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# Features of UN Sanction Regime

from Responsibility to Protect to Counter Terrorism<sup>1</sup>

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## Abstract

In January 2011, a series of “Arab Spring” movements involved Libya and Syria. Barry Buzan called this the “spillover effect.” Did the United Nations (UN) use effective coping methods with regard to the spillover phenomenon of such internal warfare? In this manuscript, I will discuss the sanctions which were imposed in response to each “Arab Spring” by the UN. The United Nations Security Council (UNSC) decided to impose sanctions on Libya under the name of “Responsibility to Protect: RtoP,” and to Syria under the label of “Counter Terrorism.” “RtoP” is the argument which considers that if a nation cannot fulfill its responsibility to protect people’s human rights, how should international society proceed to protect a large number of people whose human rights are violated? The argument behind “Counter Terrorism” is as a way of controlling the expanding transnational activities of terrorism. In other words, the UN imposed sanctions on both Libya and Syria for the purpose of dealing with non-state actors. Considering that the UN is an organization which specializes in dealing with nations, could it properly deal with the problems of non-state actors? The point in this manuscript is to examine the gap between the problems which non-state actors produce and the measures which a cross-national organization, the UN, takes from the viewpoint of a sovereign state.

## Preface

The “Arab Spring,” which spread in the manner of a domino effect at the end of 2010, first took place in Tunisia and gradually stretched to Egypt, the Great Socialist People’s Libyan Arab Jamahiriya (Libya), and the Syrian Arab Republic (Syria). It began in Tunisia with the incident of an unemployed man trying to immolate himself as a demonstration against the high unemployment rate and it expanded to a denunciation of corruption and the violation of human rights connected to the president.<sup>2</sup> It eventually became an anti-establishment movement. The Tunisian government used live ammunition to quash the protest demonstration; however, this action only added fuel to the fire. The government troops and police killed not only demonstrators but also civilians and laborers near the scene. By 10 January 2011, the number of deaths announced by the Department of Interior reached 23, but the actual number

of deaths was said to be over 50.<sup>3</sup> The incident came to be called the “Jasmine Revolution,” and it was only brought to an end when the Tunisian president, Zine El Abidine Ben Ali, resigned and defected.<sup>4</sup> In Egypt, an anti-government demonstration that was inspired by the “Jasmine Revolution” occurred on 14 January 2011. By 25 January, it had become a large-scale event with the number of deaths almost surpassing 100.<sup>5</sup> As a result, the Egyptian president, Muhammad Husnī Mubārak, announced his resignation on 11 February.<sup>6</sup>

In January 2011, a series of “Arab Spring” movements involved Libya and Syria. Barry Buzan called this the “spillover effect.”<sup>7</sup> Did the United Nations (UN) use effective coping methods with regard to the spillover phenomenon of such internal warfare? In this manuscript, I will discuss the sanctions which were imposed in response to each “Arab Spring” by the UN.<sup>8</sup> The United Nations Security Council (UNSC) decided to impose sanctions on Libya under the name of “Responsibility to Protect: RtoP,”<sup>9</sup> and to Syria under the label of “Counter Terrorism.” “RtoP” is the argument which considers that if a nation cannot fulfill its responsibility to protect people’s human rights, how should international society proceed to protect a large number of people whose human rights are violated? The argument behind “Counter Terrorism” is as a way of controlling the expanding transnational activities of terrorism. In other words, the UN imposed sanctions on both Libya and Syria for the purpose of dealing with non-state actors. Considering that the UN is an organization which specializes in dealing with nations, could it properly deal with the problems of non-state actors? The point in this manuscript is to examine the gap between the problems which non-state actors produce and the measures which a cross-national organization, the UN, takes from the viewpoint of a sovereign state.

## 1. Libya and RtoP

In October 2010, a revolution happened in Tunisia. This popular anti-government uprising in Tunisia was called the “Arab Spring” as protesters throughout the Middle East began to rise up against their governments in support of more democratic reforms.<sup>10</sup> The Tunisia revolution for democratization spread to Egypt, Libya, Syria, and other Middle East countries. Tunisia was in a state of unrest and protesters used blogs, Facebook, Twitter, WikiLeaks documents, YouTube and other methods to mobilize themselves and report what was going on. It was the so called “Twitter Revolution.”<sup>11</sup>

On 15 February 2011, this “Twitter Revolution” spread to Libya. The government of Libya responded forcefully by dispatching the national army to crush the unrest. Thirty-eight people were injured in the clashes, including 10 security officials. On 17 February 2011, Libyan protesters that were seeking to oust the longtime leader Muammar Qadhafi (Qadhafi, Muammar Mohammed Abu Minyar) defied the crackdown and took to the streets on what activists dubbed a “day of rage.” There were reports that more than a dozen demonstrators had been killed in clashes with pro-government groups.<sup>12</sup> By 20 February, it was estimated that 600 to 700 people had been killed.<sup>13</sup> On 22 February, Qadhafi appeared on television and made his first major speech since the unrest began. He promised that he would “cleanse Libya house by

house,” and “if matters require, we will use force, according to international law and the Libyan constitution.”<sup>14</sup>

On 25 February, the UN Secretary General Ban Ki-moon called on the Security Council to immediately consider concrete steps to stop the killing in Libya.<sup>15</sup> An interim opposition government was established on 26 February under the leadership of former Justice Minister Mustafa Abdul Jalil, who was the first government official to break ties with Qadhafi. The government was renamed the Transitional National Council.<sup>16</sup> On the same day, the UNSC voted unanimously to adopt a resolution to impose sanctions against the Libyan authorities.<sup>17</sup> The following nine points are mentioned in this resolution.<sup>18</sup>

- 1) RtoP: This is the first time for a resolution of the UNSC to refer to the phrase “RtoP” in its preamble; it mentions recalling the Libyan authorities’ responsibility to protect its population.
- 2) Chapter VII: The Council decided that the situation in Libya fell under Chapter VII of the Charter of the UN and took measures under Article 41 of this Chapter.
- 3) Immediate end of the violence: The Council demanded an immediate end to the violence and called for steps to fulfil “the legitimate demands of the population.”
- 4) International Criminal Court referral: The UNSC decided to refer the situation in Libya since 15 February 2011 to the Prosecutor of the International Criminal Court.
- 5) Arms embargo: “All Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to the Libyan Arab Jamahiriya, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related material of all types, including weapons and ammunition.”
- 6) Travel ban: The Council imposed a travel ban on President Muammar Al-Qadhafi and other senior figures in his administration, including some members of his family and other relatives.
- 7) Asset freeze: The Council obligated all UN Member States to “freeze without delay all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities.”
- 8) Sanction Committee: The Council used the word “Decides” to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council.
- 9) Humanitarian assistance: The Council called for the safe passage of humanitarian and medical supplies, and humanitarian agencies and workers into Libya and demanded the immediately lifting of restrictions on the media.

After the adoption of the UNSC resolution, Qadhafi’s government attempted to retake Gharyan and Zliten. On 6 March, Qadhafi recaptured coastal cities en route to Benghazi. On 12 March, loyalist forces launched another attack against Misrata. The next day, loyalist forces were still fighting rebels on the outskirts, while tank shelling hit the city. On 13 March, regime forces attacked Brega and managed to retake most of the city. On 14 March, loyalist forces retook Zuwara. Four rebels were killed during the battle. On that day, loyalists held the

oil facilities and rebels held the residential districts. By 15 March, rebel forces had been cleared from these areas and retreated towards Ajdabiya. Ajdabiya was the last rebel-held city before Benghazi and had been subject to loyalist airstrikes for three days.<sup>19</sup> The Qadhafi government appeared intent on retaking all territory from the opposition despite growing international pressure.<sup>20</sup> The Arab League requested that the Council impose a no-fly zone against Qadhafi's air force which had been pounding cities held by his opponents.<sup>21</sup> On 17 March, the UNSC adopted another resolution regarding the situation in Libya.<sup>22</sup> In this resolution, the UNSC condemned much more strongly than the former resolution on 26 February, the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions. The main points of the resolution were as follows.

- 1) Protection of Civilians: The UNSC authorized the use of force in Libya to protect civilians from attack, specifically in the eastern city of Benghazi.
- 2) No-Fly Zone: The UNSC used the word "Decides" to establish a ban on all flights in Libyan airspace in order to help protect civilians.
- 3) Panel of Experts: The UNSC requested that the Secretary General create for an initial period of one year, in consultation with the Committee, a group of up to eight experts ("Panel of Experts").

The following four points are the same as the former resolution 1970, but the tone of this resolution has been made much stronger: 4) Arms embargo; 5) Ban on flights (including travel ban); 6) Asset freeze; and 7) Designation criteria of the above mentioned sanctions. In addition to the above seven points, Ban Ki-moon said that in adopting Resolution 1973, the Council had placed great importance on an appeal to the League of Arab States for action.<sup>23</sup>

Under the new notion of RtoP, the UNSC intervened in the Libyan civil war which was the first time for the UN to apply this notion. Was it successful or not?

From two points, the arms embargo and the no-fly zone, we can evaluate the effect of the RtoP notion. The most important feature of RtoP is its people-centered approach. Could the UN and the international community successfully protect people in Libya?

First, was the arms embargo an appropriate action for the notion of RtoP? On 26 February 2011, the UNSC decided to implement an arms embargo against Libya which was only about 10 days after the first uprising had occurred. The rebels were not prepared to fight against the Qadhafi government and did not have enough weapons to protect themselves. But after this UNSC resolution, they did not have any opportunity to acquire such weapons. On the other hand, as the official ruler of Libya, Muammar Qadhafi had a national defense force with solid and stable military equipment and plenty of weapons. The UNSC's arms embargo resolution did not help the rebel side but the Qadhafi government. Was it an appropriate measure for RtoP?

Second, was the no-fly zone really helpful for people on the ground? At the request of the Arab League, the UNSC established a no-fly zone, banning all flights in Libyan airspace in order to help protect civilians. NATO, French, British and US air forces attacked Libya. Is

RtoP a notion for a people-centered approach? By invoking the UN, a council of opposition leaders in Libya made up of lawyers, academics, judges and other prominent figures sought to draw a distinction between such airstrikes and foreign intervention, which the rebels said they emphatically opposed.<sup>24</sup> Furthermore, these foreign air forces frequently bombed innocent citizens by mistake.<sup>25</sup> NATO Secretary General, Anders Fogh Rasmussen said, “We can’t protect civilians in Libya effectively if we are not prepared to take out critical military units on the ground that can be used to attack civilians.”<sup>26</sup> A no-fly zone approach was not a new measure for the UNSC but is not in line with the notion of RtoP. The most important issue for RtoP is to protect people on the ground.

By 22 August, it was believed that Tripoli had largely fallen to rebel forces which poured into the city from outside with little resistance from Qadhafi’s troops. In effect, Qadhafi’s government had collapsed and the opposition had won the civil war. Qadhafi himself escaped from Tripoli but was found and killed on 20 October. It is doubtful if this is a successful example of the implementation of RtoP.

In the future, if the UN imposes sanctions in the name of RtoP, the UNSC would be required to devise sanctions from the viewpoint of protecting human rights which are non-state actors in accordance with the intentions suggested by the proper standards of RtoP.

Thereupon, I would like to enumerate two distinctive features of RtoP. Firstly, within the UN’s activities of keeping peace and safety, the concept of RtoP has its focus on considering countermeasures against genocide, war crimes, ethnic cleansing and crimes against humanity. These four problems should be dealt with as a priority by the UN for maintaining international peace and security. The concept of RtoP can be described as a standard which is effective in claiming what the UN’s focus on international society should be. A second point is that the concept of RtoP is extracted from the context of human security which has a human-centered viewpoint.

The next problem I would like to examine is that arguments from the UNSC are always based upon what a nation should provide to fulfill its RtoP. As previously stated, the concept of RtoP emphasizes a human-centered viewpoint. Being influenced by the word “protection,” arguments are made not regarding the target entities of RtoP but how the responsible organizations should perform. When the UN takes action concerning RtoP, it is emphasized that the UN respects the intentions and roles of regional and sub-regional international organizations. Also, the importance of forming partnerships between these regional or sub-regional international organizations and the UN is taken into account. In a persistent manner, the target entities of RtoP are the people who need protection. However, it can be argued that the UN only focuses on the intentions of the regional and sub-regional international organizations, and because those organizations are much closer to troubled areas, the UN only provides security which centers on those organizations.

The reason why the concept of RtoP is significant as a standard is because the standard itself provides a human-centered viewpoint. The UN always faces challenges when it is involved in the structural problems of countries which have internal conflicts. On the other

hand, if this problem is approached from a human-centered viewpoint, the principle of non-intervention in domestic matters will no longer be an obstacle for the UN to endeavor to maintain peace and security. Using the example from Libya, if it had pursued RtoP in a real sense, the UN should have not quit taking this stance. If the UNSC really wanted to save the people in Libya, it should have looked at the situation from their viewpoint and not have thought about an arms embargo or setting a no-fly zone. It would be improper to judge that the concept of RtoP in Libya was a failure in theory. The major problem was that, even though the UNSC made reference to RtoP, the implementation measures being described in the written resolution lacked the human-centered viewpoint which is fundamental to RtoP. In other words, it can be said that RtoP itself did not fail but the implementation measures taken by the UNSC were wrong. In that sense, the UN should not renounce the standard of RtoP but should continue pursuing it in good faith.

## 2. Syria

The “Arab Spring” also spread to Syria. Has the UN taken effective measures against the Syrian civil war which is now prolonged and becoming ever more complicated?

### 2.1 The Outbreak of the Syrian Civil War

Even though there are various arguments about the exact time of the start of the Syrian civil war,<sup>27</sup> social media such as Facebook and Twitter were involved in the background in the same way as in Tunisia, Egypt and Libya. “Syrian Anger Days” were planned for 4 and 5 February 2011 on these social media websites.<sup>28</sup> There were several early indications of unrest such as a demonstration against the government of Libya in which approximately 200 people gathered around the Embassy of Libya in Damascus on 22 February.<sup>29</sup> On 15 March, thousands of protesters gathered in major cities in Syria such as Al-Hasakah, Daraa, Der Zor and Hummer and clashed with security forces.<sup>30</sup> These incidents gathered momentum and the Syrian civil war spread throughout the country. On 18 March, after Friday prayers, the severest riot for ten years, called the “Day of Dignity,” occurred. The security forces fired on demonstrators and killed at least three people. The people shouted “God, Syria, Freedom!” as they protested against the corruption of President Bashar al-Assad and his family.<sup>31</sup> The protesters demanded the release of all political offenders, the trial of those who had fired at and killed protesters, the abolition of Syria’s 48-year-old emergency law, more freedoms, and an end to pervasive corruption.<sup>32</sup> On 25 March, tens of thousands of people took to the streets across the country to protest. The government troops fired at citizens who were demonstrating peacefully. In Sanamayn, a demonstration by 27,000 people was held and at least 20 people were killed.<sup>33</sup> After that, the security forces continued to fire at people holding peaceful demonstrations and many lives were lost.<sup>34</sup> In consideration of such affairs, the Secretary General of the UN, Ban Ki-moon, telephoned President Assad and told him that killing peaceful protesters was not permissible, and that Assad should investigate the facts.<sup>35</sup> According to the UN Commission on Human Rights, it was reported that the number of deaths reached 2,000 by 23 August.<sup>36</sup>

## 2.2 The Security Council and the Developing Situation

Even though the situation was becoming worse and worse, the UNSC could not take any effective measures. On 27 September 2011, the UK, France, Germany and Portugal submitted a draft resolution to the UNSC condemning the Syrian government,<sup>37</sup> but it was denied by vetoes from Russia and China on 4 October.<sup>38</sup> In contrast with the thoughts of western countries that the problems in Syria were the violations of human rights and the killing of civilians by government troops, the Russian government thought that Assad's regime was the key to stabilizing Syrian affairs. Other possible reasons for the veto by Russia are that Russia has a naval base (Tartus) in Syria and that the Assad regime is the only reliable ally which Russia has in the Middle East. It can be said that China exercised its veto out of a fear that similar demonstrations would occur within its borders.<sup>39</sup>

While the UNSC was unable to take any effective measures, the Arab League presented a peace proposal to Syria which responded positively.<sup>40</sup> However, since the situation did not improve, the Arab League held an urgent conference on 16 November about Syria's situation. The Arab League decided to suspend Syria's status as a member nation, to impose both economic and political sanctions, and to supervise how Syria implemented the peace proposal. The Arab League also asked the UNSC to adopt the same resolution.<sup>41</sup>

Since the UNSC could not take matters further because of the Russian and Chinese vetoes, the UN discussed the matter at the General Assembly where issues are decided by majority vote. In December 2011, the General Assembly denounced Syria's violation of human rights and adopted a resolution that demanded the Syrian government stop the violations immediately and follow the plan of action presented by the Arab League (there were 22 approvals, 13 objections, and 41 countries abstained from voting, including Russia).<sup>42</sup> On 4 February 2012, the UNSC presented another resolution which denounced the Syrian government for violating human rights,<sup>43</sup> but again the resolution was rejected by the Russian and Chinese vetoes.<sup>44</sup> The resolution was proposed not only by western countries such as the US, the UK, France and Germany but also by Arab countries such as Saudi Arabia, Jordan, the United Arab Emirates, Libya, Tunisia and Morocco. The resolution welcomed the diplomatic efforts made by Russia; nonetheless Russia still exercised its veto. Also, even though the resolution contained wording which denounced the government of Syria it did not refer to the UN imposed sanctions on Syria. Violations of human rights are very serious, and an investigation by the Office of the UN High Commissioner for Human Rights had found that about 5,000 people had been killed from March to December in 2011.<sup>45</sup> Properly speaking, a state of affairs in which the Assad regime does not protect human rights is strongly linked with the sovereignty of the country itself and a situation where a regime points guns and kills its own people should allow RtoP to be applied. However, regardless of the careful consideration of Russia's intentions and the omitted reference to the sanctions against Syria, the resolution proposed by the UNSC was not adopted.

The proceedings were then transferred to the General Assembly, and a resolution which demanded the Syrian government stop oppressing its people was decided by a majority of 137

affirmative votes.<sup>46</sup> Meanwhile, the situation in Syria was getting worse and worse. The Secretary General of the UN dispatched Kofi Annan (the former Secretary General of the UN and current joint envoy from the UN and Arab League) to try and settle the situation. On 16 March, Annan reported to the UNSC that he had suggested a Six-Point Proposal of the Joint Special Envoy of the UN and the League of Arab States as a solution to the Syrian civil war.<sup>47</sup> The six points were as follows: (1) That the government of Syria commit to work with the Envoy in an inclusive Syrian-led political process; (2) Commitments would be sought by the Envoy from the opposition and all relevant elements to stop the fighting and work with him to bring about a sustained cessation of armed violence in all its forms by all parties with an effective UN supervision mechanism; (3) Ensure timely provision of humanitarian assistance to all areas affected by the fighting; (4) Release of arbitrary detained persons, including especially vulnerable categories of persons, and persons involved in peaceful political activities; (5) Ensure freedom of movement throughout the country for journalists; (6) Respect freedom of association and the right to demonstrate peacefully as legally guaranteed. On 14 April 2012, UNSC Resolution 2042 confirmed these six points and requested that the affected parties implement them.<sup>48</sup> On 21 April, as a result of UNSC Resolution 2043 it was decided to dispatch the UN Supervision Mission in Syria (UNSMIS) to the local area.<sup>49</sup>

On 30 June 2012, Annan convened a meeting of the Action Group on Syria at the UN office in Geneva. The group consisted of the following: the High Representative of the European Union for Foreign Affairs and Security Policy; the Foreign Ministers of China, France, Russia, the UK, the US, and Turkey; the Foreign Minister of Iraq as Chair of the Summit of the League of Arab States; the Foreign Minister of Kuwait as Chair of the Council of Foreign Ministries of the League of Arab States; and the Foreign Minister of Qatar as Chair of the Follow-up Committee on Syria of the League of Arab States.

While the Action Group for Syria's Final Communiqué, which was composed in the meeting mentioned above, respects Syrian sovereignty, autonomy and territorial integrity, it is also a significant document which suggests that the future of Syria be decided by the Syrian people and that the transition of the political system be led by Syrians from all groups and social orders.<sup>50</sup> However, in contrast to this suggested political solution of high ideals, the situation on the ground was becoming worse and worse.

On 19 July 2012, France, Germany, Portugal, the UK and the US proposed a resolution at the UNSC referring to Chapter VII of the UN Charter and which included "Prolonging the dispatch of UNSMIS" and "Sanctions to Assad's regime."<sup>51</sup> The contents referred to Annan's six points and demanded that the Syrian government implement the Geneva Communiqué; moreover, the resolution suggested that if the government did not execute three particular points within 10 days, the UN would promptly take measures under Article 41 of the UN Charter.<sup>52</sup> The three points required that the Syrian authorities shall: (a) cease troop movements towards population centres; (b) cease all use of heavy weapons in such centres; and (c) undertake a complete pullback of military concentrations in and around population centres and withdraw its troops and heavy weapons from population centres back to their barracks or



temporary deployment places in order to facilitate a sustained cessation of violence. China and Russia exercised their vetoes so the resolution and sanctions to Syria did not pass.

At this rate, even securing the presence of UNMIS on the ground became difficult, so a resolution which suggested a 30 days extension of the stationing term was submitted to the UNSC on 20 July and was accepted.<sup>53</sup>

Conditions in Syria were not improving at all, therefore on 13 August, not only the Arab League but also foreign ministers at a meeting of the Organization of Islamic Cooperation (OIC) agreed from 15 August to suspend Syria's membership, emphasizing that Syria is "living the horrors of a grinding war from which the OIC has repeatedly warned."<sup>54</sup> Compared to the UNSC, which could not take any prominent actions due to the vetoes from China and Russia, the Arab League and the OIC could impose firm sanctions from the Islamic side including suspending the membership of Syria. On the other hand, the Syrian government seemed to be unwilling to implement the Six-Point Proposal of the Joint Special Envoy of the UN and the League of Arab States. Fighting continued in Syria and conditions were not met to continue the mission of the UN observer force there, so in the 16 August meeting, the UNSC members decided to break up and withdraw the UNSMIS.<sup>55</sup>

The UN could not take any effective action, even though it is the first prioritized international organization which has the responsibility to maintain peace and security. It is not clear how many people were saved in conflict areas because of the Condemning Resolution of the Violation of Human Rights being carried by the General Assembly. The activation of the third RtoP following Libya and the Ivory Coast was wanted by western countries but, due to the vetoes from Russia and China, it ended in failure. To investigate the local situation in detail, the UN dispatched the UNSMIS to the scene but because of the worsening conditions they had to withdraw. On 17 August, the UN appointed the veteran diplomat Lakhdar Brahimi as the new Joint Special Representative of the UN and League of Arab States for the crisis in Syria. He took over the peace-facilitation role played over the previous several months by former UN Secretary General Kofi Annan.<sup>56</sup> At a meeting of the delegation of the Syrian Opposition to the Geneva II Conference, Brahimi invited both the Syrian government side and the anti-government side to discuss the establishment of a provisional government. However, conditions did not improve as expected which resulted in a new situation which is shown below.

The investigation conducted by the International Commission of Inquiry on Syria reported in May 2013 that more than 70,000 people, mostly civilians, had been killed.<sup>57</sup> On 15 May, the General Assembly also strongly condemned the Syrian Government's increased use of chemical weapons.<sup>58</sup> In response to this issue, due to the quantity of the contents, details are omitted in this paper, the US and Russia consented to a proposal for Syria to place its chemical weapons under international control.<sup>59</sup> And on 27 September, the resolution was unanimously adopted at the UNSC.<sup>60</sup> On 14 October, the Syrian government acceded to the Chemical Weapons Convention,<sup>61</sup> and procedures were speedily drawn up by the Organization for the Prohibition of Chemical Weapons (OPCW) for the expeditious destruction of Syria's chemical weapons

program.

### 2.3 Counterterrorism and Aerial Bombing by the US

The problem of chemical weapons was not completely solved but the Syrian civil war developed into an even more serious stage. In April 2013, the Islamic State of Iraq and the Levant (ISIL) took control of Lepanto and expanded its power drastically.<sup>62</sup> In order to counter ISIL, which is said to be a more cruel and infamous terrorist group than Al-Qaida, on 27 January 2014, the Security Council adopted a resolution of counterterrorism, 2133.<sup>63</sup> The resolution was passed without being rejected by vetoes from Russia and China. The resolution reconfirms the contents from Resolution 1373 which was adopted just after the synchronized terrorist attacks on 28 September 2001.<sup>64</sup>

Resolution 1373 (2001) is based upon Chapter VII of the UN Charter. It has legally binding power, and it is the decision that all states shall prevent and suppress the financing of terrorist acts and refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts.

The counterterrorism Resolution 2133 reaffirmed that the decision of 2001 has legally binding power; however, the text of Resolution 2133 did not directly refer to the sanctions mentioned in Chapter VII of the UN Charter, so it can be interpreted that the new resolution was only reaffirming Resolution 1373; nevertheless, it can be understood that the resolution has almost the same effect as Resolution 1373. Resolution 2133 also added to the asset freeze on terrorist groups. It was noted that ransom payments to terrorist groups are one of the sources of income which supports their recruitment efforts, strengthens their operational capability to organize and carry out terrorist attacks, and incentivizes future incidents of kidnapping for ransom.

Even after this resolution, the situation regarding human rights in Syria kept worsening. Over 100,000 people had been killed including more than 10,000 children. On 22 February, through Resolution 2139,<sup>65</sup> the UNSC strongly condemned the widespread violations of human rights and international humanitarian law by the Syrian authorities, as well as the human rights abuses and violations of international humanitarian law by armed groups. It stressed that some of these violations might amount to war crimes and crimes against humanity. Because the Syrian authorities had violated human rights and international humanitarian law, the UNSC Resolution could refer them to the International Criminal Court (ICC).

In addition to this, the resolution referred to ensuring the safety and security of UN personnel and all other personnel engaged in humanitarian relief activities and providing immediate humanitarian assistance to the affected people in Syria. On one hand, the resolution strongly condemned the Syrian authorities and the armed groups; however, it did not refer to sanctions or an asset freeze but stressed humanitarian assistance. For these reasons it was adopted without any veto.

On 22 May 2014, in order to implement sanctions, which directly refers to Chapter VII of the Charter of the UN, 65 member states jointly proposed a resolution,<sup>66</sup> which identified the responsibility of the Syrian government, demanded the cooperation of the non-state armed

groups and decided to refer the situation in Syria to the Prosecutor of the ICC. Included in the 65 member states were western ones and Japan, and Middle East countries such as Jordan, Libya, Saudi Arabia and members of the Arab League; but because of vetoes from China and Russia the resolution was not adopted.

Despite the chaos in Syria, on 3 June, a presidential election was conducted. The official results gave Bashar al-Assad victory with 88.7 percent of the votes and a turnout of 73.47 percent. Anti-establishment groups boycotted the presidential election and claimed that the election had no validity.<sup>67</sup> Nevertheless, despite the criticisms of the opposition factions, on 16 July, Assad was sworn in to serve his third term as president of Syria.

The UNSC considered the possibility that China and Russia might continue to exercise their vetoes if the council recommended sanctions be imposed on the Syrian government. It also took into account the fact that Assad had been elected as president for the third term in spite of the doubts that the opposition factions had. As a result, the council narrowed the focus of its resolution to sanctions on terrorists. Previously, UNSC resolutions had the possibility of developing into RtoP, which denounced a government's violation of human rights, such as had happened with the Libyan precedent. However, after Assad was re-elected, the UNSC established sanctions which focused on anti-government groups and individuals who commit acts of terrorism.

On 17 June, the UNSC unanimously passed Resolution 2161.<sup>68</sup> The resolution was the first one to specify that the issues of human rights in Syria and terrorism problems come under the scope of Chapter VII of the Charter of the UN. The sanctions included non-military measures such as an asset freeze, a travel ban, an arms embargo and a ban on the payment of ransoms (para. 7).<sup>69</sup> The targets of such sanctions were people who provided internet hosting or related services such as providing weapons to support Al-Qaida and other individuals, groups, undertakings or entities included on the Al-Qaida Sanctions List. This is a list of terrorists who are subject to sanctions which had been in use since 2001. The UN formally added Syrian terrorists to it. The UN attached importance to the activity of creating the list conducted by the Al-Qaida Sanctions Committee and decided to set up a Monitoring Team or specialized UN agencies<sup>70</sup> to assist with capacity-building to enhance the implementation of measures upon request by member states. The resolution excluded the Syrian government from the sanctions so it was accepted by both China and Russia. Finally, a resolution of counterterrorism measures which Chapter VII of the Charter of the UN specified had been established.

In spite of the fact that a counterterrorism resolution was issued by the UNSC, ISIL steadily expanded its domain. On 29 June, Islamist militants declared the establishment of an Islamic nation called ISIL headed by a caliph.<sup>71</sup> Thereafter, ISIL expanded its territory even faster. On 24 August, ISIL fighters breached Al-Tabqa and took control over large parts of the air base which was located in the northeast part of Syria.<sup>72</sup> This expanded its influence to not only Syria but also Iraq, Turkey and Libya.<sup>73</sup>

In response to the state of tension in Syria, on 24 July, the UNSC decided to adopt a resolution which invoked Article 25 of the Charter of the UN. Even though the resolution does not

refer to Chapter VII of the Charter of the UN,<sup>74</sup> some of the Article 25 decisions which have legally binding force were specified. The following are the three main points of the resolution: 1) UN humanitarian agencies should obtain consent from the Syrian government and other relevant countries to implement their humanitarian assistance within the territory of those countries; 2) UN monitoring mechanism should be developed; 3) All Syrian parties to the conflict shall take every possible and proper means to deliver humanitarian assistance. The resolution does not use the strong expression “decision,” nonetheless it expresses that all parties to the conflict, in particular the Syrian authorities, must comply with their obligations under international humanitarian law and international human rights law. It also pays tribute to the efforts of Lakhdar Brahimi and welcomes the appointment of the Special Envoy of the UN Secretary General for Syria, Staffan de Mistura.

Even though a decision which has legally binding force was adopted and it was possible to place the Syrian government under the UN Observer System, it was not possible to refer to sanctions under Chapter VII of the Charter of the UN. In the meantime, ISIL continued to recruit many foreigners through its internet activities and was able to expand its territory and increase the number of its members.

On 15 August, the UNSC adopted Resolution 2170 from Chapter VII of the UN Charter which again narrowed its subjects to terrorists.<sup>75</sup> The resolution deplored and condemned in the strongest terms the terrorist acts of ISIL and its violent extremist ideology, and its continued gross, systematic and widespread abuses of human rights and violations of international humanitarian law. Resolution 2116 had used the term Al-Qaida; however, Al-Qaida issued a statement which denied its relation with ISIL.<sup>76</sup> Therefore, in order to include ISIL within the Al-Qaida Sanction Committee targets, Resolution 2170 was adopted. It emphasized the need to ensure that ISIL, Al-Nusra Front (ANF) and all other individuals, groups, undertakings and entities associated with Al-Qaida should be held accountable for abuses of human rights and violations of international humanitarian law and urged all parties to prevent such violations and abuses.

Moreover, UNSC Resolution 1373 in 2001 stated that it will activate sanctions to entities providing support to terrorist groups, including those who are financing, arming, planning or recruiting (para.18). Also, the resolution is distinctive in that it includes providing support for terrorism through information and communications technologies including the internet and social media or through any other means. Unlike the “Twitter Revolution” which was thought to have had legitimacy, the fact that the use of social media in a particular way can make one a subject to sanctions is a different example from the “Arab Spring” in Libya. ISIL continues to recruit many foreigners through its social media activities. The issue does not seem to limit itself to a resistance movement against a government, and Resolution 2170 condemns such recruitment by ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida of foreign terrorist fighters. It also calls upon all member states to take national measures to suppress the flow of foreign terrorist fighters to, and bring to justice, in accordance with applicable international law. The resolution encourages all member states to

engage with those within their territories at risk of recruitment and violent radicalization and discourage them from traveling to Syria and Iraq for the purposes of supporting or fighting for ISIL, ANF and Al-Qaida, and it also restricts people at large from travelling to Syria and Iraq (paras. 7–10).<sup>77</sup>

As it expanded its territories, ISIL was clever in the way it showed its brutality to the world through the internet. On 19 August 2014, a video released by ISIL showing the beheading of US journalist James Foley spread worldwide. In response to this incident, on 25 August, President Obama approved US surveillance flights over Syria.<sup>78</sup> On 26 August, the Assad government expressed its intention to cooperate with international society to oppose the influential expansion of ISIL.<sup>79</sup>

On 28 August, ISIL announced the execution of 160 Syrian soldiers out of 500 that had been previously captured. On 2 September, Steven Sotloff, an American and Israeli journalist was murdered by ISIL. The UNSC strongly condemned this “heinous and cowardly” murder.<sup>80</sup> Moreover, on 13 September, ISIL murdered David Haines, a British humanitarian aid worker. The UNSC strongly condemned his murder and expressed its condolences to the UK.<sup>81</sup>

On 19 September, the UN announced that 43 troops from the UN Disengagement Observer Force (UNDOF) had been detained by an armed group which might be ANF.<sup>82</sup> On the same day, ISIL started to invade the northern area of Syria near the border of Turkey, and UN Secretary General Ban Ki-moon demanded an immediate end to the violence.<sup>83</sup> On 19 September, the UNSC strongly condemned attacks by ISIL and urged member states to assist the Iraqi government’s efforts to combat militants. The 15-member body expressed its deep outrage about Iraqis who had been killed, kidnapped, raped, or tortured by ISIL.<sup>84</sup> However, nothing was said about the Syrian people who were being attacked by ISIL in the same way.

On 23 September, before the day of the UNSC Summit, the Secretary General strongly called for decisive actions against such terrorism.<sup>85</sup> During the night of 22 September (it was 23 September in Syria), the US began air raids on Syria.<sup>86, 87</sup>

#### **2.4 The Airstrikes: The US Explanation and the UN Response**

On 24 September 2014, President Obama attended the General Assembly and strongly denounced the actions of ISIL and called for other countries to join the airstrikes. The parts of President Obama’s speech which are relevant to the airstrikes are shown below:

“The terrorist group known as the Islamic State in Iraq and the Levant (ISIL) must be degraded, and ultimately destroyed,” he said, emphasizing that the group has terrorized all who they come across in Iraq and Syria; women and girls had been subjected to rape as a weapon of war; children had been gunned down; religious minorities had been starved to death; and innocent human beings had been beheaded on video. “No God condones this terror. No grievance justifies these actions. There can be no reasoning — no negotiation — with this brand of evil. The only language understood by killers like this is the language of force. So the United States of America will work with a broad coalition to dismantle this network of death,” the President declared. Emphasizing that the US would

not act alone in that effort or send troops to occupy foreign lands, he said that his government would support Iraqis and Syrians fighting to reclaim their communities. “We will use our military might in a campaign of airstrikes to roll back ISIL,” he declared, noting that over 40 nations had already offered to join his country’s coalition against the extremist group. “Today, I ask the world to join in this effort. Those who have joined ISIL should leave the battlefield while they can. Those who continue to fight for a hateful cause will find they are increasingly alone. For we will not succumb to threats; and we will demonstrate that the future belongs to those who build — not those who destroy.”

After the US aerial bombing against Syria, President Obama summoned the UNSC Summit. The main points from Secretary General Ban Ki-moon’s opening speech at the meeting are as follows: he called ISIL an Un-Islamic Non-state and appealed to the more than 13,000 foreign terrorist fighters from over 80 countries that had joined these terrorist groups that they were being used. He also said that terrorists must be defeated and to do so a political strategy, international cooperation and a comprehensive approach are essential. He added that, while immediate security issues must be addressed, the biggest threat to terrorists over the longer term is not the power of missiles but the politics of inclusion. The Secretary General concluded that missiles might kill terrorists but a good policy kills terrorism.<sup>88</sup>

While the speech of the Secretary General denounced terrorism as something that should be eradicated, he also pointed out that a political solution must be sought. He neither condemned nor affirmed the airstrikes which differs from the stance which the former Secretary General, Kofi Annan, took at the opening of the General Assembly in 2003. He then stated that the aerial bombing against Iraq by the American and British forces violated the UN Charter.<sup>89</sup> This time, Syria, Russia and Iran denounced the airstrikes on Syria.<sup>90</sup> This use of force without permission from the UNSC was evaluated at the Security Council Summit on 24 September. The main points of UNSC Resolution 2178 are shown below:<sup>91</sup>

- 1) The resolution calls terrorism a crime but the use of force against terrorists was not approved. “Terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whosoever committed.”
- 2) The main focus of this resolution was to prevent the recruitment of foreign terrorist fighters and to prevent foreign terrorist fighters from crossing state borders. Member states should disrupt and prevent financial support to foreign terrorist fighters, and develop and implement prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters. The resolution calls upon member states to require that airlines operating in their territories provide advance passenger information to the appropriate national authorities. It also encourages Interpol to intensify its efforts with respect to the foreign terrorist fighter threat and to monitor and prevent the transit of foreign terrorist fighters.

- 3) The sanctions acting under Chapter VII of the Charter of the UN determine that the following two points have legal binding force:
  - i) Member States shall, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities (para. 6).
  - ii) All Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and decides that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense (para. 5).
- 4) All states shall prevent violent extremism which can be conducive to the movement of terrorists or terrorist groups.
- 5) The UN involvement especially focused on the threat posed by foreign terrorist fighters. The resolution expressed appreciation for activities undertaken in the area of capacity building and encouraged activities by UN entities, in particular the Counter-Terrorism Implementation Task Force (CTITF) which included the UN Office of Drugs and Crime (UNODC) and the UN Centre for Counter-Terrorism (UNCCT), and also the efforts of the Counter Terrorism Committee Executive Directorate (CTED).
- 6) Member states shall improve international, regional, and subregional cooperation which can afford one another the greatest measure of assistance in connection with criminal investigations or proceedings relating to the financing or support of terrorist acts.

After the airstrikes the UNSC did not condemn the US for violating the UN Charter by its use of force. Of course, it is true that the UNSC recognized that terrorism was the target of UN sanctions under Chapter VII of the UN Charter. But the UNSC did not authorize military measures under Article 42 of the UN Charter, nor was the act of self-defense authorized by the UNSC.

In response to this, the US Ambassador to the UN, Samantha J. Power, submitted a letter to the Secretary General. The following is the most important part of the letter:

“In the letter dated 20 September 2014 from the Minister for Foreign Affairs of Iraq addressed to the President of the Security Council (S/2014/691, annex), Iraq has made clear that it is facing a serious threat of continuing attacks from the Islamic State in Iraq and the Levant (ISIL) coming out of safe havens in Syria. The Government of Iraq has asked that the United States lead international efforts to strike ISIL sites and military strongholds in Syria in order to end the continuing attacks on Iraq, to protect Iraqi citi-



zens, and ultimately to enable and arm Iraqi forces to perform their task of regaining control of the Iraqi borders. ISIL and other terrorist groups in Syria are a threat not only to Iraq, but also to many other countries, including the United States and our partners in the region and beyond. States must be able to defend themselves, in accordance with the inherent right of individual and collective self-defense, as reflected in Article 51 of the Charter of the United Nations, when, as is the case here, the government of the State where the threat is located is unwilling or unable to prevent the use of its territory for such attacks. . . . Accordingly, the United States has initiated necessary and proportionate military actions in Syria in order to eliminate the ongoing ISIL threat to Iraq. . . . In addition, the United States has initiated military actions in Syria against Al-Qaida elements in Syria known as the Khorasan Group.”<sup>92</sup>

## 2.5 The Legitimacy of the Airstrikes: Pros and Cons

Can it really be acknowledged that the US military operations were legally admitted by the Charter of the UN? Their legitimacy can be analyzed from five aspects.

The first reason is the use of individual or collective self-defense as was mentioned in the Power Letter. The explanation given was that the US was not the only country which exercised self-defense but more than 40 other countries were also involved including five countries from the Middle East such as Saudi Arabia and Jordan. The UNSC had referenced collective security measures (in other words, sanctions) such as an asset freeze and a travel ban but permission for the use of self-defense military measures was not given in the resolution. UNSC Resolution 2178, which was adopted after the airstrikes by the US on 22 September, also did not refer to self-defense.

Second, it was explained that the Iraqi government had asked for the measure.<sup>93</sup> Even if the air-raids against ISIL within the borders of Iraq were justified since they had consent from the government, the air attacks in Syria cannot be justified.

Third, the US conveyed to the Syrian government beforehand that the targets of the airstrikes were the bases of ISIL and other terrorist groups.<sup>94</sup> The Assad regime admits that there was a message before the attacks but that the message was only unilateral and the Assad regime did not comment upon permitting the action. It is difficult to deem that the US had consent from the Syrian government from the facts presented.

Fourth, looking at the Power Letter, it seems that the government of Iraq had asked the US to lead international efforts to strike ISIL sites but not the Khorasan Group. This matter can be explained in that the actions were based on UNSC Resolution 1368 of 12 September 2001 which acknowledges the inherent right of individual or collective self-defense against Al-Qaida.<sup>95</sup> Certainly, the Khorasan Group is an element of Al-Qaida, but it may be thought unreasonable to attack the Khorasan Group which does not seem to have distinctive continuity based on a resolution from 14 years previously in 2001. Also, since ISIL is a separate organization from Al-Qaida, it is difficult to justify the use of self-defense against ISIL with this resolution.

Lastly, the applicability of the theory of the “unwilling or unable test” can be examined. This



test has been considered as an argument which justifies individual or collective self-defense after the synchronized terrorist attacks in 2001. The idea is that “if a host state is unable or unwilling to deal with the threat posed to the victim state, then the latter should acquire the right to use force in the host’s territory against the threat.”<sup>96</sup> This is similar to the idea of RtoP, but it is not a concept which is as widely accepted and so far a resolution which embodies the idea has not been adopted. I would like to introduce some of the arguments made using six standards from Ashley S. Deeks which can justify attacks upon non-state actors from other countries; in other words, in the case where the “unwilling or unable test” is applicable.<sup>97</sup> 1) Prioritization of Consent or Cooperation, 2) Nature of the Threat Posed by the Non-state Actor, 3) Request to Address the Threat and Time to Respond, 4) Reasonable Assessment of Territorial State Control and Capacity, 5) Reasonable Assessment of Proposed Means to Suppress the Threat, 6) Prior Interactions With the Territorial State.

Kazuhiro Nakatani refuted the “unwilling or unable test” by stating that the test’s legality in general international law has been questioned (as Deeks explained),<sup>98</sup> and that it is very hard to establish an argument which says the test could be admitted as an international customary law because of this precedent.<sup>99</sup> In response to this, Dawood I. Ahmed explained that “the unwilling or unable doctrine may continue to be of limited efficacy in constraining arbitrary uses of force against weaker host states.”<sup>100</sup> He insisted that the UNSC should play an important role by dispatching fact finding delegations to host states and transmitting information to the international community as to the accuracy of a victim state’s claim of being unwilling or unable. Such verification by the UNSA could significantly improve decision making under the “unwilling or unable” doctrine. This would increase the transparency of state behavior.<sup>101</sup> Gareth D. Williams explained the legitimacy of the test by stating that it had been used in previous incidents such as those involving Chechen rebels in Georgia, PKK rebels in northern Iraq against Turkey, and by the US against Al-Qaida in Pakistan. Several high-ranking US officials, including international lawyers, argue that the test is legal even though the test is not part of international law, and that the “unwilling or unable” test is emerging from the customary law requirement of necessity.<sup>102</sup> But in the case of Syria, there is some doubt concerning its legality as Assad was re-elected in the presidential election on 3 June so the regime cannot be called a failed state of the “unwilling or unable.” Conceding for argument’s sake that, as Williams argues, the test is emerging from the customary law requirement of “necessity,” even if it was a violation of the UN Charter (Article 2, Clause 4), this argument might be a distorted one.

As mentioned above, the legitimacy of the US airstrikes raises many controversies. On the other hand, while the UNSC can demand non-military measures against the extreme threats of non-state actors such as terrorists, can it not be permitted to take military measures? I would like to point out where there is the possibility of compromise. On 12 September 2001, UNSC Resolution 1368 did not explicitly specify Al-Qaida but focused on terrorism in general that created “threats to international peace and security” and admitted the inherent right of individual or collective self-defense. The resolution does not use words which can be inferred

as having legally binding power such as “decision”; however, whether they are military or not, it certifies that “threats to peace and security” can activate sanctions. It is not clear that the resolution can be universally applied to extreme violent threats in general; nevertheless the argument of generalizing the resolution is possible.

Also, about the air attacks on Syria which commenced on 22 September and were mainly conducted by the US, as the UN Charter article 51 prescribed, “the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.” It was not clear if the UNSC authorized the airstrikes.

UNSC Resolution 2178, which immediately followed the airstrikes on 24 September, approves the application of Chapter VII of the Charter of the UN to terrorist groups such as ISIL; in other words, it confirms that terrorism is subject to UN sanctions (non-military measures), and it did not condemn the US airstrikes. From a political viewpoint, it means the resolution was supportive of the US airstrikes. However, concerning UNSC resolution which accepts non-military measures, the idea of not referring to the justification of the use of force which is mainly applied by the US is not a desirable choice for maintaining the system of the Charter of the UN. Thomas Franck argues that four factors determine whether a state complies with its international obligations: determinacy, symbolic validation, coherence, and adherence.<sup>103</sup> Where these four factors are present, legitimacy theory predicts a strong pressure toward compliance and where they are absent it predicts a very limited impetus in that direction. A repetition of the mistakes of the Iraqi war in 2003 should be avoided. In the case of airstrikes against Syria, some institutional or normative frame should be reconsidered for securing the legitimacy of these actions.

## Concluding Note

Both the cases of RtoP in Libya and counter terrorism in Syria are almost like domestic issues, human rights issues or terrorist issues, and the problems of non-state actors. There are common problems in how the UNSC should deal with non-state actors. In both cases the UNSC mobilized non-military sanctions but could not reach the solution which it had originally sought. These cases reveal the limits of the UNSC to deal with extraordinary violations of human rights in a territorial state or extreme military threats by terrorists in the context of relationships among nation states. It is necessary to seek a normative system which could transcend the arguments of international law among nation states and could control non-state actors directly.

## Notes

1. This paper was submitted at the annual meeting of International Studies Association held at Atlanta in the USA on 18 March 2016. The session title was “Smart Sanctions Reinvestigated: How to make smart sanctions smarter against the new type of war.” The paper was revised after the meeting. This original version was translated into Japanese. 「国連制裁の現代的展開——保護する責任からカウンター・テロリズムへ」白井実穂子、奥迫元、山本武彦編『経済制裁の研究——経済制裁の政治経済学的位置づけ』志學社、2017年3月。

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