

# Defending the UN Charter by Use of the Veto: The Security Council Resolution on Syria

The Arab League Observer Mission Report

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Up until the Arab League Observer Mission had been sent to Syria on December 24, 2011, there had been two main narratives describing what was happening in Syria. One was that the violence in Syria was by the government against its people. The other was that the violence was also perpetrated by armed groups attempting to destabilize Syria. There had been no independent way to judge between these two narratives. The Observer Mission Report of January 22 provided such an independent judgment. (1)

The Observer Mission determined that there were armed opposition elements in Syria. (Paragraph 71) The original protocol setting up the Observer Mission did not take into account this aspect of the situation. By detailed observations in the Report, the Observer Mission documented that there were armed opposition elements attacking civilians and government officials, blowing up trains and pipelines, civilian buses and killing not only Syrian civilians but also a French journalist.(2) (Paragraphs 25, 26, 27, 44, 75)

The Observer Mission Report noted that as a result of the Mission's insistence on a complete end to violence, the problem of violence by the Government forces and exchange of gunfire with armed elements in Homs and Hama had receded. "The most recent reports of the Mission," the Report stated, "point to a considerable calming of the situation and restraint on the part of those forces."

The Report documented that the Observer Mission witnessed peaceful demonstrations by both the opposition and the supporters of the government while the Mission was on the ground. (Paragraph 30)

Also, the Report said that, "The most important point in this regard is the commitment by 'all sides' to cease all aspects of violence thereby allowing the Mission to complete its tasks and ultimately lay the groundwork for the political process." (Paragraph 79) The Report warned that discontinuing the Mission "could lead to chaos on the ground". (Paragraph 81)

To seek a peaceful resolution to the conflict in Syria, the continuation of something like the Observer Mission would be needed. The Report concluded that there needed to be an "expansion of and a change in the Mission's mandate." (paragraph 79) Also the Mission needed political, media and technical support to fulfill its mandate. (paragraphs 80, and 82)

The dominant states in the Arab League, however did not support changing the protocol to include the problem represented by the armed groups in Syria, as recommended by the Report. Instead, the Arab League introduced a plan to require President Assad of Syria to

step down and to turn over power to the Vice President to fulfill a plan drafted without the Syrian government's agreement.(3) This ignored the recommendations of the Report of the Observer Mission, and substituted the imposition of an Arab League political plan for Syria in place of the recommended modification and continuation of the Observer Mission. The Arab League political plan had as its aim the removal of the Syrian president, as opposed to creating a peaceful solution so that the Syrian people could make the political changes they desired in a Syrian determined process.

The Arab League brought their regime change political plan to the UN Secretary General asking him to submit it to the Security Council. The Arab League was seeking the UN's endorsement for its plan.

The Arab League submitted a letter to the UN Secretary General requesting a meeting of the Security Council. The letter listed several enclosures.

Though the Report of the Observer's Mission (Report) to the UN was listed as one of the enclosures, this document was not included in the material originally sent to the UN.

The Russian Ambassador, however, insisted that the Report be submitted to the UN Security Council. No Security Council discussion of the Arab League plan was to be held until the Report was submitted to the Security Council. Also it was to be treated as an official document of the UN and translated into the six official languages as is customary of official documents.

Russia had requested that the Security Council hold a session to discuss the Report. Russia also requested that the head of the Observer Mission, General Mohammed Al-Dabi, be invited to the Security Council to discuss the Report. Russia's request to the Security Council to discuss the Report was not accepted, even though there were other Security Council members who agreed about the importance of the report. Instead some members of the Council wanted to schedule the Security Council to discuss the Arab League plan on Monday, January 30. Other members wanted the meeting on Tuesday, January 31 to give Security Council members time to read the Report.(4)

On January 31, as part of the Security Council meeting, the Report was officially circulated in English and Arabic along with the letter from the Arab League to the Secretary General. The Arab League, represented by its Secretary General Nabil Elaraby and the current rotating chairman of the League, Prime Minister Al-Thani of Qatar, presented its plan to the Security Council. They discouraged the Security Council from asking to meet with Al Dabi. Though some members of the Security Council recognized the importance of the Report, the discussion in the Council was diverted to the Arab League plan for Syria.

Subsequently, a draft Security Council resolution was submitted by Morocco. Though Russia also had submitted a revised version of the Resolution it had submitted weeks before, the discussion turned to the Moroccan draft. (5) The issue in contention over this draft was whether the Council would agree to "fully support" the Arab League plan for regime change in Syria.

The recommendations of the Observer Report presented the need to expand the protocol agreed to by the Syrian government and the Arab League to include a provision related to the presence of armed groups and the violence perpetuated by them. The Arab League proposal for regime change in Syria ignored this issue. The Security Council members

differed on the need to make an independent judgment about whether the Arab League plan fit the criteria of Chapter VIII in the UN Charter. This provision of the Charter requires that regional actions supported by the Security Council be consistent with the Purposes and Principles of the United Nations. ( Article 52(1) )

On Saturday, February 4, the Russian Federation submitted several amendments to the draft resolution, amendments it said would enable Russia to support a resolution on Syria. (6) It asked that these amendments be discussed before taking a vote on the draft resolution.

To deal with the problem of armed groups and violence perpetuated by them, Russia proposed that a line be added to the Security Council Resolution that would not only demand the withdrawal of the government's military forces from conflict areas, but in conjunction would require that armed groups be prevented from taking advantage of the vacuum to occupy those areas. (7)

Also the Russian Federation identified another important loophole in the draft Security Council resolution. The Arab League plan required that President Assad step down and turn over negotiations for a political transition to his vice president. This is essentially a call for Assad to agree to a forced regime change for Syria. If Assad were to resist, which one would expect of the head of State of a nation being attacked by armed insurgents who are killing civilians and destroying infrastructure. Then what? The arbitrary and mandatory time deadlines would provide a pretext for the advocates of foreign intervention to claim that the UN supports intervention into the internal affairs of Syria. This is what had been done with Libya. The Russian amendments proposed the need to change the mandatory time deadlines in the Arab League timetable to make the deadlines advisory, instead of mandatory. Mandatory time deadlines could be used as a pretext to violate the UN Charter which prohibits foreign interference in the internal affair of a member state. (UN Charter, Article 2(7) )

The request for time to discuss the amendments was denied, leading to a vote on the draft resolution at a public meeting of the Council on February 4. Russia and China as expected by all, vetoed the resolution. Chinese Ambassador Li Baodong supported Russia's request for continued consultations as "reasonable". (8) He said that it was "regrettable" that Russia's request for a few days of discussion on its proposed amendments had not been honored.

Referring to the Charter to explain why China vetoed the resolution, Li Baodong said:

"(T)he sovereignty, independence and territorial integrity of Syria should be fully respected. The actions of the Security Council on the Syrian issue should comply with the purposes and principles of the UN Charter...."

"Under these principles," he said, "China has taken an active part in the consultations on the draft resolution, and supported the efforts made by the Arab League to facilitate a political settlement of the Syria issue and maintain stability in the region. Like many Council members, China maintains that, under the current circumstances, to put undue emphasis on pressuring the Syrian government, prejudge the result of the dialogue or impose any solution will not help resolve the Syrian issue, but instead may further complicate the situation."

Talking to journalists at a media stakeout at the UN, Vitaly Churkin described some of what led to his nation's veto of the proposed Security Council resolution. (9) "As Syrian forces were pulling out, armed groups were moving in. We were trying to address that situation," he explained. To support a peaceful political solution to the crisis in Syria as required by the UN Charter, both sides capable of substantial violence had to be observed and called on to be restrained and to cease all acts of violence, thereby allowing the Mission to complete its tasks and, ultimately lay the groundwork for a political solution.

Commenting on the impact on Russia of the Security Council action on Libya, a columnist for Russia Today (RT), Fyodor Lukyanov, explains that, "Russia has drawn lessons in Libya last year after Moscow refrained from using its veto in the UNSC, paving the way for 'humanitarian intervention' by NATO. The 'no-fly' mandate was almost immediately shifted into a regime change operation led by France and Britain. Russia felt its cooperation had been abused."

The result of this experience, Lukyanov argues, is that, "Russia opposes any call for Bashar al-Assad to resign because ultimatums of this kind will mean entering onto a path whose final destination is invasion. This is because the UNSC will not allow its demand to be ignored, while it is unlikely that Assad will be in any hurry to fulfill it." (10)

At a media stakeout after he spoke with the Security Council on Wednesday, February 8, Ban Ki-moon said that he had told the Security Council that the Arab League Secretary General had spoken with him on the phone and asked the UN Secretary General about setting up some sort of Observer Mission in Syria in conjunction with the UN. The question this raises is whether such a possible joint Observer Mission would take into account the recommendations of the January 22 Observer Mission Report. The obligations of the UN Charter require that the UN Security Council act in line with the UN Charter, rather than just endorsing the actions of regional organizations even if such actions are in violation of the UN Charter. (11)

The struggle continues at the UN Security Council to find a way to support a peaceful resolution to the conflict in Syria without violating the Purposes and Principles of the UN Charter. The February 4 veto was in the words of the Foreign Minister of the Russian Federation Sergey Lavrov, "the (United Nations) Charter at work."

## Notes

(1)"League of Arab States Observer Mission to Syria: Report of the Head of the League of Arab States Observer Mission to Syria for the period from 24 December 2011 to 18 January 2012"

[http://www.columbia.edu/~hauben/Report\\_of\\_Arab\\_League\\_Observer\\_Mission.pdf](http://www.columbia.edu/~hauben/Report_of_Arab_League_Observer_Mission.pdf)

The official UN document distributed January 31 2012 at the UN contained the Observer Report as Enclosure 4 of S/2012/71

(2)See for example, Ronda Hauben, Al Observer Report Corrects Media Narratives about Syria, [taz.de](http://taz.de) January 31, 2012

<http://blogs.taz.de/netizenblog/2012/01/31/observer-mission-report-syria/>

(3)Security Council S/2012/71, Enclosure 1"Elements of Arab Plan to Resolve the Syrian

Crisis", January 30, 2012

Enclosure 1 listed the following steps to be taken in Syria:

1. Govt of national unity formed within 2 months. The President should grant his Vice-President full powers to fulfill transition phase

2. Within 3 months of its formation free and fair elections should be held for a constituent assembly

3. This should prepare a new draft constitution for approval by popular referendum and an electoral based on that draft constitution

(4) I was told that Security Council members received a copy of the Observer Mission Report sometime on Friday, January 27.

(5) Draft resolution S/2012/77

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/223/75/PDF/N1222375.pdf?OpenElement>

vetoed on February 4, 2012

(6) Mathew Lee, "Russian Amendments Condemn Armed Groups, Only 'Take Into Account' AL", Inner City Press, February 4, 2012

<http://www.innercitypress.com/syria1rusam020412.html>

(7) Change proposed by Russia from the text of the Resolution on Syria.

Resolution said: 5d) withdraw all Syrian military and armed forces from cities and towns, and return them to their original home barracks;

Russia's requested change:

Requested change said: 5d) withdraw all Syrian military and armed forces from cities and towns, and return them to their original home barracks; in conjunction with the end of attacks by armed groups against State institutions and quarters and towns.

(8) UN Transcript, Security Council Meeting on Middle East Situation (February 4, 2012) - Syria, S/PV.6711, p. 9-10

<http://daccess-dds-ny.un.org/doc/UNDOC/PRO/N12/223/56/PDF/N1222356.pdf?OpenElement>

(9) Stakeout, Vitaly L. Churkin (Russian Federation) on Syria, Security Council Media Stakeout, February 4, 2012

<http://www.unmultimedia.org/tv/webcast/2012/02/h-e-mr-vitaly-i-churkin-russian-federation-on-the-situation-in-syria-security-council-media-stakeout-2.html>

(10) Fyodor Lukyanov, "Why is Russia so Resolute on Syria?", RT, February 3, 2012

<http://rt.com/politics/columns/unpredictable-world-foreign-lukyanov/russia-syria-assad-un/>

(11) Ban Ki Moon at stakeout at Security Council on February 8, 2012.

<http://www.unmultimedia.org/tv/webcast/2012/02/un-secretary-general-ban-ki-moon-on-the-middle-east-security-council-media-stakeout.html>

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