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# Humanitarian Space and the International Community

16<sup>th</sup> Humanitarian Conference

Alexandre Vautravers

Yvita Fox (eds.)

**Webster**  
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## Humanitarian Space in the Arab Spring

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On 17 December 2010, Mohamed Bouazizi set himself on fire in the city of Sidi Bouzid, some 200 km from Tunis, to protest the humiliating treatment he had received at the hands of a city official who had confiscated his fruit and vegetable cart, depriving him of his sole means of income.<sup>2</sup> His death on 4 January 2011 sparked widespread demonstrations and rioting that compelled President Zine El Abidine Ben Ali to relinquish power ten days later and to flee the country, after 23 years in office. The President's capitulation emboldened people in many other Arab countries to agitate against their own oppressive dictatorships and to reclaim their human rights and fundamental freedoms. The 'Arab Spring' that then swept through the Middle East and North Africa throughout 2011 offers lessons of hope, courage and triumph, but also of despair, uncertainty and tragedy. In Egypt, President Hosni Mubarak's iron-fisted rule crumbled once the army realized that continuing to shoot unarmed protestors in Tahrir Square only brought the pent-up frustrations of generations of Egyptians to the boiling point. Even then, foot-dragging by the military over several months impelled ordinary people once again to risk their lives in demonstrating against the *status quo* and for an expeditious transition to a civilian-controlled democratic government. Protests in Saudi Arabia, Bahrain and Algeria were harshly suppressed, but even Governments in these countries had to promise that reforms would be quickly implemented. In Libya, opposition activists provoked Moammar Qadhafi into gross overreaction which plunged the country into full-scale civil war. Following the adoption of Security Council resolution 1973, NATO intervened to protect civilians and effectively starved the regime of its own fuel supplies, tipping the balance in favor of the insurrectionary National Transitional Council which culminated in Qadhafi's summary execution on 20 October 2011 shortly after revolutionary forces found him hiding in a

<sup>1</sup> The author thanks Dr. Ilaria Bottigliero for her valuable comments on this paper.

<sup>2</sup> "Witnesses report rioting in Tunisian town," Reuters, 19 December 2010, <http://af.reuters.com/article/topNews/idAFJ0E6BI06U20101219>, accessed on 6 December 2011.

drainage pipe on the outskirts of Sirte, previously a pro-Qadhafi stronghold. In Yemen, President Saleh, who was seriously injured in a bomb attack and forced to leave the country for medical treatment, remained in power after 33 years of rule amid defections in military personnel who refused to fire upon unarmed protestors, but finally relinquished power in November 2011.<sup>3</sup> In December 2011, Bashar El Assad's Government in Syria was still managing to retain power despite widespread unrest throughout the country, the Arab League's suspension of its membership, and growing international outcry over an estimated 4,000 persons killed between March and early December 2011, around 300 of whom were children.<sup>4</sup>

It will no doubt take years to unravel the story of how ordinary people in the Middle East and North Africa gathered the courage to fight for their rights after years of subjugation and in the face of tear gas charges, sniper attacks on peaceful demonstrators, and eventual government-orchestrated intimidation involving arbitrary arrest and detention, torture, rape and outright massacres. Likewise, it will take time to interpret why some fossilized regimes could be ousted fairly quickly, while others could not, and why the aftermath of regime change in certain countries seemed much more conducive than in others to the installation or restoration of democracy, human rights and the rule of law.

More immediately, what can be done to prevent State sponsored violence against civilians who are demanding respect for their human rights? Rather than opening up opportunities for citizens to vent their frustrations and share proposals for political reform, many Arab governments chose to silence political dissent and to stigmatize protestors variously as 'criminal elements,' 'militants,' 'terrorists,' or 'agents manipulated by outside forces.' On numerous occasions police and security forces simply shot unarmed citizens who had gathered peacefully in public places to express their political opposition to the Government. Many Governments in the region seem to have considered that violent crackdowns on protestors, if imposed sharply and quickly, would nip demonstrations in the bud before they graduated into more broadly based uprisings, or even full-scale rebellion. The sheer insensitivity with which so many Governments in the region adopted lethal measures to ward off popular challenges to dictatorial rule forced the international community to confront the issue as to whether the violence

<sup>3</sup> Almasmari, Hakim, "Hundreds defect from Yemen's military," CNN, 20 November 2011, [http://edition.cnn.com/2011/11/19/world/meast/yemen-unrest/index.html?eref=rss\\_topstories&utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+rss%2F cnn\\_topstories+%28RSS%3A+Top+Stories%29](http://edition.cnn.com/2011/11/19/world/meast/yemen-unrest/index.html?eref=rss_topstories&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+rss%2F cnn_topstories+%28RSS%3A+Top+Stories%29), accessed on 8 December 2011.

<sup>4</sup> "Statement by UN High Commissioner for Human Rights Navi Pillay at the Human Rights Council 18th Special Session to examine the situation of human rights in the Syrian Arab Republic," 2 December 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/media.aspx?IsMediaPage=true>, accessed on 4 December 2011.

fell essentially within the State's domestic jurisdiction, or instead, it had to be considered a threat to or breach of international peace and security that demanded strong multilateral measures and perhaps even military action. The stance of the United Nations and regional peace and security actors proved pivotal in determining the extent to which humanitarian space could be negotiated to protect civilians. The situation in Libya was then qualified as a non-international armed conflict and North Atlantic Treaty Organization (NATO) forces intervened on the side of the revolutionaries to help topple Qadhafi's regime. In contrast, the situation in Bahrain was considered primarily as an internal matter despite the deployment of troops fielded by the Gulf Cooperation Council to quell the violence. Syria veered towards full-fledged non-international armed conflict between Government forces and the Syrian Free Army, under the leadership of Colonel Riyad al-Asad, made up of an estimated 20,000 soldiers and security forces personnel who defected from the regular army (by November 2011) and whose stated goal was to liberate Syria from the Assad regime.<sup>5</sup> By December 2011, the Government of Syria had not recognized the situation as a non-international armed conflict. China and Russia had earlier vetoed a draft Security Council resolution to intervene militarily in Syria to protect civilians.<sup>6</sup>

The present article reviews the Arab Spring experience in order to highlight some of the limitations of international and domestic efforts to negotiate humanitarian space to protect civilians under threat from their own government. It is therefore essential first to distinguish among the approaches to humanitarian assistance adopted by: a) the International Committee of the Red Cross (ICRC) and Red Cross / Red Crescent Movement; b) certain humanitarian NGOs; c) UN integrated peacekeeping or peace enforcement missions and / or regional peace and security organizations; and d) counterinsurgency operations (COIN) as exemplified by US-led coalition forces in Iraq or by the NATO's International Security Assistance Force in Afghanistan (ISAF). Second, it is instructive to outline UN reaction to the Arab Spring violence in various countries of the Middle East and North Africa (MENA) to uncover some of the overriding political factors that seemed to have influenced whether humanitarian space could be successfully negotiated to help prevent civilian bloodshed. Finally, it is valuable to consider action that could be taken to help secure humanitarian space in countries where the government continues to resort to violence against unarmed civilians

<sup>5</sup> "The Free Syrian Army: The Free Syrian Army (FSA) claim to have attacked an Air Force Intelligence facility, has attracted more media attention to the group of Syrian Army deserters. There are reports that the opposition Syrian National Council has recently met FSA leader Col Riyad al-Asad to discuss the scope for cooperation," BBC World News, 16 November 2011, <http://www.bbc.co.uk/news/world-middle-east-15563900>, accessed on 4 December 2011.

<sup>6</sup> Marcus, Jonathan, "Why China and Russia rebuffed the West on Syria," BBC News, 5 October 2011, <http://www.bbc.co.uk/news/world-middle-east-15180732>, accessed on 6 December 2011.

in the context of non-internationalized conflict, whether it takes the form of a general uprising, widespread civil unrest or something else short of civil war.

### **Contrasting Concepts of Humanitarian Space**

Different actors use the term 'humanitarian space' in divergent and even contradictory ways. The UN employs the term 'humanitarian space' differently from either the ICRC or many humanitarian NGOs. In the context of counterinsurgency operations, 'humanitarian space' means again something quite distinct. It is therefore useful to relate the various interpretations of 'humanitarian space' and cognate terms to the contexts in which they are understood as discussed next.

#### *The ICRC and Red Cross / Red Crescent Movement and Humanitarian Space*

The ICRC is neither an intergovernmental organization nor is it an NGO. The ICRC operates as an independent humanitarian organization that enjoys recognition from all governments as the principal implementing body for the Geneva Conventions and Protocols. It receives substantial funding from governments and national Red Cross Societies as well as from private sources. With its uncompromising adherence to narrow conceptions of neutrality, impartiality and independence, the ICRC has an unrivalled track record in gaining humanitarian access to victims and potential victims in armed conflict situations around the world as well as in tracing and reuniting family members in the aftermath of hostilities.

The ICRC's approach to humanitarian space centers around the legal obligation of the government or other authority to ensure the humanitarian well being of the population within the territory under its effective control. Article 3 common to the four Geneva Conventions, 1949, establishes a minimum standard of treatment that applies both in time of international and non-international armed conflict and prohibits parties from committing at any time or in any place acts of "violence to life and person, (...) mutilation, cruel treatment, and torture" or "outrages against human dignity, in particular humiliating and degrading treatment." The ICRC Commentary interprets an 'armed conflict not of an international character' in common Article 3 in terms of the following 'convenient criteria': that the rebels possess an organized military force, that they take responsibility for their acts; that they operate within a determinate territory; and that they are capable of respecting the Geneva Conventions. Other indicators as to whether there exists a non-international armed conflict are that the legal Government has to use the



regular military forces to fight insurgents who are organized as military units and who control part of the national territory, or that the *de jure* Government has recognized the insurgents as a party to the conflict, or that it claims the rights of a belligerent, or that it has recognized the insurgents as belligerents for the purposes of the Geneva Convention. Alternatively, there could exist a non-international armed conflict where “*the dispute has been admitted to the agenda of the Security Council or the General Assembly of the United Nations as being a threat to international peace, a breach of the peace, or an act of aggression.*” The ICRC Commentary posits other possibilities such as that the insurgents are organized into an entity that purports to ‘have the characteristics of a State,’ or that the ‘insurgent civil authority exercises *de facto* authority over the population within a determinate portion of the national territory’ or that the insurgent armed forces function under the command of an organized authority and can observe the laws of war, or finally, that ‘the insurgent civil authority agrees to be bound by the provisions of the Convention.’<sup>7</sup> Article 1 of Protocol II,<sup>8</sup> adopted in 1977 to develop and supplement common Article 3 to the four Geneva Conventions, narrowed the interpretation of ‘non-international armed conflict’ to apply to all armed conflicts between a State Party’s “*armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.*” Article 1(2) of Protocol II further clarifies that: the Protocol does not apply to ‘internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.’

Running through the mandate and activities of the ICRC since the adoption in 1864 of the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field has been the strict application of the principles of neutrality and independence. As Denise Plattner explained, the ICRC considers neutrality to comprise three main aspects, namely as “*an attribute whose outlines must be delimited because the institution is described as a neutral body,*” second, as “*one of the Fundamental Principles of the International Red Cross and Red Crescent Movement*” and finally as a principle that guides humanitarian assistance.<sup>9</sup> Plattner points out that with regard to non-international armed conflicts, Article 18(2) of Protocol II additional to the four Geneva Conventions refers to “*relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction*” in the sense that humanitarian assistance cannot

7 Commentary on Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949 at 49.

8 Protocols II additional to the four Geneva Conventions of 12 August 1949, adopted 8 June 1977, entered into force on 7 December 1978.

9 Plattner, Denise, *Neutrality and neutrality in humanitarian assistance*, International Review of the Red Cross, No. 311, 1996, p. 161-180, available on-line at <http://www.icrc.org/eng/resources/documents/misc/57jn2z.htm>, accessed on 22 November 2011.

constitute any sort of interference in the conflict itself. This implies also that humanitarian assistance has to be offered impartially and on a strictly non-discriminatory basis to all on the basis of need and without any regard to their possible involvement on one side or other of the conflict, as affirmed by the International Court of Justice ruling in the *Nicaragua Case*.<sup>10</sup>

The ICRC's notion of humanitarian space is accordingly one based on the strict application of the principles of neutrality, independence and impartiality, which prevent it from engaging in any criticism whatsoever on the legality or legitimacy of any party to an armed conflict.

The Red Cross and Red Crescent Societies which function at the national level operate according to the same principles of neutrality, independence and impartiality but, as discussed below, in some of the Arab Spring countries, they have come under deliberate and direct physical attack from army personnel, police and security forces to prevent them from extending urgent humanitarian assistance to injured protestors.

#### *Advocacy-Oriented Humanitarian NGOs and Humanitarian Space*

Few if any humanitarian sector NGOs can equal the ICRC either in terms of legitimacy or their capacity or experience in negotiating humanitarian access in situations involving difficult governments or rebel forces. NGOs nevertheless play an indispensable role because they bring in specialized skills and they often draw international attention to severe violations and serious degradation in political conditions that might signal the onset of armed hostilities, famine, outbreak of disease, or other dire threat to human security. As such, the presence and operation of humanitarian NGOs in the field also form essential elements in the international community's early warning capacity.

Some humanitarian personnel have expressed the view that strict neutrality risks making the ICRC and Red Cross Societies complicit, or at least unacceptably silent, in the face of egregious violations of human rights and humanitarian law. The presence of the ICRC in territories suffering armed hostilities could also be misunderstood to confer a veneer of legitimacy upon the authorities or rebel forces, despite the strictures of the Geneva Conventions to contrary effect.<sup>11</sup>

<sup>10</sup> See Case concerning Military and Paramilitary Activities in and Against Nicaragua, 1986 ICJ Reports at para. 243.

<sup>11</sup> In particular, common Article 3(2) states that the application of the rest of Article 3 does not affect the legal status of the parties to the conflict. In the same spirit, Article 96(3) of Protocol I which foresees the possibility of a unilateral declaration of an 'authority representing a people engaged against a High Contracting Party in an armed conflict' fighting against colonial domination and alien occupation and against racist regimes in the exercise of their

In this sense, the French medical doctors who founded Médecins sans Frontières (MSF) in 1971 expressed their concern that the ICRC's policy of strict neutrality in humanitarian assistance betrayed a moral responsibility to denounce violations wherever they are witnessed.<sup>12</sup> The founders of MSF accordingly rejected silence as an operating principle for their own brand of humanitarianism.<sup>13</sup> Similarly, human rights NGOs such as Amnesty International, Human Rights First, Human Rights Watch among many others, remain keen to engage actively, often aggressively, in political advocacy, while also supporting or providing some form or other of humanitarian assistance. Sometimes, striking the right balance between impartial humanitarianism and political advocacy proves difficult and even highly divisive within the humanitarian NGO community. This was illustrated strikingly when Save the Children (US) preferred not to criticize the Bush Administration for its illegal invasion of Iraq in March 2003 in order to avoid jeopardizing its important in-country work which depended much on security provided by the coalition itself, while Save the Children (UK) took a diametrically opposed position, instead condemning the United States Government and its coalition partners for intervening militarily in Iraq without Security Council authority.<sup>14</sup> It is not that MSF and other prominent human rights NGOs have opted to act partially or in a biased manner, but rather that their interpretation of the principles of neutrality and impartiality allow for, or even demand, denunciation of violations on an even handed and non-discriminatory basis, so as not to favor the perpetrators of atrocities through silence.

### *UN Integrated Peace Operations and Humanitarian Space*

The changing character of armed conflict since the end of the Cold War has intensified the need for UN peace operations to extend beyond the task of keeping warring parties apart, and instead also to incorporate protection for humanitarian space. In his September 1999 report, the Secretary-General indicated that:

*"Combatants target civilians in conflict by, among other things,*

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right of self-determination,' alters neither the status of the conflict or the parties to it. The ICRC Commentary to Protocol 1 further explains that: "a proposal to require recognition by the competent regional intergovernmental organization, which was not included in Article 1 (General principles and scope of application), paragraph 4, was not adopted either for inclusion in the text of the present paragraph." Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Claude Pilloud et al. (Eds.), 1987, at para. 3763.

12 See generally, Bortolotti, Dan, *Hope in hell: Inside the world of Doctors Without Borders*, Firefly Books, Ltd., 2004.

13 See Wylie, Neville, "The Sound of Silence: The History of the International Committee of the Red Cross as Past and Present," *Diplomacy & Statecraft*, Vol. 13, No. 4, 2002, p. 186-204.

14 Sunga, Lyal S., "Dilemmas Facing NGOs in Coalition-Occupied Iraq," in Bell, Daniel A., and Coicaud, Jean-Marc, (Eds.), *Ethics in Action: The Ethical Challenges of International Human Rights Nongovernmental Organizations*, Cambridge University Press, Cambridge, 2007, p. 99-116.

*attempting to restrict their access to food and / or other forms of life-saving assistance, or, indeed, deliberately starving them. In 1992 in Somalia, for instance, the parties to the conflict deliberately impeded the delivery of essential food and medical supplies, while during the siege of the enclaves in Bosnia and Herzegovina, civilians were systematically deprived of assistance necessary for their survival. ... In this year alone, restrictions on the access of humanitarian organizations to those in need have put hundreds of thousands at risk in Angola, Kosovo (Federal Republic of Yugoslavia) and Sierra Leone. In the absence of any international presence, civilians affected by the conflicts in these areas are at the mercy of the warring parties and are dependent on them for the supplies they need.”<sup>15</sup>*

The report described also such related problems as the deliberate targeting of humanitarian and peacekeeping personnel, the mixing in refugee and IDP camps of unarmed civilians with armed militia, vulnerability of women and children, widespread availability of small arms, and continued use of anti-personnel landmines.

In his 2005 report on the protection of civilians in armed conflict, the Secretary-General noted that while armed conflicts had decreased in number from 50 in 1992 to 30 in 2004, low-intensity conflicts had become relatively more common than either inter-State conflict or even full-scale civil war. Consequently, fighting by conventional, formed units, under a responsible command, had become less common. Instead, lower intensity conflicts often featured the use of small arms and light weapons. Civilians were:

*“(...) increasingly at risk of being caught in crossfires, targeted for reprisals, forcibly recruited, sexually enslaved or raped. Armed groups involved in these conflicts tend to be smaller and less well trained and equipped than national military forces. They consequently tend to avoid major military engagement and instead target and spread fear among civilians, using them as human shields or extorting food and money for their own subsistence and support. Increasingly, today’s conflicts rely upon child soldiers, who are commonly recruited and used against their will, through abduction, kidnapping, enslavement and coercion or intimidation of their parents or guardians. It is estimated that children are serving in almost 75 per cent of contemporary armed conflicts.”<sup>16</sup>*

<sup>15</sup> See Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict; S/1999/957 of 8 September 1999 at paras. 19 and 20.

<sup>16</sup> Report of the Secretary-General on the protection of civilians in armed conflict, S/2005/740 of 28 November 2005 at para. 3.

Sexual violence, forced displacement, indiscriminate killings and mutilations as well as hunger and the spread of disease in contemporary armed conflict were also on the rise.<sup>17</sup>

The following year, in resolution 2000/1296 on the protection of civilians in armed conflict, the Security Council underlined *“the importance of safe and unimpeded access of humanitarian personnel to civilians in armed conflicts”* and called upon all parties concerned *“to cooperate fully with the United Nations Humanitarian Coordinator and United Nations agencies in providing such access.”* The Council further invited States and the Secretary-General *“to bring to its attention information regarding the deliberate denial of such access in violation of international law, where such denial may constitute a threat to international peace and security, and, in this regard, expresses its willingness to consider such information and, when necessary, to adopt appropriate steps.”*<sup>18</sup> In particular, the Council reiterated *“its call to all parties concerned, including non-State parties, to ensure the safety, security and freedom of movement of United Nations and associated personnel, as well as personnel of humanitarian organizations.”*<sup>19</sup> The Security Council also drew attention to *“the importance for humanitarian organizations to uphold the principles of neutrality, impartiality and humanity in their humanitarian activities.”*<sup>20</sup> Peacekeeping mission mandates therefore had to be supported with rapid deployment of peacekeepers, civilian police, civil administrators as well as humanitarian personnel.<sup>21</sup> Resolution 1296 further expressed the Council’s *“willingness to consider (...) and, where necessary, adopt appropriate steps to help create a secure environment for civilians endangered by conflicts, including by providing support to States concerned in this regard.”*<sup>22</sup> The Council considered that *“temporary security zones and safe corridors for the protection of civilians and the delivery of assistance in situations characterized by the threat of genocide, crimes against humanity and war crimes against the civilian population”* might be feasible and appropriate.<sup>23</sup>

In response to these challenges, the Secretary-General’s Panel on United Nations Peace Operations, convened in March 2000 to assess the UN’s capacity to conduct peace operations effectively, noted that at that time, there was: *“no integrated planning or support cell in DPKO in which those responsible for political analysis, military operations, civilian police, electoral assistance, human rights, development, humanitarian assistance, refugees and displaced persons, public information, logistics, finance and personnel recruitment, among others,*

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17 *Ibid.*

18 See UN Security Council resolution 2000/1296 of 19 April 2000 at para.8.

19 *Ibid.* at para.12.

20 *Ibid.* at para.11.

21 *Ibid.* at para.13.

22 *Ibid.* at para.14.

23 *Ibid.* at para.15.

are represented.”<sup>24</sup> The Panel recommended stronger UN agency integration right from the planning and pre-deployment stage in the form of Integrated Mission Task Forces and it encouraged multi-agency involvement, including the participation of: “DPA, the Department of Political Affairs, the Department of Peacekeeping Operations (DPKO), the Office for the Coordination of Humanitarian Affairs (OCHA), the Department of Disarmament Affairs (DDA), the Office of Legal Affairs (OLA), UNDP, the United Nations Children’s Fund (UNICEF), OHCHR, UNHCR, the Special Representative of the Secretary-General for Children and Armed Conflict, and the United Nations Security Coordinator” as well as World Bank institutions.<sup>25</sup>

Practically speaking, the UN’s notion of humanitarian space implies that in order to promote reconciliation between or among warring parties and help to restore the safety and security of the civilian population, it is not enough for UN and regional peacekeeping missions to employ only military operations in the classical DPKO mould i.e. to halt and prevent hostilities in accordance with cease-fire and peace treaty arrangements. Peace enforcement, peacekeeping and peace-building efforts must also administer or at least pave the way for the introduction of a range of palliative measures to bring immediate humanitarian relief to affected populations as well as to establish conditions in which longer term projects can be instituted that are designed to put the country on the path of sustainable peace. This relatively new multi-track approach to peacekeeping is infinitely more complex and difficult than more narrowly mandated military operations. International efforts to reduce hostilities and create conditions for lasting peace in such places as Darfur, Iraq and Afghanistan cannot even begin to improve conditions on the ground unless they ensure adequately secure space to allow such agencies, bodies and programmes as UNHCR, UNDP, UNOHCHR, UNICEF, UNOCHA and WFP among others to operate freely and to have unrestricted access to affected populations, civil society organizations, and victims or potential victims of serious violations of human rights or humanitarian law.

Thus, in the UN context, the question of humanitarian space has become more important with the development and operation of more broadly integrated peacekeeping operations which focus not only on ceasing hostilities and preventing their resumption, but also on bringing in immediate humanitarian relief as well as measures to address root causes of conflict over the longer term. The operational significance of ‘humanitarian space’ in the UN context contrasts with that of either the ICRC or humanitarian / human rights NGOs. Unlike the ICRC, the UN often is forced to take sides in a conflict and to

<sup>24</sup> *Report of the Panel on United Nations Peace Operations* (the Brahimi Report); A/55/305-S/2000/809 of 21 August 2000 at para. 198.

<sup>25</sup> *Ibid.* at para. 45.



identify the party or parties at fault, as it did for example with regard to the fraudulent election results in Côte d'Ivoire in December 2010, or against the Qadhafi regime's brutality against Arab Spring unarmed protestors. At the same time, several key resolutions of the Security Council and General Assembly reiterate the basic principles of neutrality, impartiality and humanity with regard to humanitarian assistance.

The inherent tensions between building peace, which frequently requires military action against one or other side of the conflict, and humanitarian assistance on a neutral, impartial and independent basis, made it important for the UN to define more clearly its notion of humanitarian space with regard to complex emergencies. In this regard, paragraph 3 of the UN Inter-Agency Standing Committee's Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies, March 2003, characterizes 'the humanitarian operating environment' as:

*"A key element for humanitarian agencies and organizations when they deploy, consists of establishing and maintaining a conducive humanitarian operating environment (this is sometimes referred to as 'humanitarian space'). The perception of adherence to the key operating principles of neutrality and impartiality in humanitarian operations represents the critical means by which the prime objective of ensuring that suffering must be met wherever it is found, can be achieved. Consequently, maintaining a clear distinction between the role and function of humanitarian actors from that of the military is the determining factor in creating an operating environment in which humanitarian organisations can discharge their responsibilities both effectively and safely. Sustained humanitarian access to the affected population is ensured when the receipt of humanitarian assistance is not conditional upon the allegiance to or support to parties involved in a conflict but is a right independent of military and political action."<sup>26</sup>*

What about the seeming contradiction in the UN's notion of humanitarian

<sup>26</sup> This document was developed by a drafting committee comprised of representatives of Austria, Czech Republic, France, Germany, Italy, Sudan, Switzerland, UK, USA, DPKO, SCHR, UNHCR, UNICEF and WFP, and a review committee consisting of representatives of Australia, Canada, China, Costa Rica, Denmark, Ecuador, Egypt, Estonia, Finland, Ghana, Greece, India, Japan, Libyan Arab Jamahiriya, Madagascar, Mauritius, Mexico, Netherlands, Norway, Poland, Russian Federation, Sweden, Turkey, Yugoslavia, the Council of Europe, the European Commission Humanitarian Office, the European Commission, Military Staff of the European Union, International Civil Defence Organisation, International Committee of the Red Cross, International Council of Voluntary Agencies, INTERACTION, International Organization for Migration, the North Atlantic Treaty Organization, the UN Office for the Coordination of Humanitarian Affairs, the German Federal Agency for Technical Relief, and the World Health Organization. See also UN Inter-Agency Standing Committee, "The civil-military relationship in complex emergencies - an IASC reference paper" of 28 June 2004.

assistance? Does not the UN's simultaneous pursuit of political engagement, and even the denunciation of one side in a conflict, on the one hand, necessarily contradict the UN's provision of humanitarian assistance on a neutral, impartial and humane basis on the other hand? It might do so, but not necessarily: the UN functions at many different levels at once to address complex emergencies. In a crisis situation, the Secretary-General himself and his envoys and representatives may be engaged in diplomatic negotiations at the highest political levels with a government or insurgent group, while a UN commission of experts examines whether individuals (including possibly the same individuals conducting negotiations with the Office of the Secretary-General) are criminally responsible under international law for genocide, war crimes or crimes against humanity. At the same time, other UN agencies, bodies and programmes could be providing humanitarian assistance to refugees and others with scant regard to the possible involvement of some beneficiaries in crimes under international law. Thus, while Special Representative of the UN Secretary-General for the former Yugoslavia Thorvald Stoltenberg negotiated with Serbian President Slobodan Milosevic,<sup>27</sup> the Security Council's Commission of Experts on the former Yugoslavia investigated Milosevic's possible criminal responsibility, while UNHCR provided the maximum humanitarian assistance it could under the circumstances. In Rwanda too, in November 1994 the Secretary-General's envoy and a representative of the UN Office of Legal Affairs were engaged in political negotiations with the new Government of Rwanda to try to restore stability in the region, while the Security Council's Commission of Experts on Rwanda worked to determine facts and responsibilities relating to the genocide and associated violations, and the UN High Commissioner for Refugees tried to provide food and shelter to refugees and internally displaced persons even though it was very likely that many people fleeing the conflict were, or were directly allied with, extremist Hutu militia and other génocidaires. At best, a range of UN actors could intervene along a broad front to explore all possibilities to prevent further violence through diplomacy, while signalling that international criminal law must be respected by all parties, but without holding up efforts to bring urgent humanitarian assistance to those in need where every hour of delay costs lives. All these efforts could also help to address root causes in order to promote sustainable peace building over the longer term.

Unfortunately, in some instances the tension between efforts to attain peace and efforts to establish criminal responsibility under international law ends up working at cross purposes such that criminal investigations complicate peace negotiations and vice-versa. In this kind of political atmosphere, trust in UN humanitarian assistance can quickly dwindle. In the former

<sup>27</sup> See generally Gharekhan, Chinmaya R., *The horseshoe table: An inside view of the UN Security Council*, Longman, 2006, at chapter 4.



Yugoslavia for example, humanitarian assistance was perceived by many to be a 'humanitarian alibi' or 'humanitarian fig leaf' for the UN's failure to prevent or stop the conflict in the first place or to protect civilians from direct armed hostilities.<sup>28</sup> Similarly in Rwanda, some commentators considered that the international investigation of genocide and associated violations and the establishment of the International Criminal Tribunal for Rwanda was little more than a 'fig leaf' for the international community's abject failure to halt the massacres of innocent civilians throughout the country in 1994.<sup>29</sup>

On the one hand, the development of a common understanding within the UN of 'humanitarian operating environment' has allowed various parts of the UN system to focus more on the responsibility of the Government or territorial authorities to allow and facilitate humanitarian access. With regard to the dire situation in Darfur for example, in its Final Report of November 2007, the UN Human Rights Council's Group of Experts on Darfur indicated quite frankly that:

*"...the rights and privileges of [UN] staff members operating in Darfur were being increasingly disregarded. As regards attacks on humanitarian workers and their assets, the group notes reports by the United Nations that, while the number of incidents against humanitarian workers during the period from June to October 2007 (168 incidents) had dropped when compared with data for the months from June to October 2006 (214 incidents), the severity of these incidents appeared to have been much greater than in 2006. The following incidents relating to the security of humanitarian workers or their assets were reported to the United Nations between June and September 2007: 49 humanitarian vehicles hijacked / stolen; 32 humanitarian convoys attacked / ambushed / looted; 36 break-ins / damage of humanitarian premises; 11 humanitarian personnel arrested / detained; 48 humanitarian personnel kidnapped / abducted; 3 humanitarian personnel killed. In October 2007, 7 humanitarian workers were killed, 10 humanitarian vehicles*

28 The authors of a report for Brown University's Watson Institute lamented that: "From the start, humanitarian activities had been a showcase for governments, unable to forge agreement on a common political or military strategy, to demonstrate concern for the people of the region. While the High Commissioner for Refugees and other senior officials repeatedly cautioned against letting such activities become an all-purpose response to the crisis, their pleas were not heeded. Early in 1993, one senior official told us that 'Humanitarian aspects have become the centerpiece of the UN's entire Yugoslavia operation. This was not intended. (...) During our first mission to the region in March 1993, the terms humanitarian alibi and the humanitarian fig leaf were gaining currency.'" See Minear, Larry, Clark, Jeffrey, Cohen, Roberta, Gallagher, Dennis, Guest, Iain, and Weiss, Thomas G., "Humanitarian action in the former Yugoslavia: The UN's role, 1991-1993," Humanitarianism and War Project, 1994 at 7, <http://watsoninstitute.org/pub/OP18.pdf>, accessed on 26 November 2011.

29 See e.g. Waldorf, Lars, "A Mere Pretense of Justice: Complementarity, Sham Trials, and Victor's Justice at the Rwanda Tribunal," *Fordham International Law Journal*, Vol. 33, issue 4, 2011, p. 1221-1277 at 1234; see also Posner, Eric A., Political Trials in Domestic and International Law, *Duke Law Journal*, Vol. 55, 2005, p. 75-152.

*hijacked and 7 convoys ambushed and looted. ... The group received information that humanitarian services continued to be provided to the vast majority of conflict-affected civilians.*"<sup>30</sup>

The report also indicates the increase in people not reached by the World Food Programme owing to general insecurity and in several cases, governmental intervention, for example in Jebel Marra, where *"the Government Security Committee suspended all humanitarian movement into the SLA-AW-controlled areas of Golol and Kwilla as from 16 August 2007, officially for security concerns."*<sup>31</sup>

On the other hand, UNAMID's mandate brought UN peacekeeping one step closer towards blurring peacekeeping and humanitarian assistance. The Security Council mandated the UN Assistance Mission in Darfur (UNAMID) to take the necessary action to implement the Darfur Peace Agreement, but also *"to ensure the security and freedom of movement of its own personnel and humanitarian workers."*<sup>32</sup> UNAMID was mandated to deter violence, with robust patrols of redeployment and buffer zones, monitoring long-range weapon withdrawals, and through deployment of police in demilitarized and buffer zones as per the Darfur Peace Agreement, as well as to disarm the Janjaweed and other militias. At the same time, UNAMID's mandate encompasses *"the creation of the necessary security conditions for the provision of humanitarian assistance and to facilitate the voluntary and sustainable return of refugees and internally displaced persons to their homes,"* and to protect United Nations-African Union personnel, humanitarian workers and civilians from physical violence.<sup>33</sup> Arguably, UNAMID's mandate also invites confusion between the notion of the international responsibility to protect and the protection of humanitarian assistance as well.<sup>34</sup>

The shift in armed conflict away from classic inter-State war towards low-intensity, non-international hostilities involving insurgent forces and irregular

<sup>30</sup> Final report on the situation of human rights in Darfur prepared by the group of experts mandated by the Human Rights Council in its resolution 4/8, presided by the Special Rapporteur on the situation of human rights in the Sudan and composed of the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on violence against women, its causes and consequences, the Special Representative of the Secretary-General on the situation of human rights defenders, the Representative of the Secretary-General on the human rights of internally displaced persons and the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment; A/HRC/6/19 of 28 November 2007 at para. 42.

<sup>31</sup> *Ibid.* at para. 43.

<sup>32</sup> Security Council resolution 1769 (2007) of 31 July 2007, at para. 15.

<sup>33</sup> Report of the Secretary-General and the Chairperson of the African Union Commission on the hybrid operation in Darfur; S/2007/307/Rev.1 of 5 June 2007 at para 54.

<sup>34</sup> In an interesting study based on field research undertaken in the Sudan, Jide Okeke rejects a linkage between humanitarian assistance and the international responsibility to protect, noting that humanitarian workers either have little knowledge of this notion or they have rejected it as a politically charged concept that serves the agenda mainly of donor States. See Okeke, Jide, *Why Humanitarian Aid in Darfur is not a Practice of the 'Responsibility to Protect,'* Nordiska Afrikainstitutet, Uppsala, 2011.

combatants with an increased incidence of terrorist attacks and other crimes, has impelled the UN to respond with integrated peace operations that seek to stop violence, meet urgent humanitarian needs, and create conditions to address root causes of conflict on a sustainable basis. However, the conflation of UN military operations and humanitarian assistance can resemble or even equate to tactics used in counterinsurgency operations, and it further sharpens the contradiction between military action and the protection of humanitarian space in peacekeeping.

### *Counterinsurgency Operations and Humanitarian Space*

The UN Security Council-mandated NATO-run International Security Assistance Force (ISAF) in Afghanistan employs counter-insurgency (COIN) operations which incorporate humanitarian assistance efforts.<sup>35</sup>

In the context of COIN operations (not to be confused with counter-intelligence operations), humanitarian assistance has little to do with humanitarianism. Humanitarian assistance instead is employed as a tactical means by which to achieve military success by separating the insurgents from the general population. The United States Army's COIN Field Manual spells this out clearly as regards tactics in Chapter 2-1:

*“Military efforts are necessary and important to counterinsurgency (COIN) efforts, but they are only effective when integrated into a comprehensive strategy employing all instruments of national power. A successful COIN operation meets the contested population’s needs to the extent needed to win popular support while protecting the population from the insurgents. Effective COIN operations ultimately eliminate insurgents or render them irrelevant. Success requires military forces engaged in COIN operations to:*

- *Know the roles and capabilities of US, intergovernmental, and host-nation (HN) partners;*
- *Include other participants, including HN partners, in planning at every level.*
- *Support civilian efforts, including those of nongovernmental organizations (NGOs) and intergovernmental organizations (IGOs).*
- *As necessary, conduct or participate in political, social,*

<sup>35</sup> See the Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, signed 5 December 2001 in Bonn, Germany, also known as the ‘Bonn Agreement’, which envisages the deployment of a peacekeeping force, which was established as ISAF by the Security Council through resolution 1386 of 20 December 2001.

*informational, and economic programs.*"<sup>36</sup>

The *Counterinsurgency Field Manual* emphasizes the integration of civilian and military efforts in order to launch successful COIN operations, arguing that: "*Political, social, and economic programs are usually more valuable than conventional military operations in addressing the root causes of conflict and undermining an insurgency.*"<sup>37</sup> The Manual counsels commanders to monitor and "'work with, through, or around' local leaders, informal associations, religious groups, families, tribes, some private enterprises, some humanitarian groups and the media."<sup>38</sup>

Citing the words of General Charles C. Krulak, the Field Manual explains that COIN operations require that:

*"In one moment in time, our service members will be feeding and clothing displaced refugees, providing humanitarian assistance. In the next moment, they will be holding two warring tribes apart — conducting peacekeeping operations — and, finally, they will be fighting a highly lethal mid-intensity battle — all in the same day... all within three city blocks. It will be what we call the 'three block war.'*"<sup>39</sup>

Krulak's January 1999 article in *Marines Magazine* entitled "The Strategic Corporal: Leadership in the Three Block War," points out that in Bosnia, Haiti and Somalia, many of the greatest challenges the US Marine Corps had to face involved the use of 'military operations other than war' to address "*the entire spectrum of tactical challenges in the span of a few hours and within the contiguous space of three city blocks.*"<sup>40</sup>

The Field Manual goes on to state frankly that:

*"There is no such thing as impartial humanitarian assistance or CMO [civil-military operations] in COIN. Whenever someone is helped, someone else is hurt, not least the insurgents. So civil and humanitarian assistance personnel often become targets. Protecting them is a matter not only of providing a close-in defence, but also of creating a secure environment by co-opting local beneficiaries of aid and their leaders."*<sup>41</sup>

36 *Counterinsurgency Field Manual* (FM 3-24; MCWP 3-33.5), Headquarters, Department of the Army, Washington, DC, and Headquarters, Marine Corps Combat Development Command, Department of the Navy, United States Marine Corps, Washington, D.C., 15 December 2006.

37 *Ibid.*

38 *Ibid.* at Chapter 2-16.

39 *Ibid.* at Chapter 8-3.

40 See General Krulak, Charles C., "The Strategic Corporal: Leadership in the Three Block War," *Marine Corps Gazette*, Vol. 83, No. 1, 1999, p. 18-22.

41 *COIN Manual, Op. cit.* at note 36.

ISAF has explicitly embraced COIN tactics, as spelt out in the United States-ISAF Commander General David Petraeus' guidance to the soldiers, sailors, airmen, marines, and civilians of NATO-ISAF and US Forces-Afghanistan.<sup>42</sup>

Is there a contradiction in the UN-mandated ISAF operation in Afghanistan with regard to the protection of humanitarian space? On the one hand, the UN Inter-Agency Standing Committee Guidelines discussed above state clearly that both the "*perception of adherence to the key operating principles of neutrality and impartiality in humanitarian operations*" and "*clear distinction between the role and function of humanitarian actors from that of the military*" are essential in promoting an effective and safe humanitarian operating environment. On the other hand, ISAF has adopted COIN tactics which explicitly reject the notion of neutrality and impartiality. Arguably, there is no contradiction because the IASC Guidelines apply to humanitarian operations whereas COIN applies to military operations including ISAF which should protect humanitarian space in a partisan fashion. This argument however fails to address key imperatives in UN peacekeeping, for example, the need to:

- Maintain a clear distinction between military operations and humanitarian assistance;
- Assure civilians in complex emergency situations that they can benefit from humanitarian assistance on a neutral and impartial basis free from the self-interest of those who are offering it;
- Build trust among host-nation beneficiaries so as to enhance the effectiveness of humanitarian efforts and maximize humanitarian space; and
- Help address all threats to human security on an urgent and sustainable basis.

As Antonio Donini has pointed out, Afghanistan is the only country where all major donors are also belligerents in the armed conflict except for Switzerland and India and that this arrangement had militarized the humanitarian assistance effort. Also, the Afghanistan situation was the "*only complex emergency where the humanitarian UN — i.e. OCHA — and the broader humanitarian community are not negotiating access with the other side nor openly advocating for the respect of humanitarian principles with all parties to the conflict.*"<sup>43</sup> Donini also noted that the statements of the Secretary-General and his Special Representative commending an increased deployment of military personnel

<sup>42</sup> See COMISAF's *Counterinsurgency (COIN) Guidance*, Headquarters International Security Assistance Force COMISAF/CDR USFOR-A of August 2010, <http://www.isaf.nato.int/from-the-commander/from-the-commander/comisaf-s-counterinsurgency-guidance.html>, accessed on 4 December 2011.

<sup>43</sup> See Donini, Antonio, *Afghanistan: Humanitarianism Unraveled?*, Briefing Paper of the Tufts University Feinstein International Center, <https://wikis.uit.tufts.edu/confluence/download/attachments/36675386/Donini-Afghanistan.pdf?version=1&modificationDate=1278945535000>, accessed on 30 November 2011.

and the conduct of the war, lends a clear impression of partiality on one side of the conflict, which runs directly counter to the principles of neutrality and impartiality in UN humanitarian assistance.<sup>44</sup>

The use of ISAF's COIN operations may be an effective military strategy, but it seriously undercuts the image and reality of humanitarian assistance, not only in Afghanistan, but also in future UN peace operations as well, including in some of the countries directly implicated in the Arab Spring as discussed below.

### **Humanitarian Space in the Arab Spring**

The spirit of the Arab Spring manifested itself in a range of activities across countries in the Middle East and North Africa of diverse cultures, religious affiliations, tribal and ethnic backgrounds, histories and alliances, political and legal frameworks, as well as varied levels of economic development and experience with democratic governance, human rights and the rule of law. The survey below of countries directly implicated in the Arab Spring shows a quite clear pattern. Polities with a significant measure of democracy, respect for human rights and the rule of law, in which the Government seemed to make genuine efforts to accommodate the demands of peaceful protestors for reform, and to refrain from the use of excessive force with regard to demonstrations, in effect tried to respect the humanitarian space of civilians at the domestic level, which is first and foremost how humanitarian space should be protected. In contrast, Governments unused to democratic governance, respect for human rights, or the rule of law, showed themselves to be too brittle to respond to demands for change. These Governments reacted with such brute force involving scores of casualties, completely disregarding their responsibility to protect civilians, that the international protection of humanitarian space became an urgent issue. In a number of countries such as Morocco, Jordan and Oman, protests were less violent or protracted, while in others such as in Bahrain, Libya, Syria or Yemen, demonstrations and protests were harshly suppressed. Libya experienced a full-scale civil war and at the time of writing in December 2011, Yemen and Syria were veering towards the precipice of internal armed conflict. While this might not be surprising in itself, a matter for serious reflection is the grey area between a situation in which the Government uses excessive force to quell protests over several months, but manages not to let the situation degenerate into an armed conflict

<sup>44</sup> "Both the UN Secretary-General and his Special Representative for Afghanistan (SRSG) have publicly and repeatedly welcomed the military surge and the prosecution of the war. The SRSG is often seen in public with General McChrystal, ISAF commanders, or visiting belligerent dignitaries (e.g., with Senator John Kerry in early November 2009). Many aid workers, UN and NGO alike, felt that the UN Secretary General's remarks to the press expressing "admiration" for ISAF, after the October 2009 attack on the Bakhtar guest house in which five UN colleagues were killed, were particularly insensitive." *Ibid.* at 4-5.



which might require international military intervention.

### *Tunisia*

In Tunisia, where the first demonstrations took place following the self-immolation of Mohamed Bouazizi on 17 December 2010 to protest high levels of unemployment and corruption, events moved rather quickly with the flight from the country of President Ben Ali on 14 January 2011 to Saudi Arabia and his resignation from all official functions after 23 years of rule. More than 200 people died over the course of a series of demonstrations which had involved harsh reaction from security forces. However, the quick departure and capitulation of the president, followed by a shake-up within the government to pave the way for democratic elections, which took place on 23 October 2011, limited the need for any sort of international intervention in the territory of Tunisia itself. The protection of humanitarian space by UN or other international agencies to ensure protection of civilians seemed less necessary as long as the Government could provide security and take credible measures to respect human rights and the rule of law. The EU High Representative for Foreign Affairs and Security Policy, Ms. Catherine Ashton, for example, commended the resignation of Prime Minister Ghannouchi (a holdover from the Ben Ali regime), and Tunisia's preparations for democratic elections with EU support to take place quickly, and recognized that the *"future lies firmly in the hands of the Tunisian people."*<sup>45</sup>

### *Morocco, Jordan, Oman and Lebanon*

In the monarchies of Morocco, Jordan and Oman, and in Lebanon, protests have been largely peaceful although not completely without violence. Clashes between riot police and protestors since Morocco's first Movement for Change demonstration was held on 20 February until the end of November 2011 claimed the life of one individual and over 100 others had been injured. From March until October, a series of demonstrations in various cities throughout the country called for immediate constitutional reform and greater respect for human rights. King Mohammed VI was quick to respond to these demands in an important speech of June 2011 in which he announced a proposal for the installation of democratic institutions and strengthened human rights protection, the relinquishment of power to the prime minister and parliament, and recognition of Berber as an official language in Morocco in addition to Arabic.<sup>46</sup> These proposals were approved through a national

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<sup>45</sup> Statement by Catherine Ashton, EU High Representative for Foreign Affairs and Security Policy, on the Resignation of the Tunisian Prime Minister; A/077/11 of 27 February 2011 in Brussels.

<sup>46</sup> "Morocco's King Mohammed unveils constitutional reforms: Morocco's King Mohammed VI has announced proposals for constitutional amendments in a landmark speech," BBC News,

referendum held on 1 July. In late November, Morocco's Party of Justice and Development registered a strong victory in national elections and the leader of this moderate Islamist party was officially appointed as the prime minister by King Mohammed VI. In Jordan, King Abdullah was even quicker to react to protests which took place in Amman and other cities throughout the kingdom against high food prices and for political reforms, by dismissing his government on 1 February, yet protests continued throughout the summer and fall of 2011 over the slow pace of change. On 17 October, the King replaced the prime minister in a bid to keep ahead of the protestors' demands.<sup>47</sup> The King's move to give up certain powers and usher in reforms seemed to have helped calm the political opposition.

In Oman, relatively light protests occurred on 17 January and 18 February 2011 and protestors carried placards pledging their allegiance to Sultan Qaboos.<sup>48</sup> The Sultan shuffled his cabinet on 26 February and announced plans for job creation. While a number of demonstrations took place against corruption and difficult economic conditions, the situation seemed to remain quite stable with little violence.

In Lebanon, on 25 January 2011, a Day of Rage was organized to protest the ousting of Saad Hariri from the post of Prime Minister, son of the popular former Prime Minister Rafik Hariri who was assassinated on 14 February 2005 in a massive car bomb explosion in Beirut, and the ascent of Hezbollah, backed by the Governments of Iran and Syria, to controlling position in the Government of Lebanon.<sup>49</sup> Since then however, protests in Lebanon have been relatively few and far between probably because, far from experiencing long running dictatorship, governance in Lebanon has been a chronically unstable balancing act with a heavily fractured electorate and divided personal and political loyalties, fissured along religious lines (Sunni, Shi'a, Maronite Christian, Greek Orthodox, Greek Catholic, and Druze, Copts and, Islamic and many other variants), language (Arabic, French and English) and ethnicity.

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18 June 2011, <http://www.bbc.co.uk/news/world-africa-13816974?print=true>, accessed on 4 December 2011.

47 Black, Ian, "Jordan's King sacks prime minister: Marouf al-Bakhit asked to resign following accusations of incompetence and failing to push through reforms," *The Guardian*, 17 October 2011, <http://www.guardian.co.uk/world/2011/oct/17/jordan-king-sacks-prime-minister>, accessed on 4 December 2011.

48 "Deaths in Oman protests: At least two people killed in industrial town of Sohar as police clash with anti-government demonstrators," *Aljazeera*, 27 February 2011, <http://www.aljazeera.com/news/middleeast/2011/02/2011227112850852905.html>, accessed on 4 December 2011.

49 "Lebanon's 'day of rage': Supporter of the ousted Lebanese prime minister Saad Hariri stage a 'day of rage' over the likely appointment of the Hezbollah-backed Najib Mikati as his successor," *The Guardian*, 25 January 2011, <http://www.guardian.co.uk/world/gallery/2011/jan/25/lebanon-protests-rage-pictures#/picture=371004958&index=4>, accessed on 6 December 2011.



Through a combination of minimizing the use of force against protestors, and making credible efforts at serious political reform, the Governments of Tunisia, Morocco, Jordan, Oman and Lebanon, at the time of writing, seemed to be maintaining order, security and the rule of law, thus successfully keeping the situation at the level of an internal disturbance or of relative calm.

*Algeria, Bahrain, Kuwait and Saudi Arabia*

Much more tenuous has been the situation in Algeria, Saudi Arabia, and especially Bahrain where humanitarian space has been directly attacked or suppressed by the Government itself and at the same time, the international community seemed unable or unwilling to intervene.

In Algeria, in January 1992, the military stepped in and cancelled democratic elections to prevent the Islamic Salvation Front, poised to win by a large majority, from bringing in Shari'a Law.<sup>50</sup> The ensuing Algerian Civil War that lasted until 1998 took an estimated 100,000 lives.<sup>51</sup> In February 2011, President Bouteflika, who has been in power since 1999, reacted to hundreds of demonstrations throughout the country to protest a lack of human rights, high prices and high unemployment, by lifting the state of emergency that had been in place since 1991, and by promising constitutional reform and price subsidies for essential foodstuffs. On 15 April 2011, Bouteflika announced that the Constitution would be revised and that reforms would be made to strengthen democracy.<sup>52</sup> He justified a continued ban on protests on grounds of public order and security however.<sup>53</sup> Whether these eventual reforms will bring about stronger human rights and democracy in Algeria remains to be seen.

The unlawful use of force against civilians loomed large in Bahrain where the Government seemed to have taken systematic efforts to eliminate humanitarian space for the protestors. Bahrain sits at the front-line between Saudi Arabian and Iranian influence. Protestors gathered in Pearl Roundabout, Manama, on 14 February 2011 and called on King Hamad to end monarchic

50 A number of Islamic Salvation Front (FIS) leaders advocated that Shari'a Law should form the supreme law of Algeria and that democracy could be dispensed with entirely. The FIS had won landslide victories in local elections in December 1991 and was poised to win a massive majority in national elections until the army annulled the elections process, declared a state of emergency and banned the FIS. See Bassam, Tibi, "Islamic Law / Shari'a, Human Rights, Universal Morality and International Relations," *Human Rights Quarterly*, Vol. 16, No. 2, 1994, p. 277.

51 See generally, Luis Martinez, Luis, *The Algerian Civil War 1990-1998*, Columbia University Press, 2000.

52 "Algerian president announces the constitution will be revised" CNN, 15 April 2011, [http://articles.cnn.com/2011-04-15/world/algeria.constitution\\_1\\_islamist-party-insurgency-algerian-president-abdelaziz-bouteflika?\\_s=PM:WORLD](http://articles.cnn.com/2011-04-15/world/algeria.constitution_1_islamist-party-insurgency-algerian-president-abdelaziz-bouteflika?_s=PM:WORLD), accessed on 4 December 2011.

53 Act No. 91.19 of 2 December 1991 on Public Meetings and Demonstrations and Government Council decision 18 June 2001 criminalizing even peaceful demonstrations in Algiers, has not been repealed.

rule and to recognize greater political freedom and representation of the Shi'a majority. On 18 February, police used live ammunition to shoot people attending a funeral of an individual killed during the 14 February protests, wounding 66 people and killing at least six. On the same occasion, police also fired upon and severely beat medics and nurses trying to triage and treat the wounded.<sup>54</sup> The extreme reaction of Bahrain's police and security forces stoked further protests throughout February and on 26 February the King dismissed a number of cabinet ministers to concede some ground to the political opposition. Protests continued in early March and an opposition coalition presented a list of demands to the Government to introduce a new Constitution while police and security forces continued to use tear gas on peaceful demonstrators. On 14 March, the situation in Bahrain began to take on an internationalized dimension with the arrival of 1,200 troops from Saudi Arabia and 800 from the United Arab Emirates as part of a Gulf Cooperation Council force called Peninsula Shield Force, invited by the Government of Bahrain to put down the uprising and preempt Iran from stepping in on the side of the Shi'a majority.<sup>55</sup> In a 4 April phone call to Secretary-General Ban Ki-Moon, Iranian President Mahmoud Ahmedinejad expressed his concern over the massacres in Bahrain and Yemen in their pursuit of democracy and complained that Western countries were applying double-standards in Libya and Bahrain while remaining silent over Israel's crimes against the Palestinian people.<sup>56</sup>

On 22 March, several UN Human Rights Council Special Rapporteurs voiced their alarm at the continuing violence and called on the Government to stop shooting and beating unarmed, peaceful protestors. The Special Rapporteur on arbitrary executions, Christof Heyns said that: *"Public order cannot be sustained by attacking peaceful crowds and unarmed civilians with shotguns, rubber bullets, clubs, tear gas and knives."* The Special Rapporteur on freedom of opinion and expression, Frank La Rue asked how was it possible for the Government to open up *"any genuine exchange of views when people have guns directed at them? ... By crushing the voices of peaceful protesters with brute force, rather than addressing their legitimate concerns, the Government is only aggravating the situation."* The Special Rapporteur on the right to health, Anand Grover, added that: *"The reports of takeovers of hospitals and medical centres by security*

54 "Bahrain forces fire at protesters: Troops open live fire around Pearl roundabout in Manama after nightfall, at least 66 wounded," Aljazeera, 18 February 2011, <http://www.aljazeera.com/news/middleeast/2011/02/20112184122210251.html>, accessed on 4 December 2011.

55 Bronner Ethan, and Slackman, Michael, "Saudi Troops Enter Bahrain to Help Put Down Unrest," *New York Times*, 14 March 2011, [http://www.nytimes.com/2011/03/15/world/middleeast/15bahrain.html?\\_r=2&hp](http://www.nytimes.com/2011/03/15/world/middleeast/15bahrain.html?_r=2&hp), accessed on 4 December 2011.

56 "In a phone conversation with the UN chief: President urges UN chief to stop US, Europe interference in region President Mahmoud Ahmadinejad urged United Nations Secretary General Ban-ki Moon to stop the interventions of the US as well as some European countries in the affairs of regional countries," Presidency of the Islamic Republic of Iran website, 4 April 2011, available at <http://www.president.ir/en/27629>, accessed on 4 December 2011.

*forces, blocking access to life-saving medical treatment, and the targeting of medical workers is deeply distressing.”<sup>57</sup> On 5 May, the UN High Commissioner for Human Rights expressed her concern over the detention of hundreds of activists in Bahrain and the military trials of 23 doctors and 24 nurses for participating in unlicensed protest and incitement of hatred against the Government. She also noted that her office “has also received reports of severe torture against human rights defenders who are currently in detention,” and she called upon the Government to “stop the intimidation and harassment of human rights defenders and political activists, ensuring that their fundamental civil and political rights are protected.”<sup>58</sup>*

A detailed 60-page report published by Human Rights Watch in July 2011 documents the Government of Bahrain’s efforts to systematically punish and intimidate medical professionals suspected of sympathizing with protesters by:

- Attacking offsite medical facilities and preventing medical treatment to the injured;
- Attacking paramedics, doctors, and nurses attempting to provide urgent medical care to injured persons, protesters and bystanders during demonstrations;
- Attacking ambulances dispatched to treat the wounded at Pearl Roundabout and nearby;
- Standing by during pro-government armed gang attacks on medical personnel;
- Attacking several hospitals and medical centres where severely injured protesters were taken for treatment;
- Deploying masked security personnel to the main hospital and other health facilities effectively converting them into detention centres for wounded and sick persons;
- Forcible movement by security forces of patients and placing them in incommunicado detention; and
- Arresting, detaining and torturing patients with injuries related to the protests.<sup>59</sup>

In Kuwait, protests started in January 2011. In November, a crowd of protesters raged into the Parliament to demand democratic reforms, which was met by

<sup>57</sup> “Broken promises in Bahrain – UN experts question Government’s human rights commitments,” OHCHR Press Release, 22 March 2011, Geneva, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10881&LangID=E>, accessed on 4 December 2011.

<sup>58</sup> “Pillar deeply concerned about dire human rights situation in Bahrain” OHCHR Press Release 5 May 2011, Geneva, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10985&LangID=E>, accessed on 4 December 2011.

<sup>59</sup> See Bahrain: Targets of Retribution: Attacks against Medics, Injured Protesters, and Health Facilities, Human Rights Watch July 2011, at ‘Summary.’

a severe security crackdown.<sup>60</sup> On 28 November, the Prime Minister and his cabinet resigned.

In late February and early March 2011, there were many protests by Shi'a groups in Saudi Arabia and on 6 March, a senior clerical council outlawed public protests as contrary to Islam.<sup>61</sup> On 15 March, around a thousand people protested against the presence of Peninsula Shield Force in Bahrain. King Abdullah announced financial assistance and housing loans, but did not indicate his intention to launch any political reforms. In May 2011, the British Government continued training Saudi Arabia's national guard elite unit, which was deployed to Bahrain to suppress protests as part of Peninsula Shield Force, in how to enforce public order and use sniper rifles.<sup>62</sup> On 25 September, the King announced that he would introduce reforms to allow women to vote in 2015 elections to the Shura Council, and that they will also become eligible to stand for and vote in municipal elections.<sup>63</sup> On 22 October, the King passed away and was likely to be succeeded by an even more conservative member of the royal family.<sup>64</sup>

### *Egypt*

On 25 January 2011, there were mainly peaceful protests held throughout Egypt as a 'Day of Revolt' to protest rising food and living costs, corruption and call for an end to the 30-year long, state of emergency, one-party rule of President Hosni Mubarak. On 26 January, in an effort to dampen the protest movement by cutting access to web-based social media, the Government shut down internet and mobile services, but this high-handed move seemed only to throw fuel on the fire. Further ill-considered manoeuvres by President Mubarak to pacify the protestors by a combination of brute force and small concessions managed to enrage them further. For example, Mubarak appointed the intelligence chief to the post of vice-president and his forces

<sup>60</sup> "Kuwait security crackdown after crowd storms parliament: Emir denounces protest as threat to country's stability and calls for 'stricter measures to confront chaotic behaviour,'" Associated Press, 17 November 2011, <http://www.guardian.co.uk/world/2011/nov/17/kuwait-protesters-storm-parliament>, accessed on 8 December 2011.

<sup>61</sup> "Saudi Arabia bans public protest: Ruling by senior clerical council follows two weeks of Shia demonstrations and 22 arrests," *The Guardian*, 6 March 2011, <http://www.guardian.co.uk/world/2011/mar/06/saudi-arabia-bans-public-protest>, accessed on 6 December 2011.

<sup>62</sup> Doward Jamie, and Stewart, Philippa, "UK training Saudi forces used to crush Arab spring," *The Guardian*, 28 May 2011, <http://www.guardian.co.uk/world/2011/may/28/uk-training-saudi-troops>, accessed on 6 December 2011.

<sup>63</sup> Chulov, Martin, "Saudi women to be given right to vote and stand for election in four years: King Abdullah's 'cautious reform' will not take effect until 2015 but welcomed as cultural shift in conservative Islamic country," *The Guardian*, 25 September 2011, <http://www.guardian.co.uk/world/2011/sep/25/saudi-women-right-to-vote>, accessed on 6 December 2011.

<sup>64</sup> McVeigh, Tracy, "Prince Sultan's death fuels debate about who will succeed to the Saudi throne: Ultraconservative Prince Nayef, who was behind suppression of protests in neighbouring Bahrain, becomes likely successor," *The Observer*, 23 October 2011, <http://www.guardian.co.uk/world/2011/oct/22/prince-sultan-death-nayef-saudi-arabia>, accessed on 6 Decemberr 2011.

incurred more than 100 civilian deaths attacking protestors. On 28 and 29 January, hundreds of thousands of people congregated in Cairo's Tahrir Square and in other cities of Egypt to demand an end to President Mubarak's regime.<sup>65</sup> Mubarak's response was to promise not to run for elections in September, but to remain in office he said to ensure an orderly transition in government – a tepid offering that was immediately rejected by protestors.<sup>66</sup> The situation turned from bad to worse on 2 February when pro-government supporters stormed Tahrir Square on camels and horseback, using various weapons to assault protestors.<sup>67</sup>

With spectacular ill-timing, former UK Prime Minister Tony Blair publicly declared his support for Mubarak stating that Mubarak was 'immensely courageous and a force for good,' and that:

*"It's perfectly natural for those from the outside to want to support this movement for change at the same time as saying let's be careful about this and make sure that what happens in this process of change is something that ends in free and fair elections and a democratic system of government and it doesn't get taken over or channelled in to a different direction that is at odds with what the people of Egypt want."*<sup>68</sup>

Secretary-General Ban Ki-Moon, US President Barack Obama and UK Prime Minister David Cameron, among many others on the other hand condemned the violence and warned Mubarak against further intimidation tactics which could seriously backfire.<sup>69</sup> President Mubarak clung to power for another week and instead of announcing his resignation in a formal address on 10 February 2011, he brazenly declared that he would continue as Head of State and would delegate some power to his Vice-President. The number of protestors grew to the hundreds of thousands until Mubarak announced

65 Batty, David and Olorenshaw, Alex, "Egypt protests - as they happened," *The Guardian*, 29 January 2011, <http://www.guardian.co.uk/world/2011/jan/29/egypt-protests-government-live-blog>, accessed on 4 December 2011.

66 Shenker, Jack, Beaumont, Peter, Black, Ian, and McGreal, Chris, "Hosni Mubarak vows to stand down at next election – but not now: Egyptian President Hosni Mubarak's announcement that he will serve out remaining term immediately rejected by angry crowds," *The Guardian*, 2 February 2011, <http://www.guardian.co.uk/world/2011/feb/01/hosni-mubarak-egypt-president>, accessed on 4 December 2011.

67 *The Guardian* reported that: "Using clubs, bats, knives and even homemade spears, pro-Mubarak demonstrators charged the square at just before 2pm. They had been gathering for several hours 800 metres from the square on the Nile Corniche, outside the state television station"; Beaumont, Peter, Shenker, Jack, and Khalili, Mustafa, "Cairo Mubarak supporters stage brutal bid to crush Cairo uprising: Egyptian president's regime orchestrates bloody battles in Tahrir Square against protesters seeking his removal from power," *The Guardian*, 2 February 2011, <http://www.guardian.co.uk/world/2011/feb/02/hosni-mubarak-supporters-violence-cairo>, accessed on 4 December 2011.

68 McGreal, Chris, "Tony Blair: Mubarak is 'immensely courageous and a force for good': Former PM praises Egyptian president over role in peace negotiations and warns against a rush to elections that could bring Muslim Brotherhood to power," *The Guardian*, 2 February 2011, <http://www.guardian.co.uk/world/2011/feb/02/tony-blair-mubarak-courageous-force-for-good-egypt?intcmp=239>, accessed on 4 December 2011.

69 Beaumont, Peter, Shenker, Jack, and Khalili, Mustafa, *Op. Cit.* at note 67.

his resignation and turned over his powers to the Supreme Council of Egyptian Armed Forces on 11 February 2011. On 3 August, proceedings in Cairo commenced in Mubarak's criminal trial for premeditated murder and corruption-related offences.<sup>70</sup>

Over the following months right through July, protestors kept up pressure on the military government which was widely perceived to be prevaricating or at least foot-dragging on upcoming elections, constitutional reform, democratic change, and the criminal prosecution of Mubarak and other government officials for corruption and serious human rights violations including killing and the unlawful detention and torture of activists. On 8 July, the British Broadcasting Corporation reported that official figures indicated that at least 846 people had died and another 6,000 had been injured during the protests which had begun in January 2011.<sup>71</sup> The protests and reactions from the military Government continued right through until elections were held in November. For example, on 19 November, security forces fired on unarmed protestors in Tahrir Square killing two and injuring 600 persons.<sup>72</sup> On 28 November, Egyptians could vote in free and fair elections for the first time in 80 years.<sup>73</sup> On 6 December 2011, Egypt held a second day of runoff elections for the national parliament as a number of Islamist parties competed for votes with the Muslim Brotherhood in a strong lead.<sup>74</sup>

Even after hundreds of thousands of protestors throughout the country agitating for an end to the dictatorship finally forced Hosni Mubarak to give up power after 30 years of iron-fisted dictatorship, Egyptians found they had to continue risking their lives to ensure that military rule would not continue indefinitely. As long as the freedoms of assembly and speech were heavily curtailed, the Egyptian authorities were more a threat to the welfare of ordinary Egyptians than a guarantor of their safety.

70 "Military ruler testifies in Mubarak trial: Hussein Tantawi testifies in the trial of Hosni Mubarak as demonstrators rally outside of the court house," Aljazeera, 25 September 2011, <http://www.aljazeera.com/news/middleeast/2011/09/201192410551080602.html>, accessed on 4 December 2011.

71 "Cairo's Tahrir Square fills with protesters: Tens of thousands of protesters have rallied in Cairo to press for speedier reforms from the Egyptian government," BBC News, 8 July 2011, <http://www.bbc.co.uk/news/world-middle-east-14075493>, accessed on 4 December 2011.

72 Shenker, Jack, "Violent clashes in Cairo leave two dead and hundreds injured: Egyptian security forces open fire on thousands of protesters in Tahrir Square, leaving two dead and more than 600 injured," *The Guardian*, 19 November 2011, <http://www.guardian.co.uk/world/2011/nov/19/egypt-violent-clashes-cairo-injured>, accessed on 4 December 2011.

73 Chulov, Martin, and Shenker, Jack, "Egypt election: voters defy fears of violence with record turnout: Fears of violence and chaos unfounded with no major violations or security incidents reported in first free ballot for over 80 years," *The Guardian*, 28 November 2011, <http://www.guardian.co.uk/world/2011/nov/28/egypt-voters-record-numbers>, accessed on 4 December 2011.

74 The Associated Press reported that: "The leader of Egypt's Muslim Brotherhood said Tuesday he is prepared to compromise with the ruling military on the formation of a new government, and that fears of the "Islamization" of the country are overblown"; Michael, Maggie, "Egypt: Islamist Leader Downplays Fears of Takeover," Associated Press, 6 December 2011, <http://abcnews.go.com/International/wireStory/egypt-islamist-leader-downplays-fears-takeover-15093800#.Tt4f6LfW8A>, accessed on 6 December 2011.



The example of Egypt shows that even as the number of casualties mounted, Egyptian civilians had little recourse but to risk life and limb merely to speak out peacefully for the right to change their government and to exercise their basic human rights and fundamental freedoms. On the one hand, security forces and police in fact posed the greatest threat to security and law and order throughout the country by shooting, beating and tear gassing protestors, while on the other hand, the ICRC could not offer assistance since the situation had not reached the level of an armed conflict. That left the Egyptian Red Crescent, humanitarian NGOs and ordinary people to provide humanitarian assistance as best they could. The President of the Egyptian Red Crescent was Suzanne Mubarak, the wife of President Mubarak, which raises some obvious questions of real or perceived conflict with the principles of neutrality, impartiality and independence.<sup>75</sup> After Mubarak stepped down, the Egyptian Red Crescent explained in a number of February situation reports relating to the civil unrest that it had:

- Deployed six doctors, paramedics and volunteers to provide emergency services and first aid in Tahrir Square following the protests;
- Conducted follow up visits to twelve hospitals in the Greater Cairo area and supplied specific antibiotics, medicines, certain surgical equipment and orthopedic appliances;
- Deployed more than 20 Red Cross members and volunteers to visit Giza hospitals to assess the needs of the injured;
- In Alexandria provided first aid services to more than 150 people;
- Distributed surgical kits provided by the ICRC;
- Operated a 24-hour / day blood bank to assist people in need with the help of mobile units;
- Coordinated with the ICRC to divide responsibilities with regard to persons fleeing the conflict in Libya;
- Formed “*teams from ERC youth to visit Tahrir Square went to clean up: picking up garbage, scrubbing statues and tanks, sweeping the streets*”;
- Supported hospitals in Cairo and Giza with urgent supplies to assist wounded and injured and provided financial aid to a number of injured in need;
- Conducted visits to hospitals and provided support to persons with disabilities; and
- Assisted in providing ‘psychosocial support and relief.’<sup>76</sup>

75 Like her husband, Suzanne Mubarak has been indicted on charges of massive corruption. “Suzanne Mubarak, Egypt’s former first lady, is detained and under investigation for corruption-related charges,” Aljazeera, 14 May 2011, <http://www.aljazeera.com/news/middleeast/2011/05/201151452710305808.html>, accessed on 6 December 2011.

76 See Egyptian Red Cross Situation Reports 1-6 and 10, <http://www.egyptianrc.org/ModulesEn.aspx?lang=2&moduleNo=71&str=situation%20report>, accessed on 6 December 2011.

Negotiating humanitarian space in the midst of harsh security forces crackdown in Tahrir Square could not have been at all easy, especially as police and security forces targeted medics who were assisting injured protestors. In November 2011, for example, security forces fired on, assaulted and arrested healthcare volunteers in Tahrir Square. At least one medic was killed. There were reports that during many other protests, tear gas canisters fell directly in field hospitals, and that soldiers chased doctors and seized medical supplies in a deliberate attempt to prevent any form of humanitarian assistance being provided to injured demonstrators.<sup>77</sup>

### *Libya*

On 15 February 2011, peaceful protests were held in Tripoli for an end to the rule of Colonel Muammar Qadhafi who had ruled Libya for almost 42 years. The Government used military force to try to crush the demonstrations which hastened the formation of a provisional government in Benghazi called the National Transitional Council whose main objective was to overthrow the Qadhafi regime and hold democratic elections. The severity of Qadhafi's reaction to the protests in Tripoli, Benghazi and in other cities, pushed the death toll up to some 230 persons, attracting international concern.<sup>78</sup>

The situation in Libya clearly met the criteria for the existence of a 'non-international armed conflict' within the meanings of common Article 3 and Protocol II, particularly once the National Transitional Council (NTC) was established on 17 February 2011 with an executive board in late March, as well as formal recognition by important members of the international community that the NTC became the sole legitimate representative of Libya and its people.<sup>79</sup> On 16 September 2011, at the conclusion of a fractious debate, the UN General Assembly voted to seat the National Transitional Council as Libya's representative for the Assembly's 66<sup>th</sup> session.<sup>80</sup> On 25 February 2011, the UN Human Rights Council expressed its alarm over reports of extrajudicial killings, arbitrary arrest and detention, systematic torture

<sup>77</sup> Cunningham, Erin, "Egyptian police target medics at Tahrir riots: One medic is dead, others are injured and arrested, as police use a virulent form of tear gas," *GlobalPost*, 24 November 2011, <http://www.globalpost.com/dispatch/news/regions/middle-east/egypt/111124/egyptian-police-target-medics-at-tahrir-riots>, accessed on 6 December 2011.

<sup>78</sup> Black, Ian, "Libya on brink as protests hit Tripoli: Muammar Gaddafi's son warns of civil war in state television address as regime tries to halt uprising," *The Guardian*, 21 February 2011, <http://www.guardian.co.uk/world/2011/feb/20/libya-defiant-protesters-feared-dead>, accessed on 6 December 2011.

<sup>79</sup> The National Transitional Council website indicates that it was recognized by France on 1 March 2011; Qatar on 28 March 2011; Maldives on 3 April 2011; Italy on 4 April 2011; Gambia on 22 April 2011; the United Kingdom on 12 May 2011; Senegal on 20 May 2011; Jordan on 24 May; Malta on 1 June 2011; Spain on 8 June 2011; Australia on 9 June 2011; United Arab Emirates on 12 June 2011; Germany on 12 June 2011; and Canada on 14 June 2011.

<sup>80</sup> See "After Much Wrangling, General Assembly Seats National Transitional Council of Libya as Country's Representative for Sixty-Sixth Session," UN Department of Public Information Press Release GA/11137 of 16 September 2011.



as well as indiscriminate armed attacks on civilians and it called “*upon the Government of Libya to meet its responsibility to protect its population, to immediately put an end to all human rights violations, to stop any attacks against civilians, and to fully respect all human rights and fundamental freedoms, including freedom of expression and freedom of assembly.*”<sup>81</sup> The Human Rights Council established an international commission of inquiry to investigate the violations and make recommendations on the criminal responsibility of the perpetrators.

The Security Council then adopted resolution 1970 on 26 February which referred the situation to the ICC,<sup>82</sup> enforced an arms embargo upon all UN member States on direct or indirect supply of arms to Libya,<sup>83</sup> put in place a travel ban on 16 members of the Qadhafi family and persons close to the regime<sup>84</sup> and froze the assets of six Qadhafi family members.<sup>85</sup> The Security Council urged all UN member States to facilitate humanitarian assistance. On 17 March, in resolution 1973, the Security Council deplored the Government’s failure to comply with resolution 1970 and condemned “*the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions*” and urged it to comply with its humanitarian law obligations.<sup>86</sup> Even more significantly, the Council authorized member States: “*to take all necessary measures (...) to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory.*”<sup>87</sup> On 20 October 2011, Colonel Qadhafi was captured and killed by rebel forces in Sirte.<sup>88</sup>

In its June 2011 report, the Human Rights Council’s Commission of Inquiry estimated that between 10,000 to 15,000 people may have been killed by that time.<sup>89</sup> Part IV of the report documents the use of excessive force against demonstrators, arbitrary detention and enforced disappearances, torture and other forms of ill-treatment, denial of access to medical treatment, suppression of the freedom of expression, attacks on civilians, civilian objects, protected persons and objects, sexual violence, use of prohibited weapons, use of mercenaries and human rights violations against migrant workers,

81 Human Rights Council resolution on the situation of human rights in the Libyan Arab Jamahiriya; A/HRC/S-15/1 of 3 March 2011, adopted on 25 February 2011, at paras. 1 and 2.

82 *Ibid.* at paras. 4-8.

83 *Ibid.* at paras. 9-14.

84 *Ibid.* at paras. 15 and 16 and see Annex I to the resolution.

85 *Ibid.* at paras. 17 - 21 and see Annex II to the resolution.

86 Security Council resolution 1973 of 17 March 2011; S/RES/1973 (2011).

87 *Ibid.* at para. 4.

88 See “Muammar Gaddafi killed as Sirte falls: Former Libyan leader dies as last bastion falls, but questions remain about the circumstances of his death,” Aljazeera, 20 October 2011 at <http://english.aljazeera.net/news/africa/2011/10/20111020111520869621.html>, accessed on 20 October 2011.

89 See Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya; A/HRC/17/44 of 1 June 2011 at Summary.

and children in the armed conflict.<sup>90</sup>

As regards humanitarian space, the Commission of Inquiry's report addresses the Government's denial of access to medical treatment in connection with protests that preceded the onset of a non-international conflict in Libya, as well as the Government's violations of international humanitarian law once civil war broke out.

The Commission reported that it had received information from victims and witnesses that Government forces prevented injured protestors from getting medical treatment by:

- Refusing to facilitate medical assistance;
- Blocking access to medical facilities;
- Attacking individuals in hospitals considered to have been associated with the protests;
- Closing entrances to hospitals and accident centres;
- Preventing injured individuals from seeking medical assistance across the border in Tunisia;
- Attacking wounded persons;
- Abducting individuals from hospitals;
- Facilitating access of mercenaries to hospitals to kill injured demonstrators; and
- Abducting medical personnel who were treating protestors.<sup>91</sup>

In terms of humanitarian space during the Libyan armed conflict, the Commission of Inquiry noted that during the armed conflict, there were reports of attacks on civilians, civilian objects, protected persons and objects, for example:

- In Ajdabiya, artillery and rocket-propelled grenades hit a family trying to flee the fighting, killing three family members and injuring two others;
- In the Nafusa mountain area, where government forces fired mortars and Grad rockets into residential areas 'in a random and indiscriminate manner towards the mountainous area and had landed over a wide residential area, inflicting large-scale civilian casualties';
- Indiscriminate shelling of borders and crossing points along the Libyan-Tunisian border; and
- In Misrata, indiscriminate attacks on civilians.

The Commission stated that:

*"In many of the cases, while the Commission was able to establish that many civilians (including children) have been killed or injured,*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.* at paras. 130-139.

*the Commission was not able to determine the full circumstances of the attacks in order to be able to evaluate whether the attacks were intentional, indiscriminate and / or disproportionate. There were numerous cases of shells hitting houses causing fires, as well as persons being killed when shots entered their cars. Many persons from Misrata reported that they had suffered injuries at check points as a result of rounds launched by government forces. Reports were also received of snipers taking aim and shooting at any and all persons who left their homes near the Bu Minyar building, which was one of the three tall buildings utilized by snipers, supporting the efforts of government forces in Misrata.”<sup>92</sup>*

Thus, in Libya, humanitarian space seems to have come under direct attack from the Government during all phases of the violence. As in Bahrain, in Libya, medical personnel were prevented from carrying out their functions and there were reports of assault and abduction of hospital staff. During the armed conflict, Government forces also attacked and invaded both regular and makeshift hospital installations to prevent people from receiving medical assistance.

### *Syria and Yemen*

For many weeks since protests had begun in December 2010 in Tunisia, and violence broke out in Libya, Egypt and in other Arab countries, it appeared that the Syrian Government might be immune from the civil unrest of the Arab Spring as President Bashar Al Assad himself claimed.<sup>93</sup> The Syrian Government has long suppressed and restricted human rights through an insidious, powerful and well coordinated intelligence apparatus. It comprises the civilian General Security Directorate, the Political Security Directorate that closely monitors all media and political opposition throughout the country and runs detention centres, the Military Intelligence Directorate which is alleged to have orchestrated the brutal crackdown on Syrian protestors as well as the Air Force Intelligence Directorate which seems to be running torture centres and may have little to do with the Air Force itself.<sup>94</sup> The directors of these bodies, together with the Al Quds specialist arm of the Iranian Islamic Revolutionary Guard Corps which has been widely suspected to be supplying technical assistance, equipment and support to Syrian security forces,

<sup>92</sup> *Ibid.* at para. 166.

<sup>93</sup> Badran, Tony, “Syria’s Assad No Longer in Vogue: What Everyone Got Wrong about Bashar al-Assad,” *Foreign Affairs*, 25 March 2011, <http://www.foreignaffairs.com/articles/67677/tony-badran/syrias-assad-no-longer-in-vogue>, accessed on 8 December 2011.

<sup>94</sup> “Inside Syria’s torture chambers: ‘This regime is brutal but also stupid’: Adnan, a young Syrian professional in his thirties, tells of his experience as one of hundreds detained in President Bashar al-Assad’s crackdown on dissent,” *The Guardian*, 29 April 2011, <http://www.guardian.co.uk/world/2011/apr/29/inside-bashar-al-assad-torture-chambers?INTCMP=ILCNETTXT3487>, accessed on 8 December 2011.

have been placed under financial and travel sanctions.<sup>95</sup> The impression of invulnerability started to crumble on 26 January 2011 when Hasan Ali Akleh set himself on fire to protest against the Government. Protests throughout the end of January and February were harshly dispersed by the Government and on 19 March, security forces killed five protestors in Deraa city.<sup>96</sup> Ensuing protests throughout Syria were met with severe Government reaction and the killing of further protestors. On 29 March, Al Assad dismissed his cabinet.<sup>97</sup> The next day, instead of lifting the state of emergency and announcing reforms, President Assad blamed the protests on foreign interference and denounced the protestors.<sup>98</sup> On 9 April, protests spread throughout the country and 22 people were killed in Deraa as security forces struggled to maintain the upper hand.<sup>99</sup>

In October 2011, the UN Human Rights Council held a second special session on the human rights situation in Syria. In late August, the Council decided to dispatch an international commission of inquiry to look into serious human rights violations being perpetrated in Syria.<sup>100</sup> In a statement to the 18<sup>th</sup> Special Session of the Human Rights Council, the High Commissioner on 2 December reported that:

*“The violent crackdown against peaceful protesters and civilians in the Syrian Arab Republic has continued unabated since I last reported to this Council on 22 August 2011. Since March of this year, more than 4,000 people have reportedly been killed. Tens of thousands have been arrested. And more than 14,000 are reported to be in detention as a result of the crackdown. At least 12,400 have*

95 European Council Implementing Decision 2011/515/CFSP of 23 August 2011 implementing Decision 2011/273/CFSP concerning restrictive measures against Syria; Official Journal L 218, 24/08/2011 P. 0020 - 0022; see also the United Kingdom’s Treasury Financial Sanctions Notification of 24 August 2011 European Council regulation on Syria No. 843/2011, [http://www.hm-treasury.gov.uk/d/fin\\_sanct\\_syria\\_reg843\\_240811.pdf](http://www.hm-treasury.gov.uk/d/fin_sanct_syria_reg843_240811.pdf), accessed on 8 December 2011.

96 “Syrian police seal off city of Daraa after security forces kill five protesters: Cordon aimed at suppressing spread of conflict following demonstrations and funeral processions,” *The Guardian*, 19 March 2011, <http://www.guardian.co.uk/world/2011/mar/19/syria-police-seal-off-daraa-after-five-protesters-killed>, accessed on 8 December 2011.

97 Chulov, Martin, “Syrian president sacks cabinet in effort to quell protests: Bashar al-Assad is expected to lift emergency laws and announce a crackdown on corruption in a speech,” *The Guardian*, 29 March 2011, <http://www.guardian.co.uk/world/2011/mar/29/syrian-president-sacks-cabinet>, accessed on 8 December 2011.

98 Marsh, Katherine, and Chulov, Martin, “Syrian president blames foreign conspirators for inflaming protests: Observers predict further trouble after Friday prayers as Assad’s TV broadcast, which detailed no reforms, angers the nation,” *The Guardian*, 30 March 2011, <http://www.guardian.co.uk/world/2011/mar/30/assad-blames-foreigners-inflaming-protests>, accessed on 8 December 2011.

99 Marsh, Katherine, “Syria’s biggest day of unrest yet sees at least 20 people killed: Protests move closer to the centre of Damascus as Bashar al-Assad’s concessions fail to quell calls for reform,” *The Guardian*, 9 April 2011, <http://www.guardian.co.uk/world/2011/apr/08/syria-unrest-killed-damascus-assad>, accessed on 8 December 2011.

100 See OHCHR Press Statement on “Human Rights Council decides to dispatch a commission of inquiry to investigate human rights violations in the Syrian Arab Republic” of 23 August 2011 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11326&LangID=E>, accessed on 1 September 2011.

*sought refuge in neighbouring countries and tens of thousands have been internally displaced. Reports of increased armed attacks by the opposition forces, including the so-called Free Syrian Army, against the Syrian military and security apparatus are also of concern.”<sup>101</sup>*

The Security Council’s role in isolating Bashar Al Assad’s regime was blocked by the vetoes of China and Russia to a draft Security Council resolution to place sanctions on Bashar El Assad’s regime.<sup>102</sup>

A September 2011 report by the High Commissioner for Human Rights stated that:

*“Highly consistent accounts given by witnesses described the events [on 25 May 2011 in Ar Rastan]. The armed forces surrounded the town, controlling all points of access with tanks and armoured vehicles to prevent the entry of food and medical supplies. The town was divided into two operational zones. Inside each zone, rows of soldiers pushed through the different areas, preceded by officers. Behind each unit there were groups of six to eight Shabbiha members, allegedly ready to shoot any soldier who looked back or refused to obey orders. Soldiers broke into homes and looted, shooting indiscriminately at cars and passers-by, and damaging property. Many of the inhabitants of Ar Rastan fled to nearby fields to hide, but were pursued, and numerous people were killed. Several of the witness accounts also referred to the killing of army officers by unidentified sniper fire during the operation.”<sup>103</sup>*

By late November 2011, the Government of Syria had rebuffed the Arab League’s ultimatum to accept monitors to help stabilize the situation:

*“Announcement of the landmark agreement came from Qatar’s prime minister, Hamad bin Jassem bin Jabr al Thani, who chaired the Cairo meeting. Bin Jassem said the decision, which is to take immediate effect, was backed by 19 of the league’s 22 members. (...) The Qatari leader had warned earlier that Arab failure to agree could lead to Libyan-style intervention by the West. ‘All the work that we are doing is to avoid this’, he said, adding that if the international community did not see that Arabs were ‘serious’ he*

101 Statement by UN High Commissioner for Human Rights Navi Pillay at the Human Rights Council 18th Special Session to examine the situation of human rights in the Syrian Arab Republic, Geneva, 2 December 2011, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11675&LangID=E>, accessed on 8 December 2011.

102 See Marcus, Jonathan, “Why China and Russia rebuffed the West on Syria,” BBC News, 5 October 2011, <http://www.bbc.co.uk/news/world-middle-east-15180732>, accessed on 10 October 2011.

103 Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic; A/HRC/18/53 of 15 September 2011 at para. 46.

*could not guarantee that such action could be avoided.*"<sup>104</sup>

The UN Human Rights Council's independent Commission of Inquiry, which was not granted access to Syria, reported that:

*"Restrictions imposed by the State on the treatment of injured protesters constitute serious violations of the right to health and the right to access medical assistance guaranteed under article 12 of the International Covenant on Economic, Social and Cultural Rights. Other rights, such as the right to an adequate standard of living and the rights to food, to water (art. 11) and to education (art. 13), have been infringed upon in the context of wide-scale military operations and blockades in several locations."*<sup>105</sup>

With regard to humanitarian space, the Commission indicated that:

*"A number of cases was documented of injured people who were taken to military hospitals, where they were beaten and tortured during interrogation. Torture and killings reportedly took place in the Homs Military Hospital by security forces dressed as doctors and allegedly acting with the complicity of medical personnel. As people became afraid of going to public hospitals, makeshift clinics were set up in mosques and private houses, which also became targets. This was the case of the Omari Mosque in Dar'a, which was raided on 23 March. Several of the injured and some medical personnel were killed there."*<sup>106</sup>

The Commission also reported that in late June and July 2011, security forces took measures to restrict humanitarian space:

*"Individuals suspected by the Government of being involved in setting up and operating alternative medical facilities or providing medical supplies or treatments were also subjected to arrest and torture by the security forces. According to testimonies, security forces warned the staff of private hospitals and ambulance drivers not to treat or provide assistance to injured protestors. Instead, they were ordered to transfer all such patients to either public or military hospitals. While some private hospitals complied with Government orders, others continued to provide wounded protestors with first aid and other medical services."*<sup>107</sup>

<sup>104</sup> Black, Ian, "Syria defiant as Arab League votes for financial sanctions: Tanks head to Homs as crackdown continues despite league's landmark agreement that aims to protect ordinary Syrians," *The Guardian*, 27 November 2011, <http://www.guardian.co.uk/world/2011/nov/27/arab-league-approves-sanctions-syria>, accessed on 8 December 2011.

<sup>105</sup> Report of the independent international commission of inquiry on the Syrian Arab Republic; A/HRC/S-17/2/Add.1 of 23 November 2011 at para. 96.

<sup>106</sup> *Ibid.* at para. 50.

<sup>107</sup> *Ibid.* at para. 81.



Witnesses also recounted to the Commission that the security forces deliberately cut food and water supplies to residential areas where there were pitched armed hostilities.<sup>108</sup>

Despite all these difficulties, the Syrian Arab Red Crescent described the following activities they conducted in late July 2011:

*"The volunteers — many of them medical students — have been working in shifts to provide services around the clock. The branch also launched a hotline service for people to easily reach the first aid teams. Despite their dedication, it is still a challenge to reach everyone who needs help; volunteers sometimes get five calls at the same time, but the branch has only three ambulances with which to respond. (...) The principles of the Red Cross Red Crescent movement both protect us and serve us. Because of our neutrality and impartiality we are protected and we can reach out to all people who need our help."*<sup>109</sup>

In addition, the Red Crescent managed to distribute "22,925 food parcels, 10,000 hygiene parcels, 6,194 kilos of baby milk, 3,260 mattresses, 3,884 blankets as well as jerry cans, kitchen sets, medicine, children diapers, first aid consumables, and stretchers."<sup>110</sup> By December 2011, the situation in Syria had not been resolved nor had adequate humanitarian space been negotiated with the authorities and prospects for improvement looked bleak without a political or military resolution to halt the violence.

Events in Yemen seemed to risk creating the same kind of impasse as that suffered in Syria. Rather than to make gestures of goodwill towards democracy activists, the Government of President Ali Abdullah Saleh had protestors arrested on 23 January 2011 which backfired.<sup>111</sup> On 27 January, thousands of protestors held demonstrations in Saana and called for President Saleh to leave office after holding power for 32 years<sup>112</sup> and on 23 February, at least two protestors were shot dead and many others injured

<sup>108</sup> *Ibid.* at para. 82.

<sup>109</sup> Aljoura, Loubna, "Fundamental principles ensure access despite civil unrest," International Federation of Red Cross and Red Crescent Societies, 21 July 2011, <http://www.ifrc.org/en/news-and-media/news-stories/middle-east-and-north-africa/syria/fundamental-principles-ensure-access-despite-civ-il-unrest/>, accessed on 8 December 2011.

<sup>110</sup> *Ibid.*

<sup>111</sup> Tom Finn, "Yemen arrests anti-government activist: Thousands protest in Sana'a after authorities charge Tawakul Karman with organising unlicensed demonstrations," *The Guardian*, 23 January 2011, <http://www.guardian.co.uk/world/2011/jan/23/yemen-arrests-protest-leader>, accessed on 8 December 2011.

<sup>112</sup> Tom Finn, "Yemenis take to the streets calling for President Saleh to step down" As unemployment rises and oil and water reserves dwindle, thousands demand an end to president's 32-year reign," *The Guardian*, 27 January 2011, <http://www.guardian.co.uk/world/2011/jan/27/yemen-protests-president-saleh>, accessed on 4 December 2011.

during further demonstrations.<sup>113</sup> Protests occurred sporadically throughout the summer months until on 6 June, President Saleh was severely burned in an assassination attempt and he left immediately for Saudi Arabia for treatment.<sup>114</sup> On 23 November 2011, President Saleh relinquished power in an agreement that provided immunity from prosecution for him and his family, after months of equivocation and stalling, but instability continued in Yemen.<sup>115</sup>

The International Federation of Red Cross and Red Crescent Societies acknowledged in its 2011 mid-year report on Yemen that:

*“Due to the current civil unrest and security situation most the delegates were evacuated from the field. Despite these difficulties, efforts are being made to continue the services, as the local staff and volunteers are fully engaged in the delivery of the required services.”<sup>116</sup>*

At the time of writing, it remained unclear to what extent the situation would calm down sufficiently to ensure that humanitarian agencies could access those in need.

Thus, although the Syria and Yemen situations involved thousands of casualties and large displacements of population, there was growing, but still insufficient political will at the time of writing in December 2011 to qualify them as threats to or breaches of international peace and security that would warrant Security Council enforcement action under Chapter VII of the Charter of the United Nations. Humanitarian space was attacked directly by the Government which not only failed to provide assistance, but actively prevented it, and even exploited it to further brutalize the political opposition and innocent civilians who happened to have been in the wrong place at the wrong time.

### **Humanitarian Space in the Arab Spring**

113 Finn, Tom, “Yemeni protesters shot dead at Sana’a University: Pro-government gunmen open fire on students staging a sit-in, killing at least two and wounding 21,” *The Guardian*, 23 February 2011, <http://www.guardian.co.uk/world/2011/feb/23/yemen-protesters-shot-dead-university>, accessed on 8 December 2011.

114 Black, Ian, “Yemeni president in Saudi hospital with ‘extensive’ injuries from palace attack: Severe burns and shrapnel wounds - which require cosmetic surgery - reduce likelihood of Saleh returning to Yemen,” *The Guardian*, 6 June 2011, <http://www.guardian.co.uk/world/2011/jun/06/yemen-president-saleh-injured-attack>, accessed on 8 December 2011.

115 Finn, Tom, “Yemen president quits after deal in Saudi Arabia: Agreement for immediate transfer of power pledges immunity for Ali Abdullah Saleh and family,” *The Guardian*, 23 November 2011, <http://www.guardian.co.uk/world/2011/nov/23/yemen-president-quits>, accessed on 8 December 2011.

116 Mid-Year Report of the International Federation of Red Cross and Red Crescent Societies Appeal No. MAAYE001 of 15 August 2011, <http://www.ifrc.org/docs/appeals/annual11/MAAYE00111myr.pdf>, accessed on 8 December 2011.



The Arab Spring demonstrates well the precariousness of humanitarian space particularly at a time when it is most needed — during armed conflict or serious internal disturbance. Especially concerning have been the concerted efforts of Government, security forces, police and pro-government militia in certain countries to invade humanitarian space in order to hunt down and kill or terrorize anyone it associates with dissent. Of the four variants of humanitarian space reviewed above, perhaps only the ICRC and Red Cross / Red Crescent Movement have been at least partially effective. In many countries of the Arab world, civil society has been systematically marginalized or actively persecuted, for example, in Libya, Syria and Saudi Arabia. Despite this, in some countries, people organized themselves quickly to deal with the harsh Government repression and their networking helped to coordinate the downfall of the regime, as in Egypt. The kinds of UN integrated peace operations and counterinsurgency tactics that have been used in Afghanistan can only play a role where they have been admitted into the host country, which has not been the case in the Arab Spring uprisings, and in any case, they are not without their own paradoxes and shortcomings.

The Arab Spring suggests that the international legal framework does not adequately address the protection of humanitarian space in internal situations where the Government or other territorial authority does not consent to the presence or operation of international, regional or foreign humanitarian agencies in the country, and worse, hinders or even attacks humanitarian agencies and personnel. These gaps in humanitarian protection suggest that:

1. Once conditions allow, stronger efforts should be made to enhance international and regional integration of humanitarian agencies across the Middle East and North Africa.
2. The ICRC and International Federation of Red Cross and Red Crescent Societies should increase their awareness and training efforts to involve humanitarian-related voluntary associations in countries across the Arab region since in many instances, humanitarian space became a matter to be negotiated at the local level because Governments rejected foreign and multilateral assistance.
3. To avoid a resumption of the kinds of atrocities involving hospitals and personnel that have been perpetrated in Bahrain, Libya and Syria, the UN Human Rights Council should adopt a resolution that reminds all UN member States of the neutrality of medical personnel and medical institutions.
4. The UN Human Rights Council should also remind States that attacks on protected persons in time of armed conflict constitute grave breaches of the Geneva Conventions which could be prosecuted before the International Criminal Court.

5. The UN Human Rights Council should continue to field commissions of inquiry to investigate and document serious violations of human rights and humanitarian law and where necessary, it should request the Security Council to adopt a resolution under Chapter VII of the Charter of the United Nations that binds all member States, as it has done with regard to Libya, in order to freeze assets, enforce no-fly zones and where necessary, authorize military action.
6. The UN should work more closely with the Organization of the Islamic Conference and the Arab League, and where applicable, the African Union, to establish standing policy committees to assist the civil society sector across the Arab region to spread knowledge, training and delivery of humanitarian assistance in order to enhance preparedness.
7. Once conditions are more conducive to democracy, human rights and the rule of law, every effort must be made through multilateral agencies to encourage and assist the domestic authorities to build up human rights culture and awareness, institute democratic reforms and strengthen the independence of the judiciary from the Executive power of Government.