

# The Effect of the Intervention in Libya on the International Debate about Syria

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The intervention in Libya against Colonel Muammar Gaddafi's regime was at first seen as a victory for those in the West attempting to establish an international legal norm on the responsibility of states to protect their own population. However, for China and Russia, as well as many nations in the Global South, it was seen as a potentially dangerous legal precedent, which threatened the protection that state sovereignty hitherto had been given under international law. This was at the heart of the refusal of Beijing and Moscow to accept any intervention under the auspices of the United Nations Security Council against the Syrian government, during its crackdown of opposition forces. There were also wider geopolitical considerations that were applicable to Syria, but not to Libya. Syria has a strategic importance that dwarfs Libya's, despite the latter's extensive energy reserves. The two case studies also show, that international law, as well as the world system itself, is still subject to the whims of great power rivals. That states sometimes use the façade of legality to justify their actions and if the international legal framework contradicts their own self-interest, they do not shy away from ignoring it. Split into four parts, this essay first will examine the history of sovereignty and international law, the humanitarian interventions of the post-Cold War era, and the rise of the concept of Responsibility to Protect (R2P). The second and third parts will be made up of two case studies, one on the intervention in Libya in 2011, and the other on the UNSC's debate about intervening in Syria in 2012. The final part will discuss the geopolitical differences between Syria and Libya, as well as the future of "humanitarian intervention".

### **Sovereignty, Humanitarian Intervention, and International Law**

The concept of sovereignty, as well as that of international law, is usually linked to 16<sup>th</sup> and 17<sup>th</sup> century European thought and the development of the modern international system.[1] However, it has been noted that notions on the non-intervention of states into other countries "internal affairs", pre-dates Christian Europe and the papal conception of universal jurisdiction. Popes in the Middle Ages claimed the right to intervene anywhere to prevent or counteract sinful actions.[2] The re-discovery of the ancient writings of Aristotle, during the Renaissance re-introduced ideas of international pluralism, which directly challenged the universalism of empire and the Roman Catholic Church.[3] The early 17<sup>th</sup> century Dutch legal theorist, Hugo Grotius, a pioneer of international law theory, declared in his 1625 work *On the Law of War and Peace* that "the treatment of subjects was a matter only to the judgement of the sovereign".[4] Nevertheless, Grotius did argue that kings, or rulers, did have the right to punish those sovereigns who violated the law of nature by excessive ill treatment of their own subjects.[5] The Treaty of Westphalia in 1648, which brought to an end the Thirty Years War, is claimed to be the modern foundation of the legal norm of state sovereignty[6] although during the following century and a half, there were cases of states intervening in the domestic affairs of other countries. Edmund Burke claimed, in the midst of the French Revolution, that the doctrine of non-intervention was "a false principle in the Law of Nations".[7]

The 19<sup>th</sup> century is considered the birthplace of the modern notion of "humanitarian intervention".[8] The decision of Britain, France, and Russia to aid Greece in the Greek War of Independence in 1827 was a precursor to a series of European interventions, in both Europe and the Middle East, to protect Christians living under the rule of the Ottoman Empire.[9] In reality, during the colonial-era, sovereignty was only respected in the interaction of European countries with each other. Europeans had a level of respect for the legal rights of the rest of the world ranging from low to

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medium for East Asia, to practically zero for Africa. It was only in the aftermath of the two World Wars, especially with the experience of facing the hyper aggressive Nazi Germany, that the idea of a nation's right to the non-interference of outside powers became a universal norm. The Charter of the United Nations enacted in 1945, states in Article 39, Chapter VII, that in cases that are not related to self-defence, the United Nations Security Council has the sole legal authority to decide on the use of force against states.[10] In the post-colonial-era newly independent nations, as well as communist ones, sought to protect themselves from interference from Western powers, and, therefore, took a strictly positivist line towards the legal importance of sovereignty.[11] A UN General Assembly declaration in 1965, which was pushed forward by Third World countries, stated that,

The principle of the non-intervention of States in the internal and external affairs of other States is essential to the fulfilment of the purposes and principles of the United Nations[12].

Another General Assembly Resolution in 1970 also declared, "the principle of sovereign equality of States" and the settlement of disputes on that basis.[13]

The end of the Cold War and the collapse of the Soviet Union in 1991 brought an end to the bipolar world order and gave way to an increasingly American-dominated international system. More UNSC Resolutions were passed in the first half of the 1990s than in the previous 45 years and with it began a new-era of humanitarian interventions.[14] UNSC Resolution 688, in 1991, demanded that Iraq allowed a foreign military force to deliver aid to the Kurds in Northern Iraq.[15] In 1992, Resolution 794 authorized an international mission to protect civilians in lawless Somalia.[16] But it was the failure to protect civilians in Rwanda and Bosnia in the mid-1990s, which brought to the fore a debate on "interventions" and the rights of sovereignty under international law. Some, like Richard K. Betts, argued that intervention in civil conflicts was pointless unless the interfering powers picked a side to support, thus ending the conflict quicker.[17] The clash of the idea of a "moral duty" to protect civilians with the sovereign rights of states was played out in 1999 by the North Atlantic Treaty Organisation's (NATO) intervention in Kosovo against the Yugoslavian government, which was conducted without the backing of the UNSC. This made it illegal according to the UN Charter.[18] The promotion of concepts like "human security", especially by nations like Canada and Norway, led in the aftermath of the Kosovo War to an attempt to bridge the gap between international law and the protection of human rights within sovereign states.[19]

Speeches by U.S. President Bill Clinton and British Prime Minister Tony Blair in the aftermath of the Kosovo intervention propagated the moral right of humanitarian interventions, with the UN Secretary-General Kofi Annan also endorsing the principle.[20] Annan argued, that any evolution in the understanding of sovereignty, which led to the protection of civilians should be welcomed.[21] In response to these arguments, the Canadian government set up the International Commission on Intervention and State Sovereignty (ICISS).[22] The report issued by the ICISS, in 2001, argued that the international community and individual countries have a Responsibility to Protect (R2P) civilians and that in extreme cases like genocide, intervention was legitimate.[23] Moreover, it issued six criteria to be abided by before undertaking a military intervention: *"right authority, just cause, right intention, last resort, proportional means, and reasonable prospects."*[24] The 2005 UN World Summit outcome document endorsed the concept of R2P. But it stressed in paragraphs 138 and 139 that although states have a responsibility to protect their populations from mistreatment, any intervention had to be conducted via the Security Council, in accordance with the UN Charter, and on a case-by-case basis only.[25] UNSC Resolution 1674 the following year, reaffirmed the provisions of paragraphs 138 and 139.[26]

Nevertheless, to some in the Global South, as well as to the governments of Russia and China, R2P was just a sophisticated way for the West to legitimise their interference into the internal affairs of other countries.[27] Too many, especially following the American-led invasion of 2003 Iraq and the so-called War on Terror, Western-led interventions were conducted primarily to serve national self-interests.[28] The Secretary-General's annual report to the United Nations General Assembly in 2009 attempted to clarify things; it suggested that R2P rested on three pillars.[29] Pillars one and two were relatively uncontroversial, pillar three, however, called for states to protect their own populations and for: "Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection".[30] R2P was in actual fact based on existing international law, and the use of military force as laid out under pillar three of the 2009 report, was still subject to UNSC authorisation. There

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was, however, the potential for an emerging legal norm to develop under pillar three, making it not just a moral duty, but a legal one for governments to protect the citizens of countries other than their own.[31]

## **The Intervention in Libya**

After the failure to find an international consensus on NATO's intervention in Kosovo, as well as on the 2003 Darfur crisis, the 2011 Libyan military operation was initially heralded as the start of a new age of R2P inspired humanitarian interventions.[32] It was the first time that the UN Security Council had invoked the R2P principle in the authorisation of the use of force by member states.[33] A rebellion in eastern Libya broke out in February 2011, following a government crackdown on peaceful protests the previous month. It took place in the context of the wider Arab Spring that had already brought civil disorder to both Tunisia and Egypt.[34] Although the rebels had initial successes and took over most of the eastern part of the country, the forces of Colonel Gaddafi's regime swiftly counter-attacked and attempted to put the rebellion down.[35] The brutality inflicted upon civilians by government-controlled security forces, was condemned on the 22<sup>nd</sup> of February by the UN's Secretary-General Special Advisor on R2P, Edward Luck.[36] By the 26<sup>th</sup> of February Libya was removed from the UN Human Rights Council and Tripoli's own representative at the Council defected and condemned his own government.[37] The same day the UNSC passed Resolution 1970, which expressed grave concern about the situation in Libya and condemned the use of force against non-combatants and also considered that the actions of regime forces could be classified as a crime against humanity.[38]

A number of factors led to the eventual use of force against Libya's armed forces. One was the complete unwillingness of Colonel Gaddafi to accept the demands of Resolution 1970 and allow the entry of humanitarian aid convoys into eastern Libya.[39] Two, the Libyan regime was relatively isolated within Africa and the Arab world, with their "eccentric" leader managing over the course of his 40 year rule, to offend many neighbouring countries.[40] Three, there was an almost tireless effort on behalf of the UK and France to seek UN approval for a no-fly-zone.[41] And finally, four, there was the imminent threat of massacre in the besieged eastern city of Benghazi.[42] The call by the League of Arab States for a no-fly-zone on the 12<sup>th</sup> of March is what, arguably, twisted the arms of Russia and China enough for them to step back from vetoing a UNSC-backed intervention.[43] Five days later, on the 17<sup>th</sup> of March, Resolution 1973 was passed with Russia and China, as well as Brazil and India, abstaining.[44] Its wording was limited to the authorisation of military action to enforce a no-fly-zone and "to take all necessary measures" needed "to protect civilian populated areas under threat of attack".[45] It also reiterated the restrictions already set in place by Resolution 1970, which included the prohibition on supplying weapons to the rebels.[46]

The NATO-led military effort quickly turned into an obvious attempt at regime change. This placed the West and its "interventionist" coalition, led by Britain, France and the United States, in direct diplomatic confrontation with a so-called "sovereignist" bloc of nations led by Russia and China, which also included Brazil, India, and South Africa.[47] In the eyes of the "sovereignists" the West had overstepped the rationale of Resolution 1973 and had tricked them into accepting an intervention under the umbrella of R2P.[48] What's more, after Gaddafi's eventual fall in autumn 2012, the country descended into chaos as rival tribes and militias, including Al Qaeda and Islamic State, competed for power.[49] This led to some pessimistic pundits to declare R2P "R.I.P".[50] The diplomatic situation was not helped by the callous language of U.S. Secretary of State Hillary Clinton, who joked after finding out about Gaddafi's brutal murder by opposition forces, that: "We came, we saw, he died." [51] Pierre Thielborger claims, that the case of Libya shows that a new "muscular liberalism" is on the rise challenging the privileged position of state sovereignty under the current international legal framework.[52] To the "sovereignists", however, there was clearly a premeditated plan for regime change, with the concept of R2P simply being used as cover for the naked self-interest of Western countries.

## **The Debate over Intervention in Syria**

The day after Resolution 1973 had been passed, on the 18<sup>th</sup> of March, Syrian government forces opened fire on a crowd of protesters in the southern Syrian city of Daraa.[53] As reports of the horrific abuses inflicted by President Bashar al-Assad's security forces spread, the protests around the country quickly turned into an outright rebellion.[54] Opposition forces united under the banner of the newly formed "Free Syrian Army" and a new shadow

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government called the Syrian National Council.[55] Despite some Syrian army defections, the government refused to buckle and the rebellion never turned into a revolution as a substantial percentage of the Syrian population remained loyal to President al-Assad. To the Syrian government and its supporters, the revolt was a part of a conspiracy by foreign actors to bring the regime down.[56] Moreover, any discussions on intervention against the Syrian government were from the start hampered by the cloud hanging over the UN Security Council after the regime change in Libya.

The Chinese and Russian governments were determined that Resolution 1973 would not become a legal precedent, which the West could use to intervene against any regime it did not like.[57] From their perspective Responsibility to Protect is a political norm, which the West, especially the U.S., is pushing in order to justify interventions that in reality only serve to further their own national interests.[58] It was against this background that the legal debate on Syria unfolded; China and Russia were determined to reassert their authority on the Security Council and push back against R2P with the legal norm of state sovereignty. In October 2011, they vetoed a UK draft Resolution, demanding that a clause be added that cancelled out any notion of military intervention. Other members of the UNSC, including Brazil, India, and South Africa, also abstained.[59] The Russian Ambassador to the United Nations, Vitaly Churkin, warned, that “it is easy to see that Libya’s ‘United Protector’ model could happen in Syria”. [60]

By early 2012 there was an escalation of violence caused by the Syrian army, including use of heavy weapons in civilian areas.[61] In response a draft Resolution, backed by most Western and Arab states, called for the Syrian government to immediately bring the violence to a halt.[62] This Resolution was again vetoed by both Russia and China. In the ensuing meeting the U.S. Ambassador to the UN, Susan Rice, accused Moscow and Beijing of not meeting their responsibilities and claimed that: “Any further bloodshed will be on their hands.”[63] Articulating his government’s reasoning, China’s Ambassador to the United Nations, Li Baodong, declared, after calling for the sovereignty of Syria to be respected, that:

The actions of the Security Council on the Syrian issue should comply with the purposes and principles of the Charter of the United Nations and help ease the tensions, help promote political dialogue and diffuse disputes, and help maintain peace and stability in the Middle East region, rather than complicate the issue.[64]

In other words, the legal principle of state sovereignty should trump the political norm of R2P. A watered-down version, UNSC Resolution 2042, was eventually accepted by the “sovereignists” and passed on the 14<sup>th</sup> of April. It called for all forces, including the opposition, to cease all violent actions.[65] Nonetheless, the violence still continued, so on the 21<sup>st</sup> of April, Resolution 2043 was adopted by the Security Council. It authorised a 90-day United Nations Supervision Mission in Syria (UNSMIS), comprised of 300 unarmed military officers, in order to assess whether the call for a cessation of violence demanded by Resolution 2042 was being observed or not.[66] The mission was an eventual failure and, although the Syrian government continued to commit crimes against non-combatants, Russia and China still blocked every effort of the UNSC to inflict sanctions upon the “regime”. [67] This culminated in their third use of their veto right on the 19<sup>th</sup> of July.[68]

It was obvious to all that it would now be impossible for any military intervention into Syria against government forces, to be conducted within the current international legal framework that governs the use of force. Indeed, some could argue that under Article 51, Chapter VII of the UN Charter, any legitimate government has the right to self-defence against an anti-government rebellion.[69] This is especially true if said “rebels” have been supplied weaponry by foreign actors.[70] Nevertheless, the high amount of civilian casualties caused by the use of heavy weapons by the Syrian armed forces does point to a possible case for charging members of the Syrian regime with crimes against humanity.[71] The legal significance of the debate has shown the shallowness of R2P under international law. It has not created a legal duty for states, or the UNSC, to intervene to protect civilians. Its evolution from a political norm to a legal one appears even more unlikely, at least in the short term. Moreover, the international legal framework governing the use of force still states that the use of force is only permissible in the act of self-defence, or if authorised by the UNSC.[72] Some like Amos N. Guiora argue, however, that the international community, especially the United States, has a responsibility to react and protect Syrian civilians in spite of current international law.[73] The geopolitical consequences that an “illegal intervention” could have brought, may have only served to make the situation even worse, as well as precipitating a wider regional conflict.

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## Geopolitics and the Future of Humanitarian Intervention

There are major differences in the geopolitical importance of Libya and Syria, despite the former's oil reserves.[74] Libya does not sit across the Middle East's major fault lines like Syria does. The Syrian government and its armed forces were substantially stronger than Libya's, which included the possession of advanced Russian-made anti-air and anti-ship missile systems.[75] This made any attempt to set up a no-fly-zone potentially much more costly than it was in Libya. Furthermore, things were complicated by the fact that unlike Gaddafi's regime, Syrian leader al-Assad was supported by regional actors, which included the world's best trained guerrilla group, Lebanon's Hezbollah, and military advisors from the Islamic Republic of Iran.[76] The position of the world's two great non-Western powers, Russia and China was also different. Moscow has vast strategic and economic interests in Syria going back decades. Future arm sales from Russia to Damascus are expected to run into billions of dollars. Syria, at Tartus on the West coast, also hosts Russia's only major military base [77]outside the former Soviet Union, providing a vital naval installation in the Mediterranean for Russian warships.[78] China similarly has economic interests in Syria and also concurs with Russia's position on the protection that state sovereignty is granted under international law.[79] The delivery of military equipment to the Syrian regime from Russia, and to a smaller extent from China, has continued unabated since the start of the uprising.[80] Whatever the moral, as well as legal, case for intervention, intervening states can never ignore the wider geopolitical reality.

In the aftermath of the failure of the international community to intervene in Syria, some critics of the Responsibility to Protect concept, as well as a few adherents, have declared its death knell.[81] In an attempt to find a middle ground between the "interventionists" and the "sovereignists" the Brazilian government pushed the concept of "Responsibility While Protecting". It called for greater oversight by the UNSC on the use of force, and argued that military action should be limited to the parameters set in the Security Council Resolution, which authorised the intervention.[82] Nevertheless, to many in the Global South Western-led humanitarian interventions, as well as the concept of R2P, showcases the West's double standards when it comes to valuing human rights. R2P is, in the eyes of some, just a disguise for hegemonic ambitions.[83] Though it could be argued, as Roland Paris does, that Western intervention into the Third World is an updated version of the colonial-era *mission civilisatrice*, with the West taking it upon itself again to civilise the periphery.[84] It should also be noted that, as military technology advances, especially the continued development of drones, the human and financial costs for "advanced" states to intervene inside the borders of poorer nations goes down substantially. This can be seen by the United States use of missile-carrying unmanned aerial vehicles (UAV's) in multiple countries, as part of the seemingly never ending "War on Terror" campaign.[85] The question is whether international law will keep up with these capabilities, or will the idea of the internal sovereignty of states retain its privileged place in the international legal framework, leading to some Western nations simply deciding to ignore it.

## Conclusion

To Russia, China and many other states, the Western-led intervention in Libya under the legal framework of United Nations Security Council authorisation, threatened to set a dangerous legal precedent. The history of the concept of "humanitarian interventions" goes back centuries, but the international legal framework set up after the Second World War placed sovereignty as a privileged right under international law, with states unable, legally anyway, to interfere in the internal affairs of others. The post-Cold War world changed everything again, as the West tried to develop legal justifications for military interventions into the Global South. To many of these countries, the West's propagating of the concept of Responsibility to Protect was just a cover for naked self-interest. The intervention into Libya was the first time force had been authorised by the UNSC under the R2P banner. The Russian and Chinese use of the veto during the Syria debate was part of a policy of forestalling the evolution of R2P from a political norm to a legal one. There was also, however, a large geopolitical difference in the importance of Libya to Moscow and Beijing, compared to the strategically vital position of Syria. Military technology appears to be making it easier for "advanced" countries to interfere in the internal affairs of poorer states. Arguably, this will make it likely in the future, if international law does not develop an R2P-style norm, that Western nations will conduct "humanitarian interventions" outside the international legal framework whenever they see fit.

## Notes

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