Applying the Kosovo Model to Syria

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The UN Security Council adopted a resolution in 2011 (1973) demanding an immediate cease-fire in Libya and authorizing the international community to establish a no-fly zone and to use all means necessary to protect civilians. In the case of the intervention in Mali, France took part in that operation under a Security Council resolution (2085) which authorized the deployment of the African-led International Support Mission to Mali. There was also a call from officials. However, in Kosovo, the Security Council called for a ceasefire, set limits on the number of Serbian forces that could be in Kosovo, and established two missions named the Kosovo Verification Mission and the Partnership for Peace to observe compliance. Regarding Syria, the Security Council adopted the Syrian Civil War observer force resolution (2042) and established a UN supervisory mission (2043), like in Kosovo. Therefore, the Kosovo formula seems to be the best model for Syria.

When the Security Council mechanism was at an impasse and international mediation efforts broke down, NATO decided to conduct an aerial operation over Kosovo. Shortly after the operation, the Independent Kosovo Report Commission stated that the military intervention was “illegal but legitimate” because of the lack of a Security Council resolution. NATO member states that were involved in the operation focused on factors that highlight the political aspect and legitimacy of the operation. According to Ashley Deeks, prominent international law scholar and a former attorney for the U.S. State Department's Office of the Legal Adviser, NATO members had adopted the “factors” approach and listed several factors legitimizing the operation: the violations of previous Security Council resolutions, the failure to cooperate with the International Criminal Tribunal for the Former Yugoslavia, the excessive, indiscriminate use of force, the possibility of a breakdown of peace and security in the region, massive flow of refugees and possible risks that NATO member states Turkey and Greece could face, among others. After the operation, the Security Council issued a resolution (1244) authorizing the “deployment of effective international and security presences, with

substantial NATO participation in the security presence and unified command and control; establishment of an interim administration; the safe and free return of all refugees; a political process providing for substantial self-government…"

Some analysts, looking from a different perspective, asserted that the Kosovo operation was both legitimate and legal. These analysts considered resolution (1244) to be implicitly approving the operation or giving "tacit acceptance", which retroactively granted the legality to the operation.

Spillover and *jus ad humanitarianism*

The risk of spillover, a blocked Security Council, a multilateral coalition, and serious and common violations of international law, all factors present in Kosovo, have again appeared in the Syrian case. The only difference is the usage of chemical weapons. The usage of chemical weapons cannot be the only reason for a military intervention but it can be a legitimizing factor. The potential for chemical weapons to affect neighboring countries can be the legal grounds for "anticipatory collective self-defense". Alternatively, an "anticipatory humanitarian intervention" could be warranted in the context of genocide, war crimes, or crimes against humanity.

In conclusion, considering the international legal structure, humanitarian interventions, and the Responsibility to Protect doctrine, there is no legal basis for a military intervention without consent from the Security Council. However, there are many legitimizing factors. On the other hand there is no fundamental legal text that all parties agreed upon regarding interventions; thus, customary international law and state practices will form the legal basis for a humanitarian intervention.

Lastly, precautions ought to be taken in order to maintain legitimacy through *jus ad humanitarianism*; force must be used sparingly, and only as necessary to achieve humanitarian aims and prevent further atrocities.