

CHAPTER VII SOLUTION FOR SYRIA? MORE HEALING TIME NEEDED AFTER THE LIBYAN EXPERIENCE

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The relevance of the United Nations has been once again put on test with the international response to the Syrian crisis. US readiness for unilateral military action in Syria without UN Security Council secured mandate has once again provoked questions among policy makers and academia about the purpose of such system and its relevance in today's world. The US President Barack Obama has given a chance to diplomacy and the Russian President Putin's proposal to put under international control Syria's chemical weapons is expected to be operationalised into a UN Security

Council Resolution in the days to follow. The wording of the resolution can signal the future actions of the international community towards Syria in case Russia's plan fails. The question that remains to be answered is how would a settlement of the Syrian crisis look like? A regime change, power-sharing agreement or even overturning the rebels, are some of the possibilities with a UN (tacitly) sponsored regime change being if not the most controversial. That is why the commentary borrows from the 2011 Libyan case in order to depict its problematic nature.

The establishment of the United Nations (UN) in 1945 created a new platform for resolv-

ing international disputes and more prominently, as suggested in Article. 1, paragraph 1 of the Charter: "to maintain international peace and security..." This core function of the UN draws from previous international arrangements such as the League of Nations (Art. 3, para. 3), which nevertheless failed to live up to these principles with the beginning of World War II. The UN directly addressed one of the shortcomings of the League of Nations by enshrining the ideals of "maintaining peace and security" deeply into its Charter and by inclusion of the "enforcement" clause in Charter VII, giving the UN the right to directly "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and act both by peaceful as well as military means.

It goes without saying that the international system has morphed from the point in time when the UN Charter entered into force. More precisely, the conventional threat of wars of an inter-state nature has greatly evolved and dispersed into having more hybrid character, yet still dangerous enough to present a threat to international peace and security. Gross human rights violations, terrorism and armed conflicts have all been put under this umbrella. Therefore, the drafters of the Charter looked into the more traditional setting when mentioning the threats to international peace such as the threat of land invasion

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and aerial bombardment.¹

The Charter entitles member states and the United Nation Security Council (UNSC) to the use of force only in two cases: a) self-defence (Article 51) and b) in cases when the UNSC assesses that there is a threat to international peace and security (Article 39). One can observe the unlimited powers the UNSC has in regards to evaluating whether certain situation pose an international security threat. Some authors such as Alina Kaczorowska consider that the UN has an arbitrary right to put forward any situation it deems likely to represent a threat under Chapter VII.² However another group of authors such as Alexander Orakhelashvili considers that even though the UNSC has wide powers in this regard it has to limit itself to the principles of the UN Charter by consulting facts and circumstances.³

So far the UN has acted upon as many as 15 interventions under Charter VII addressing a wide variety of threats. Consequently, there have been attempts to group them into categories. Galván connects threats with: a) serious violations of human rights, b) lack of democracy and c) anti – terrorist interventions.⁴

With reference to the first and second category, the 2011 UN intervention in Libya (UNSC resolution 1973) was approved under Chapter VII, mandating member states to “protect civilians by all necessary means” as well as establish no-fly zones.⁵ The task was shared among coalition states and later on transferred to NATO’s command. The Libyan experience is important because it resurfaced one par-

ticular question connected with UNSC’s previous track record (of the lack thereof) of as suggested by some, overthrowing heads of states. Authors such as Payandeh argue that “...the intervention in Libya is the first case of a Security Council-mandated operation conducted with the more or less openly admitted goal of overthrowing the government and changing the regime.”⁶ Russian Foreign Minister Sergei Lavrov confirms the lack of practice of “regime change” under UN scope by classifying it as “illegal.”⁷ Indeed without extensive support from NATO and the international community, especially with the recognition of the National Transitional Council as the legitimate governing body together with the heavy attacks on “Gaddafi’s key regime and compound node”⁸, it remains to be questioned whether the opposition front would have been able to take over and induce regime change.

After the Libyan experience Russia would be very cautious in opening the door for military action in Syria through the UN Security Council, making the resolution of the Syrian conflict prolonged due to diplomatic rivalry with the United States.

1 Smith D. D 2006. “Establishing a Global Quarantine Against Weapons of Mass Destruction” Yale Journal of International Affairs

2 Kaczorowska, Alina. 2010. Public International Law Fourth Edition. Abington, Oxon. Routledge.

3 Orakhelashvili, Alexander. 2000. . Legal Aspects of Global and Regional International Security – The Institutional Background - NATO/EAPC Research Fellowships Programme 1998-2000 Final Report.. http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCCEQFjAA&url=http%3A%2F%2Fwww.nato.int%2Ffacad%2Ffellow%2F98-00%2F0rakhelashvili.pdf&ei=Jh1uULBoB13COAXPz4B4&usq=AFQjCNFRh_QYQJeJ5CcQFTioSG9oEIVJ2g

4 Serna Galván, Mónica Lourdes de la 2010. Interpretation of Article 39 of the UN Charte (Threat to the peace) by the Security Council. Interpretation of Article 39 of the UN Charte (Threat to the peace) by the Security Council. Is the Security Council a legislator for the entire international community?

5 For a more detailed analysis of the 2011 Libya crisis, see International Coalition for the Responsibility to Protect background: <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya>

6 Payandeh M. 2012. “The United Nations, Military Intervention, and Regime Change in Libya” Virginia Journal of International Law

7 Bloomerg. 2011. April 19, 2011. <http://www.bloomberg.com/news/2011-04-19/un-security-council-not-pushing-libya-regime-change-lavrov-says.html>

8 BBC.2011. June 20, 2011. BBC World <http://www.bbc.co.uk/news/world-africa-13843798>

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