

The Implementation Mode of No-Fly Zones in International Relations^{*}

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A No-Fly Zone (NFZ) is a unique mode of humanitarian intervention which is understudied in international relations. This article focuses on the political dimension of NFZs in international relations and investigates their implementations by empirically reviewing all three cases of NFZs to date. There may be efforts by intervening states to highlight humanitarian crises among certain targets to secure UN authorization for the NFZs; yet the implementation of NFZs is also driven largely by the security interests of enforcing states. As a result, there is the potential for those states implementing NFZs to transcend legal authorization and sometimes use excessive force, with likely calamitous results for local populations, or in extreme cases, accomplishing regime change by supporting opposition parties in target states.

Keywords: No-Fly Zone, humanitarian intervention, limited use of force, human rights, international norm, China's diplomacy

Introduction

The term No-Fly Zone (NFZ) can be used in a variety of ways (Mueller, 2013, p. 13). For the purpose of this discussion, Michael N. Schmitt's definition is useful: "a no-fly zone is a de facto aerial occupation of sovereign airspace in which, absent consent of the entity authorizing the occupation, only aircraft of the enforcement forces may fly" (Schmitt, 1998, p. 729). In April 1991 and August 1992, France, the United Kingdom, and the United States established the Northern No-Fly Zone to protect the Kurds and the Southern NFZ to protect Shiite Muslims in Iraq, based on their own interpretation of United Nations Security Council (UNSC) Resolution 688. The NFZs imposed by the three powers created a precedent in humanitarian interventions which allowed the international community to place an NFZ over the territory or a country in conflict, in order to protect a vulnerable population victimized by the conflict. As a result, this practice was later utilized in Bosnia-Herzegovina as well as in Libya; thus NFZs developed into a method of UN-authorized humanitarian intervention.

NFZ, as presented here, is indeed a new and unique form of humanitarian intervention which incorporates both general features of humanitarian intervention and some new and unique additions. Generally speaking, two factors determine how and if a country is to engage in an international intervention: the attractiveness of the target

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countries' strategic resources to the intervening parties; and the level of international outrage caused by a target country's domestic situation. The former is a self-interest consideration by intervening states, determined by how much cost they are willing to sustain; and the latter concerns the severity of humanitarian crises in target countries, influencing the possibility for intervening parties to obtain international authorization. Early international interventions were only influenced by the first factor, and were legally on a par with an overt military invasion whose contemporary practices are in Kosovo and during the Iraq War. With the constant developing nature of international law, states began to promote more interventions to be conducted with international authorization, as were seen in Gulf or Libyan Wars. These two patterns may be called, respectively, the "Kosovo/Iraqi War Mode" and the "Libyan/Gulf War Mode".

The uniqueness of the NFZ as a new form of international intervention may be understood as a combination of the two intervention modes. Even if intervening states have important interests to obtain or protect in target countries, they nevertheless must cautiously choose the method and scale of their intervention. When a target state is subject to serious internal crisis, but has not caused international outrage, the UN authorization for the use of force will most likely be limited and conditional. Under such circumstances, states which use excessive force in NFZs—beyond UNSC authorization—need the label of international legality to control potential liability. The following description constitutes NFZs as unique forms of international intervention: NFZs can only be imposed by great powers on territories of small and weak states and implemented with UN authorization. Hence, they represent a method of "bullying" weaker nations, legally and legitimately, and an attempt at regime change in the name of human rights in targeting countries.

Intervening powers, therefore, have demonstrated a considerable gap between stated and "real" objectives for those NFZs implemented to date. While presenting publicly as a UN-approved humanitarian intervention, it seems implicit that there have been underlying motives: to remove anti-Western regimes in target countries, demonstrating that public perception and an NFZ's "undeclared" objective are both important to the enforcer. If this is indeed the case, how does the intervening state square the distance between its stated humanitarian objective and its likely unstated one of achieving regime change?

The three NFZ cases studied suggest that there appear to be three phases to the implementation of NFZs. The first step would be to identify intervention targets. As a unique form of humanitarian intervention, the prerequisites for enactment fall within strict limits. If any of the four conditions listed below are not fulfilled, the intervening state would likely choose not to pursue an NFZ or perhaps might seek other forms of intervention. At this stage, an intervening state might focus on its self-interests simultaneously with the humanitarian crisis in a target country. Once a determination has been made, the next step would be to obtain UN authorization. Without formal authorization, intervening states would typically prefer not to intervene; at that point they may however opt to take other measures. During this stage intervening states would need to focus on humanitarian crises in target countries. The third step involves implementation of the NFZ itself. Once authorized by the UN, the intervening state would then focus on its self-interests, making the UN provisions and objectives secondary.

Prerequisites for Imposition

The first step of establishing an NFZ is to select the target state. Since intervening powers use NFZs as a form of international intervention to promote regime change behind the cover of humanitarianism, the application of NFZs in international relations is therefore subject to strict prerequisites. First of all, as previously mentioned,

NFZs can only be imposed by major powers over small countries which do not have effective retaliation capabilities. This ensures that the enforcers possess absolute military superiority. Any potential for heavy losses—to manpower or equipment—would likely dissuade major powers from seeking to implement NFZs. For example, if a small country is strongly supported by one or more major powers, as in the current situation in Syria; or has obtained unidentified weapons of mass destruction, such as in the case of North Korea, the possibility of imposing an NFZ over either of them would be remote.

Secondly, the target states must have resources which are attractive to some major powers, to provide sufficient motivation to “pay” for the intervention. It is important to acknowledge that if unprofitable, a country is less likely to intervene in a humanitarian crisis which has nothing to do with them. For example, the US (along with most of the world) was indifferent to the genocide in Rwanda; and after suffering casualties in Somalia withdrew, following the withdrawal of UN support and other nations supporting the mission.

Thirdly, as partly mentioned earlier, the target regime must be subject to universal hostility in the West. For example, the Saddam regime had threatened international peace and security through annexation of Kuwait, an ally of Western countries. In doing so, his regime trampled on the UN Charter. In addition, its brutal oppression of domestic Kurdish and Shiite Muslims had invited strong condemnation from the West as well as other regional states. Similarly, the Bosnian Serbs had gained support of the Milosevic regime, whose leader belonged to the former Communist Party and maintained a close relationship with Russia, making it a target for containment by Western powers. When Muammar Gaddafi took office in 1969, he began to pursue a high-profile anti-Western foreign policy which continued over the next several decades: The US characterized him as a “madman” with a “rogue regime”. Because of the seriously negative images of the three regimes in the Western world, it was then considered reasonable to overthrow them when other conditions were met.

An NFZ can only be established over a small country in the throes of civil conflict. If a country is stable, there is no excuse (or need) for external forces to intervene, regardless of other issues and despite how tempting the country’s resources may be. Thus, the condition to impose an NFZ on any country, depends on an invitation for external intervention within a nation experiencing civil unrest which has then deteriorated into a humanitarian crisis. The importance of civil conflicts in a target country will be discussed in the section on NFZ’s authorization procedures. It should be noted that without some form of armed rebellion already existing in a target country, a humanitarian crisis alone may not offer sufficient reason to impose an NFZ. The importance of armed rebellion will be analysed in the section on specific implementation methods.

Authorization Procedures

The second step in establishing an NFZ is to obtain international authorization. Under the current system of international law, legal authorization for the use of force can only come from the UNSC and not other countries or international organizations (Schmitt, 2011, p. 47). Within the UN Charter, however, there are two exceptions to the rule regarding the use of force in international relations: Article 39 “to maintain or restore international peace and security”, and Article 51 concerning “individual or collective self-defence”. Article 51 stipulates:

Nothing in the present Charter shall impair *the inherent right of individual or collective self-defence* if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under

the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Article 39 further states:

The Security Council shall determine the existence of any *threat to the peace, breach of the peace, or act of aggression* and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Beyond the two articles, member countries have the right to use force only for self-defence in response to an invasion. Member nations that take action pursuant to a UNSC decision must report to the Security Council immediately upon exercising the right of “individual or collective self-defence”, respecting its right to act as deemed necessary at any given time. As far as target states are concerned, if they did not behave aggressively or threaten to use force, no member country or organization, including the UNSC, has the right to use force against them.

An NFZ can only be established when the target state is suffering internal chaos; only then can interveners find a legal justification to use force. The prerequisite to establish an NFZ in a small country is not dependent on aggressive actions against other countries by the target nation. If it is necessary to use force against a non-aggressive small state, the legal basis is found in UNSC Resolution 134 (1960). Using this precedent, the Security Council can declare that a particular domestic situation within a member state threatens international peace and security, despite the absence of aggression to other nations. By definition, a country’s domestic situation has nothing to do with other nations, unless that country’s condition has threatened international peace and security; such a case may be seen as a humanitarian disaster. To classify as a humanitarian disaster, there must be either a massive violation of human rights which has caused widespread public concern, or a condition of anarchy exists which creates a significant number of refugees. Whether a domestic situation has threatened international peace and security or not, can only be determined by the UNSC. Once such a situation is identified, the Security Council can interpret the abuse of human rights in a target country as a violation of international humanitarian law, or declare the cross-border refugees to be a threat to international peace and security. Based on this interpretation, the UNSC can adopt a resolution to authorize NFZs to protect civilians or the weak fighting faction(s) of a target country. Under such circumstances, the military action against the target state is: morally, to eliminate the apparent humanitarian disaster and, legally, to exercise the international community’s right of collective defence. Participating countries have taken advantage of the UN Charter to set up NFZs, by combining Articles 51 and 39.

In order to obtain legal status through UN authorization, an NFZ-related resolution must adhere to strict procedures within the Security Council. According to Chapter VII of the Charter, the authorization of use of force should follow three steps. First, when the UNSC identifies a domestic situation which has threatened international peace and security, it typically does not authorize the immediate use of force. Rather, it urges relevant parties in the target country to resolve problems by themselves, as seen in Article 40:

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Secondly, if measures are not undertaken by the government or factions in a target country or they are not effective, the Security Council shall adopt another resolution not involving the use of force to oblige them to take effective measures (Article 41).

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Finally, if it is determined by the Security Council that means other than force is insufficient, the Council will adopt a resolution to authorize member states to “take all necessary measures” (Article 42).

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take *such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security*. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations.

Once such a resolution is approved, the legal procedure to establish an NFZ is set in motion. The reference to “all necessary measures” is the standard phrase used by the Security Council to authorize states to act militarily. Pursuant to such a resolution, states can operate alone, in an ad hoc coalition, through a regional organization such as NATO, or any combination thereof (Schmitt, 2011, p. 45).

Since the UN Charter strictly limits the use of force in international relations, the UNSC must make clear provisions when authorizing force, stipulating not only who organizes the intervention, but also the method, scale, and procedures relating to the use of force¹ (Schmitt, 2011, p. 48). The Iraqi NFZs were not authorized by the UN, but established by the US, the UK, and France based on their own interpretation of UNSC Resolution 688. In that case, therefore, there is no question of UN authorization to use force² (MOD, 2009, pp. 6-7; Schmitt, 1998, pp. 732-733, 736-737; Silliman, 2002, pp. 768-770). With Bosnia and Herzegovina, the UNSC passed 25 resolutions over a period of 13 months before cautiously deciding to authorize the use of force. UNSC Resolution 757 established a safety zone in Bosnia and Herzegovina on May 30, 1992. At the same time, it imposed comprehensive economic sanctions against the Serbs in Bosnia and Herzegovina and Yugoslavia. On August 13, UNSC Resolution 770 authorized the use of force for the first time, but required that the force can be used only for “providing humanitarian assistance” and that the enforcers must “coordinate with the UN”.³ On October 9, UNSC Resolution 781 established an NFZ over the entire airspace of Bosnia and Herzegovina.⁴ However, it was not until March 31, 1993 that UNSC Resolution 816 authorized member states or international organizations to

¹ As with any resolution contemplating the use of force, a no-fly zone resolution will generally designate who can take enforcement action. There are three possible alternatives; First, a UN-Command-and-Control Force (i.e. “Blue Helmets”) may be authorized to maintain the zone. Secondly, the resolution may authorize “member states” generally or specific states to enforce the zone. In the latter case, only those states so designated may act. In the former case, states acting on their own or in an ad hoc coalition may police the zone. Thirdly, the Council may designate an international organization, either by name or in general, as an authorized enforcement entity. In light of the complexity of mounting no-fly zone operations and the UN’s limited military capabilities, the first option is highly unlikely to be used. The common practice to date is that the UNSC opts for a combination of the second and third options.

² As to the US and UK, justification for the legal basis for Iraqi no-fly zones, see MOD, 2009, pp. 6-7; while academic analysis see: Michael N. Schmitt, “Clipped Wings”, pp. 732-733, 736-737; and Scott L. Silliman, “The Iraqi Quagmire”, pp. 768-770.

³ See UNSC Resolution 770 (1992), official website of the UN: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N92/379/65/IMG/N9237965.pdf?OpenElement>.

⁴ See UNSC Resolution 781 (1992), official website of the UN: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N92/491/63/IMG/N9249163.pdf?OpenElement>.

“take all necessary measures”.⁵ On June 4, UNSC Resolution 836 authorized the UN Protection Force (UNPROFOR) to protect the safety zone by force, and allow NATO to provide air support.⁶ In 2011, when the Security Council passed UNSC Resolution 1973 to establish an NFZ throughout Libya, it clarified rules about the use of force, stipulating that ground force actions would be unlawful.

An NFZ must be enforced by major powers or international organizations like NATO since the NFZ-related resolutions are promoted by them.⁷ Constrained by the UN Charter, however, the Security Council will inevitably set clear rules about the use of force. If Western powers implement the no-fly restrictions strictly according to such authorization, the objective of regime change will inevitably fail. Therefore, in order to reach that goal, Western powers inevitably go beyond UN authorization and may, in some instances, use excessive force.

Implementation Methods

Understanding the criteria for states under international law is a useful place to begin analysing the implementation modes of NFZs. One of the most frequently quoted definitions of a state is found in the 1933 Montevideo Convention on Rights and Duties of States, one of a remarkable series of texts emanating from the Pan American Union (predecessor of the Organization of American States). Article I of that Convention stipulates:

The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states. (Lowe, 2007, p. 153)

The elements of the state indicate that sovereignty is the exclusive jurisdiction of the government on its territory and inhabitants, and the validity of the jurisdiction is based on its internal recognition by the people as well as external recognition by the international community. It also indicates that there are three potential threats to sovereignty: human rights; national self-determination at home; and hegemony or super-state authority abroad.

The challenges to sovereignty come exactly from three main aspects. First, in order to fight for human rights, the public tends to deny the authority of government, or even formulate anti-government armed groups. Secondly, minority groups take advantage of the right of national self-determination and deny the legitimacy of a central government, thus creating separatist forces. Thirdly, foreign governments or the international community infringe on a country's sovereignty, usually denying its legitimacy on a pretext such as opposing a dictatorship or oppression. With respect to NFZs, intervening nations would follow the same path by partially or wholly depriving jurisdiction by the target regime over its citizens or territory. The NFZ is by definition a specific area of a target country over which the aircraft of all parties in conflict (including the target nation), is prohibited to fly. This is tantamount to partially depriving a target nation of its sovereignty.

As the operating process of NFZs shows, there is a paradox between their authorization and implementation. An NFZ can only be authorized by the UNSC; however it can only be implemented by hegemonic powers. This

⁵ See UNSC Resolution 816 (1992), official website of the UN: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/187/16/IMG/N9318716.pdf?OpenElement>.

⁶ See UNSC Resolution 836 (1992), official website of the UN: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/330/20/IMG/N9333020.pdf?OpenElement>.

⁷ The NFZ areas in Iraq and Bosnia were all occupied; those areas were secured due to the US-UK or NATO's military support, respectively. In contrast, the UNPROFOR tried unsuccessfully to establish similar safety zones for the Croatian Serbs. The Republic of Serbian Krajina was located within the safety zones but without sufficient protection from the local UNPROFOR was quickly destroyed during the August 1995 invasion by the Croatian forces. The two cases indicate the fundamental difference between the protection offered by NATO and the UN.

connotes interdependence between the two. Furthermore, Western nations promote NFZs in order to enforce regime change, while the Security Council authorizes them only to restore peace and prevent humanitarian disaster. Thus, an inherent contradiction remains between those powers seeking to implement NFZs and the UNSC which approves them. For Western powers, imposing an NFZ requires UN authorization with the inherent purpose of restoring peace and containing humanitarian disaster. Being constrained by the Charter and UNSC members, the UN is not likely to authorize the use of force arbitrarily. Instead, it always tries to restrict force within the scope necessary to re-establish peace and limit humanitarian disaster. In that way, if intervening powers were to strictly implement a no-fly order, coordinating with the UN, they would likely not be able to achieve the desired goal of regime change⁸ (Benard, 2004, p. 460). On the contrary, given the current state of international relations, no country would likely be interested in promoting and enforcing an NFZ, if prevented from achieving their self-interest objectives.

With such contradictions between authorization and implementation, given their self-interest concerns, those tasked with enforcing NFZs will inevitably move beyond Security Council authorization and use unwarranted force. The NFZs should have been created as a defensive measure (Cook, 2012, p. 4). In practice, an NFZ should restrict aircraft of *all parties*, not just the targeted regime. Also the restriction should only apply to aircraft, not ground forces, who by definition, don't violate NFZs. What seems most important to those enforcing NFZs is the "real" objective behind the "humanitarian" façade. From the three NFZ practices to date, we observe that once intervening powers have obtained UNSC authority, they can essentially proceed unimpeded, not only barring aircraft, but able to attack a target's ground forces not in violation of the NFZ⁹ (Cook, 2012, p. 30). During the implementation of the Bosnian NFZs, the strained relationship between the UN Secretary-general Boutros Boutros-Ghali and the US government was evident. After UNSC Resolution 1973 was approved, the Gaddafi government troops did not violate the UN's no fly order, but the NATO-led coalition still conducted air strikes against them. The actions of the coalition ranged far beyond the scope of implementing the no-fly order. Although the Gaddafi regime called for a ceasefire, the opposition forces refused to negotiate. Peace talks were also refused and air strikes on Tripoli, ground troops, air defence facilities, and civil airports, continued, finally facilitating Gaddafi's demise. At start of the Libyan war, Arab League Secretary General Moussa exclaimed that "what is happening in Libya differs from the aim of imposing a no-fly zone, and what we want is the protection of civilians and not the bombardment of more civilians".

Fortunately, interdependence between authorization and implementation also limits NFZ enforcers. In choosing the NFZ as their intervention model, Western powers have been willing to conduct limited military activities and take advantage of opposing forces as a primary means of achieving regime change. A major implication for the establishment of an NFZ, is to protect weaker factions from being annihilated while adopting a strategy of both strengthening weak forces and weakening strong factions, gradually pushing toward a change in the balance of power. Thus, regime change is achieved by reversing the fortune of various opposition forces. Previously, all three NFZs were established when opposition forces were on the verge of total defeat. Whether the goal of regime change can be achieved or not is highly dependent on a rebel faction's ability to fight against

⁸ As Benard observes, if implemented consistent with the UN Security Council authorization, "a no-fly zone will be successful in deterring or preventing enemy aggression. This, however, can lead to the problem that the no-fly zone contains the enemy while leaving the 'rogue leader' unharmed and in power, therefore not addressing the origin of the problem".

⁹ Cook notices that no-fly zones occurred in conjunction with more aggressive strategies. However, he believes that operations beyond authorization should not be counted a part of NFZs, and thus should be considered as a separate offensive operation. Unlike his argument, this research asserts that all aggressive actions are inseparable from the underlying purpose to establish NFZs.

the target regime. Throughout the long dictatorial rule of Saddam Hussein, opposition factions in Iraq were too weak to overthrow the regime despite air support from the US and the UK. As a result, the two powers failed to oust Saddam Hussein, although they had made multiple attempts within a twelve-year period.

Therefore, the limits imposed on NFZs by the UN affect nations enforcing no-fly orders in important ways. Constrained by these limits, such countries are disinclined to venture too far beyond their mandate; instead they focus on supporting and strengthening opposition forces in target countries. The extent to which they are successful or not, is strongly connected to whether a regime will change or remain in power in the target country.

Conclusion

In conclusion, the NFZ is a new phenomenon in international politics that has been established in the post-Cold War era. Up to the present time, there have been three NFZ implementations: in Iraq, Bosnia-Herzegovina, and Libya. Based on an empirical summary of those three cases, this article makes three tentative arguments about their nature: a middle way of international intervention; bullying the weak states legally and legitimately; and promoting regime change in anti-Western countries in the name of humanitarianism implementation. Because of the considerable gap between their stated and real objectives, imposing powers inevitably use force excessively but limitedly.

In order to affect regime changes legally and legitimately, intervening states have developed specific procedures to implement NFZs. The intervening parties may choose not to use an NFZ or choose other intervention methods, if the four conditions earlier presented are not met. The first three conditions are all hidden rules; only the last one, the humanitarian crisis in the target state, is a topic to be openly discussed. After selecting the proper target, the intervening parties typically strive to get international authorization, which is a necessary condition to implement an NFZ. During this phase, intervening states emphasize and even dramatize the humanitarian crisis in target countries, in order to cause international outrage and gain support from UNSC member states. A legal authorization will result following resolutions adopted by the UNSC. However, it is not beyond the realm of possibility that barring a UNSC resolution, intervening parties could impose an NFZ by referencing a UN General Assembly Resolution with the support of representative international organizations. UNSC decisions on humanitarian intervention have provided a precedent for NFZ authorization while the customary abstention by certain permanent UNSC members has also contributed to the process. In the implementation phase, after obtaining international authorization, intervening states may switch their focus from the humanitarian crisis in target states to pursue their own self-interests, and inevitably employ excessive—and unauthorized—force. However, by exercising restraint in exceeding UNSC authority, intervening states may avoid condemnation and opt for a “legitimate” and limited form of intervention. Further, to achieve regime change without dramatically exceeding UN authorization, intervening states may devote themselves to strengthening opposition forces against the target regime, helping them capture territory and achieve victory by providing naval and air support.

It is important, however, to note that the arguments of this article are based on an empirical summary of extremely limited NFZ practices. Because NFZs have been implemented only three times to date, some of the arguments must be seen as tentative. The concept of NFZs emerged during structural transformations of the international system in the post-Cold War era when Western powers were then able to wield sufficient power while often gaining cooperation from China and Russia in the Security Council. They are thus able to impose regime changes in extra-system countries with the benefit of UN authorization. NFZs, thus far, have been

imposed against regimes hostile to Western values. With international power constantly in transition, the international system will likely involve additional structural changes, which will inevitably affect the future implementation—or not—of NFZs.

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