



**Military intervention and international law: A  
critical analysis of the role of the international  
community in political uprisings in Libya and Syria**

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This thesis is submitted in fulfillment of the requirements for the degree of  
Doctor of Philosophy in Political Science in the School of Social Sciences,  
University of KwaZulu Natal - Howard College

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**Durban, South Africa**

**November 2014**

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
DECLARATION .....	iv
ACKNOWLEDGEMENTS.....	v
LIST OF ACRONYMS.....	vi
ABSTRACT.....	viii
CHAPTER 1 .....	1
INTRODUCTION.....	1
1.1 Overview .....	1
1.2 Background and outline of research problem .....	5
1.3 Preliminary literature study and reasons for choosing topic.....	9
1.4 Research problems and objectives: Key questions to be asked .....	15
1.5 Research problems and objectives: Broader issues to be investigated:.....	15
1.5.1 Hypothesis.....	15
1.6 Principal theories upon which the research project will be constructed (research design) .....	17
1.7 Research methodology and methods .....	20
CHAPTER 2 .....	26
INTERNATIONAL LAW AND CONTENDING THEORIES ON MILITARY INTERVENTION .....	26
2.1 Introduction .....	26
2.2 The Grotian Doctrine and the Just War Theory .....	27
2.3 The Concept of Sovereignty .....	30
2.4 Realist Theory and Military Intervention for Humanitarian Purposes .....	32
2.5 Human Rights Theory of International Relations.....	34
2.6 Implications of theories on Military Intervention.....	38
2.7 Conclusion.....	42
CHAPTER 3 .....	44
INTERVENTION AND PRECEDENCE, 1990-2010 (IRAQ, SOMALIA AND KOSOVO) .....	44
3.1 Introduction .....	44
3.2 Historical background to military interventions for humanitarian purposes .....	44
3.3 Iraq (1991 and 2003).....	46
3.4 Somalia (1992) .....	51
3.5 Kosovo (1999) .....	52
3.6 Conclusion.....	56
CHAPTER 4 .....	58

LIBYA AND SYRIA: ORIGINS AND NATURE OF THE CRISES .....	58
4.1 Introduction .....	58
4.2 The Arab spring .....	59
4.3 Libya – historical overview .....	61
4.4 Syria.....	67
4.5 General Disproportions in the Arab Spring.....	74
4.6 Conclusion.....	76
CHAPTER 5 .....	80
INTERNATIONAL LAW, TRANSNATIONAL ORGANIZATIONS, AND INTERVENTION IN LIBYA AND SYRIA .....	80
5.1 Introduction .....	80
5.2 Responsibility to Protect: Changing the Rules of Military Intervention for Humanitarian Purposes?.....	80
5.3 International Law and Intervention in Libya .....	86
5.4 The Syrian case and international law .....	91
5.5 Aiding Opposing Belligerents under International Law .....	92
5.6 External Support for the Assad Government: Legality and Morality?.....	94
5.7 The Use of Chemical Weapons and International Response .....	94
5.8 Conclusion.....	96
CHAPTER 6 .....	99
RESPONSES OF THE INTERNATIONAL COMMUNITY TO LIBYA AND SYRIA: A COMPARISON .....	99
6.1 Introduction .....	99
6.2 Similarities and Differences in the Libyan and Syrian Crises .....	100
6.3 African Union (AU), Arab League and United Nations (UN) on Libya .....	103
6.3.1 Africa and the African Union (AU).....	103
6.3.2 Arab States and the Arab League.....	106
6.3.3 The International Community and the UN .....	107
6.4 Syria, the Arab League and the International Community .....	109
6.4.1 The International Community.....	111
6.5 Regime Change and Other Factors .....	116
6.6 Conclusion.....	117
CHAPTER 7 .....	120
CONCLUSIONS.....	120
7.1 General Findings: Libya and Syria .....	120
7.2 Human rights considerations vs strategic and geo-political interests: A case for reform of the responsibility to protect doctrine .....	128

7.3 Concluding Remarks and Recommendations .....	134
APPENDICES .....	137
Appendix 1: Journal Article to Middle East Journal .....	137
Appendix 2 United Nations Security Council Resolution 1973 (Libya) .....	153
BIBLIOGRAPHY .....	164

## DECLARATION

I, Blessing Simura declare that,

1. The research presented in the thesis except where otherwise indicated is my original research.
2. This thesis has not been submitted for any degree or examination at another university.
3. The thesis does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other them.

Student Name: Blessing Simura

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Signature

DATE: 24 November 2014

## ACKNOWLEDGEMENTS

This work was a challenging but worthwhile experience and journey for me. It would not have been possible without the guidance from my supervisors. Dr. Lubna Nadvi and Professor Goolam Vahed. Like a compass to a sailor, they guided me towards the directions expected of me on the level of study that I chose to undertake. I am greatly indebted to them for their scholarly guidance throughout the research period.

I am compelled to mention my sister, Tsitsi, for the assistance not only during this study, but since high school, and my father for inspiring me to study international relations and politics.

My mother and other siblings (River and Joseph and Bitia) also played different important roles that made me realize my dream to study at the University of KwaZulu Natal (UKZN). They deserve my gratitude. A special 'thank you' goes to my wife and son whose special time was sacrificed for this study.

Friends and colleagues contributed in different ways for the realization of the dream to undertake this study with UKZN. The following deserve to be mentioned: Gift Mukwanda, Kudzaishe Marecha, Sarudzai Salome Chakwakwama, Gift Mwonzora, Courage Dzukamanja, Catherine Mutitima, Tamuka Ndoro, Tendai Nyambaro-Ndoro, Mitchael Bizure, Musara Lubombo, Freeman Chiwada, Edmore Kwenje, Precious Zenda, Skoliwe Matarise and Dr. Charity Manyeruke.

Lastly, I am grateful to Dr. Lucky Asuelime for assisting me during the application stages and the SANZAF team.

## LIST OF ACRONYMS

ANC	African National Congress
AU	African Union
BBC	British Broadcasting Corporation
CAT	Central African Time
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CIA	Central Intelligence Agency
DRC	Democratic Republic of Congo
ECOMOG	Economic Community of West African States Monitoring Group
EU	European Union
FRY	Federal Republic of Yugoslavia
FSA	Free Syrian Army
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRC	International Committee of Red Cross
ICSL	International Court for Sierra Leone
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IS	Islamic State
ISIS	Islamic State in Iraq and Syria
ISIL	Islamic State in Iraq and the Levant
MENA	Middle East and North Africa
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NTC	National Transitional Council (Used interchangeably with TNC)
OPDS	Organ on Politics, Defence and Security (of SADC)
PKK	Partiya Karkeren Kurdistan (a militant rebel group, also known as Kurdistan Workers Party)
R2P	Responsibility to Protect
SADC	Southern Africa Development Community
SNC	Syrian National Council

TNC	Transitional National Council (Used interchangeably with NTC)
UAR	United Arab Republic
UDHR	Universal Declaration of Human rights
UK	United Kingdom
UN	United Nations
UNITAF	Unified Task Force
UNOSOM	United Nations Operation in Somalia
UNSC	United Nations Security Council
USA	United States of America
WMD	Weapons of Mass Destruction
WW II	Second World War



## ABSTRACT

The role of the international community in internal crises of sovereign states has been a subject of great debate in international relations studies. The legality and morality (from a United Nations Charter and customary international relations perspectives) of military intervention, either actively or through the support of an uprising or a rebellion, has been a subject of debate. The major debate on the role of the international community has been on the subject of military intervention for humanitarian purposes. Military intervention for humanitarian purposes which was popular in the 19<sup>th</sup> century and was seen by scholars as the justification of the military interventions in Iraq, Somalia and Kosovo during the 1990s was rekindled with the Arab Spring and North Atlantic Treaty Organization (NATO) member states' intervention in Libya and the alleged military support to Libyan rebels. NATO member states' intervention in Libya polarized the Security Council and led to paralysis on the Syrian crisis. This thesis critically analyses the concept of military intervention for humanitarian purposes taking into consideration the transformations that have taken place in the international system specifically on the concept of sovereignty, human rights, and the United Nations (UN) law as well as the rise of the "Responsibility to Protect" as the repackaging of the concept of military intervention for humanitarian purposes. The research argues that the concept of military intervention for humanitarian purposes is controversial and has not gained full recognition by member states of the UN. It also argues that the concept of military intervention for humanitarian purposes is subject to abuse by ambitious powers. Its use in Libya was controversial. However, the international community could have learnt from the Libyan mistakes to come up with an accepted intervention programme in Syria in order to save civilian lives.

# CHAPTER 1

## INTRODUCTION

### 1.1 Overview

The roles of the international community in the internal affairs of a sovereign state have been changing since the development of the state system in different regions in the world. The major contentious topic on external intrusion into the internal affairs of a state relates to military intervention and supporting 'rebellions'. This thesis notes that there are three broad categories of military intervention that a state or group of states can conduct in another state.

These interventions are:

1. Military intervention in response to an invasion. This war is accepted as legally and morally justified by both customary international law (Vattel; 1758: bk. 3, Ch. 3) and the UN law. Article 51 Of the UN charter clearly states that, "Nothing in the present Charter shall impair the inherent right of individual or collective self defence if an armed attack occurs against a Member of the United Nations"
2. An invasion which is driven by any desires pursue self/national/strategic/territorial/geo-political interests. This category encompasses all wars that are fought without internationally accepted legal or moral justification. This type of war also include wars that are declared on legally or morally accepted grounds but these legally and morally accepted reasons only being used as pretexts to pursue the interest of the invading state/s (Vattel; 1758: bk. 3, Ch. 3).
3. Military intervention for humanitarian purposes. Under this third category, a state or group of states militarily intervene in another state not for self/national/strategic/territorial/geo-political interests or to repel an invasion, but to protect the civilians of the subject state who will be under gross abuse by their leaders. In other words, it is a war to restrain a sovereign from committing heinous crimes against humanity against his/her subjects.

It is important to note that while the research categorized wars from a legal and moral perspective in three groups, there are complex issues which relate to the categorization and classification of wars. These complex issues include the clear parameters that set boundaries on when a states can define the acts of another states as a threat to their security and respond

militarily under self defence including pre-emptive attacks. For instance, when a nation is amassing weapons that threaten a change in the balance of power and balance of threat with its neighbours or rivals, such rivals may attack the state that will be militarizing to restore the balance of power. However, such complexities were beyond the scope of this study and therefore the researcher deliberately relegated them.

There are no legal arguments on the first two categories of military intervention, namely war for self-defence and an aggressive war. A military invasion is clearly illegal and a sovereign state has the right to defend itself and can call for assistance from other sovereign states. A war of self defence in retaliation to an attack or invasion by another state unjustly is legal under international law. Hence, states can form regional defence pacts which are not proscribed under international law because of the importance of self defence in the international system.

Military intervention for humanitarian purposes is, however, highly contentious. Theoretically, military intervention for humanitarian purposes is traced back to the writings of classical jurist and theorist, Hugo Grotius, in his work, *De Jure Belli ac Pacis (On the Law of War and Peace)* of 1625. The concept which is based on the Grotian argument that, "... where [leaders] provoke their people to despair and resistance by unheard of cruelties, having themselves abandoned all the laws of nature, they lose the rights of independent sovereigns, and can no longer claim the privilege of the law of nations" (Grotius; 1625: 247), supports the use of military force, or the threat of it, by a sovereign state in order to stop the commission of gross human rights violations and heinous crimes by another state on its subjects/citizens. Although scholars like Emmerich de Vattel (1758) also wrote in support of the concept, critics such as Bartolome de las Casas argued that the sanctity of every life made it impossible to justify its taking even if it is for the defence of those who are threatened by the culture of human sacrifice (las Casas, cited in Sorabji; 2006: 20).

In modern times, military intervention for humanitarian purposes was used by the European powers (Austria, Britain, France, Prussia and Russia) to extensively intervene militarily in the affairs of the Ottoman Empire beginning in the 19<sup>th</sup> century (Cheikh; 2013: 155). It is however difficult to judge the legal standing of military intervention for humanitarian purposes in the period before the end of the Second World War (WW II) given that the use or threat of force was not proscribed as a foreign policy tool in international relations.

The carnage of the two world wars left international leaders with the conclusion that the use or the threat to use force except in cases of self defence should be proscribed as a foreign policy tool in the international system. The Charter of the United Nations which created the United Nations organization, therefore clearly stated in Article 2 (4) that, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” The founding fathers of the United Nations were pre-occupied with the issue of wars of aggression and accorded little attention to the rise of internal unrests and civil wars as a major threat to international peace and security.

The increase of internal uprising during the last decade of the 20<sup>th</sup> century resulted in the use of brutal force by the state against the perpetrators and brought back the question of military intervention for humanitarian purposes. This thesis critically analyses the legality and practicality of the concept of military intervention for humanitarian purposes under UN law, using Libya and Syria as specific comparative case studies. It looks at three examples of military intervention for humanitarian purposes during the ‘decade of intervention’ (1990-1999), namely Iraq, Somalia and Kosovo.

It also discusses the international efforts to come up with a universal position on military intervention for humanitarian purposes by redefining the old concept of military intervention for humanitarian purposes that was propounded in the absence of a formally recognized apex body to suit the current international system in which the UN is the apex universal body that regulate state behavior in the international system. It analyzes efforts by contemporary interventionists like Kofi Annan, the former UN Secretary General (1997-2006) to reinterpret the UN charter in order to justify the legality of military intervention for humanitarian purposes under UN law. The work of the International Commission on Intervention and State Sovereignty (ICISS) is discussed at a length. The thesis argues that the commission’s “The Responsibility to Protect,” Report is the main tool that the international community tried to use to legalize military intervention for humanitarian purposes and co-opt it into the UN law. The document classifies international crimes, an exercise which, this thesis argue, was simply a re-codification of what had already been codified by the international criminal tribunals like the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR respectively), International Court for Sierra Leone (ICSL), and the Rome Statute of the International Criminal Court (ICC).

The major change that the ICISS brought was codifying that any military intervention for humanitarian purposes should be passed by the UN through the Security Council. It is argued in the research that such a recommendation was taken in order not to upset power structures of the UN on contentious issues. However, the recommendation failed to take cognizant of the fact that all contentious interventions are mostly related to the interest of the veto powers and giving them the powers would only bring the UN to paralysis on matters in which the interest of a veto power are threatened. This is put clearly in the thesis as parallels are drawn between Libya and Syria in which the issue of the interest of the permanent members in the Syrian case, where threatened bringing the whole UN system into paralysis except only on non-binding issues like peace talks.

In an effort to clearly bring out the arguments on practicality and legality of the concept, the thesis explores international relations theories that have some answers on the contentions on both the concept of intervention and the sovereignty of states in the international system. The Grotian tradition and the just war theory, realism, human rights theory, and the concept of sovereignty are discussed and analyzed in relation to the concept of military intervention for humanitarian purposes.

The thesis argues that while the sacrosanct nature of state sovereignty is being challenged, the international human rights theory has not achieved universal acceptance that can warrant its use to justify defying the former and militarily intervene in sovereign states. The failure to universalize derives from the fact that different nations are still guided by different and diverging cultural beliefs that create glass walls for universalizing human rights. This does not mean that there are no universal human rights. As argued by Richard Norman (2006), while there are basic universal human rights like the right to life, food and shelter, the current form of international human rights are problematic as they are human constructs with no accepted universal foundation. Norman, hence questions which minimum number of fundamental human rights are there given that the United States of America's Declaration of Independence has three; the French's Declaration of the Rights of Man and Citizen has four; the European Convention on Rights has thirteen; while the UN Declaration of Human Rights has over thirty (Norman; 2006: 193).

This study also presents an argument on the classical notion of sovereignty which has gone through evolutionary changes, yet it still remains the foundation upon which the international

system is built. Therefore threatening it with an overhaul might have unforeseen negative consequences especially given that states always look for opportunities to increase or maximize their influence in the international system. This brings the discussion to the Realist theory which argues that the concept of military intervention for humanitarian purposes is a case of pursuing national interest cased as goodwill and advancing the observation of universal human rights.

On the broader and specific case studies, the study argues that the whole unfolding of the Arab Spring witnessed some form of international intervention. For instance, the Gulf Cooperation Council (GCC) states intervened to control the Yemen uprising and give Ali Abdullah Saleh, the former president of Yemen a safe passage. In Libya, Gaddafi had long been indicted by the International Criminal Court (ICC) before his defeat and assassination by the ‘rebels’.

International intervention was more pronounced in Libya and Syria, two states which ran on systems that had notable similarities. However, despite those similarities, the intervention was different and influenced by the interests of major powers specifically the GCC, USA, Britain, France, Russia, Iran and China.

## **1.2 Background and outline of research problem**

The political uprisings in Libya and Syria since early 2011 were part of the so-called “Arab spring” that attracted the attention of the international community. The uprisings were, however, different from the Tunisian and Egyptian revolutions which preceded them in the region during the same period in terms of the reaction of the state security apparatus as the police and military had a minimal reaction and confrontation with the demonstrators. The uprisings were also different from those that occurred in Algeria, Morocco, Kuwait and other Arab states which had minimal militarization of the protesters.

In Tunisia, the *Economist* noted that around 219 people died (The Economist: 2012), while the Egyptian revolution claimed the lives of at least 840 protesters and resulted in a further 6,467 injuries (Amnesty International; 2011: 8), the Libyan and Syrian uprisings were more violent and resulted in many more casualties. Ahmad (2013: 122 states that in Libya and Syria the leaders responded with heavy weaponry against the demonstrators. This is supported by Clark

(2013: 47) who notes that in Syria, the protests were “ruthlessly suppressed and thousands of innocent men, women and children had to flee the country or stay to be tortured and killed.”

The figures for Libya have been hard to access and it is impossible to state with authority how many were killed and injured by the Gaddafi regime to warrant an intervention specifically targeting his regime in favour of the National Transitional Council (NTC), the then “rebel” movement. Gaddafi’s forces and the rebels committed atrocities that claimed hundreds, perhaps even thousands, of lives (Smith: 2011). The conflict in Syria claimed more than 100 000 lives by January 2014 when the United Nations stopped taking count of the death toll (Stamper: 2014).

The conflicts also distinctly differed in that they took regional and ethnic divisive lines. In Libya, the protesters were concentrated from the Benghazi area with other pockets of uprisings in Sirte and Misrata and later Tripoli, while in Syria the protesters were predominantly Sunni Muslims who viewed the ruling Alawites<sup>1</sup> as monopolizing power in the Baath Party. The uprisings were classified more as rebellions rather than revolutions<sup>2</sup> by the international media and political leaders. The revolting masses and the dissident soldiers used military ammunition that can be characterized as a war situation. This presented a dilemma to the regimes in power who had to decide on the amount of force that they should use to quell the rebellions, given continued calls by mostly Western powers not to use force against ‘civilians’.

The uprisings in Libya and Syria brought into sharp focus the role of the international community in national uprisings. In Libya, the North Atlantic Treaty Organization (NATO), using the power conferred to it by a United Nations Security Council (UNSC) Resolution 1973 to effect a no-fly zone over the country, provided logistical support and supplied arms to the

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<sup>1</sup> The Alawites are a minority sect in Syria, an offshoot of the Twelver sect of Shiaism. They constitute approximately 12 percent of the Syrian population and control national power in Syria since 1966 when they rebelled against Sunni who dominated politics in the Baath Party. In 1970, Hafez al-Assad, father to Bashar al-Assad took over power in a coup. Since then the Assad family and the Alawites have dominated Syrian politics. Alawites hold most influential positions in the security sector, politics and business. The rebels are composed by those disillusioned by the Assad regime and they are against the monopoly of power by the minority Alawite sect. they formed the Free Syrian army and they are made up of civilians and defectors from the Syrian army.

<sup>2</sup> A rebellion can be defined as a high level of political violence directed against the state by a segment of the population. “Rebellion or ‘revolt from below’ is a necessary but not a sufficient cause of social revolution (Boswell and William, 1990: 540), which can be defined as a mass uprising of the national population, with minimum amount of violence, as a result of multiple problems arising from long term shifts in the balance of population and resources (Goldstone, 1991: xxiv). A revolution is therefore a transformation that may continue for a long time which can be years, whilst a rebellion takes a short period of time that may not go beyond a single year before it succeeds or fails.

rebels against the government of Gaddafi (Zoubir and Rozsa; 2012: 1273). The situation was, however different in Syria where the international community failed to follow the Libyan script mainly because of the paralysis in the UNSC resulting from competing geopolitical interests of the major powers, which it may be argued, reflects a wider paralysis in international relations in general (Thakur; 2013: 61). The fact that Syria appeared militarily stronger than Libya, the role of Hezbollah and Iran, and fears of the knock-on effects of intervention on Israel made the situation less straightforward for international powers than was the case in Libya (Hasler; 2012: 5).

In view of the blatant support of the rebels by external forces in Libya (Everest: 2011), and allegations of the funding of rebels in Syria by Western powers (Malas and Dagher: 2012), this thesis examined the political and legal status of such acts in terms of international law and the United Nations (UN) Charter. Did they, for example, contradict the international norm that was established by the arms embargo placed on Serbia that strived to stop the trade of arms to the warring parties? Did they go against the judgment by the International Court of Justice (ICJ) in the USA vs. Nicaragua case in which it was ruled that no state had a right to arm dissidents or rebels in another sovereign state (Nicaragua v. United States of America; ICJ: 1986)? This dissertation questions whether new rules are being set in the global international system in response to these two cases.

The fact that states which had publicly stated that they were against the Gaddafi regime were given the mandate to implement a no-fly zone over Libya calls for an interrogation of the role of the UN as the final peace broker in international relations. This thesis examined the “credibility” of the UN as an international peace broker after permitting non-neutral states to effect a no fly zone and send an observer mission to Syria which included individuals from states that were clearly not neutral. Many observers felt that the UN was not neutral in the Libyan crisis either, and that it engaged in regime change due to its support of the rebels, who were branded as ‘Democratic’, rather than playing the role of an honest peace broker.

On the other hand, the African Union as a regional bloc tried to come up with a negotiated settlement. Simon Handy (2011: 8), argued that “The AU and some African heads of state ... consider that what happened in Libya was not a revolution such as those in Egypt and Tunisia, but a coup d’état orchestrated by a heteroclite coalition of putschists helped by NATO under the pretext of its responsibility to protect.” The AU, due to its policy of not accepting



unconstitutional governments, could not accept the takeover of power by the rebels but had planned a negotiated settlement (Simon Handy; 2011: 8). However, efforts by the AU to play the role of “honest” broker were thwarted by a number of reasons which included; divisions amongst African states on Libya (Kasaija; 2013: 117); African member countries votes for UNSC Resolution 1973 for the No-Fly Zone; and the refusal by NATO to stop bombardments and open the way for AU brokered talks between the rebels and the Gaddafi government. It was, therefore, due to disunity between individual African states that led to the weak position of the AU in relation to NATO (Kasaija; 2013: 117).

USA and other NATO states did not accept the proposal by former UN Secretary General and first UN-Arab League Special Envoy to Syria (February 2012- August 2012), Kofi Annan, that to have a sustainable peace in the Syrian crisis, Iran as a major regional power should be taken aboard in discussions. The refusal suggested that Western powers’ policy was driven by their interests against the desired general interest of a peaceful political solution.

Another apparent anomaly is that the UNSC was prepared to use force against Libya and that NATO countries provided support to rebels in Syria, but not to those in Bahrain, where many unarmed protesters have been killed by national and foreign forces in 2011 (Katzman: 2012). In the same line, Russia and China accepted the use of force against Gaddafi by abstaining from voting in Resolution 1973 but used the veto power to defend Assad, whose situation was nearly similar to that of Gaddafi. This raises the question of whether the actions and discourse of the international community, both those countries that are supporting the regime and those who are supporting the rebels, is not hypocritical in nature.

Military and non-military interventions by the international community in the domestic affairs of sovereign states over the past two decades have generated intense debate over the legality and validity of such actions in international law due to selective intervention by international powers and organizations. This dissertation interrogates what the legal role of the international community is in uprisings within sovereign states in terms of international law, who demarcates the amount and nature of force that can be used against an armed population that is rebelling, and whether international law can have any value in international relations if it is applied inconsistently.

### **1.3 Preliminary literature study and reasons for choosing topic**

The role of foreign intervention in the internal affairs of other states was questioned by international law philosophers and writers, such as Vattel, Grotius, Weiss (2007), Lang (2002), Coady (2003) and Kochler (2001). The definition of the concept of intervention is contested and highly controversial. In a general sense, any act in which an outside state sends its troops into or supports a rebel movement in a foreign state can be termed an intervention. Due to the controversy brought about by this definition and the desire to separate an armed invasion from an intervention to stop the violation human rights by a sovereign against his / her citizen, scholars such as J. L. Holzgrefe (2003: 18), define military intervention for humanitarian purposes as the use or threat of armed force by a state or group of states to stop gross human rights violations. Among the proponents of the concept of intervention is Hugo Grotius (1625: 207), who argued that those vested with power have a right to punish other leaders for committing “gross violations of the law of nature and of nations, done to other states and subjects”.

Grotius’ theory was applied extensively by the European powers to justify their interventions in the crises of the Ottoman Empire (Cheikh; 2013: 155). However, Hans Kochler (2001: 3) argues that the interventions by the European powers (Britain, France, Prussia, Austria and Russia) in the Ottoman Empire were driven by geo-political imperatives rather than the sincere desire to correct the mistreatment of Ottoman Christians by their Turkish Muslim rulers. Kochler notes that the “wrongs” that the European leaders pointed to as the crimes of the Ottoman sovereigns were less than the horrendous human rights crimes that they themselves were committing in their colonies in Africa, East Asia, and Latin America. Kochler (2001: 3)’s argument is that the Ottoman Empire was a tussling ground for control of the Mediterranean and Constantinople, particularly between Britain and Russia, with military intervention for humanitarian purposes being used as a cover for national interest.

In the contemporary period, one of the chief proponents of military intervention for humanitarian purposes was Kofi Annan, who sought to redefine the concept of sovereignty in order to make it compatible with the concept of the responsibility to protect (military intervention for humanitarian purposes). Annan, cited in Massingham (2009: 804), asked, “... if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we

respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?” Annan redefined the notion of sovereignty from the old Westphalian concept of a state’s right to be the supreme power in municipal issues and its non-recognition of any supreme power outside its borders to that of responsibility of its actions on its citizens and the international community (Weiss; 2007: 96). The drive by Annan to redefine sovereignty and justify intervention led to the production of the ‘Responsibility to Protect’ (R2P) document that was simply a repackaging of the old concept of military intervention for humanitarian purposes in a new name and sought to legitimize it through the UN General Assembly (Massingham; 2009: 804).

Annan’s drive for the international legalization of R2P, however, suffered a major setback when the R2P was used by the US-led “coalition of the willing” to justify the invasion of Iraq in 2003 in search of weapons of mass destruction. The application of the R2P in Libya raised more questions than justification of the legalization of the concept and the desires to limit the sovereign powers of the state and the regime in power. This lent weight to the argument of the scholars and politicians who are against the R2P concept. Hasler (2013: 5) is of the notion that intervention in Libya was not driven by moral intent only but by geopolitical and economic interests as well. Hasler (2013: 5) argues that the statements by the former United States of America (USA) Under-Secretary for African Affairs, Susan Rice that the American government will stand up for people who fight for their basic rights and French Foreign Minister, Alain Juppe, that France will not abandon civilians being brutalized by their leaders were mere rhetoric. This, Hasler (2013) argues, because these states intervened in Libya but failed to intervene in Syria whose civilians were equally suffering like the Libyan from Assad who was refusing to allow them to exercise basic democratic rights. Kochler (2001: 3) maintained that the concept, now repackaged as the responsibility to protect, previously termed military intervention for humanitarian purposes, had never been undertaken for humanitarian needs but as a cloak to cover up the pursuit of national interests by powerful states in weaker states. Other scholars who are against the application of the concept of military intervention for humanitarian purposes include Chesterman (2002: 295) who argues that the general rules of international law provide for the non-use of force or its threat in international relations.

The scholars mentioned (Hasler, Kochler and Chesterman) provided interesting insights on the subject of military intervention for humanitarian purposes. However, this thesis shed different light from their arguments. While Hasler (2013) argues that there was no intervention in Syria,

this thesis argued that there was intervention in both Libya and Syria but only conducted differently. On one hand, Western states and Gulf Cooperation Council (GCC) states funded and armed the rebels (Clark; 2013: 47), while on the other hand, Russia and Iran provided the Assad government with arms. These actions are argued in this thesis as intervention. On the question of Russia and Iran providing arms arguing that the Assad government was the de-facto government of Syria, the thesis argues that the heightened and increase in support was a reaction to the crisis that was taking place. Hence, their support for Assad is arguably intervention.

Although the aforementioned argument concentrated on scholars and proponents for and against military intervention for humanitarian purposes as an international response to local crises that would have turned into the gross violation of human rights and/or the practice of genocide, the topic also calls for the discussion of external support to rebels or dissidents in local crises. In one of its major rulings in the case concerning military and paramilitary activities in and against Nicaragua (Nicaragua vs. United States of America), the International Court of Justice (ICJ) ruled that it is against international law that a state supports dissidents and/or rebels in another state and such acts are tantamount to acts of aggression against the target state.

Having got a UNSC mandate through Resolution 1973 the entry of NATO into Libya was “legitimate” but this thesis looks at whether giving rebels weapons and other logistical support was in line with the morals of the theory of military intervention for humanitarian purposes and whether it contradicted the mandate given by the authorizing resolution and the UN Charter which calls for the limitation of aggression in international relations. In line with this, the research also questions the legality and morality of Russia in supplying weapons to the Assad led Syrian government at a time when the UN was calling for stopping the supply of weapons to the belligerents in order to limit the number of casualties.

The thesis interrogates the alleged supplying of weapons by Western countries to rebels in Syria through Turkey against the background that the international community has a moral obligation to protect distressed citizens in a conflict situation. Investigations centered on who can provide such assistance, whether peace brokers are taking aboard their national interests and whether this is compromising the just cause of intervention and negotiation.

The current notion of military intervention for humanitarian purposes has been overshadowed by the use of armed force and the need to justify the use of such armed force mostly by the powerful states in humanitarian cases. In a number of instances, powerful states have pushed for the use of armed force even in natural humanitarian disasters that would be mitigated by a civilian contingent. One can cite, the use of the United States' army to provide humanitarian assistance to Haiti (Taft-Morales and Margesson; 2010: 7). While there is no apparent problem in using a military force for humanitarian reasons, the presence of a foreign military force, especially from a major power, can threaten national sovereignty.

In instances where the major powers have not used the army, NGOs which have their roots in the assisting countries are given funds to assist in humanitarian projects. However, the use of NGOs has also been questioned by locals in the target states as they are seen to be bringing or promoting alien western cultures and also acting as extensions of the intelligences of their mother states to undermine local leaders; a situation which has led Russia to develop an NGO Law that seeks to control the NGO operations and track their sources of Finance (Volk: 2006).

The legal foundation upon which this research rest is the charter of the United Nations (UN). The UN is arguably the first successful international organization that outlawed "the use of force as a legitimate instrument of national policy" (Schrijver; 2003: 1). The UN was founded in 1945 with the primary objective of protecting the world against another major war (see the preamble to the UN Charter). Article 2 (4) of the UN charter unequivocally prohibited the use of force. This article (i.e. 2 (4)) is described by Schrijver (2003: 4) as "the pivot of the UN charter" which "serves as the backbone of the envisaged system of collective security and peaceful relations among states."

The importance of the UN charter and the outlawing of the threat or use of force is appreciated if one realizes that the quest to delegitimize the use of force as a tool for international relations in contemporary times had begun in 1899. After the Hague Convention of 1899, other major attempts included the Hague Convention of 1907, the League of Nations (1919) and the Kellogg-Briand Pact of 1928 (Schrijver; 2003: 2). The League of Nations as a predecessor to the UN attempted to regulate warfare after the horrific experience of the First World War (WW I). Article 11 of the charter of the League of Nations, therefore, declared any war, either involving a member or non-member of the League of Nations to be a concern to the whole League which

had to take “wise and effectual” action to safeguard peace of nations. However, the League of Nations did not ban the use of force but established a moratorium.

The League of Nations also had loopholes which were taken advantage of by aggressor states, specifically the use of the word ‘war’ to conceptualize force. This loophole was abused by Japan which described its invasion of Manchuria not as a ‘war’ but an ‘incident’ and Italy which called its annexation of Ethiopia as an ‘expedition’. Crafters of the UN charter therefore opted to use the word ‘force’ to encompass all incidents (Schrijver; 2003: 3).

At birth the UN had clear mandates and guidelines set in the charter, specifically the preservation of international peace and security. However, international transformations have seen the growth of competing interests within the UN and in the interpretation of the charter. Firstly, the transformation from concentrating only on negative peace that was conceptualized as the absence of war among states (Institute for Economics and Peace; n. d.; 3), to the realization that lack of human security as group level in internal affair of member states also constitute a threat to peace and security (Schrijver; 2006: 9, 16-17). It was from the acceptance of this new phenomenon that the Security Council declared the situation in the then Southern Rhodesia (now Zimbabwe) (Morris; 2013: 1268) and supply of arms to Apartheid South Africa as threats to peace and security.

Less powerful states, predominantly the erstwhile colonies, which joined the UN at decolonization came in seeking protection to maintain their newly acquired independence and sovereignty. The foundation pillars of the UN system of the respect to sovereignty and territorial integrity was an assurance to their aspiration of sovereign equality. However, human rights issues and the question of military intervention for humanitarian purposes, which have come to the front of international debate are perceived by the less powerful states as threats to their survival. Some view them as pretext for recolonization by the powerful states (Schrijver; 2003: 6). The less powerful states have also questioned the maintenance of 1945 structures in the UN which are seen by weaker states as rewards for victors in the Second World War (WW II). Schrijver (2003: 6) summarizes the competing interests in the form of classical International Law principles of sovereignty, non-intervention and prohibition of the use of force on one hand and on the other hand, modern International Law principles of respect for universally accepted human rights and the organization of the world as an international community, meaning more than just a “world of states”.

Scholars and global leaders have given different and sometimes contradictory interpretations to the charter regarding the concept of military intervention for humanitarian purposes. Scholars and world leaders like Thomas Weiss, Kofi Annan and Tony Blair argued that the charter emphasized the need for both international peace and security, and the observance of human rights hence sovereignty was limited to those who respected their subjects. Those who abused their subjects could not be protected by the principles of sovereignty and non-interference from the UN charter. On the other hand sceptics like Ian Brownlie, and most of the leaders of the less powerful states argue that the charter has no provisions for military intervention for humanitarian purposes and the concept of intervention is prone to abuse by powerful states. It was the aim of this research to dig into the arguments and come up with negotiated conclusions. The research sought to fill the gaps pertaining the concept and practice of military intervention for humanitarian purposes under the UN charter which can be seen as the global constitution using Libya and Syria as comparative case studies.

This study therefore:

- a) Discusses the legal framework that governs intervention, with specific interest on military intervention for humanitarian purposes, by foreign states in disputes within sovereign states under international law;
- b) Interrogates the role of the international community in local disputes, with the political uprisings in Libya and Syria serving as case studies;
- c) Analyzes the disparity between theory and practice on intervention in international relations in general, and in the cases of Libya and Syria in particular;
- d) Discusses the Libyan and Syrian crises in depth, to determine the level of force which can be applied by local regimes against rebelling masses; and
- e) Analyses the Responsibility to Protect (R2P) concept in line with customary international law and United Nations law.

#### **1.4 Research problems and objectives: Key questions to be asked**

The research is centered on the question: What are the international rules and regulations on “intervention” which, in terms of international law refers to the forcible interference of one country or countries in the internal or external affairs of another state?

From this, a series of further questions emerge:

- a) Under what conditions is intervention considered to be an unlawful act and when is it regarded as lawful?
- b) What amount of force can/should a state use against rebelling citizens and who is to judge that a certain amount of force is appropriate / excessive?
- c) What changes have there been in international law regarding the rules of intervention since the formation of the UN in 1945, and why?
- d) What is the role of the international community in internal states’ political disputes, particularly in the case of Libya and Syria? What accounts for the different reactions?
- e) What precedence has been set by the international community’s response to the Libyan and Syrian crises?
- f) What is the position of the Responsibility to Protect in International and United Nations Law?

#### **1.5 Research problems and objectives: Broader issues to be investigated:**

##### **1.5.1 Hypothesis**

The differential response of the international community to the Libyan and Syrian crises suggests that the actions of international powers are motivated by global and regional self-interests and not the genuine desire to intervene on humanitarian grounds.

There has been increased intervention in the affairs of sovereign states over the past two decades. Examples include the establishment of a safe haven for Kurds at the end of the first Gulf War (1991); missions in Somalia, Rwanda, and Kosovo (1999), which were all defined as ‘threats to peace and security’; the mission to Sierra Leone (1999) was to protect UN personnel; and the invasion of Iraq (2003) was to seek out weapons of mass destruction. After Kosovo, there was international debate on the legality of military interventions for



humanitarian purposes and principles on the Responsibility to Protect (R2P). This came to an end with the invasion of Iraq but surfaced again following intervention in Libya.

The Libyan and Syrian crises presented a new precedence in international relations as the rationale was not a threat to 'peace and security' but threats to civilian lives. Since the codification of the 'Responsibility to Protect' document by the International Commission on Intervention and State Sovereignty (ICISS) in September 2001, there has not been any decision by the UNSC mandating the support of rebels against a de-facto state leader, as was the case in Libya (Thakur; 2013: 61). The failure by the international community to pass another resolution on Syria authorizing intervention portrayed an international order that can best be argued to be contradictory and thus leading to disorder and confusion. This apparent lack of consistency by various governments, such as China and Russia who did not veto international action in the case of Libya but have taken a pro-Assad regime stance in the case of Syria (DePetris: 2012) warrants an academic investigation. NATO's inconsistency by not going into Syria without a UNSC mandate, as it did in Kosovo, also raises questions that warrant investigation.

The number of states in which local populations may rebel / revolt may increase in the near future for various reasons. In fact, as I am completing this dissertation (October 2014) the people of Syria and Iraq are under threat from the self-designated Islamic State (**IS**), which previously called itself the **Islamic State of Iraq and the Levant (ISIL)**. The group has been described by the United Nations as a terrorist group and designated as a foreign terrorist organization by Britain, Australia, the United States, Canada, Indonesia, Saudi Arabia, Turkey, and several other countries.

The protection of civilians again seems to assume importance under UN auspices. The study seeks to establish whether there is a new precedence on the role of the international community in local disputes, ostensibly to protect civilians, especially with the rise of the new discourse on human rights, and whether this is in line with the UN Charter on when the international community is justified in employing force or the threat of force to influence the behavior of another state. Crucially, what are the dangers of leaving such important decisions to self-interested decision-makers?

## **1.6 Principal theories upon which the research project will be constructed (research design)**

Interrogating the role of the international community in the uprisings in Libya and Syria raises a number of conceptual and theoretical questions. The theories that will be used to analyze the role of the international community in the uprisings are the theory of sovereignty, just war theory, and the realist theory of international relations. The research also relates to the human rights theory in international relations because it is used as the benchmark to judge leaders and to call or not to call for intervention.

The theory of sovereignty has been a central regulator of international relations since the days of the Greek city states (Thucydides; bk. 5; xvi, 27-29 of 31). The crafters of the UN Charter were not oblivious to international realities as they incorporated the concept of sovereignty as a foundation of the post Second World War (WW II) international community. The crafters noted in Article 2(1) of the Charter that for international peace and security to be realized, all states should respect the principle of sovereign equality.

The concept of sovereignty denotes that a state is the supreme judge in all its internal affairs to which no external interference can be considered legitimate, while externally the state recognizes no any other supreme authority. This old Westphalian concept of sovereignty that respected the sacrosanct nature of state sovereignty and the principle of non-interference in the internal affairs of other states has come under stress due to the changing nature of international relations.

In 1993, Francis Deng and Roberta Cohen redefined the notion of sovereignty from the right to non-interference in internal affairs to ‘sovereignty as responsibility’ (Bellamy; 2008: 619). Deng and Cohen argued that while a state enjoyed sovereignty from external intervention, this sovereignty was only legitimate when the state was responsible for the well-being of its citizens. In cases of “stress”, where the state is unable to discharge its responsibilities, they argued that the state could exercise its sovereignty by calling for external support; failure to do so would compromise the legitimacy of its sovereignty (Bellamy; 2008: 619). This argument, therefore, presupposes the existence of a supreme higher authority in international relations that is capable of holding supposed sovereigns accountable (Bellamy; 2008: 620). This perspective, it may be argued, is very ambitious given that in the current international system

even the UN has not matured enough to be granted the role of legal supreme authority over all states. The concept of sovereignty also does not conform to the arguments provided by the social contract theorists who argued not for a supreme power to hold the sovereign to account but for citizens to hold their leaders to account based on their natural rights against the state Aristotle (Trans. B. Jowett; 1999: 77).

In contrast to the theory of sovereignty, the Just War Theory argues that not all wars, which are not of repelling an assault on one's state, are wars of aggression per se. While these two theories do not stand totally polarized given that they both recognize the supremacy of the state in its internal affairs and the lack of a supreme power externally, the just war theory stops recognizing state sovereignty when massive violations of human rights, as contained in the law of nature and nations, are committed (Murphy; 1996: 43). The concept of military intervention for humanitarian purposes is justified under the theory of just war which has two main guiding codes of war, namely the *jus ad bellum* (rules governing the resort to war) and *jus in bello* (rules governing the conduct of an armed conflict, the treatment of combatants and non-combatants). More recently, there has been the introduction of a third code, namely, the *jus post bellum* (Rules governing the conduct of the return to peace and stability after an armed conflict) (Fabre; 2008: 963). According to the traditional rules of the just war theory, "a war is just if the harms that it causes are outweighed by the good that it brings about, and if it is waged for a just cause, towards just ends, and by a legitimate authority or authorized by a legitimate authority" (Fabre; 2008: 963).

The applicability of just war theory is problematic as it raises a set of contentious questions: how and who judges whether the harms are outweighed by the good, and for whom? Who decides the just cause of the war? And who can be regarded as the legitimate authority? Even with the creation of the UN, problems of legitimate authority continue to arise, as shown by USA and NATO activities in Kosovo (1999), Iraq (2003), and Libya (2011).

The Realist Theory of international relations, this study holds, is the best equipped to provide answers to the questions of power politics which are raised by these interventions. Realists believe that power is the currency of international relations to the extent that the theory is sometimes referred to as the Power Theory. The thinking is traced back to the writings of Thucydides who noted that states compete and fight for security, honour, and self-interest (Nossal; 1998: 66). This is also supported by Hobbes who argued that human beings fight for

competition, diffidence and glory (Hobbes; 1651: 77). Classical realist thinkers such as Hans J. Morgenthau have also been influenced by the philosophical writings of Thucydides and Hobbes and have managed to position the theory in current international relations (Nossal; 1998: 15). For a realist, states in international relations seek to maximize their power both in political and economic terms. John J. Mearsheimer (2013: 78) notes:

Great powers, the main actors in the realists' account, pay careful attention to how much economic and military power they have relative to each other. It is important not only to have a substantial amount of power, but also to make sure that no other state sharply shifts the balance of power in its favor.

While the new thinking on sovereignty as responsibility and the just war theory locate the current international system as an intertwined one in which states have a moral duty to protect citizens whose rights are grossly violated by their sovereigns, realism argues that there is no place for morality in international relations. The theory also argues that the state is the central actor in international relations (and not citizens) and that it is a rational actor which can speak for the whole nation with a unified voice (Donnelly; 2000: 7-8).

This notion has been heavily criticized by the theory of Globalism which argues that the international system has evolved into an international society of individuals. A problem in any single state may have negative impacts beyond its borders no matter how much internal it may be judged to be. It is therefore argued that internal matters can no longer be covered by sovereignty as they have the capacity to have spill overs in other states.

An analysis of the actions of the major international and regional powers in the international system shows that while states argue from a moral ground to intervene in the affairs of other states, the major reasons behind such interventions are national interests. Actions of the USA and NATO have, in some cases, not been sanctioned by the UN, which is supposedly the supreme international authority, hence, their actions cannot be accounted for under the just war theory. Since the wars were prevalent against states that threaten USA and Western hegemony, realism can be the best theory to analyze such extra-legal action in the 21<sup>st</sup> century.

Discussing the concept and conduct of military intervention for humanitarian purposes rests on an invisible foundation of universal human rights which should be respected by all states,

leaders and citizens across the world. This body of law can be collectively understood as being constituted by humanitarian law (Cassese; 1999: 791). Contrary to that, this body of law now moves behind the traditionally understood principles of humanitarian law as it sought to deal with inter-state conflicts. The Rome Statute of the International Criminal Court (ICC) is one of the rules of law which were created to govern the conduct of intra-state conflicts, and the conduct of leaders against public unrest. According to Article 1 of the Rome Statute, even civil conflicts now threaten international peace and security, hence the involvement of the UNSC in matters that would be considered internal affairs.

### **1.7 Research methodology and methods**

Research can be simply understood as “the systematic investigation into and study of materials and sources in order to establish facts and reach conclusions” (Oxford Dictionary: online). The purpose of research, according to Berg (2001: 6) “is to discover answers to questions through the application of systematic procedures.” The researcher sought to establish knowledge and answer question on how, where and when a state can militarily intervene in the domestic affairs of another state without having been militarily provoked. The researcher specifically sought to come up with valuable knowledge on the concept of military intervention for humanitarian purposes using Libya and Syria as comparative case studies. The study set the researcher on the path of research in social sciences given that states behaviour and interaction, like human beings is more of social interaction than scientific phenomena, hence the adoption of qualitative research approach.

The researcher was influenced by the interpretive philosophy of world view. From this non-positivist approach, the researcher sought to come up with conclusions on what can be termed as social aspects of states interaction. The researcher therefore adopted qualitative research methodology and methods of gathering data not because only qualitative research methodology could be used in social science research or superior to quantitative research methodology (Nudzor; 2009: 119), but because the researcher judged it to be the best to answer the question which the research posed. The researcher borrows from Berg (2001: 6) that, “qualitative research properly seeks answers to questions by examining various social settings and the individuals who inhabit these settings.” From the perspective of this research, the international arena becomes the social setting, while states are taken as individuals who inhabit this setting. However, influential individuals with the capacity to influence the behaviour of states are also

considered as actors whose actions were subjects for analysis. This was because, qualitative research is interested in uncovering the meaning of a phenomenon for those involved and the construction of world views (Merriam; 2009: 5).

Specifically the researcher was concerned with states' interaction with relation to military intervention for humanitarian purposes. The subject of research is a highly subjective and sometimes emotional concept which, with its long history, has not found universally accepted conclusions. Such a phenomenon, according to the researcher, could not be studied using strict methods from the positivist approach. The researcher therefore accepted Berg (2001: 6)'s philosophy that if states are studied "in a symbolically reduced, statistically aggregated fashion, there is a danger that conclusions – although arithmetically precise – may fail to fit reality." The researcher questioned how states use and abuse the concept to either help those in stress, or to pursue gains not related to the concept and how law and morals sought to regulate the concept (i.e. military intervention for humanitarian purposes).

The major tool for this study was Archival Research which is also known as 'desk research'. Books, journals, newspapers, news bulletins, social media, media release, research reports by "think tanks", policy documents of international agencies, and other such relevant material on international relations and international law was used. The researcher was unable to visit the study area due to the on-going violence and war in Libya and Syria, which made it risky to travel and conduct this study.

The research utilized a variety of sources, including, the following:

- a) International law instruments to establish the laws and regulations pertaining to interventions in the domestic affairs of sovereign states;
- b) Official reports prepared by various states and international organizations (Arab League, European Union, United Nations, African Union) on the Syrian and Libyan crises, as well as UNSC resolutions .
- c) Minutes of meetings, unpublished correspondence, and media statements;
- d) Social media websites to track the feelings of ordinary Libyans and Syrians with regard to the actions of the ruling elites in the first instance and the subsequent intervention;

e) Secondary books and journal articles pertinent to the study were also consulted.

The Libyan case was intriguing owing to the fact that it was the first time that the UNSC contracted an outside party, NATO, to act on its behalf in implementing the responsibility to protect. Libya became the first country in which the responsibility to protect was applied since the drafting and adoption of the Responsibility to Protect document by the International Commission on Intervention and State Sovereignty (ICISS). Observers like Stea (2012) argue that the reaction of the veto powers had a legacy in international relations and the application of Resolution 1973 by NATO had a direct impact on the behaviour of Russia and China in the Syrian crisis. All the actions and processes have interesting research areas that have precedence in international relations, especially the notion of military intervention for humanitarian purposes, now also referred to as Responsibility to Protect.

It would have been appropriate to visit Libya and Syria and interview ordinary people and relevant policymakers, to appreciate their feelings with regards to international intervention and how they reacted to it but the tyranny of distance, financial constraints and the volatile situation in both countries made site visits impossible. The foregoing shortcoming was redressed through the usage of the internet to access documents and media sites.

Desk research provided the researcher with invaluable data. The materials needed for the research were accessed using internet technology including from the UN archives. Live news bulletins with testimonies from victims, interviews, press statements, press conferences were accessed from digital television stations like Al-Jazeera, British Broadcasting Cooperation (BBC) and Russia Today (RT). Follow up on the news bulletins were made from the websites of the different news channels while other print media news which could not be accessed physically by the researcher like the Wall Street Journal and Washington Post were accessed from their websites. Competing interests and biases of news channels helped the researcher to get different views on different issues and check on the authenticity of events and issues reported through comparison of stories.

Apart from archival research, interaction with fellow student and political and media scholars who followed the Arab Spring assisted the researcher in having insights on the topic. While such informal interactions are not referenced in the study they assisted the researcher in making

analysis of data, specifically given that the creation of knowledge under the non-positivist approach is negotiated between researchers, subjects and the broad society.

Data gathered was analyzed using interpretive and content analysis. Interpretive approach allowed the researcher to treat interaction of states and individual state actions and policymakers as text from which conclusions were made (Berg; 2001: 239). Actions and statements that impacted on the question of intervention or lack of it in the cases under study were analyzed to come up with questions and conclusions on the broader study.

Content analysis refers to “techniques for making inferences by systematically and *objectively* identifying special characteristics of messages.” Content analysis was used as a tool to have a better objective understanding of documents like the UN Charter, resolution 1973 and other international and regional agreements. Conscious of the research methodology, the researcher did not seek to analyze data to come up with a single truth, but to set standards for argument and debate in order to come up with agreed positions and conclusions to generate policy and future debates.

In summary, the study concentrates on the theoretical and legal roles of the international community in local crises through a case study of Syria and Libya. It compares the theory and law with the actual practice by the international community in both uprisings. It also explores the nature of the uprisings in a historical manner in order to create ground for analyzing the legality or illegality of international intervention or non-intervention. This means taking note of other cases of intervention where they became pertinent for comparative reasons.

The thesis structure is as follows:

## **Chapter 1 Introduction**

This introductory chapter contains a background to the study, hypothesis, research methodology, statement of the problem, research objectives and questions, a brief discussion on the major theories that guide the research and a preliminary literature study.



## **Chapter 2 International Law and Contending theories of intervention**

An assessment of the major theories that enable analysts to capture the notion of military intervention for humanitarian purposes viz. the Just War Theory, the concept of State Sovereignty and the Realist Theory of International Relations.

## **Chapter 3 Intervention and Precedence, 1990-2010: Kosovo, Somalia, Iraq**

A critically analysis of international interventions in the 1990s which was dubbed a decade of intervention, which was initiated by the USA at the end of the Cold War. The chapter discusses the reasons for the interventions and weighs the official pronouncements against the concepts of self interests and universal morality.

## **Chapter 4 Libya, Syria, and the Arab Spring: Nature of the crises**

The Arab spring as transnational uprising did not follow the same events in all the countries. The chapter discusses and illustrates the nature of the uprisings in Libya and Syria and also discusses whether they can be classified as rebellions or revolutions.

## **Chapter 5 International law, transnational organizations, and intervention in Libya and Syria**

The position of the NATO intervention in Libya in international law and also the position of Syria according to the Law of Nations are analyzed in this chapter. Discussion is centred on re the UN, NATO, AU, GCC and the Arab League.

## **Chapter 6 Comparative responses of the international community to Libya and Syria**

An analysis of the international response to the Libyan and Syrian cases through the comparison of actions by the P5, namely Britain, France and the USA, on one hand against Russia and China on the other. It questions the moral basis of Russia and China when they abstained from voting at the UNSC thereby paving way for intervention in Libya and the active use of the veto by the two states in the protection of the Syrian government. It also questions

the act of supplying rebels with weapons in any form during the conflicts in both Libya and Syria.

## **Chapter 7 Conclusions**

The conclusion sums up the key issues raised in this study and contains recommendations on the concept of military intervention for humanitarian purposes or Responsibility to Protect.

## CHAPTER 2

### INTERNATIONAL LAW AND CONTENDING THEORIES ON MILITARY INTERVENTION

#### 2.1 Introduction

There are three major types of military intervention under international law which are reproduced here as explained in the thesis overview:

1. Military intervention in response to an invasion. This war is accepted as legally and morally justified by both customary international law (Vattel; 1758: bk. 3, Ch. 3) and the UN law. Article 51 Of the UN charter clearly states that, “Nothing in the present Charter shall impair the inherent right of individual or collective self defence if an armed attack occurs against a Member of the United Nations”
2. An invasion which is driven by any desires pursue self/national/strategic/territorial/geo-political interests. This category encompasses all wars that are fought without internationally accepted legal or moral justification. This type of war also include wars that are declared on legally or morally accepted grounds but these legally and morally accepted reasons only being used as pretexts to pursue the interest of the invading state/s (Vattel; 1758: bk. 3, Ch. 3).
3. Military intervention for humanitarian purposes. Under this third category, a state or group of states militarily intervene in another state not for self/national/strategic/territorial/geo-political interests or to repel an invasion, but to protect the civilians of the subject state who will be under gross abuse by their leaders. In other words, it is a war to restrain a sovereign from committing heinous crimes against humanity against his/her subjects.

This thesis concentrates on the later type of military intervention which is highly contentious in international relations and international law as compared to the other two types. Debate is, therefore, centred on some of the major theories of intervention for humanitarian purposes,

which refers to the use of military force by foreign state(s) against another state to preserve human rights. The key question is, ‘Does a state’s coercive power, as embodied in its military forces, have a moral role to play in promoting respect for rights when this is lacking in foreign states?’ (Lee; 2010: 22). In this chapter, discussion dwells on the Grotian tradition and the Just War theory, Realist theory, theory of State Sovereignty and Human Rights theory, which are all deemed to be fundamental theories which have a direct bearing on the concept of military intervention for humanitarian purposes.

## **2.2 The Grotian Doctrine and the Just War Theory**

The work of Hugo Grotius<sup>3</sup> is often used to justify military intervention for humanitarian purposes. Lauterpacht, cited in Malanczuk (1993: 7), is of the view that the writings of Grotius contained “the first authoritative statement of the principle of humanitarian intervention.” This is supported by Murphy (1996: 43) who notes that Grotius maintained that “resort to war was lawful... when doing so was based on a just cause... and the infliction of punishment on a wrongdoing state of excessive crimes.” Grotius (1625: 247) argued that;

Though it is a rule established by the laws of nature and of social order... that every sovereign is supreme judge in his own kingdom and over his own subjects, in whose disputes no foreign power can justly interfere. Yet where [leaders] provoke their people to despair and resistance by unheard of cruelties, having themselves abandoned all the laws of nature, they lose the rights of independent sovereigns, and can no longer claim the privilege of the law of nations.

It may, however, be argued that Grotius’s assertion did not amount to giving military intervention for humanitarian purposes a legal standing due to the absence of codification of what constitutes ‘unheard of cruelties’ or abandonment of the law of nature which in itself is not codified and not consensus.

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<sup>3</sup> Hugo Grotius (1583-1645) is considered the father of modern international law ([www.global.britannica.com/EBchecked/topic/246809/Hugo-Grotius](http://www.global.britannica.com/EBchecked/topic/246809/Hugo-Grotius)). He was a Dutch Jurist and philosopher. Among his great works is ‘*De Jure Belli ac Pacis (On the Law of War and Peace (1625))*’ which deals extensively on legal and moral issues with regards to wars.

According to Vattel (1758: bk. 3, Ch. 3), nations only have the right to employ force to the extent ‘necessary for their own defense, and for the maintenance of their rights.’ Vattel further notes the corollary that when a nation goes to war when not attacked or threatened, ‘she undertakes an unjust war.’

Coates (2006: 212) notes that the doctrine of Just War in the current age can be grouped into three categories - *jus ad bellum* (rules that governed resort to war), *Jus in bello* (rules that governed the conduct of a war) and *jus post bellum* (rules governing the obligations and conduct after the war). In relation to the question of military intervention specifically for humanitarian purposes, the study is more concerned with *jus ad bellum* and *jus in bello*. Sorabji (2006: 14) just cause, attempts of peaceful resolution having been exhausted, the war should be declared and decided by an appropriate authority, the war should not worsen the situation that already exists, a reasonable prospect of achieving the aims of the war and an attitude of benevolence as the six conditions of engaging in a just war. The foregoing is reiterated by Snauwaert (2004: 172) that, “*jus ad bellum* criteria have included the following principles: just cause, right authority, right intention, proportionality, reasonable hope of success, and last resort.”

The issue of military interventions on humanitarian grounds remains highly contested from the time of classical philosophers like Grotius and Vattel to the contemporary thinkers like Weiss and Annan. Grotius (1625: 247 – 248) strongly supports intervention as he argues that the sovereign should treat his subjects with the respect of the law of nature.

Sorabji (2006) notes that Vitoria (1537) had already written on the subject in relation to the Spanish invasion of the Americas on the pretext of saving victims of human sacrifice and notes that one cannot intervene on the ground of human sacrifice as this was evidenced in Christianity by God’s command to Abraham to sacrifice his son (Bible (KJV); Genesis 22: 2) and the sacrificial of Christ (Bible (KJV); Romans 5: 8). However, one can intervene on the grounds that victims, who have a right to self defence, have a right to be defended even if they do not wish to be, argued Vitoria (Sorabji; 2006: 20).

Las Casas (1550), influenced strongly by Christian doctrine, opposed military intervention for humanitarian purposes arguing that it is wrong to kill even one innocent person and that it is against natural law to bring about more evil than good because in rescuing victims of human

sacrifice, more human beings would be killed than saved (Sorabji; 2006: 20). Agreeing with Las Casas, Norman (2006: 201-202) argues that military intervention to alleviate victims of human rights violations is not acceptable given the sacrosanct right to life of every human being.

The work of Vattel (1758) shows just how complex this subject is. Vattel gives contradictory versions on the subject of intervention. While supporting intervention to defend those who have a right to defend themselves (Vattel; 1758: bk. 2, ch. 4), the dilemma this creates is that nations who take up arms when they are not threatened in any way ‘undertakes an unjust war’ since only those to ‘whom an injury is done or intended, have a right to make war’ (Vattel; 1758: bk. 3, ch. 3). This contradicts his argument in Book 2 Chapter 4 that when subjects rise up against an unjust ruler, “every foreign power has a right to succor an oppressed people who implore their assistance.” Under these circumstances, Vattel (1758) calls for the intervening state to do so on the side of justice. For Vattel “it is but an act of justice and generosity to assist brave men in the defense of their liberties” (1758: bk. 2, ch. 4).

There is no mutual view on the issue of military intervention for humanitarian purposes as a branch of the just war theory given that some state leaders use the military intervention for humanitarian purposes as a cover to pursue national interests. Ian Brownlie, quoted in Ramsbotham and Woodhouse (1996: 64), argues this when he writes that “a rule allowing humanitarian intervention ... is a general license to vigilantes and opportunists to resort to hegemonial intervention.” Norman (2006: 204) supports this argument for, “in practice,” he writes, “bad faith is all too apparent.” He believes that nation states are using this license to “intervene in pursuit of their own interests, while rationalizing the actions in the language of human rights” (Norman; 2006: 204). Many have argued that this is the case in the USA-led invasion of Iraq in which leaders of the invading forces, Tony Blair and George Bush of the UK and USA respectively, argued that the invasion was to rid Iraq of a tyrant who not only threatened international peace but also kept his people under terror (Simura; 2011: 3-4).

There has been acceptance by a number of states that military intervention for humanitarian reasons is acceptable but that it needs a regulating authority in the name of the UNSC in order to curb its use as a pretext to pursue national interests by powerful states (Goodman; 2006: 108). The concept has therefore been adopted through the acceptance of the Responsibility to

Protect (R2P) document of the International Commission on Intervention and State Sovereignty by the UN General Assembly.

### **2.3 The Concept of Sovereignty**

The theory of sovereignty has been going through an evolutionary process which predates the Peace of Westphalia in 1648. Abiew (1999: 25-26) traces the history of the absolute nature of sovereignty to Roman law and the writings of Aristotle and notes that “the idea of sovereignty as formulated in ancient Rome sought to establish the theoretical absolutism of the powers of the Emperor and to consolidate the despotism of his rule.” In the midst of varied views, two schools of thought, being classical and constitutional are more pronounced.

Classical theory is also termed the primordial concept as it refers to sovereignty in relation to Monarchs before the rise of republics. The primordial understanding of sovereignty was that of unlimited power vested in the monarch (Pavlovic; 1997: 5). Even Grotius, who supported the concept of military intervention for humanitarian purposes and Voltaire who is regarded as one of the prophets of the French Revolution of 1789, agreed on the primordial notion of sovereignty. Voltaire noted that he “would rather obey one lion, than two hundred rats of [his own] species,” in a clear rejection of popular democracy (New World Encyclopedia: n d).

Bodin (1576; Trans. M. J. Toley: 25) defines sovereignty as irrevocable power vested in the monarch which can be temporarily delegated to governors, ambassadors or military leaders. Such power could only be “limited by divine law, natural law, the law of nations, and by such agreements as made between ruler and the ruled” (Abiew; 1999: 27). While it is accepted under the social contract that the sovereign gains his authority from the governed (Grotius, 1625), once that power is vested in him, the power became absolute.

Sovereignty was institutionalized as a cardinal principle in international relations by the Peace of Westphalia (1648). The general understanding is that a state is the supreme body regulating behaviour within its boundaries and recognizes no outside supreme law or political body. As Abiew (1999: 25) puts it, “to be sovereign is to be subject to no higher power.” With the passage of time, scholars, sometimes invoking the writing of classical thinkers, produced new thinking around the subject which can be referred to as the constitutional theory of sovereignty. The American Declaration of Independence (ADI) of 1776, for example, argued against the

sovereignty of the British monarch. It held that all 'men' were created equal and enjoyed certain right, such as life and liberty.

Governments derived their legitimacy and power from "the consent of the governed" who reserved the right to change that government when it became destructive in order to "effect their safety and happiness" (ADI: 1776). The constitutionalist theory of sovereignty holds that sovereignty is a public good and is enshrined in a constitutive document (Pavlovic; 1997: 6). This argument is derived from social contract theory which argues that before the formation of governments, societies lived in a state of nature which could either be Hobbesian or Lockean. Under the Hobbesian state of nature each individual had unrestrained rights and the hallmark of life was that of war of one against all (Hobbes; 1651: 79). People agreed to cede some of their rights to a sovereign who would institute peaceful co-existence between the governor (sovereign) and the governed, as well as among the governed (Hobbes; 1651: 107). Under the Lockean state of nature, people live in harmony but in cases of conflict, they meet justice with emotions, hence the need for a state regulator in the name of a government (Locke; 1689: 110-111).

The state of nature has been refuted by Norman (2006: 197) as an imaginary situation that was meant to give meaning to the concept of social contract and the rise of governments. A contradiction is derived from the writings of Hobbes in *The Leviathan*, who recognizes that Adam was the first person to be created (Hobbes, 1651, 19), a biblical theory has its own argument on the development of society, which is contradictory to the concept of the state of nature.

Constitutional theory is based on the construction of supreme national constitutions, mostly found in republics, which contain the most important laws which citizens regard as indispensable 'for their governance and wellbeing,' and stipulate various "state institutions and distributes powers among them and puts limitations on the exercise of those powers" (Odoki; 1991: 3). Powers reside in citizens who collectively craft and/or endorse a constitution.

Aspects of globalization which entails economic interdependence have given platform for some analysts to claim that the state is conceding its sovereignty to non-state actors as well as ordinary people. Annan (1999) argued that globalization and international cooperation have resulted in barriers between domestic and international breaking down, and state sovereignty



being redefined. States, he argues, “are now widely understood to be instruments at the service of their peoples, and not vice versa.” This is supported by Weiss (2011: 8) who argues that sovereignty is not absolute and entails not only rights but duties as well.

However, developing states have a tendency to cling to the Westphalian concept of sovereignty (Acharya; 2005: 3) because most post-colonial states are weak relative to their powerful erstwhile colonizers. Despite the fact that rights abuse and conflict between states and certain groups within them, occurs in both powerful (China / Tibet; Russia / Chechnya being examples) and weak states, powerful states intervene to “defend” human rights of the citizens in weak states. Kochler (2001: 3-4) noted the hypocrisy of European powers who instituted themselves as the protectors of the rights of the Christians in the Ottoman Empire during the nineteenth-century while being guilty of the same or even worse crimes in their own colonies.

#### **2.4 Realist Theory and Military Intervention for Humanitarian Purposes**

The Realist theory developed as a field of inquiry after the failure of the League of Nations, but it has been read back to philosophers like Hobbes and Thucydides, who is regarded as the first Realist thinker (Wisken: 2010). Thucydides (460BC – 390BC) postulated that – “security, honour, and self-interest” are the reasons why states compete in international relations (bk. 1, ch. 3, 7 of 12). He goes on to describe an anarchic international system when he said that “right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must” (Thucydides; bk. 5, ch. 18, 2 of 8). Thucydides further notes that one state’s security is derived from the weaknesses of another (bk. 5, ch. 7, 3 of 8).

Hobbes, influenced by Thucydides, argued that the nature of man is to take control of the resources and control others in a state of nature when there is no supreme law and power to regulate human behaviour. He advocated for the creation of a strong government which he termed a Leviathan. Hobbes (1651: 76) suggests that when there is a tussle for finite resources men

become enemies, and in the way to their end ... endeavor to destroy or subdue one another. And from hence [one only fears another’s power and when one possesses what others do not have they will use force to deprive him] ... not only of the fruit of his labour, but also of his life or liberty. And the invader again is in the like danger of another.

Hobbes (1651: 77) states competition, diffidence and glory as the three principal causes of conflict among human beings. Thucydides and Hobbes had a great influence on twentieth-century Realist thinking. Hans J. Morgenthau (2006: 29), opines that “international politics, like all politics, is a struggle for power. Whatever the ultimate aims of international politics power is always the immediate aim.” According to Mearsheimer (1995: 569);

In Realist thinking, the international system is portrayed as a brutal arena where states look for opportunities to take advantage of each other and therefore have little reason to trust each other. Daily life is essentially a struggle for power, where each state strives not only to be the most powerful actor in the system but also to ensure that no other state achieves that lofty position.

Both Liberalism and Realism influenced the crafting of the UN Charter in 1945. The Allied leaders, united by a common enemy, had no guarantee that they would not revert to their old rivalry and to guard against future wars crafted the UN which was influenced by Liberalism but had clear marks of Realism. Contrary to the UN Charter (Art. 2.1) which recognized the Westphalian concept of sovereignty and clearly stipulated that it was “based on the principle of the sovereign equality of all its Members”, realist traits are evident in the granting of the veto power to the victors of the Second World War (Britain, France, Russia, and the United States of America) and China. The paradox was noted by Thomson (1962) when he argued that the veto defeated the purpose of the Charter by violating the principle of sovereign equality. Only a major power or its ally has the potential to wage a war that has the capacity to threaten international peace and security (Thomson; 1962: 833).

These realist traits have been at the centre of international relations since 1945. Military intervention for humanitarian purposes has been influenced by the pursuit of self-interests. For instance, while the Rwandan crisis of 1994 had all the reason for intervention as forwarded by Grotius and other proponents of the concept, there was no intervention which was undertaken to protect the ethnic Tutsi and moderate Hutu against state and militia excesses.<sup>4</sup>

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<sup>4</sup> In the Rwandan Genocide of 1994, the Interahamwe militias, who were supported by government, embarked on a genocide campaign and crimes against humanity (Carla J. Ferstman, “Rwanda’s domestic Trials for Genocide and Crimes against Humanity,” *Human Rights Brief*, Vol. 5 (1), 1997, p. 1). The actions showed that the state had an active role and also gave military and moral support to the militias who killed more than a million people the majority being Tutsi (see Carla J. Ferstman, “Rwanda’s domestic Trials for Genocide and Crimes against Humanity,” and International Panel of Eminent Personalities, “Rwanda: The Preventable Genocide,” accessed 25 September 2013, <http://www.africa->

Realists do not fully accept that military intervention can be wholly influenced by an altruistic desire to save distant peoples (Orford; 2009: 440). According to realism, the whole nature of the international system in terms of institutions reflects the desires and interests of powerful states. Only military intervention that has some benefits for the powerful will be conducted as well that which does not affect the interests of some major power. This explains why the Security Council was not polarized on the Libyan case in which NATO's intervention was not stopped by the 'Eastern veto' of Russia and China,<sup>5</sup> but in the Syrian case Russia and China continue to oppose UN involvement in the crisis.<sup>6</sup>

## 2.5 Human Rights Theory of International Relations

A lot of the debate on military intervention for humanitarian revolves around gross violations of fundamental human rights and acts of genocide. There is no agreement on the minimum benchmarks of what constitutes human rights and what constitutes genocide. The concept of human rights is a polarized area mostly between Universalists and the Cultural Relativists, while the conceptualization of genocide in modern day application is more political than scientific.

Senghore (2002: 149) notes that "human rights are the universally accepted principles and rules that support and that make it possible for each member of the human family to realize his/her full potential and to live life in an atmosphere of freedom, justice and peace. They are those fundamental values inherent in every individual human being on the basis of humanity and recognized by law, both domestic and international." Philosophical writing on the concept of human rights goes as far back as the writings of social contract theorists. When Grotius (1625: 247) argued that sovereigns can intervene in the affairs of other states by either using or threatening the use of force against a sovereign who does not treat his subjects according to the

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[union.org/official\\_documents/reports/Report\\_rowanda\\_genocide.pdf](http://www.unhcr.org/official_documents/reports/Report_rowanda_genocide.pdf)). Such acts warranted a military intervention to protect the Tutsis and moderate Hutus who also needed the protection as indicated by their escape to neighbouring states as refugees. Be that as it may, the genocide took place with no international intervention to help those who suffered.

<sup>5</sup> Security Council Resolution 1973 passed mainly because Russia and China did not veto the resolution but chose to abstain in what they said it was in solidarity with African states in the Security Council who had voted in favour of the resolution. The resolution had also been supported by the Arab league, a regional group to which Libya was part of, which had called for the imposition of a no-fly zone over Libya.

<sup>6</sup> With regards the Syrian case, the Security Council saw the tabling of three resolution from the beginning of the Syrian conflict until the end of 2012 which were all vetoed by Russia and China arguing that Western States abused Resolution 1973 by acting as an air power for the rebels and effected a regime change in Libya which was outside the letter and spirit of the resolution.

law of nature, he was implicitly agreeing that there are some rights which even the sovereigns themselves ought to respect with regard to the governed.

Norman (2006: 192) argues against the notion of human rights as postulated in the contemporary era. He does not argue against the concept of human rights but argues that because they are human constructs there is a lack of unison in the human rights declarations in international society. In the “absence of guarantees backed by institutional sanctions... talk of ‘rights’ makes no sense. It may be a good thing if people have certain rights, but it is misleading to equate the claim that people ought to have those rights with the claim that they already have them at some ‘natural’, pre-institutional level” (Norman; 2006: 192). Which minimum rights should we accept?, Norman asks. Is it the US declaration of independence (life, liberty and the pursuit of happiness), the French Declaration of the Rights of Man and Citizen (liberty, property, security and resistance to oppression), the thirteen rights recognized in the European Convention on Rights, or the over thirty rights recognized in the UN Declaration of Human Rights? (Norman; 2006: 193).

Apart from arguments forwarded by scholars like Norman, the concept of human rights is bedeviled by differences between Cultural Relativists and Universalists (Donnelly; 1984: 401). Cultural relativism calls for the respect of cultural diversity in the construction and interpretation of human rights and holds that moral rules and social institutions should be exempt from legitimate criticism by outsiders (Booth; 1999: 36). In her argument against military intervention for humanitarian purposes, Orford (2009: 444) noted that the religious and military divide in the world simply proves that there is no such thing as “common values animating all states and peoples, or that coalitions of the willing might intervene in the name of defending such values.”

Universalism, in contrast, argues that human rights are culture blind and predate human institutions and societies and so should be enjoyed by every human being equally regardless of region, race, or religion (Norman; 2006: 192). This argument is based on the natural law, which sees human beings as universally natural and therefore cannot be separated on their rights by respective communities (Donnelly; 1984: 401).

It may be argued that the major difference between the two schools of thought is mainly found in the interpretation of human rights and their instruments. In respect to fundamental rights like

the right to life, it may be argued that all societies accept its universality. However, there are differences even in how such a fundamental right should be respected. In classical religious laws of Islam and Judaism, for example, one who turns apostate is punishable by death (Lent: 2010; and Saeed and Saeed; 2004: 444); in contrast to the current universal concept of rights, in which each person has the right to choose his or her religion (Universal Declaration of Human Rights (UDHR); n d: Art. 18).

International practice has shown, however, that universalism and weak relativism have gained prominence in international human rights discourse (Donnelly; 1984: 402). Most states, including those from the conservative Middle East and East Asia regions, have ratified important international human rights instruments and declarations including the UDHR and CEDAW with reservation on some clauses of the treaties. While the philosophical tradition of human rights has a long history, the practical condition is relatively young and can be traced back to the American declaration of independence in 1776 and the French's Declaration of the Rights of Man and Citizen in 1789.

If the practical concept of human rights is relatively young, then the conceptualization of genocide is relatively new. The term 'genocide' was first used by Raphael Lemkin in 1944 (Schabas; 2000: 14). Lemkin, quoted in Schabas (2000: 25), defines genocide as;

A coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. ...Genocide is directed against the national groups..., and the actions involved are directed against individuals, not in their individual capacity, but as members of a national group.

The UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948 defines genocide as, "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (Gellately and Kiernan; 2003: 3).

The centrality of genocide is seen in the fact that at the end of major international humanitarian catastrophes, the international community constituted international tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), and the International Court for Sierra Leone (ICSL), to

individually hold responsible those who took part in the disrespect of international human rights and humanitarian law. The appreciation that international human rights and international humanitarian law should be respected even in times of war led the international community to create the International Criminal Court (ICC) in 2002.

However, the notion of preventing and prosecuting genocide is plagued by a number of legal and political questions such as:

- How many individuals of a certain group should have been targeted for any action to be defined as genocide and warrant intervention?
- Who should declare genocide in a particular conflict, given the fact that belligerents have a tendency to use legal and political terms in order to win international support or sympathy?

The foregoing questions above become glaring when applied to contemporary conflicts such as the Darfur crisis, wherein the international community was divided on whether to declare it a genocide or not. While a section of the international community did not recognize genocide as per the findings of the UN Secretary General Commission of Enquiry that noted that the Sudanese government had not pursued a policy aimed at genocide (Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General: 2005), the USA declared the Sudanese government's actions to constitute genocide but took no further actions to ameliorate the plight of groups that were subjects of persecution (Straus; 2005: 123).

The subject of human rights and genocide are therefore affected by political decisions that are normally applied ahead of international justice. The issue of human rights has also been manipulated by powerful states to justify access to weaker states for strategic and economic interest cloaked as military intervention for humanitarian purposes. The drive for human rights is also compromised by international power politics as exemplified by the international paralysis on the Syrian conflict. The pursuit of economic and strategic interests do cast a long shadow on the sincerity of military intervention for humanitarian purposes.

## 2.6 Implications of theories on Military Intervention

Two broad schools of thought have emerged on military intervention for humanitarian purposes, namely, Restrictionists and the Counter Restrictionists. Military intervention for humanitarian purposes can be defined as;

reliance upon force for the justifiable purpose of protecting the inhabitants of another state from the treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice (Abiew; 1999: 31).

Teson, cited in Abiew (1999: 31-32), defines military intervention for humanitarian purposes as the “proportionate trans-boundary help, including forcible help, provided by governments to individuals in another state who are being denied basic human rights and who themselves would be rationally willing to revolt against their oppressive government.”

The Restrictionists School is guided by the strict observance of the classical concept of sovereignty which argues that whatever happens within the territorial boundaries of another state is not subject to review by foreign states until and unless it poses security threats to the outside states. From a Restrictionist perspective, Article 2(4) of the UN Charter, read in conjunction with Article 2 (7), prohibits the use of force against any other state even for humanitarian purposes until such internal acts have a direct threat on international security (Brown; 2000: 1700).

Restrictionists argue that while military intervention for humanitarian purposes, in some cases, is legitimate, it is prone to abuse by ambitious state leaders (Brownlie, quoted in Ramsbotham and Woodhouse, 1996: 64). Even Brown (2000: 2), who argues that in extreme circumstances military intervention for humanitarian purposes is legal without UN authorization, acknowledge that as it stands, military intervention for humanitarian purposes is legally vague and can be subject to abuse by powerful states. Chesterman argues that “humanitarian justifications may be used in practice to cloak less altruistic foreign policy objectives in the robes of dubious legality.”

Military intervention for humanitarian purposes was supported by legal philosophers and practiced since the 19<sup>th</sup> century in Europe, at a time when the legality of war was narrowly defined and many wars of conquest and aggression took place with impunity (Chesterman; 2001: 5). Chesterman further notes that “neither the writings of publicists nor state practice established any coherent meaning of this ‘right’; at best it existed as a lacuna in a period in which international law did not prohibit recourse to war” (2001: 5).

In 1986, the British Foreign Office argued against military intervention for humanitarian purposes on the grounds that “the UN Charter and the corpus of modern international law do not seem specifically to incorporate such a right”; “state practice in the past two centuries, and especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention, and, on most assessments, none at all;” and “on prudential grounds, that the scope for abusing such a right argues strongly against its creation” (Brown; 2000: 1701).

Jayakumar (2012), citing the ICJ in the case of USA vs Nicaragua, argues that “the use of force could not be the appropriate method to monitor or ensure respect for human rights, that there is no general right of intervention in international law and, therefore, intervention violated international law.” Jayakumar (2012) further notes “there is a generally accepted notion that state practice cannot over rule treaty and customary law, both of which denounce the use of force except in self-defence,” hence when states like Tanzania and India intervened in Uganda and Bangladesh, respectively, they looked for alternative justifications for the interventions, with scholars branding such interventions as humanitarian.

Kochler (2001) argues that since its inception, Military Intervention for humanitarian purposes has served the interests of intervening states more than the humanitarian needs of the subject state’s citizens. This has been the major reason why scholars in the Restrictionist school are against the concept. Chomsky, quoted in Jayakumar (2012) argues that, “For one thing, there’s a history of humanitarian intervention. You can look at it. And when you do, you discover that virtually every use of military force is described as humanitarian intervention.”

Restrictionists do not deny the existence of military intervention for humanitarian purposes in principle but argue against it in a world where state actions are governed by realist politics such as the desire to secure geopolitical zones, control areas of strategic resources and markets are a political reality since the development of the state system. The inconsistent pattern of state



intervention proves this. The USA takes an active role in Latin America and the Middle East, Russia in the Caucasus region, while Britain and France do so in their former colonies in Africa; with the exception being the involvement of the USA in Somalia and Libya. This makes one skeptical about the morality and legitimacy of military intervention for humanitarian purposes.

Counter-restrictionists, on the other hand, argue that military intervention for humanitarian purposes is an established practice of customary international law. They refer to the Grotian tradition and the argument that those who have a right to defend themselves, have a right to be defended (Sorabji; 2006: 20). Abiew (1999: 30) argues in support of counter-restrictionists when he stated that military intervention for humanitarian purposes has long co-existed with state sovereignty. The practice, he said, “is based on the assumption that states in their relation with their own nationals have the international obligation to guarantee to them certain basic or fundamental rights which are considered necessary for their existence, and for the maintenance of friendly relations among nations.”

Annan, quoted in Massingham (2009: 804), famously asked, “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond... to gross and systematic violations of human rights that affect every precept of our common humanity?” Greatly influenced by the humanitarian catastrophes in Rwanda and the former Yugoslavia, Annan led a crusade for the redefinition of the concept of sovereignty and also the legitimization and legalization of military intervention for humanitarian purposes under UN law. Annan (1999) argued that “intervention must be based on legitimate and universal principles,” and that the UN Charter restricts the use of armed forces “save in the common interest.”

In general, Counter-restrictionists argue that the concept of military intervention to stop gross human rights violations is an element of customary international law. They point to the intervention of European states in the territories of the Ottoman Empire in the nineteenth century as example of this. However, Richards (1950: 155) argued that Britain’s intervention in the Ottoman Empire was really driven by the need to check Russian influence in the Mediterranean as an important route to the Far East. In such a case, invoking the doctrine of military intervention for humanitarian purposes is immoral. Vattel (1758: bk. 3, ch. 3) believed that disguising interests where there are just reasons renders a war illegitimate.

Counter-restrictionists argue that military intervention for humanitarian purposes to “correct” the wrongs of a despotic leader does not amount to trumping on the territorial sovereignty of that state. As derived from Social Contract principles, sovereignty is derived from the authority granted by the people and when a leader brutalizes his people to the point that is contrary to the Law of Nature and the Law of Nations that leader loses sovereign power and can be deposed by the people, who, in instances where they are unable to do so themselves, can be assisted legitimately by external sovereigns. Abiew (1999: 30) points out that sovereignty and military intervention for humanitarian purposes has existed together since the inception of the concepts.

This argument is also derived from the constitutional theory of sovereignty which argues that sovereignty resides in the people who delegate state power and authority through the constitution (Pavlovic; 1997: 6). A leader who commits human right violations and contravenes the constitution loses his or her sovereign rights, privileges, and power.

Counter-restrictionists argue that the UN Charter is equally concerned with the respect of Human Rights as it is concerned about the preservation of international peace and security (Bellamy and Wheeler: 2005). The Charter in its preamble notes that peace and security can be preserved with the respect of fundamental human rights and freedoms. According to article 1(3) of the Charter, the UN should promote and encourage respect for human rights and fundamental freedoms for all without any discrimination of race, sex, language, or religion. Contemporary supporters of military intervention for humanitarian purposes, having met with the stubbornness of the concept of sovereignty, argued for a redefinition of sovereignty in order to incorporate the concept of military intervention for humanitarian purposes. This is captured in the report by the International Commission on Intervention and State Sovereignty (ICISS) (2001: xi), termed the Responsibility to Protect (R2P), according to which state sovereignty implies responsibility of the leaders to protect their citizens. According to this definition, sovereignty refers not to power and non-interference per-se, but to state responsibility to protect its citizens from external and internal threats to fundamental rights. This is not a new intervention but the unearthing of what Social Contract theorists, such as Hobbes (1651) and Locke (1689), alluded to in their crafting of the theory of the state and sovereignty in general.

Proponents of R2P managed to incorporate the doctrine of international human rights to the concept of sovereignty by redefining the Charter of the UN as a legal tool that not only sought to maintain international peace and security by the respect of state sovereignty but also the

international observance of human rights. The R2P document therefore was an incorporation of sovereignty as responsibility to protect the human rights of its people. Such rights should be regarded as fundamental and universal as the international community becomes more global.

Globalization has transformed issues which were of domestic jurisdiction into issues of international concern, mostly because the effects of such conflict situations affect regional peace and security. Cases of refugees and cross border raids mushroomed in regional countries where civil wars or acts of gross human rights violations took place, a good example is the Rwanda crisis which birthed an influx of refugees in Tanzania and the Democratic Republic of Congo, while the Somali crisis had political and security repercussions in the Horn of Africa.<sup>7</sup>

The inter-linkages brought about by globalization and the acceptance of the concept of fundamental human rights with limited scope for cultural relativism has changed the way military intervention for humanitarian purposes should be viewed. Military intervention for humanitarian purposes can be, theoretically, undertaken in exceptional areas of gross human rights violations, although a lot of areas should be reconciled before the concept of universal human rights is incorporated in mainstream international law. This includes the clarification of the threshold of human rights abuses and defining the amount of force to be used and by whom it is authorized. It can therefore be concluded, as posited by Brown (2000: 1686), that “without clear legal standards to limit it, the practice of humanitarian intervention threatens to undermine the friendly relations among states and could have an adverse impact upon international peace and security.”

## **2.7 Conclusion**

The chapter discussed the major theories that have a bearing on military intervention for humanitarian purposes and their implications. The major findings of the chapter are that there is no consensus among the theories on the position of military intervention for humanitarian

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<sup>7</sup> While internal disturbances are regarded as internal matters that do not warrant international intervention as they do not amount to threats to international peace and security, recent history has shown that internal civil wars can amount to threats to regional stability. During the Rwandan Genocide there were massive refugee movements in the great lakes region which resulted in the exporting of violence and the trafficking of arms (Swedish International Development Agency (SIDA), “A Strategic Conflict Analysis for the Great Lakes region,” March 2004, p. 51-54) and this has further destabilized a region that has since independence been fragile. The Somali crisis had also a destabilizing impact in the Horn of Africa. Somalia has been alleged to be a breeding ground for terrorism (Julie Cohn, “Terrorism havens: Somalia,” Council on Foreign Relations, June 2010, accessed, 25 September 2013, [www.cfr.org/somalia/terrorism-havens-somali/p9366](http://www.cfr.org/somalia/terrorism-havens-somali/p9366)).

purposes. Realists and Restrictionists view the concept of military intervention for humanitarian purposes and its practice with suspicion while proponents of international human rights and counter-restrictionists accept it as a practical doctrine that should be legalized in order to make the world safe. Even international philosophers failed to agree on military intervention for humanitarian purposes with some like Grotius and Vattel accepting it while others like Des Las Casas arguing that it is wrong and self-defeating. There is also lack of consensus on the acceptable basic human rights that should be universally accepted. The UDHR is seen as the benchmark international instrument although there are still cynics who view the doctrine with suspicion.

The next chapter focuses on some examples of military intervention for humanitarian purposes in recent decades and how they give credence to different theories and how they fit in the broader international law. The chapter, like theories, shows that states have remained divided even in the period celebrated as the golden age of intervention in contemporary times. It also gives background of some of the major international events that influenced international developments on military intervention for humanitarian purposes at the turn of the 21<sup>st</sup> century.

## **CHAPTER 3**

### **INTERVENTION AND PRECEDENCE, 1990-2010 (IRAQ, SOMALIA AND KOSOVO)**

#### **3.1 Introduction**

This chapter will discuss and analyse major military interventions that were undertaken since the beginning of the ‘decade of intervention’ until the Iraq invasion that was also justified as humanitarian by the leaders of the coalition of the willing states. The chapter will assess the human rights conditions and unjust practices that preceded intervention in order to determine whether such crises warranted a military intervention or not. It will conclude by assessing how the interventions fit in the Grotian concept of military intervention and just war or whether they were simply driven by national interest, hence proving that the realist notion of military intervention is still pertinent.

#### **3.2 Historical background to military interventions for humanitarian purposes**

Since the 19<sup>th</sup> century, European powers have engaged in a number of military interventions, citing humanitarian reasons mostly in the affairs of the Turkish Empire (Cheikh; 2013: 155). These interventions include Greece (1826), Syria (1860), Crete (1866, 1894), Armenia (1896) and Macedonia (1905) (2001: 2). The interventions have been discredited for having been driven by national interest of the intervening states and for being selective in application (Kolb; 2003: 121). There were, however, other cases of genuine humanitarian concerns (Kolb; 2003: 121), which were only considered crimes when being perpetrated on the Christians. On the other hand, the same Christians rulers of Europe were practicing slavery and denying the full human rights on non-Europeans arguing that they were either not fully human or were created to serve European, as noted in the Social Darwinism theory. The advent of the two world wars resulted in the concept of military intervention for humanitarian reasons losing its prominence.

Notable military interventions for humanitarian purposes were conducted by the leading powers in 19<sup>th</sup> century Europe of Britain, France, Prussia and Russia in the affairs of the Ottoman Empire. The affairs, while having been justified under military interventions were disputed by Kochler (2001: 3) who argued that they were motivated by national interest. Richards (1950:155) who concurs with Kochler noted that the interventions specifically by

Britain were meant to check on Russia's influence in the Mediterranean Sea which was an important waterway for Britain to its colonial empire in the Far East. To give weight to his argument, Kochler (2001: 4) disputed the fact that European powers were intervening to save Christians in the Ottoman Empire because these powers were committing more heinous crimes in their colonies that were equal or worse than those committed by the Ottoman Turks.

However, prior to these interventions, European colonial powers had also justified their military colonial adventures on the basis that they were either spreading Christianity or saving the victims of human sacrifices as was the case with the Spaniards in South America (Losada; 1975: 9). However, De Las Casas cited in Losada (1975: 9), argued that such an intervention was against the natural law and trampled on the sacred respect of every human soul.

Prior to the establishment of the UN it was controversial to argue that military intervention for humanitarian purposes was illegal given the fact that even wars of conquest were countenanced. The establishment of the UN as the supreme international organization of states and the Charter, which established the UN law outlawed all wars except in self defence, (UN Charter, Article 2 (4)). The power to intervene in a war outside self defence against external aggression was only entrusted to the Security Council which could only act on crises that threatened international peace and security (UN Charter, Articles, 39 and 42).

The concept of military intervention for humanitarian purposes was not covered in the UN Charter thereby creating debate among international lawyers on the legality of the concept. Those who argue against military intervention for humanitarian purposes note that the Charter outlawed all wars except in self defence or the intervention of the Security Council on matters that threaten international peace and security. They further argue that the charter itself emasculated the UN when it noted that the UN shall not intervene in internal matters of its member states (UN Charter, Article 2 (7)). In support of this notion, Cassese (while commenting on NATO's intervention in Kosovo), quoted in Allain (2004: 253) noted that, "From an ethical viewpoint resort to armed force was justified. Nevertheless, as a legal scholar I cannot avoid observing in the same breath that this moral action is *contrary to current international law.*"

Those in support of military intervention for humanitarian purposes argue that military intervention can be justified on the basis that the UN Charter noted that the body was created

to defend and protect individual human rights in as much as it was established to protect international peace and security (see Bellamy and Wheeler: 2005), hence the security council has a duty to act in the internal affairs of its member states when they commit gross violations of human rights. As noted by Kolb (2003: 126), proponents of military intervention for humanitarian purposes in the era of UN law argue that military “intervention is directed at neither the territorial integrity nor the political independence of a targeted State, and thus is not inconsistent with Article 2(4)” of the UN Charter.

The cold war period that followed the end of WW II and the establishment of the UN saw the two major powers fighting for influence in strategically important areas in the world. Issues of human rights and democracy were totally unconsidered as even the liberal democratic states like USA, and France that were allegedly born out of the need to recognize the rights of the citizens befriended and propped up the most undemocratic and brutal governments like Saddam Hussein of Iraq, Francois Duvalier of Haiti, and Joseph Mobutu of the former Zaire (Democratic Republic of Congo). The intervention hype came with the end of the cold war. It was thought that issues of human rights and good governance would take precedence ahead of the national interests of major powers mostly the USA that had emerged then as the sole superpower. It was from this euphoria that the 1990s saw major interventions which were mostly led by USA.

### **3.3 Iraq (1991 and 2003)**

In the post cold war era, the Iraq case of 1991 can be viewed as a case that set a precedence for military intervention for humanitarian purposes. The treatment of the Kurdish minorities in different countries in the Middle East has been a case that did not attract much international attention until soon after the defeat of the Iraq forces by an international coalition force of the UN. The international intervention in Iraq of 1991 can therefore be traced back to the Iraq invasion of Kuwait.

The defeat of the Iraq forces by an international coalition force encouraged the uprising of the minority groups who had suffered at the hands of Saddam Hussein (Malanczuk; 1991: 114). The uprisings took place in the Southern provinces which are predominantly Shia, and the Northern Kurdish provinces. The uprisings were influenced by the speculation that most of the Iraq military machinery and personnel would be destroyed by the war against the coalition

forces. The Bush (Snr) government in the USA also encouraged the Kurds to rise (Malanczuk; 1991: 117).

The Kurds therefore rose up anticipating American support (Seybolt; 2008: 49) although this was not the case. On one hand, the USA government shied away from supporting the Kurdish uprising, either for fear of the financial and human costs or an international uproar against intervening in the internal affairs of a sovereign state. On the other hand, the Iraq army survived to defend the regime and by the end of March 1991 the army had managed to quell the rebellions.

The suppression of the uprisings was followed by a great number of refugees that spread from Iraq to the neighbouring countries specifically Turkey and Iran. There were a lot of internally displaced persons among the Kurds who took refuge in the mountains as they feared a backlash and reprisals from the Iraq forces. One Kurdish leader, Barzani, put the number at 3 million Kurds (Malanczuk; 1991: 118).

While in the beginning there was a dragging of feet by world leaders to have a UN or a coalition intervention in Iraq to protect the Kurds, pressure from Turkey, France and Iran who sent letters in support of the Iraqi Kurds to the UN Security Council, led the Council to adopt UNSC Resolution 688 on 5 April 1991 (Malanczuk; 1991: 119). The notion propounded by scholars like Gallant (1992: 904) that attribute Resolution 688 as a precedence of Security Council authorized military intervention for humanitarian purposes can be contested. Wheeler (2000: 142-145) notes that on its adoption, Resolution 688 was supported more by the fact that the situation in Iraq was posing a threat to regional stability in the Middle East, hence a threat to international peace and security.

The resolution was passed by 10 votes in favour, 3 votes against and 2 abstained. States which were against the resolution were Cuba, Yemen and Zimbabwe which argued that a humanitarian crisis in Iraq was outside the jurisdiction of the UNSC and Security Council intervention and would violate article 2(7) of the UN Charter (Wheeler; 2000: 143-144). States that voted in favour of the resolution did not base their vote on humanitarian grounds. They argued that the crisis in Iraq, which of a humanitarian nature was threatening regional peace and security (Wheeler; 2000: 144).



The wording of the resolution was crafted in such a manner that it legalized the intervention based on the need to protect international peace and security. However, the resolution also noted and condemned the repression by the Iraq government of its civilian population (S/RES/0688, 1991).

One can also argue that the tabling of the crisis in the Security Council by Turkey and Iran was driven not by humanitarian motives but on the need to maintain stability in their states. These states, unlike France which is a continent away from the Middle East, share borders with Iraq and have large Kurdish minorities. These states feared that the influx of Kurdish refugees from Iraq had the potential to politicize their Kurdish populations and lead to instability in their borders (Leezenberg; 2000: 3).

The intervention therefore will fall outside the parameters of the just war paradigm as propounded by just war theorists like Grotius and Vattel. As they note, there should be no self-gaining interest. However, the intervention in international law can be argued to have been legal as the internal crisis in Iraq had the potential of sparking a regional Kurdish uprising that could have destabilized mostly Iraq, Iran and Turkey.

While there was a general unwillingness among the powerful states to intervene even after the adoption of Resolution 688 (Seybolt; 2008: 49), the media effect pushed USA, British and French leaders to establish a 'Safe Haven' for the Kurds. The safe havens were meant to give assurance to the displaced Kurds that they could return to the protected areas which had been demilitarized from the Iraqi forces. Temporary camps that would serve as a transitional zone to their homes were created for the Kurds who had escaped to the mountains.

Humanitarian relief was brought to the safe havens. The Kurds and aid donated to them in the safe havens were protected by the military personnel of USA, Britain, France and a small Belgian contingent. Humanitarian aid was protected by military personnel, which amounted to a threat of force. It was this threat of force and the military presence in Iraq that sparked legal and legitimacy questions. The intervening powers argued that resolution 688, whilst it had no explicit military deployment clause; could be interpreted as allowing for a military presence as it calls for states to ensure that humanitarian aid reaches the Kurds (Bartram; 2000: 1705). The Resolution also insisted that Iraq should allow for humanitarian personnel to operate in Iraq without disturbance. It can therefore be argued that the Resolution had already used strong

language and demands that only legitimized and legalized the operation of foreign forces not based on humanitarian reasons per se, but to provide humanitarian relief as a means to stabilize the region.

One can therefore conclude that the Iraq case of 1991-3 hinged between a humanitarian case and a UN Chapter 7 case. The countries that asked the Security Council to come up with a resolution on Iraq were driven by different motives. France was driven by moral motives for the Kurds, while Turkey and Iran petitioned the UNSC as they feared a Kurdish backlash in their own countries.

The reaction of the UN itself was based more on the need for the maintenance of international peace and security. However, it was the second time for the UN to specifically call upon a member state to respect human rights after it had done so to apartheid South Africa (Schrijver; 2006: 17). The use of military personnel for humanitarian ends in Iraq set a precedence which was applied in Somalia. The case also set a precedence for the discussion of internal affairs of member states in the UNSC.

While it has been noted that the first Iraq intervention opened the decade of intervention in the post Cold War era, the 2003 invasion of Iraq by a coalition of the willing led by USA was a destroyer to the intervention doctrine. The intervention was initially based on the claimed need by USA and Britain to rid Iraq of alleged weapons of mass destruction, yet the failure to find such weapons led the coalition leaders to justify the war on humanitarian grounds (Blair; 2010: 382).

Iraq's invasion of Kuwait in 1990 made Saddam Hussein a foe of USA and other European countries like Britain. Saddam Hussein used chemical weapons during the Iraq – Iran war and against the Kurds in 1988 while it is alleged that he got the chemical weapon technology from USA. It was this fact that gave the USA a pretext to argue on the international front.

The failure to secure the alleged weapons of mass destruction led the coalition leaders to argue that the invasion was not in vain as it had rid the world of a dictator who not only threatened the Iraq citizens but also the international community through the possession of weapons of mass destruction (Blair; 2010: 382).

The war in Iraq of 2003 can be discredited by two arguments from the philosophical perspective of military intervention for humanitarian purposes. Firstly, from the Grotian perspective, the leader of the subject state must be in the process of committing mass atrocities that warrants such an intervention. The Saddam regime reportedly had little respect for human rights of its citizens, although there is no evidence that the regime was committing mass atrocities and genocide that warranted an intervention as enunciated by Walzer (1977). The reason why the coalition sought to firstly justify their intervention on the case of weapons of mass destruction and not military intervention for humanitarian purposes proves the fact that there was not a strong enough case to push for such a kind of intervention.

Secondly, according to scholars like des las Casas, every life is sacred and no life can be sacrificed for the protection of the other. The use of such massive force in Iraq including around 150, 000 ground troops (Roth: 2004) and indiscriminate weapons that claimed the lives of an estimated 600 000 civilian lives according to Burnham et.al (2006: 1) while British Broadcasting Cooperation (BBC) (2011) put the civilian deaths at a lesser but significant figure of between 97, 461 and 106, 348, discredited the mission as humanitarian and proved that there were other underlying motivations for the war.

I argue elsewhere that the USA led invasion of Iraq in 2003 was driven by the need to stifle Iraq's plans for a change in the international petro currency (Simura; 2011: 42). Iran was mootting a similar plan which had tremendous effects that had the potential to shake the foundation of the American economy (Simura; 2011: 19). The petro-dollar system became an effective substitute of the Bretton Woods system since 1973 after the collapse of the latter.

Saddam Hussein had also fallen out of the USA alliance in the Middle East and was viewed as a threat to Israel as evidenced by the fact that when the USA intervened in Somalia where it claimed no national interest it pulled out immediately after losing eighteen rangers while it soldiered on in Iraq for eight years even though it had lost four thousand, four hundred and eighty seven soldiers (BBC: 2011). The US led invasion of Iraq could be explained more within the context of the Realist writings and from the works of Thucydides than from a moral or international human rights perspective.

The war was therefore driven by national interest rather than humanitarian concerns as was declared after the failure to secure the alleged weapons of mass destruction. Roth (2004)

concluded that, “The result is that at a time of renewed interest in humanitarian intervention, the Iraq war and the effort to justify it even in part in humanitarian terms risk giving humanitarian intervention a bad name. If that breeds cynicism about the use of military force for humanitarian purposes, it could be devastating for people in need of future rescue.”

In sum, the justification of the invasion of Iraq of 2003 on humanitarian grounds was a desperate bid by the coalition leaders to placate the international community and electorate at home who were yawning for answers after the claim of the ‘weapons of mass destruction’ failed to materialize. This claim can be validated by the fact that a military intervention for humanitarian purposes is declared so on entry citing the reasons on the ground. It cannot be justified as an afterthought at the middle or the end of the war. Roth (2004) notes that, “Over time, the principal justifications originally given for the Iraq war lost much of their force. ...weapons of mass destruction have not been found. No significant pre-war link between Saddam Hussein and international terrorism has been discovered.” The claim is finally discredited by the fact that after the war, Iraq is more dangerous for civilians than during the time of Saddam Hussein.

### **3.4 Somalia (1992)**

The end of the cold war led to a considerable shift in the foreign policies of both the USA and Russia. The latter took a more self introspective policy that saw it cutting back on its fight for spheres of influence with USA which did not lose its interest in the Middle East. However, its decision to support mostly liberal governments saw Siad Barre losing out on the military and financial assistance he had benefitted from the USA to prop up his military heavy handed government. This loss of military support led to the crumbling of his military regime and Somalia degenerated into a chaotic state.

War lord-ism took over Somalia. All the warring factions that had been united by their dislike of Barre’s rule found themselves without a unifying ‘enemy’ but separated by the struggle for power. The leading figures in the power struggle were General Aidid and Ali Mahdi. By the end of 1991 war between Mahdi and Aidid’s militia units, and the drought that had swept across the country resulted in devastating famine which claimed 300 000 lives, internally displaced 1.7 million and hundreds of thousands fled to neighbouring states as refugees (Philipp, 2005, 524).

International humanitarian efforts by private Non Governmental Organizations (NGOs) and the International Confederation of Red Cross (ICRC) faced the stiff challenge of banditry by the warring factions who stole the aid (Philipp, 2005, 524). The United Nations Operation in Somalia (UNOSOM I) was subsequently established in order to facilitate supply of aid and create a sustainable peace. Despite the formation of UNOSOM I, banditry continued unabated thereby leading to the birth of UNSC Resolution 794 which authorized the establishment of the Unified Task Force (UNITAF) and 'Operation Restore Hope'. The UN neither organized nor commanded UNITAF as operational command fell to the USA which had the largest contingent (Philipp, 2005, 534).

The intervention had little controversy as there were sincere humanitarian concerns. Intervention in Iraq had already set a precedent for intervention in internal affairs to salvage suffering masses. In Somalia, the absence of a recognized central government with effective control of the state created a vacuum on the custodian of the sovereign power of the state rendering it an international case. Intervention did not trample on state sovereignty because Somalia was already a collapsed state which did not have the cardinal principles of statehood as mentioned in the Montevideo convention on rights and duties of states. The convention noted that a state must have; "a ) a permanent population; b ) a defined territory; c ) government; and d) capacity to enter into relations with the other states" (Montevideo Convention on the Rights and Duties of States, Article 1). The absence of a government meant that Somalia had no capacity to form relations with other states.

The withdrawal of the USA after the death of its eighteen rangers when Pakistan had lost twenty five soldiers in Somalia to Aidid's militia as evident enough that major powers are still driven more by the electoral community and other pockets of power at home than by saving those in need. This is even compounded by the fact that the USA was reluctant to intervene in the first instance and only accepted to lead UNITAF after the administration had been pushed by the effect of the international media that beamed pictures of starving mothers and children from Somalia in need of humanitarian assistance (Baum; 2004: 204).

### **3.5 Kosovo (1999)**

The crisis in Kosovo took Europe by surprise because since the German holocaust, it had not been envisaged that any crisis that would be equated to genocide would occur in Europe. The

crisis resonated in the spheres of self determination, civil war and gross violation of human rights by state authorities. The international legal system was strained on the question of intervention and non-intervention.

Serbian militias and the government committed atrocities and crimes that could amount to war crimes and gross violation of human rights against Kosovar Albanians and other minorities. The hostilities had begun in early 1998 and by August 1998, Serbian militias had undertaken various repressive actions that had displaced two hundred thousand Kosovars. In January 1999, Serbian forces killed forty five Kosovars among the civilian populations in what is famously known as the Racak Massacre (Betti; 2010: 5).

European states, North Atlantic Treaty Organization (NATO) and the UN made attempts to have a peaceful solution to the crisis. The UN appointed Richard Holbrooke as a Special envoy to the Balkans to broker a peace deal while the UNSC came up with two resolutions (Resolution 1199 and 1203) that condemned the human rights violations and atrocities as a threat to international peace and security. It called on the Federal Yugoslav Government of Slobodan Milosevic to cease the hostilities.

The failure by the parties involved to cease the hostilities specifically the Federal Republic of Yugoslavia (FRY) government, opened the door for a NATO military intervention in Kosovo. The intervention which was code named, 'Operation Allied Force' raised many questions pertaining to its legality, legitimacy and efficacy owing to the fact that NATO was neither with nor sought a UNSC mandate to legalize its military operations in the internal affairs of a sovereign state.

In defence of a NATO intervention in Kosovo, the British Foreign and Commonwealth Office cited by Roberts (1999: 106) argued that UNSC authorization of the threat or use of force for humanitarian purposes in Bosnia and Somalia had offered precedence for the use of force to stop the perpetration of gross human rights violations by those with or in power. The Office further argued that, "The UK's view is therefore that, as matters now stand and if action through the Security Council is not possible, military intervention by NATO is lawful on grounds of overwhelming humanitarian necessity" (Roberts; 1999: 106).

Different NATO states and NATO as a body defended their action on a basket of reasons that included the international duty to protect civilians who should be able to defend themselves but were lacking in capacity and the duty to protect international peace and security which was being threatened by refugee influx in the region posing a threat of escalating and exporting the war (Roberts; 1999: 107). In defence of the NATO actions without an explicit UNSC mandate, Slovenia argued that the Security Council does not have a monopoly on decision making regarding the use of force it has “the primary, but not exclusive, responsibility for maintaining peace and security” (Roberts; 1999: 105).

In other words, Slovenia argued that any other country or group of countries had a right to act to protect international peace and security as well as stop gross human rights violations if the UNSC had failed to act. The danger with this argument is that it opens the door for adventurous and vigilante leaders of any powerful state to put the international law in the armpits of their militaries, hence destroying the confidence which (smaller) states had developed through the UN system of international relations (Brown; 2000: 1686).

Slovenia’s contention was countered by the UN Secretary General’s response that all actions that had to do with the use of force should involve the Security Council because it has the duty to protect international peace and security (Ronzitti; 1999: 46). Even the argument that preceding Security Council resolutions, specifically Resolution 1199 which noted that in the case of the breaches of peace agreement, the Security Council “would consider further action and additional measures to maintain or restore peace and stability in the region,” did not give an implicit mandate to NATO to use force.

One can argue further that the reason why NATO did not attempt to seek a Security Council mandate through a resolution was because it was not going to be granted on the basis that Russia had already declared that it would not support any resolution that allowed the use of force (Wheeler; 2000: 261). True to its word, Russia brought forward a resolution which was co-sponsored by Belarus and India which called for the immediate cessation of all hostilities and the resumption of talks. The defeat of the resolution by a margin of 3 votes for and 12 against did not in turn authorize the NATO mission in Kosovo. Ronzitti (1999: 49) argues that, “It is unreasonable to say that failure to pass a prohibitive deliberation is equivalent to an authorization, on the principle that that which is not expressly prohibited is allowed.” Therefore

as noted by Simma (1999: 1), the intervention in Kosovo, while having a moral defence, breached the UN Charter.

The actions of regional organizations on matters of peace and war are allowed but according to the Charter, regional organizations cannot act independently of the Security Council. They should either be granted proper authorization or they are delegated upon which they will be answerable to the Security Council (UN Charter, Article 53). It is only in self defence or against those states that were considered enemy states at the formation of the UN that regional organizations could use force without Security Council authorization specifically for self defence against aggression.

Therefore, the use of force against FRY by NATO was illegal if measured against UN law. However, other scholars like Simma (1999: 1) have argued that even though the intervention was illegal, it was a legitimate moral act which saved human lives at a time when the Security Council was paralyzed by the veto power. This was also the sentiments of the Kosovo Commission which noted that intervention in Kosovo by NATO was illegal but legitimate (The Independent International Commission on Kosovo; 2000: 4). If measured against the writing of international law philosophers like Grotius, Vattel and Vitoria the military intervention would be seen as legitimate in as much as it sought to save civilians from the excesses of their leaders but falls short of the theorists' rules because the use of force resulted in the deaths of more civilians from those who sought to defend them and also because the authority of NATO on the matter cannot be seen as a right and legal authority in the place of the UN.

According to De Las Casas, the intervention in Kosovo would not be judged as a moral act. NATO bombings resulted in an estimated death of about 500 civilians (Koskenniemi; 2002: 161). According to De Las Casas, every human life is important and cannot be sacrificed for the other (Sorabji; 2006: 20). Hence, the killing of an estimated 500 civilians whom NATO was on a mission to protect negated the results of the mission.

Scholars like Nicholas J. Wheeler have come up with reasons, outside the humanitarian cloak, that could have influenced NATO to militarily intervene in Kosovo. According to Wheeler (2001), "Clinton's guilt over the US failure to act in Rwanda was perhaps a factor in leading the President to launch 'Operation Allied Force' to rescue the Kosovars. Wheeler (2001: 126) goes on to argue that, "The President went to war over Kosovo and not Rwanda because



important security interests were perceived to be at stake, including the credibility of the alliance, and the use of air power promised a quick result with little risk to NATO air-crews.”

Kurth (2005: 100) also argues that, “As for the Bosnian and Kosovo interventions, the Clinton administration saw them as logical extensions of America’s traditional interest in European stability, with the sphere of responsibility of the NATO alliance now being expanded from Western Europe into Eastern Europe.”

In extension, one can then argue that this encroachment into what has been historically a Russian sphere of influence was the reason why Russia rejected the use of force and called for the withdrawal of NATO forces. In both cases, while there were genuine humanitarian concerns, the major powers had national interest to respond to besides the question of the suffering masses.

### **3.6 Conclusion**

This chapter discussed some of the military interventions that were undertaken in the 1990s. Iraq, Somalia and Kosovo were specifically chosen as they were declared to be cases that did not have implications on international peace and security but were also justified in humanitarian terms. In the case of Iraq, even after the passage of UNSC Resolution 688 based more on the issue of regional security, France which was among the first states to call for the intervention had used humanitarian reasons to justify the intervention it had called for. Kosovo was also justified as such,<sup>8</sup> so was Somalia.

These interventions came at the dusk of the Cold War and there was an international euphoria for the observance of human rights and for the United Nations and the USA in particular to act in pushing states that were seen as rogue to transform into human rights respecting states. The interventions had impacts on other crises that followed like the failure to intervene in Rwanda

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<sup>8</sup> The British foreign and commonwealth office argued that the failure of the Security Council to act in a situation of gross violations of human rights made it imperative for NATO to take action (British Foreign and Commonwealth Office, quoted in Roberts, 1999, 106). In announcing the commencement of NATO actions in Serbia, the NATO Secretary General said that, “We must stop the violence and bring an end to the humanitarian catastrophe now taking place in Kosovo. We have a moral duty to do so” (quoted in Koskeniemi, 2002, 161). All these statements were made in a bid to justify the intervention from a humanitarian perspective.

and Darfur. They also ushered in an era in which the UNSC passed resolutions that targeted specifically matters of internal interests and NATO also took up the role of acting as a military machine on crises that did not threaten the security of its member states but seen as humanitarian issues.

The selected cases had legitimate humanitarian concerns but also fell short on some areas to be classified as legal military interventions for humanitarian purposes. The failure specifically rests on the argument that the doctrine of military intervention for humanitarian purposes has not been fully developed either by customary or treaty law to be incorporated as legal under the current UN law. Even in the 19<sup>th</sup> Century when it was practiced, it was heavily contested, while the theorists who wrote on military intervention for humanitarian purposes did not agree on the legality of the concept, with philosophers like Grotius and Vattel accepting it while others like Bartolome De Las Casas denounced it. However, while the interventions of the 1990s could not create a legal precedence, they affected the way in which military intervention for humanitarian purposes was to be dealt with in the 21<sup>st</sup> Century.

It is from this precedence that UNSC passed resolution 1973 that legalized intervention in Libya based on the new doctrine of the Responsibility to Protect (R2P). The precedence also meant that NATO had a platform to build from in its intervention in Libya. The 'No-Fly Zone' concept of the Iraq intervention and the NATO air strikes were combined in a manner that saw the restriction and finally the defeat of Gaddafi's forces.

The following chapter will discuss the nature of the Arab Spring in particular how the crises unfolded in Libya and Syria in order to create a base of analyzing the role and nature of international intervention and its legality and morality.

## CHAPTER 4

### LIBYA AND SYRIA: ORIGINS AND NATURE OF THE CRISES

#### 4.1 Introduction

Chapter three examined cases of military intervention for humanitarian purposes from 1990 to 2010 specifically the cases of Iraq, Somalia and Kosovo. The cases were examined due to the attention they attracted and how they impacted on other cases of military intervention for humanitarian purposes. This chapter analyzes the Arab Spring specifically with regard to Libya and Syria. The analysis of each case will be preceded by a brief historical background in order to contextualize the uprisings and rebellions. The analysis is also meant to bring to light events that called for military intervention for humanitarian purposes in Libya and Syria.

During the 2011 Arab Spring that started in Tunisia in 2011 and spread across North Africa and the Middle East, the heads of state in Tunisia and Egypt were removed from power during the civil unrest that saw limited participation of the army in trying to stop the uprisings, and hence minimum casualties both in terms of the military and civilians (Barany, 2011, 31-32). In Yemen, the Head of State, Saleh, negotiated an exit strategy that saw him depart without prosecution.<sup>9</sup>

The Libya and Syria crises had a great impact on the international community as they raised the question of military intervention for humanitarian purposes. The international response showed that the world remains polarized as it also brought about questions on the smooth functioning of the UNSC and the objective applicability of international law, specifically with regard to military intervention for humanitarian purposes. As pointed out, in order to understand the context in which these debates were played out, an overview of historical developments to 2011 is provided.

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<sup>9</sup> On the 23<sup>rd</sup> of April the Gulf Cooperation Countries (GCC) presented an exit deal to Saleh which he signed on the 23<sup>rd</sup> of November 2011. See “Yemenis Oust Saleh Regime (Yemen Revolution), 2011-2012, [www.nvdatabase.swrthmore.edu/content/yemenis-oust-saleh-regime-yemen-revolution-2011-2012](http://www.nvdatabase.swrthmore.edu/content/yemenis-oust-saleh-regime-yemen-revolution-2011-2012) . The deal which was a Schumpeterian deal as it was not supported by the public in Yemen was also supported by the USA. It granted Saleh immunity from prosecution if he relinquished power. After stepping down he went to the USA for treatment. This was against the fact that the USA had adopted a hands free approach on other Arab states who had gone through the Arab spring in which the former Tunisian president was tried in absentia, and Mubarak was tried in Egypt while Gaddafi was indicted by the International Criminal Court (ICC) before he died for their roles in the deaths of demonstrators during the uprisings. Granting Saleh immunity was an act of double standards for the GCC and the USA.

## 4.2 The Arab spring

Prior to the revolutions in Tunisia in 2010, democracy was a little known concept in the Middle East and North Africa. Western powers, in particular the USA, UK, and France, were complicit with the military and monarchical governments that gave them favourable oil concessions (Zurayk, 2011, 119) and were seen as preferable to ‘Islamist’ or unstable governments that would threaten their position in the Middle East. In the case of Egypt, successive US governments favoured the government of Hosni Mubarak, who came to power in October 1981, because it supported US Middle East policy in relation to the Arab-Israeli issue. Hence, while USA and European governments ‘coerced’ sub-Saharan African leaders to be democratic in order to receive aid, North African and Arab leaders such as Mubarak received aid without any democratic conditionalities.

Economic meltdown, rising poverty, unemployment, the need for greater and meaningful political freedom and the impact of social media networks have been cited as some of the drivers of the Arab Spring (Beck and Huse, 2012, 7). Advocates of the social networks systems argue that dissent and the need for change had long been there in the region; however, it was the advent of social networking systems that allowed people to mobilize in a way that was not controllable by the governments (Howard and Hussain, 2011, 36-37). These explanations are not sufficient to shed light on the multiple causes of the uprisings in the Middle East and North African region, commonly known as the MENA region. As Haddad (2012, 113) argues,

there have been early attempts to frame (the uprisings) with generic economic arguments about poverty ... and destitution, with regional comparisons to the case of Syria ... Equally, narrow arguments about the uprisings being a reaction to decades of authoritarian rule do not help us to understand why they are occurring now. Finally, the prevalent of the “social media revolution” narratives merely obscures the important issues at play.

A plethora of drivers, spanning many years, can be seen as the seeds that germinated into the uprisings. Quasi-liberal economic reforms that were brought about in the MENA region at the end of the 1990s saw the rise of a capitalist elite class that was either related or connected to the ruling elites (Smith and Taylor, 2011, 1). The growth of the Gross Domestic Products (GDPs) of these states did not trickle down to the grassroots, thereby, leading to widespread

discontent. The problem was compounded by high birth rates and low infant mortality that resulted in a high population segment of the youths that was being channeled into the labour market where they could not be absorbed (Beck and Huse, 2012, 6). This created a fertile ground for an uprising which, when coupled with authoritarian exclusionary political systems, it created a pressure cooker scenario that only needed a spark for the uprisings.

In Syria, the socioeconomic changes instituted by Bashar al Assad shifted from primarily focusing on agriculture and the rural areas and concentrated on urban industrial development (Haddad, 2012, 120). This is supported by Phillips (undated) who argues that Assad's "economic reforms alienated the Sunni Arab workers and peasantry", and while the Syrian GDP grew, the subsidies to the poor "were cut and public sector employment decreased."

However, the argument of the role of economic pressure cannot be applied homogeneously because although there was a global financial crisis in 2008 and high rate of unemployment, other states affected by the uprisings had relatively stable economies. For example, Egypt had a growth rate above 5 percent in 2010 (Zikibayeva, 2011, 2) while Libya was ranked among those states with the highest standards of living of its citizens in Africa (Global civilians for Peace in Libya, 2011; The Sunday Mail, 23 October 2011).

The need for political reforms had been a major thorn for MENA leaders as the majority of the civilian population had for long agitated for democratic governance. This is explained by the rise of religious-political organizations in most of the countries in the Arab world like the Muslim Brotherhood in Tunisia, Egypt, Libya and Syria<sup>10</sup> which called for political reforms long before the Arab Spring.

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<sup>10</sup>The Muslim Brotherhood is one of the oldest opposition groups to the long autocratic and dictatorships in the Middle East and North Africa. It is not a single political union in all the countries it is found. It differs from state to state and has employed different tactics in its opposition to the entrenched rule. As an organization it has stood for the upholding of Islam as the official state religion in mostly Egypt and Syria. This agitation has seen coming into conflict with the governments hence in most of these states it was banned and existed as an underground organization. The states to note were Egypt, where the organization has taken over power after the end of the revolution that ousted Hosni Mubarak, and Syria where its leaders are now dominating the opposition movement the Syrian National Coalition (SNC), Libya and some of its members are fighter in the Free Syrian Army (FSA).

In most MENA countries there were a number of political prisoners who had been incarcerated for calling for democratic reforms and governance and many more were in exile.<sup>11</sup> Egypt was a military dictatorship that survived more on U.S. patronage than on the support of Egyptians. Egypt, in fact, received military aid that was second only to that of Israel in the region without questions asked as to whether that aid was used to forestall civilian rights through military and other security services repression of the civilians (The Telegraph, 29 June 2011).

In Libya, Colonel Muammar Gaddafi was a soldier who came into power through a coup and his dictatorship was not challenged, while in Tunisia the leaders had strong alliances with the army and business elites. Although no uprising took place for many years, there was much unhappiness and all that was needed was a spark and the courage to rise, which was brought first in Tunisia by Boaziz<sup>12</sup>. The masses in other countries took inspiration from these events and unrest moved from North Africa to the Middle East (Zikibayeva, 2011, 1).

#### **4.3 Libya – historical overview**

Libya was under Muammar Gaddafi's rule who came into power in 1969 when a group of military officers led a bloodless coup against King Idris who had ruled the country when Libya achieved independence from the British on 24 December 1951. The king who was an ally of Western countries and had little support from his neighbouring Arab states granted the US and the UK airbases in Libya and allowed the French to use Libya as a transit route to counter the Algerian movements that were fighting for independence from French colonial rule (World Model United Nations, 2013, 7-8).

During the Six Day war in June 1976 between Israel and the Arab states, King Idris failed to fulfill his pledge to support the Egyptians leading to discontent among Libyans who held demonstrations and attacked Jews in Libya, killing eighteen and injuring others, after the defeat

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<sup>11</sup> This situation was rampant in Libya where Gaddafi even employed agents to murder Libyan refugees to come home (Model United Nations, 2013), while in Syria, the political prisoners who were released during the Damascus spring were 600. At the unceremonial closure of the Damascus spring more political activists and intellectuals were imprisoned. Another factor to note is that a considerable leadership of the uprisings in the Arab Spring, Specifically the TNC and SNC were in exile.

<sup>12</sup> Mohamed Boaziz, a youth and street vendor from the city of Sidi Bouzid in Tunisia committed protest-suicide after having been subjected to maltreatment by police officers who also confiscated his vending cart and failed to get a redress from the city police officials after he approached them with his case on 17 December 2010. His self-immolation became a spark of the Tunisian revolution as youth initially protested against police excesses and later turned into a national revolution against the state.

of the Arab states ([www.sixdaywar.co.uk/jews\\_in\\_Arab\\_countries\\_intro.htm](http://www.sixdaywar.co.uk/jews_in_Arab_countries_intro.htm)). In a context of rising Pan – Arabism and the rise of the Nasserite doctrine<sup>13</sup>, the failure by King Idris to support the Arab cause in Palestine was seen as a betrayal of Arabs, both in Libya and the wide Middle East.

Internal discontent rose against King Idris because of alleged corruption and mismanagement of oil funds to the extent that with oil reserves which were discovered in 1959, the monarch relied on assistance from the US while oil concessions were largely given to British and US companies. Revenue from oil benefited the elite and little benefit trickled down to the general citizens (International Debates, 2011, 6). King Idris's pro-Western foreign policy and corruption created discontent among Libyans. This was fuelled by the growing Arab nationalism and Nasserism in the Middle East and North African region. By 1969 there were several groups considering overthrowing the king, including those led by army chief Abdul Aziz and former Prime Minister Abdul Bakoush (World Model United Nations, 2013, 8).

In 1969, Gaddafi led the Free Officers' Movement, a group of young officers in the army, to occupy and take control of important installations like military stations, radio stations and police stations in the urban centres of Tripoli, Benghazi and Bayda (World Model United Nations, 2013, 9). On 1 September 1969, Gaddafi declared the end of king Idris' reign and immediately gained recognition from most Arab states to the ewe of most western states who neither recognized him nor intervene to save King Idris.

Soon after assuming power, Gaddafi moved to implement reforms internally and externally. He applied an anti-western foreign policy and within two months advised the US and the British that their military bases and forces had to be evacuated by the spring of 1970 (International Debates, 2011, 6). He also expelled the Italians and nationalized the lands that had been in their hands (International Debates, 2011, 6). In the 1970s, Gaddafi instituted a policy of achieving more control of oil companies and the nationalization of others like British Petroleum and US major, Bunker Hunt (Libya Oil Almanac, 2012, 15-16).

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<sup>13</sup> The Nasserite doctrine refers to the Pan Arabism socialist policies that were espoused by the 2<sup>nd</sup> Egyptian president, Gamal Abdul Nasser. The doctrine was centred on the rejection of western, erstwhile colonial masters' influence in Egyptian and Arabian affairs. It also sought to unite the Arabs in the region, as was proven by the establishment of the short-lived United Arab Republic which united Egypt with Syria. it was also a doctrine that was against Zionism and the establishment of Israel in the Middle East

Gaddafi also courted controversy because of his support for revolutionary independence movements in Africa and extremist groups internationally. He is alleged to have been behind the killing of Israeli Olympic team members at the Munich Olympic games in 1972 (World Model United Nations, 2013, 14). Other organizations that allegedly received his support included Palestinians movements, the Irish Republican Army (IRA) and the African National Congress (ANC) of South Africa. By the mid-1980s, Israeli sources estimated that Gaddafi supported roughly fifty “terrorist” organizations and around forty “radical” governments (World Model United Nations, 2013, 15). This claim is ambiguous because the definition of a terrorist and a radical are subjective. A case in point is that for a long time the US had South African independence leader Nelson Mandela on its list of terrorists.<sup>14</sup> Gaddafi is also credited for supporting the former Liberian leader, Charles Taylor and the Sierra Leonean rebel leader, Foday Sankoh (De Waal, 2013, 366).

The waterloo of Gaddafi’s support for terrorist activities was reached on the bombing of the Pan American plane in Lockerbie, Scotland in 1988. The American and British governments demanded that the Libyan government should turn over the two Libyan nationals who were suspected of having orchestrated the bombing. The Libyan government refused and the case drove the American and British governments to push for UN sanctions against Libya. The Security Council passed Resolution 748 which took effect on 15 April 1992 and banned air travel and arms sales to Libya until that country surrendered the two alleged suspects (UNSC Resolution 748, 1992, Articles 4 and 5). In 1993, with the coming of the Clinton presidency in the USA, the USA government pushed for the adoption of Security Council Resolution 883 which froze Libyan assets overseas and banned trade in oil equipment (UNSC Resolution 883, Articles 3 to 5).

Due to the effects of sanctions, and also partly because of the collapse of communism in Russia, whom Libya had considered its ally in international relations, Libya decided to re-align its policies with the western powers. In April 1999, the two Lockerbie bombing suspects were surrendered to Scotland. This act improved relations with European and American governments. Within three months, Britain re-established diplomatic relations with Libya. However, the act did not appease the USA to lift the sanctions (Schwartz, 2007, 566-568). In

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<sup>14</sup> Mandela was on the USA terrorists list since his days in prison and was only removed from the list in 2008, see Brett Wilkins, “Crucial CIA Role in Nelson Mandela Arrest 50 years Ago Today,” accessed 14 May 2013, <http://m.digitaljournal.com/article/33015>



the aftermath of the September 11, 2001 terror attacks in the USA, Libya condemned the attack and sympathized with the USA (Schwartz, 2007, 568). Libya also cooperated with the USA against Al-Qaeda since the terror attacks (Schwartz, 2007, 580).

In December 2003, Libya acknowledged that it had Weapons of Mass Destruction (WMDs) and had also been developing missiles technology (International Debates, 2011, 7). The former Libyan leader stated that the missile development plan would be stopped and the WMDs dismantled (International Debates, 2011, 7). It may be argued that the move was inspired by the USA led coalition of the willing's invasion of Iraq and the subsequent fall of Saddam Hussein. The move was therefore meant to reduce tension with the USA and its NATO allies and be removed from the states targeted by the USA in its international war on terror campaign.

In Africa, while Gaddafi was a central figure in Africa Union affairs, his involvement in the internal politics of other states brought him enemies and friends alike. In 1972 and 1979 he assisted Idi Amin, former president of Uganda, to suppress the rebellion that was taking place in Uganda (Museveni, 2011, 22). Museveni (2011, 23) says that;

The third mistake has been the tendency by Gaddafi to interfere in the internal affairs of many African countries using the little money Libya has compared to those countries. One blatant example was his involvement with cultural leaders of black Africa – kings, chiefs, etc. since the political leaders of Africa had refused to back his project of an African government, Gaddafi, incredibly, thought that he could bypass them and work with these kings to implement his wishes.

Museveni's comments on Uganda may be clouded with personal issues as he was among those who fought Idi Amin, but his claims with regards Gaddafi's interference with internal African leadership are backed by De Waal (2013, 367) who points out that, "In line with his insistence that he was not a 'head of state' but rather the representative of the people, Gaddafi latterly began circumventing Africa's official leaders and aspiring to lead the continent through chiefs and monarchs, taking for himself the title 'King of Kings'."

He is also alleged to have called for the breakup of Nigeria into separate independent states as a solution to solve the clashes between the Muslims, predominantly in the north and Christians,

predominantly in the south (*BBC News*, 29 March 2010; De Waal, 2013, 366). The foregoing statements, which he uttered on Nigerian soil, was viewed as intervening in the internal affairs and calling for an act which any sovereign state would not countenance. It should therefore come as no surprise that while the African Union as a body stuck with its rules on not recognizing the TNC during the war days, a number of African states including Nigeria had already granted the body recognition.

### **The 2011 Uprisings**

The Libyan crisis started as a demonstration on 15 February 2011 by some Benghazi residents in front of the police headquarters against the arrest of a human rights lawyer who was representing the relatives of the over thousand prisoners who were allegedly killed by security forces at the Abu Salim jail in Tripoli in 1996 (Daoud; 2011: 221). The planned peaceful protest turned violent when the National Conference for the Libyan Opposition declared 17 February “a day of rage” and confrontations with the armed forces led to the alleged use of live ammunition by security forces against demonstrators (Report of the Independent Civil Society Fact-Finding Mission to Libya; 2012: 10).

Human rights activists referred to the Libyan uprising in its initial days as pro-democracy demonstrations, but it soon degenerated into a civil war that was divided on regional lines. Benghazi, which is in the eastern part of the state, was King Idris’ native home and most of the “rebels”, in the initial to medium term of the uprising came from this area (Souare; 2011: 11). Souare (2011: 11) notes that amongst easterners the overthrow of the king was a blow to their dominant position in the, as Gaddafi promoted his tribes people.

The rebels,<sup>15</sup> led by the TNC, used the flag of the former king (Idris) as their new flag and a rallying symbol thereby giving rise to questions regarding the regional divide and mass popularity of the revolution. Souare (2011, 11) argues that ‘these historical fault lines’ remain very much a part of contemporary Libyan society and it “is therefore not surprising that the overwhelming majority of Libyan rebels are still from the east, where the current uprising/civil war started, or that they are using the flag of the Libyan kingdom.”

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<sup>15</sup> This may be a contested term. As used here, it refers to those who rise in armed resistance against an established ruler and Gaddafi was an established ruler.

On the other hand, in Tripoli and Sirte, Gaddafi continued to have considerable support, hence the argument that he had the capacity to hold on to power despite NATO strikes for almost six months. The question is whether this support was based on tribal loyalty, fear or natural political inclination of the masses.

Ankomah, (the editor of the New African magazine) (2011, 8) questioned the definition of who constituted the ‘people of Libya’ especially as the voices of those who supported Gaddafi were not aired in the international media. He queried that

I have watched with dismay in the past three months how an upstart four-worded term “the people of Libya”, is taking the shine off our favourite word “regime”. So who are “the people of Libya”? How do we define “the people of Libya”? In normal times, “the people of Libya should mean “ALL the people of Libya”. But these are not normal times. So “the people of Libya” has been made to mean “the people” of Benghazi and its environs in the north-eastern districts of Libya who want Muammar Al Gaddafi to pack his bags and go (Ankomah, 2011, 8).

Although the foregoing point is legitimate, as events unfolded the uprising moved to other parts of the country which were either neutral or Gaddafi strongholds when the uprising started where it appears that they joined the uprising in order to claim a share in the next government.

Despite the dwindling popularity of Gaddafi as the rebellion continued, international relations scholars, the media and some leaders in Africa, Asia and some European countries queried that the intervention in the country was more of the NATO forces supporting the rebels with air power against Gaddafi’s forces. Discussions on NATO’s intervention in most media and academic circles are analyzed from the time of the passage of Resolution 1973 though it can be argued that intervention began when Gulf Cooperation states (GCC) like Qatar supported the TNC with finance and ammunition from the end of February 2011, and on the 8<sup>th</sup> of March 2011 called for the intervention of the Security Council. This discussion will be continued in the following chapters.

## 4.4 Syria

### Background

With regard to the socio-economic-political situation in Syria on the eve of the uprising Blanchard and Sharp (2012, 1):note that the country has for decades struggles “with many of the same challenges that have bred deep dissatisfaction in other Arab autocracies, including high unemployment, high inflation, limited upward mobility, rampant corruption, lack of political freedoms and repressive security forces.” The Syrian state had been unstable and between independence in 1946 and Hafiz Al Assad’s coup in 1970, Syria experienced eight coups (Al Haj Saleh, 2003, 59) and persistently changed its cabinet and constitution.

Syria was shaped by a long process of state creation given that it declared its independence from the French in 1944 but was only recognized internationally on 15 April 1946. Apart from the coups, political upheavals saw it merging with Egypt to create the United Arab Republic (UAR) which was a short-lived experiment that lasted from 1958 to 1961.

After a series of unstable governments, in November 1970, Hafez Al Assad, the then Minister of Defence and father of the incumbent ruler, Bashar Al Assad, seized power through a bloodless military takeover. He instituted some economic reforms while he increased his hold on power through laws that reduced the prospects of a democratic or military takeover by others.

In a bid to consolidate his power, Hafez Al Assad prioritized the military. As a man who rose from the military he knew that the army was the most important organ of the Syrian state. Having close ties to the army meant that he could effect a coup and when he was in power he used the army to quell dissent among the Syrian population (Hinnebusch, 2012, 96 & 97).

In 1973 he spearheaded the formulation of a new constitution that gave him absolute powers and an indefinite period of term of office. The new constitution approved the emergency laws that had been put in place in 1963 which suspended the constitutional freedoms of civilians. These laws, and his failure to create an Islamic state which was the desire of members of the Syrian Muslim Brotherhood, created strong internal opposition to his rule which Assad Snr. could only suppress with harsh laws or outright military force (Hinnebusch, 2012, 97).

## Internal Opposition

The most powerful opposition to Hafez Al Assad was the Syrian Muslim Brotherhood, (hereinafter Muslim Brotherhood) which was a legitimate political party from the end of French occupation in 1946 until March 1963 when the Ba'ath Party took power in Syria. Since then, the party chose the path of violence and disobedience against the Assad government, and openly called for the overthrow of the government of Hafiz Al Assad (Porat, 2010, 2).

The Muslim Brotherhood branded the leadership of the Ba'athist party as heretics and as non-Muslims (Goldsmith, 2011, 42), and called for it to be deposed and replaced with a new 'Islamic' government. The Muslim Brotherhood found fuel in the sense that the Ba'ath Party implemented a secularist policy which separated religion from politics and accepted a secular society with no special position for Islamic law as the basis and primary source of the law of the state.

Al Assad tried to placate the Muslim Brotherhood when he came to power by declaring in the constitution that the religion of the president of the state should be Islam (1973 Syrian Constitution, Article 3 (1)). However, this fell short of the aspirations of the Muslim Brotherhood and other Sunni Muslims who wanted Islam to be declared the state religion, instead of being only recognized as the religion of the majority while the state was secular. The clause which declared that the president of the state should be a Muslim rebounded given that he (Hafez Al Assad) was from the Alawite sect<sup>16</sup> which is considered by Sunni Muslims to be non-Muslims. Al Assad therefore quickly moved to disarm legal protest by calling in the Iranian born Lebanese Shia cleric, Musa Al-Sadr, to declare the Alawites to be a Shia Muslim sect (Schwartz, 2013).

The second half of the 1970s saw an escalation of violence in Syria between the Muslim brotherhood and the Assad government. Porat (2010, 3) notes that there are divergent opinions

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<sup>16</sup> The Alawite sect (or simply Alawites) is a Shia sect that has had a long history that has also seen the sect transforming itself into other beliefs that are not part of mainstream Shiaism. Tord Olsson, quoted in Goldsmith (2011, 38) defines that, "The Alawites belong to a secret sect of Shia type, with striking Gnostic features. Except for the Mandeans, the Alawites seem to be the only living group of people who adhere to a mythological gnosis that has been transmitted for centuries as a religious legacy." Notable Sunni clerics have called them heretics and non-believers which led to their persecution. Because of this description and definition, members of the Muslim Brotherhood and other Muslims argued that Assad Snr. Could not be a Syrian president constitutionally after the promulgation of the 1973 Constitution.

on the exact year in which violence escalated to a civil war between the two. Some accounts argue that in 1976 several groups operating under the umbrella of the Muslim brotherhood initiated violence against government institutions while the Muslim brotherhood argues that the government initiated the attack against the Muslim brotherhood in 1979. According to Porat, on 16 June 1979 an Ikhwan attack on the Military Academy for Artillery Officers in Aleppo resulted in thirty two deaths and many more injured. Hafez Al Assad responded by seeking to “completely uproot the movement” (Porat, 2010, 3). The result was a full blooded civil war by 1980.

During the initial stages, the Muslim Brotherhood gained control of major cities on the basis of the unity of various Sunni groups and it appeared as though the Assad government was losing its grip on power (Porat, 2010, 3). The government responded by massacring large numbers of Muslim Brotherhood members (Goldsmith, 2011, 42). According to one source, at Palmyra prison, Government troops massacred nearly a thousand inmates who were members or supporters of the Muslim Brotherhood (Seale, 1988, 329). The war escalated in 1981 but the government regained control by the end of 1982 and rooted the Muslim Brotherhood out of the country, with most of its members going into exile in neighbouring countries as well as in Europe (Porat, 2010, 3). Apart from the Muslim Brotherhood, the power of the Assad government and the Alawite minority was also being threatened by young leftist academics but the repressive police state rendered the latter’s opposition ineffective. Most opponents of the regime were either in prison or exile by the mid-1980s.

During his reign, Hafez Al Assad maintained good relations with the Soviet Union which were strategically calculated to insulate the hostile Western states. In regional and international relations, Hafiz Al Assad’s foreign policy was driven by the need to legitimize his rule at home by citing international and regional threats (Hinnebusch, 2008, 276). It is not uncommon for governments facing legitimacy problems at home to seek to divert citizens’ attention by going on international adventures. In 1973, Syria partnered with Egypt in the Yom Kippur Wars against Israel, by standing with the Palestinians, the Syrian government positioned itself as pro-Arab in a way that allowed it to gain internal legitimacy. Syria’s international policy therefore was antagonistic to USA and Western interests in the Middle East.

Pipes and Kedar, cited in Hinnebusch (2008, 276), argue that Syria relations in the Middle East were driven by the need to placate discontent at home and acquire resources. Syria practically

enlisted itself among Arab states that championed Palestinian independence against the establishment of Israel and participated in wars that sought to defeat Israel. It also intervened in the Lebanese civil war in 1976 and kept some of its forces in Lebanon until 2005, when they were moved out after an outcry from western states arguing that the Syrian intelligence had a hand in the assassination of Rafik Hariri<sup>17</sup>. Hof and Simon (2013, 10) concur with this argument when they note that Syria's involvement in the 1973 war against Israel “signaled just how far Assad was willing to go and the risks he was willing to take to establish himself in the eyes of all Syrians as a genuine Arab leader and as a Syrian hero able to transcend sectarian identification.” The idea fell short of the desired outcomes by Hafez al Assad to placate the majority Sunni Muslim community and the Muslim Brotherhood because the latter initiated a rebellion in Hama in the 1980s which was only quelled by outright state military force (Joya, 2012, 30). Hafez al Assad’s power base, therefore, primarily remained the military and the Alawite community.

Syria’s alignment with Russia made it a foe of its neighbour, Turkey, which is aligned to West and is a member of the North Atlantic Treaty Organization (NATO). Al Haj Saleh (2003, 60) notes that Syria had always had frosty relations with Turkey which “ever since its modern reformulation in the 1920s, sought to distance itself from its Arab and Islamic environment, allying itself with the West.”

After Hafez al Assad’s death in 2000, his son Bashar Al Assad succeeded his father. His slogan on attaining power, “Change through Continuity” (Goldsmith, 2011, 43), was confusing and received mixed interpretations from the Alawites and the Sunni Muslim majority. For Alawites, it implied a continuation of their privileges and a closed political system that favoured them while the Sunni Muslims viewed it as an opening of the political space and the coming of a new age (Goldsmith, 2011, 43-44).

Assad promised reform and encouraged political dialogue among the citizens. This was in response to calls for politics and governance reforms which culminated in the Damascus Spring of 2000 to 2001 in which, among the ideas put forward were the demand for greater freedoms

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<sup>17</sup> Rafik Hariri is the former Prime Minister of Lebanon between 1992 and 1998 and again from 2000 until his resignation in 2004. He was among the most influential persons in Lebanon who opposed the extension of the presidential term of the Syrian backed Emile Lahoud. He was popular both in Lebanon and internationally as he was the first post war Lebanese Prime Minister. He was assassinated on 14 February 2005 with allegations from Western States that Syria could have played a role in the assassination.

of association, the release of political detainees and the opening of the media space to private players (Kawakibi, 2007, 1). Debating forums were established in Damascus and other large towns and ninety nine intellectuals signed a new declaration which demanded the release of all political prisoners, freedom of speech and an end to the state of emergency, was published<sup>18</sup> (Kawakibi, 2007, 1). These demands resulted in the release of more than six hundred political prisoners on 17 October 2000. The private press also began to emerge and was allowed to flourish (Kawakibi, 2007, 1).

These desires of change and democratization were not acceptable to hardliners in the Assad government who viewed the then young leader with mistrust, and hence began to close civic space for political discussion (Zisser, 2005, 2). The operating space for individuals and political groups was reduced through the emergency laws that had been in place since the rule of Hafiz Al Assad thereby ending the Damascus Spring. Kawakibi (2007) argues that it ended prematurely in March 2001 with the detention of some of the activists and their leaders (Kawakibi, 2007, 2).

Although calls for reforms were silenced, by the fall of Saddam Hussein of Iraq at the hands of the USA led Coalition of the willing, the ‘liberal’ opposition was emboldened and tried to push for reforms (Hinnebusch, 2012, 103). Assad (Jnr) deflected the calls by rallying the dominant Sunni sect of Syria against reforms which he called western imperialists driven. He argued that political reforms will follow economic reforms in a manner that would follow the Chinese model. In order to counter the dissent from the Muslim Brotherhood and other Sunni Muslims, ‘moderate’ Sunni clerics were given space to preach non-political Islam and others were co-opted into the government (Hinnebusch, 2012, 103-105). The move bought time for the government but it did not snuff the flame of dissent which was kindled by the closure of the Damascus Spring. It was with these embedded political disgruntlements that the Arab Spring from North Africa and other Arab states became a spark of the Syrian uprisings and subsequent civil war.

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<sup>18</sup> The intellectuals at the Damascus Spring were predominantly from Damascus, popularly called the ‘Damascene Intellectuals’. They were from the opposition, civil society and the media and they sought to transform Syria to a democratic state (see Carnegie Endowment for International Peace, April 2012). They advocated for the lifting of the emergency laws which were in place since 1963, to allow the return of the exiled politicians and to free political prisoners (see Salik, (2013)



## **The Uprisings in Syria**

The uprisings that engulfed North Africa found their way into Syria in mid-March 2011, where they were molded very much along sectarian lines. Broadly, the uprising and the subsequent civil war was dominated and led by Sunni Muslims against Alawites (Hof and Simon, 2013, 1). The demographic demarcation of Syria is estimated at seventy percent, being Sunnis, followed by the Alawites who constitute twelve percent, Christians ten percent, and the Druze being three percent (Nishapuri, 2012; Zifcak; 2012: 27). The uprisings began with Sunni Muslims demanding democratic reforms and the lifting of the state of emergency (Phillips; 2012: 67-68), which would allow them to gain power. They called on Assad to step down and for a reduction of the influence of the Alawite clique in government. The majority of Alawites supported Assad because in the majority of Alawite households there was at least one individual in the security forces, while others have benefitted economically due to their military or business connections (Nakkash, 2013, 11-12). The roots of the uprisings in Syria were not exclusively a result of the revolutions and uprisings in North Africa. The Syrian political environment was very volatile since the country's attainment of independence from France in the 1940s.

The "Damascus Spring" opened a political space which, though short lived, provided a taste of reforms. Intellectuals and reformists who had been given a taste to oppose the government were disgruntled by the closure of the public political space. The fall of Saddam Hussein kindled their quest but the government came up with counter measures that delayed the clash until an unspecified time in the future. Such an unspecified moment came in the wake of the Arab Spring. The coming of the Arab Spring only served as a spark to the decades old discontent that had been brewed by local and regional events since the Damascus spring.

The uprisings in Syria started with a failed demonstration in February 2011 (Sharp and Blanchard, 2012, 1-2). However, the protracted struggle was ignited on 15 March 2011 in Daraa with demonstrators calling for the release of a group of teenagers who had been arrested for drawing graffiti with oppositional narratives (Hof and Simon, 2013, 1). In response to the demonstrations, security forces killed some protesters, thereby leading to the increase in demonstrations throughout the country (Hof and Simon, 2013, ii & 1).

Bashar al Assad's government used excessive force to nip the uprising in the bud because the preceding government was skeptical about the Sunni sect, which comprised the bulk of the Muslim Brotherhood's following. Hafiz Al Assad, after all, had successfully but ruthlessly used the security forces to quell civil disobedience and later to destroy the support base Muslim Brotherhood. Bashar Al Assad may have wanted to adopt the same strategy during the 2011 uprisings.

The government did, however, try to placate the demonstrators by introducing reforms such as scrapping the emergency laws and passing a bill that allowed for the creation of opposition political parties and their participation in national elections (BBC News: 25 July 2011). The State of Emergency, which had been in place since 1963, was scrapped on 19 April 2011. This was an important gesture since the law had been used to suspend most democratic and constitutional rights and protection of citizens.

A large number of security personnel were killed by armed groups in the Jisr Al-Shugar district under the Idlib Governorate (see figure 2 at the end of the chapter) between 3 and 6 June 2011. The incident indicated that the protests had transformed into armed conflict (Report of the Head of the League of Arab States Observer Mission to Syria: Articles 26 & 27). Military activities from the uprising groups increased, leading to their branding as rebels. The Assad regime informed the international community that the uprising was fomented by militants and that "extremists" and "terrorist" groups had either infiltrated or assisted to infiltrate into Syria to help the uprising aimed at toppling Assad (Hof and Simon; 2013: ii & 2). This was initially denied by Western states and the Arab League, but with time these reports were confirmed with groups linked to Al Qaeda publicly accepting responsibility for some suicide and other terrorist bombings inside Syria and calling for the supporting of the uprising (Sharp and Blanchard; 2012: 7). Some of the groups that were later listed as terrorist groups by the USA and other western states include Al-Nusra Front, Khorasan Group and ISIL. ISIL grew to become a large group aiming to create an Islamic Caliphate that would transcend Syrian and Iraq borders. As I conclude this thesis USA managed to call for an international coalition that include western and Arab states to fight ISIL which had taken control of large parts in Iraq and Syria.

The uprising in Syria is arguably more complex than the other crises in the region. It has both internal and external influences and elements. The complexity is due in part to the fact that

Syria is in a region that is of unparalleled importance to the major international powers, specifically Britain, France, USA, China, and Russia. The former USA president Jimmy Carter noted as long ago as the 1970s when he was in power that the Middle East occupied strategic position in the national interest of the United States. He categorically stated that, “An attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States of America, and such an assault will be repelled by any means necessary, including military force” (Carter quoted in Woodward, 1991, 225).

Israel has security interests with regard who rules in Damascus. On the other hand, Syrian alignment in the region has the potential of tipping the regional balances in relation to Iranian or Saudi Arabian alignment which would also spell the balance of international power between the Eastern and Western blocs in the region. Al-Rasheed (2013: 36) argues that Saudi Arabia and the Gulf Cooperation Council (GCC)’s response to the Arab Spring was driven by the need to preserve the GCC and score diplomatic victory against Iran.

The uprising and subsequent civil war in Syria raises a number of questions one which pertains to the desires and plans of USA and Israel to clear the region of perceived enemy states. Mearsheimer and Walt, in 2006, pointed out that since the fall of Saddam Hussein in Iraq, Israel and the USA Israeli Lobby have been pushing the USA to embark on a regime change in Syria (2006, 36). Several members of the Israel government and the Israeli Lobby in the USA mentioned Syria as the next target after the fall of Saddam Hussein (Mearsheimer and Walt, 2006, 36). Such targeting and the armed uprising raise a question of the role of outside forces in the beginning of the uprising and also gave the Syrian leadership a veil to argue with that the uprising was engineered from outside and composed of ‘mercenary’ fighters, an argument that has now been accepted by many in the international community (Sharp and Blanchard, 2012, 7).

#### **4.5 General Disproportions in the Arab Spring**

The uprisings in Tunisia, Egypt, Libya and Syria that acquired greater international attention and intervention yet the uprisings were widespread in the MENA region affecting Bahrain and Yemen significantly with countries like Saudi Arabia, Jordan, Morocco, and Algeria among others. It was the international alignment that saw others facing loud condemnations with others surviving with reprimands only (Pattison; 2011: 276).

International attention was also attracted by the intensity of the uprising and the manner in which the governments in different states reacted to the uprisings. In states like Saudi Arabia, Morocco and Jordan the uprisings were of low intensity (Dalacoura, 2012, 66) and this allowed the governments to announce reforms in a manner that snuffed the flame of the uprisings before they gained intense international attention and popularity (Dalacoura, 2012, 66). Lack of international attention allowed the governments to put out the last pockets of the uprising using force without facing international condemnation. There was, therefore the use of force in a manner that stifled the uprisings with the Saudi Arabian monarch getting no reprimand from the USA and other Western states as was the case with those states that were on the international limelight (i.e. Tunisia, Egypt, Libya and Syria).

Major international double-standards specifically by the members of the GCC were on the Yemen<sup>19</sup> and Bahrain cases. In Bahrain, the Saudi Arabian government led a GCC intervention in support of the Bahrain government against the predominantly Shia demonstrators in Bahrain. Saudi Arabia contributed one thousand, two hundred forces, United Arab Emirates contributed 600 police personnel and Kuwait sent a naval force to protect Bahrain's maritime borders (Katzman, 2012, 8). The intervention was done with complacency from veto wielding international powers.

Arguably, one can sum up the nature of the response by the Arab league and the GCC states as one that was driven by their interests and not primarily guided by international standards either in terms of law or morals. The argument is based on the fact that the powerful GCC states thwarted any uprisings that were driven by alleged members of the Shia sect while in Syria they supported a predominantly Sunni uprising against an Alawite (which is alleged to be a breakaway 'Twelver' Shia sect) dominated government. Al-Rasheed (2013: 29) clearly captures this argument when he notes that the uprisings in "Bahrain and Yemen were seen as a threat to Saudi supremacy, while the revolt in Syria was considered an opportunity to score internal and regional goals."

Given the fact that there is a race for regional dominance between Saudi Arabia and Iran as well as the fact that one of the leading symbols of the Bahrain uprising, Ayatollah Isa Ahmad Qassim is a Shia cleric who is aligned to Iran (Alfoneh, 2012, 1), the Saudi monarchy and other

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<sup>19</sup> See note 10.

GCC member states could not accept a situation in which an Iranian aligned cleric would influence an uprising against a Sunni government. It should therefore be noted that while the uprisings in the Middle East were driven by genuine grievances, there were also subtle political currents in the region that directed the course of the uprisings so as to suit geopolitical and strategic interests.

#### **4.6 Conclusion**

There are contested versions on the causes of the Arab Spring. Scholars like Beck and Huse (2012) have argued that the uprisings are a result of economic meltdown especially the rising unemployment among the youth, and the lack of democratic space in the region, while others like Howard and Hussain (2011) locate the causes in the rise of the digital social media networks. Other scholars have celebrated the power of the social media as the major cause of the uprisings and the successful removal of leaders in Tunisia, Egypt, Libya, and Yemen; in other states like Algeria and Jordan there have been reforms by the governments; and in Syria the conflict is raging on with no side able to claim total victory.

The arguments that seek to explain the Arab spring in isolated causes are limited. The causes of the uprisings are multiple and complex and a single analysis will limit the understanding of the complex nature of the events. While youth unemployment and the limitations on democracy had a bigger role in igniting the uprisings in Tunisia, other factors were at play in other countries. In states like Libya and Syria, the call for reforms in the political arena did not start on the eve of the Arab Spring. There had long been agitation for reforms and the leaders of all three states (Mubarak of Egypt, Gaddafi of Libya, and the Assads in Syria) had faced at least a single assassination attempt by some disgruntled elements of their citizens during their times in power.

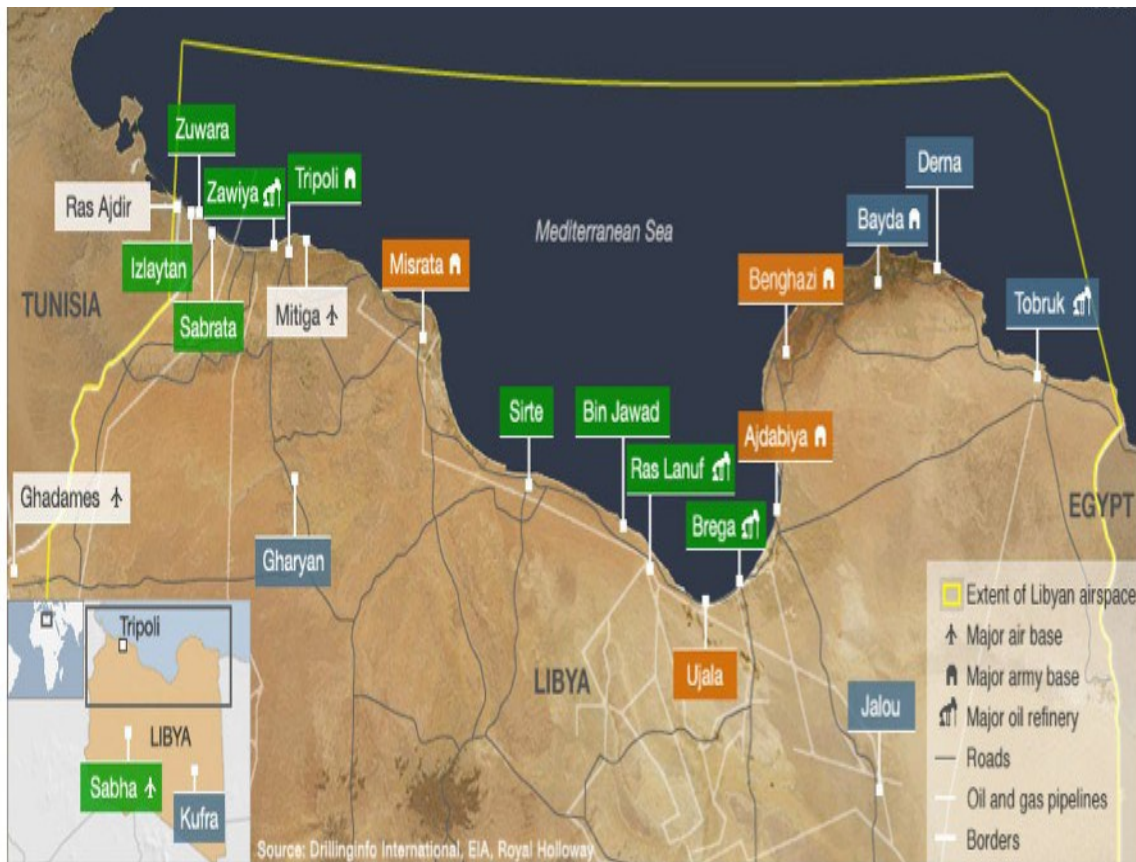
Historically, as discussed in this chapter, there was deep mistrust between the government and the people, as well as sectional, religious, and ethnic differences amongst various sections of the population. The governments stifled attempts of reform and dialogue thereby creating a “time bomb” which only needed a spark to light up. While the uprisings had objective concerns, it can also be argued that powerful regional and sectarian divides were manipulated in Libya and Syria to drive the uprisings and to solicit for support and recognition internally and externally.

The causes and successes of the uprisings should also be located in the international relations continuum of the region. In Tunisia and Egypt the swiftness of events limited international response, while in Libya and Syria, the power of the rebels was fanned by outside forces who had turbulent relations with the government of Gaddafi and Assad, respectively. Parallels can be drawn on how sectarianism was a drive on the way GCC states reacted to the uprisings given their economic might and western alignment in the region. In states like Jordan and Yemen, GCC states assisted governments in power to resist the uprising that was dominated by the Shia minority while in Syria; the GCC states have been aiding the Sunni majority in the uprising against the Alawite dominated government. The uprisings should therefore be viewed from the long lenses of the struggle for regional dominance between the Shia led by Iran and the Sunni led by Saudi Arabia and internationally on the contestation between the USA and Russia. Such will be the major thrust of Chapter 6. The following chapter will analyse international law and the role of regional organizations and other states in internal matter specifically using the case of Libya and Syria.

The next chapter will question the role played by the international community in the uprisings and subsequently, civil wars in Libya and Syria. It will discuss the critique the legality of the UN endorsed NATO intervention in Libya and the failure of an UN intervention in Syria. It will also discuss the doctrine of the Responsibility to Protect (R2P) as it is the focal concept that was used to justify the Libyan intervention.

### Map 1: Fighting in Libya: March 2011

(Source: Centre for strategic and International Studies, Washington D. C.)



Key locations	Gaddafi control	Rebel control	Recent clashes
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## Map 2: Syrian Map

(Source: Human Rights Watch, November 2011)





**CHAPTER 5**  
**INTERNATIONAL LAW, TRANSNATIONAL ORGANIZATIONS, AND**  
**INTERVENTION IN LIBYA AND SYRIA**

**5.1 Introduction**

This chapter examines the legality of NATO intervention in Libya in terms of UN law and customary international law. One of the key questions which the chapter discusses was why the international community did not learn from the Libyan intervention to have a sustainable intervention in Syria, rather than the return to the paralysis of the Cold War era? This chapter also answers the questions: Does the UNSC has the mandate to legalize intervention based on human right violations? Is it legal to effect regime change in the process of or after a military intervention for humanitarian purposes?, among others.

International law is polarized on the concept of humanitarian military intervention. The precedence set by the military interventions in Kosovo, Somalia and Iraq have not acquired enough consensus to be accepted as international practice. Critics view such interventions as pursuing national interest while proponents argue that while they may be viewed as illegal, such interventions are legitimate (Berman; 2006: 751-752). The UN has sought to make military intervention for humanitarian reasons legal through the adoption of the Responsibility to Protect (R2P) document by the International Commission on Intervention and State Sovereignty (ICISS) which was sponsored by the government of Canada. Intervention in Libya was influenced more by the concept of the Responsibility to Protect (R2P) which is a repackaging of military intervention for humanitarian purposes (Payandeh; 2012: 377).

**5.2 Responsibility to Protect: Changing the Rules of Military Intervention for Humanitarian Purposes?**

The post-Cold War conflicts of the 1990s in places like Somalia, Rwanda, the Democratic Republic of Congo (DRC), and in the former Yugoslavia underscored the void in rules and principles of engagement in international law. The UN Charter and its subsequent laws were crafted against a background of aggression between states. Leaders of different states therefore sought to bring about permanent peace through the regulation of state relations.

The end of the cold war saw the emergence of a new threat in the form of civil wars, militia activities and gross human rights abuses by state leaders which the international community had to grapple with as this internal stability was destabilizing international peace and security. Evans (2006: 706) notes that “the quintessential problem of the 1990s became that of intra-state conflict, civil war and internal violence perpetrated on a massive scale.”

The Kosovo war in 1999 was tipping point. NATO intervened in the internal affairs of a sovereign state citing “the overwhelming need to put a stop to the atrocities perpetrated by the Serbs” (Cassese; 1999: 793). This intervention was done without Security Council authorization because of the fear of a Russian and or Chinese veto (Adjei; 2005: 63). NATO’s intervention in Kosovo without authorization from the UNSC could have created a dangerous precedence in which powerful states could unilaterally intervene in any state militarily and disregard UN rules. Hence it threatened the UN with the fate of the League of Nations. This concern led to the establishment of an independent International Commission on Kosovo to look at the legality and legitimacy of NATO operations in Kosovo and also to come with proposals for future operations (The Independent International Commission on Kosovo; 2000: 19-21).

The commission established that the intervention was illegal because it had no explicit authorization by the Security Council, but legitimate because “all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule” (The Independent International Commission on Kosovo; 2000: 4). It recommended that the UN set laws that would respond to such humanitarian catastrophes in order to avert a situation in which the international community would be held to ransom by the politicking of the veto wielding states in the Security Council and the old rules of non-intervention and non-interference (The Independent International Commission on Kosovo; 2000: 10).

This call was answered by the constitution of the International Commission on Intervention and State Sovereignty (ICISS) in 2000 which was sponsored by the government of Canada. ICISS, which submitted its report in 2001, repackaged the issue of military intervention for humanitarian purposes as the ‘Responsibility to Protect’. According to Gareth Evans (2006: 708), who co-chaired the commission with Mohamed Sahnoun, the commission “sought to turn the whole weary debate about the right to intervene on its head and to re-characterize it not as

an argument about any *right* at all but rather about a *responsibility*—one to protect people at grave risk— with the relevant perspective being not that of the prospective interveners but, more appropriately, of those needing support.”

ICISS (2001: xi) broke the responsibility to protect into three categories namely ‘the responsibility to prevent’, ‘the responsibility to react’, and ‘the responsibility to rebuild’. The commission summarized the responsibilities as follows;

A. **The responsibility to prevent:** to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.

B. **The responsibility to react:** to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.

C. **The responsibility to rebuild:** to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert. (ICISS; 2001: xi).

In its endeavour to find the right balance between intervention and the concerns of less powerful states that R2P may be used by powerful states to intervene for their interests, ICISS laid down benchmarks for intervention. For intervention to be legal;

there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind: A. **large scale loss of life**, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or B. **large scale ‘ethnic cleansing’**, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape (ICISS; 2001: xii).

Intervention can also be legitimate if it is undertaken using the right intent, undertaken as a last resort with proportional means to stop or deter the humanitarian catastrophe, and if there is a reasonable prospect of success (ICISS; 2001: xii).

On the question of authority, the commission called for the Security Council to be the authorizing power of military intervention for human protection purposes. “The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has” (ICISS; 2001: xii).

One can argue that the only major invention which the commission introduced was the proposal for the explicit legalization of military intervention for humanitarian purposes. The crimes which the commission came up with had already been condemned under different conventions and treaties as crimes against humanity. These include genocide, war crimes, and crimes against humanity were already codified as such under the Genocide Convention, the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), Special Court of Sierra Leone (SCSL) and the Rome Statute of the International Criminal Court (ICC) of 1998.<sup>20</sup>

On the rules that govern intervention, pro intervention philosophers had already alluded to them. Most of the rules that warrant the legitimacy of an intervention like the correct intention were mentioned by Vattel (1758: bk. 3, ch. 3) in his justification of military intervention for humanitarian purposes. The commission also accepted the classical notion of the pro-intervention thinkers that military intervention for humanitarian purposes should not start with the intention of and/or end with a regime change (ICISS; 2001: 35) as that is a matter that is purely internal and a matter of self determination. This notion is however not accepted by Walzer (1977: x) who argues that when a regime is built on aggression and criminality, then after a war the victors are morally justified to replace such a regime or at least initiate a process of its replacement.

Walzer’s argument is drawn from the fact that it is not the authoritarian nature of governments that warrant military intervention for humanitarian purposes but the murderous nature of any government that would legitimize military intervention hence regime change of any government that commits these crimes is morally upright (1977: x).

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<sup>20</sup> The mentioned international tribunals and courts all stipulate genocide, crimes against humanity, war crimes and aggression as serious crimes of concern to the international community. The ICC explains these crimes in articles 5, 6, 7, and 8. The Statute of the ICTR notes the crimes in articles 2, 3, and 4, the statute of the ICTY notes the crimes in articles 2, 3, 4, and 5 while the Statute of the SCSL explains the crimes in articles 2 and 3.

Giving back the powers of deciding on the legality of an intervention to the Security Council, it may be argued, is a drawback because of the politics of veto which continues to play a stifling role to the new doctrine. In cases where the interests of veto power states are at risk, they are likely to veto the resolutions as in the Syrian case where Russia and China have vetoed three UNSC Resolutions. Welsh (2011: 2) argues that R2P was a compromise document. On one hand, it faced resistance from the major powers, who saw it as a threat to their domination on major international events, specifically on matters to do with military intervention, which is a preserve of the five veto powers. On the other hand, less powerful states which dominate the General Assembly viewed it as an instrument which would increase major powers' influence in their internal affairs. The outcome of the 2005 World Summit, according to Welsh (2011: 2) was therefore a compromise between supporters of the emerging R2P doctrine and detractors of this new interventionist doctrine.

Given that military intervention for humanitarian purposes in most cases has a weaker state as a target, which weaker states usually does not have power in the security council, it would have been more appropriate if the powers were given to the General Assembly on a two thirds majority as many less powerful states question the democratic and/or representative nature of the Security Council which is regarded as a "prestigious exclusive club" (Akpotor and Agbebaku; 2010: 51).

Another question which the crafters of R2P apparently failed to consider is what the response of the international community should be in cases where a state fails to defend its citizens from insurgencies or internal civil war because they are getting assistance from external powerful states as was the case in the Syrian crisis. It seems that the commission was very much influenced in its deliberations by the Kosovo crisis and the need to have a justification and an acceptable document for military intervention for humanitarian purposes.

While there may be less dispute where a state is specifically brutalizing its own citizens, insurgency and internal civil wars are different issue and the ICISS (2001: xi) noted that "where a population is suffering serious harm, as a result of *internal war, insurgency* (italics - author's emphasis), repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect." This, arguably, opens the door for major powers to instigate civil wars or insurgencies in less powerful states in order to gain access through military intervention for humanitarian purposes

for resource and geo-political interest. The contemporary crisis in Syria, some may argue, is a possible case in point. While there were demonstrations in the initial stages, there was the increase of militia groups who were given military and non-military support by external states (Joya; 2012: 31).

One can also take issue with the argument by ICISS that the notion of military intervention has to be viewed as a responsibility and not as a right (Welsh; 2011: 2). The difference being that a right is a legal entitlement upon which one can act upon or can ignore without facing legal consequences, while a responsibility is “a duty or obligation to satisfactorily perform or complete a task (assigned by someone, or created by one's own promise or circumstances) that one must fulfill, and which has a consequent penalty for failure” (*Business Dictionary*: n d). If viewed as a right, military intervention would be an act allowed to those willing to undertake a mission and have the resources to pursue the mission with considerable chances of success in cases where intervention is warranted, without necessarily making it an obligation upon states to do so. Such a right, while open to abuse by states, would have made military intervention for humanitarian purposes flexible especially at a time when the UN cannot do more than peacekeeping.

By making it a responsibility for the international community to intervene under certain conditions, the question is whether such will can be found among different states. This has been shown in a number of instances. Although there was enthusiasm in toppling Gaddafi in Libya, the Syrian case suggests that states are driven by the will as well as interests beyond the scope of rules and/or humanitarianism and such will never manifested in the Syria crisis. The answers to these inconsistencies can be found in Grotius' statement that, “no one is bound to give assistance or protection, when it will be attended with evident danger” (1625: 247). What Grotius noted was that if there is a danger or cost in assisting those in distress, then such people are not obliged to undertake the assistive mission.

Be that as it may, the concept of R2P was accepted by the UN General Assembly, gathering as the World Summit in 2005. Such responsibility also fell onto the UN through the use of Chapter VI, VIII and in some cases VII of the Charter and to that effect declared that;

In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including

Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity (United Nations General Assembly; Resolution 60/1, 2005: Art. 139).

The World Summit accepted R2P, although it must be noted that General Assembly resolutions have no legal power to amend UN law or enact rules for international law (Kerwin; 1983: 879). In analyzing Article 10 of the Charter, Schwebel (1994: 509) notes that, the General Assembly “can only, in principle, issue ‘recommendation’ which are not of a binding character.” This view is shared by Sir Hersch Lauterpacht (1977: 541)) who notes that the General Assembly “has no legal power to legislate or bind its members by way of recommendation.” The adoption of R2P was not a binding legal document, but a step in the drive to legalize military intervention for humanitarian purposes under current UN Law.

In spite of this shortcoming, R2P did bring up to the peak the transformations on customary international law and UN law. Since the end of the Cold War, there has been an evolution of international law from being one that specifically protected states to one that struck a balance between the survival of the states as the primary regulators of international relations and individuals who are the subjects of states. Bellamy and Williams (2011: 826) “argue that “international society is now explicitly focused on civilian protection.”

### **5.3 International Law and Intervention in Libya**

The intervention by NATO states in Libya raised a number of legal and moral questions. The case should be analyzed in two tiers thus, was the military intervention legal according to the UN law and was the conduct of the intervention legal in accordance with UN law and international humanitarian law?

In terms of legality, intervention was sanctioned by resolution 1973 of the UN Security Council. According to resolution 1973, the Security Council;

*Authorizes* Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in

cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory.

Intervention by NATO member states and NATO as a regional organization was legal in accordance with article 53 (1) of the UN Charter which states that the Security Council “shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority.”

On the other hand, one could argue that the UN was not allowed by Article 2.7 of the charter to sanction intervention as the dispute was basically an internal one and the charter prevents it from intervening in internal matters of states. It may be argued that Article 2.7 offers an exception as Chapter VII permits intervention when international peace and security is threatened, but this was not the case in Libya at the time of the passing of the resolution.

The Security Council tried to legalize its intervention by invoking Chapter VII. Resolution 1973 notes that, “*Determining* that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security.” However, in the revolving crisis, no reports from the media, Libyan government or neighbouring states were produced that showed that the conflict was spilling over into regional countries. Invoking Chapter VII was therefore inappropriate as the crisis had not yet developed into one that threatened regional security. This line of thinking is supported by former South African President Thabo Mbeki who stated that the Security Council failed to show that “the situation in Libya and Ivory Coast constituted a threat to international peace and security ... yet they authorize the use of military force” (Ncana: 2011).

When resolution 1973 was passed, the uprising had already turned into a civil war which pitted predominantly two armed sides against each other. The Libyan government was caught in the dilemma of trying to defeat a rebelling movement while protecting its civilians. The government resorted to using heavy weaponry in civilian populated areas, including rocket propelled grenades, artillery shells and tank shells (Blanchard; 2011: 4). It is noteworthy that both sides in the conflict were committing acts that amounted to human rights violations and



the international community could have taken a middle line by calling both warring sides to respect the rules of the conduct of war (*jus in bello*). Mbeki (2012: 5) argues that what happened is that “in essence, NATO intervened not to impose a no-fly-zone to protect civilians, as prescribed by the UN Security Council, but to lead and empower the opposition National Transitional Council in a military campaign to overthrow the Gaddafi regime.”

The argument that the Security Council resolution was based on international human rights theory has no legal basis because Charter law does not mandate the UN to intervene in support of the observance of human rights issues. In this case, such an intervention would only be legitimate but not legal as was the case with the Kosovo intervention in 1999.

Leaders, such as Tony Blair,<sup>21</sup> argued that in matters of humanitarian catastrophe, it is legal and morally correct for the international community to act rather than wait while human lives are lost. In similar vein, Annan (1999), cited in ICISS (2001: vii) asked, “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?”

This argument is drawn from the Grotian Doctrine and the social contract theory which argue that a government that commits gross human rights violations against its civilians loses its legitimacy and the privileges which come with sovereignty (Grotius; 1625: 247). Since war machinery is mostly controlled by the government which can use it to maintain its hold in power, foreign states can, therefore, assume the role of saving those whose lives are endangered. This argument, based in international morality and philosophy, was, however, not adopted by the crafters of the UN Charter.

Assuming that intervention was based on the need to preserve human rights and enforce humanitarian law, then the Security Council should have referred the case to the prosecutor of

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<sup>21</sup> Tony Blair in his “The Doctrine of the International Community,” said that, “I set out what I described as a doctrine of international community that sought to justify intervention, including if necessary military intervention, not only when a nation’s interests are directly engaged; but also where there exists a humanitarian crisis or gross oppression of a civilian population. It was a speech that argued strongly for an active and engaged foreign policy, not a reactive or isolationist one: better to intervene than to leave well alone. ... I still believe that those who oppress and brutalize their citizens are better put out of power than kept in it.” See Tony Blair, “The Doctrine of the International Community: Ten Years Later,” *Yale Journal of International Affairs*, Spring/Summer 2009, p. 5-6

the International Criminal Court to investigate the excesses by those involved in war and not to authorize NATO to be part of the war.

Several international instruments and the UN Charter support the argument that the authorization which was granted to NATO was not legal under UN law. Article 3.1 of the UN General Assembly Friendly Relations Declaration of 1970 states; “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.”

The aforementioned declaration is supported by a number of International Court of Justice (ICJ) pronouncements in international cases such as Nicaragua vs. USA case (1986: Art. 55) wherein the ICJ read that international law prohibited not only external intervention but also interference in matters that are considered purely internal.

The [il]legality of the intervention is more controversial given that the mandate was granted and or taken over by a group of states that confessed partiality in the uprising. When the uprising was gaining momentum, USA president, Barack Obama, stated that, “Muammar Gaddafi has lost the legitimacy to lead, and he must leave” (Landler: 2011). The then US Secretary of State, Hilary Clinton, reiterated that “instead of issuing threats, Gaddafi ... should step down from power” (Mohammed and Abu-Aun: 2011). The USA position was supported by Western powers who all voted in favour of Security Council Resolution 1973.

The conduct of NATO in Libya raised condemnation from countries such as Russia (Eastweek; 2011: 2-3), China, Iran and South Africa (De Waal; 2013: 367-368), amongst others, who argued that NATO overstepped the boundaries of Resolution 1973 by using it as a pretext to effect regime change which is against international law (Campbell: 2013). Mbeki (2012: 5) quotes NATO leaders’ intention in their joint statement that, “So long as Gaddafi is in power, NATO and its coalition partners must maintain their operations...Colonel Gaddafi must go, and go for good.” The price of conduct of NATO in Libya was paid by the Syrian because Russia and China vetoed any resolution that sought UN intervention in Syria (Thakur; 2013: 70).

The conduct of NATO amounted to regime change in the affairs of a sovereign state; an act not accepted under customary international law as well UN law. Given that the intervention was based more on the emerging concept of R2P, it is interesting that ICISS (2001: 35) noted that “overthrow of regimes is not, as such, a legitimate objective, although disabling that regime’s capacity to harm its own people may be essential to discharging the mandate of protection – and what is necessary to achieve that disabling will vary from case to case.”

Walzer (1977: x-xi) argues that although regime change is not the primary goal of intervention it becomes part of the process because a tyrant cannot be expected to reconcile with those he or she is brutalizing. Walzer uses the example of Rwanda to argue that if there had been “an African or a European or a United Nations intervention in Rwanda in 1994 ... the initial purpose of the military action would have been to stop the massacre of Tutsi men and women (and their Hutu sympathizers), but in order to do that and to protect the survivors, it would have been necessary to overthrow the Hutu Power regime” (1977: x-xi).

Drawing from Walzer’s argument, one can argue that it was necessary to effect regime change in Libya because Gaddafi had already threatened retribution against the people of Benghazi (Shrivastav; 2011: 3).

The Libyan case is different in that the goal of the intervening powers was explicitly to oust Gaddafi before the passage of Resolution 1973 which paved the way for intervention. Furthermore, it was a civil war in which rebel fighters and government forces were fighting to the detriment of civilians (Pinfari; 2012:144). It could be argued that in such a case, the international community had a duty to holistically look at the case without taking sides. Support for the rebels was therefore, drawing from the judgment of the ICJ in the case of Nicaragua vs. USA, an act of aggression.<sup>22</sup>

Finally this raises the question of which law takes precedence over the other. Given that the World Summit accepted R2P and noted that even chapter VII of the Charter can be invoked to use coercive action against a regime perpetrating gross human rights violations against its

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<sup>22</sup> As ruled by the ICJ in the case: Nicaragua Vs United States of America, 1986, the support of military bands in another country, including provision of weapons and other logistical support is an act of aggression according to customary international law. Hence, it can be argued here that the provision of lethal and/or non-lethal military aid to some Syrian rebel groups by members of the GCC, Turkey, France, and the USA is an act of aggression on Syria.

civilians (United Nations General Assembly; Resolution 60/1, 2005: Art. 139), how should the declaration and the R2P report be harmonized with the UN Charter? In this argument, the UN Charter should be seen as the international constitution thereby nullifying all laws which contradict with the charter. The R2P was accepted by world leaders who can be viewed here as the world's parliament, but failure to harmonize the agreed resolutions with the Charter, viewed here as the constitutive document of the world order, renders more discord in the practice of international relations. If R2P is to take precedence, then the UN Charter should be amended in line with the new rules, especially those that pertain to military intervention because the charter explicitly states that any member of the United Nations has no such right under article 2.7 except on matters that threaten international peace and security.

#### **5.4 The Syrian case and international law**

The crisis in Syria, as in Libya, points to gaps in the current international law regime. Following the 'abuse' of UNSC resolution 1973 in Libya by NATO,<sup>23</sup> and involving a state situated in the contested region of the Middle East, the Syrian case brought the international community back to 'Cold War' polarization. In an alleged bid to resolve the crisis, states like Turkey, France, Britain, Germany, USA, Russia, China and Iran have hardened their positions which are prolonging the crisis.

Legally, a number of states are found wanting. The USA, Turkey, France and Britain have been accused of aiding the rebels in Syria (Lendman: 2012). They have also covertly and overtly called on Syrian president Bashar al Assad to step down from power (Karmi: 2011). This suggests interfering in the internal affairs of a sovereign state, which is proscribed by the UN Charter and the UN General Assembly Friendly Relations Convention.

Morally, states like Russia and Iran, and Hezbollah (a non state actor organization based in Lebanon) can be argued to have abetted the crisis in Syria by defending the Assad government and providing it with weapons (Wezeman; 2013; 270). In supplying weapons, Russia argues that it is not violating international law and has to fulfill its contracts (Loiko: 2013).

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<sup>23</sup> The qualifying of the term 'abuse' is contested. In the current case it is being used based on the fact that the African countries, particularly South Africa argued that NATO member states intervening in Libya went beyond the mandate that was accorded to them by Security Council Resolution 1973. This is also supported by the arguments that were put forward by China and Russia, whose abstention from voting paved the way for the passage of the resolution.

## **5.5 Aiding Opposing Belligerents under International Law**

International law stipulates that it is permissible for a sovereign state to seek outside intervention in the case of external aggression. Vattel (1758: bk. 3, ch. 3) wrote that “if any one attacks a nation, or violates her perfect rights, he does her an injury. Then, and not till then, that nation has a right to repel the aggressor, and reduce him to reason.” The UN charter does not proscribe a war of self-defence and it allows collective wars by UN member states acting under Chapter VII or friendly states fighting in the defence of a weaker ally fighting a legal war. It is for this reason that mutual defence pacts and organizations like NATO, Economic Community of West African States Monitoring Group (ECOMOG), and Southern Africa Development Community (SADC) Organ on Politics, Defence and Security (OPDS) are legal. The fact that the UN has worked in cooperation with NATO on some international missions shows that mutual defence pacts are not illegal under international law.

There is need to clarify the nature of war that is acceptable when a state is faced with internal insurgency. According to customary international law, war and the maintaining of armies and military machinery is a preserve of the state as an exclusive right (Grotius; 1625: 44). Military insurgency is therefore illegal in all states in the world. Civil wars have, however, been present since the creation of states and sovereigns have also grappled with stopping military insurgencies in ways that restored state stability, maintained state cohesion, and helped prop their power as undisputed leaders.

The drafting of the UN Charter centred on international wars, especially after the international experience with the first and second world wars thereby foregoing the regulation of state behaviour in cases of military insurgencies. This was seen as an internal matter and international leaders did not seek to regulate it. One can therefore presume that the UN Charter saw military insurgency as an illegal act as drawn from customary international law and classical legal philosophy (Khan; 1987: 10).

An insurgency that has external support can be treated as aggression on the part supporting the insurgency. A case in point is the Democratic Republic of Congo (DRC) under Laurent Kabila which, in 1998, was attacked by rebels sponsored by Rwanda and Uganda. As a member of the Southern Africa Development Community (SADC) and the Organ on Politics, Defence and Security, Kabila sought SADC assistance which was granted by Angola, Namibia and

Zimbabwe under ‘Operation Sovereign Legitimacy’ (Ngoma; 2004: 1). It is in this light that the Syrian case should be analyzed.

The Syrian uprising started as peaceful demonstrations that sought the transformation of Syria to a democratic state (Joya; 2012: 31) but quickly transformed into an insurgency movement and a civil war. The formation of the Syrian National Council, the Syrian National Coalition (SNC) and the Free Syrian Army (FSA), as well as a number of other militia groups in different governorates bears testimony that what the international community has been witnessing in Syria was a civil war.<sup>24</sup>

The Free Syrian Army and other insurgency groups have been fighting heavily against the Syrian government forces. In June 2011 about one hundred and twenty Syrian soldiers were killed in Jisr Al-Shughar (*BBC News*: 2013) thereby marking the transformation of the conflict into a civil war. The Syrian army and the rebels were accused of summary executions in order to instill fear in would-be opposers from among the civilians and members of the military forces (Amnesty International; 2013: 1, and Human Rights Watch: 2012) proving the growing power of the rebels.

The rebellion has an international dimension in that ‘Jihadists’ from across the Arab world (Jordan, Algeria, Saudi Arabia, Tunisia and Libya) are fighting on the side of the rebels (Joya; 2012:33) It is also alleged that the USA, Britain and Qatar sent strategists to help the rebels (Lendman: 2012). Therefore, while the uprising had internal roots, it was being fanned from outside Syria.

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<sup>24</sup> The Syrian National Coalition (SNC) (also known as National Coalition for Syrian Revolutionary and Opposition Forces) preceded the Syrian National Council. It is an amalgamation of different opposition groups in Syria founded in November 2012 in Doha, Qatar and has its headquarters in Istanbul, Turkey. It calls for the removal of Assad and the Baath party from power in Syria and supports international intervention. It is recognized as the legitimate interlocutor of the people of Syria by the European Union (EU) and the Arab League. This is exemplified by the decision by the Arab League to give the SNC the Syrian seat at the organization.

The Free Syrian Army is a militia group formed by defectors from the Syrian Armed Forces and other individuals who voluntarily joined. It was formed in July 2011 to fight against the Syrian Armed Forces that have remained loyal to the Syrian Government. Its main target is the removal of Bashar al Assad from power. While the two (SNC and FSA) are independent entities, they have an interactive relationship that has seen the FSA acting as the military wing the SNC. They are the most publicized opposition and armed movements in the Syrian crisis even though there are a number of groups that advocate for change and transformation in Syrian politics.

Apart from the presence of foreign national fighters, the rebels have been getting assistance from the Gulf Cooperation Countries (GCC), Turkey, USA, and France, including military expertise, weapons and means of communication (Joya; 2012: 36-37). This raises questions about the role of the international community when it comes to funding rebels in a civil war given that aiding the rebels that do not hold the legal monopoly of legitimate force is illegal.

In that regard the Western and GCC states aiding the rebels are found wanting. In moral terms, Vattel (1758: bk. 2, ch. 4) argues that it is morally justifiable to assist people who are being brutalized by their sovereign. This would seemingly condone the actions of those aiding the rebels in Syria. However, the question that needs answering is that what is the representative nature of the rebel groups in Syria and the SNC, and what is the percentage of the population that still approves the leadership of the Syrian government.

### **5.6 External Support for the Assad Government: Legality and Morality?**

Legal and moral questions also arise against those who are supporting the Assad government. This support has come mainly from Russia and China who vetoed UN resolutions against the Syrian government; Russia and Iran who provided military hardware (Wezeman; 2013: 270); and Hezbollah, Iraq, Pakistani and Afghani Shia in terms of personnel (Al-Jarba: 2013) to assist in fighting the rebels.

In terms of the supply of military hardware to the Assad government, it can be argued that the morality questions being raised by western powers are ironical given that they are sponsoring the rebels. However, moral question can be raised given the fact that the Syrian government was using the heavy military weaponry in densely populated civilian areas (Human Rights Watch; 2013: 12), which has resulted in the killing of innocent civilians as collateral damage. Russian support is morally questionable given that the Russian authorities are aware of the events unfolding in Syria and should assist with relevant weaponry.

### **5.7 The Use of Chemical Weapons and International Response**

The use of chemical weapons was termed a game changer by the USA on 20 August 2012 when it referred to it as a “red line” (The White House: 2012). The weapons were later used in August 2013 thereby sparking international outcry. The USA, France and Britain led the call

for a military intervention as they alleged that the Assad government had used the weapons (Charbonneau and Nichols: 2013), while Russia and Iran among others stood against the intervention (*Al Jazeera*: 2013). The Western powers argued that their intelligence revealed that the chemical weapons were used by the Syrian government (Nikitin, Kerr and Feickert; 2013: 15) while the Russian government stated that there is a possibility that the rebels could have used the weapons in order to court international intervention (*Russia Today*: 2013). The UN report did not mention who used the chemical weapons but only asserted that chemical weapons were used (United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic; 2013: Art. 19 & 21). The USA adamantly maintained that the Syrian government was at fault given that the findings by the UN technical team implicated the Syrian government in the launching and directing of chemical weapons (Charbonneau and Nichols: 2013).

The USA government supported by mostly France argued that intervention was necessary in order to lay down precedence against the use of chemical weapons in the future as inaction would lead a bad precedence in the future (Condon: 2013).

Be that as it may, the Libyan style intervention case failed due to a number of factors. Firstly, the British parliament voted against intervention. The action was a big setback for the USA which had always relied on British support in its contemporary international military interventions. The military intervention case was also done a great blow by the Russian diplomatic maneuvers which led to an international agreement being reached by Russia and USA which paved way for an international accounting and destruction of Syrian chemical weapons stockpile (Irish and Nichols: 2013).

The international hype on intervention coming from the western powers after the use of chemical weapons, brings about questions on the humanitarian nature of the intervention given that nothing has been done to end the conflict that has claimed more than one hundred thousand lives and has created more than two millions of Syrian refugees in Jordan, Lebanon, Turkey and Iraq (Bowen: 2013).

There is a possibility that the USA could have given the rebels chemical weapons and or ordered them to use them in order to create a case for intervention (Paul: n d). There have been instances in which Syrian rebels in Syria have been seen with chemical weapons equipment



and there are also allegations of the involvement of GCC states in the major plot that sought to offer the USA a moral pretext for intervention (Paul: n d).

The Middle East is known to be a region of important geopolitical importance to the USA as stipulated in the Carter Doctrine and the stifling role to military intervention by the USA and its allies have given Russia a new strength in the Middle East as a check on USA actions regarding the region in the Security Council. The failure by the USA to have a control on Middle East issues with regards Syria in the Security Council could have influenced the “redline” call on chemical weapons which is the reason why it has been argued that the USA could have been behind the chemical weapons attack (Paul: n d).

## **5.8 Conclusion**

The mere fact that the intervention in Libya by NATO states was sanctioned by the Security Council through Resolution 1973 does not render it legal. The UN Charter prohibits the UN from intervening in matters that are purely internal. Furthermore the UN had no legal right to intervene as the crisis had not turned regional despite the moral justification for intervening in order to save the lives of civilians under threat from primarily government forces and rebel fighters. The Security Council would only have attained competence had the matter grown to threaten regional stability, hence threatening international peace and security.

It can also be argued that the conduct of the intervention also tarnished the legitimacy for two reasons. Firstly, intervening forces were mandated with the protection of the civilians. However, they actively turned themselves into ‘a rebels’ air force’ (Overhaus; 2011: 2). This was compounded by allegations leveled against the French mission of dropping ammunition for rebel forces on the ground (*BBC News*: 2011). The French military leadership quoted by BBC News acknowledged having dropped weapons for the rebels when Colonel Thierry Burkhard accepted that, “During the operation, the situation for the civilians on the ground worsened. We dropped arms and means of self-defence, mainly ammunition” (*BBC News*: 2011). Secondly, NATO bombardments resulted in a large number of civilian deaths. Such a case raises forth the argument proposed by Des Las Casas that using military means for the purposes of saving lives endangered by war or tyrant sovereigns is self defeating as the intervention results in the death of the same human beings whom the intervention purports to protect (Sorabji; 2006: 20). Although there are no universally accepted statistics on the

casualties from exclusive NATO's Operations alleged targeting of Gaddafi family members specifically his sons, Khamis, Mutassim, and Saif Al Islam as they commanded respect among the Libyan military forces (which NATO denied and claimed to be targeting military installations) (Payandeh; 2012: 379) tarnished the moral legitimacy on which the intervention was grounded on.

In Syria, from the Grotian and Just War perspective, the conflict warrants military intervention to save civilians who are not only in danger of the government forces but also from the rebels whom the government failed to contain. If one weighs all the necessary conditions for military intervention, the Syrian case would prove to be a classical case for an R2P intervention. Firstly, international negotiations to stop the crisis failed and there was no other possible peaceful avenue that would end the war except the outright defeat of either of the parties. However, with the nature of the crisis, waiting for one side to have a decisive victory that would force the other to the negotiation table will only open the door for a protracted struggle with a heavy toll on the civilian population.

Secondly, there has been a heavy civilian toll that cannot justify non-intervention. The major challenge is the fact that human rights were being violated by the government as well as the rebel movements supported by some major powers as noted by Mather (2012: 502 & 505-507)) that Alawites, Christians and civilians who fail to enlist their children in the Free Syrian Army or other militant groups faced execution. These are not the only atrocities committed by the rebel units given the fact that they are also in position of bigger arms which can indiscriminately kill targets and civilians (Mather; 2012: 506). The current toll according to conservative UN figures as of the end of August 2013 is placed at more than 100 000 dead with the majority being civilians.

In that regard, the manner in which the international community has responded to the uprisings in Libya and Syria is questionable. The Libya case had minimal casualties given that the intervention was based on the threats of hunting down all those who had taken part or supported the rebellion from Benghazi in the event of a Gaddafi victory. In Syria the civilian toll has reached a threshold where most would agree that an international military intervention for humanitarian purposes is justified. Be that as it may, the intervention is hampered by international polarity at Security Council level. The polarity has proven the fact that the failure by the ICISS to look for an alternative body to assess issues of military intervention for

humanitarian purposes and leaving it with the Security Council has failed to steer the international community from the polarity and stagnation.

## **CHAPTER 6**

### **RESPONSES OF THE INTERNATIONAL COMMUNITY TO LIBYA AND SYRIA: A COMPARISON**

#### **6.1 Introduction**

The international response to the rebellions in Libya and in Syria show that even in matters of international law, interests of states have a great bearing that may militate against legal and moral issues. In Libya the proponents of intervention celebrated a precedent that would not only allow for future intervention but also deter would-be aggressors based on the fear that the international community was willing to respond while critics saw intervention as yet another flawed act driven by self-interests (Lee; 2012: 22).

The international paralysis in the case of Syria shows that the responsibility to protect is not established as an international norm that stands above veto power paralysis. The international community, it appears, has not learnt from mistakes committed during the implementation of UNSC Resolution 1973 in Libya in order to develop a sustainable solution in the case of Syria. The Syrian crisis proved true the statement by Weiss (2011: 10) during the Libyan intervention that, “If the operation fares well, the norm (R2P) will be strengthened. If it goes poorly, future decision-making about its implementation may be even more problematic than in the past.”

This chapter compares and contrasts international responses to the Libyan and Syrian crises and analyses the factors that led to certain actions on the part of international states. The first part of the chapter discusses similarities and differences between the two crises as a background to analyzing international responses.

The international community appeared not prepared for the political and social upheavals in the Middle East and North Africa in 2010 / 2011 where events moved quickly and most countries, it may be argued, adopted a wait and see policy in order to protect their relations with either the governments of the day or the revolting masses. In Egypt, the USA was caught between supporting an old and ‘stabilizing’ ally in the region and supporting the rising power from the people in the streets (National Committee on American Foreign Policy (NCAFP); 2012: 256).

The case was different in Libya and Syria where the governments in power had neither protracted cordial relations with the west nor their Arab counterparts. In this case, the response from the west was more hostile, while the Russian and Chinese governments stuck to their non-interference principles.<sup>25</sup>

## **6.2 Similarities and Differences in the Libyan and Syrian Crises**

The Libyan and Syrian crises which followed uprisings in Tunisia and Egypt differed much their predecessors because they no longer adhered to the dictates of demonstrations but turned into rebellions and civil wars.

The thin line between rebellions and peaceful demonstrations or revolutions was evident in the cases of Libya and Syria where the complete military stand-off between those referred to as ‘rebels’ and ‘pro-Gaddafi / pro-Assad’ forces showed that the uprising had surpassed the threshold of ‘peaceful demonstrations.’ The uprisings in Tunisia and Egypt targeted the leadership in general and its system of governance, while in Libya the rebellion was driven more from Benghazi and later spread to other towns (Lacher; 2012: 12), and in Syria, the target was Assad and his Alawite government (Phillips; n d: 37).

The National Transition Council (NTC) was formed in Benghazi in March 2011 and declared itself the transitional government of Libya. In a manner that exhibited regionalization of the Libyan crisis, the NTC was dominated by elites in the North East from where the former Libyan monarchy hailed and those who had ties to the former Libyan monarchy (Lacher; 2012: 12 & 13). Rebels also retained the flag of Libya that was used during the era of the monarchy (Issaka; 2011: 11). Similarly, the uprising in Syria developed sectarian rifts (International Crisis Group (ICG); 2012: 24-25) wherein the Assad regime propped up by the Alawite sect courted animosity mostly from Sunnis who comprise sixty percent of the Syrian population (Phillips; n. d: 37 & 40). The Christian community was caught in-between because on one hand it enjoys the religious liberty that came as a result of Hafez al Assad’s secularist policies while on the other it wanted to protect itself in the event of a power take over by a ‘radical’ Islamic group

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<sup>25</sup> In the wake of the Middle East Uprisings, Russia and China have remained resolute to the principle of non-intervention. Both countries abstained from voting on the passage of UNSC Resolution 1973 of 2011 on Libya. While they have been criticized for propping the Assad government in Syria, specifically Russia, these states pointed out that they acknowledge the opposition and have been pushing for a political solution to the crisis through dialogue between the opposition and the government in Geneva.

which had already exhibited hostility towards them (*Assyrian International News Agency (AINA)*: 2013). The concept of an elitist transitional council was also applied in Syria as in Libya. The Syrian National Council declared itself the transition government and liaised with states hostile to the Assad government for recognition and support.

The crises also had governments that were entrenched and exhibited dynastic tendencies (Owen; 2012: 374-375). In Libya, Gaddafi exhibited ambitions that he wanted his son, presumably Saif al Islam who was installed as the second in command and was instrumental in the dialogue with major western capitals like Washington, London and Paris, to succeed him (Khechana; 2010: 2). Gaddafi also put some of the special military units under the command of his tribesmen or sons (Adams; 2012:9) specifically the 32 Brigade dubbed the Khamis Brigade that got its name from Khamis Gaddafi. In Syria, the Assad family's four decade reign ushered in Bashar al Assad who succeeded his father Hafez al Assad in 2000. Similarly to Gaddafi, Bashar al Assad put the command of the armies under close relatives, such as the elite Republican Guard that is commanded by his brother Maher al Assad (Beck and Huser; 2011: 2).

The similarities between the Syrian and Libyan crises did not translate to similar international responses which appeared to be determined by the relationships that existed between these states and the international community. Intervention was also varied because the two states have different geographical locations, thus Libya is an African country located close to the European mainland while Syria is in the Middle East. They are both members of the Arab league and Libya is also a member of the African Union.

The possession or alleged use of chemical weapons is another major difference between the two countries. The use or threat of the use of chemical weapons was never issued in Libya where the defining issues were the use of heavy weaponry in highly civilian populated areas and the threat to have a house by house attack in Benghazi.<sup>26</sup> In Syria, the USA government issued a 'red line' warning on the use of chemical weapons on 20 August 2012 (The White House: 2012). The weapons were allegedly used in August 2013. The USA government pushed

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<sup>26</sup> In the Libyan case, the passing of Resolution 1973 sanction military intervention was due to the abstention by Russia and China as well as the African vote. As noted by the Russian ambassador to the UN, the major reason was that Gaddafi was threatening excessive use of force and had not heeded the unanimous international call for the cessation of violence as called for in UNSC Resolution 1970 of 2011.

for an intervention arguing that inaction would create a bad precedence against states with chemical weapons (Condon: 2013). One of the major arguments was on who used the weapons. Rebels and the western governments argued that the weapons were used by the Syrian government(Charbonneau and Nichols: 2013) while the Syrian government and Iran, among others, argued that the weapons were used by rebels with support of some GCC states in order to create a pretext for intervention outside the ‘morally driven’ humanitarian drive (Paul: n d).

The call for this military intervention started to crumble when the British Prime Minister, David Cameron, failed to get a parliamentary approval for intervention (Watt and Hopkins: 2013). The British parliament’s refusal weakened the USA position which had undoubtedly relied on European support in intervention given the strained nature of its military resources. One would argue that there was generally a reluctance on intervention even in USA basing on the ‘intelligence reports’ that laid the blame on Syria due to the failure to find weapons of mass destruction in Saddam Hussein’s Iraq after ‘intelligence reports’ had been used as the basis for the argument for military invasion.

A middle line was found when the USA Secretary of State, John Kerry, announced that the USA would not pursue a military intervention plan if Syria gave up its chemical weapons stockpile to the international community (Alexander: 2013). Through the intervention of Russia, Syria allowed the inspection by international inspectors on its chemical weapons stockpile and agreed on a timeline of the destruction of the stockpiles and the production facilities (CBS/ AP: 2013). The agreement ushered in a new era of agreement on the need for a political solution to the Syrian crisis and an official international acceptance of the failure of the military solution.

Zifcak (2012: 26-27) postulate that another major difference between Libya and Syria, which influenced the Security Council to authorize intervention in Libya and failure in Syria was on the two leaders of Libya and Syria’s reaction to the uprising. On one hand Gaddafi issued explicit threat to destroy all who had joined the rebellion from Benghazi using the word, “cockroach” which was used during the Rwandan Genocide. On the other hand, Bashar al-Assad lamented that the revolution in Syria had been hijacked by armed gangs and extremists and promised reforms. According to Zifcak (2012), this different conceptualization of the crises in their states meant that the international community came hard on Libya and soft on Syria, even though they all used their military machineries against their peoples.

### **6.3 African Union (AU), Arab League and United Nations (UN) on Libya**

The conclusion of Security Council resolutions 1970 and 1973 which authorized the implementation of a no fly zone over Libya for the protection of civilians was as a result of Libya's relations with different states and international organizations. The Libyan case was different from the Syrian case partly because of the different foreign relations between Gaddafi and Assad with individual states as well as international alignment.

#### **6.3.1 Africa and the African Union (AU)**

There was a discrepancy in the responses of African states and the AU to the Libyan uprising. At a regional level, the AU tried to take a middle ground in its response to the uprisings not only in Libya but in all the uprisings that affected its Arab membership. The regional body was bound by the African Charter on Democracy, Elections and Governance which aims, among other things to, "prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development" (Article 2). The Charter further states that "State Parties agree that the use of, inter alia, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union: ... 3. Any replacement of a democratically elected government by armed dissidents or rebels" (Article 23 [3]). The AU therefore did not extend formal recognition to the Transitional National Council (TNC) when it was established in Benghazi.

However, the regional body attempted to have a 'peaceful solution' by dispatching an AU high level Ad Hoc Committee on Libya which was composed of Presidents of South Africa, Uganda, Mali, Congo-Brazzaville, Mauritania and the AU Commission chairperson, Jean Ping. Its task was to negotiate with the Gaddafi government and the TNC to accept a peaceful roadmap that was going to be implemented through the creation of a unity government (Ping; 2011: 2). Among the issues that had to be implemented in the transition roadmap were the cessation of hostilities, accepting humanitarian agencies to help those in need of socio economic assistance, the protection of foreign national working as expatriates in Libya and an inclusive transition authority that would come up with democratic principles for the next government (Ping; 2011: 2).



The initiative failed for a number of reasons. At local level, individual states had conflicting responses to the uprisings and the leadership of the rebellion. Gambia, Nigeria and Senegal extended formal recognition to the TNC while Zimbabwe and South Africa did not. The Zimbabwean government expelled the Libyan Ambassador from Harare when he defected to the TNC (Machivenyika: 2011), while the Ambassador to South Africa was not expelled. His roles were assumed by the Charge d’Affaires who was already at the embassy (Alzubedi; 2011: 14). The Zimbabwean Minister of Foreign Affairs, Simbarashe Mumbengegwi, in his explanation of why the government of Zimbabwe expelled the ambassador argued that;

Once you renounce the authority, which gave you letters of credence, pull down their portrait, burn the flag and pledge allegiance to a different authority, it means that act alone deprives you of the diplomatic standing, which you had been accorded. This is what happened here with the ambassador and his staff. That act alone deprived the Libyan ambassador and his staff of any diplomatic status or standing in Zimbabwe because Zimbabwe does not recognize the National Transitional Council (Machivenyika: 2011).

The contradictory responses between individual states and the AU as a regional body, which emanated from the collision between national interests of different states and the legal protocols of the AU, was one of the reasons why the AU failed to have an ‘African solution to an African problem’.

The AU mission failed in part because of mistrust from the NTC as a result of Gaddafi’s perceived influence in the continental body and the TNC’s belief that Gaddafi would not accept change. These suspicions were further compounded by the fact that Gaddafi quickly accepted the AU peace plan. On the other hand, the TNC was emboldened by NATO support. TNC fears were arguably not unfounded. In the two classic examples of inclusive governments that had been formed under the auspices of the AU and regional organizations in Zimbabwe and Kenya, the incumbent leaders had a large share of power and greater influence in political decisions than the new ‘junior’ partners (Mapuya; 2013: 113).

The AU mission also failed because of the Arab League’s stance against Gaddafi. The fact that Libya belonged to both the AU and the Arab League made it complex to understand which regional body’s decision took precedence when the AU was discussing a peace roadmap, the

Arab League referred the case to the Security Council, hence, the Security Council had a mandate to act as it was invited by a recognized organization under Chapter 8 of the UN Charter. The Arab League reference was driven by its relations as an organization and the different relations between Libya and individual member states of the League. These relations will be discussed in the following section.

The AU argued that its response to the crisis in Libya was appropriate as guided by its principles on democratic governance and constitutional change of government. Ping (2011: 1) argues that African “issues have long suffered from either a lack of exposure in the mainstream media, marginalization and misrepresentation or from outright silencing. The case of the African Union’s intervention in Libya is a classic example of how African efforts go unreported or are twisted to suit a hostile agenda.”

In his defence of the AU peace plan, Ping (2011: 2) noted that the organization was neither in support of Gaddafi nor the rebel movement but tried to balance the wishes of the Libyan people. When the Ad Hoc High Level Panel was making efforts to redress the crisis in a peaceful and inclusive manner, NATO stifled the plan;

The members of the *ad hoc* Committee met in Nouakchott, on 19 March 2011. They were planning to travel to Libya the following day, to interact with the parties. As required by resolution 1973 (2011), the Committee sought authorization for the flights carrying its members to Libya. This request was denied. In actual fact, the military campaign to enforce resolution 1973 started the very day the *ad hoc* Committee was meeting in Nouakchott.

Ping notes that the course of events in Libya differed from the revolutions in Tunisia and Egypt, hence, acknowledging that in Libya, the crisis was more of a rebellion than an uprising. The case, therefore, required a different reaction which meant not simply accepting the newly formed TNC until it was in effective control of Libya after the fall of Tripoli. The AU therefore granted recognition to the TNC on 20 September 2011.

Former South African President, Thabo Mbeki, made a stern analysis of events and blamed the the Security Council and the Arab League for the AU’s failure. Mbeki (2012) noted that, “the UN Security Council willfully elected to ignore the decisions of the African Union, treating

these decisions relating to an African country, and therefore us, the peoples of Africa, with absolute contempt.” Mbeki (2012: 5) notes that the Security Council argued that Gaddafi had distanced himself from the AU (Mbeki; 2012: 5), a claim that was unfounded. In actual fact, Libya under Gaddafi only remained a nominal member of the Arab League while most of its attention was on Africa, hence the contempt with which he was treated by Arab states. Mbeki concludes that the intervention by NATO was not in good faith as it was aimed at effecting regime change in Libya (Mbeki; 2012: 5), an act which is illegitimate and illegal in both customary and international treaty law.

### **6.3.2 Arab States and the Arab League**

The Arab League’s decisions on the crisis were given precedence over those of the AU principally by the USA and the EU as they had entrusted the League to do so (Bradley and Levinson, 2011). The Arab League’s response to the crisis in Libya was totally different from that of the AU. The League suspended Libya from the organization on 22 February 2011 citing its heavy handed response on ‘civilians’ (*Al Arabiya News*: 2011). This was ironic given that other League members, including Saudi Arabia and Bahrain, used force in suppressing dissenting voices (Blanchard; 2012: 9 – 12 & 13).

On 12 March 2011 the Arab League urged the Security Council to enforce a ‘no-fly zone’ over Libyan airspace (Freeman, Meo and Hennessy: 2011). The decision could have been influenced by the six-member Gulf Cooperation Council (GCC) (Bellamy and Williams; 2011: 841), comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates, and which stated that the Gaddafi government had lost legitimacy and that the GCC would initiate contact with the Libyan rebels (*Al Jazeera*: 2011).

The statement by the GCC, the USA and EU’s deferment to the Arab League on whether a military intervention was possible and feasible in Libya seem to have been coordinated between the regional bodies and states given that the EU, on 11 March 2011 had stated that Gaddafi’s government has, “lost all legitimacy and is no longer an interlocutor for the EU” (*Al Arabiya News*: 2011).

The role of the Arab League, particularly the GCC countries, appears to have been influenced more by the relations these states had with Libya than legal or humanitarian motives. While

the Gaddafi government was transforming into a Western ally especially after the surrender of the Lockerbie bombing suspects to Britain and when the USA resumed diplomatic relations with Tripoli in 2004 (World Model United Nations; 2013: 15), this was not the case with the GCC. As long ago as 1980 it was alleged that Gaddafi was involved in a plot to assassinate King Hussein of Jordan (World Model United Nations; 2013: 15), while in 2004 Saudi Arabia alleged that Gaddafi was plotting to assassinate its Crown Prince (World Model United Nations; 2013: 19).

### **6.3.3 The International Community and the UN**

Gaddafi had no permanent alliances internationally and vacillated between being critical of the West, supporter of Pan-Arabism and Pan-Africanism, before lingering back to the Western powers' armpits. The Western states that never trusted him seized the moment by protecting their national interest, while Russia and China's abstention from the vote in UNSC Resolution 1973 showed that they had no interest in protecting Gaddafi who had courted an alliance with Western powers. The resolution was passed with ten votes in favour and five abstentions (Xinhua: 2011). Apart from China and Russia, which are veto power wielding states, the other states which abstained were Brazil, Germany and India (Xinhua: 2011).

The Chinese, through their permanent representative to the UN, noted that China was concerned by the situation in Libya and supported appropriate measures by the Security Council to stop the killing of civilians (Xinhua: 2011). However, China had serious concerns over some of the clauses in Resolution 1973 and therefore abstained from voting as it respected the decision by the Arab League for the implementation of a no fly zone and also the fact that all the African countries at the Security Council had voted in favour of the resolution (Xinhua: 2011). The Chinese delegate exposed the detachment China had with Libya when he stated that while China "abstained during the vote on the resolution, Resolution 1973, we support the secretary-general's special envoy for Libya and the African Union and the Arab League in their continuing efforts to address by peaceful means the current crisis in Libya" (Xinhua: 2011).

Russia argued that it abstained on the basis that it respected the aspirations of the Arab states as represented by their call for a no-fly zone on Libya through the Arab League (UNSC 6498<sup>th</sup> Meeting minutes; 2011: 8). The Russian Ambassador to the UN noted that his country also took into consideration the need to preserve the lives of the Libyan civilians who were

threatened by the heavy weapons used by the government in civilian populated areas but had reservations on the language of the final draft which opened room for excessive use of force (UNSC 6498<sup>th</sup> Meeting minutes; 2011: 8). Vitaly Churkin noted that on resolution 1973, “Gaddafi was coming out with various threatening statements with regard to the population of Benghazi. And there was a real possibility of a bloodbath” (Turlin: 2011).

The history of vetoing security council resolutions shows that veto powers usually use such powers where their interests are threatened or in support and or defence of their non-veto allies. Thomson argues that the veto is a weapon to maintain the international hegemony of those who wield it and that it leads to the paralysis of the UN. According to Thomson (1999: 878), “the structure and voting procedure of the Security Council have made it impossible for any great power, or the protégé of any great power, to be condemned as an aggressor by the United Nations. It is therefore, normally impossible to take punitive action against such a state through the machinery of the United Nation.”

The move by China and Russia not to veto Resolution 1973 should not only be analyzed in terms of Chinese/ Russian-African Union-Arab League relations, but also in the political interests of these veto powers. The Chinese argued that they wanted the case to be resolved amicably yet they shied from vetoing the resolution that opened the gates for NATO air strikes and regime change in Libya. It can therefore be argued that Gaddafi’s lack of clear cut international alignment and leaning more to the West, which had its own interests as far as the Arab League was concerned, cost him support from Russia and China.

NATO member states had mobilized for a military intervention in Libya even before the passing of Resolution 1973 (Issaka; 2011: 10-11). This decision by NATO member states, specifically Britain, France, Italy, and the USA, was influenced by their past history of hostility with Gaddafi, the geo-strategic importance of Libya and the desire to have a stake in Libyan natural resources as exemplified by the fact that French government signed a contract with the NTC as early as April 2011, when the rebels conceded 35 per cent of Libya’s crude oil to Paris in exchange for its support’ (Issaka; 2011: 11).

#### **6.4 Syria, the Arab League and the International Community**

The response of the Arab League to the Syrian crisis has shown some similarities in the manner in which the organization responded to the Libyan uprising. The Arab League suspended the Syrian government on 12 November 2011 stating that the Assad government had failed to stop a crackdown against anti-government protesters (*Russia Today*:2011). On 26 March 2013 the Syrian National Council (SNC) was invited to occupy the Syrian seat at the Arab League (*Fox News*: 2013), a clear sign of the recognition of SNC as the legitimate representative of the Syrian people. Similarly the League suspended the Gaddafi government from the regional organization and in a joint statement with the EU, granted recognition to the ‘rebel’ TNC which was recognized as the “legitimate interlocutor representing the aspirations of the Libyan people” (*Arab Times*: 2011).

While the Arab League was not the primary deciding body on the international response in Syria, the majority of its member states, including Libya and Tunisia who had come through the processes of the Arab Spring, are hostile to the Syrian government of Bashar Al Assad and have pursued a response that is not in line with international law and morals for protecting civilians, but a radical policy that seeks to oust Bashar Al Assad at all cost. This has been done by providing material and moral support to rebel groups inside Syria (Joya; 2012: 32).

The developments and responses to the crises in the Middle East countries, Syria included, has created suspicions in many minds of a Sunni Muslim conspiracy against Shiites who are a regional minority. This draws from the fact that in countries where the uprisings are driven by Shiites, GCC states have supported a sitting Sunni government, while in Syria, where the Alawite which dominated government has Shia roots, the GCC states have sided with Sunnis (Abdo; 2013: 2 & 4). In Bahrain, the GCC sent in military assistance to the ruling government against the demonstrators who were mainly Shia, while in Yemen, the Saudis, long before the Arab Spring, helped the Saleh government to control the militant Shia community that was waging an uprising in Yemen in 2009 (Winter; 2011: 104). This support was also extended in the work of the Arab Spring in which Saudi Arabia helped to broker a deal that saw Saleh agreeing to an exit plan that granted him immunity from prosecution (Almasmari: 2011).

The regional ‘cold war’ which had been given impetus by the Iranian nuclear projects was rekindled by the Syrian crisis. The response of the GCC has been in support of the Free Syrian

Army and the SNC, which are dominated by the Muslim Brotherhood and the Sunni Muslims while Iran has stood by the Assad led Syrian government. In support of this argument, Sun (2012: 2) notes that, “Indeed, some Chinese analysts argue that the campaign against the Iran-backed Assad government is essentially a Christian-Sunni Muslim coalition against Shiite Muslims.”

The sectarian divide in Syria has a regional interest explanation. Syria is a major ally of Iran in the region due to its centrality and standing as a buffer between Iran and Turkey. Therefore, Iran sees the survival of the Assad government as the maintenance of a buffer against NATO encroachment into its proximities, while the success of the western and Arab League backed SNC will mean the isolation of Iran.

The Gulf states, specifically Saudi Arabia and Qatar, which failed on the plan to use the Security Council platform in a replay of the Libya case in which Resolution 1973 paved the way for regime change, resorted to media war against Syria. Joya (2012: 37) notes that Qatar “directed its foreign policy through Aljazeera Arabic, a media outlet which serves an important role in shaping public opinion in the Arab world.” Saudi Arabia conducted its media campaign “through its London based network, Al-Arabia, which offered a platform for fundamentalist clerics who painted the Assad regime as non Muslims and the Alawites as heretics who should be deposed” (Joya; 2012: 39). The media war helped to shape international reaction in Europe and North America where the public would support western intervention in the Middle East. There is a symbolic annihilation of the voices supporting a peaceful demonstration or those supporting the government in favour of those who are militant or aligned to the SNC (Joya; 2012: 38).

Qatar and Saudi Arabia have gone beyond a media war against Syria in advocating open support, including supplying arms to the SNC and the Free Syrian Army. The Amir of Qatar and the Foreign Minister of Saudi Arabia, Prince Saud Al Faisal, described the arming of the opposition in Syria as an excellent idea. This process draws some similarities with the Libyan case in which France supplied weapons to the TNC (Spencer: 2011). The case has been compounded by the use of chemical weapons in 2013. GCC states like Saudi Arabia quickly called for a western led military intervention. The call was accepted by the governments of Britain, France and USA. These states argued that they had intelligence which implicated Bashar al Assad’s government in the use of chemical weapons (Nikitin, Kerr and Feickert;

2013: 15). They also argued that the UN report on the chemical weapons implicated the Syrian government (Charbonneau and Nichols: 2013).

The argument was rejected by major Syrian allies who alleged that even the rebels had the capacity to have used the chemical weapons so as to court international intervention (Paul: n d). Russian dissent meant that taking the case to the Security Council would be futile. Britain took the case to the House of Commons where it was rejected (Watt and Hopkins: 2013). There were also cold feet among some USA policymakers. The tense international climate was salvaged by John Kerry's suggestion that if the Syrian government gave up its chemical weapons arsenal there will be no strikes (Alexander: 2013).

Russia and Syria agreed to the proposition. The deal was not acceptable to Saudi Arabia which some analysts like Ron Paul; argue that it had provided the weapons to the rebels to initiate a strike that would bring in international intervention (Paul: n d). Given the changes in the Iranian presidency and government to a leadership that sought rapprochement with the west, failure to remove Assad by force may pose a geo-political threat to Saudi Arabia. The same fears are also shared by Israel, another USA and Western ally in the region.

In a clear show of geo-political concerns, Saudi Arabia threatened to review its relations with the USA due to the failure of unilateral airstrikes (Foster, Sherlock and Spillius: 2013). The transformation of relations after a seemingly Russia-Iran victory has seen Saudi Arabia and Israel disheartened by USA responses to their political survival needs in the region.

#### **6.4.1 The International Community**

The response of the international community to Syria shows glaring differences from its response to the Libyan uprising. The UN and the Arab League made strides to have a peaceful solution to the Syrian crisis. This may have been influenced by the international polarity that was not visible in the Libyan crisis. Under the auspices of the UN and the Arab League, a peace plan was muted. The peace process was initially led by Kofi Annan and later by Lakhdar Brahimi (UN/Arab League Special Envoy to Syria) after the resignation of the former.

Under the peace plan, Kofi Annan proposed six points which called for cooperation by both the government and rebels with the international community in a peace process under UN



supervision. The plan proposed the opening of inaccessible areas due to war for humanitarian assistance, the release of political prisoners and to ensure freedom of movement for media personnel and freedom of association for the general citizenry ([http://www.un.org/en/peacekeeping/documents/six\\_point\\_proposal.pdf](http://www.un.org/en/peacekeeping/documents/six_point_proposal.pdf)).

The six point peace plan accepted what the Arab League Observer Mission noted that military activities were being conducted by both the government and the rebel fighters. The peace plan called on all sides to stop military activities and engage in acts that would bring peace and trust among the parties and hence begin the process of peaceful negotiations and transition to a democratic society.

The process however failed and Kofi Annan resigned, citing lack of cooperation from both sides as well as the Security Council (Gladstone: 2012). A ceasefire process that had been commenced by the Syrian authorities on 12 April 2012 it did not stop clashes between rebel and government fighters and lack of support from regional and international powers saw the Plan collapsing (The Telegraph: 2012).

Joya (2012: 32) supported the notion that international players specifically those aligned to the rebels were not committed to the success of the peace plan when she noted that the SNC “pushed for sanctions and policies to isolate the Ba’thist regime and its proposals have been received positively by western powers. The group condemned diplomatic solutions as well as the Kofi Annan Peace Plan.” Joya (2012:35) further notes that the USA and its allies have shunned diplomatic solutions to the Syrian crisis as their ultimate goal is the defeat of Iran through regional and international isolation of which defeating and overthrowing Bashar Al Assad was a stepping.

Western powers supported the SNC, in the same manner it did with the TNC, but that support did not translated into a military intervention that would have propelled the SNC to power as was the Libyan case. This failure of a western driven military intervention is only due to the Chinese and Russian vetoes in the Security Council because most western powers and the GCC states preferred a military intervention. Russia and China have responded very differently to

the Syrian crisis. They vetoed three Security Council resolutions on Syria<sup>27</sup> unlike abstention in the case of resolution 1973 which paved way for the ousting of Gaddafi in Libya.

The Russian government criticized implementation of Resolution 1973 in the case of Libya. On 20 March 2011, the Russian Ministry of Foreign Affairs stated that the use of force went beyond the agreed principles in the resolution, while Vladimir Putin (The Russian President, then Russian Prime Minister on the passing of Resolution 1973) was quoted on 21 March 2011 saying that the resolution was deficient in that it gave room for interference in the internal affairs of a sovereign state in a manner that was reminiscent of the mediaeval crusades (Global Research: 2011). The Russian Ambassador to the UN on 8 December 2011 argued that UN actions in Libya “impacted on our thinking on Syria and led to our veto, together with China, of a resolution on Syria” (Tulin: 2011).

While resolutions on Syria were watered down, Russia and China feared that they would be used for military intervention. Another precedent was Kosovo in which resolutions 1199 and 1203 of 23 September and 24 October 1998, respectively, were interpreted by NATO as authorization for military intervention without an explicit military intervention resolution. Efforts by Russia on that occasion to reverse the Kosovo intervention through the Security Council were defeated by fifteen votes to three. Russia came to believe that once in motion, it would be impossible to reverse military intervention. Churkin (quoted in Tulin: 2011) notes that, “we have a new phenomenon in place, where Security Council resolutions are simply regarded by some countries as a trigger.”

Geo-political interests also played a role in the Russian response to the Syrian crisis. Russia felt sidelined in the implementation of Resolution 1973 by NATO and the fact that it did not take part in the Libyan Contact Group which provided political guidance to Libya (Allison; 2013: 798). Russia is also challenging Western-led intervention in order to check USA influence in the Middle East (Allison; 2013: 808), given that the USA already has considerable influence over Sunni leaders in the region. Therefore, aligning with the Shia was one way to check on USA influence.

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<sup>27</sup> Michelle Nichols, “Russia, China Veto UN Security Council Resolution on Syria,” Reuters, 19 July 2012, accessed 30 September 2013, <http://www.reuters.com/article/2012/07/19/us-syria-crisis-un-idUSBRE86I0UD20120719>, The 19 July 2012 double veto was the 3<sup>rd</sup>, having been preceded by the 1<sup>st</sup> on 4 October 2011 and the 2<sup>nd</sup> on 4 February 2012.

Mearsheimer and Walt (2006: 25 & 29) argued that there is a USA / Israeli plan to effect regime change against governments in the Middle East that are not friendly to them with the chief targets being Iran and Syria and Iraq before the overthrow of Saddam Hussein. Sharon, when he was leader of Israel, and his Defence Minister Shaul Mofaz, called for the USA to put “very heavy” pressure on Syria, Sharon’s national security advisor, Ephraim Halevy, was quoted as saying that the USA had to “get rough with Syria”. The Israeli lobby in the USA was clear that “there has got to be regime change in Syria” (Mearsheimer and Walt; 2006: 36).

Syria came to be increasingly seen as a terrorist state due to its relationship with Hamas and Hezbollah. This was despite the fact that Syria had co-operated with the USA in its international “war on terror” by exchanging intelligence on Al-Qaeda with the CIA and had given CIA interrogators access to Mohammed Zammar, the alleged recruiter of the 9/11 hijackers (Mearsheimer and Walt; 2006: 37) . Syria became a target of regime change as a step towards isolating Iran. Joya (2012: 35) notes that after the defeat of the Security Council resolutions on Syria, the USA, Britain, France and Germany pushed for regime change through arming Syrian rebels.

Joya (2012: 35-36) believes that this is not a ‘recent development.’ The US and Israel have wanted to contain Iran for a long time and effecting regime change in Syria “will get the US one step closer to its goal.” Seen from this perspective, there was a conspiracy between the USA, Sunni Arab states, and Israel to contain Iran and Syria in order to curtail Shia influence in the Middle East.

Syria became a battle ground for regional dominance between Turkey and Iran. Mohammed (2011: 66) argued that Syria was the “epicenter for clout competition among several actors. Turkey and Iran have appeared as two prominent rivals in Syria.” Prior to the Arab Spring and the uprising in Syria, Turkey courted Syrian attention and pushed for diplomatic cooperation (Mohammed; 2011: 68-70). However, the uprising saw aligning with the Western powers due to international and religious sectarian alignment, while Iran supported the government of Bashar Al Assad (Robinson; 2012:334). The Syrian government therefore drifted to the Iranian sphere. This radical shift in allegiance saw Turkey supporting the SNC, giving bases to the Free Syrian Army and being a route for weapons transfer to the Free Syrian Army and other militias inside Syria (Strategic Comments; 2012: 2).

The support given to Syrian rebels by the Turkish authorities created more tension with the Syrian authorities. The Syrian Ambassador to Turkey warned that for Syria “the Muslim Brotherhood is like the PKK for Turkey” (Mohammed; 2011: 72). The PKK is a Kurdish group that seeks autonomy from the Turkish government and is regarded by the government as a terrorist organization (Mohammed; 2011: 72). Syrian ambassador to Turkey noted that Turkey’s support for the Muslim Brotherhood implied that it wanted to destabilize Syria which may offer a sanctuary for the PKK in retaliation.

Turkey saw the survival of Assad’s government as a threat to its internal stability as proven by the threats of possible support for the PKK and subsequently a regional victory for Iran in its struggle with Turkey for regional dominance. On the other hand Assad’s fall, would give Turkey the upper hand and be advantageous to NATO and allow it to pressure Iran over issues such as its nuclear programme.

The Syrian uprising should therefore not only be viewed as an internal democratic uprising, but also one with geo-political issues that have fuelled the conflict for so long. There has been a neglect of international law, humanitarian law and the responsibility to protect concepts as major powers tussles for dominance and maneuvering under the guise of military intervention for humanitarian purposes.

The use of chemical weapons did not change the responses of the players in the international system on Syria. The USA, Arab League members, European powers like Britain and France, used the case to push for an intervention against the Assad government (Charbonneau and Nichols: 2013). These states argued that they had intelligence implicating the Assad government in the case (Nikitin, Kerr and Feicket: 2013: 15) and also argued that the UN report had information that proved their argument (Charbonneau and Nichols: 2013).

Russia and Iran argued to the contrary and stood by Assad. They noted that there was a possibility that the rebels could have used the chemical weapons to court USA led intervention (*Russia Today*: 2013). They, hence stood against the calls for a military intervention as a punishment for Assad. The western driven intervention momentum eased when the British parliament voted against Cameron government’s call for intervention (Watt and Hopkins: 2013) alongside France and the USA. Even in the USA there was skepticism against intervention. The announcement by John Kerry in early September 2013 that if Syria

surrendered its chemical weapons stockpile to the international community there will be no intervention (Alexander: 2013) transformed the polarized international climate but not the regional climate in the Middle East. Syria agreed to a Russian plan for chemical weapons surrender (CBS/AP: 2013) which brought some degree of international consensus that there was need for a political solution in the form of talks between Syrian parties mediated by the international community in Geneva.

The polarity proved that the major international and regional powers were standing by their sides. Even the fact that more than one hundred thousand deaths had been surpassed, the international community seemed not concerned about the humanitarian catastrophe which leads one to question on what are to be the benchmarks for military intervention for humanitarian purposes.

## **6.5 Regime Change and Other Factors**

Regime change is one of the many reasons why powerful states intervene in other states on the pretext of humanitarian intervention is regime change. Regime change can be defined as, “The forcible replacement by external actors of the elite and/or governance structure of a state so that the successor regime approximates some purported international standard of governance” (Reisman; 2004: 516).

Regime change has been part of the foreign policy of powerful states before the regulation of war in the international system. Reisman (2004: 516) notes that, “States have long meddled in the politics of other states in order to change the governments there to their own liking, whether impelled by revolutionary political, racial, or religious ideology; fear; or sheer lust for power.” The creation of UN Law which illegalized all other wars and the threat of the use of force except in self defence or for the protection of international peace and security, meant that forcible regime change became an illegal act in international relations. The act was also rendered illegitimate by the upholding of the principles of self determination and sovereignty.

The current UN Law stipulates that waging a war that is driven by the need for regime change is not accepted. Walzer (2006: xiii) points that, “I do not believe that regime change, by itself, can be a just cause for war.” Even in cases of a war against aggression, after defeating the aggressor, the victors have no right to forcibly change the government of the state they were

fighting (Walzer; 2006: x). Such an act would be against the principles of sovereignty and self determination of the citizens of the defeated state.

In spite of the foregoing, powerful states have continued to intervene in other states and effect regime change thereby usurping of the right of self determination of the citizens in an intervened state. However, Walzer (2006: x) argues that in an intervention against a regime committing genocide and gross human rights violations, there is need for regime change because the government system would be criminal. Its murderous system makes it morally liable for regime change, which will be an assurance for safety and protection to the civilians. In this regard, Walzer argues that if a humanitarian intervention had been conducted in Rwanda, such an intervention could only be completed with the intervening powers leading in changing the Rwandese government (2006: x-xi).

Regime change after a humanitarian intervention can be justified as a moral assurance of safety for the citizens, however, questions arise in cases where intervention is a pretext to regime change. In Libya and Syria, Western leaders called for the removal of Gaddafi and Assad, respectively, before the talk of humanitarian intervention. The interventions that followed calls for the resignation of the leaders for the troubled states, as was the case in Libya later, where obviously done in pursuit of regime change. This was also proven by the failure by the intervening states to assist in stabilizing Libya after the war, an act which is a duty under the Just War Doctrine (*Jus post bellum*).

Regime change in Libya, and as also argued for in Syria, was not meant to save the lives of the civilians, because many were killed after Gaddafi, while in Syrian (and Iraq) terrorist groups like ISIL killed many people, but to instead effect regime change for geo political gains for the intervening states.

## **6.6 Conclusion**

The international response to the uprisings and the crises in Libya exhibited some uniformities and divergences. In Libya, there was an understanding between the major powers and most other states in the Security Council which led to the passage of resolution 1973 which paved way for a legitimate and legal military intervention in Libya by NATO member states and NATO itself. The major reason for the passage of resolution 1973 can be seen as the lack of a

clear alignment policy by Gaddafi. In the last years before the Arab Spring, Gaddafi had pursued a western alignment policy. One can therefore argue that the abstention was a silent message to both the western powers and Gaddafi that Russia and China were not part of the camp and so had no interest to protect by voting for or vetoing the resolution.

The conduct was, however, riddled with international criticism regarding the manner in which the Security Council sidelined the African Union as the regional body that had the primary responsibility to respond through the principle of the pacific settlement of disputes on the Libyan crisis. In the same vein, the Security Council granted this mandate to the Arab League to which Gaddafi had only become a nominal member without active participation and had bad relations with most of its members, leading to the hastened call by the Arab League for the Security Council to enforce a no fly zone over the Libyan territory.

The implementation of the resolution by NATO was also against the spirit of the resolution 1973. NATO states extended their mandate against the prescription of the resolution to become a de facto air power for the TNC and effecting a regime change. This led to suspicions among the major powers that have led to the polarization in the Security Council among the veto states on the Syrian crisis.

The international and regional response in the Syrian crisis has been marred by politics of national and geopolitical interests. The Sunni Muslim dominated states in the Middle East led by Saudi Arabia and Qatar have pushed for a regime change by any means necessary in Syria. This has the blessing of Western powers that see the fall of Assad's government as a major step to isolate and contain Iran which is seen as a regional power with the capacity to threaten Israel's security.

Military intervention was stopped because China and Russia vetoed all resolutions on Syria as they were skeptical of the Western powers' plans on Syria. The resistance against a western backed intervention by Russia and China can also be understood in the context of geo-political influence. Syria holds the only Russian naval base in the Middle East and a success of a western driven intervention had the capacity to tip the scale in favour of the USA and its allies against those of Russia, as was the case in the Libyan intervention. International pride can also be seen as an influencing factor. After the Libyan intervention, Russia and China were overshadowed by the USA and the EU even though their abstention paved way for the intervention. The

response by the new Libyan government could have influenced Russia and China to stop a forcible western intervention, while at the same time playing a mediatory role by recognizing the need for talks in Geneva in which they would be influential to the point of ushering a new Syrian government that would be seen as pro-western.

Syria was also a battleground to test the regional dominant power between Turkey and Iran. The international response in Syria, as was in Libya was, therefore, not driven by the need to protect civilians from government forces or rebel forces but driven more by national interests and the battle for regional dominance. Even the international reaction to the use of chemical weapons was not driven more by the need to protect civilians but the need to push for dominance between contending powers in the Middle East.

The laxity of USA policy especially after the success of a Russian driven policy for the surrender of Syria's chemical weapons stockpile to the international community so as to avert USA air strikes can also be explained in the renewed nuclear talks with Iran in Geneva after the ascension of Hassan Rouhani to the Iran presidency that saw an initial nuclear agreement being reached on 24 November 2013. However, the deal has not been welcomed by Saudi Arabia and Israel (Yan and Levs: 2013) whose major regional policies were sustained by antagonism with Iran, a policy that influenced their response to the Syrian crisis.

The responses to the Syrian crisis by both regional and international powers have been influenced by geo-political implications. Legal and legitimate concerns as advocated for by international law and the doctrine of military intervention for humanitarian purposes have been flouted. There has not been an active military intervention, but indirect intervention through the unveiling of weapons to the parties and official announcements by major powers that has helped to harden the sides and acted as fuel to the conflict.



## **CHAPTER 7**

### **CONCLUSIONS**

The international community's active role in the crises in Libya and Syria raises legal and moral questions on the role of states in the internal affairs of other states. The active or passive participation of powerful states such as the members of NATO, Russia, China, Qatar, Saudi Arabia, Turkey and Iran, amongst others, in the crises has seen questions of sovereignty, the use of force and human rights issues resurface on the table of international relations. This chapter synthesizes the major findings and arguments raised in this thesis and makes some recommendations.

#### **7.1 General Findings: Libya and Syria**

Since the 1990s military interventions for humanitarian purposes have raised the need to synchronize international law, human rights law and military intervention for humanitarian purposes. The international human rights doctrine gained momentum since the end of the Cold War but it has not been developed to the extent that it can be considered as unseating the concept of sovereignty and non-intervention in the internal affairs of sovereign states. The doctrine has failed, among other things, to gain full universal acceptance. International human rights doctrines are accepted by different states, depending on their cultural values or political exigencies. There are no commonly accepted parameters or statistics to define gross human rights violations. One may argue that this is one of the reasons why there was intervention in the Libyan crisis and a failure to intervene in the Syrian crisis even though more civilians died in Syria than in Libya.

The question of military intervention for humanitarian reasons, having been brought to light by the NATO intervention in Libya, raises judgmental questions. As noted in chapter 5, the legality of the Security Council's resolution 1973 was questionable as the UN does not have a mandate to intervene in matters that are purely internal to a sovereign state. The Security Council, therefore, tried to make its intervention legal by invoking the threat to international peace and security clause in the preamble of Resolution 1973. One may argue that the intervention was legitimate as it was based on the evident grounds of the Libyan authorities using heavy weaponry in civilian populated areas (Blanchard; 2011: 4), thereby endangering the lives of those who were not part of the rebellion or uprising. Intervention also gained

credence from the international backing, as shown by the support that the resolution had from Security Council members, including the three African members.

However, the legitimacy of the intervention became questionable because of the conduct of the intervening states and the regional security organization (NATO) which acted in a manner that was arguably against the spirit and letter of Resolution 1973. The resolution called for the protection of civilians and their residential areas, NATO actively provided air cover for the rebel forces<sup>28</sup> who were also committing human rights violations against civilians they labeled ‘Gaddafi loyalists’.

The Resolution itself (art. 4) also singled out Benghazi specifically as deserving protection. The Security Council thus offered protection to the city of rebellion to the neglect of other areas, specifically those that were seen as sympathetic to Gaddafi.

According to Walzer (1977: 21), when a state intervenes in another state militarily, its actions should be judged by its motive to intervene and the military methods it applies in order to succeed in winning the war against an aggressor or in stopping the commitment of massive human rights violations. The sincerity of NATO states in enforcing UNSC Resolution 1973 is questionable given that all states that intervened had overtly called for the stepping down of Gaddafi<sup>29</sup>, which was against international law as such acts amount to interference in the sovereign affairs of another state. Although the actions of the Libyan forces in stopping the rebellion can be judged as excessive due to the use of heavy weaponry in civilian populated area (Blanchard; 2011: 4), the action of stopping the rebellion itself was legal in the jurisdiction of the Libyan authorities. The overt and covert support that different intervening states directed to the rebels was therefore illegal. UNSC Resolution 1973 called for ‘all necessary means to preserve civilian lives’, not to expressly take a side in the conflict. The mandate was for the

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<sup>28</sup> While the mandate provided by Resolution 1973 was for the protection of civilians from any attack from the warring sides (Though primarily from the Libyan forces), NATO’s role was specifically directed at destroying the capabilities of the Libyan forces against the rebels as evidenced by the fact that France dropped weapons for the rebels and there was coordination between NATO forces and rebels in Libya. See Richard Spencer, “France Supplying Weapons to Libyan Rebels,” *The Telegraph*, 29 June 2011, accessed 4 June 2013, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8606541/France-supplying-weapons-to-Libyan-rebels.html>

<sup>29</sup> The USA President, Barack Obama and the former USA Secretary of State, Hillary Clinton on different fora called on Gaddafi to resign. The same calls also came from the French, British and Germany leaders. (See [www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/](http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/) posted on March 3, 2011, or the *Arab News*, Sunday February 27, 2011, [www.arabnews.com/node/388329](http://www.arabnews.com/node/388329))

preservation of human rights, primarily the right to life of civilians who were not part of any side of the military conflict.

The failure by the UN Security Council to promulgate an intervention framework on Syria drawn up from lessons learnt from Libya raises the question of the capability of the body to deal with human rights issues in internal affairs of other states.

The Security Council is not necessarily the best organ to impartially militarily deal with intervention for humanitarian purposes and international justice because its veto power system is biased towards those who wield the veto power and can use it in defence of their interests or that of their allies. This was manifested in Syria when Russia and China used the veto power to defend Syria against Security Council condemnation that would have resulted in a military intervention, while Britain, France and the USA supported the rebels with arms while denouncing the same war in the Security Council.

Supporting rebels and calling for international military intervention, as was the case with the USA, European states such as Britain and France, Turkey and the GCC States (*BBC*: 2013), is illegal in international relations as they were fighting against a legal government thereby destabilizing a sovereign state.<sup>30</sup> The decision to support rebel groups also proved that the USA, Britain, France, Turkey and GCC states were driven by national interests and sectarian politics against the Syrian government. In some cases, GCC states and some groups from them sent in ‘jihadists’ who some of them were members of terrorist groups to fight Assad. The USA Subcommittee on Terrorism, Nonproliferation and Trade of the Committee on Foreign Affairs, House of Representatives in 2013 acknowledged that besides groups like the Islamic State in Iraq and Syria (or and the Levant) (ISIS/ISIL), which were known to be terroristic in nature, other groups perceived to be moderates had been radicalized and these groups included Jabhat Al-Nusra (Al Nusra Front) and Ahrar Al-Sham had ‘franchises’ with Al-Qaeda (Poe; 2013: 2). These groups survived on different channels of funding one of the primary one being donations from Gulf States (Poe; 2013: 2).

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<sup>30</sup> See Case Concerning Military and Paramilitary Activities in and Against Nicaragua, (*Nicaragua v. United States of America*), International Court of Justice, 27 June 1986, Article 205

The roles of Russia, China and Iran are also called for interrogation. The two gave a nod to intervention in Libya by abstaining from voting, but denied military intervention on humanitarian grounds in Syria where more civilians have died due to the crisis than those who had died in Libya when the Security Council passed Resolution 1973. The crisis in Syria raises the issue of the strategic interests of powerful states in international relations. According to Mearsheimer and Walt (2006: 25 & 29) there exists a USA / Israel plan to effect regime change in states that are hostile to the interests of the USA and Israel in the Middle East. This argument is given credence by the fact that while the Arab uprisings covered most countries in the Middle East and North Africa region, the response by powerful states, specifically the USA, was not uniform in supporting the uprisings. The USA turned a blind eye against the use of Saudi Arabia-led military intervention in stopping the uprisings in Bahrain, a state which it enjoys cordial relations with (Katzman; 2013: 15-16).

Apart from supporting the Syrian government by vetoing UNSC resolutions against Syria, Russia delivered weapons to the embattled government when the crisis had reached unprecedented levels (*BBC*: 2013). The Iranian government allegedly supported the Syrian government with ammunition to stop rebel advances as Syria is one of its allies in a region where most Sunni Muslim states are considered hostile to its advances as a regional power (Nichols: 2012 and Yan: 2013).

The response of the GCC states and the Arab League to the crises in the Middle East raises serious questions regarding conspiracies, collusions and sectarian politics in the region. Their outright support for civilians in the Libyan crisis and condemning the use of force by states against their civilians was shown by the League's call for a No-Fly zone over Libya (Leyne: 2011). The foregoing was in contrast with their previous historic responses which depicted them as a league of despots and monarchies due to their support of the leaders and stance against revolutions (Leyne: 2012).

The Arab League's calls on the Security Council to pass a resolution establishing a No-fly Zone on Libya. It was this decision, and the support that was given by the three African non-permanent member states namely to the Security Council, that gave impetus to the Security Council resolution and NATO military intervention. This paradigm shift, coming as the first implementation of the Responsibility to Protect concept, was seen as an acceptance of the new rising concept of intervention under the auspices of UN law (Bellamy and Williams; 2011: 825

& 826). Its coincidence with the French intervention in Ivory Coast in early 2011 was seen as the rise of a new precedence of UN sanctioned military intervention for humanitarian purposes.

However, the hopes of the acceptance of the new doctrine were snuffed by the international response in the Syrian crisis and other crises in the Middle East, specifically Yemen and Bahrain. The GCC states out-right supported the rebel groups in Syria with arms and some members of the Arab League sent 'jihadists' to support the Syrian uprising (*BBC*: 2013). This brought into question the sincerity of the Arab League to protect civilians when the group gave rebels weapons to fight a sovereign government. The action was also in contrast to the support that the Arab League, specifically the GCC states, gave in the Yemen and Bahraini crises to incumbent dictatorial governments against protesters who, in both cases, are from the Shia sect (Colombo; 2012: 7).

The response to the uprisings by the Arab League can be interpreted as being driven by political alignment and sectarian biases. In the Libyan case, Gaddafi had frosty relations with Saudi Arabia and most of the GCC states (Bellamy and Williams; 2011: 842); in Syria, Assad is from the Alawite sect which is an offshoot of the Shia sect; in Bahrain, the demonstrators were predominantly Shia against a Sunni monarch (see Colombo: 2012); and in Yemen the uprising was dominated by the Shia against a Sunni government even though the nature of the demonstrations were more complex than in other states (Colombo; 2012: 9). In all the uprisings, except for Libya, the Arab League supported Sunni sects either as rebels or as the government, to try and defeat the Shia, both as demonstrators / rebels or government.

It appears that religious sectarianism is playing a critical role in shaping the foreign policy decisions of certain countries. These examples show that the Responsibility to Protect doctrine does not override sectarian sentiments in these states. Hence, there appears to be a failure in the functioning of the Arab Muslim states who seem to be driven by religious sectarian sensibilities rather than secular political principles.

Arab Sunni regimes have long been suspicious of Iran's Shia identity and fear Shia hegemony which, they believe, Iran is seeking to achieve by expanding its links and support to Shia groups in the region with the broader objective of undermining their own (Sunni) regimes. The attempts of Saudi Arabia and its allies like the United Arab Emirates (UAE), Kuwait, and Qatar to resist Shia influence in the region, with their fear heightened by the Shia majority

government in Iraq, has led to the growth of sectarianism in the region with some of these regions funding fighters in Syria, even beyond those supported by Western countries. This sectarianism, it may be argued, is fuelled by the actions of non-state Sunni actors who are also funding rebels in Syria. The perceived Iranian support for Shias is also making many ordinary Sunnis suspicious of Iran's ambitions, thus further fuelling sectarianism which the Sunni regimes can feed off.

It can nevertheless be concluded that transformations in international law has failed to establish an express and universally accepted doctrine on military intervention for humanitarian purposes. The role of the international community in the application of military intervention is only accepted in so far as it is in conformity with the cardinal principles of the UN Charter. These principles are primarily the safeguarding of sovereign equality and non-intervention in the internal affairs of other states. This principle has been reinforced by a number of ICJ promulgations in different international cases, specifically in the case of *Nicaragua vs USA*.<sup>31</sup>

There is need for military intervention for humanitarian purposes in extreme cases of gross human rights violations and genocide, but pursuance of national interest by powerful states who have the capacity to intervene, clouds the concept. Historically, major powers have not intervened in states where they do not have interest, or where such intervention would be contrary to the major powers' geo-political interests no matter how prevalent human rights are violated. This is exemplified in the Rwandan genocide of 1994, the ongoing Palestinian conflict and the Darfur crisis, amongst other such cases.

The Libyan and Syrian cases have shown that the international community is still far from formulating rules of military intervention for humanitarian reasons. In Libya, although a successful but controversial intervention in terms of morality and legality was instituted, failure by the international community to reach consensus on active military intervention in Syria for humanitarian purposes is a travesty on humanity and humanitarianism.

The international community failed to reach agreement on how to engage in an acceptable intervention strategy which has resulted in the deaths of more than 191 000 civilians and

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<sup>31</sup> Case Concerning Military and Paramilitary Activities in and Against Nicaragua, (*Nicaragua v. United States of America*), International Court of Justice, 27 June 1986, Article 205

military personnel in Syria, as of April 2014, according to the United Nations Human Rights Office.<sup>32</sup> The decision by different international and regional powers in the Middle East to selectively take sides in a manner that is driven by national self-interests against humanitarian concerns is arguably the chief reason for the protraction of the crisis. The Gulf States and Western powers as well as Turkey emboldened the rebels and other opposition movements by supporting them in their refusal to compromise and call for the stepping down of Assad. The fact that the crisis has claimed more than 2 000 state soldiers means that the rebels were also being supplied with sophisticated ammunition from outside by powerful states. Such acts are a negation of the concept of humanitarian aid which seeks to limit the deaths of civilians.

On the other hand, the support to the Syrian state by Russia, China and Iran contributed to the deaths of citizens as these weapons were being imported for war and not for any other actions. The Syrian government has a right under international law to procure weapons for the safeguard of national sovereignty and cohesion but the use of weapons in a way that may harm civilians is against the morals of war and Geneva conventions. This brings a dilemma on the international community on how to deal with a rebel movement and a government who are all fighting for power to the detriment of civilians.

From this argument, a void is discovered in the concept of military intervention for humanitarian purposes which was developed as a counter measure to a sovereign which had become extremely brutal to civilians. Military intervention for humanitarian purposes is however blind in instances in which a rebel movement of equal power to the state is perpetrating crimes against humanity, especially in the era of non-discriminate weapons and weapons of mass destruction. The concept of the responsibility to protect as a follow up to the concept of military intervention for humanitarian purposes has also failed to regulate this situation. It has become a common practice that the rebel movement or a militia fighting government forces attracts international sympathy and support. This was the case in the Ivory Coast, Libya and Syria. it is noteworthy that although the governments in power would have their excesses or would have turned illegitimate due to contested election results, as was the

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<sup>32</sup> According to the United Nation Human Rights Office on 22 August 2014, while the documented death from the Syrian war since the beginning of the conflict to April 2014 is estimated to be slightly above 191000, there are more undocumented death. This means that the estimates might to considerably lower than the actual death toll of the conflict. See Nick Cumming-Bruce, "Death Toll in Syria Estimated at 191 000," New York Times, 22 August 2014, accessed 5 November 2014, [www.mobile.nytimes.com/2014/08/23/world/middleeast/un-raises-estimate-of-dead-in-syria-conflict-to-191000.html?referrer=&\\_r=0](http://www.mobile.nytimes.com/2014/08/23/world/middleeast/un-raises-estimate-of-dead-in-syria-conflict-to-191000.html?referrer=&_r=0)

case in the Ivory Coast (Bellamy and Williams; 2011: 832), or using force to defend power which was gained in unconstitutionally, as was the case in Libya as well as Syria, the lives of civilians are sacrificed for power by both the rebel movements and the state governments in the name of the same civilians. This negates the concept of military intervention for humanitarian purposes and calls for another relook into the concept and the guidelines for intervention.

The Libyan and Syrian cases made rebel movements realize that capturing international public attention and aligning with powerful states are stepping stones to attaining legitimacy. This is proven by the fact that soon after its creation, the TNC was accorded recognition by a number of powerful states who had an impact in directing the course of events internationally and regionally on Libya, such as France and the GCC states, and in the case of Syria, the Arab League invited members of the SNC to occupy the seat of Syria (*Al-jazeera*: 2013).

This precedence might embolden rebel movements in the future, especially in geo-strategic zones while also scaring smaller states, particularly in Africa, where they have been critical of the interests of western states on the continent. The role of the International Criminal Court has been under the spotlight and it is seen by the majority of African leaders and intellectuals as an appendage of western powers to stifle leaders that are critical of western policies. This phobia has been emboldened by the ‘reinterpretation’ of resolution 1973 on Libya by NATO and the desire to have a similar resolution on Syria, to aid a rebel group in regime change.

Less powerful states have contended against the doctrine as they fear that it can be abused by the powerful states to punish governments who will be considered hostile to the interests of powerful states or to unfairly gain access to the natural resources in these countries or simply for geo-political reasons. The concept of military intervention for humanitarian purposes can, hence, be seen as an old concept that is still developing and transforming in an era where globalization is transforming the interpretation between the old concept of sovereignty and the new concepts of international human rights law and practices.



## **7.2 Human rights considerations vs strategic and geo-political interests: A case for reform of the responsibility to protect doctrine**

The concept of military intervention for humanitarian purposes is derived from the human rights discourse which states that any sovereign who violate them to an extent that is shocking to the conscience of the society of nations, should be restrained with the use or threat of force of arms. Acting on this principle has, however, lacked uniformity and consistency due to arguably the influence of geo-political interests. This section discusses geo-political interests specifically in the Middle East and North Africa, and how these interests act as a stumbling point to the promotion of human rights and democratic discourse in the region.

The term 'Geo-Politics' was originally coined by a Swedish political scientist, Rudolf Kjellen, in 1899 (Tuathail; 1998: 1). A specific definition of the term is very difficult because the definition and usage of the term has kept evolving due to international political changes. The term was originally understood as, "that part of Western imperial knowledge that dealt with the relationship between the physical earth and politics" (Tuathail; 1998: 1). According to Tuathail (1998: 1), the term was later associated with, "the notorious Nazi foreign policy goal of Lebensraum (the pursuit of more 'living space' for the German nation)", and it fell out of favour with writers and scholars after the Second World War (WW II).

Geo-politics can be understood as the classification of world geographical regions in terms of their importance to a certain state or group of states. The classification entails giving names and planning on the amount of political and military resources that can be committed to the regions or states so named for political and economic reasons. It can be seen, from an imperialist perspective, as the curbing by major powers of spheres of influence and the creation of 'empires' for greater socio-economic reasons. For instance, the Arabs coined the terms, 'Maghreb' and 'bilaadul Sudan' meaning the West and the land of the black people when they invaded and conquered North Africa in the 7th and 8th centuries (Bilgin; 2004: 26). This was the same with the creation of the terms 'the Americas, Latin America and Africa' by the European empires who conquered these regions.

Since the rise of contemporary Europe as an imperial region, the Middle East has been important to Europe and later the world. Writing in 1902, a USA naval officer and strategy thinker and writer, Captain Alfred Thayer Mahan (quoted in Bilgin; 2004: 25) stated that

“Britain should take up the responsibility of maintaining security in the (Persian) Gulf and its coasts – the Middle East – so that the route to India would be secured and Russia kept in check.”

The discovery of oil in the region increased the geo-strategic importance of the region. Bilgin (2004: 28) sums up the regional strategic importance of the Middle East when he states that the Western definition of the Middle East is that conceptualized as security, which could be summed up as “the unhindered flow of oil at reasonable prices, the cessation of Arab-Israeli conflict, the prevention of the emergence of any regional hegemony while holding Islamism in check, and the maintenance of friendly regimes that are sensitive to these concerns”. The geo-political and strategic importance of the Middle East can be understood as the protection of the Mediterranean Sea from Russian influence (or the influence of any power that would threaten British interests), having uninterrupted flow of affordable oil, protection of Israel and the need to curb the rise of terrorism, which could disrupt the first three reasons as well as threaten the security of western powers, specifically the USA by attacking their civilians in any part of the world.

Former USA President, Jimmy Carter, summed the geo-political importance of the Middle East to the USA when he pointed that, “An attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States of America, and such an assault will be repelled by any means necessary, including military force” (Carter, quoted in Woodward; 1991: 230). The statement was made in reference to Russia and other communist states outside the Middle East (see Tadman: 2013), thus the desire by the USA to remain the only hegemonic power to control the Middle East also meant that even an internal state which would try to attain regional dominance of the middle east would be treated in an equal manner as an ‘outside force’. This was exemplified by the manner in which the USA quickly accepted the UN mandate to repel Saddam Hussein from Kuwait and went on to degrade his power through supporting Kurdish revolt and sanctions and finally an invasion in 2003.

Individual states in the region are of varying significance to the USA, Europe as well as other internal powers that seek to gain internal dominance in the region like Qatar, Saudi Arabia, Turkey and Iran. To the USA, for example, Saudi Arabia is important as one of the leading states in the Organization of Petroleum Exporting Countries (OPEC), which assures the USA of the maintenance of its currency as the only petro-currency, while Egypt is important for the

existence and security of Israel (Sharp; 2014: 20). Sharp (2014: 20) noted that, “Since the 1979 Israeli-Egyptian Peace Treaty, the United States has provided Egypt with large amounts of military assistance. U.S. policy makers have routinely justified aid to Egypt as an investment in regional stability, built primarily on long-running military cooperation and on sustaining the treaty—principles that are supposed to be mutually reinforcing.” For the USA and European powers, the rivalry between Sunni states and Iran which is a Shia sect means that the states cannot collude to form a dominant force to repel USA and European influence in the region.

GCC States and Egypt and other Sunni ‘friendly’ states rely on USA military and security support (Habibi and Woertz; 2009: 2). Egypt is the largest recipient of USA military aid after Israel in the Middle East (Sharp: 2010). GCC states enjoys diplomatic support and was not condemned by the USA and other major European powers when they came up with a coalition to put down an uprising in Bahrain during the Arab Spring as noted by Katzman (2012: --) in his summary that,

The Obama Administration has not called for a change of the Al Khalifa regime but it has criticized the regime’s use of force against protesters and urged further political reform and sustained government engagement in dialogue with the opposition. The U.S. position on Bahrain has been criticized by those who believe the United States is downplaying regime abuses because the U.S. security relationship with the Al Khalifa regime is critical to U.S. efforts to secure the Persian Gulf. Bahrain has provided key support for U.S. interests by hosting U.S. naval headquarters for the Gulf for over 60 years.

Leaders in Sunni Middle East states do not enjoy local support and count on their allies to put down any attempts to change the status-quo. Democracy and human rights discourses, especially as understood from a western paradigm, is alien to most Middle East and North African states. The concept of human rights is a contested one which is restrained by religious discourses, while democracy has been an unknown concept to the region. Most of the states in the region (mostly before the Arab Spring) are either monarchies (Saudi Arabia, Jordan, Kuwait, Morocco) or led by long serving dictators who either took power through military coups (as was the case with Libya, Egypt and Sudan) or inherited such powers from their fathers or relatives (Syria).

The Middle East survived the post-Cold War western human rights and democratic onslaught which was meted out on most sub-Saharan African states due to geo-political concerns. From the end of the Cold War until the presidency of George W. Bush (Jr), the USA has been comfortable with the strong non-democratic rulers of the Middle East as long as they propped up the interests of the western world in the region (Markakis; 2012: 84-85). Markakis (2012: 84-85) sums USA's relations with Middle East non democratic leaders when he argued that,

The US's longstanding support of authoritarian governments in the Middle East had been based on several premises. First and foremost is the fact that authoritarian proxies have been effective in facilitating US interests in the region, particularly during the Cold War. The overriding interest in the Middle East during this period, as elsewhere, was its strategic value in the US-Soviet conflict. ... Yet despite the end of the Cold War in 1991, the US has continued to support authoritarian rule in the region. Longstanding proxies include Saudi Arabia and Jordan. This continuity has been motivated primarily by the aim of maintaining stability in the near-term, given the potential impact of instability on core US regional interests.

People in the Middle East were seen as not ready for democracy and the heavy handed leaders were seen as important to control different militant groups and terrorist organizations in the region. Their reliance on western support against their own people meant that they would be perpetually indebted to Western capitals, hence, responding positively to their geo-political needs and interests.

The Bush government came with a policy to democratize the Middle East. Bush's Middle East policy was followed by visits to the region in which he sought to encourage the democratization of the region from inside. Bush and Tony Blair, argued that their invasion of Iraq was in part a democratization process in the Middle East, even though the justification was made after the failure to uncover the alleged Weapons of Mass Destruction (WMDs) which had been used as the reason for the invasion in the first instance (Markakis; 2012: 101-102). The claims have, however, been disputed and the intervention, it is argued, was driven by geo-political consideration (Markakis; 2012: 102). The intervention was meant to diffuse Saddam Hussain's plans to change the oil currency from the USA currency to the Euro (Simura; 2011: 42) among other reasons.

At the end of his presidency, George Bush and USA European allies had changed their Middle East policy from a democratization mission to fighting terrorism, after the terrorist attacks on the World Trade Centre in New York and the Pentagon on 11 September 2001. The change of policy should not be found to be surprising because deep rooted conflict has been prevalent between Arab groups and the USA and Europe since the Western powers (specifically USA) entered the region and continue to dominate and influence political issues in the region (see Abdallah: 2003). There has been a complex rise of terrorist groups who argue that they will fight the western powers who interfere with their policies particularly the USA which has bases near the Islamic holy sites, until they pull out of the Middle East (Abdallah; 2003: 66-67). In that regard, combating terrorism while maintaining hegemony in the Middle East has remained a geo-political interest of Western powers. The call for a 'crusade' by the Bush government did not signal a transformation in USA-Middle East policy but simply heightened of the pursuit of an interest that had been pursued by previous presidents.

The rise of Barak Obama and the coming of the Arab Spring, which took the world by storm, especially in its formative stages in North Africa, saw a change in the USA and European policies on the region from the democratization process to a return to a support for stability. USA and European states supported civilians in the initial stages, as exemplified by the calls to respect civilians to former Egyptian, Libyan and (incumbent) Syrian leaders, Hosni Mubarak, Muammar Gaddafi and Bashar al-Assad, respectively, but the support dwindled as the opposition moved against 'friendly' states like Bahrain and Saudi Arabia.

Egypt became a clear case of the failure of the USA democratization process in favour of geo-political consideration. The post revolution leader, Mohamed Morsi was overthrown by the military under the leadership of General Sisi. The takeover had all the imprints of a military coup but the USA failed to declare it so because such actions would have forced it to freeze its military aid to Egypt (Elmasry; 2014: 29). Such an action would have jeopardised the security of Israel, to which the aid to Egypt is attached (Elmasry; 2014: 31). One may also argue that USA saw it fit as the action got rid of Morsi, a leader regarded as Islamist from a country that is too important to be left alone. Morsi was seen as supportive of Hamas and Palestinian independence, which in itself is seen as anti-Israel in the region (Levy; 2014: 1). Therefore, when the Arab Spring challenged allies or brought into power unfriendly leaders, even in a democratic manner as was the case with Morsi, the support of human rights and democracy was sacrificed for geo-political interests.

In order for military intervention for humanitarian purposes to gain traction in the 21st century, there is a need for the re-definition of different political interests of different states in the global world. There is a need to acknowledge human rights and democracy as part of national interests of the states with the capacity to conduct such interventions. Such an acceptance, which can be made as recommendations to the responsibility to protect (R2P) document would provide a framework for military intervention for humanitarian purposes.

The preservation of human rights and democracy in other states can be national interests of other states because the world is now intertwined to the extent that uprisings and instability in other states have the capacity to destabilize neighbouring states regional and geographically far away states. The assertion is evident in cases like the Bangladesh crisis in which India intervened arguing that Pakistan was destabilizing it through what it termed “refugee aggression” (Wheeler; 2000: 61), and millions of refugees from Syria who swarmed into Lebanon, Turkey and Jordan, with others attempting to flee to Europe.

It can be argued that the rise of terrorism in the Middle East that specifically targets USA, Europe and their installations around the world is fuelled by the allegations that these countries are interfering in their affairs, including sponsoring undemocratic and unpopular leaders. It is, therefore, in the interest of western states to promote democracy in the region which has the capacity to curb or limit the escalation in terrorism, which with the growth of Al-Qaeda and ISIL, has become more complex as it now seeks to establish a state.

The Egyptian case can be used as an example of how disgruntled Arabs can turn to terrorism as a counter measure. Prior to the presidency of Morsi, Egypt had not experienced any significant terrorist activities, however, after his deposition, there has been an escalation of terrorist activities with the Sinai region being the most affected. Terrorism in Egypt can easily spread to Africa, Persian Gulf, Europe and the USA. Although it is a USA geo-political interest that Egypt be ruled by a government friendly to the USA, it is also in their interest to promote policies that help in curbing terrorism, which is a threat to the entire international community. The responsibility to protect doctrine should, therefore, recognise the importance of the peaceful promotion of human rights and democracy as a wider global interest to curb the growth of terrorism, refugee aggression and the exposition of the world to massacres that are shocking to the human conscience.

The above discussion provides a definition of geo-politics in relation to the concept of the responsibility to protect doctrine. It noted that military intervention for humanitarian purposes has been transformed with the passage of time to suit international political changes on the ground and is also influenced by globalization. It argues that Western states' intervention in the Middle East and North Africa has been influenced by geo-political considerations than humanitarian intervention. USA presidents like George W. Bush and Barak Obama, developed policies that sought to democratise the region, although they were limited by the supremacy of geo-politics against mere principles and international morality. As argued in this chapter, the USA and Western intervention has partially led to the growth of terrorism and hatred of the West in the Arab world. Furthermore, objective support of democratization and human rights has the capacity to destroy terrorism and limit brutal regimes, hence, creating peaceful environments. Intervening powers should, therefore, take the promotion of human rights and democracy as international interests while humanitarian intervention is viewed as a principle and as a way for pursuing geo-political interests.

### **7.3 Concluding Remarks and Recommendations**

This study has shown that there is no international consensus on the application and applicability of the concept of military intervention for humanitarian purposes. The failure by the Security Council to fulfill its stipulated mandate by the ICISS to come up with a fair judgment and set rules of intervention in Syria is evident that the World Summit of 2005 that agreed on the Responsibility to Protect document as a successor concept of military intervention for humanitarian purposes was a mere lip-service. In a negation of the set role, veto powers were implicated in supporting different sides with even arms in the Syrian case.

The Libyan and Syrian crises in particular and the Arab Spring in general have shown that national interests rather than humanitarian concerns have a primary influence on the response of international and regional powers to crises. This is understood from the fact that the USA and France argued for military intervention in Syria after the alleged use of chemical weapons, arguing that it was in the USA and Europe's national interests to react, rather than intervene because of the more than one hundred thousand United Nations estimated civilian deaths at the time (Lederer: 2013), and the many millions rendered refugees inside and outside of Syria.

The practical application of the concept of military intervention for humanitarian purposes has shown that while there may be some states or leaders who may support the concept, vigilantes have the capacity to hijack the intervention in pursuit of national interests. This was the case in Libya where Gaddafi's threats that his soldiers would have a killing spree in Benghazi (Kirkpatrick and Fahim: 2011) led African states (in the Security Council), Russia, and China not to veto passage of resolution 1973 aimed to protect civilians against the threats by Gaddafi. NATO took the opportunity to effect regime change, a move which is against the tenets of military intervention for humanitarian purposes and can be seen as condoning extra-judicial assassinations.

The selective response by the Arab League also proved that the international community had not moved into the era of applying international law non-selectively and in pursuit of international justice. States apparently use international law as a justification of actions in areas where their interests are at threat and negate same international instruments in cases where it is in their advantage to do so.

The application of military intervention for humanitarian purposes in Libya created a phobia among the African states against the concept. What has been established is that the AU did not condone the use of indiscriminate force and weapons against civilians but was undermined by major powers which sidelined its input on amicably resolving a crisis riddling its member state.

Noteworthy is that the crafter of the doctrine of military intervention for humanitarian purposes had realised that some leaders may use excessive force against civilians in ways that delegitimize their sovereignty thereby rendering intervention necessary. There is, therefore need to come up with stringent rules and guidelines to govern such international intervention in states riddled with internal conflicts. There is also need to draw boundaries and lines of collaboration between the UN and regional powers given that any military intervention in a single state may also threaten the sovereignty and position of other regional states.

It appears weaker states are mostly targeted for intervention, therefore, it may be prudent that the final prerogative to decide on embarking on such military intervention be given to the UN General Assembly in which all states stand equal, on a two third majority basis, to pass such a decision. This will help provide a balance between curbing ambitious leaders to pursue national interests under the guise of humanitarianism and also to open a room for the legalization of



military intervention for humanitarian purposes under UN law. The foregoing opinion is no guarantee of a just intervention but it may help to offset some of the obvious biases evident in the present UN system. Clear guidelines are needed because the consequences of failing to apply the Responsibility to Protect doctrine can result in the rise of non-state entities like ISIS, who are opportunistic groups who do not abide by or recognize international legal frameworks and effectively engage in their own forms of violations of human rights, while at the same time arguing that they stand for the protection of certain groups or sectarian interests.

Finally, it must be noted that there is a need to create a legal basis for military intervention for humanitarian purposes under the UN law. Such a law will be strictly controlled by the application of measures noted above. Military intervention for humanitarian purposes is an important deterrent against excessive tyranny but should be fortified against vigilantes as noted by Grotius (1625: 248) that;

But right does not necessarily lose its nature from being in the hands of wicked men. The sea still continues a channel of lawful intercourse, though sometimes navigated by pirates, and swords are still instruments of defence, though sometimes wielded by robbers or assassins.

## **APPENDICES**

### **Appendix 1: Journal Article to Middle East Journal**

#### **USA AND RUSSIA IN SYRIA AND UKRAINE: THE IRONY OF GEO-POLITICAL INTERVENTIONS**

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#### **Abstract**

The battle between the USA and Russia that had been snuffed by the demise of the Soviet Union has been rekindled. The USA and Russia have regional doctrines that demarcate areas to which outside powers cannot encroach. However, the Middle East has remained a contested region for the two powers. USA has also sought to encroach into the backyard of Russia in order to contain the resurgence of the Eastern power. Both states have sought to protect their regions of influence and in the era beginning with the Arab spring, the doctrine of humanitarian intervention has been used to justify geo-political interventions. This article argues that the current tussle between the USA and Russia on Syria and Ukraine can be understood more from geopolitical struggles than from the humanitarian intervention argument.

#### **Introduction**

The defeat of Gaddafi by the North Atlantic Treaty Organization (NATO) member states in October 2011 after Russia and China had abstained from voting in resolution 1973 opened a new chapter in the politics of uprisings and major powers' intervention. Whatever were the reasons for the Russian abstention, Moscow changed its policy when the Syrian uprising attempted to follow the Libyan script. Russia, with the alliance of China, became the protector of the Syrian government of Bashar al Assad. When the international community and the major powers had reached a stalemate in Syria as symbolized the resignation of two UN/Arab League special envoys to Syria (Kofi Annan and Lakhdar Brahimi), another uprising took place in Ukraine and led to the oust of President Victor Yanukovich. The uprising occurred because Yanukovich had refused to join the European Union and opted for more cooperation with

Russia.<sup>33</sup> The uprising therefore occurred with the blessing of the EU and the USA. It was however not approved by Russia whose man was the victim. The new power bloc that was built in Kiev was also not approved by many people in eastern Ukraine and Crimea who saw the new government in Kiev as neo-fascist who usurped power to destroy the Russian links between eastern Ukraine and Russia. Putin described the leadership in Kiev as “Neo-Nazis, Russophobes and anti-Semites,” as well as the ideological heirs of Bandera, who was Hitler’s accomplice during the Second World War in the Region.<sup>34</sup> A crisis was brewed which led Crimea to secede and join the Russian Federation. Other major cities and regions in eastern Ukraine attempted to follow the Crimean script. Another standoff erupted between Russia and USA and its European allies. USA and its allies in Europe saw Russia as the major player in the Ukrainian counter-uprising. Russia was slammed with targeted sanctions and threats of more sanction and was suspended from the Group of 8 (G8).

These events are interesting in international relations. The two sides have defended their positions by attempting to stand on the high moral ground of either humanitarian intervention or protecting the governments in power from underground external power intervention. there is however a conflictual policy direction when ones notes that Russia is on the sitting government’s side in Syria while on the side of the ‘rebels’<sup>35</sup> in Ukraine with the USA being on the side of the ‘rebels’ in Syria and the sitting government in Ukraine. This paper attempts to analyse the reasons of this irony and put forward reasons for it.

### **A Brief overview of the Syrian and Ukrainian Crises**

There is no an exclusively accepted reasons for the uprisings in Syria (2011) and Ukraine (2013). It is important to note that the latest uprisings and wars in these countries are not new. They are the latest in a number of upheavals that have engulfed the countries in their years of existence. Syria had, before the 2011 uprisings experienced a latest civil war in the early 1980s, which was only put down by a brutal crackdown by Hafez al Assad. Ukraine had its latest upheaval before the current one in 2004 in the name of the Orange Revolution.

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<sup>33</sup> Ben Smith and Daniel Harari, “Ukraine, Crimea and Russia,” House of Commons Library, Research Paper 14/16, 17 March 2014, p. 1

<sup>34</sup> Vladimir Putin, President of the Russian Federation’s address to the State Duma Deputies, Federation Council Members, Heads of Russian regions and Civil society Representatives in the Kremlin on the Annexation of Crimea, 18 March 2014, accessed 24 June 2014, [www.eng.kremlin.ru/news/6889](http://www.eng.kremlin.ru/news/6889)

<sup>35</sup> This may be a contested term. Here, it is used in reference to those who rise in armed resistance against an established ruler and/or government.

## Syria

The uprising in Syria started as peaceful demonstrations against some undemocratic practices by the Assad government.<sup>36</sup> However, the demonstrations, due to a government crackdown and interference by militant forces, took a sectarian line pitting the minority but dominant Alawites against the majority Sunni Muslims.<sup>37</sup> The ‘rebels’ were emboldened by the successes by the uprisings in Tunisia, Egypt and Libya.

In relation to the regional examples, the Syria rebels tried to push for a repetition of Libya. The SNC was quickly formed in the manner in which the NTC was formed in Libya. The leaders of the council/coalition got recognition from the EU, USA and GCC states and other regional states.<sup>38</sup> The SNC was pro-western and pro-Sunni. They got military and financial assistance from the West and Sunni States in the gulf<sup>39</sup> as well as sanctuary from Turkey, a pro-western state and a member of NATO.

On the other hand, the Assad government labeled the uprising as a western instigation. The Assad government also argued that the uprising was being fought by terrorists and that USA and other Western states were funding terrorists to topple it (the government).<sup>40</sup> This argued was accepted by Russia, China and also Iran. Russia and its allies on the Syrian case argued that the west was pushing for regime change in states they had no cordial relations with the governments. This was seen as a means to extend USA and NATO influence in resource rich and important geo-political zones. From this argument Libya fell because the west wanted to control its rich petroleum wealth while Syria is seen as the last bastion in the west’s battle against Iran.<sup>41</sup> Russia therefore defended Syria at the Security Council and remained a major weapons supplier during the crisis.

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<sup>36</sup> Angela Joya, “Syria and the Arab Spring: The Evolution of the Conflict and the Role of the Domestic and External Factors,” *Ortadogu Etutleri*, Vol 4, No. 1, July 2012, p. 27, 31-32

<sup>37</sup> Fredric C. Hof and Alex Simon, “Sectarian Violence in Syria’s Civil War: Causes, Consequences and Recommendations for Mitigation,” paper commissioned by the Center for the Prevention of Genocide, United States Holocaust Museum, accessed 23 April 2013, [www.ushmm.org/genocide/pdf/syria-report.pdf](http://www.ushmm.org/genocide/pdf/syria-report.pdf), p 1

<sup>38</sup> Stefan Talmon, “Recognition of Opposition Groups as the Legitimate Representative of a People,” *Chinese Journal of International Law*, 31 May 2013, par. 1-5, see also Christopher M. Blanchard, “Libya: Transition and US Policy,” Congressional Research Service (CRS) Report for Congress, 25 October 2014, [www.crs.gov](http://www.crs.gov), p. 17

<sup>39</sup> Angela Joya, “Syria and the Arab Spring: The Evolution of the Conflict and the Role of the Domestic and External Factors,” p. 35

<sup>40</sup> Fredric C. Hof and Alex Simon, “Sectarian Violence in Syria’s Civil War: Causes, Consequences and Recommendations for Mitigation,” p. ii & 2

<sup>41</sup> Angela Joya, “Syria and the Arab Spring: The Evolution of the Conflict and the Role of the Domestic and External Factors,” p. 35; see also, Seymour M. Hersh, “Annals of National Security: The Redirection,” *The New*

## Ukraine

Ukraine has been a major part of the Russian empire. Historically, Ukraine could not be separated from Russia. While the fall of the Soviet Union in the early 1990s saw Ukraine being geographically separated from Russia, Russia consider it an important part of its sphere of influence. Since its creation, Ukraine had been torn between joining the European Union and in extension NATO, or remaining a Russian partner state and joining the Eurasian customs union which is dominated by Russia. The tipping point came in November 2013 when then president, Victor Yanukovych decided not to sign an Association Agreement and a deep and comprehensive Free Trade Area agreement with the EU and opted for a deeper cooperation with Russia.<sup>42</sup> Pro-western demonstrations began in Kiev calling on the abandonment of the Russian deal and join the EU. The demonstrations continued into December and turned bloody. A compromise agreement which was mediated by the foreign ministers of France, Germany, and Poland failed to materialize.

On 22 February 2014 president Yanukovych disappeared from Kiev as protesters occupied state buildings. The Ukrainian parliament responded by stripping the president of his powers and a new government was formed.<sup>43</sup> Pro-western leaders, interim president Olexander Turchynov and Prime Minister Arsebiy Yatseniuk, took over power and aligned Ukraine to the West.

After the ascension of the new government, the semi-autonomous region of Crimea, which is home to more than 60 percent ethnic Russian quickly held a referendum on 16 March 2014 to break away from Ukraine and join the Russian Federation. The Russian government accepted to annex Crimea, while western states viewed is as a breach of Ukrainian sovereignty and a threat to the international order. A backlash of the uprising started against the new government in Kiev from the eastern cities that are predominantly ethnic Russia. Emboldened by the Crimean case, the regions of Donetsk and Luhansk pushed on for secession and to join Russia.

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*Yorker*, 5 March 2007, accessed 25 June 2014, [www.m.newyorker.com/reporting/2007/03/05/070305fa\\_fact\\_hersh?currentPage=all](http://www.m.newyorker.com/reporting/2007/03/05/070305fa_fact_hersh?currentPage=all)

<sup>42</sup> Ben Smith and Daniel Harari, "Ukraine, Crimea and Russia," p. 1

<sup>43</sup> "Ukrainian Parliament Votes to Strip Yanukovich of Powers as President Leaves Kiev," *Russia Today*, 22 February 2014, accessed 26 June 2014, [www.rt.com/news/ukraine-president-parliament-chaos-249/](http://www.rt.com/news/ukraine-president-parliament-chaos-249/)

While Russia denied the calls to annex the other Ukrainian territories, and stand by Putin's words that, "We do not want to divide Ukraine, we do not need that"<sup>44</sup>, when he accepted Crimea into the Russian federation, Russian forces conducted military drills in the border towns that were seen as military threats to Ukraine or a move to embolden the rising masses in the eastern regions.

The USA and the EU blamed Russia for the escalation in eastern Ukraine. NATO secretary general, Anders Fogh Rasmussen echoed the same sentiments and called on Russia to deescalate the crisis.<sup>45</sup> Russia denied having a hand in the crisis. However, the appearance of gunmen in unmarked military uniforms identical to the one used by Russian forces and the discipline they exhibited<sup>46</sup> led the west to argue that Russia was behind the uprising or had sent in its special forces to act as pro-Russian Ukrainians. The crisis deepened with military exchanges between the secessionists and the Kiev government even after the presidential elections in May 2014 which were won by Petro Poroshenko.

While Russia has denied any wrong doing in the Ukrainian backlash, it has shown support for the deposed president, Yanukovich, contempt of the interim government after the uprising and resentment of the newly elected government. While it has accepted to have talks and spoke against secession of eastern Ukraine, it has argued that it has no control of the movements. This has not helped the crisis which has also seen the former bipolar power in a new stand-off reminiscent of the Cold War era.

### **Clash of Regional Control Doctrines**

In 1823 James Monroe declared that countries in the American continents were not to be considered colonies of the warring European states and that any interference by the European states in the affairs of the American continents was considered as endangering the peace and security of the continents.<sup>47</sup> The declaration effectively stopped the European states from

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<sup>44</sup> Vladimir Putin, President of the Russian Federation's address to the State Duma Deputies, Federation Council Members, Heads of Russian regions and Civil society Representatives in the Kremlin on the Annexation of Crimea, 18 March 2014, accessed 24 June 2014, [www.eng.kremlin.ru/news/6889](http://www.eng.kremlin.ru/news/6889)

<sup>45</sup> "NATO Secretary General Says Ukraine Crisis Amplifies Need to Boost Defence Cooperation," accessed 25 June 2014, [www.nato.int/cps/en/natolive/news\\_109187.htm](http://www.nato.int/cps/en/natolive/news_109187.htm)

<sup>46</sup> Danielle Wiener-Bronner, "Ukraine's Pro-Russia 'Militia' Look Suspiciously Like Veteran Soldiers," *The Wire*, 21 April 2014, accessed 1 July 2014, [www.thewire.com/global/2014/04/ukraine-soldiers-russia/360969/](http://www.thewire.com/global/2014/04/ukraine-soldiers-russia/360969/)

<sup>47</sup> "The Monroe Doctrine", accessed 28 May, 2012: [www.utahlinks.org/learn/docs/Monroe.pdf](http://www.utahlinks.org/learn/docs/Monroe.pdf)

interfering in affairs across the Atlantic. The doctrine was not meant to liberate South America from colonialism but USA declaration of control and politics within its vicinity. The Monroe Doctrine was the most influential regional doctrine that has influenced major powers to try and curve their exclusive spheres of influence and control that are regarded as regions of national interest.

In January 1980, the Carter Doctrine added the Middle East as strategic region which an attempt by any outside force to gain control of would be regarded as an assault on the vital interests of the United States of America, which would be repelled by any means necessary, including military force.<sup>48</sup> The region is so important that the USA is willing and compelled to sacrifice its military personnel and assets to safeguard. The doctrine was promulgated in order to deter the then Soviet Union from encroaching into the Middle East and Persian Gulf regions after the Soviet Union had invaded Afghanistan in 1979.

Equally, even after the fall of the Soviet Union, Russia has its own regional control doctrine. Russia has always taken active and passive actions to guard the Caucasus region and the former soviet countries from external interference specifically interference from the USA. Any encroachment into this region is regarded as a threat to Russian national interest and security.

USA has been an offensive actor in Middle East relations. The importance of the region to USA is hinged not only on the need to keep the petroleum tapes running to USA and its allies and curbing terrorism but also to the need to control the petrodollar system<sup>49</sup> and the existence of Israel. It is for this reason that Jimmy Carter declared that the “An attempt by any outside force to gain control of the Persian Gulf (Middle East) region will be regarded as an assault on the vital interests of the United States of America, and such an assault will be repelled by any means necessary, including military force”<sup>50</sup> Because of this declaration, USA Middle East policy is continuously reviewed and threats redefined. This is exemplified by Saddam Hussein who at one time is seen as a USA ally and later turns into a foe and invaded in 2003.

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<sup>48</sup> President Jimmy Carter quoted in Bob Woodward; *The Commanders*; New York; Simon and Schuster; 1991; p. 230

<sup>49</sup> Blessing Simura, *An Analysis of the Role of Oil in Shaping the USA Foreign Policy in the Middle East: The Case of the American-led Invasion of Iraq in 2003*; Unpublished Master of Science Dissertation in International Relations; University of Zimbabwe; April 2011; 17-21

<sup>50</sup> President Jimmy Carter quoted in Bob Woodward; *The Commanders*; p.20

The constant transformation of USA's Middle East policy is the reason why Syria, which was not much seen as a special interest state, becomes important soon after the fall of Saddam Hussein's Iraq. Syria grew to be a state of importance arguably because as a state under Alawite (a Shiite sect) it was the last major ally of Iran, which the then USA President George Bush classified among the "axis of evil"<sup>51</sup> states together Iraq and North Korea. Being under the control of Alawites meant that Syria, like Iran, was viewed as a threat by the dominant Sunni states like Saudi Arabia, Qatar, Kuwait and United Arab Emirates, in the region who are all USA allies.

Another reason for the need to change the leadership in Syria was driven by Israel's security concerns. Syria provided safe external base for Hamas, a Palestinian liberation movement, a relationship which is now strained after the Syria uprising by predominantly Sunni groups.<sup>52</sup> It supported and also used as a transit route for Iranian financial and military assistance to Hamas and Hezbollah, an anti-Israel Shia militia group based in Lebanon to counter Israel dominance in the region.<sup>53</sup> John Mearsheimer and Stephen Walt argue that, there is a USA / Israeli plan to effect regime change against governments in the Middle East that are not friendly to them. They further add that the chief targets are Iran and Syria, and Iraq before the overthrow of Saddam Hussein.<sup>54</sup> They further note that the Israeli lobby in the USA was clear that "there has got to be regime change in Syria."<sup>55</sup>

It can be argued that because of the plethora of reasons noted, the uprising against Assad in 2011 was given support by the USA and her European and Middle East allies. The rebellion was contextualized as pro-democracy uprising and deserved military support or a humanitarian intervention in the style of the intervention in Libya.<sup>56</sup> However, the paradox of this support could be seen in the blind eye the USA turned on the Arab Spring style uprising in Bahrain

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<sup>51</sup> George W. Bush, "2002 State of the Union Address," accessed 25 June 2014, [www.cnn.com/2002/ALLPOLITICS/01/29/bush.speech.txt/](http://www.cnn.com/2002/ALLPOLITICS/01/29/bush.speech.txt/)

<sup>52</sup> Karin Laub and Brian Murphy, "Hamas Drifting from Longtime Patron Iran," *The Seattle Times*, 9 February 2012, accessed 25 June 2014, [www.seattletimes.com/html/nationworld/2017465373\\_apmlshiftinghamas.html](http://www.seattletimes.com/html/nationworld/2017465373_apmlshiftinghamas.html)

<sup>53</sup> Casey L. Addis and Christopher M. Blanchard, "Hezbollah: Background and Issues for Congress," Congressional Research Service (CRS) Report for Congress, 3 January 2011, [www.crs.gov](http://www.crs.gov), p. 17-19

<sup>54</sup> John J. Mearsheimer and Stephen M. Walt, "The Israel Lobby and US Foreign Policy," John F. Kennedy School of Government (Harvard University), Faculty Research Working Paper Series (RWP 06-011), March 2006, p. 25 & 29

<sup>55</sup> John J. Mearsheimer and Stephen M. Walt, "The Israel Lobby and US Foreign Policy," p.36

<sup>56</sup> Angela Joya, "Syria and the Arab Spring: The Evolution of the Conflict and the Role of the Domestic and External Factors," p. 35



which the government crushed with Saudi Arabian led GCC military support.<sup>57</sup> This paradox is clearly proven by the fact that when the Syrians rose for different reasons and with different tones<sup>58</sup>, the USA called on Bashar al Assad to step down and allow for democratic processes,<sup>59</sup> but in the uprising in Bahrain and the Saudi Arabia led intervention, the USA called on the leadership to exercise restraint.<sup>60</sup>

At the United Nations (UN) level the USA and its allies sponsored Security Council resolutions that sought to pave way for an international military intervention and/or empower the Syrian opposition in a manner resolution 1973 paved way for the military intervention and support for Libyan National Transitional Council (NTC).

Outside the UN, USA gave the SNC financial support. It also supported the different militia groups that were not classified as terrorist or working with terrorist, with military support.<sup>61</sup> The media from the USA followed the national policy and broadcasted in a manner that was supportive of the Syrian opposition.<sup>62</sup>

The machinations by the USA can be understood in light of the Carter doctrine which exclusively classified the Middle East as strategic region of vital national interest to the USA.<sup>63</sup> The intervention in Syria was a war by proxy in a greater Middle East policy that targeted Iran. It would also translate that the Middle East would be a region under the rule of USA allies and countries that do not threaten the security of Israel. It can also be seen as a war that was aimed at pushing out the least Russian influence in the region. Syria has major arms deals with Russia and the Syrian port of Tartus houses a Russian Naval military facility, the only one outside the vicinities of Russian.

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<sup>57</sup> Kenneth Katzman, "Bahrain: Reform, Security, and US Policy," Congressional Research Services (CRS) Report to Congress, 29 June 2012, accessed 23 December 2012, [www.crs.gov](http://www.crs.gov), p. 8

<sup>58</sup> Angela Joya, "Syria and the Arab Spring: The Evolution of the Conflict and the Role of the Domestic and External Factors," p. 31-35

<sup>59</sup> CNN Wire Staff, "US, Europe Call for Syrian Leader al Assad to Step Down," *CNN*, 19 August 2011, accessed 26 June 2014, [www.cnn.com/2011/POLITICS/08/18/us.syria/](http://www.cnn.com/2011/POLITICS/08/18/us.syria/)

<sup>60</sup> Kenneth Katzman, "Bahrain: Reform, Security, and US Policy," 15

<sup>61</sup> Angela Joya, "Syria and the Arab Spring: The Evolution of the Conflict and the Role of the Domestic and External Factors," p. 35 & 36

<sup>62</sup> Angela Joya, "Syria and the Arab Spring: The Evolution of the Conflict and the Role of the Domestic and External Factors," p. 27

<sup>63</sup> Bob Woodward; *The Commanders*; p.20

The argument that the USA has a policy to export democracy sound hollow given the fact that it has maintained cordial relations with the monarchies and military dictators in either the name of fighting terrorism as in the case of Yemen under Saleh or for the security of Israel as was the case with Egypt. The USA denied classifying the ouster of Mohamed Morsi by the Egyptian army on 3 July 2013 as a coup due to the need to preserve the Middle East peace treaty for Israel, and air space and naval privileges the USA enjoys from Cairo<sup>64</sup>, a declaration which would have forced the USA to review its military aid and cooperation with Cairo.

Russia, on the other hand argued that it could not support or allow for the passage of any Security Council resolution on Syria after NATO abused resolution 1973 which was deficient in that it gave room for interference in the internal affairs of a sovereign state in a manner that was reminiscent of the mediaeval crusades.<sup>65</sup> True as it is, Russia knew that the interpretation of Security Council resolutions can be different in implementation from that given during the debating period. Russia had learnt from the Kosovo example that a Security Council resolution that was not water-tight could be abused for self interest by the intervening state. The argument that Russia did not allow the passage of any resolution on Syria due to the Libyan experience is therefore questionable.

Strategic reason should be seen as providing a better understanding to the Russian behaviour in relation to the Syrian case. Russia could have allowed the passage of resolution 1973 because Muammar Gaddafi had, in his later stages of his rule, drifted to the western hemisphere and redirected his foreign policy to placate western powers. This is evidenced by Libya's acceptance of the responsibility of Lockerbie bombing, and oil and other business agreements and investments with and/or in Europe and the USA companies.

However, the Syrian case, in Russia regions of national interest is different from that of Libya. While Libya had 'dumped' its traditional allies in its re-engagement overdrive with the west, Syria remained a Russian ally since the days of Hafez al Assad. Even when Syria cooperated with the USA in fighting Al Qaeda, it did not do so at the expense of its relationship with Russia. Syria is also a strengthening ally of Iran against the Shia-Sunni regional battle. Iran

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<sup>64</sup> Kim Ghattas, "US Credibility 'in tatters' Over Egypt Crisis," *BBC News*, 16 August 2013, accessed 25 June 2014, [www.bbc.com/news/world-middle-east-23721918](http://www.bbc.com/news/world-middle-east-23721918)

<sup>65</sup> Global Research, "Putin Likens UN Security Council Resolution on Libya to a Medieval Crusade," 21 March 2011, accessed 30 September 2013, <http://www.globalresearch.ca/putin-likens-un-security-council-resolution-on-libya-to-a-medieval-crusade>

being a Russian ally in the Middle East could not be allowed to begin the process of falling through the fall of Syria. Russia, therefore, used its veto powers in the Security Council on Syria more than it had done on any other country to maintain equilibrium in Middle East so as to balance its influence against that of Russia.

Ukraine is an extension of the battle of the control of strategic regions between USA and Russia. Deducing from its actions, Russia had already demarcated the Caucasus region and the Eurasian territories as its inviolable sphere of influence. Russia has not been comfortable with the ‘colour revolutions’ in Georgia (Rose Revolution, 2003), Ukraine (Orange Revolution, 2004) and Kyrgyzstan (2005) which it viewed as western instigations to reduce the Russia sphere of influence which it views as pretexts to bring NATO to its backyard.<sup>66</sup> The Georgian crisis of 2008 ended with Russia fighting a war against Georgia and supporting the autonomy of Abkhazia and South Ossetia, a recognition which is not shared by other states in the international community, specifically the USA and the EU states.

Russia has not been comfortable with the NATO encroachment into its sphere of influence. Putin summarized the Russian regional policy against the encroachment NATO when he stated that, “NATO remains a military alliance and we are against having a military alliance making itself at home right in our backyard or in our historic territory.”<sup>67</sup> Ukraine is strategically important that Russia cannot leave it to fall to USA influence. Its geographical location makes it the bridge between Europe and Russia, and with it Russia is geopolitically safe from European and American threats.

Ukraine, before the break away of Crimea was house to the Russian Black Sea fleet. Even though it had been neglected for some years due to the non-conclusive agreement on its future in Sevastopol, the Black Sea fleet is important for Russian naval access to the Mediterranean and Southern Europe. While Yanukovich had renegotiated the Ukrainian naval lease agreement from 2017 to 2042, the agreement was not guaranteed in the future pro-European

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<sup>66</sup> See Anthony H. Cordesman, “Russia and the ‘Color Revolution’: A Russian Military View of a World Destabilized by the US and the West (Key Briefs),” Center for Strategic and International Studies (CSIS), 28 May 2014

<sup>67</sup> Vladimir Putin, President of the Russian Federation’s address to the State Duma Deputies, Federation Council Members, Heads of Russian regions and Civil society Representatives in the Kremlin on the Annexation of Crimea, 18 March 2014, accessed 24 June 2014, [www.eng.kremlin.ru/news/6889](http://www.eng.kremlin.ru/news/6889)

government in Kiev. One would also wonder if Ukraine would have joined NATO if it would have allowed for the stay of a Russian fleet in its territory.

Geographically, the Ukrainian border with Russia is a few hundred miles from Moscow, the Russia capital city. If Ukraine is to join the EU and subsequently NATO, it would be bringing a Russian enemy on its door step and within closer striking distance of Moscow. Putin also stated the Russian fears if Ukraine with Crimea was to join the NATO alliance that, “Let me note too that we have already heard declarations from Kiev about Ukraine soon joining NATO. What would this have meant for Crimea and Sevastopol? It would have meant that NATO’s navy would be right there in this city of Russia’s military glory and this would create not an illusory but a perfectly real threat to the world of southern Russia.”<sup>68</sup>

The Russian concerns for shutting out the USA from Eastern Europe can be seen as the reasons why the USA has been pushing to draw closer. Since Putin came to power, there has been growing concerns in the USA with regards to his desires to push Russian international influence.<sup>69</sup> The USA has been in the drive to contain the growing Russian influence, while Russia has been pushing to ‘claim its place on the moon’. It is because of this reason that there has been an escalation in the geo-political struggle between Russia and USA.

Be that as it may, the international order of the pre UN era and the Cold War era has been surpassed by international developments. The transformations in the international system now mean that states can no longer simply invade other states without a legal justification. In the absence of a viable justification, powerful states have adopted the responsibility to protect, formerly known as humanitarian intervention, to pursue geopolitical interest. It is this justification that the USA and its allies have used to try to gain access legally to Syria through a Security Council resolution. The irony is found in the fact that while the USA was sponsoring Security Council resolutions on Syria, it was also simultaneously funding the rebels, which is against the concept of military intervention for humanitarian purposes. Russia also argued that its intervention in Ukraine was a humanitarian intervention.<sup>70</sup> The justification raises questions

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<sup>68</sup> Vladimir Putin, President of the Russian Federation’s address to the State Duma Deputies, Federation Council Members, Heads of Russian regions and Civil society Representatives in the Kremlin on the Annexation of Crimea, 18 March 2014, accessed 24 June 2014, [www.eng.kremlin.ru/news/6889](http://www.eng.kremlin.ru/news/6889)

<sup>69</sup> Jim Nichol, “Russian Political, Economic, and Security Issues and US Interests,” Congressional Research Service (CRS) Report for Members and Committees of Congress, 31 March 2014, [www.crs.gov](http://www.crs.gov), p. 38

<sup>70</sup> Ben Smith and Daniel Harari, “Ukraine, Crimea and Russia,” p. 21

on the reasons for military intervention for humanitarian purposes. There was no massacre of any target group in Ukraine and hence Russia also tried to strengthen its argument by saying that it had been invited to intervene by the then Ukrainian president, Viktor Yanukovich.<sup>71</sup>

## **Conclusion**

The crises in Syria and Ukraine call for a revisit on the concept of military intervention for humanitarian purposes. The crises have shown that while the concept is a noble one, the international community should pay heed to Ian Brownlie's (cited in Ramsbotham and Woodhouse) argument that it can be abused by vigilantes and ambitious power to extend their spheres of influence.<sup>72</sup> The Syrian crisis is a noble case which would meet most of the requirements for a military intervention to save the suffering masses. However, the case will go down in history books as another failed case due to the primacy of the interest of the powerful regional and international players. On one hand, the USA and its allies financed and armed the rebels and also called for a military intervention to assist the same rebels. Such an approach is hypocritical and against the moral standards for an intervention. Russia and its allies on the other hand continued to arm and defend the Syria government in the Security Council. All the calculations were at the expense of the suffering civilians. The Syrian crisis shows that USA and Russia as the leading powers intervened in the conflict not because of the need to fulfill a moral responsibility to protect the civilians but with hidden interest to pursue geo-political influence.

This paper argued that the Ukrainian crisis is an extension of the Syrian geo-political tussle between the USA and Russia. While Russia has tried in part to justify its intervention as a humanitarian adventure and in part an intervention by the legitimate president of Ukraine. This paper did not seek to discuss the second claim. However, the first claim has no basis if weighed against the principles of military intervention for humanitarian purposes. There was no threat on the lives of the civilians by the interim Ukrainian government after the fall of Yanukovich. The Russian intervention can therefore be explained in terms of its geo-political interest.

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<sup>71</sup> Edith M. Lederer and Peter James Spielmann, "Russia Says Yanukovich Requested Troops in Crimea," *The Seattle Times*, 3 March 2014, accessed 1 July 2014, [www.seattletimes.com/html/nationworld/2023040147-apxunukraine.html](http://www.seattletimes.com/html/nationworld/2023040147-<u>apxunukraine.html</u>)

<sup>72</sup> Oliver Ramsbotham and T. Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization*, Polity Press, Cambridge, 1996, p. 64

USA's intervention can also be seen in the light of geo-political interests. USA had tussled with Russia regarding the Ukrainian fate since the birth of Ukraine. Having access to Ukraine is a major blow on Russian prestige and influence in global politics. Hence the USA had always had preferred candidates in Ukrainian elections with the latest official telephone links between US officials in Kiev and Washington showing that there had been preferred and non-preferred candidates to take over in Kiev.<sup>73</sup>

The two crises have shown that great powers can be so desperate to use any case at their disposal to justify their actions if there is a major gain or major threat on their interest. The Middle East and Eastern Europe are regions of strategic importance to both the USA and Russia. It is for this reason that the Syria crisis ended with a stalemate while the backlash in the Ukrainian uprising have turned into a 'war zone'.

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<sup>73</sup> Ben Smith and Daniel Harari, "Ukraine, Crimea and Russia," p. 25

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## **Appendix 2 United Nations Security Council Resolution 1973 (Libya)**

**United Nations S/RES/1973 (2011)**

**Security Council Distr.: General 17 March 2011**

11-26839 (E) **\*1126839\***

### **Resolution 1973 (2011)**

**Adopted by the Security Council at its 6498th meeting, on 17 March 2011**

*The Security Council,*

*Recalling* its resolution 1970 (2011) of 26 February 2011,

*Deploring* the failure of the Libyan authorities to comply with resolution 1970 (2011),

*Expressing* grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties,

*Reiterating* the responsibility of the Libyan authorities to protect the Libyan population and *reaffirming* that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians,

*Condemning* the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions,

*Further condemning* acts of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel and *urging* these authorities to comply with their obligations under international humanitarian law as outlined in resolution 1738 (2006),

*Considering* that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,

*Recalling* paragraph 26 of resolution 1970 (2011) in which the Council expressed its readiness to consider taking additional appropriate measures, as necessary, to facilitate and support the

return of humanitarian agencies and make available humanitarian and related assistance in the Libyan Arab Jamahiriya,

*Expressing its determination* to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel,

*Recalling* the condemnation by the League of Arab States, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that have been and are being committed in the Libyan Arab Jamahiriya,

*Taking note* of the final communiqué of the Organisation of the Islamic Conference of 8 March 2011, and the communiqué of the Peace and Security Council of the African Union of 10 March 2011 which established an ad hoc High Level Committee on Libya,

*Taking note also* of the decision of the Council of the League of Arab States of 12 March 2011 to call for the imposition of a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in the Libyan Arab Jamahiriya,

*Taking note further* of the Secretary-General's call on 16 March 2011 for an immediate cease-fire,

*Recalling* its decision to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court, and *stressing* that those responsible for or complicit in attacks targeting the civilian population, including aerial and naval attacks, must be held to account,

*Reiterating its concern* at the plight of refugees and foreign workers forced to flee the violence in the Libyan Arab Jamahiriya, *welcoming* the response of neighbouring States, in particular Tunisia and Egypt, to address the needs of those refugees and foreign workers, and *calling on* the international community to support those efforts,

*Deploring* the continuing use of mercenaries by the Libyan authorities,

*Considering* that the establishment of a ban on all flights in the airspace of the Libyan Arab Jamahiriya constitutes an important element for the protection of civilians as well as the safety of the delivery of humanitarian assistance and a decisive step for the cessation of hostilities in Libya,

*Expressing concern* also for the safety of foreign nationals and their rights in the Libyan Arab Jamahiriya,

*Welcoming* the appointment by the Secretary General of his Special Envoy to Libya, Mr. Abdel-Elah Mohamed Al-Khatib and supporting his efforts to find a sustainable and peaceful solution to the crisis in the Libyan Arab Jamahiriya,

*Reaffirming* its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya,

*Determining* that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Demands* the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians;
2. *Stresses* the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people and *notes* the decisions of the Secretary-General to send his Special Envoy to Libya and of the Peace and Security Council of the African Union to send its ad hoc High Level Committee to Libya with the aim of facilitating dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution;
3. *Demands* that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures

to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance;

### **Protection of civilians**

4. *Authorizes* Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and *requests* the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council;

5. *Recognizes* the important role of the League of Arab States in matters relating to the maintenance of international peace and security in the region, and bearing in mind Chapter VIII of the Charter of the United Nations, requests the Member States of the League of Arab States to cooperate with other Member States in the implementation of paragraph 4;

### **No Fly Zone**

6. *Decides* to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians;

7. *Decides further* that the ban imposed by paragraph 6 shall not apply to flights whose sole purpose is humanitarian, such as delivering or facilitating the delivery of assistance, including medical supplies, food, humanitarian workers and related assistance, or evacuating foreign nationals from the Libyan Arab Jamahiriya, nor shall it apply to flights authorised by paragraphs 4 or 8, nor other flights which are deemed necessary by States acting under the authorisation conferred in paragraph 8 to be for the benefit of the Libyan people, and that these flights shall be coordinated with any mechanism established under paragraph 8;

8. *Authorizes* Member States that have notified the Secretary-General and the Secretary-General of the League of Arab States, acting nationally or through regional organizations or

arrangements, to take all necessary measures to enforce compliance with the ban on flights imposed by paragraph 6 above, as necessary, and *requests* the States concerned in cooperation with the League of Arab States to coordinate closely with the Secretary General on the measures they are taking to implement this ban, including by establishing an appropriate mechanism for implementing the provisions of paragraphs 6 and 7 above,

9. *Calls upon* all Member States, acting nationally or through regional organizations or arrangements, to provide assistance, including any necessary overflight approvals, for the purposes of implementing paragraphs 4, 6, 7 and 8 above;

10. *Requests* the Member States concerned to coordinate closely with each other and the Secretary-General on the measures they are taking to implement paragraphs 4, 6, 7 and 8 above, including practical measures for the monitoring and approval of authorised humanitarian or evacuation flights;

11. *Decides* that the Member States concerned shall inform the Secretary- General and the Secretary-General of the League of Arab States immediately of measures taken in exercise of the authority conferred by paragraph 8 above, including to supply a concept of operations;

12. *Requests* the Secretary-General to inform the Council immediately of any actions taken by the Member States concerned in exercise of the authority conferred by paragraph 8 above and to report to the Council within 7 days and every month thereafter on the implementation of this resolution, including information on any violations of the flight ban imposed by paragraph 6 above;

### **Enforcement of the arms embargo**

13. *Decides that* paragraph 11 of resolution 1970 (2011) shall be replaced by the following paragraph : “Calls upon all Member States, in particular States of the region, acting nationally or through regional organisations or arrangements, in order to ensure strict implementation of the arms embargo established by paragraphs 9 and 10 of resolution 1970 (2011), to inspect in their territory, including seaports and airports, and on the high seas, vessels and aircraft bound to or from the Libyan Arab Jamahiriya, if the State concerned has information that provides reasonable grounds to believe that the cargo contains items the supply, sale, transfer or export

of which is prohibited by paragraphs 9 or 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, *calls upon* all flag States of such vessels and aircraft to cooperate with such inspections and authorises Member States to use all measures commensurate to the specific circumstances to carry out such inspections”;

14. *Requests* Member States which are taking action under paragraph 13 above on the high seas to coordinate closely with each other and the Secretary-General and *further requests* the States concerned to inform the Secretary-General and the Committee established pursuant to paragraph 24 of resolution 1970 (2011) (“the Committee”) immediately of measures taken in the exercise of the authority conferred by paragraph 13 above;

15. *Requires* any Member State whether acting nationally or through regional organisations or arrangements, when it undertakes an inspection pursuant to paragraph 13 above, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspection, the results of such inspection, and whether or not cooperation was provided, and, if prohibited items for transfer are found, further requires such Member States to submit to the Committee, at a later stage, a subsequent written report containing relevant details on the inspection, seizure, and disposal, and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report;

16. *Deplores* the continuing flows of mercenaries into the Libyan Arab Jamahiriya and *calls upon* all Member States to comply strictly with their obligations under paragraph 9 of resolution 1970 (2011) to prevent the provision of armed mercenary personnel to the Libyan Arab Jamahiriya;

### **Ban on flights**

17. *Decides* that all States shall deny permission to any aircraft registered in the Libyan Arab Jamahiriya or owned or operated by Libyan nationals or companies to take off from, land in or overfly their territory unless the particular flight has been approved in advance by the Committee, or in the case of an emergency landing;

18. *Decides that* all States shall deny permission to any aircraft to take off from, land in or overfly their territory, if they have information that provides reasonable grounds to believe that the aircraft contains items the supply, sale, transfer, or export of which is prohibited by paragraphs 9 and 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, except in the case of an emergency landing;

#### **Asset freeze**

19. *Decides that* the asset freeze imposed by paragraph 17, 19, 20 and 21 of resolution 1970 (2011) shall apply to all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the Libyan authorities, as designated by the Committee, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by the Committee, and *decides further* that all States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the Libyan authorities, as designated by the Committee, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, as designated by the Committee, and directs the Committee to designate such Libyan authorities, individuals or entities within 30 days of the date of the adoption of this resolution and as appropriate thereafter;

20. *Affirms* its determination to ensure that assets frozen pursuant to paragraph 17 of resolution 1970 (2011) shall, at a later stage, as soon as possible be made available to and for the benefit of the people of the Libyan Arab Jamahiriya;

21. *Decides that* all States shall require their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in the Libyan Arab Jamahiriya or subject to its jurisdiction, and any individuals or entities acting on their behalf or at their direction, and entities owned or controlled by them, if the States have information that provides reasonable grounds to believe that such business could contribute to violence and use of force against civilians;



## **Designations**

22. *Decides* that the individuals listed in Annex I shall be subject to the travel restrictions imposed in paragraphs 15 and 16 of resolution 1970 (2011), and *decides* further that the individuals and entities listed in Annex II shall be subject to the asset freeze imposed in paragraphs 17, 19, 20 and 21 of resolution 1970 (2011);

23. *Decides* that the measures specified in paragraphs 15, 16, 17, 19, 20 and 21 of resolution 1970 (2011) shall apply also to individuals and entities determined by the Council or the Committee to have violated the provisions of resolution 1970 (2011), particularly paragraphs 9 and 10 thereof, or to have assisted others in doing so;

## **Panel of Experts**

24. *Requests* the Secretary-General to create for an initial period of one year, in consultation with the Committee, a group of up to eight experts (“Panel of Experts”), under the direction of the Committee to carry out the following tasks:

- (a) Assist the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011) and this resolution;
- (b) Gather, examine and analyse information from States, relevant United Nations bodies, regional organisations and other interested parties regarding the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;
- (c) Make recommendations on actions the Council, or the Committee or State, may consider to improve implementation of the relevant measures;
- (d) Provide to the Council an interim report on its work no later than 90 days after the Panel’s appointment, and a final report to the Council no later than 30 days prior to the termination of its mandate with its findings and recommendations;

25. *Urges* all States, relevant United Nations bodies and other interested parties, to cooperate fully with the Committee and the Panel of Experts, in particular by supplying any information at their disposal on the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;

26. *Decides* that the mandate of the Committee as set out in paragraph 24 of resolution 1970 (2011) shall also apply to the measures decided in this resolution;

27. *Decides* that all States, including the Libyan Arab Jamahiriya, shall take the necessary measures to ensure that no claim shall lie at the instance of the Libyan authorities, or of any person or body in the Libyan Arab Jamahiriya, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolution 1970 (2011), this resolution and related resolutions;

28. *Reaffirms* its intention to keep the actions of the Libyan authorities under continuous review and underlines its readiness to review at any time the measures imposed by this resolution and resolution 1970 (2011), including by strengthening, suspending or lifting those measures, as appropriate, based on compliance by the Libyan authorities with this resolution and resolution 1970 (2011).

29. *Decides* to remain actively seized of the matter.

### **Libya: UNSCR proposed designations**

#### **Annex I: Travel Ban**

1 QUREN SALIH QUREN

AL QADHAFI

Libyan Ambassador to Chad.

Has left Chad for Sabha. Involved directly in recruiting and coordinating mercenaries for the regime.

2 Colonel AMID HUSAIN

AL KUNI

Governor of Ghat (South Libya).

Directly involved in recruiting mercenaries.

## **Annex II: Asset Freeze**

1 Dorda, Abu Zayd Umar Position: Director, External Security Organisation

2 Jabir, Major General Abu Bakr Yunis

Position: Defence Minister

**Title:** Major General

**DOB:** --/--/1952.

**POB:** Jalo, Libya

3 Matuq, Matuq Mohammed

Position: Secretary for Utilities

**DOB:** --/--/1956.

**POB:** Khoms

4 Qadhafi, Mohammed Muammar

Son of Muammar Qadhafi.

Closeness of association with regime

**DOB:** --/--/1970.

**POB:** Tripoli, Libya

5 Qadhafi, Saadi Commander Special Forces.

Son of Muammar Qadhafi.

Closeness of association with regime.

Command of military units involved in repression of demonstrations

**DOB:** 25/05/1973.

**POB:** Tripoli, Libya

6 Qadhafi, Saif al-Arab Son of Muammar Qadhafi.

Closeness of association with regime

**DOB:** --/--/1982.

**POB:** Tripoli, Libya

7 Al-Senussi, Colonel Abdullah

Position: Director Military Intelligence

**Title:** Colonel

**DOB:** --/--/1949.

**POB:** Sudan

### **Entities**

1 Central Bank of Libya Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

2 Libyan Investment Authority Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

**a.k.a:** Libyan Arab Foreign Investment Company (LAFICO)

**Address:** 1 Fateh Tower Office, No 99 22nd Floor,  
Borgaida Street, Tripoli, Libya, 1103

3 Libyan Foreign Bank Under control of Muammar Qadhafi and his family and a potential source of funding for his regime.

4 Libyan Africa Investment Portfolio Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

**Address:** Jamahiriya Street, LAP  
Building, PO Box 91330, Tripoli, Libya

5 Libyan National Oil Corporation Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

**Address:** Bashir Saadwi Street, Tripoli,  
Tarabulus, Libya

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