HUMANITARIAN INTERVENTION AND SOVEREIGNTY UNDER THE UMBRELLA OF GEOPOLITICS

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1. INTRODUCTION

The events of the Arab Spring and subsequent developments in Libya and Egypt raise profound questions regarding the tension between international humanitarian intervention and state sovereignty in the context of geo-politics. In examining this tension, it is necessary to understand overarching geo-political considerations regarding issues critical to understanding international relations and international law in a paradigm best described as "murky." This murkiness applies to facts on the ground and the legal and policy questions confronting decision makers, both regionally and globally. While the Arab Spring was widely perceived as the dawn of a new age in the Middle East, it is too early to fully assess its consequences.

On the one hand, elections in Egypt reflect change while continued massacres in Syria, on the other hand, recall the actions of previous Middle Eastern regimes. The question regarding Syria is: when do humanitarian considerations justify intervention into a sovereign state? The question the international community would face regarding Egypt is: how should it respond if the Morsi government reneges on preexisting international obligations? While some would point to Egypt's free and fair elections as a positive indicator, others would suggest that the outcome is troubling, for it potentially portends significant changes in Egyptian foreign policy. After all, the electoral successes of the Muslim Brotherhood suggest that changes are in the offing.

Perhaps Bob Dylan's oft-quoted phrase that "the times they are a-changin'"[1] aptly captures the moment. But changing where and to what? Because of the uncertainty of the moment, international

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[1] BOB DYLAN, *The Times They Are a-Changin', in* BOB DYLAN LYRICS 1962–2001 81 (Simon and Schuster ed. 2004).

decision makers must assess innumerable dilemmas with insufficient information resulting from significant changes in Egyptian, Syrian, and other Middle Eastern leadership positions. After all, one of the practical results—or fall-outs—of dramatic regime change is the need to identify new, key decision makers and their inner circles, develop new information and intelligence sources, and understand the relationship between the new civilian leadership and the national security establishment.

This is an issue that confronts world leaders daily, requiring assessment of possible actions by a government that recently replaced a deeply entrenched regime that ruled with an iron hand but whose commitment to international obligations was unquestioned. Both paradigms raise legitimate concerns regarding the relationship between sovereignty, intervention, and geo-politics. The Syrian dilemma is tangible and immediate, whereas the Egyptian paradigm is suggestive as a hypothetical. Therefore, this Essay focuses on humanitarian intervention—or lack thereof—in the face of extraordinary human rights violations.

That is not to suggest that analyzing possible changes in Egyptian foreign policy is not important; in the context of post-Arab Spring ramifications, the "Egypt to where" question is amongst the most important. One assumes that decision-makers in the United States, Israel, Europe, and the Middle East are fully engaged in seeking to better understand the future direction, policy, and aims of the Morsi government. While that question is of immense importance, it will not be the focus of this Essay, which will address the relationship between humanitarian intervention and sovereignty under the umbrella of geo-politics. To that end, this Essay will be divided into the following sections: (2) a brief overview of humanitarian intervention; (3) a short history of Western intervention in the Middle East; (4) a discussion of humanitarian intervention and state sovereignty; (5) an examination of geo-political considerations; and (6) questions for further study.

2. BRIEF OVERVIEW OF HUMANITARIAN INTERVENTION

The overriding questions with respect to humanitarian intervention are (a) for what purpose and (b) to what end. There also exists the distinction between "absolute" and "limited" interventions in the context of human rights violations. With respect to sovereignty, the question is whether significant

violations of human rights justify violation by external actors of a nation-state's sovereignty.

The current Assad regime in Syria has engaged in unrelenting massacre and torture of thousands of Syrian civilians. Arab and Western leaders alike have met those actions, which recall the brutality of Assad's father, with deafening silence. Whether that silence reflects a "what do you expect" attitude, studied indifference, or geo-political considerations given the Syrian-Iranian relationship, is unclear. What is clear is that, as these lines are written, the Syrian regime is engaged in ongoing attacks on Syrian civilians. In the meantime, leaders in the United States, Europe, and the Middle East respond with clichés devoid of substance or meaning.

In examining this tension, it is necessary to understand overarching geo-political considerations. While legal terminology contributes to framing international humanitarian law issues, understanding national self-interest and geo-political realities is essential to their practical implementation. Hence, a study of geo-politics provides the all-encompassing umbrella under which a myriad of critical and competing issues must fit.

Understanding geo-politics requires analysis of four distinct factors: self-defense, leadership, humanitarian intervention and sovereignty, and international cooperation. Self-defense is particularly important because it addresses the extent and manner in which states protect their populations, resources, and interests. Leadership is germane to the discussion since it highlights the qualities necessary to resolve complicated paradigms reflecting distinct disciplines with minimal "margin for error." Humanitarian intervention requires reconciling sovereignty with international obligations to respect, protect, and fulfill human rights. International cooperation is essential to effective implementation of geo-politics on the premise that unilateralism is at odds with the principle of a global community.

Addressing these four factors facilitates understanding the nuts and bolts of geo-politics. While the four topics may seem unrelated, I believe that reality suggests otherwise: they are the core of geo-politics. This Essay focuses on humanitarian intervention and sovereignty, but the importance of national leadership, international cooperation, and self-defense are likewise critical components.

Focusing on the confluence, if not tension, between humanitarian intervention and sovereignty highlights the

dilemmas confronting contemporary decision-makers. Resolving this tension requires sober analysis of national self-interest while recognizing limits of external influence on events occurring within another state. Determining when intervention principles outweigh sovereignty rights poses significant dilemmas; the complexity is accentuated when national interests are not consistently and narrowly defined. Historians will long engage in questioning whether legitimate American interests were truly at stake when President George W. Bush ordered U.S. forces into Iraq and Afghanistan and President Obama ordered their continued presence in Afghanistan. In the meantime, decision-makers—not historians and pundits—must resolve this tension while confronting situations marked by uncertainty rather than certainty.

Contemporary flash-points in the broader Middle East are numerous: Iran's nuclear plans; continuing sectarian conflict in Iraq; the aftermath of the Benghazi, Libya attack; increased tension between Syria and Turkey; uncertainty regarding possible intervention in Syria; continuing war in Afghanistan; efforts by Al-Qaeda to establish a presence in Northern Sinai;[2] and Hezbollah's demonstrated willingness and capability to do Iran's bidding.[3] The brazen attack on the American embassy in Cairo[4] reflects a disturbing combination of a significant intelligence failure, seemingly incompetent Egyptian security forces, and a fumbled response by the Obama Administration.

3. THE MIDDLE EAST

History is replete with examples of Western intervention in the Middle East. Whether through colonization, or military or humanitarian intervention, Western intervention in the Middle

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[2] Yaakov Lappin, *Israel Preparing for al-Qaeda on its Borders*, GATESTONE INST. (July 16, 2012, 04:00 AM), http://www.gatestoneinstitute.org/3169/israel-borders-al-qaeda.

[3] Patrick Goodenough, *Hezbollah: Iran Will Attack U.S. Bases if Israel Bombs Iranian Nuclear Facilities*, CNSNEWS.COM (Sept. 4, 2012, 3:39 AM), http://cnsnews.com/news/article/hezbollah-iran-will-attack-us-bases-if-israel-bombs-iranian-nuclear-facilities. See also CASEY L. ADDIS & CHRISTOPHER M. BLANCHARD, CONG. RESEARCH SERV., R41446, HEZBOLLAH: BACKGROUND AND ISSUES FOR CONGRESS, CRS REPORT FOR CONGRESS (2011), *available at* http://www.fas.org/sgp/crs/mideast/R41446.pdf.

[4] *Protests Near U.S. Embassy in Cairo Continue After Obama Warning*, CNN (Sept. 13, 2012, 7:31 PM), *available at* http://www.cnn.com/2012/09/13/world/meast/egypt-us-embassy-protests/index.html.

East has in many ways defined the relationship between the West and the Middle East. At one time or another major Western powers have had a significant presence in the following nations:

- Palestine (British Palestine Mandate, 1917–1948)
- Lebanon (France, 1920–1946; United States, 1958)
- Syria (France, 1920–1946)
- Jordan/Transjordan (United Kingdom, 1922–1946)
- Libya (France, 1942–1951)
- Iran (United Kingdom, 1941–1945)
- Iraq (British Mandate of Mesopotamia, 1920–1932; United States, 2003–present)
- Afghanistan (United Kingdom, 1839–1919; Soviet Union, 1980–1989; United States, 2001–present)
- United Arab Emirates (United Kingdom, 1819–1968)

Intervention raises profound questions regarding both the limits of national sovereignty and the articulation of national self-interest. What is defined as intervention can also be described as imperialism (as evidenced in many of the aforementioned cases of Western intervention in the Middle East). After all, Western powers have historically perceived Middle Eastern oil and trade routes as essential to their national interests and have, therefore, imposed themselves on indigenous populations.

The historical basis for Western imperialism was largely a combination of: the availability of much needed natural resources, cheap labor, geo-politics, and Christian missionaries. The result was both taking (natural resources) and purported giving (Christianity and democratic values). The intended beneficiary was the Western power; in large part the indigenous people were victimized. That said, some have suggested Western powers also contributed to local cultures by introducing democratic values and traditions, but the grim tale of post-colonial Africa suggests a significantly different reality.

One of the clear results of World War II is the dusk that settled on traditional Western European powers. While the sun (as the expression went) never set on the British Empire, since World War II, the United Kingdom has become almost exclusively focused domestically (including on the Troubles in Northern Ireland) and France has largely disengaged (following withdrawals from

Algeria, Vietnam, and Lebanon) from any international involvement.[5]   The post-World War II dawn was largely dominated by the Cold War (until the fall of the Berlin Wall in 1989), as the United States and the Soviet Union (until its fall in 1991) largely "divided" the world into two (with the exception of non-aligned nations) spheres of influence with extraordinary, but ultimately restrained, competition for geo-political gains.

From an American perspective, the desire to achieve a particular regional gain often resulted in American support of unsavory regimes and leaders for the sole purpose of denying the Soviet Union a perceived gain. In the Cold War context, "victory" was piecemeal (if at all), largely limited by the doctrine of nuclear mutual assured destruction, and mainly devoid of principle other than perceived gain (however defined) at the expense of the other side.

The obsession with the other side led both the United States and the Soviet Union to costly military interventions. Brezhnev's decision to invade Afghanistan in 1979 was arguably the beginning of the end of the Soviet Union, and the Kennedy-Johnson decision to deploy the U.S. military to Vietnam in the early 1960's continues to have a dramatic impact on the U.S. budget, psyche, and armed forces. In both cases, the United States and the Soviet Union intervened in a conflict that was "not theirs." Soldiers were sent to countries whose language, culture, and conflict were foreign to them; the mission (other than to stay alive) was unarticulated beyond vague and confused rhetoric.

In November, 2005, I was invited to speak at the U.S. Military Academy; it was, without doubt, an extraordinary honor to speak with West Point cadets on a wide array of issues relevant to the laws of war and morality in armed conflict. In the context of my talk, I addressed the issue of "combat mission" and in particular the mission of the United States in Iraq; the topic was, obviously, relevant given that many of cadets, upon their commission would be posted in Iraq. I was, both in my talk and in subsequent conversations with cadets, struck by a profound lack of clarity and palpable vagueness in their articulation of the mission that awaited

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[5] Whether France's recent intervention in Mali signals a change in this trend remains to be seen. *See* Scott Sayare & Alan Cowell, *As Mali Fighting Persists, France Vows to Exit in Weeks*, N.Y. TIMES, Feb. 6, 2013, http://www.nytimes.com/2013/02/07/world/africa/france-mali-militants.html?_r=0.

them. Conversations with friends and colleagues who served in Vietnam suggest a disturbing similarity in this vein between the two conflicts.

Doubtlessly, a similar talk to Soviet cadets in 1980 would have resulted in the same ambiguity regarding their mission in Afghanistan; that conflict, ultimately, demonstrated the Red Army was little more than a brutal paper tiger.

4.   HUMANITARIAN INTERVENTION AND SOVEREIGNTY

Military intervention can occur for humanitarian purposes. NATO intervention (albeit after much tragedy and atrocity) in the former Yugoslavia is a clear example, as is U.S. intervention in Haiti in 1992. The philosophy behind humanitarian intervention is simple: it stems from the principle that "intervention for human protection purposes . . . is supportable when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator."[6] In other words, humanitarian intervention is based on the belief that "when a government turns savagely upon its own people" it becomes the responsibility of "[a]ny state capable of stopping the slaughter . . . to try to do so."[7]

The brutally repressive regime of President Assad (the elder) was made clear where more than ten thousand citizens were massacred when Assad ordered the Syrian army to squash a purported revolt against the regime in the Syrian town of Hama in 1982.[8] While the brutal nature of the regime (in addition to the Hama massacre) was well known and documented, successive U.S. Presidents turned a "blind eye" in the name of larger interests and goals. In the context of this pragmatic policy, President Assad brutalized his people while negotiating with the United States. Simply put, Syrian domestic affairs were an internal matter that the United States chose to ignore while focusing on broader geo-political considerations.

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[6] INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT 16 (2001), *available at* http://responsibilitytoprotect.org/ICISS% 20Report.pdf.

[7] MICHAEL WALZER, JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS 101, 108 (4th ed. 2006).

[8] John Kifner, *Syrian Troops Are Said to Battle Rebels Encircled in Central City,* N.Y. TIMES, Feb. 12, 1982, at A1.

The U.S. "blind eye" policy regarding foreign governments' domestic policy—regardless of its repressive nature and inevitable human cost—reflects respect for the principle of national sovereignty. However, as documented above, the United States has repeatedly violated that principle when broader American interests are perceived to be at stake.[9] This brings us to the question: Why did the Obama Administration choose not to intervene in Syria in the spring and summer of 2011? How does the Obama Administration distinguish between Syria and Libya? Why did the extraordinary violation of human rights in the latter justify international intervention, whereas the massacre of innocent civilians in the former did not? With respect to Syria, the Obama Administration has limited its response largely to rhetoric. Secretary of State Clinton commented: "Syria's future is up to the Syrian people . . . but of course the efforts by the opposition to come together to organize in order to articulate a political agenda is an important part of political reform."[10]

In both Libya[11] and Syria[12] brutal regimes were deliberately torturing, imprisoning and killing their own citizens. In both cases, thousands of citizens were forced to flee their homes recognizing that the regime would brook no dissent and give open fire orders that enabled indiscriminate shooting by armed forces into crowds of individuals. In other words, both regimes were engaged in massacring their citizens. The power of social media contributed to enormous public scrutiny of both regimes.[13]

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[9] NIKKIE R. KEDDIE, MODERN IRAN: ROOTS AND RESULTS OF REVOLUTION 235 (2003) ("Carter followed no clear policy. . . . American military intervention was not a serious possibility given the united strength of Iran's revolutionary movement."); *see also* ROBERT A. PASTOR, EXITING THE WHIRLPOOL: U.S. FOREIGN POLICY TOWARD LATIN AMERICA AND THE CARIBBEAN (2d enlarged ed. 2001).

[10] Sebnem Arsu, *Clinton Chides Turkey on Rights Record*, N.Y. TIMES, July 16, 2011, http://www.nytimes.com/2011/07/17/world/middleeast/17turkey.html.

[11] David D. Kirkpatrick & C. J. Chivers, *Photos Found in Libya Show Abuses Under Qaddafi*, N.Y. TIMES, Apr. 5, 2011, http://www.nytimes.com/2011/04/06/world/africa/06libya.html?pagewanted=all.

[12] *See Syria 'State-Sanctioned Torture is Crime Against Humanity,'* BBC NEWS MIDDLE E., (July 3, 2012, 1:00 AM), http://www.bbc.co.uk/news/world-middle-east-18684443 (summarizing a Human Rights Watch report that documents the arbitrary arrests, torture, and enforced disappearances in Syria's underground prisons since March 2011).

[13] *See* William Halal, *The Arab Spring and the Technology Revolution*, WORLD FUTURE SOC'Y, (May 27, 2011), http://www.wfs.org/content/arab-spring-and-

In Libya, opponents of the regime took to the streets. Though uncertainty existed regarding the identity and nature of their organization, the Obama Administration[14] and NATO[15] decided to intervene militarily on their behalf. In a five-month period (April-August, 2011), the United States flew 5,316 sorties, including 1,210 airstrike missions and 101 Predator drone strike missions.[16] In addition, the United States was providing nearly 70% of the intelligence capabilities and refueling assets,[17] and by July 31, 2011, had spent over $896 million since intervention began.[18] The stated purpose of the military engagement was to force Gadhafi to either step down or leave Libya; that mission was accomplished.

However, there is an important dichotomy: an organized rebel group receives significant international military assistance while a largely unorganized opposition barely receives meaningless platitudes that accompany non-intervention in the face of extraordinary violations of human rights. Declarations that the

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technology-revolution (recognizing the major role information technology, namely social media, played in accelerating the Arab Spring).

[14] President Obama deployed U.S. military forces to Libya without receiving congressional authorization under the 1973 War Powers Resolution. *See* Charlie Savage & Mark Landler, *White House Defends Continuing U.S. Role in Libya Operation*, N.Y. TIMES, June 16, 2011, http://www.nytimes.com/2011/06/16/us/politics/16powers.html?pagewanted=all (remarking that "'U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve U.S. ground troops,'" rendering War Powers authorization unnecessary in the eyes of the Administration). *See also* Paul Starobin, Op-Ed., *A Moral Flip-Flop? Defining a 'War'*, N.Y. TIMES, Aug. 7, 2011, http://www.nytimes.com/2011/08/07/opinion/sunday/harold-kohs-flip-flop-on-the-libya-question.html?pagewanted=all (illustrating the issue of framing the Libyan intervention through a critical examination of Department of State Legal Adviser Harold Koh's position on the applicability of the War Powers Resolution).

[15] *See* Paula Newton, *NATO: Libya Mission Will Be to Protect, Not Arm*, CNN, (Mar. 28, 2011), http://articles.cnn.com/2011-03-28/world/libya.nato_1_nato-civilians-libya-mission?_s=PM:WORLD (last visited Jan. 23, 2013) (indicating that NATO's control of the Libyan operation increased during its early stages).

[16] *See* Devin Dwyer, *US Military Intervention in Libya Cost At Least $896 Million*, posted in *Political Punch*, ABC NEWS, (Aug. 22, 2011, 6: 43 PM), http://blogs.abcnews.com/politicalpunch/2011/08/us-military-intervention-in-libya-cost-at-least-896-million-.html (last visited Nov. 8, 2012) (tallying total cost as of Aug. 22, 2011).

[17] *See generally* Mark Benjamin, *The White House Hopes You Don't Google the War Powers Resolution*, TIME U.S. (June 16, 2011), http://nation.time.com/2011/06/16/white-house-please-dont-goolge-the-war-powers-resolution/ (providing a detailed overview of American operations in Libya).

[18] *See* Dwyer, *supra* note 16.

Syrian regime has lost legitimacy are true, but they are just that—declarations. Devoid of intervention, such declarations are akin to whistling in the wind. The essence of the Obama Administration's policy with respect to Syria is mere words, which, needless to say, is a far cry from its aggressive intervention policy with respect to Libya.

Herein lies the rub: a compelling argument can be made that unorganized Syrians are in greater need of international intervention than were organized Libyan rebels. The United States and NATO have deliberately turned their backs on the citizens of one country while readily coming to the assistance of the citizens of another country. With this in mind, we turn our focus to humanitarian intervention.

As Professor Ryan Goodman asked, "Should international law permit states to intervene militarily to stop a genocide or comparable atrocity without Security Council authorization?"[19] According to Article 39, Chapter VII of the U.N. Charter, "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."[20]

While the U.N. authorized the use of military force against Libya,[21] it has not done so regarding Syria.[22,23,24] Does that mean

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[19] Ryan Goodman, *Humanitarian Intervention and Pretexts for War*, 100 AM. J. INT'L L. 107, 107 (2006).

[20] U.N. Charter art. 39.

[21] *See* Jay Solomon, Adam Entous & Joe Lauria, *U.N. Clears Way for Attack on Libya*, WALL ST. J., Mar. 18, 2011, http://online.wsj.com/article/SB10001424052748703818204576206373350344478.html (noting that the U.N. Security Council authorized military force against Libyan leader Col. Gadhafi's security forces).

[22] *See U.N. Security Council Issues Statement Condemning Violence in Syria*, CNNWORLD (Aug. 3, 2011, 6:22 PM), http://www.cnn.com/2011/WORLD/meast/08/03/syria.unrest/index.html?hpt=hp_t1.

[23] *See UN Security Council Issues Statement Condemning Houla Massacre*, RT (May 28, 2012, 7:34 AM), http://rt.com/news/un-security-syria-houla-348/.

[24] *See UN Chief, Security Council Urge Restraint Amid Rising Tensions Along Syrian-Turkish Border*, UN NEWS CENTRE (Oct. 4, 2012), http://www.un.org/apps/news/story.asp?NewsID=43214#.UH82u650huI ("The members of the Council demanded that such violations of international law stop immediately and are not repeated. The members of the Security Council called on the Syrian

the United States cannot intervene in Syria? As Professor Goodman and others have written,[25] international humanitarian intervention raises legitimate questions regarding the pretext to "wage wars for ulterior motives."[26] From the perspective of international law, a discussion regarding international humanitarian intervention requires carefully analyzing the relationship between national sovereignty, international responsibility, and grave violations of human rights. The pretext argument suggested by Professor Goodman is of justifiable concern when examining specific examples of intervention; in the two examples discussed in this essay, the application of international humanitarian intervention principles reflects the inconsistency previously referenced.

Humanitarian intervention is an inherently complicated proposition, because it clearly implies both that nation state "A" is engaged in significant violations of the human rights of its own citizens, requiring nation state "B" and/or the international community to recognize that intervention is essential.[27] However, analysis of when intervention is deemed essential, and criteria justifying intervention suggest both lack of clarity and lack of objective standards and benchmarks.

The lack of clear criteria as to when intervention is justified, if not required, suggests that the question is one of interpretation,

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Government to fully respect the sovereignty and territorial integrity of its neighbors. . . .").

   [25] *See* Goodman, *supra* note 19 (arguing that, even though legitimate concerns to the contrary exist, legalizing unilateral humanitarian intervention can discourage wars with ulterior motives); *see, e.g.*, Jacob Katz Cogan, *The Regulatory Turn in International Law*, 52 HARV. INT'L L.J. 321, 322 (2011) (purporting that there has been an unnoticed change in international regulatory law allowing for states who treat their citizens improperly to come under international scrutiny); Jonah Eaton, *An Emerging Norm? Determining the Meaning and Legal Status of the Responsibility to Protect*, 32 MICH. J. INT'L L. 765, 784-94 (2011) (discussing humanitarian intervention); Nicolas Lamp, *Conceptions of War and Paradigms of Compliance: The 'New War' Challenge to International Humanitarian Law*, 16 J. CONFLICT & SECURITY L. 225, 225 (2011).

   [26] Goodman, *supra* note 19.

   [27] *See Learn about the International Coalition for the Responsibility to Protect*, INT'L COALITION FOR THE RESPONSIBILITY TO PROTECT, http://www.responsibilitytoprotect.org/index.php/about-coalition (last visited Jan. 23, 2013) (detailing an effort to impose a normative standard for demanding preventative intervention).

subject to specific circumstances and particular interests.[28] In that vein, then, the question is: why does the United States not determine that the actions of the Syrian government justify international humanitarian intervention? As of July 2012, the Syrian death toll was estimated to exceed 17,000 people.[29] At the time of writing, estimates of deaths in the conflict vary, with figures ranging from 28,000[30] to 33,000.[31] In addition to the rising death toll, up to 28,000 people have been reported missing or in military or militia custody since the protests began.[32] The United

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[28] *Compare* Chris Borgen, *The "Libya and Humanitarian Intervention" Meme*, OPINIO JURIS (Feb. 24, 2011, 7:07 PM), http://opiniojuris.org/2011/02/24/the-libya-and-humanitarian-intervention-meme (compiling internet commentary on Anne-Marie Slaughter's referencing humanitarian intervention in Libya), *and* Asli Ü. Bâli & Ziad Abu-Rish, *On International Intervention and the Dire Situation in Libya*, JADALIYYA (Feb. 23, 2011), http://www.jadaliyya.com/pages/index/725/on-international-intervention-and-the-dire-situation-in-libya (comparing Libya with Tunisia and Egypt and cautioning against intervention), *with* Issandr El Amrani, *A Different Take On Foreign Intervention in Libya*, ARABIST (Feb. 24, 2011, 09:02 AM), http://www.arabist.net/blog/2011/2/24/a-different-take-on-foreign-intervention-in-libya.html (opposing foreign military intervention), *and* Shadi Hamid, *It's Time to Intervene*, SLATE (Feb. 23, 2011, 1:30 PM), http://www.slate.com/id/2286184 (giving the international community options for supporting a regime change in Libya).

[29] *See Syria Crisis: Death Toll Tops 17,000, Says Opposition Group*, HUFFPOST WORLD (July 9, 2012, 8:51 AM), http://www.huffingtonpost.com/2012/07/09/syria-crisis-death-toll-17000_n_1658708.html.

[30] *See 'Massacre' Alleged as Syria Slams Outside 'Interference'*, CNN (Oct. 2, 2012, 1:52 AM), http://edition.cnn.com/2012/10/01/world/meast/syria-civil-war/?hpt=hp_t1 (referencing casualty figures stated by the Local Coordination Committees of Syria).

[31] *See Syria Conflict Death Toll at Least 33,000—NGO*, AGENCE FRANCE-PRESSE (Oct. 13, 2012, 6:46 PM), http://newsinfo.inquirer.net/288388/syria-conflict-death-toll-at-least-33000-ngo ("Violence in Syria has killed at least 33,082 people, most of them civilians . . . ."); *Syria Death Toll Nearly 30,000*, ALBAWABA (Sept. 20, 2012, 3:38 PM), http://www.albawaba.com/news/syria-death-toll-nearly-30000-443029 (citing Syrian Observatory of Human Rights figures); Erika Solomon, *Syrian Death Toll Now Tops 30,000: Activist Group*, REUTERS (Sept. 26, 2012, 11:15 AM), http://www.reuters.com/article/2012/09/26/us-syria-crisis-toll-idUSBRE88P12Y20120926 (citing a British-based Syrian monitoring group). [Editor's Note: by February, 2013, casualty estimates stood between 70,000 and 90,000. *Cf.* Ashley Fantz, *Syria Death Toll Probably at 70,000, U.N. Human Rights Official Says*, CNN (Feb. 13, 2013, 2:07 AM), http://edition.cnn.com/2013/02/12/world/meast/syria-death-toll ; *John Kerry: Syria Death Toll Could Be 90,000, Saudis Say*, HUFFPOST WORLD (Feb. 14, 2013, 4:53 PM), http://www.huffingtonpost.com/2013/02/14/john-kerry-syria-death-toll-90000_n_2687712.html.]

[32] *See Syria Crisis: 28,000 Disappeared, Say Rights Groups*, BBC NEWS MIDDLE E. (Oct. 18, 2012, 6:29 AM), http://www.bbc.co.uk/news/world-middle-east-

Nations reported that 10,000 persons were arbitrarily detained between mid-March and late June 2011,[33] and as many as 40,000 to 80,000 people are being held in detention today.[34]

In fact, a high-level U.N. human rights team reported finding systematic human rights violations by the Syrian government, including summary executions, prisoner torture, and child targeting during the government's crackdown on opposition protestors.[35] Based on its findings, the U.N. team recommended that Syria be referred to the International Criminal Court for prosecution of the alleged atrocities.[36] By comparison, the Libyan death toll was estimated at more than 1000 on February 23, 2011,[37] only weeks before the U.N. authorized intervention in Libya and NATO began flying sorties over the country.

Precisely because international law does not articulate either normative or architectural standards as to when international humanitarian intervention is justified, national leaders arguably have a responsibility to act.[38] For a variety of reasons, the

19986806 (describing reports by various Syrian human rights groups that say disappearances are rampant and part of a deliberate strategy to terrorize people).

[33] *See* U.N. High Comm'r for Human Rights, Preliminary Report of the High Commissioner on the Situation of Human Rights in the Syrian Arab Republic, ¶ 7, U.N. Doc. A/HRC/17/CRP.1 (Jun. 14, 2011) (reporting that some women and children were among the detained, but human rights defenders, political activists, and journalists were targeted).

[34] *See Syrian Activists Call for Release of Detainees*, BBC NEWS MIDDLE E. (Jan. 20, 2012, 11:22 AM), www.bbc.co.uk/news/world-middle-east-16646806 (reporting on Syrian activists' protests against the detention of thousands of people).

[35] *See* U.N. Human Rights Council, Rep. of the U.N. High Comm'r for Human Rights on the Situation of Human Rights in the Syrian Arab Republic, ¶¶ 69–91, U.N. Doc. A/HRC/18/53 (Sept. 15, 2011). *See also* Frank Jordans, *U.N. Syria Mission Finds Systematic Human Rights Violations*, HUFFPOST WORLD (Aug. 18, 2011, 7:16 PM), http://www.huffingtonpost.com/2011/08/18/un-syria-human-rights_n_930577.html (summarizing the findings and recommendations of the U.N. mission).

[36] U. N. Human Rights Council, *supra* note 35, ¶ 94(c).

[37] *See* Rachel Donadio, *Italy Says Death Toll in Libya Is Likely Over 1,000*, N.Y. TIMES (Feb. 23, 2011), http://www.nytimes.com/2011/02/24/world/europe/24italy.html (noting that although the exact number of deaths in Libya is difficult to estimate, reports that over 1000 civilians have been killed appear accurate).

[38] *See* Irwin Cotler & Jared Genser, *Libya and the Responsibility to Protect*, N.Y. TIMES (Feb. 28, 2011), http://www.nytimes.com/2011/03/01/opinion/01iht-edcotler01.html?_r=2 ("At the U.N. World Summit in 2005, more than 150 heads of state and government unanimously adopted a declaration on the responsibility

international community has determined—whether actively or passively—that the massacre of the Syrian population by the Assad government does not justify international humanitarian intervention. While the human rights violations occurring on a daily basis do not compare to the horrors of Rwanda,[39] Kosovo,[40] or Sierra Leone,[41] they are not less compelling than the events transpiring in Libya.[42]

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to protect authorizing international collective action 'to protect [a state's] population from genocide, war crimes, ethnic cleansing and crimes against humanity' if that state is unable or unwilling to protect its citizens, or worse, as in the case of Libya, if that state is the author of such criminality."); Jayshree Bajoria, *Libya and the Responsibility to Protect*, COUNCIL ON FOREIGN REL. (Mar. 24, 2011), http://www.cfr.org/libya/libya-responsibility-protect/p24480 (stating that if a state fails to protect its citizens from genocide or other war crimes, it becomes the international community's responsibility to do so); *Crisis in Syria*, INT'L COALITION FOR THE RESPONSIBILITY TO PROTECT, http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria (last visited Nov. 17, 2012) (discussing alleged human rights violations by the Syrian government and calling for intervention by the international community).

[39] *See* BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011: RWANDA 34 (2011), *available at*, http://www.state.gov/documents/organization/186443.pdf (recalling that between 750,000 and 1 million Rwandans were slaughtered during the 1994 genocide).

[40] The death toll in Kosovo was estimated between 5,000 and 12,000. *See Q & A: Counting Kosovo's Dead*, BBC NEWS (Nov. 12, 1999, 15:36 GMT), http://news.bbc.co.uk/2/hi/europe/517168.stm. For a more recent report, see BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2009: KOSOVO, *available at* http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136039.htm (highlighting the lingering human rights impact from the 1999 conflict).

[41] *See* BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2009: SIERRA LEONE, *available at* http://www.state.gov/j/drl/rls/hrrpt/2009/af/135975.htm (examining Sierra Leone's failure to respect human rights in areas such as torture and detention center conditions).

[42] *See, e.g.*, *UN Envoy Warns Over Syria*, IAFRICA.COM (Oct. 17, 2012, 5:52 PM), http://news.iafrica.com/worldnews/822235.html (describing the global impact of the Syrian conflict, negotiations for a truce and ceasefire, and possible international intervention); Raghida Dergham, *Only Turkey's Intervention Can Cause a Shift in the Syrian Crisis*, HUFFPOST WORLD (Oct. 12, 2012, 12:16 PM), http://www.huffingtonpost.com/raghida-dergham/only-turkeys-intervention_b_1961595.html (discussing the various stances of major states regarding intervention in Syria); *UN Chief Warns of Escalating Syria Conflict Dangers*, VOICE OF AM. (Oct. 8, 2012, 1:45 PM), http://blogs.voanews.com/breaking-news/2012/10/08/un-chief-warns-of-escalating-syria-conflict-dangers-3/ (describing Turkey's retaliatory action against Syria and the latest conflict information).

5.   GEO-POLITICS

Geopolitics imposes on national leaders the recognition that their decisions are not made in a vacuum. Quite the opposite, for the financial and security interdependence between nation-states represents the reality of the global community. To that end, viewing the four issues below as the four legs of geo-politics significantly facilitates understanding the relationship between the nation-state and the global community.

Effective geo-politics requires a confluence between the theoretical and the practical. The former demands that national leaders understand a wide range of issues including international law, international relations, finance, geography, and the limits of military power. This requires the implementation of these distinct disciplines with sensitivity both to domestic politics and the global community while recognizing the importance of tactical and strategic issues alike. Though, *prima facie,* tactical and strategic considerations suggest a dissonance, effective national leaders are able to incorporate both in the decision-making process.

Tactical thinking reflects national security decision-making focused solely on the immediate security impact, whereas strategic thinking reflects keen understanding of and appreciation for the long term, devoid of immediate results and impact. Perhaps circumstances justify, or dictate, a narrow national security perspective; while that may be the case, effective leadership demands the ability to weigh and broadly consider the ramifications of particular decision points. A leader who cannot consider issues beyond the immediate is incapable of engaging in effective geo-politics. A leader whose focus is exclusively tactical is incapable of identifying future national security threats and risks.

A global community implies enhanced cooperation across a wide range of issues including finance, security, border control, environment, health care, and natural resources. National leaders, understandably, primarily emphasize domestic considerations. Nevertheless, effective geo-politics suggest national interests are significantly enhanced when international affairs are factored into domestic decision-making. That is, rather than focusing primarily on its own particular and specific needs, geo-politics implies recognition that global markets and global security enhance domestic economy and domestic security alike.

While international law places great emphasis on sovereignty, geo-politics and recognition of world order implies limits on actions individual nation-states may take. This limit, whether self-imposed or externally imposed, seeks to avert conflict with unpredictable ramifications. In addition, respect for the principle of sovereignty is minimized in the context of humanitarian intervention. After all, the very act of intervention, regardless of its basis, implies violating the sovereignty of a nation-state.

Decisions to intervene in the domestic affairs of a nation-state imply violation of national sovereignty. Conversely, not intervening in the face of human rights violations reflects unwillingness to interfere in domestic matters of a sovereign nation though consequences of the decision are clear. The dilemma whether, when, and how to engage in humanitarian intervention is directly related to geo-politics: in many ways it highlights the tension in balancing sovereignty with humanitarian-predicated intervention. This tension, much like determining how to most effectively respond to the Iranian threat, is at the heart of contemporary geo-politics.

The decision whether to intervene requires discerning the proper role of the international community regarding domestic issues of a sovereign state. With the exception of refugees seeking safe haven in a bordering country, domestic human rights violations do not have impact beyond the borders of the state engaged in rights violations. That is in direct contrast to the threat potentially posed to the international community by a nuclear Iran. Nevertheless, both paradigms reflect cutting edge issues relevant to contemporary geo-politics.

6.   LOOKING FORWARD

The question, then, is: What is the responsibility of the international community to civilians massacred by their own government? It goes without saying that some killed by the Assad regime are engaged in armed conflict with Syrian forces. Of that, there is no doubt. However, the massacre of women and children, many of whom were tortured, must be distinguished from the killing of those firing on Syrian soldiers.[43] The consistent refusal,

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[43] *See* Frida Ghitis, *Why the Syrian Regime is Killing Babies,* CNNOPINION (August 16, 2012, 2:20 PM), http://www.cnn.com/2012/05/31/opinion/ghitis-

best described as brazen, unrelenting, and deliberate, to distinguish between innocent civilians and legitimate targets is a clear violation of international law. Nevertheless, the international community has chosen to ignore the months-long campaign conducted by the Assad regime. This is not the first time the world has turned its back on innocent civilians killed by their own regime; nor, tragically, will it be the last.[44] It is equally predictable that the international community's hackneyed clichés regarding the Syrian civil war will be re-articulated in the next humanitarian crisis. In both cases, the present Syrian conflict and in future conflicts, the international community will fail in its responsibility to protect innocent people.   Re-articulated, the international community will limit itself to phrases devoid of substance and significance; at best, the oft-repeated clichés resemble a bad rerun providing neither relief nor hope for an all-too vulnerable civilian population.

In many ways, it is a pattern that repeats itself time after time, just as the cliché responses sound like a bad rerun.   While discussions are held and platitudes uttered (if not muttered), the killing continues unabated.   The important key, from our perspective, is why. "It is not our fight as we don't have a dog in the fight" or "we can't be everywhere" or "why doesn't someone else step in" are understandable responses as they resonate with a public focused on the current economic crisis.[45] It is not by chance that Syria has barely registered on the radar screen in the recent U.S. Presidential election; after all, the two candidates largely ignored Afghanistan, where American military personnel are directly in harm's way.   In addition, Syria is a resource-poor

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syria-killing-children/index.html (reporting that forces loyal to President Bashar al-Assad killed at least 108 people, including women and children).

[44] *See* Jeb Sharp, *Intervention in Libya, Why Not Darfur?*, PUB. RADIO INT'L (April 6, 2011, 2:25 AM), http://www.pri.org/stories/world/africa/intervention-in-libya-why-not-darfur.html (noting that the United Nations deployed peacekeeping forces in Darfur, but perhaps only when it was too late).

[45] *See* Doug Bandow, *No to Intervention in Syria*, AM. SPECTATOR (June 8, 2012, 6:09 AM), http://spectator.org/archives/2012/06/08/no-to-intervention-in-syria (arguing that "the U.S. needs peace, not more wars"); Gary C. Gambill, *Intervention Won't Save Syria*, NAT'L INTEREST (Sept. 27, 2012), http://nationalinterest.org/commentary/humanitarian-intervention-wont-save-syria-7501 ("Absent a workable plan for saving lives or a compelling strategic rationale for intervention, the United States should stay out of the conflict" and use other measures to limit the potential for atrocity).

country (meaning, no oil) with no clearly articulated or understood importance from the perspective of U.S. interests.[46] In other words, why should we give a damn?

Those who dismiss the national interest argument are not at fault; in large part, the Obama Administration has failed to make a compelling case either for or against intervention, and the media have, largely, failed to force the Administration to articulate its rationale for non-intervention.[47] While the massacre of more than 21,000[48] Syrian civilians raises legitimate questions regarding humanitarian intervention and the limits of sovereignty, there are, naturally, additional considerations essential to this conversation. Those additional considerations, in conjunction with humanitarian intervention principles, provide much food for thought with respect to future dilemmas and paradigms.

Re-articulated: regimes that massacre their civilians will continue to haunt mankind; history very clearly shows this.[49] The question is whether humanitarian obligations, however defined and implemented, dictate government policy or whether geo-political considerations and calculations rule the day. In many ways, the answer is in the question. Were nation-states guided

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[46] *See* Chris Mansur, *Why NATO Cannot Deal with Syria, in the Same Way as Libya*, OILPRICE (July 2, 2012, 8:44 PM), http://oilprice.com/Geopolitics/Middle-East/Why-NATO-Cannot-Deal-with-Syria-in-the-Same-Way-as-Libya.html (explaining that because Syria does not have a large oil industry, foreign countries do not have any long-term oil interests in that country).

[47] For an important insight into the larger nature of the conflict in Syria, see David E. Sanger, *Rebel Arms Flow Is Said to Benefit Jihadists in Syria*, N.Y. TIMES, Oct. 14, 2012, http://www.nytimes.com/2012/10/15/world/middleeast/jihadists-receiving-most-arms-sent-to-syrian-rebels.html?nl=todaysheadlines&emc= edit_th_20121015 (describing international involvement in the Syrian conflict, such as arms shipments, access to intelligence, and U.S. concerns should the conflict lead to a regime change); Sebnem Arsu & Michael Schwirtz, *As Tension Escalates, Turkey Issues a Ban on All Syrian Aircraft*, N.Y. TIMES, Oct. 15, 2012, http://www.nytimes.com/2012/10/15/world/middleeast/turkey-bans-all-syrian-aircraft-as-tension-over-war-escalates.html?nl=todaysheadlines& emc=edit_th (describing Turkey's response to Syrian aircraft and other military incursions onto Turkish soil and the latest incidents in the Syrian conflict).

[48] *See Syrian Death Toll Now Tops 30,000*, *supra* note 31.

[49] *See generally,* ROBERT PASTOR, EXISTING THE WHIRLPOOL: U.S. FOREIGN POLICY TOWARD LATIN AMERICA AND THE CARIBBEAN (2ND .ED, 2001); Peter S. Michaels, *Lawless Intervention: United States Foreign Policy in El Salvador and Nicaragua*, 7 B.C. THIRD WORLD L.J. 223 (1987) (describing a history of government massacres of civilians in Latin America).

solely by humanitarian principles, then massacres committed by nation-states against their own civilian populations would have been mitigated, even at the risk of violating sovereignty. However, nation-states are—as history repeatedly teaches us—guided by an additional set of principles best described as self-interest and geo-politics.

To the point: a powerful combination of factors—the extraordinary volatility of the Middle East, the uncertainty with respect to Iran's nuclear development, the heightened tensions between Syria and Turkey, and the 'Egypt to where' uncertainty—suggest that the massacre in Syria takes a backseat to larger, more combustible considerations. While those four uncertainties rightly weigh on the minds of decision-makers, the practical result of disregarding the massacre in Syria—meaningless platitudes notwithstanding—is that thousands of people will be killed in the days and months ahead. While not, evidently, of geo-political significance, it raises profoundly important questions regarding the practical essence of humanitarian intervention and whether age-old historical patterns will inevitably repeat themselves.

It has been suggested to me that intervention in Syria is a logistical and operational nightmare because of uncertainty regarding the nature of the forces in conflict with the Assad regime. Perhaps. But, perhaps not. The sense is that operational difficulty is an all-too-comfortable rationalization for an uncomfortable reality: cold geo-political realities trump humanitarian considerations. Articulation of this standard would reflect maturity on the part of national leaders who are clearly not guided either by the spirit or letter of humanitarian intervention. The decision not to intervene is not predicated by concerns regarding sovereignty; rather, as the title to this Essay suggests, humanitarian intervention and sovereignty are under the umbrella of geo-politics. That is the essence of contemporary diplomacy and international relations. While not distinct from innumerable historical examples, perhaps the time has come for national leaders to stand up and proclaim that geo-politics trumps the principles of intervention in international law.

A final thought: the tipping point towards intervention and military action may come, rather ironically, as a result of increased tension, activity, and violence along the border between Syria and Turkey. The U.N. and Arab League have warned that this isolated violence can easily turn into a larger regional conflagration. If Turkey is attacked outright, or otherwise under assault, the U.N.

would arguably be forced to defend a member nation; this action would be defined as defense of a fellow member nation rather than an act of humanitarian intervention.[50]

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[50] *See supra* note 42.