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Monitoring, Reporting, and Fact-finding
in Bahrain and Syria During the Arab Spring

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I. INTRODUCTION

The way in which international actors implement monitoring, reporting, and fact-finding (MRF) mechanisms is changing. Modern MRF mechanisms date back to 1913, when, after the Balkans had erupted in war for the second time in two years, the Carnegie Endowment for International Peace initiated a commission to investigate potential violations of international law. But the Carnegie Endowment did not begin its work until fighting had ceased, believing, as the mission's final report notes, that a mission initiated before the conflict's conclusion would be "premature."¹ In contrast, almost a century later, as massive protests erupted in numerous autocratic Arab countries in 2011, international actors felt no need to hesitate. Instead, MRF actors initiated MRF missions to examine potential violations of international law in Yemen, Libya, Syria, and Bahrain, all contexts in which violent conflicts continued to unfurl, as well as Tunisia and Egypt, where massive protests had recently led to transfers of political power. These missions represent a trend in the world of MRF toward more rapid deployment.

As MRF actors more frequently mandate missions to examine ongoing conflicts, MRF's potential on-the-ground political impact increases. While this trend could be a positive development, an MRF mission, if implemented improperly, can actually harm an ongoing political reconciliation process and exacerbate conflict. Hence, greater analytic scrutiny of the effect of MRF missions on the local contexts in which they operate is necessary.

To address the need for more in-depth examination of MRF's on-the-ground effects, this paper examines local responses to two of the most high profile Arab Spring MRF missions: the Bahrain Independent Commission of Inquiry (BICI) and the League of Arab States Observer Mission to Syria (LASOMS). This paper first examines the BICI, then examines the LASOMS, and finally assesses lessons applicable to future MRF mechanisms. Through this analysis, this paper aims to provide MRF policymakers and practitioners with an analytical foundation to more effectively grapple with the shift toward more rapid MRF deployment.

¹ Carnegie Endowment for International Peace, "Report of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars," 1914, p. 1, available at <http://archive.org/stream/reportofinternat00inteuoft#page/n13/mode/2up>

II. THE BAHRAIN INDEPENDENT COMMISSION OF INQUIRY

The Government of Bahrain established the BICI in June 2011 after months of unrest “to investigate and report on the events occurring in Bahrain in February/March 2011, and any subsequent consequences arising out of the aforementioned events, and to make such recommendations as it may deem appropriate,” as the BICI mandate states.² King Hamad — the ruler of Bahrain — hoped that the BICI would help Bahrainis move beyond the perpetual instability that has defined the country’s four decades of independent existence, and, as he stated in his speech announcing the BICI, “write a new chapter in our history, a chapter full of success and prosperity.”³ But as this section demonstrates, the BICI fell short of this goal and instead became a highly controversial initiative that risked harming Bahrain’s tense political reconciliation process.

The 2011 Uprising and the Creation of the BICI

The 2011 uprising was driven by a wide range of grievances, including concerns about anti-Shiite discrimination, demands for constitutional reforms such as greater limits on constitutionally granted executive power, and dissatisfaction with economic disparity. After massive protests erupted in February 2011, the Bahraini government offered various concessions — including an offer to provide two thousand dollars to every Bahraini family and a cabinet reshuffle in which King Hamad dismissed his ministers of health, housing, and cabinet affairs — but the opposition rejected these measures as inadequate.⁴ As protests continued, a cycle emerged in which the government’s attempts to crack down on demonstrations led to injuries, losses of life, and torture, as well as other abuses, which inflamed the opposition even further.⁵

This pattern reached a new level in March 2011, when King Hamad declared a state of emergency,⁶ authorized the intervention of Saudi Arabian and United Arab Emirates

² Royal Order No. 28 of 2011, Article One, available at <http://www.bici.org.bh/wp-content/uploads/2011/08/RoyalOrder28of2011.pdf>

³ “HM King Hamad Sets up Independent Investigation commission made of Worldly Reputed Personalities,” *Bahrain News Agency*, June 29, 2011 (<http://www.bna.bh/portal/en/news/462967>).

⁴ “Bahrain doles out money to families,” *Al Jazeera*, February 12, 2011 (<http://www.aljazeera.com/news/middleeast/2011/02/201121251854857192.html>); and “Barack Obama urges Bahrain to embrace reform,” *The Guardian*, February 28, 2011 (<http://www.guardian.co.uk/world/2011/feb/28/barack-obama-bahrain-embrace-reform>).

⁵ See “Report of the Bahrain Independent Commission of Inquiry,” December 10, 2011, p. 65-168, available at <http://www.bici.org.bh/BICIreportEN.pdf>

⁶ “Bahrain king declares state of emergency after protests,” *BBC*, March 15, 2011 (<http://www.bbc.co.uk/news/world-middle-east-12745608>).

security forces under the umbrella of the Gulf Cooperation Council (GCC),⁷ and ordered Bahraini forces to demolish the Pearl Roundabout, a prominent monument in Manama that had emerged as a focal point for opposition demonstrations.⁸ But even these measures could not definitively quell the protests, as evidenced in June 2011, when, after King Hamad lifted the state of emergency, demonstrations once again erupted throughout the country.⁹

Beginning in May 2011, the Office of the High Commissioner for Human Rights (OHCHR) urged the Bahraini government to accept a commission of inquiry mandated by the United Nations (UN) to investigate the government's crackdown.¹⁰ But the Government of Bahrain opted to mandate a commission at the domestic level, hoping that the BICI, implemented in tandem with a National Dialogue geared toward national reconciliation, would usher in a period of stability in Bahrain. The commission's mandated activities specifically excluded "political issues or negotiations," and per the mandate — Royal Order No. 28 of 2011 — the BICI's mission was limited to "fact finding" and "mak[ing] such recommendations as it may deem appropriate."¹¹ But the BICI's creators hoped the commission would depolarize the Bahraini political landscape and lay a foundation for calming the unrest. As Professor M. Cherif Bassiouni — the commission Chairperson — stated, "moderates on the reform side want to have their hand gently pushed," and "a report of the commission that gives [moderates] the appearance of being gently pushed as opposed to being hit on the head with a hammer can become useful."¹² After Al Wefaq, the largest Bahraini opposition group, withdrew

⁷ "Gulf states send forces to Bahrain following protests," *BBC*, March 14, 2011 (<http://www.bbc.co.uk/news/world-middle-east-12729786>).

⁸ "Bahrain destroys Pearl roundabout," *The Guardian*, March 18, 2011 (<http://www.guardian.co.uk/world/2011/mar/18/bahrain-destroys-pearl-roundabout>).

⁹ "Thousands rally for reform in Bahrain," *Reuters*, June 11, 2011 (<http://www.reuters.com/article/2011/06/11/us-bahrain-idUSTRE75A19G20110611>).

¹⁰ United Nations Office of the High Commissioner for Human Rights, "Press briefing note on Bahrain, June 7, 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11116&LangID=E>

¹¹ See Royal Order No. 28 of 2011, *supra* note 2, at Articles Four, Eight, and Ten. Additionally, Royal Order No. 29 of 2011 supplements the mandate and is available at: <http://www.bici.org.bh/wp-content/uploads/2011/08/RoyalOrder29of2011.pdf>

¹² "Bahrain Is Nervously Awaiting Report on Its Forgotten Revolt," *The New York Times*, November 21, 2011 (http://www.nytimes.com/2011/11/22/world/middleeast/bahrain-nervously-awaits-revolt-reports-findings.html?_r=1&pagewanted=all).

from the National Dialogue in July 2011, the National Dialogue's legitimacy faltered,¹³ and the BICI became, as Bassiouni would later tell the press, "the only game in town."¹⁴

The Local Response

Over the course of the BICI's investigations, different sectors of the Bahraini populace developed widely divergent views about the commission. While the Government of Bahrain expressed support for the commission and repeatedly emphasized the mission's historical importance,¹⁵ members of the opposition disagreed about the extent to which Bahrainis should embrace the BICI as legitimate. Many opposition activists feared that the BICI would, as various Bahraini opposition members noted, serve as "a political shield for the regime," a tool for improving the regime's reputation and containing the uprising,¹⁶ and an "excuse" for the international community to take no significant action.¹⁷ These critiques arose, in part, in reaction to the domestic origin of the BICI's mandate. As one Al Wefaq member stated of the BICI's domestic nature:

We had a problem with the commission because it was appointed by a royal decree and it will submit its recommendations to the king himself. The body that may be tasked with implementing those recommendations may be the same body that has committed the violations. We would have preferred a UN-mandated commission to do the job.¹⁸

Furthermore, as argued in one Bahraini dissident electronic newspaper, the Bahraini government engaged in "no consultations of any sort" with victims or civil society organizations about the commission's creation, resulting in a mission that "did not

¹³ "Bahrain's main opposition party withdraws from 'national dialogue,'" *CNN*, July 18, 2011 (http://articles.cnn.com/2011-07-18/world/bahrain.unrest_1_al-wefaq-leftist-waad-party-opposition-party?_s=PM:WORLD).

¹⁴ *Supra* note 12

¹⁵ For example, one government spokesman said, "This was an unprecedented step in the whole history of the Arab world (...) And we did not wait to be asked or be forced; we took this bold and historic initiative because you need the truth before embarking on the reconciliation process." See "After Bassiouni: a nation waits," *The Gulf*, January 2012 (<http://www.thegulfonline.com/Print.aspx?ArtID=4229>).

¹⁶ Alaa Shehabi, "Bahrain's Independent Commission of Inquiry: A Path to Justice or Political Shield," *Jadaliyya*, November 22, 2011 (http://www.jadaliyya.com/pages/index/3244/bahraains-independent-commission-of-inquiry_a-path-).

¹⁷ Maryam Alkhawaja (MARYMALKHAWAJA). "#bici report was excuse for #uk #us #usa and others to not say anything about #bahrain CONTD#arabsping #feb14." January 3, 2012, 5:53 a.m. Tweet.

¹⁸ "What is the BICI?," available at <http://www.youtube.com/watch?v=555tcQ7Ujds&feature=relmfu>

express the national choice.”¹⁹ The inclusion on the commission of Dr. Badriya Alawadhi — a Kuwaiti international law expert — also evoked criticism, because Alawadhi had previously written an editorial that defended the GCC’s right to intervene in Bahrain.²⁰ Though the BICI’s mandate specifies that the “Commission is wholly independent of the Government of Bahrain or of any other government,”²¹ the opposition continually questioned the mission’s impartiality and independence, viewing the BICI with skepticism.

A sequence of events that occurred in August 2011 particularly demonstrates the intensity with which activists responded to the BICI. In early August, while the BICI’s investigation was underway, a *Reuters* article quoted Bassiouni as stating that “there was never a policy of excessive use of force or torture,” and that “it was a case of people at the lower level acting, and there not being an effective chain of communication, control.”²² For many opposition members, this statement confirmed suspicions about the BICI’s biased nature. A tense exchange of public letters resulted between the Bahrain Center for Human Rights, a Bahraini non-governmental organization, which accused Bassiouni of “espous[ing] the view of the political establishment whilst paying lip-service to the concept of a fair and independent enquiry,”²³ and Bassiouni, who defended the commission’s work, legitimacy, and impartiality.²⁴ But Bassiouni’s defense failed to adequately assuage the opposition’s concerns, and a mob of hundreds of demonstrators infiltrated the BICI’s office building and clashed with staff members, leading the BICI to close its office and resume its work at a different location.²⁵

A diverse array of responses followed the publication of the BICI’s final report on November 23, 2011. The report stated, among other findings, that Bahraini security forces had used “unnecessary and excessive force,” that “detainees were subjected to torture and other forms of physical and psychological abuse,” and that Bahrainis had

¹⁹ “Royal Fact Finding Commission: Five Fatal Breaches of the Standards of the United Nations High Commission for Human Rights,” *Bahrain Mirror*, November 14, 2011 (<http://bahrainmirror.no-ip.org/article.php?id=2286&cid=71>).

²⁰ *Supra* note 16.

²¹ *Supra* note 2, at Article Three.

²² Joseph Logan, “Jurist: Bahrain inquiry serious, political split grave,” *Reuters*, August 5, 2011 (<http://www.reuters.com/article/2011/08/05/us-bahrain-commission-idUSTRE77424H20110805>).

²³ Nabeel Rajab, “BCHR Open Letter to Head of the Bahraini Independent Commission of Inquiry (BICI) re statement to Reuters,” Bahrain Center for Human Rights, August 9, 2011 (<http://bahrainrights.hopto.org/en/node/4491>).

²⁴ “The Bahrain Independent Commission of Inquiry Statement,” Bahrain Center for Human Rights, August 10, 2011 (<http://www.bahrainrights.org/en/node/4499>).

²⁵ “Bahrain Commission Closes Office After Clashes,” *Voice of America*, August 16, 2011 (<http://blogs.voanews.com/breaking-news/2011/08/16/bahrain-commission-closes-office-after-clashes/>).

suffered “[n]umerous violations of due process rights.”²⁶ But the report did not accuse high-level Bahraini government officials of violations and recommended that the Government of Bahrain “establish a national independent and impartial mechanism to determine the accountability of those in government who have committed unlawful or negligent acts resulting in the deaths, torture and mistreatment of civilians.”²⁷

The Bahraini government publicly embraced the report’s findings, as evidenced by King Hamad’s statement to Bassiouni upon receiving the report. “Your Report is of profound value to us,” King Hamad declared, and “[b]y taking to heart your findings and recommendations, the people of Bahrain can make this day one that will be remembered in the history of this nation.”²⁸ Furthermore, on November 28, 2011, King Hamad issued a royal decree creating a National Commission for implementing the BICI’s recommendations,²⁹ and in February 2012, created a new investigatory unit focused on accountability for violations committed during the 2011 unrest.³⁰

Some sectors of the opposition shared the government’s enthusiasm for the report. For example, Al Wefaq issued a statement embracing the report’s findings as a vindication

²⁶ Supra note 5, at 416-418.

²⁷ Supra note 5, at 422.

²⁸ “His Majesty King Hamad bin Isa Al Khalifa Speech at the Bahrain Independent Commission of Inquiry Report Submitting ceremony,” Implementing the Bahrain Independent Commission of Inquiry (BICI), available at http://www.govactions.bh/wps/portal/EgovBICI!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gLAxNHQ093A3f3AEcjA88AQ09DFwtDYwMzY_1wkA4kFf4GRk4GnqZG5sG-weYGzqbGeOVNPE0g8gY4gKOBvp9Hfm6qkfF2dpCFo6IiAMJPOw!/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZfT0FISUdHRzBHODZVOTBJUE5OTTEyUjEwUTQ!/

²⁹ “BICI Recommendation 1715 (IMPLEMENTED),” Implementing the Bahrain Independent Commission of Inquiry (BICI), available at http://www.govactions.bh/wps/portal/EgovBICI!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gLAxNHQ093A3eLMEcjA88AU3djyxBjAwMDc6B8JJK8v4GRk4GnqZF5sG-wuYGzqTEFuk08TQjoDge5Fr_teOTB5oPkDXAARwN9P4_83FT9gtzQCIPMgHQA8mnw!/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZfT0FISUdHRzBHT0Q5OTBJUFAzR0RLNDIwVTU!/?WCM_GLOBAL_CONTEXT=/wps/wcm/connect/egov+english+library/egovbici/progress+and+actions+taken/action1715

³⁰ Habib Toumi, “Bahrain unit to probe unrest,” *Gulf News*, February 29, 2012 (<http://gulfnews.com/news/gulf/bahrain/bahrain-unit-to-probe-unrest-1.987880>). For critiques of the Government of Bahrain’s follow-up measures to the BICI, see “One Year Later: Assessing Bahrain’s Implementation of the BICI Report,” Project on Middle East and Democracy, November 2012, available at: http://pomed.org/wordpress/wp-content/uploads/2012/11/POMED_BahrainReport_web-FINAL.pdf; “Bahrain 13’ political and human rights leaders meet with the OHCHR Delegation,” Bahrain Center for Human Rights, December 17, 2012, available at: <http://www.bahrainrights.org/en/node/5566>; and “Bahrain: Promises Unkept, Rights Still Violated,” Human Rights Watch, November 22, 2012, available at: <http://www.hrw.org/news/2012/11/22/bahrain-promises-unkept-rights-still-violated>

of the opposition movement's legitimacy.³¹ But other Bahraini activists argued that the BICI should have implicated high-level members of the ruling regime and entirely rejected the report. In particular, the February 14th Youth — a movement instrumental in the 2011 uprising — called the report “honey laced with venom,” replete with “contradictions, twisted facts, and conspiratorial aspects (...).”³²

As these critiques suggest, the BICI fell short of fulfilling King Hamad's hope that the commission would initiate “a new chapter in [Bahrain's] history.”³³ Though, as noted earlier, Bassiouni hoped the BICI report would empower opposition moderates, in fact, some analysts have noted that the opposite result occurred. As one writer has stated, an “apparent hardening of al-Wefaq's position [was] a direct result of the BICI report,” and immediately following the publication of the BICI report, “if anything, state violence has intensified.”³⁴ Though instability in Bahrain is not as severe as it was during the peak of the 2011 uprising, unrest continues, as evidenced by the Bahraini government's efforts to contain ongoing protests.³⁵

III. THE LEAGUE OF ARAB STATES OBSERVER MISSION TO SYRIA

Like Bahrain, Syria has also suffered from perpetual unrest since its birth as an independent country. After achieving independence from France in 1946, Syria experienced over two decades of frequent military coups until Hafez al-Assad — a member of Syria's Ba'ath party — took control of the country in 1968. But unrest — fueled by a combination of sectarian, constitutional, and economic grievances — continued. The 2011 uprising was another manifestation of this disenchantment. The LASOMS, like the BICI, was created as a component of a strategy to resolve the crisis.

³¹ “Al-Wefaq: ‘BICI’ Report proves the patriotism of the Bahrain revolution,” Bahrain Justice and Development Movement, November 23, 2011 (<http://www.bahrainjdm.org/2011/11/23/al-wefaq-bici-report-proves-the-patriotism-of-the-bahrain-revolution/>).

³² Alaa Shehabi, “Red Lines and Human Rights: An Evaluation of the Bahrain Independent Commission of Inquiry Report,” *Jadaliyya*, December 8, 2011 (http://www.jadaliyya.com/pages/index/3453/red-lines-and-human-rights_an-evaluation-of-the-ba).

³³ *Supra* note 3.

³⁴ Toby Jones, “We Know What Happened in Bahrain: Now What?,” Carnegie Endowment for International Peace, December 1, 2011 (<http://carnegieendowment.org/2011/12/01/we-know-what-happened-in-bahrain-now-what/7yf0>).

³⁵ “Citing Violence, Bahrain Bans All Protests in New Crackdown,” *The New York Times*, October 30, 2012 (http://www.nytimes.com/2012/10/31/world/middleeast/bahrain-bans-all-protests-in-new-crackdown.html?_r=0).

But, as detailed below, like the BICI, the LASOMS proved unable to accomplish this task.

The 2011 Uprising and the Creation of the LASOMS

The 2011 Syrian uprising, and the subsequent government crackdown, was presaged by unrest in Syria during the early 1980s. In March 1980, demonstrations erupted in the small town of Jisr ash-Shughur and quickly spread to various cities.³⁶ In response, Syrian security forces took numerous coercive measures, including firing on peaceful protesters and subjecting detainees to torture and summary execution.³⁷ Events culminated in 1982 in Hama, an opposition center, when Syrian security forces sealed the city, launched military attacks that left thousands of civilians dead, and definitively crushed the insurrection.³⁸

Almost thirty years later, after protests erupted in March 2011, the security forces of President Bashar al-Assad — Hafez’s son, who had risen to power after Hafez’s death in 2000 — proved similarly willing to use force to suppress demonstrations. Protests began in March 2011, in Dara’a, where clashes between demonstrators and security forces left five protesters dead.³⁹ By autumn of 2011, after over seven months of unrest, and, according to UN estimates, over three thousand civilian deaths,⁴⁰ the Arab League emerged as the entity with the most potential to resolve the crisis. In December, the Arab League — after suspending Syria from the Arab League and approving anti-Syrian sanctions — struck an agreement with the Syrian government geared toward ending the conflict.⁴¹ According to the agreement, Syria would halt attacks on civilians, withdraw security forces from Syrian cities, release political prisoners, and allow an Arab League MRF mission to monitor the Syrian government’s adherence to the

³⁶ Human Rights Watch, “Human Rights in Syria,” A Middle East Watch Report, September 1990, pp. 16-17.

³⁷ Ibid.

³⁸ See generally Alasdair Drysdale, “The Asad Regime and Its Troubles,” Middle East Research and Information Project, Syria’s Troubles, No. 110, November — December 1982, pp. 3-11.

³⁹ “Syrian police seal off city of Daraa after security forces kill five protesters,” *The Guardian*, March 19, 2011 (<http://www.guardian.co.uk/world/2011/mar/19/syria-police-seal-off-daraa-after-five-protesters-killed>).

⁴⁰ “Death toll passes 3,500 as Syrian crackdown continues, says UN human rights office,” *UN News Centre*, November 8, 2011 (<http://www.un.org/apps/news/story.asp?Cr=Syria&NewsID=40326>).

⁴¹ See David Batty and Jack Shenker, “Syria suspended from Arab League,” *The Guardian*, November 12, 2011 (<http://www.guardian.co.uk/world/2011/nov/12/syria-suspended-arab-league>); and Ian Black, “Syria defiant as Arab League votes for financial sanctions,” *The Guardian*, November 27, 2011 (<http://www.guardian.co.uk/world/2011/nov/27/arab-league-approves-sanctions-syria>).

agreement's provisions.⁴² The LASOMS — the Arab League's first major monitoring mission — was born.

The Local Response

As with the BICI in Bahrain, the LASOMS evoked a diverse array of responses from the Syrian population. Despite agreeing to the Arab League proposal, President al-Assad was sharply critical of the Arab League throughout the work of the LASOMS. Al-Assad maintained from the beginning of the uprising that the unrest was driven by foreign "conspirators"⁴³ and "terrorists,"⁴⁴ and viewed the matter as a "Syrian issue."⁴⁵ Then, in January 2012, in the midst of the LASOMS deployment, President al-Assad delivered a speech in which he scathingly critiqued the Arab League, stating, "The Arab League failed for six decades to protect Arab interests (...). We shouldn't be surprised it has failed today."⁴⁶ Nevertheless, the Syrian government pledged to protect the LASOMS monitors and support the mission's work. When pro-government demonstrators attacked LASOMS monitors on January 9, 2012,⁴⁷ the Syrian government reiterated this pledge, expressing "condemnation of any act that the [LASOMS] team has been exposed to which obstructs their mission" and pledging to "continue to bear its responsibility to secure and protect those monitors," and to "not allow any act to obstruct their mission (...)."⁴⁸

The opposition quickly became critical of the LASOMS. Within the first week of the LASOMS deployment, as noted by one Syrian activist, the "regime did not withdraw any tanks from the street," "didn't release anybody from jail," "didn't let the

⁴² Arthur Bright, "Syria signs deal to allow Arab League monitors," *The Christian Science Monitor*, December 19, 2011 (<http://www.csmonitor.com/World/terrorism-security/2011/1219/Syria-signs-deal-to-allow-Arab-League-monitors>).

⁴³ "Assad decries 'conspiracy' in Syria," *Ynet News*, March 30, 2011 (<http://www.ynetnews.com/articles/0,7340,L-4049886,00.html>).

⁴⁴ Barney Henderson, "Syria: Bashar al-Assad vows 'iron fist' against 'terrorists,'" *The Telegraph*, January 10, 2012 (<http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9004285/Syria-Bashar-al-Assad-vows-iron-fist-against-terrorists.html>).

⁴⁵ "TRANSCRIPT: ABC'S Barbara Walters' Interview With Syrian President Bashar al-Assad," *ABC News*, December 7, 2011 (<http://abcnews.go.com/International/transcript-abcs-barbara-walters-interview-syrian-president-bashar/story?id=15099152#.T2NK32JU3DN>).

⁴⁶ "Assad to nation: 'The victory is near,'" *Russia Times*, January 10, 2012 (<http://rt.com/news/assad-speech-nation-victory-447/>).

⁴⁷ Dominic Evans, "Syria's Assad vows 'iron fist', mocks Arab League," *Reuters*, January 10, 2012, (<http://www.reuters.com/article/2012/01/10/us-syria-idUSTRE8041A820120110>).

⁴⁸ "Arab League says Syria must protect monitors," *Egypt Independent*, January 10, 2012 (<http://www.egyptindependent.com/node/594861>).

demonstrators to demonstrate free [sic],” and the Syrian opposition began to believe that the LASOMS was accomplishing “absolutely nothing.”⁴⁹ Additionally, various actors asserted that regime loyalists were undertaking several deceptive measures, such as painting military vehicles to look like police vehicles,⁵⁰ moving prisoners from civilian to military prisons to avoid detection by monitors,⁵¹ changing street signs so that monitors traveled to the wrong locations, and obstructing the monitors’ freedom of motion by allowing members of the LASOMS to visit only locations that were loyal to the government.⁵²

For many Syrians, the composition of the mission also fueled concerns about the mission’s ineffectiveness. Opposition members critiqued the fact that some of the mission’s monitors were government employees of countries, such as Algeria, that were sympathetic to the Syrian regime.⁵³ Moreover, the mission’s leader, the Sudanese general, Mohammed Ahmad Mustafa al-Dabi, became a focal point for opposition outrage. Due to General al-Dabi’s service under Omar al-Bashir, who has been indicted for war crimes and crimes against humanity by the International Criminal Court (ICC),⁵⁴ opposition members described General al-Dabi as a “senior officer with an oppressive regime that is known to repress opposition,”⁵⁵ and as a man who has been “accused of genocide in his own country.”⁵⁶ The Syria National Council — a group of Syrian exiles based in Turkey — called for General al-Dabi to be removed, dubbed the LASOMS a “political farce,” and asserted, “It would be more appropriate, in our view, in the circumstances of the current conflict, for the United Nations to be mandated to conduct the monitoring mission.”⁵⁷

⁴⁹ “Arab mission ‘is failing’ in Syria,” available at http://www.youtube.com/watch?feature=player_embedded&v=3yuO1r0e9_8#!

⁵⁰ “Activists accuse Syria of misleading monitors,” *Al Jazeera*, January 5, 2012 (<http://www.aljazeera.com/news/middleeast/2012/01/20121510105288818.html>).

⁵¹ “Rights group accuses Syria of hiding detainees from monitors,” *CNN*, December 27, 2011 (<http://www.cnn.com/2011/12/27/world/meast/syria-unrest/index.html>).

⁵² “Syria releases 552 political prisoners,” *The Guardian*, January 5, 2012 (<http://www.guardian.co.uk/world/feedarticle/10025747>).

⁵³ *Supra* note 49.

⁵⁴ “Warrant of Arrest for Omar Hassan Ahmad Al Bashir, International Criminal Court, available at <http://www.icc-cpi.int/iccdocs/doc/doc639078.pdf>

⁵⁵ “Syria wants general overseeing Arab League mission out,” *USA Today*, December 29, 2011, available at <http://www.usatoday.com/news/world/story/2011-12-29/syria-arab-league-monitors/52272616/1>

⁵⁶ “Syria: Head of Arab League Observers General Mustafa al-Dabi Accused of ‘Human Rights Abuses,’” *International Business Times*, December 29, 2011 (<http://www.ibtimes.com/articles/274154/20111229/syria-head-arab-league-observers-general-mustafa.htm>).

⁵⁷ “Syrian activists slam Arab League mission head,” *CNN*, December 28, 2011 (http://articles.cnn.com/2011-12-28/middleeast/world_meast_syria-opposition-al-dabi_1_ali-kushayb-local-coordinating-committees-syrian-opposition?_s=PM:MIDDLEEAST).

Over the course of January and February 2012, the LASOMS began to falter. Monitors began resigning from the mission because, as one monitor stated, “I found myself serving the regime, and not part of an independent observer group,”⁵⁸ and as a second monitor claimed, “[T]he mission is unclear (...) It does not serve the citizens. It does not serve anything (...).”⁵⁹ The LASOMS produced a report that examined actions by both government and opposition forces, prompting accusations from the opposition that the report had equated “the butcher and the victim” and had “blurred the monumental hardship that millions of Syrians experience every day while they rise to reach freedom, dignity, democracy and a wise system of governance.”⁶⁰ Saudi Arabia and Jordan withdrew its monitors,⁶¹ the Arab League suspended the mission,⁶² General al-Dabi resigned, and the Arab League requested that the United Nations Security Council (UNSC) authorize a joint UN-Arab League peacekeeping force.⁶³

IV. ANALYSIS

This section deduces lessons that MRF practitioners can learn from the experiences of the BICI and the LASOMS. In both cases, local perceptions of the missions became highly politicized. HPCR’s research suggests that this phenomenon arose largely as a result of three key factors: misperceptions about the mission’s mandated functions; the lack of other impactful crisis resolution initiatives; and perceptions that the missions had insufficiently adhered to neutrality, impartiality, and independence, three core guiding principles for implementing MRF mechanisms. The below analysis examines each of these factors.

⁵⁸ “Arab League monitor in Syria criticize Sudanese head of mission,” *Sudan Tribune*, January 12, 2012 (<http://www.sudantribune.com/Arab-League-monitor-in-Syria,41268>).

⁵⁹ “Exclusive: Second Arab monitor may quit Syria over violence,” *Reuters* (<http://www.reuters.com/article/2012/01/11/us-syria-monitor-idUSTRE80A1VP20120111>).

⁶⁰ “Arab League turns to U.N. as Gulf observers quit Syria,” *Reuters*, January 24, 2012 (<http://www.reuters.com/article/2012/01/24/us-syria-idUSTRE8041A820120124>).

⁶¹ “Syria unrest: Saudis pull out of Arab League mission,” *BBC*, January 22, 2012 (<http://www.bbc.co.uk/news/world-middle-east-16670007>); and “Jordan withdraws from Syria monitoring mission,” *Haaretz*, February 2, 2012 (<http://www.haaretz.com/news/middle-east/jordan-withdraws-from-syria-monitoring-mission-1.410651>).

⁶² “Arab League suspends Syria monitoring mission,” *The Guardian*, January 28, 2012 (<http://www.guardian.co.uk/world/2012/jan/28/arab-league-suspends-syria-monitoring>).

⁶³ “Arab League Calls for Arab-UN Peacekeeping Force in Syria,” *Bloomberg News*, February 13, 2012 (<http://www.businessweek.com/news/2012-02-13/arab-league-calls-for-arab-un-peacekeeping-force-in-syria.html>).

Misperceptions About the Mission's Mandated Functions

Local actors judged both the BICI and the LASOMS on outcomes that exceeded both missions' mandate. Both missions were mandated to serve classical MRF functions centered on gathering data about potential violations of international law. However, local populations viewed both the BICI and the LASOMS not only as data-gathering initiatives but also as civilian protection mechanisms. For the LASOMS, this perception was based on successes of past UN monitoring missions. As one MRF actor has stated about the civilian protection capacities of UN missions:

For the communities this [visibility] generates a reflected protection. Why reflected? Because the simple fact that they see a UN vehicle travelling the roads, through the villages, through zones of high conflict — the simple fact that one of these blue vests is going to go ask after the local troop commander, ask who is responsible for the zone — this alone in itself generates a level of protection because what it says is, "These communities are not alone. These communities have friends in high places."⁶⁴

When the LASOMS failed to achieve this level of civilian protection, various actors strove to reduce the inflated expectations of Syrian opposition members. One Qatari official noted that the purpose of the LASOMS was merely to observe, "not to intervene in stopping the violence,"⁶⁵ and as General al-Dabi stated of the mission's function, "If the violence stops, we'll say that it has. And if this doesn't happen, we'll say so."⁶⁶ But Syrian activists continued to judge the success of the LASOMS by its protection potential and, when the mission failed to discourage further government attacks against civilians, opposition activists deemed the LASOMS a failure.

In Bahrain, local actors developed similar expectations of the BICI. Though, as noted earlier, the BICI's mandated activities were limited to fact-finding and making recommendations, and specifically excluded political negotiations, one Bahraini, reacting to the BICI's failure to free her husband from prison, proclaimed, "These commissioners let us down."⁶⁷ In both contexts — Bahrain and Syria — a disconnect

⁶⁴ Liam Mahoney, "Field strategies for civilian protection," Henry Dunant Centre for Humanitarian Dialogue, 2006, p. 63.

⁶⁵ "Official: Arab League monitors made 'mistakes,'" CNN, January 5, 2012 (http://articles.cnn.com/2012-01-05/middleeast/world_meast_syria-unrest_1_arab-league-syrian-national-council-monitors?_s=PM:MIDDLEEAST).

⁶⁶ "Head of Arab League monitors in Syria defends work," Syrian Youth Movement, January 23, 2012 (<http://mar15.info/2012/01/head-of-arab-league-monitors-in-syria-defends-work/>).

⁶⁷ *Supra* note 32.

existed between the mission's mandated objectives and local expectations, and this disconnect resulted in local disappointment about the mission's accomplishments.

Lack of Other Impactful Crisis Resolution Initiatives

The lack of other impactful crisis resolution initiatives in both Bahrain and Syria also contributed to politicized local perceptions. As noted earlier, the Bahraini government implemented the BICI in tandem with a National Dialogue geared toward national reconciliation, but the National Dialogue's legitimacy faltered during the BICI's investigation. International efforts to intervene in the government-opposition dispute in Bahrain were also minimal. Though the OHCHR had urged the Bahraini government to accept a UN-initiated MRF mission, the OHCHR supported the BICI and did not send an MRF mission to Bahrain until after the BICI had completed its work.⁶⁸

Similarly, regarding Syria, Russia and China had exercised their UNSC veto power to prevent the UNSC from adopting a resolution condemning the Syrian authorities for the Syrian government's crackdown.⁶⁹ And though the United Nations Human Rights Council (UNHRC) mandated a commission of inquiry "to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic,"⁷⁰ the Syrian government did not grant the commission of inquiry access to Syrian territory. In the absence of other international or national initiatives with the capacity to affect the situation on the ground, in both contexts, local actors turned their attention toward their respective MRF mechanisms, and both missions became political lightning rods for the local population.

This experience contrasts sharply with that of the International Commission of Inquiry on Libya (hereafter the Libya Commission) mandated by the UNHRC in February 2011 "to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya (...)." ⁷¹ The Libya Commission visited Libya after the UNSC had referred the Libyan situation to the ICC and in the midst of the military intervention of

⁶⁸ "Human Rights in Bahrain," Office of the High Commissioner for Human Rights, February 1, 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/HumanRightsinBahrain.aspx>

⁶⁹ Neil MacFarquhar, "With Rare Double U.N. Veto on Syria, Russia and China Try to Shield Friend," *The New York Times*, October 5, 2011 (<http://www.nytimes.com/2011/10/06/world/middleeast/with-united-nations-veto-russia-and-china-help-syria.html?pagewanted=all>).

⁷⁰ "The human rights situation in the Syrian Arab Republic," A/HRC/S-17/2, para. 12.

⁷¹ "Situation of human rights in the Libyan Arab Jamahiriya," A/HRC/RES/S-15/1, para. 11.

the North Atlantic Treaty Organization (NATO).⁷² As a result, Libya Commission investigators discovered that, while Libyan interviewees were aware of the significance of the ICC referral and the NATO intervention, many interviewees were previously unaware of the Libya Commission's existence.⁷³ The Libya Commission's experience suggests that, in the presence of other robust crisis resolution initiatives, MRF missions are less likely to emerge as high-profile mechanisms perceived as controversial by the local population.

Perceptions of Insufficient Adherence to Neutrality, Impartiality, and Independence

The critiques that arose of the BICI and the LASOMS largely entailed perceptions that the missions had failed to maintain neutrality, impartiality, and independence, three guiding principles for creating and implementing MRF mechanisms.⁷⁴ Neutrality requires the MRF mission to refrain from taking sides on issues related to the political conflict and remain focused on fulfilling the requirements of the mission's mandate. Impartiality entails maintaining an objective methodology in the implementation of an MRF mechanism, particularly in terms of gathering evidence from multiple sources. Independence implies operating without interference from outside entities, such as host states, opposition forces, other states, and donors. In many cases, perceptions of the lack of integrity of a mission matters more than factual shortcomings of the mission and its leadership. During both the BICI and the LASOMS, concerns about neutrality led local actors to fear that both missions were primarily functioning as political tools to serve the interests of the ruling regimes. For example, as noted earlier, Bahrainis were wary about the inclusion on the commission of Dr. Badriya Alawadhi, who had written an editorial supportive of the legality of the GCC intervention. Concerns about impartiality included critiques that LASOMS monitors were led by Syrian authorities to investigate primarily locations where populations favored the regime. In terms of independence, some Bahrainis believed Bassiouni to be too trusting of King Hamad while some Syrians worried that certain LASOMS monitors, as civil servants of governments allied with the Syrian regime, could be influenced by these governments in a manner that would affect the data gathering process.

⁷² The UNSC referred the Libyan situation to the ICC with S/RES/1970 (2011), paras 4-8; authorized Member States to take measures to protect civilians in Libya with S/RES/1973 (2011), paras 4-5; and authorized the establishment of a no-fly zone in Libyan airspace with S/RES/1973 (2011), paras 6-12.

⁷³ HPCR interview on 1/31/12 with Marc Garlasco, Senior Military Expert on the Libya Commission.

⁷⁴ For more information about these guiding principles, see Rob Grace and Claude Bruderlein, "Building Effective Monitoring, Reporting, and Fact-finding Mechanisms," Social Science Research Network, 2012, pp. 17-21, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038854

MRF practitioners have struggled with operationalizing these guiding principles since modern MRF mechanisms first emerged. The report of the Carnegie Endowment's 1913 commission of inquiry that, as noted earlier, heralded the modern age of MRF, stressed that the Carnegie Endowment's initiative was "an impartial examination by an independent body,"⁷⁵ that was guided by the principles of "truth, independence, and complete disinterestedness."⁷⁶ Still, the Government of Greece accused the mission of bias.⁷⁷ Almost a century later, the experiences of the BICI and the LASOMS suggest that the MRF community might benefit from engaging in further examination of how MRF policymakers might mitigate the proliferation of such critiques.

V. CONCLUSION

The above analysis offers a foundation for understanding the dilemmas that have arisen from the recent trend of implementing MRF mechanisms in the context of ongoing conflicts. But until the MRF community reaches a consensus around the best methods of grappling with these dilemmas, the experiences of the BICI and the LASOMS are likely to be repeated. Furthermore, given the international community's steadily increasing demand for MRF mechanisms, MRF actors must learn lessons expeditiously. Though one analyst writes that "scholars will debate the impact of the 2011 Arab Spring for decades, if not centuries, to come,"⁷⁸ MRF actors lack the luxury of time. There has been a "dramatic increase in the number of urgent fact-finding missions and commissions of inquiry" in the past year, as noted by a recent OHCHR report, and the demand for MRF missions is likely to continue to increase.⁷⁹ As international conditions require increasing numbers and types of MRF missions, the MRF community must become more agile not only in its capacity to respond rapidly as crises emerge but also in its ability to learn lessons from past practice.

⁷⁵ *Supra* note 1, at "Preface."

⁷⁶ *Supra* note 1, at 5.

⁷⁷ "Greeks Denounce Carnegie Board," *The New York Times*, June 8, 1914 (<http://query.nytimes.com/mem/archive-free/pdf?res=F00610F73C5412738DDDA10894DE405B848DF1D3>).

⁷⁸ Kenneth M. Pollack, "Introduction: Understanding the Arab Awakening," in *The Arab Awakening: America and the Transformation of the Middle East* (Washington DC: The Brookings Institution, 2011), 6.

⁷⁹ Office of the High Commissioner for Human Rights, "OHCHR Management Plan 2012-2013: Working for results," 2012, pp. 39 and 95, available at http://www2.ohchr.org/english/ohchrreport2011/web_version/media/pdf/0_OMP_2012-13_whole_Report.pdf