

**From Doctrine to Practice: Responsibility to Protect and Military
Intervention in Libya 2011**

**by
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Preface

The intervention in Libya is the best example to date to judge the implementation of the Responsibility to Protect. In 2011, public demonstrations started in Libya seeking political and economic reforms in the country. In return, the Libyan President Muammar Al-Qaddafi threatened mass atrocities in Libya. This allowed the UNSC to sanction the use of force against Qaddafi's regime in order to protect civilians. First, under resolution 1970 (2011), the UNSC referred the case to the International Criminal Court and applied sanctions. Second, via resolution 1973 (2011), the application of force was approved for the express purpose of "protecting civilians." This thesis assess whether the military intervention in Libya in 2011 was R2P case. This question is answered by an analysis based upon the UNSC's Resolutions, Council's proceedings, and other official documents.

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List of Acronyms

AL	Arab League
AU	African Union
AUPSC	African Union Peace and Security Council
BPC	Basic People's Congress
BRICS	Brazil, Russia, India, China, and South Africa
CGL	Coalition Group on Libya
CERD	Committee on the Elimination of Racial Discrimination
GPS	Global Positioning System
ICC	International Criminal Court
ICISS	International Commission of Intervention States Sovereignty
ICRC	International Committee of the Red Cross/ Red Crescent
IDP	Internally Displaced Person
INC	Interim National Council
LAS	League of Arab States
LCG	Libya Contact Group
MENA	Middle East and North Africa
NATO	North Atlantic Treaty Organization
NAM	Non-Aligned Movement
NTC	National Transitional Council
TNC	Transitional National Council
MENA	Middle East and North Africa
OIC	Organization of the Islamic Conference
OUP	Operation Unified Protector (NATO's mission in Libya)
PITF	Political Instability Task Force (CIA)
PPE	Personal Protective Equipment

R2P	Responsibility to Protect
SFTR	State Failure Task Report (Former name for PITF)
UNDP	United Nations Development Programme
UNHCR	United Nations High Commission for Refugees
UNPKOs	United Nations Peace Keeping Operations
UNPROFOR	United Nations Protection Force
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNGA	United Nations General Assembly

CHAPTER ONE

Introduction

In March 2011, the UN Security Council (UNSC) authorized the North Atlantic Treaty Organization (NATO) to use force to protect citizens of Libya from harm perpetrated by the government led by President Muammar Muhammad Abu Minyar al-Qaddafi.¹ This authorization has been widely reported in the literature as the first operation of a doctrine known as the Responsibility to Protect (R2P). However, opinions regarding whether or not this is a bona fide case of R2P are mixed. This thesis seeks to answer the question: was the military intervention against Libya authorized by the UNSC in 2011 a case of R2P or not? And if so, what are the ramifications for future interventions? In order to answer these questions, an understanding of the background conflict in Libya must be outlined as well as a detailed analysis of the decisions made by member states of the UNSC to authorize NATO to use force.

The Arab Spring began in the Middle East and North Africa (MENA) in 2010. Public demonstrations against the ruling governments emerged in Egypt, Tunisia, Iraq, Libya, Sudan, Syria, Yemen,² Mauritania, and Bahrain.³ The regimes were criticized for being repressive, autocratic, and corrupt. These regimes symbolized decades of ineffective civil society, poor economies, inadequate income and literacy levels, and the absence of democratic rights.⁴ These

¹ Commonly known as Colonel Qaddafi.

² Amichai Magen, "On Political Order and the 'Arab spring'," *Israel Journal of Foreign Affairs* VI, no.1 (2012): 14. Assessed July 1, 2014, <http://www.israelcfr.com/documents/6-1/6-1-2-Magen.pdf>.

³ Ibid., 11-16.

⁴ Gonzales and Cannistraro, "Local Norms Matters: Understanding National Responses to The Responsibility to Protect," *Global Governance: A Review of Multilateralism and International organization* 20, no.2 (2014): 265.

economic and political factors led youth groups in 2010 to express their frustration with the corrupt economic and political situation in MENA.⁵ These youth groups demanded grass root democratic changes in their respective countries. Noticeably, many of “these young people, frustrated with the lack of jobs, [had] been at the forefront of anti-government protests.”⁶ The protestors sought economic improvement, liberal political reforms, and assurances to their respective governments, that massive protests would not be stopped until their demands had been fulfilled.⁷

In order to comprehend the root cause of the Arab Spring, it is important to understand regime typologies in the Arab world. The Arab world has two types of regimes: a one party authoritarian system and a monarchical system. One party authoritarian systems included Egypt, Tunisia, Libya, and Syria, while the monarchies included Saudi-Arabia, Morocco, Jordan and the Gulf countries. Both types exhibited Sultanistic regime features, and hence became the most susceptible to a revolution, as they were the least politically stable.⁸

Additionally, many factors such as cultural beliefs, regional dynamics, structural economic conditions, a demonstrated lack of security, and regime legitimacy drove the Arab Spring. Similarly, these factors also provided space to non-state actors, ethnic divisions, and terrorist groups to act as a major force in causing regime failures.⁹ In addition, critical factors

⁵ Michael Hoffman and Amaney Jamal, “The Youth and the Arab Spring: Cohort Differences and Similarities,” *Middle East Law and Governance* 4, (2012):168-188. Assessed July 1, 2014, http://mthoffma.mycpanel.princeton.edu/Hoffman_JamalMELG.pdf,1.

⁶ Ibid., 169.

⁷ Zaid Abu Zayyad, “The Arab Spring: Progress Report and Conclusions,” *The Palestine-Israel Journal* 18, no.1, (2012): 29. Assessed July 1, 2014, <http://www.pij.org/details.php?id=1423>.

⁸ Jason William Boose, “Democratization and Civil Society: Libya Tunisia and the Arab Spring,” *International Journal of Social Science and Humanity* (July 2012): 312-313. Assessed July 15, 2014, <http://www.ijssh.org/papers/116-CH317.pdf>.

⁹ Boose, “Democratization and Civil,” 14-15.

related to the formation of Islamic civilization, its traditional communities, ancient tribal system and religion were manipulated by autocratic rulers in an attempt to continue their rule. These leaders kept their regimes hidden behind religious customs, beliefs and connections to Sharia and the Islamic Brotherhood.

The Arab Spring is seen a “belated arrival of democracy in the sole region of the world that previously seemed impervious to it.”¹⁰ According to the Central Intelligence Agency’s Political Instability Task Force (PITF), also formerly known as the State Failure Task Force (SFTF) Report, the four types of state failure affected the Sub-Saharan Africa and Arab countries: revolutionary wars, ethnic wars, genocides and politicides, and adverse regime change. The project also revealed three statistically significant variables associated with state failure including regime type (especially those states with only partial forms of democracy), international trade (the more insular a state, the more likely they were to fail), and infant mortality.¹¹

Focus of Thesis

In 1969, army captain Maummar Qaddafi deposed King Idris with a bloodless coup in Libya and started his own political theory Jamahiriya: “Government through masses.”¹² This was considered as the only legitimate political theory in Libya and styled as the last phase of democracy. The Jamahiriya theory rejected the existence of the Libyan opposition, abolished political parties, and subsequently established the Basic People’s Congress (BPC). Political

¹⁰ Magen, “Political Order,” 10.

¹¹ Jack A. Goldstone et al., *State Failure Task Report: Phase III Findings*, accessed January 23, 2015, <http://www.raulzelik.net/images/rztextarchiv/uniseminare/statefailure%20task%20force.pdf>, V.

¹² Jullian M. Siskind, “*Humanitarian Intervention, R2P and the Case of Libya*,” (keynote address presented to International Relation Society Annual Conference CLAIR, (2011): 9. Assessed September 27, 2014, <http://claihr.ca/wp-content/uploads/2011/04/RTP-and-Libya-Munk-Keynote.pdf>.

representation in parliament was restricted only to supporters of Qaddafi's 1969 coup. The Qaddafi regime imposed the death penalty on anyone who opposed the state's ideology. Similarly, the media was restricted and freedom of speech¹³ and civil society were banned.¹⁴

Qaddafi took advantage of the traditional tribal and regional divisions of Libyans, which kept him in power. Qaddafi stimulated tribal affiliation and preserved the tribal structure in the country.¹⁵ Also, Qaddafi made deliberate moves during his reign to repress and effectively exclude any opponents, which gave him much more power and the country was ultimately ruled only by one man. Qaddafi was also criticized internationally and he "acquired a reputation as one of the world's more eccentric and unpredictable dictators."¹⁶

The Arab Spring in Libya was opposed by Qaddafi who was determined to eliminate protests, so that he could continue his rule. Peaceful protests in Libya quickly turned violent, when Qaddafi started a crackdown on protests in Benghazi. On 17 February 2011, the protestors suffered a violent set back. Many people were killed and injured, while many people fled to neighboring countries. While Qaddafi promised a dialogue with protestors, he also warned of bloodshed, if the protests did not end. The situation subsequently deteriorated, when Qaddafi ordered the army to destroy the rebels by all means. This situation led the international community to adopt first UN Resolution 1970 and then Resolution 1973. The later Resolution

¹³Ibid., 8-9.

¹⁴ Boose, "Democratization and Civil," 314.

¹⁵ There are at least 140 tribes and clans in Libya and thirty are influential power broker.

¹⁶ Boose, "Democratization and Civil," 9.

established a no fly zone over Libyan airspace and allowed military intervention to avert mass atrocities.¹⁷

Purpose of Study

Humanitarian military intervention is a contentious topic within international politics. Despite the circumstances and motives, it has significant consequences, due to its coercive nature, for international relations. Nevertheless, in 2005, world leaders endorsed a doctrine called Responsibility to Protect (R2P), which outlined the conditions under which force could be authorized by the UNSC in order to protect the lives of innocent civilians from mass atrocities perpetrated by governments.¹⁸ An example of this phenomenon occurred during the United Nations Security Council's (UNSC) sanctioned intervention in Libya, which was led by North Atlantic Treaty Organization (NATO). The intervention in Libya is the best example to date to judge military humanitarian intervention in the name of the R2P doctrine.

The failure of the international community to stop genocide in Rwanda, and Srebrenica. Bosnia-Herzegovina during the 1990s led states to embrace the R2P concept in principle. This concept was presented by the International Commission on Intervention and State Sovereignty (ICISS) in its report in 2001. It was widely accepted by the members of the states during 2005 World Summit Document. The ICISS report focused upon human security as the primary rationale for states to intervene against the perpetrators of genocide, war crimes, ethnic cleansing and crimes against humanity. This contention was reignited when the UNSC sanctioned intervention in Libya, which was led by NATO.

¹⁷ Siskind, "Humanitarian Intervention," 11-13.

¹⁸ ICISS, Responsibility to Protect, (December 2001). The commitment by world leaders included in paragraphs 138 and 139 of the 2005 World Summit Outcome Document (WSOD). The first General Assembly Resolution on the Responsibility to Protect was adopted on 14 September 2009. The Resolution (A/RES/63/308) was introduced on 14 September 2009 by the delegation of Guatemala, and was co-sponsored by 67 Member States.

The origins of the intervention in Libya can be traced back to the Arab Spring, which began in late 2010 with mass demonstrations in Tunisia against its autocratic government. These demonstrations were followed by protests in Egypt, Yemen and Libya. The mass protests aimed to put an end to oppression, corruption and incompetence, and to establish a new democratic government. A perception emerged that if democracy triumphed in Tunisia and Egypt, it would be the beginning of the end of the age of autocracies in the Middle East. However, this democratic movement was set back in Libya.

Libyan leader Colonel Muammar Al- Qaddafi reacted brutally to the protests centered on Benghazi with warnings of violence. Qaddafi warned his protestors: “at [a] suitable time [I] will open arms [depots] so all the Libyans and tribes become armed, so that Libya becomes red with fire!.”¹⁹ The Libyan Ambassador at the United Nations, Ibrahim Dabashi, criticized Qaddafi’s brutality, and urged the United Nations (UN) to save Libyans from the impending massacre. Domestic and international pressure pushed the UNSC to take non-coercive and coercive actions under Resolutions 1970 and 1973 against the Qaddafi government.

On 26 February 2011, after extensive debates, the UNSC placed sanctions on the Qaddafi government under Resolution 1970. This included an arms embargo for the entire state, travel bans and financial asset freezes. When the government failed to comply, Resolution 1973 was adopted on 17 March 2011 allowing for military intervention in Libya. With a rapidly deteriorating situation, the two adopted resolutions aimed to address the legitimate grievances of the Libyan people. Within seven months, Qaddafi’s forces were defeated, the regime was overthrown, and he was killed by his own people. For many observers, the UNSC sanctioned military intervention into

¹⁹ Neil MacFarquhar. “The Vacuum After Gaddafi,” *New York Times*, retrieved from http://www.nytimes.com/2011/02/27/world/africa/27qaddafi.html?pagewanted=all&_r=1, (2011): 1.

Libya marks the first ever implementation of R2P, and is widely viewed as the most significant case of R2P to date.

R2P has three pillars: Responsibility to Protect; Responsibility to React (R2R), and Responsibility to Rebuild. As the two UNSC resolutions reflect only the first two pillars of R2P, these resolutions and the statements made by the members of the UNSC, as well as other UN agencies, are examined to assess whether this is clearly a case of R2P or not. The meaning and scope of R2P can be traced back to the ICISS report:

Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.²⁰

In such a situation, the international community is responsible to assist that state, or respond collectively to halt atrocities. Critics, however, suggest that the intervention was driven by ulterior motives in oil rich Libya. Skeptics of the UNSC's motives accused it of using the R2P doctrine as a guide to attack Libya: a country that had long been on the UNSC's agenda.²¹ The case of Libya has opened the politics of R2P to a wider discourse, and contributed to controversial arguments about the motives for collective action, under the auspices of the UN, and in the name of humanitarian protection. Fundamentally, the academic literature is deeply divided over whether Libya is a clear case of R2P in action. Moreover, neither side of this division has provided clear

²⁰ "The Responsibility to Protect," *International Commission on Intervention and State Sovereignty*, accessed on March 20, 2014, <http://responsibilitytoprotect.org/ICISS%20Report.pdf>, xi.

²¹ On 21 December 1988, two airlines exploded in air. Pan Am Flight/TWA 103 exploded over Lockerbie Scotland. Qaddafi was accused of supporting the bombing. On 21 January 1992, the UN Security Council adopted Resolution 731 urging Libya to immediately provide a full and effective response to the extradition requests and to contribute to the elimination of international terrorism and was sanctioned by the UNSC. Sanctions were also applied.

empirical evidence to sustain their arguments. Instead, the arguments are largely informed by *a prior ideological* assumptions.

In order to resolve this division, and thus establish whether R2P has become an operative-norm within the international community, this analysis directly examines the key operative phrases embedded in the two UNSC Resolutions, 1970 and 1973, as well as statements made by member states of the UNSC, and relevant international organizations/agencies relative to the foundational document released by the ICISS. If the language employed in the UNSC resolutions and statements, are consistent with R2P, it can be concluded that the intervention in Libya is the first practice of R2P. If, however, the case is determined to have used the traditional intervention language, or if any ulterior motives of powerful states can be identified, then it can be concluded that Libya was not a R2P case.

Structure of Study

In order to reach a conclusion about the case of R2P in Libya, this thesis is structured in five chapters. The second chapter examines the academic debates about the UN's intervention in Libya. Its purpose is to improve an understanding of the existing literature by examining questions such as why Libya is viewed by some of the academics as a R2P case and by others as not. The chapter posits that the existing debates lacks consistency, and fail to document carefully the relationship between R2P doctrine and the Libyan case.

Chapter three examines the nature and scope of the R2P doctrine. It assesses the ICISS report and the 2005 World Summit Document, and discusses the debates among academics, state leaders, practitioners and regional organizations when they adopted R2P. The chapter highlights the key R2P concepts and phrases employed. It clarifies the limits and applicability of R2P, and dispels the myths among the international and state actors about the R2P debate.

Chapter four evaluates whether the intervention in Libya matched R2P core principles. It analyzes the UNSC's proceedings, Resolutions 1970 and 1973, and other official documents, which were used during the intervention. The bulk of documents were used to examine R2P intervention in Libya. The obligations and standards associated with the documents, along with the normative operational practice of NATO, are examined. This chapter looks at words and phrases in the UNSC's resolutions relative to the key concepts of R2P. Additionally, it examines whether NATO exactly followed the UNSC mandate. Chapter five provides some remarks about the research (and more importantly, what the research did not examine) and suggests future research on R2P. In the end, this thesis concludes that the Libyan case as outlined in the UNSC's Resolutions 1970 and 1973 is an example of R2P. Many of the precautionary principles of the doctrine were clearly present and debated by members of the UNSC.

What R2P cannot guarantee is that the international community will always choose to act. The R2P offers a practical policy and a strategy, distinct from traditional crisis management and humanitarian intervention. It has a potential to deal with intrastate conflicts and the UN can address the perpetrators of war crimes and crimes against humanity by utilizing R2P. This operationalized capability has the potential to prevent the actions of the perpetrators of genocide, war crimes, ethnic cleansing, and crimes against humanity. The Libya intervention sets out normative standards for the institutions at the international and regional levels to address impending conflicts.

CHAPTER TWO

The Academic Debate on R2P and Libya

The intervention in Libya evoked a controversial debate in academia, which can be divided into pro and anti-R2P camp. Both camps highlight the complex debate surrounding R2P and has generated major misperceptions about the Libyan intervention. The chapter is structured under the principle questions posed by the ICISS report. The report states, “[W]hen if ever, it is appropriate for states to take coercive—and in particular military—action, against another state for the purpose of protecting people at risk in that other state.”²² It posits that every state has due responsibility to protect its people from mass atrocities, and failing to do so legitimizes the international community’s responsibility to intervene.²³ The ICISS report identifies six basic principles for intervention: Just cause, Right Intention, Last Resort, Proportional Means, Reasonable Prospects, and Right Authority. Of these, academic debate only discusses the first four principles of the R2P: Just Cause, right Intention, Last Resort, and Proportional Means to conclude whether the military intervention in Libya is a R2P case.

Pro-R2P

Central to R2P is the Just Cause criteria, which signifies moral status to defend innocents from genocide, war crimes, ethnic cleansing and crimes against humanity. Luke Glanville supports the evidence of human rights violations in Libya and defends the rights of innocent civilians, who were facing Qaddafi’s threats. For Glanville, the intervention invoked the

²² ICISS, Responsibility to Protect, VII.

²³ Jared Genser et al., “RtoP and the Evolution of State Sovereignty,” (United Kingdom, *Oxford University Press*, 2011), 28-38.

first criteria of R2P, and it is amongst the very few times when the international community agreed to use coercive measures for the protection of civilians in a non-consenting state.²⁴

Glanville argues that Libya was unfairly ruled by Muammar Qaddafi, who refused to enforce universal human rights during his rule.²⁵

Abdelkader Abdelali reiterates that the Libyan demonstrators were seeking radical political transformation and economic reform in an unstable and corrupt bureaucratic system.²⁶ Abdelali states that law and order in Libya suddenly deteriorated and the Libyan government used all repressive means against the legitimate protests.²⁷ Abdelali argues that the “regime’s next move [was] to try to lure the opposition into civil war, which [was] what the regime in Libya did and paid a heavy price, namely political isolation and loss of international legitimacy.”²⁸

Anthony Bell and David Witter argue that Qaddafi purposefully supported many tribes in Libya and gained much of his political support in Tripolitania and Fezzan. They identify repressive tactics used by Qaddafi, and also his employment of mercenaries.²⁹ When the situation in Libya worsened, Qaddafi rejected protestors’ demands and expressed his determination to continue to rule over Libya. Bell and Witter argue that in the beginning of protests, Qaddafi ordered the Libyan security forces to use “brutal but non-lethal tactics to disrupt the protests.”³⁰ In

²⁴ Ibid., 343.

²⁵ Ibid., 359.

²⁶ Abdelkader Abdelali, “Wave of change in the Arab world and Chances for a Transition to Democracy,” *Contemporary Arab Affairs*, (April 2013):204, ISSN: 1755-0912 (Print), 1755-0920 (Online).

²⁷ Ibid.

²⁸ Ibid., 204.

²⁹ Anthony Bell and David Witter, “The Libyan Revolution: The Roots of Rebellion Part I,” *Institute for the Study of War*, (2011): 16-21. Assessed August 1, 2014.
http://www.understandingwar.org/sites/default/files/Libya_Part1_0.pdf .

³⁰ Ibid.,7.

Tripoli, at Green Square, Qaddafi's security forces and demonstrators clashed, and many people were killed over three days. This bought the immediate attention of the international community to resolve the crisis.³¹ They argue that this "assault proved to be the turning point of the early revolts, as protesters ultimately overran the compound and forced the pro-Qaddafi forces to withdraw."³²

Amy E. Eckert restates that Qaddafi warned protestors that if they did not disperse he would "purge Libya inch by inch, room by room, household by household, alley by alley, and individual by individual until the country is purified."³³ Similarly, Matthias Dembinski and Theresa Reinold argue that Qaddafi ordered government forces to use all type of repressive, violent methods against protestors in Benghazi. Qaddafi stated that those measures were taken to clear the country from "cockroaches and that any Libyan who takes arms against Libya [would] be executed."³⁴ Terry Nardin incorporated the rightful implementation of R2P in Libya under political and philosophical narratives and states that Qaddafi's words and actions were enough to indicate as "he [had] openly stated his murderous intentions – without getting rid of him."³⁵

Bell and Witter examine the Battle of Zawiyah (February 24- March 30) in Libya and highlight an effective military strategy used by Qaddafi to stop the rebels. They argue that

³¹ Bell and Witter, "The Libyan Revolution," 8- 29.

³² Ibid.

³³ Amy E Eckert, "The Responsibility to Protect in the Anarchical Society: Power, Interest, and the Protection of Civilians in Libya and Syria," *Denv. J. Int'l L. & Pol'y* 41, 87, (2012): 88. Assessed on September 16, 2014. http://djilp.org/wp-content/uploads/2014/04/Eckert_FinaltoPrinter.pdf.

³⁴ Matthias Dembinski and Theresa Reinold, "Libya and the Future of the Responsibility to Protect –African and European Perspectives," *PRIF-Report No. 107* (2011): 6. Assessed on July 22, 2014. <http://www.peacepalacelibrary.nl/ebooks/files/369284305.pdf>.

³⁵ Terry Nardin, "From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention," *The European Journal of International Law* 24, no. 1, 67–82, (2013): 77, doi: 10.1093/ejil/chs085.

Qaddafi employed armed resistance in the East and the rebellion became “unfolded into a broader conflict when Qaddafi ordered a full-scale offensive against rebel held areas.”³⁶ Qaddafi shifted his troops to continue the siege in Misrata and opened two visible assaults on Zawaiyah that caused many civilian deaths. During March 2011, the supply of ammunition increased for both sides, which intensified street fighting in Libyan cities, and Qaddafi’s loyalist forces started the indiscriminate use of force to maximize harm to civilians. Bell and Witter also state that Qaddafi was using a simple, but effective strategy. During the conflict, Qaddafi ordered increased coercive methods by using helicopter gunships, warplanes, tanks, armored vehicles, technical artillery and snipers against civilians³⁷ and inflicted many casualties on rebels and civilians.³⁸

Right Intention is the second principle of R2P and signifies the primary motives behind intervention. Talal and Schwarz state that “the operation in Libya remains the best example to date of a humanitarian intervention in the name of R2P.”³⁹ Resolution 1970 clearly accused the Libyan government of committing crimes against humanity⁴⁰ because the “practical policies on the ground [...] were encountered [within the] conceptual boundaries” of R2P.⁴¹ Nardin argues that when the mass atrocities became clearer in Libya, the international community declared Libya’s sovereignty, independence, territorial integrity, and its national unity under persistent

³⁶ Bell and Witter, “The Libyan Revolution,” 13.

³⁷ Ibid., 26-33.

³⁸ Ibid., 7-33.

³⁹ Ibid., 7.

⁴⁰ Ibid., 8.

⁴¹ Al Hassan bin Talal and Rolf Schwarz, “The Responsibility to Protect and the Arab World: An Emerging International Norm?,” *Contemporary Security Policy* 34, no.1, (2013):1-15, 3, doi: 10.1080/13523260.2013.771026.

threats and adopted Resolution 1970.⁴² Likewise, Talal and Schwarz also condemn immoral acts by Qaddafi against civilians:

Resolution 1970 decided that the International Criminal Court (ICC) should investigate the situation in Libya, thus implying that any of the four kinds of crimes falling under the jurisdiction of the ICC – genocide, crimes against humanity, war crimes, and the crime of aggression – had likely occurred in Libya, thus giving rise to international action.⁴³

Alex Bellamy and Paul D. Williams argue that these widespread and systematic attacks were also condemned by the League of Arab States (LAS), the African Union (AU) and the Organization of Islamic Conference (OIC). They affirm that a regional mandate was adopted quickly with sound moral clarity and political will to protect innocent civilians.⁴⁴ Similarly, Williams, Colleen, and Popken state that Resolution 1970 articulated the will of the international community, “to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi”⁴⁵, and it aimed to stop the brutal acts of the Libyan government.⁴⁶ They further argue that, under Resolution 1970, the international community clearly highlighted the violation of human rights in Libya, and this mandate was unanimously adopted in expressing international determination to prevent such occurrences.⁴⁷

⁴² Nardin, “From Right to Intervene,” 77.

⁴³ Talal and Schwarz, “The Responsibility to Protect”, 9.

⁴⁴ Ibid., 845.

⁴⁵ Paul R. Williams, Colleen (Betsy), and Popken, “Security Council Resolution 1973 on Libya: A Moment of Legal and Moral Clarity,” *CASE W. RES. J. INT’L L.* 44, 225, (2011): 233, assessed on November 19, 2014, <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1093&context=jil>.

⁴⁶ Ibid., 250.

⁴⁷ Ibid.

Piiparinen reiterates that the international community raised its concerns to protect victims from crimes committed by the belligerent parties.⁴⁸ Piiparinen argues that the central purpose of Resolution 1970 (2011) was clear: “It [the Government] had to end violence, protect civilians, allow the Libyans to determine their own future, and free Libyans from the tyranny of the Qaddafi regime.”⁴⁹ Ayça Çubukçu condemns the unexpected and intolerable repressive methods used by Libyan regime, and argues that Qaddafi’s actions were rightfully condemned by the international community, because the UN was supporting Libyan self-determination.⁵⁰ He claims that Resolution 1970 supported the universal idea of popular sovereignty and it “further marked its leadership as suspected enemies of humanity.” This made the National Transitional Council (NTC) the only legitimate single party representing the Libyans’ demands and raised Libyans voices at the UN.⁵¹

Last Resort is the third principle of R2P and is only justifiable when all peaceful means are exhausted and military option is only last option to resolve crisis. Ramesh Thakur highlights the significance of economic and political sanctions and states: “R2P spectrum of action must include military force as the option of last resort.”⁵² Williams, Colleen, and Popken state that Resolution 1973 (2011) is clearly designed to protect civilians and encourages the international

⁴⁸ Touko Piiparinen, “McDonaldisation of Sovereignty: A Foucauldian Analysis of Responsibility to Protect,” *Global Society* 26:4, 473-493, (2012): 414, doi: 10.1080/13600826.2012.710598.

⁴⁹ Ibid., 477.

⁵⁰ Ayça Çubukçu, “The Responsibility to Protect: Libya and the Problem of Transnational Solidarity,” *Journal of Human Rights*, (2013):50, ISSN: 1475-4835 (Print) 1475-4843 (Online).

⁵¹ Çubukçu, “The Responsibility to Protect,” 52.

⁵² Thakur, “Libya and the Responsibility to Protect,” 2.

community to enforce the “text of the resolution—with the latitude to determine which objects, facilities, actions, and people posed a threat of attack to civilians in Libya.”⁵³

Mark Kersten affirms that the referral was made by the UNSC to the ICC against Qaddafi by accusing him of crimes against humanity in Libya. The referral was passed with extraordinary speed, and it was approved unanimously by all member states of the Security Council.⁵⁴ An international team consisting of representatives from the AL and the AU was dispatched to Tripoli to negotiate a ceasefire and to seek a mechanism for a democratic election. The AU tried negotiations with Qaddafi, while the North Atlantic Treaty Organization (NATO) offered Qaddafi exile to the non-ICC member states of Sudan, Belarus and Zimbabwe. The AU High Level Panel, led by President Jacob Zuma of South Africa, tried to resolve the situation peacefully, but the AU peace plan failed, and the possibility of negotiations between Qaddafi’s regime and rebels failed.⁵⁵ Ian Davis states: “[A] range of these non-military measures were adopted with unprecedented speed and decisiveness through the Human Rights Council, General Assembly, Security Council, Arab League, African Union and Gulf Cooperation Council, but it was not enough to deter Gaddafi.”⁵⁶

Thakur states: “Libya marks the first time the Security Council has authorized an international R2P operation.”⁵⁷ Thakur further states that Resolution 1973 (2011) clearly mentions

⁵³ Williams, Colleen and Popken, “Security Council Resolution 1973,” 240.

⁵⁴ Mark Kersten, “Between Justice and Politics: The International Criminal Court's Intervention in Libya,” (n.d) 4, assessed on March 29, 2014 https://www.academia.edu/1558775/Between_Justice_and_Politics_The_International_Criminal_Courts_Intervention_in_Libya.

⁵⁵ Ibid., 15.

⁵⁶ Ian Davis, “How good is NATO after Libya?,” *Briefing Paper NATO Watch* No.20 , (2011):4. Assessed 1 March 2014, http://natowatch.org/sites/default/files/Briefing_Paper_No.20_NATO_After_Libya.pdf.

⁵⁷ Thakur, “Libya and Responsibility to Protect,” 3.

the legitimate aim of military action as humanitarian protection. He also affirms that Resolution 1973 urged the international community to protect innocent civilians in Libya from an impending humanitarian crisis, and this limited the nature and scope of the mandate. Thakur affirms that Resolution 1973 was adopted in one month, and this was a decisive decision taken by the Council.⁵⁸ Thielbörger supports Thakur's arguments and states that Resolution 1973 was clearly written to save Libyans from Qaddafi attacks, because the aim of the resolution was to enforce the democratic aspiration of Libyans. Thielbörger states: "Resolution 1973 proves the serious attempt of international actors to comply with, rather than avoid, the system of collective security under international law."⁵⁹

Dunne and Gifkins also affirm that the Resolution 1973 clearly stated that the Libyan authorities failed to fulfill Resolution 1970.⁶⁰ They argue that the intervention in Libya was under R2P principles and state: "the early response to Libya in 2011 has shown that the United Nations Security Council is able to give effect to the 'responsibility to protect' norm."⁶¹ Dunne and Gifkins state that the language of the mandate was very extensive, but clearer than Resolution 1970. The abstentions from China, Russia, Brazil, India and Germany suggests that there was no formal objection to the use of force to resolve the Libyan crisis.⁶² Williams, Colleen and Popken state that Resolution 1973 provided a clear plan for humanitarian intervention⁶³ in

⁵⁸ Ibid., 3-4.

⁵⁹ Thielbörger, "The Status and Future," 46.

⁶⁰ Dunne and Gifkins. "Libya and the State of intervention," 8.

⁶¹ Ibid., 1.

⁶² Ibid., 8.

⁶³ Williams, Colleen, and Popken, "Security Council Resolution 1973," 226.

order to protect Libyans.⁶⁴ Çubukçu states that Resolution 1973 was welcomed by Libyans who “[cheered] on the streets of Benghazi.”⁶⁵

Proportional Means is the fourth principle of R2P. In terms of the application of force, Williams, Colleen and Popken affirm that Qaddafi and the NTC were morally not entitled to the same protective criteria, and therefore airstrikes were conducted only against the Qaddafi forces.⁶⁶ Benghazi was significantly targeted because it was the command and control centre of the Libyan Government.⁶⁷ Talal and Schwarz affirm that the coercive means used by NATO only had human protection purposes against the wishes of a functioning state, as it was perpetrating violence against its own people. They add:

The NATO-led operation, termed Operation Unified Protector, comprised three elements: (1) the enforcement of a no-fly zone over Libya to prevent aircrafts from bombing civilian targets; (2) the enforcement of a maritime arms embargo in the Mediterranean Sea to prevent the transfer of arms, related materials, and mercenaries to Libya; and (3) military measures (air and naval strikes) against military forces involved in attacks or threatening to attack Libyan civilians and civilian populated areas.⁶⁸

Talal and Schwarz further state that the interveners targeted the government telecommunication systems, command and control facilities, military troops, and Qaddafi’s compound.⁶⁹ Ivo H. Daalder and James G. Stavridis state that the military operation was composed of three important tasks: managing arms embargoes, patrolling no-fly zone, and

⁶⁴ Ibid., 227.

⁶⁵ Çubukçu, “The Responsibility to Protect,” 43.

⁶⁶ Williams, Colleen, and Popken, “Security Council Resolution 1973,” 234.

⁶⁷ Ibid., 238.

⁶⁸ Talal and Schwarz, “Responsibility to Protect,” 8.

⁶⁹ Ibid., 9.

protecting civilians. The maritime blockade and the no-fly zone were immediately applied by NATO, but the initial operational phase was slow, and the interveners misinterpreted that the opposition forces on the ground were able to defend the civilians under the no fly zone. The initial strategy created a wrong perception that the interveners were enforcing both deadlock and stalemate.⁷⁰ Abdelali argues that Qaddafi was fighting with no military strategy and this proliferated the civil war into many cities. Abdelali states:

The Libyan regime thus chose an option that cost it its military infrastructure and spread the rebellion to the ranks of the military, not only in the eastern sector, but also in the western sector. The fighting eventually spread to the western sector, mainly to Misrata, the rebels succeeded in expanding areas under their control, and the Libyan regime lost much of its influence in the Nafusa Mountains and Misrata, which made an attack on Tripoli from several fronts possible.⁷¹

Glanville supports intervention in Libya and states: “[I]t was clear that the Council did authorize an expansive range of interventionist measures, including the use of force, in response to tyranny” to save the civilian population.⁷² Dembinski and Reinold argue that the military operation stopped the advance of government troops into Benghazi and opened the way for the rebel forces to take counter-offensive actions.

Dembinski and Reinold argue that NATO was only an impartial protector of civilians and was not interested in Libyan regime change:⁷³ “This [regime change] impression was created by the dynamics of the conflict” which were very complex.⁷⁴ Thielbörger supports Dembinski and

⁷⁰ Ivo H. Daalder and James G. Stavridis, “NATO's Victory in Libya the Right Way to Run an Intervention,” (2012):6, assessed on December 15, 2014. <https://www.foreignaffairs.com/articles/libya/2012-02-02/natos-victory-libya>.

⁷¹ Abdelali, “Wave of Change,” 204.

⁷² Luke Glanville, “Gaddafi and Grotious,” 343.

⁷³ Ibid.

⁷⁴ Ibid.

Reinold, that NATO's position was already defined in the mandate with its aim just to shift the balance in favour of rebels.⁷⁵ Thielbörger restates that Resolution 1973 did not support any regime change in Libya, and it is difficult to argue that interveners or international actors were interested in removing Qaddafi from power.⁷⁶ Williams, Colleen and Popken state:

The British-French led coalition and NATO vigorously protected Benghazi and other "civilian populated areas" from Gadhafi's forces by conducting airstrikes in and around at least thirty-five towns and cities in Libya. NATO interpreted Resolution 1973 as allowing it to deter attacks by the Gadhafi regime on the Libyan opposition and to provide close air support as the Libyan opposition moved from one town to the next.⁷⁷

Talal and Schwarz state that the Operation Unified Protector (OUP) was very precise and accurate, as it was continued only for eight months and ended on 31 October 2011.⁷⁸ The intervention ended, once all threats on the ground ended. Talal and Schwarz state that the OUP was a "success of global humanitarianism and responsibility to protect but also for NATO."⁷⁹ In addition Daldar and Stavridis affirm that NATO's involvement during the Libyan crisis clearly showed success in averting massive mass atrocities in Libya: "The initial intervention rescued the people of Benghazi, obliterated Libya's air defense system within 72 hours."⁸⁰ After August 2011, the opposition forces controlled strategic areas in the country, first in Tripoli and later on in Sirte.

⁷⁵ Thielbörger, "The Status and Future," 23.

⁷⁶ Ibid., 37.

⁷⁷ Williams, Colleen, and Popken, "Security Council Resolution 1973," 238.

⁷⁸ Ibid., 10.

⁷⁹ Talal and Schwarz, "Responsibility to Protect," 8.

⁸⁰ Ibid., 5.

During the last phase of the operation, the rebels captured Qaddafi in a convoy and killed him.⁸¹

Dalder and Stavridis state:

NATO succeeded in Libya. It saved tens of thousands of lives from almost certain destruction. It conducted an air campaign of unparalleled precision, which, although not perfect, greatly minimized collateral damage. It enabled the Libyan opposition to overthrow one of the world's longest-ruling dictators. And it accomplished all of this without a single allied casualty and at a cost -- \$1.1 billion for the United States and several billion dollars overall -- that was a fraction of that spent on previous interventions in the Balkans, Afghanistan, and Iraq.⁸²

According to the pro- R2P camp and by leaning on the principles of Just Cause, Right Intention, Last Resort and Proportional Means to advance their arguments, Libya was clearly an example of R2P in action.

Anti R2P

The anti R2P camp tends to borrow arguments from the same principles, but argue that a lack of concern for these principles were followed during the Libyan intervention. Neil Rijke states that the intervention in Libya was not conducted under the Just Cause principle. Rather it was a crime of aggression. The Council failed to understand the intensity of Libyan conflict and correctly imposed coercive methods against the Qaddafi government. Rijke claims that Resolution 1973 was vague, inaccurate, and unclear.⁸³ Stephen Zunes argues that when the protests started, the rebels equipped themselves with arms and ammunitions, and initiated fighting against the government forces. The rebels threatened, massacred, and executed

⁸¹ Daalder and Stavridis, "NATO's Victory," 8.

⁸² Ibid., 9

⁸³ Neil Rijke, "Intervention in Libya: A Crimes of Aggression," *ICD Brief 4*, (2014): 2-5, assessed on October 17, 2014.

Qaddafi's supporters, black Libyans and other black Africans, and killed and displaced thousands of Libyans.⁸⁴

Zunes suggests that the UNSC falsely judged the crisis, and the situation became more hostile as many actions by the UNSC were wrong.⁸⁵ Zunes argues that the Just Cause was not invoked, because the weaponless Tripolitarians swiftly ran into the streets before the rebel entrance into the Libyan capital. These civilians "blocked suspected snipers from apartment rooftop, and sang and chanted over loudspeakers to mobilize the population against Qaddafi."⁸⁶

Berti restates:

Instead of upholding the fiction of impartiality, the UNSC took the side of the Libyan civilian population, blaming the regime for its brutality and pointing out that the 'widespread and systematic attacks...against the civilian population may amount to crimes against humanity.'⁸⁷

Berti also states that the protests intensified the rebel's movement, who armed themselves and created the crisis in the Libyan cities. Berti states within few weeks the situation became worse, intensified, and left the government with very limited options. Berti further states that the rebels attacked Qaddafi military forces and secured control in Benghazi.⁸⁸ Berti argues that the international condemnation of the crisis was baseless, because the UNSC was clearly divided on whether to intervene in Libya.⁸⁹

⁸⁴ Stephen Zunes, "Lessons and False Lessons from Libya," *Peace Review: A Journal of Social Justice* 25:590–595, (n.d) 594. doi: 10.1080/10402659.2013.846682.

⁸⁵ Ibid., 595.

⁸⁶ Ibid., 590.

⁸⁷ Benedetta Berti, "Forcible Intervention in Libya: Revamping the 'Politics of Human Protection'?", *Global Change, Peace & Security*, (2013): 27. ISSN: 1478-1158 (Print) 1478-1166.

⁸⁸ Ibid., 34.

⁸⁹ Ibid., 83.

Daniel Silander reiterates, “R2P has been proclaimed to be a core principle for human security, the Libyan crisis shows much discrepancy and confusion by the international community.”⁹⁰ Silander refers to the series of constant military attacks during 2 March 2011, in Brega, Ajdabiya, Jawwad, Zawiyah and Ras Lanuf,⁹¹ and argues that Qaddafi loyalist forces were unable to reach a decisive position that would result in the defeat of the rebel forces. The situation quickly changed on 6 March 2011, when Qaddafi loyalist troops successfully occupied Misrata and Zawiyah. Their troops maintained a strong control over these key strategic areas, and made Qaddafi’s position strong.⁹² Silander argues that rebels became defenseless, demanded help from UN and propagated that Qaddafi was planning a large scale attack against civilians.⁹³

Bruno Pommier states that the intervention in Libya had “raised a number of issues for humanitarian organizations, in particular concerning the notion of neutral, impartial, and independent humanitarian action.”⁹⁴ Pommier specifies that the use of force against civilians was imprecisely mentioned in the preamble of the Resolution 1970, as the definition of civilian itself is not clearly defined in any armed conflict.⁹⁵ Pommier states that the Libyan intervention shows a clear “politicization of the concept of protection of civilians”⁹⁶, and the application of military and

⁹⁰ Daniel Silander, “R2P–Principle and Practice? The UNSC on Libya,” *Journal of Applied Security Research* 8:2, 262-284, (2013): 262, doi: 10.1080/19361610.2013.765340.

⁹¹ Ibid., 269.

⁹² Ibid., 269-270.

⁹³ Ibid., 270.

⁹⁴ Bruno Pommier, “The Use of Force to Protect Civilians and Humanitarian Action: the Case of Libya and Beyond,” *International Review of the Red Cross*, 93 No. 884, (2011): 1063, assessed on October 23, 2014.

⁹⁵ Ibid., 1064.

⁹⁶ Ibid., 1070.

political objectives had an indirect link to the threats to the civilian population. The regime was unjustly condemned by the international community.⁹⁷

Francesco Francioni and Christine Baker argue that the Libyan intervention lacked a clear understanding of domestic events.⁹⁸ They also argue that Qaddafi was neither planning to start atrocities, nor threatening civilians. They further believe that the crisis in Libya caused internal armed conflict with no international repercussion as regional peace was not breached in Libya under Chapter VII of the Charter.⁹⁹ The situation, according to Francioni and Baker was referred to the UN, but under the UN's Charter and international law, it was the responsibility of the Libyan government to protect its population. Francioni and Baker argue that the international decision was made quickly, and the UN only responded to the second part of the R2P principle by encouraging the international community to protect Libyans against Qaddafi's threats.¹⁰⁰ Such argument was also provided by Rijke, who states that the UNSC unjustly extended the language of Article 39¹⁰¹ of the UN Charter and wrongly interpreted the situation.¹⁰²

Similarly, Carsten Stahn states that due to the controversial nature of international and non-international armed conflict, Operation Unified Protector (OUP) conducted by NATO failed to distinguish international and ordinary crimes in Libya. Stahn affirms that in order to show the

⁹⁷ Ibid., 1068.

⁹⁸ Francesco Francioni and Christine Baker, "Responsibility to Protect, Humanitarian Intervention and Human rights: Lessons from Libya to Mali," *Transworld Working Paper* 15, (April 2013):14, ISSN: 2281-5252.

⁹⁹ Ibid., 4-5.

¹⁰⁰ Ibid., 8.

¹⁰¹ "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."

¹⁰² Rijke, "Intervention in Libya," 8.

conflict as a legitimate action of the UNSC, many international treaties were inappropriately explained and referred against the Qaddafi Government.¹⁰³ Stahn argues that the ICC is facing many challenges under Resolution 1970, which sets an unfortunate case for its future implications¹⁰⁴: “The referral was initially heralded as a victory for international justice. But it put the ICC in a delicate position. The ICC’s response shows that the United Nations Security Council referrals remain a species of their own in the practice of the ICC, with their own specific pitfalls and problems.”¹⁰⁵

In order to discuss Anti R2P concerns on the Right Intention principle, Dembinski and Reinold state that the interveners became crusaders against Qaddafi, who was an unacceptable leader to the Western world. Dembinski and Reinold emphasize that it is important to understand that the West had a history of difficult relations with Qaddafi. Humanitarian intervention in this case reflects a neo-colonial agenda,¹⁰⁶ reflective of the unjust invasions of Afghanistan and Iraq.¹⁰⁷

Dembinski and Reinold identify regional commentaries by imminent African leaders, who stated that intervention would increase the bloodshed in Libya. These African leaders favored Qaddafi’s Government by expressing their sympathies, that their brother leader was not perpetrating crimes against Libyans.¹⁰⁸ Dembinski and Reinold state that Zimbabwe’s President

¹⁰³ Carsten Stahn, “Libya, the International Criminal Court and Complementarity A Test for ‘Shared Responsibility,’ ” *Journal of International Criminal Justice* 10, 325-349, (2012): 338, doi:10.1093/jicj/mqs016.

¹⁰⁴ Ibid., 348.

¹⁰⁵ Ibid., 325.

¹⁰⁶ Dembinski and Reinold, “Libya and the Future,” 10.

¹⁰⁷ Ibid., 12.

¹⁰⁸ Ibid.

Robert Mugabe's referred to the Arab Spring as a "domestic hiccup"¹⁰⁹, while President of Uganda Yoweri Kaguta Museveni called Qaddafi a "true nationalist."¹¹⁰ Dembinski and Reinold state that these comments clearly prove that the African leaders did not want western powers to get involved in their regional affairs.¹¹¹ Silander additionally indicates that Russia's President Vladimir Putin discontentedly recalled the Afghanistan and Iraq invasions: "Now it's Libya's turn under the pretext of protecting civilians ...Where is logic and morality? There is neither."¹¹² Eckert reiterates that the intervention in Libya shows that the "problems with humanitarian intervention [was not] conceptual, [rather] they continued to plague the responsibility to protect."¹¹³

Silander criticizes the intervener's actions, and suggests that the intervention targeted Libya's geo-strategic and oil rich economy. Silander argues that the Western world was facing global economic crisis, and believed that intervention in Libya would assist their crippled economies.¹¹⁴ Silander compares both the Libyan and Syrian civil wars, and states that both crises were started at the same time, but civilians in Syria were not treated equally as Libyans. "This reality subjects the principle of the responsibility to protect to these dynamics of the international system, particularly states' pursuit of their own interests."¹¹⁵

¹⁰⁹ Ibid., 11.

¹¹⁰ Ibid.

¹¹¹ Ibid., 11-12.

¹¹² Silander, "R2P-Principle and Practice," 278.

¹¹³ Eckert, "Responsibility to Protect," 98.

¹¹⁴ Silander, "R2P-Principle and Practice," 276.

¹¹⁵ Ibid., 97.

Dembinski and Reinold reiterate that the interveners ignored the situation in Yemen and Bahrain, even though these countries were under autocratic regimes, because they are strong Western allies.¹¹⁶ Piiparinen argues that at the same time, Northern and Southern Sudan declared a humanitarian emergency, but this only received little attention from the UN. Piiparinen states that almost 250,000 people in Sudan were killed in conflict and 2 million had been displaced since 2003, but international action was worthless in Sudan's case.¹¹⁷

Jubilut argues that the loss of lives and victimization of the civilian population received uneven attention in the UNSC. The international community demonstrated no consistency.¹¹⁸

Pommier argues that the humanitarian actions in both resolutions reflect impartial objectives and motivations.¹¹⁹ Piiparinen argues:

The fixation on high-tech aerial bombings in Libya at the expense of attention given to low-tech UN peacekeeping in Sudan reveals an important paradox in global conflict management. The international response to conflicts is still determined by the widespread fascination, or fetishism, of the “storm of steel” and “aesthetics of violence” which is still prevalent, particularly by the West.¹²⁰

Berti states that the UN mandate had “ambiguity and the lack of any official clarification of the wording by UNSC.”¹²¹ Interestingly, Thielborger states that the protestors acted as a crucial force behind the intervention, as this could be the only way to provide a chance to establish a

¹¹⁶ Dembinski and Reinold, “Libya and the Future”, 12.

¹¹⁷ Piiparinen, “Macdonaldization of Sovereignty,” 493.

¹¹⁸ Liliana L. Jubilut, “Has the ‘Responsibility to Protect’ Been a Real Change in Humanitarian Intervention? An analysis From the Crisis in Libya”, *International Community Law Review* 309–335, 330-331, (2012):14, assessed on 21 July, 2014, <http://heinonline.org.uml.idm.oclc.org/HOL/Page?page=309&handle=hein.journals%2Fintlfddb14&collection=journals>.

¹¹⁹ Pommier, “Use of Force,” 1080.

¹²⁰ Piiparinen, “Macdonaldization of Sovereignty,” 493.

¹²¹ Berti, “Forcible Intervention in Libya,” 32.

democratic regime in Libya.¹²² Thielborger states, “What had started as an intervention to protect human rights became a crusade against a tyrant who had for many years been a thorn in the Western community’s side.”¹²³ Silander identifies the intervener’s national interests by stating:

Competing economic and security interests challenge[d] the long-term benefits in promoting democracy and human rights in the international domain. It is only when democratic states can show a clear record of a human-centric approach in international politics that criticism from other powerful, dictatorial states against the West, about hidden motives and double standards, can be successfully dismissed.¹²⁴

Until all non-military options are exhausted, military force is not to be entertained. The anti R2P camp states that the Last Resort principle of R2P was manipulated in Libya. The intervention in Libya inappropriately enforced coercive means before all diplomatic efforts were exhausted,¹²⁵ and “resolution [1973] rather bluntly referred to the concept without considering its exact aims or limitations.”¹²⁶ Dembinski and Reinold also criticize the failure to obtain a peaceful resolution of the Libyan crisis, as a function of short fall of diplomatic efforts.¹²⁷ They highlight political efforts that could have avoided the implementation of coercive measures. Specifically, the AU tried to resolve the issue and proposed a solution in the “African way.”¹²⁸ The African Union Peace and Security Council (AUPSC) clearly rejected any foreign military intervention in Africa, despite the fact that African members voted for resolution 1973. The AU

¹²² Ibid., 23.

¹²³ Ibid.

¹²⁴ Silander, “R2P-Principle and Practice,” 280.

¹²⁵ Thielbörger, “State and Future,” 20.

¹²⁶ Ibid., 45.

¹²⁷ Dembinski and Reinold, “Libya and the Future,” 11.

¹²⁸ Ibid.

sought to establish a transitional government in Libya and a constitutional framework for democratic elections in Libya. Under the leadership of Jacob Zuma, a peace plan was proposed. This peace plan was accepted by Qaddafi. However, it was rejected by the National Transitional Council (NTC).¹²⁹

Pommier states, “[T]he military as well as the diplomatic activities of the coalition strongly converged with a goal of regime change.”¹³⁰ Pommier additionally states that the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Valerie Amos, urged a peaceful resolution of crisis and expressed her reluctance over military operations as a Last Resort and stated that this is unnecessary at the moment.¹³¹ Keating argues that Resolution 1973 itself generated questions about coercive military actions to protect civilians and civilian protected areas.¹³²

Rijke argues that the intervention was unlawful, and Last Resort appeared to be a speedy reaction by the UN, which was applied within 36-hours. Dembinski and Reinold further suggest that there was negotiation gap between the conflicting parties, because NATO sought to resolve the conflict forcefully.¹³³ Rijke additionally states that the events in Libya were chaotic and were misunderstood by the Council and the Council’s meeting took a hasty decision to overcome the humanitarian problems and lacked credentials to explore other means.¹³⁴ “[T]he

¹²⁹ Ibid.

¹³⁰ Pommier, “Use of Force,” 1068.

¹³¹ Ibid., 1070.

¹³² Keating, “Responsibility to Protect,” 175.

¹³³ Dembinski and Reinold, “Libya and the Future,” 24.

¹³⁴ Rijke, “Intervention in Libya,” 4.

Resolution enabled Member States to take all necessary measures to protect civilians, including the use of force, whilst not all other means were exhausted.”¹³⁵

Rijke argues that the UN mandate was a political compromise on crimes against aggression under Last Resort.¹³⁶ However, the Last Resort criteria under Resolution 1973 was unacceptable as peaceful measures were not exhausted.¹³⁷ Rijke argues: “With respect to the other conditions for ‘R2P’, as already signalled there is at least considerable contention whether these were fulfilled in the situation of Libya.”¹³⁸ Keating states that Resolution 1973 was not unanimously approved and it faced five abstentions.¹³⁹ Dembinski and Reinold agree that the abstentions from Brazil, Russia, India, China and Germany exhibited skepticism and that the mandate was under-developed, vague, and premature.¹⁴⁰ NATO took responsibility for the military operation, and the intervention proved that the transatlantic alliance had still neo-imperialist desire in the aftermath of the Cold War.¹⁴¹

Justin Morris identifies risks pertaining to the Last Resort and states: “Libya has served less as a showcase for the potential of R2P and more as a warning of its dangers.”¹⁴² Morris states that there was little support for Resolution 1973 as many political, humanitarian, and

¹³⁵ Ibid.,3.

¹³⁶ Ibid., 1.

¹³⁷ Ibid., 3.

¹³⁸ Ibid., 4.

¹³⁹ Keating, “The Responsibility to protect,” 174.

¹⁴⁰ Dembinski and Reinold, “Libya and the Future,” 1.

¹⁴¹ Berti, “Forcible Intervention in Libya,” 28.

¹⁴² Morris, “Libya and Syria,” 1280.

operational factors were criticized by the member states.¹⁴³ Morris further states that Resolution 1973 failed to elaborate what was the comprehensive responsibility of the international community, how the Libyan regime had failed to fulfill its responsibility and how the international community was logically involved.¹⁴⁴

Morris also states that the US, France, Germany, Rwanda, Columbia, Lebanon made only limited use of R2P language during the Council's proceedings. The other UNSC members did not invoke R2P language.¹⁴⁵ "Resolution 1973 gives little support to assertions that R2P was a major influencing factor on decisions over the most appropriate form of intervention."¹⁴⁶

Keating argues that the peaceful resolution of the crisis was avoided. The UNSG encouraged the AU to seek out the political settlement of the crisis before implementing Resolution 1973. The Resolution was adopted in no time, urging the conflicting parties to enforce no fly zone immediately for the protection of civilians.¹⁴⁷

Dembinski and Reinold argue that the OUP eventually disabled the Libyan air defense system and opened up a way for rebel forces to defeat Qaddafi's forces.¹⁴⁸ Dembinski and Reinold further state, that NATO airstrikes halted Qaddafi's attacks on important strategic areas and helped to break the siege of Misrata. Dembinski and Reinold state that the implementation of proportional means demonstrates an unrestricted and peculiar interpretation of R2P. They

¹⁴³ Ibid., 1271.

¹⁴⁴ Ibid., 1272.

¹⁴⁵ Ibid., 1273.

¹⁴⁶ Ibid., 1271.

¹⁴⁷ Tom Keating. *The Responsibility to Protect and the Future of Humanitarian Intervention*, 162-191, (NY: Palgrave Macmillan, 2013), 174.

¹⁴⁸ Dembinski and Reinold, "Libya and the Future," 7.

argue that the operation had to be terminated if the Libyan government met three demands: ending attacks against civilians in populated areas; withdrawing military forces, and permitting unlimited humanitarian access. However, when the operational phase was started, all these demands were violated.¹⁴⁹ Dunne and Gifkins state that Resolution 1973 was directed towards victory for the rebels.¹⁵⁰

The sight of attack aircraft targeting Libyan command and control facilities triggered a barrage of criticisms by anti-interventionist commentators and state leaders. For them, Operation Odyssey Dawn did not look, resemble, or feel, like humanitarian protection. Rather, it reminded them of the worst aspects of Operation Allied Force twelve years previously – a lengthy air campaign to degrade a vastly weaker opponent’s political and military infrastructure, accompanied by political disunity over both the mandate and strategic disagreements about targeting.¹⁵¹

Eckert states: “NATO intervention neutralized the government’s advantage and paved the way for a military triumph by the rebels in August.”¹⁵² Kubo Mačáka and Noam Zamir argue: “In the first days of the intervention, the overall goals, strategy and tactics of the intervening States differed significantly from those of the rebels.”¹⁵³ To establish proper logistical and co-ordination support, NATO sent its military personnel to Libya. A joint military operation center was established in Benghazi to coordinate with the rebels.¹⁵⁴ Zunes agrees with Mačáka and Zamir and states that NATO “[B]latantly went beyond the mandate provided by the United

¹⁴⁹ Ibid., 12.

¹⁵⁰ Dunne and Gifkins, “Libya and the State,” 8.

¹⁵¹ Ibid., 2

¹⁵² Eckert, “Responsibility to Protect,” 89.

¹⁵³ Kubo Mačáka and Noam Zamir, “The Applicability of International Humanitarian Law to the Conflict in Libya,” *International Community Law Review* 14, 403–436, (2012):415, doi: 10.1163/18719732-12341238.

¹⁵⁴ Ibid., 418.

Nations Security Council to simply protect the civilian population through the establishment of a no-fly zone.”¹⁵⁵ Zunes argues that NATO discouraged rebels from resolving the conflict peacefully, and this prolonged the conflict.¹⁵⁶ He condemns the operational legitimacy of OUP by stating that 7500 air and missile strikes against Qaddafi’s military caused extensive damage to military and government facilities, and the intervention turned into a hostile civil war in Libya.¹⁵⁷

Nauruzzmaan criticizes NATO’s abuses in Libya and considers R2P implementation as “doomed to a bleak future.”¹⁵⁸ According to Resolution 1973, all member states had to take “all necessary measures,”¹⁵⁹ but this supported the establishment of NTC and provided the rebel fighters to attack the government facilities.¹⁶⁰ France supplied “all necessary measures” to the NTC and supported rebel’s attacks against the government forces. Nauruzzmaan argues that NATO provided operational support on the ground through military training, tactical information, and Global Positioning System (GPS) co-ordinates. This resulted in precise and accurate airstrikes, but created many doubts because NATO violated Resolution 1973.¹⁶¹ Bertti states: “The international community [...] aiding one side in a conflict and restricting the movements of another” clearly shows that the proportional means were inadequately carried out.¹⁶²

¹⁵⁵ Zunes, “Lessons and False Lesson,” 592.

¹⁵⁶ Ibid., 593

¹⁵⁷ Ibid., 592.

¹⁵⁸ Mohammed Nauruzzmaan, “The Responsibility to Protect Doctrine: Revived in Libya, Buried in Syria,” *Insight Turkey* 15, no. 2, (2013): 57, assessed on November 25, 2014.
http://file.insightturkey.com/Files/Pdf/15_2_2013_nuruzzaman.pdf.

¹⁵⁹ Ibid., 62.

¹⁶⁰ Ibid., 64.

¹⁶¹ Mačáka and Zamir, “The Application of International Humanitarian,” 422.

¹⁶² Bertti, “Forcible Intervention in Libya,” 34-35.

Nauruzzmaan reiterates: “The toppling of Gaddafi in October 2011 was apparently a success for R2P, but viewed critically it had done irreparable damages to the R2P doctrine.”¹⁶³ Resolution 1973 was inadequately applied in Libya, which consequently unified many Asian, African, and Latin American countries. It created suspicion about a Western neo-imperialist agenda.¹⁶⁴ Silander additionally argues that during the final stages of the military operation, Russia and China expressed their discomfort over the excessive use of force on the ground. Both countries urged a peaceful resolution to the conflict.¹⁶⁵ Pommier criticizes the exit strategy for being very poor and the fall of Tripoli on 22 August 2011 did not put an end to NATO operations. The interveners provided continuous support to the NTC, even after the death of Qaddafi. It showed that NATO went beyond the Council’s mandate.¹⁶⁶

Conclusion

Examining the wide range of arguments demonstrated by pro and anti-camp, the academic debate on Libyan intervention is inconsistent. Pro – R2P suggests that all the evidence is consistent whereas, the anti-R2P camp suggests that the normative commitments of Libyan intervention completely mismatched the basic principles of R2P. This academic debate generates controversy about the relationship between R2P and Libyan intervention.

Moreover, both camps reflect ‘a prior’ ideological biases between pro-western, democratic, human rights and humanitarian biases, and anti-western claims. While only one scholar reflects briefly on the use of R2P language, both sides of the debate largely failed to

¹⁶³ Nuruzzaman, “The Responsibility to Protect,” 63.

¹⁶⁴ Ibid., 65.

¹⁶⁵ Silander, “R2P-Principle and Practice?,” 281.

¹⁶⁶ Pommier, “The Use of Force,” 1069.

provide systematic evidence. The core ideas and values of R2P are not highlighted.¹⁶⁷ This suggests that there is a need to focus on the use of official documents and reports relative to the ICISS report. The key to resolve the debate is looking at the systematic evolution of the language employed relative to R2P during the intervention. The academic debate does not advance the discussion significantly. The same facts are used in by both camps like a double-sided coin. Instead, an analysis of the primary documents created by the UNSC is required. Only this can lead to an answer to the question of whether Libya is a R2P case.

¹⁶⁷ See page 35.

CHAPTER THREE

Development of R2P in Light of New Wars

This chapter discusses the emergence of new warfare in the new millennium, and highlights the decline of interstate warfare. It begins with a short introduction examining the changing history of warfare, and the inability of the UNSC to handle humanitarian catastrophes in Bosnia, Rwanda, and Srebrenica. It underlines the contemporary nature of warfare, and discusses the gaps that exist within the UN Charter. It briefly discusses the problem of understanding humanitarian military intervention in international law, due to the separation of humanitarian law and international human rights laws, and explains the factors that led to the formation of R2P. It then identifies the key components of R2P from the ICISS report to lay the foundation for analyzing the Libyan case.

The nature of war changed at the end of the 20th century. Combatants are largely no longer uniformed and trained soldiers, but armed civilians perpetrating violence against their fellow citizens. Historically, traditional warfare was fought between state armies.¹⁶⁸ Traditional warfare was once seen as the substance of national security, state independence, honor, and respect carried out by generals, and state leaders and regulated under prescribed rules, regulations, and norms.¹⁶⁹ To understand contemporary warfare as a new version of warfare, it is necessary to understand that conventional warfare is outdated in response to modern day

¹⁶⁸ Harald Wydra. "Understanding New Wars," *Cambridge Review of International Affairs* 26:1, 159-160, (2013): 159, doi: 10.1080/09557571.2013.770290, 159.

¹⁶⁹ Kenneth Payne, "What is Conventional Warfare?" *Small War Journals*, (2012): SWJ Editors, retrieved from <http://smallwarsjournal.com/blog/what-is-conventional-warfare> , 2.

challenges. Today war consists primarily of mercenary armies, paramilitary forces, insurgents, and terrorists,¹⁷⁰ with blurred battle lines.¹⁷¹

Another important factor in understanding the significant development of these new wars is the intensive interconnectedness of political, economic, military, and cultural awareness under the globalization phenomenon. Globalization has eroded state sovereignty and has popularized victims' grievances at the international level.¹⁷² The power-brokering institutions that function within a weak states borders to rule over its people are challenged and threatened by opponents. More importantly, the new wars has raised the issue of whether to supersede state sovereignty to avert humanitarian catastrophes.¹⁷³

There are many factors that led to the failure of averting humanitarian crises in conflict affected countries. One such factor is the traditional convention followed by the international community related to non-intervention and state sovereignty. This failed to address and resolve intrastate conflicts, which evoked a debate in the international community when genocide occurred in Rwanda, Somalia, and Bosnia, and compelled the UN to re-examine international human rights and humanitarian law.¹⁷⁴

¹⁷⁰ Ethnicity, religious identity, and political ideologies remained key indicators for the composition of rebel groups and shaped the rebel constituencies. Rwandan Patriotic Front, Eritrean People's Liberation Front, Kashmiri insurgents, Patani Insurgents, and Sikh Insurgents.

¹⁷¹ Wydra, "Understanding New Wars," 159.

¹⁷² Clara Darabont, "Are contemporary Wars New," *Romanian Journal of European Affairs* 10, no. 1, 52-53 (2010):10.

¹⁷³ Dylan Craig, D. "Developing a Comparative Perspective on the Use of Non-States in War," *African Security* 4:3, (2011): 176-174, doi: 10.1080/19392206.2011.599268.

¹⁷⁴ Melinda Rankin, "New and Old Wars: Organized Violence in a Global Era, Global Change Peace and Security," (2014): 223-224, retrieved from [http:// www.tandfonline.com/loi/cpar](http://www.tandfonline.com/loi/cpar).

Moreover, David E. Cunningham, Kristian Skrede Gleditsch, and Idean Salehyan state that rebels today have greater access to arms, and are able to challenge the military capabilities of many under-developed governments, affecting regional and international peace.¹⁷⁵ Another factor is the end of the colonialism era after World War II that resulted in decolonization of a many newly independent states. Some of the weak and fragile countries became stable, while others were not. Although, not exclusive to these newly independent states, as evident in the case of former Yugoslavia, many of these states emerged as politically weak states and are still underdeveloped with persistent fighting within their borders.

Sovereignty as State's Responsibility

Under the principle of states' sovereignty, the international community under the UN Charter, respects the sovereignty of all member states even in case of violence, human rights violations and civil wars, unless such actions are deemed a threat to international peace and security. It allows states to seek out their own solutions.¹⁷⁶ While this is not an issue for advanced, stable states, it has emerged as one for understanding weak and fragile states.

The international community's disagreement about international law with respect to the use of force for civilian protection in any foreign state is controversial. The ICISS documented this tension. It accepted the legitimacy of sovereignty, in doing so. However, sovereignty is not a license to kill innocent people within state borders. The Commission states that sovereignty means responsibility to protect its own citizens from violence and mass atrocities. This negated

¹⁷⁵ David E. Cunningham, Kristian Skrede Gleditsch, and Idean Salehyan, "New-state Actors in Civil Wars: A New Dataset," *Conflict Management and Peace Science* SAGE 30(5), 516-531, (2013): 524, doi: 10.1177/0738894213499673.

¹⁷⁶ Eleanor Lumsden, "An Uneasy Peace: Multilateral Military Intervention in Civil Wars," *Journal of International Law and Politics* 35, no.3, (2003):801-802.

the old Westphalian definition of sovereignty in the sense that sovereignty is no longer inviolable.¹⁷⁷

The UN has a collective purpose and principle to maintain international peace and security. The UN Charter formed a new world order and stressed international peace and unity. The UN Charter proposed that member states stay united against humanitarian plights especially “intolerance, repression, injustice and economic want.”¹⁷⁸ Universal agreement under the UN’s Charter does not entail, however, a clear enumeration of global values, types of social justice and social development.¹⁷⁹ There are some provisions related to human rights in the UN Charter. However, the framers of UN Charter were incapable of anticipating future problems related to humanitarian intervention. It did not include a list of threats that directly related to intrastate conflicts.¹⁸⁰

The UN Charter provides solutions for maintaining international peace and security. The first two goals identified in the preamble of the UN Charter are, “to save succeeding generations from the scourge of war”¹⁸¹ and to “reaffirm faith in fundamental human rights, the dignity and worth of the human person.”¹⁸² As humans increasingly became the subject of international law,

¹⁷⁷ Paul R. Williams, J. Trevor Ulbrick, and Jonathan Worboys “Preventing Mass Atrocity Crimes: the Responsibility to Protect and the Syria Crisis,” *Case Western Reserve Journal Of International Law* 45, (2012): 486.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid., 371.

¹⁸⁰ Thakur and Weiss, “R2P: From Idea to Norm-and Action?,” *Global Responsibility to Protect* 1, 22-53, (2009):22, doi. 10. 1163/187598409X405460.

¹⁸¹ United Nations Charter, preambular para 1.

¹⁸² Ibid., preambular para 2.

the UN Charter contains an “inherent tension”¹⁸³ of rights and duties and stressed the importance of international human rights law and international humanitarian law.¹⁸⁴

Article 2(4) of the Charter restricts states from the use of force relative to the internal affairs of the other states. “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations.”¹⁸⁵ It explicitly prohibits the use of force against a state except in individual or collective self-defense, or actions approved by the UNSC. It does not define and qualify what demonstrates a threat and use of force. Article 2(7) directs states to respect domestic affairs of other states and also supports the principle of non-intervention.

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.¹⁸⁶

Thus, the UNSC has the authority to respond to human rights violations, if it defines them as a threat to international peace and security.¹⁸⁷

In the 1990s, the issue of internal humanitarian rights violations emerged on the international agenda, which led to a series of UN reports by UN Secretary General Boutros Boutros Ghali, UN Special Advisor Francis Mading Deng, UN Secretary General Kofi Annan,

¹⁸³ Thakur and Weiss, “R2P: From Idea to Norm-and Action?,” 30.

¹⁸⁴ Ibid.

¹⁸⁵ Article 2(4), *UN Charter*, 3.

¹⁸⁶ Article 2(7), *UN Charter*, 3.

¹⁸⁷ Thakur and Weiss, “R2P: From Idea to Norm-and Action?,” 23-24.

and Ladakh Brahimi. These reports underline the numerous difficulties, mistakes, and lessons learned in the 1990s post-cold war era. Central to these reports was the recognition that UN Peace Keeping Operations (UNPKOs) remained poorly crafted, expensive, and indecisive, and demonstrated no satisfactory results in ensuring peace. In addition, the core principles of peacekeeping, including consent, impartiality, and the restrictive use of force¹⁸⁸ were questioned.¹⁸⁹ Empirically, humanitarian catastrophes in Angola, Bosnia, Cambodia, Rwanda, Kosovo, and Somalia created new challenges for UNPKOs.¹⁹⁰ In the past, traditional peacekeeping was focused on non-interference in the internal affairs of others states, without consent for the sovereign equality of all states. These catastrophic failures called for a new approach.¹⁹¹

In 1992, the UN Secretary General Boutros Boutros Ghali released the Agenda for Peace, which explicitly stated that the UN member states have to adopt new security measures to handle internal strife, civil wars, and internal threats in war affected countries.¹⁹² Ghali stated that Chapter VII of the UN Charter allows for the use force to stop mass atrocities.¹⁹³ Furthermore, Ghali stated, “neither the Security Council nor the Secretary General at present has the capacity to deploy, direct, command and control operations for this purpose, except perhaps on a limited scale.”¹⁹⁴ He argues that due to the changing context of international peace

¹⁸⁸ Swope, “The Reform of United Nations,” 5.

¹⁸⁹ Ibid., 5-6.

¹⁹⁰ Osmancavusoglu, “Challenges to United Nations,” 3.

¹⁹¹ Ibid., 6-7.

¹⁹² Oliver, “The Other Side of Peacekeeping,” 101-102.

¹⁹³ Ibid., 102.

¹⁹⁴ Ibid.

and security, it is important to reconcile sovereignty, territorial integrity, and independence of all sovereign states.¹⁹⁵

The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality (959)... Sovereignty not as a negative concept by which states barricade themselves against international scrutiny and involvement, but rather as a positive concept entailing responsibility for the protection and general welfare of the citizens and of those falling under state jurisdiction.¹⁹⁶

In 1998, the UN Special Advisor Francis Mading Deng, Special Representative on Internally Displaced People in Sudan, addressed the issue of the Internally Displaced People (IDP). Deng pleaded with the international community to take effective steps to establish a systematic, cooperative international response in order to reach an effective solution. He further stated that the IDP's issue had turned into tragedy, and intense conflicts were causing clear violations of human rights within state's borders, leading to immense human miseries.¹⁹⁷ He identified an urgent need to compile and analyze the gaps within UNPKOs by focusing on "appropriate normative and institutional frameworks for the protection and assistance of the internally displaced."¹⁹⁸ Deng further emphasized that "existing laws are dispersed in a wide variety of international instrument which make them too diffused and unfocussed to be effective in providing adequate protection and assistance for the internally

¹⁹⁵ United Nations, "Report of the Secretary-General on an Agenda for peace –Preventive Diplomacy, peacemaking and peace-keeping," *American Society of International Law* 31, no. 4, (1992):953-975, 144.

¹⁹⁶ Ibid.

¹⁹⁷ United Nations, Economic and Social Council E/CN.4/1998/53/Add.2, "Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the commission Human rights, Mass Exoduses and Displaced Persons, Report of the Representative of the Secretary-General, Mr. Francis M. Deng," submitted pursuant to Commission Resolution 1997/39 11 February 1998 1.

¹⁹⁸ "Economic and Social Council E/CN.4/1998/53/Add.2", *United Nations*, last modified March 23, 2014 <http://www.refworld.org/docid/3d4f95e11.html>, Introductory note to the guiding principle 3.

displaced.”¹⁹⁹ Deng urged national authorities, and international actors to “respect and ensure respect for their obligations under international law, including human rights and humanitarian law.”²⁰⁰

In 2000, UNSG Kofi Annan presented the Millennium Development Report and suggested that any UN reforms need to pay special consideration to human security problems in conflict affected countries.²⁰¹ “[I]f humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity ?”²⁰² Specifically, Anan placed the subject of humanity over state sovereignty. He unshielded the traditional concept of sovereignty, stating that sovereignty cannot be use to perpetrate crimes against innocent civilians.²⁰³

We have found ourselves standing by, in impotent horror, while the most appalling crimes were committed. There the limits of peacekeeping were graphically demonstrated: we learned, the hard way, that lightly armed troops in white vehicles and blue helmets are not the solution to every conflict. Some peace has to made- or enforced- before it can be kept.²⁰⁴

In 2000, Kofi Anan appointed a High Level Panel to review the UN’s Peacekeeping mechanisms, and to provide recommendations for future Peace Keeping Operations. Ladakh Brahimi, Foreign Minister of Algeria and a former Special Representative of Secretary General to the UN Peacekeeping Mission in Haiti presented a Report on United Nations Peace

¹⁹⁹ Ibid.

²⁰⁰ Ibid., 5.

²⁰¹ Ibid., 46.

²⁰² ICISS, “Responsibility to Protect,” 2.

²⁰³ United Nations, “We the Peoples,” 48, 79.

²⁰⁴ Oliver, “The Other Side of Peacekeeping,” 100.

Operations, also known as the “Brahimi Report.” The Brahimi report concluded that there was no integrated planning unit within the UN that contributes to peacebuilding through political analysis, military operations, civilian police, human rights, humanitarian assistance, refugees, public information, logistics, and finance.²⁰⁵ It further states that sending the UN’s peace keeping missions into dangerous operating zones without clear instructions, undoubtedly brings failure to the UN. The Brahimi Report suggests that UN military units have to support and plan human rights components in UNPKOs and would enable the UNPKOs to conduct effective operations. The Report urges the UN to improve its peacekeeping mandate, institutional processes, operational planning, strategic direction, and robust deployment of troops.

Many considered this report as a last chance to reverse criticism, and avert declining support for UN Peacekeeping missions.²⁰⁶ The UN was looking for a stronger and clearer mandate to understand the challenges of humanitarian military intervention.

In response to the humanitarian catastrophes of 1990s, the International Commission on Intervention and State sovereignty (ICISS) was established under the initiative of the Government of Canada at the UN General Assembly in 2000.²⁰⁷ The ICISS report looked over the “legal, moral, operational- and political debate”²⁰⁸ associated with the “right of humanitarian intervention.”²⁰⁹ The Commission identified the flaws in previous UNPKOs. It provided a comprehensive and coherent approach to answer the queries of Boutros Ghali, Francis Deng,

²⁰⁵ United Nations General Assembly Security Council, *Report of the Panel on United Nations Peace Operations*, August 21, 2000, <http://www.unrol.org/files/brahimi%20report%20peacekeeping.pdf>, xiii.

²⁰⁶ Swope, “The Reform of United Nations,” 68.

²⁰⁷ ICISS, “Responsibility to Protect,” 7.

²⁰⁸ Ibid.,

²⁰⁹ Ibid.,

Kofi Anan, and Laksh Brahimi. Importantly, it developed a remarkable political and moral doctrine that provides conceptual insight into, and meaningful actions to stop humanitarian catastrophes under the umbrella of the R2P. R2P is not a single component but it is a mechanism that is composed of a variety of components, and these components, are deeply rooted in international humanitarian and human rights law.²¹⁰

Basic Principles

R2P has three basic principles. First, the State has a primary responsibility to protect its populations. Thus, a state's sovereignty implies responsibility. Second, if a population is suffering from serious harm as a result of internal war, state failure, and insurgency, it is the responsibility of the state to protect the affected population to avert mass atrocities. The State can also protect its population with the assistance of the international community. Third, if a state is unable, or unwilling to protect its population, or unable, or unwilling to avert mass atrocities, the principle of non-intervention is dismissed. It is the international community's responsibility to protect the affected population, by intervening in the affected state to avert mass atrocities.²¹¹

R2P has three integral and essential components to prevent mass atrocity crimes. These components are the Responsibility to Prevent, the Responsibility to React, and the Responsibility to Rebuild. Of these, relevant to this study of the Libyan intervention, the Responsibility to React is key.²¹² The Commission indicates extreme and exceptional cases that can possibly present an

²¹⁰ Mehrdad Payandeh, "With Great Power Comes Great Responsibility? The Concept of the Responsibility to Protect Within the Process of International Lawmaking," *The Yale Journal of International Law* 35, no. 469, (2005):480-481.

²¹¹ ICISS, "Responsibility to Protect," XI.

²¹² Ibid.

emergency situation when all order within a targeted state breakdown, and the state is incapable of averting humanitarian catastrophe, when state institutions collapse, and civil conflict and repression become so violent that they threaten civilians with genocide, war crimes, and/or ethnic cleansing on a large scale. It states that this type of situation denotes an extreme and volatile situation, which is sufficient enough to justify military intervention from the international community. It is mentioned in the ICISS report that the use of military force is allowed, only if force is a Last Resort to stop the perpetrators. The Commission further states that coercive measures can be used against a state, or be used in assisting a state to avert atrocities in situations, which display a shock of conscience to mankind, and present a clear danger to international security.²¹³

The Commission states that the Responsibility to React is only applicable in extreme cases and must only respond to mass atrocity events, that convinces the international community that intervention is the only solution for human protection. To stop mass atrocities, military intervention is legitimate, and over-rides domestic authority of a targeted state to save civilians. The Commission established tough threshold criteria that the interveners have to satisfy before contemplating military intervention. The Responsibility to React is a compact, and step-based approach, that is composed of various tools to handle directly such extreme situations. The Responsibility to React mechanism ranges from non-coercive actions to coercive actions.²¹⁴

The Commission states that the non-coercive actions under Responsibility to React include targeted sanctions to de-escalate a conflict. The Commission identifies three types of

²¹³ Ibid., 31.

²¹⁴ Ibid., 29.

sanctions: political/diplomatic, economic, and military. The Commission also states that these sanctions can be used against rebel, terrorist organizations, specific individuals, or state leaders.²¹⁵

The Commission states that under the political and diplomatic sanctions, restrictions are put on the diplomatic representation of a targeted state at the international level. Political and diplomatic sanctions may also include the expulsion of diplomatic staff from other states. The Commission suggests further restrictions on travelling, “not least to major international shopping destinations,”²¹⁶ against individuals and their family members. It also may include the suspension of a targeted state from regional and other international organizations. Additionally, it also may entail the withdrawal of financial assistance from any regional and international organization as an effective tool.²¹⁷ Non-coercive sanctions also apply to the military components, and includes arms embargoes, the sale of military equipment and spare parts. It also may entail ending military cooperation and training programs.²¹⁸

Under economic sanctions, the Commission states that the foreign assets of a country can be targeted. It includes specific individuals and immediate family members of perpetrators. Economic sanctions are also to put a stop to income generating activities of the targeted states, which may include the sale of oil, diamonds, logging goods, petroleum, and petroleum products. The Commission also includes aviation bans in a number of cases to prohibit the movement of international traffic from specific destinations. The Commission believes that this can have a devastating impact on the targeted state’s economy and effect civilians.²¹⁹

²¹⁵ Ibid., 30.

²¹⁶ Ibid.

²¹⁷ Ibid., 30-31.

²¹⁸ Ibid., 30.

²¹⁹ Ibid.

The Commission clearly states that in order to resolve any extreme situation, all diplomatic and non-coercive means must have been applied at first. Coercive military intervention is the last option to avert atrocities.²²⁰ The Commission provides threshold criteria under extreme and conscious shocking situations that can bring attention to the international community to maximize the chances of military intervention to stop mass atrocities. It states that the use of coercive military force across a national border triggers intervention. The threshold criteria also provide a check-list to the interventionists to find a common ground for interveners to justify the motives of intervention. The Commission also notes that the threshold criteria includes the potential to undermine international peace and security.²²¹ Taken from hundreds of years of academic debate, the four criteria are:

1. Just Cause which includes evidence of:
 - a. Massive loss of life
 - b. Large scale “ethnic cleansing”
2. Precautionary Principles
 - a. Right Intention
 - b. Last Resort
 - c. Proportional Means
 - d. Reasonable Prospects for success
3. Right Authority (which is vested in the UNSC)
4. Operational Principles

²²⁰ Ibid.,36.

²²¹ Ibid., 32.

- a. Clear objectives
- b. Unity of command
- c. Gradual application of force
- d. Appropriate rules of engagement
- e. Acceptance that force protection cannot trump civilian protection
- f. Maximum coordination with humanitarian organizations.²²²

The scope of the thesis is narrow and only evaluates whether the UNSC's legitimized military intervention in Libya is a R2P case. Resolution 1970 and 1973 and the central analysis of the thesis, founded on the academic debate, and therefore evaluates only four principles of R2P namely: Just Cause, Right Intention, Last Resort, and Proportional Means. Also, the R2P debate surrounding the Libyan intervention can be empirically evaluated into two ways. First, by examining the Operational Dimension. However, many aspects of the Operational Dimension and Proportional Means are identical. Hence, to avoid the replication of data only Proportional Means is selected. Second, the structure of thesis is designed according to the academic debate, which mainly criticized Just Cause, Right Intention, Last Resort, and Proportional Means.

Threshold Criterion

The Commission identifies the Just Cause criterion as the first indicator that can over-ride non- intervention principles. Just Cause entails serious, severe, and permanent harm to human beings, or immediate harm that is likely to occur. Just cause also signifies preventive actions by the interveners, and encourages the international community to stop perpetrators once genocide

²²² Ibid., xii and xiii.

starts. The Commission proclaims that two conditions have to be met in a crisis, and explicitly underlines conscious shocking situations that show clear evidence of large scale of killing.²²³

The first condition is a “large scale loss of life actual or apprehended with or without genocidal intent, which is a product of deliberate state action, negligence of state authorities or a state’s inability to act, or a failed state situation.”²²⁴ The second condition is “large scale ethnic cleansing actual or apprehended whether carried out by killing, forced expulsion, acts of terror or rape.”²²⁵ The Commission states that if one, or both of these two conditions are met, then the just cause is satisfied.²²⁶

In so doing, this includes the killing of members of a particular group, who are targeted for destruction and/or elimination from a specific area. It further explains that terror tactics which force people to flee from their area, and/or the systematic rape of women for any political purpose will be also considered a conscious shocking situation. The Commission states that “without this possibility of anticipatory actions, the international community would be placed in the morally untenable position of being required to wait until genocide begins, before being able to take actions to stop it.”²²⁷

The Commission draws attention to the framework of the 1948 Genocide Convention. Article 1 of the Convention states: “Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they must

²²³ Ibid., 33.

²²⁴ Ibid., 32.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid., 33-34.

undertake to prevent and to punish.”²²⁸ The Commission also draws attention to crimes against humanity by referring to the Geneva Convention and Additional Protocols of 1966. Importantly, the whole document illustrates war crimes and mentions protection of civilians by the state’s parties during war.²²⁹

The Commission outlines other conditions related to the threshold criteria, including the situation of state collapse, mass starvation of civilians, and civil war situations. It also includes natural and environmental catastrophes due to the occurrence, or threat of significant loss of civilian’s lives. In this case, if the concerned state shows its unwillingness or inability to handle the catastrophe, or calls for assistance from the international community, it fulfills the threshold condition.²³⁰

The Commission excludes situations that cannot justify coercive military actions for humanitarian protection. These conditions include systematic racial discrimination against a particular group, the systematic imprisonment, or the repression of political opponents. It suggests that human rights violations in these cases should be dealt with by alternative means, and such conditions do not allow for any type of military intervention. Additionally, the Commission excludes cases when a population clearly express its urge for a democratic regime, or urge for democratic rights.

The Commission states that if a democratic government is overthrown by a military coup, it requires concerted international action. This matter can involve non-coercive actions.²³¹

²²⁸ “Convention on the Prevention and Punishment of the Crime of Genocide,” *United Nations General Assembly*, December 9, 1948, https://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf.

²²⁹ ICISS, “Responsibility to Protect,” 33.

²³⁰ Ibid.

²³¹ Ibid., 34.

However, the Commission excluded two cases in this context. If the over thrown government requests military support from the international community under Article (51)²³² of the UN Charter, and if a state wants to rescue its citizens in a foreign land. The Commission considers these matters under the provisions of international law related to Article (51) of the UN Charter; Any type of terrorist attack on a state's territory and citizens also does not legitimize humanitarian military intervention. Military action will be justified against terrorist action by a combination of Article (51) and general provisions of Chapter VII of the UN Charter.²³³

The Commission suggests that evidence should be collected under fair and accurate sources. Evidence must be based on facts and a sequential descriptions of events, which clearly shows the inability or unwillingness of the state to protect its citizens. It is essential to obtain evidence, and subsequently suggests impartial non-governmental sources for the verification of atrocities that can highlight the gravity of the situation. It recommended the International Committee for the Red Cross (ICRC) as a credible institution to provide impartial evidence on human rights violations.²³⁴ The Commission also suggests that reports prepared by the High Commission on Human Rights Refugees, other UN organizations, and agencies which can show sufficient evidence to call for coercive military actions as evidence. In the same lines, the Commission identifies international organizations and the media as useful means to assess

²³² “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.”

²³³ Ibid., 34.

²³⁴ Ibid.

volatile situations.²³⁵ The Commission recommends that fact finding missions sent out by the UNSC or UNSG can provide fair and accurate assessments, and thus verifying that the conditions exists for intervention. Similarly, it suggests that the UNSG can also take advice from experts, who are knowledgeable about the situation. The UNSG can also invoke Article (99) of the Charter by utilizing his/her power to effect actions to stop perpetrators.²³⁶

Precautionary Principles

The Commission mentions that if a Just Cause criteria is satisfied, than it establishes a precautionary criteria. A precautionary criteria provides clear guidelines to request coercive military actions. This criteria involves four substantial conditions that have to be fulfilled before using any sort of coercive action; Right Intention, Last Resort, Proportional Means, and Reasonable Prospects. Altogether, the precautionary and threshold criteria limit the use of coercive military force and provide reasons to make decisions regarding the coercive actions against perpetrators to stop mass atrocities. The Commission states that precautionary and threshold criteria have to be met under exceptional circumstances when violence within state boundaries endangers all people.²³⁷

The Commission indicates that the purpose of right intention is to halt or avert humanitarian crisis. Under the right intention principle, the Commission states that if an intervention is supported by the inhabitants of the concerned state, it indicates that the interveners have a right intention to stop mass atrocities. It further states, that the opinion of other countries in the region can also support intervention. The Commission encourages Right Intention for

²³⁵ Ibid., 35.

²³⁶ Ibid.

²³⁷ Ibid.

collective or multilateral intervention, rather than unilateral intervention. It states that multilateral intervention is an important indicator, which indicates international support for intervention. The Commission discourages any type of unilateral intervention, and discourages the interveners from intervening according to their national interests.²³⁸

The Commission additionally states that when interveners conduct military operations they can occupy a state's territory for some time. This may be required to stop the perpetrators from committing mass atrocities. The Commission states that the interveners, however, have to respect the state's sovereignty, and when the hostilities end, the intervening forces have to return control back to the people. The Commission additionally posits, that if the interveners find that a state's institutions are neglecting or threatening its citizens, then it is the responsibility of the UN to take control of the administration of that territory on an interim basis.²³⁹

The Commission argues that coercive intervention should reflect the opinions of other countries. However, their opinions in this case are considered a sub-component of the larger element of right intention. The Commission documents that mixed interests, and narrow self-interest are some of the factors that support intervention. However, the Commission rejects this factor as the determinant for motivating intervention.²⁴⁰

The Commission highlights, that economic and strategic interests of a concerned state can prompt a state's willingness to support intervention. The Commission identifies some critical risk factors that the interveners face at the time of intervention. This includes budgetary costs, and risks to their nationals as factors underlining a state's national interest. It states that national-

²³⁸ Ibid., 36.

²³⁹ Ibid., 35.

²⁴⁰ Ibid., 36.

interest can also be a reason for many to intervene in a concerned state including the flow of refugees, terrorism, drugs, smuggling, narcotics trafficking, organized crimes, and health pandemics.²⁴¹ The Commission also prohibits the interveners from certain actions. This includes the alteration of a state's borders, promoting self-determination, and overthrowing a regime. It also recognizes that the interveners can disable a regime to accomplish its mandate and disable a regime's capacity so that it cannot harm its own people.²⁴²

The Commission recommends that Last Resort can only be used when all non-coercive actions have failed to settle a dispute peacefully. It suggests that non-coercive military actions must be undertaken, and tested appropriately to prevent humanitarian crisis before contemplating coercive methods. The Commission states that if states are unable to resolve a situation through these means, the Responsibility to React explicitly justifies military actions under the Last Resort criterion.²⁴³

The Commission states that if a dispute is between a state party and insurgent minority, then both parties should be encouraged to participate in peaceful negotiations. It further states that if peaceful negotiations fail between state parties and insurgents, then a ceasefire, if necessary, can be followed with the deployment of international peacekeepers and observers. If impossible, then coercive military action can be taken. If an ethnic minority conflict, or secessionist movement is the cause of a conflict, the Commission suggests that it can be resolved by negotiating a devolutionist compromise. It states that a devolutionist compromise can guarantee

²⁴¹ Ibid.

²⁴² Ibid., 35.

²⁴³ Ibid., 36.

linguistic, political, and cultural rights to a secessionist, or ethnic minority group, and this may preserve the integrity of the state in question.²⁴⁴

The Commission states that the sovereignty, and integrity of a state have to be respected under Last Resort. The international community must monitor all its actions with good faith and honesty, and encourages states to act as peace brokers. The Commission recommends that external powers can use a military option as a Last Resort, if one, or both parties use force against each other, and initiate full scale violence against innocent civilians.²⁴⁵

The Commission states that Proportional Means have to be applied under international humanitarian law. It adds that humanitarian military intervention is composed of various military actions, which have to be narrowly focused and targeted. The Commission explicitly contends that the scale, duration, and intensity of a military operation should be minimally targeted on perpetrators to secure the objectives of preventing harm to civilians. The Commission further argues, that military objectives have to follow an original mandate. Since force is the last option to avert crisis, the Commission mentions that military intervention must aim to leave a minimum impact on a country's political system.²⁴⁶

The Commission entrusted the UNSC as a sole legitimate institution to take non-coercive and coercive measures in case of mass atrocities. It believes that the UNSC is only institution that can legitimize humanitarian military intervention.²⁴⁷ The Commission also states: “military

²⁴⁴ Ibid., 36-37.

²⁴⁵ Ibid.

²⁴⁶ Ibid., 37.

²⁴⁷ Ibid., 49.

options can only be justified if it stands a reasonable chance of success.” It clearly documents that “military intervention is not justified if actual protection cannot be achieved.”²⁴⁸

Further, the Operational Dimension discusses specifically preventive operations (undertaken military measures). It covers the preventive deployment of troops associated with the planning of military intervention: Coalition Building, Objectives, Mandate, Resources and Commitments, Rules of Engagements, Applying Force, Command Structure, Civil-Military Relations, Media Relations, Transfer of Authority, Peacekeeping and Peacebuilding, Security Sector Reforms, Disarmament, Demobilizations, and Reintegration, Mine Clearance and Victims Assistance, and Pursuit of War Criminals.

Conclusion

R2P doctrine seeks to answer the century’s old debate between sovereignty and intervention, and provide a clear direction to the international community on when to intervene to avert mass atrocities. R2P provides a coherent approach to respond to genocide, war crimes, ethnic cleansing, and crimes against humanity.²⁴⁹ Humanitarian intervention should only take place if a state has failed to prevent “systematic murder, extermination, enslavement, deportation of population, imprisonment contrary to international law, torture, sexual violence, persecution of specific population.”²⁵⁰ The R2P clearly identifies national, regional and international initiatives to halt mass atrocities, bring good governance, the rule of law, good

²⁴⁸ Ibid., 37.

²⁴⁹ Payandeh, “With Great Power Comes,” 514.

²⁵⁰ Foluke Ipinyomi, “Losing the Utility of the Responsibility to Prevent: The Confines of International Law and Focus on Genocide Prevention,” *International Journal of Criminology and Sociological Theory* 6, no.4, (2013): 191-203.

office missions, mediation, dialogue, and reconciliation.²⁵¹ It has encouraged states, and the international community to respond timely to massive human rights violations. The endorsement of R2P has not only impacted international law, but also addressed the use of force, sovereignty, responsibility and intervention by reaffirming Article 39 of the Charter.²⁵² It addresses political problems and answers contemporary problems under its basic principles.²⁵³

R2P does not prevent the permanent members of the UNSC from using the veto, but does mandate that member states are obligated by the Council to act during mass atrocities.²⁵⁴ Legally, the concept is more evolutionary than revolutionary, but has bridged many gaps in international law and politics from the 1990s. R2P is a constructive process that is designed to promote collective security.²⁵⁵ It has provided an international intersubjective understanding, and seeks to hold actors accountable for their violent behavior towards civilians.²⁵⁶

²⁵¹ Ibid.

²⁵² “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 Article 41 and 42, to maintain or restore international peace and security”.

²⁵³ Payandeh, “With Great Power Comes,” 514-515.

²⁵⁴ Ibid., 515.

²⁵⁵ Stefanie Fishel, Theorizing Violence in the Responsibility to Protect, *Critical Studies on Security* 1, no. 2, (2013): 204-218, retrieved from <http://dx.doi.org/10.1080/21624887.2013.824650>.

CHAPTER FOUR

R2P and Libya

The objective of the thesis is to evaluate the applicability of the R2P doctrine relative to the UNSC's Resolutions 1970 and 1973 and the related UNSC's proceedings. As discussed in Chapter One, the debate on R2P in the literature lacks a solid methodological and empirical foundation. Therefore, to understand the controversial application of R2P in Libya the following chapter examines the four basic principle of R2P: Just Cause, Right Intention, Last Resort, and Proportional Means under Resolution 1970 and 1973. These principles will be also be discussed under the UNSC's proceedings to highlight how these two key resolutions played a significant role in implementing R2P during the intervention.

In order to resolve the situation in Libya, the UNSC unanimously adopted Resolution 1970 on 26th February 2011 by expressing its “grave concerns at the situation in the Libyan Arab Jamahiriya and condemning violence and use of force against civilians.”²⁵⁷ Resolution 1973 was adopted on 17th March 2011 and the “Council broadened the scope of the mandate of the Committee”²⁵⁸ as a Last Resort to implement forceful measures against the Libyan regime.²⁵⁹ Resolution 1973 was adopted by a vote of ten in favour, none against and five abstentions by India, China, Germany, Russia, and Brazil.²⁶⁰ This Council's proceedings are crucially important to understand the legal and moral intentions of the international community relevant to R2P.

²⁵⁷ S/RES/1970 (2011),” *United Nations Security Council*, last modified February 26, 2011, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970(2011)), preamble par. 1, preambular para 1.

²⁵⁸ *Ibid.*, 4.

²⁵⁹ *Ibid.*, 10.

²⁶⁰ United Nations. *Index to proceeding of the Security Council Sixty-sixth year*, 2012, <http://www.un.org/depts/dhl/deplib/docs/ITP/S66.pdf>, 262.

During this period, the UNSC conducted many formal meetings and informal consultations. This Chapter examines UNSC statements presented by the representatives of Bosnia and Herzegovina , Brazil , China ,Colombia , France, Gabon , Germany , India , Lebanon ,Nigeria , Portugal ,Russian Federation South Africa ,United Kingdom of Great Britain and Northern Ireland, and the United States of America during the Libyan crisis.²⁶¹ It also evaluates the statements of the UNSG Ban Ki-moon, North Atlantic Treaty Organization (NATO) Secretary General Anders Fogh Rasmussen, the UN Under-Secretary General for Political Affairs (Lynn Pascoe), the UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator (Valarie Amos), the UN Special Envoy of the Secretary General to Libya (Abdul Elah Mohammad Al-Khatib), the International Criminal Court (ICC) Prosecutor (Luis Moreno Ocampo), Ambassador, Charge d' affairs a.i. of the Permanent Mission of the Libyan Arab Jamahiriya (Ibrahim Dabbashi), and the Representative of the Libyan Arab Jamahiriya (Abdel Rehman Shalgham).

Resolution 1970

Often, in the face of ongoing atrocities, the UNSC fails to authorize intervention in a foreign country. During Libyan crisis, the UNSC responded rapidly to stop a humanitarian crisis by passing Resolution 1970, which unanimously condemned Qaddafi's actions in perpetrating mass atrocities against civilians. On the surface, therefore, Resolution 1970 can be viewed in a framework of R2P. As ultimate aim of the intervention remains unclear in the literature, it is important to examine Resolution 1970 under first two principles of R2P namely Just cause and Right Intention.

²⁶¹ Membership since 1946, *UNSC*, http://www.un.org/en/sc/inc/searchres_sc_year_english.asp?year=2011.

Just Cause is a first principle central to R2P that can override the principle of non-intervention by identifying serious, severe, permanent or immediate harm to human beings. To evaluate this criterion, it is important to determine the responses of the UNSC as the Libyan crisis started, which positioned the Council to take action. It is also important to examine whether, or not conscious shocking situations happened in Libya and qualify the first criteria through examining evidence of large scale killings stated by many international organizations. In this context, Just Cause entails the “large scale loss of life actual or apprehended with or without genocidal intent, which is a product of deliberate state action, negligence of state authorities or a state’s inability to act, or a failed state situation.”²⁶²

The UNSC unanimously adopted Resolution 1970 and expressed its “grave concern at the situation in the Libyan Arab Jamahiriya and condemning the violence and use of force against civilians.”²⁶³ The Council condemned the Libyan authorities for using forceful methods against the peaceful demonstrators, which caused many civilian deaths. The Resolution 1970 further identified that the Libyan Government had “[rejected] unequivocally the incitement to hostility and violence against the civilian population.”²⁶⁴ The Resolution demanded the Government to “respect the freedom of peaceful assembly and of expression”²⁶⁵ by the demonstrators, and also emphasized the “need to hold to account those responsible for attacks, including by forces under their control, on civilians”.²⁶⁶ It cautioned: “Widespread and systematic attacks currently taking

²⁶² ICISS Report, “Responsibility to Protect,” 32.

²⁶³ “S/RES/1970 (2011),” preamble par. 1.

²⁶⁴ Ibid., preambular para 2.

²⁶⁵ Ibid., preambular para. 10.

²⁶⁶ Ibid., preambular para 11.

place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity.”²⁶⁷

On 25th February 2011, the Council welcomed the Human Rights Council (HRC) report²⁶⁸ that fundamentally convinced the Council to adopt Resolution 1970. The HRC report found, “Indiscriminate armed attacks against civilians, extrajudicial killings, arbitrary arrests, detention and torture of peaceful demonstrators some of which [might] also amount to crimes against humanity.”²⁶⁹ The HRC also reiterated that the Libyan authorities had to “meet its responsibility to protect its population, to immediately put an end to all human rights violations, to stop any attacks against civilians”²⁷⁰, and urged the Government to “fully respect all human rights and fundamental freedoms, including freedom of expression and freedom of assembly.”²⁷¹ In addition, the UNSC through Resolution 1970 welcomed the criticism of human rights violations in Libya perpetrated by Qaddafi’s regime by the Arab League, the African Union, and the Secretary General of the Organization of Islamic Conference.²⁷²

Under Resolution 1970 (2011), Member States were encouraged to cooperate with the UNSG by assisting and helping the “return of humanitarian agencies and [making] available humanitarian and related assistance in the Libyan Arab Jamahiriya.”²⁷³ The Resolution also

²⁶⁷ Ibid., preambular para 6.

²⁶⁸ Note: The Human Rights Council report *A/HRC/S-15/1 (2011)* affirmed the international human rights, international law, and the Universal declaration of human rights and condemned human rights violations in Libya.

²⁶⁹ “A/HRC/S-15/1 (2011),” *Human Rights Council*, last modified 25 February, 2011, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/S-15/1, para 1.

²⁷⁰ Ibid., para 2.

²⁷¹ Ibid., para 2.

²⁷² “S/RES/1970 (2011),” *UNSC*, preamble par 3.

²⁷³ Ibid., para 26.

specified that extreme human rights violations, such as the “plight of refugees forced to flee the violence in the Libyan Arab Jamahiriya,”²⁷⁴ “reports of shortages of medical supplies to treat the wounded civilians,”²⁷⁵ and “safety of all foreign nationals [...] their assets and departure of those wishing to leave the country”²⁷⁶ had to be addressed immediately.

The UNSC invoked Chapter VII of the UN Charter and adopted non-coercive measures under Article 41²⁷⁷ by considering that this might be helpful to compel the Libyan Government to adopt “necessary measures”²⁷⁸ and called for an immediate “end to the violence and calls for steps to fulfill the legitimate demands of the populations.”²⁷⁹ The Council imposed sanctions and established a sanction committee against the Libyan Government to “prevent the direct or indirect supply, sale or transfer of arms from or through Libyan territories or by their nationals.”²⁸⁰ The arms embargo included flagged vessels or aircraft, arms and arms related materiel including ammunition, military vehicles and equipment, paramilitary equipment, spare parts, technical assistance, military training, financial or other assistance related to military activities, maintenance or use of any arms and related materiel including mercenary personnel from the territories of the Member States.²⁸¹

²⁷⁴ Ibid., preambular para 7.

²⁷⁵ Ibid., preambular para 8.

²⁷⁶ Ibid., para 2 (b).

²⁷⁷ “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”.

²⁷⁸ Ibid., para 9.

²⁷⁹ “S/RES/1970 (2011),” *UNSC*, para 1.

²⁸⁰ Ibid., para 9.

²⁸¹ Ibid.

The arms embargo was not applied to non-lethal military equipment for humanitarian or protective purposes and was also inapplicable to the “sales or supply of arms and related materiel or provision of assistance or personnel as approved in advance.”²⁸² The UNSC under Resolution 1970 also imposed a travel ban to “prevent the entry into or transit through their territories of individuals.”²⁸³ It temporarily froze all funds, financial assets, and economic resources of the designated individuals and entities as listed in Annex II of Resolution 1970.²⁸⁴ The Council affirmed its commitment to review the “appropriateness of the measures contained in [...] resolution, including the strengthening, modification, suspension or lifting of the measures”²⁸⁵ with the associated provisions of resolution 1970.

The Just Cause principles according to R2P state that it is essential to obtain evidence and subsequently suggests impartial non-governmental sources for the verification of atrocities, which can highlight the gravity of the situation. Hence, it is important to verify atrocities identified by Human Rights Council on 25 February 2011, which mentioned the Group on Enforced or Involuntary Disappearance’s concern: “Hundreds of enforced disappearances had been committed over the last few months in Libya, and referring to the fact that these may amount to crimes against humanity.”²⁸⁶ Similarly, on 25 February 2011, the Special Representative of the Secretary General for Children in Armed Conflict urged the protection of children during armed clashes and reminded “All parties to the conflict of their obligation under international law to protect children

²⁸² Ibid., para 9(a).

²⁸³ Ibid., para 15.

²⁸⁴ Ibid., para 17,18.

²⁸⁵ Ibid., para 27.

²⁸⁶ “A/HRC/17/45(2011),” *Human Rights Council*, last modified June 7, 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.45_AUV.pdf, 8-9.

during armed clashes.”²⁸⁷ The Human Rights Council’s highlighted the extreme concerns of the United Nations High Commission for Refugees (UNHCR) that “6’000 people will have to be resettled from the borders of Egypt and Tunisia in the coming months. So far, a number of countries have reportedly offered 900 resettlement places.”²⁸⁸

R2P also verifies the ICRC as a credible institution to provide evidence on human rights violations. The ICRC affirmed the intensification of violence in Libya and supported humanitarian assistance to civilians, migrant workers, refugees, IDPs, and the host communities.

This is an exceptional situation, with a regional dimension that needs important support not only from individual European States but also from the European Union [...] [and] supported to provide vital humanitarian assistance to all persons in need (civilian population, migrant workers, refugees, IDP’s and host communities) irrespective of their legal status and without discrimination.²⁸⁹

The Human Rights Council report also mentioned the African Court on Human and People’s Rights’ concerns, that acknowledged the intensity of the situation and specified it as “One of ‘extreme and urgency’ and ordered to end any action that would cause the loss of life or violations of anyone’s ‘physical integrity.’ ”²⁹⁰ The Committee on Migrant Workers urged “all belligerent parties involved in the armed conflict to comply with their obligations under international human rights law by ensuring strict respect for the rights to life and to freedom of movement of migrants.”²⁹¹ UNICEF stated: “Children have been denied a normal and safe

²⁸⁷ Ibid., 9.

²⁸⁸ Ibid., 15.

²⁸⁹ International Committee of Red Cross, *Annual Report*, last modified March 11, 2011, <https://www.icrc.org/eng/resources/documents/statement/movement-statement-2011-03-11.htm>.

²⁹⁰ “A/HRC/17/45,” *HRC*, 5.

²⁹¹ Ibid., para 56.

routine,” and also sought for an “immediate end to the conflict in Misrata, warning that tens of thousands of children are at risk.”²⁹²

The Human Right Report also mentioned the extreme concerns of the Committee on the Elimination of Racial Discrimination (CERD), that requested the need to “seek urgent measures to protect non-citizens migrant populations, migrant workers, refugees and other minority groups in Libya.”²⁹³ Significantly, it requested the UNSG, UNHCR, and regional organizations to undertake “urgent measures to ensure the protection of the populations concerned and avoid the risk of inter-ethnic violence and divisions which might worsen the deteriorating situation in Libya.”²⁹⁴ As the situation deteriorated, on 25 February 2011 the UNSG’s Under-Secretary-General for Political Affairs, Lynn Pascoe, stated:

The eastern part of the country is reported to be under the control of opposition elements, who have taken over arms and ammunition from weapon depots. There are daily clashes in at least three cities near Tripoli. The streets of the capital are largely deserted. People cannot leave their houses for fear of being shot by Government forces or militias. Colonel Al-Qadhafi’s supporters are reportedly conducting house-by-house searches and arrests.
²⁹⁵

The same day, the Office of the High Commission on Human Rights (OHCHR) informed the Council that it had been “unable individually to verify and assess for credibility the totality of allegations received.”²⁹⁶ Even so, the Report of the High Commissioner stated:

[T]he human rights situation had continued to deteriorate, with reports of intensified fighting and indiscriminate air strikes resulting in numerous civilian injuries and deaths

²⁹² Ibid., para 38.

²⁹³ Ibid., para. 57.

²⁹⁴ “A/66/18, 2011 (2011),” *General Assembly*, 78th Session, last modified on 11 March 2011, <http://www2.ohchr.org/english/bodies/cerd/docs/A.66.18.pdf>, 8.

²⁹⁵ “S/PV.6490,” *UNSC*, last modified on 25 February 2011, http://repository.un.org/bitstream/handle/11176/15030/S_PV.6490-EN.pdf?sequence=3&isAllowed=y, 2.

²⁹⁶ A/HRC/17/45, *HRC*, 3.

through indiscriminate attacks, cases of summary executions, violence and harassment of nationals from sub-Saharan African countries and of other foreigners, sexual violence, torture, and enforced disappearances at the hands of Government forces.²⁹⁷

The UNSC also made a case to the ICC on 15th February 2011 to investigate crimes against humanity committed in Libya.²⁹⁸ On 2nd November 2011, the ICC Prosecutor, Luis Moreno Ocampo stated: “Muammar Al Qadhafi and Saif Al-Islam Al-Qadhafi were jointly responsible as principals in the crimes pursuant to article 25(3) (a) of the Statute as indirect co-perpetrators of the crimes against humanity.”²⁹⁹

Examining the Just Cause under resolution 1970 relative to R2P clearly activated the threshold criteria of R2P and hence met the very first condition. Resolution 1970 identifies the Libyan Government as the sole perpetrator of crimes committed against humanity. Noticeably, without any possibility of anticipatory actions, the international community was placed under a morally untenable position if it waited to take further action.

To examine whether the intervention was supported by the inhabitants of the concerned state, Right Intention, the second R2P principle, one can examine statements presented to the Council during the crisis. Military intervention in Libya was requested on 21st February 2011 from Ambassador, Charge d’ affairs a.i. of the Permanent Mission of the Libyan Arab Jamahiriya, Ibrahim Dabbashi.³⁰⁰ On 26th February, Dabbashi welcomed Resolution 1970, and acknowledged

²⁹⁷ Ibid., 4.

²⁹⁸ “S/RES/1970 (2011),” *UNSC*, para 4.

²⁹⁹ “S/PV.6647,” *UNSC*, last modified on 2 November 2011, http://repository.un.org/bitstream/handle/11176/16163/S_PV.6647-EN.pdf?sequence=3&isAllowed=y, 2.

³⁰⁰ “S/2011/102 (2011),” *UNSC*, last modified 22 March, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/102, 1.

it as a “sincere attempt to protect civilians.”³⁰¹ He stated, “[T]his resolution will send a signal for a definitive end to the fascist regime that is still in place in Tripoli.”³⁰² Mr. Shalgham, the representative of the Libyan Arab Jamahiriya, stated that the human rights situation in Libya had become volatile due to many killings in Tajura and Tripoli.³⁰³ He sought the UNSC to take immediate notice of situation and stated, “Libyans are asking for democracy; they are asking for progress; they are asking for freedom; and they are asking for their rights ... peacefully.”³⁰⁴ He further stated:

Muammar Al-Qadhafi and his sons are telling Libyans: “Either I rule you or I kill you”. That much is clear this evening after dozens of our brothers were killed in Tajura and in eastern Tripoli. He gave a speech to a crowd of children who were brought in from asylums and soldiers dressed in civilian clothes. He told them “I will burn Libya; I will distribute arms to the tribes. Libya will run red with blood.”³⁰⁵

On 25 February 2011, the UNSG condemned the Libyan Government’s actions as a violation of international human rights and humanitarian law and stated: “Al-Qadhafi and members of his family have continued to threaten citizens with a civil war and the possibility of mass killing if the protests continue.”³⁰⁶ The UNSG also recalled the statement of the Special Advisor on the Prevention of Genocide and the Responsibility to Protect; “the heads of State and Government at the 2005 World Summit [States] pledged to protect populations by preventing genocide, war crimes, ethnic cleansing and crimes against humanity.”³⁰⁷ On 26 February 2011,

³⁰¹ S.PV.6491, *UNSC*, last modified 26 February, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.6491, 7.

³⁰² *Ibid.*,

³⁰³ S/PV.6490, *UNSC*, 4.

³⁰⁴ *Ibid.*,

³⁰⁵ “S/PV.6490, (2011),” *UNSC*, 4-5.

³⁰⁶ *Ibid.*, 2.

³⁰⁷ *Ibid.*,

the UNSG, Ban ki-moon, recognized that Resolution 1970 was a “vital step and a clear expression of the will of a united community of nations”³⁰⁸ to end violence in Libya. He stated that the real challenge is to provide adequate protection to civilians and added:

The actions taken by the regime in Libya are clear-cut violations of all norms governing international behavior, and serious transgression of international human rights and humanitarian law. They are unacceptable. It is of great importance that the Council, in response, has reached a consensus and is determined to uphold its responsibilities for the maintenance of international peace and security.³⁰⁹

Resolution 1970 was unanimously adopted by the UNSC and welcomed the wide support of the AL, AU, and the OIC.³¹⁰ It affirmed the Council’s commitment to “sovereignty, independence, territorial integrity, and national unity of Libyan Arab Jamahiriya.”³¹¹ As the situation remained volatile, on 1st March 2011, the General Assembly suspended Libya’s membership in the HRC and dispatched an International Commission of Inquiry to investigate violations of international human rights law.³¹²

On 26 February 2011, during UNSC meeting, the UNSC members expressed their concerns over the deteriorated situation in Libya. Sir Mark Lyall Grant (United Kingdom) stated, that “[Resolution 1970] demands an immediate end to violence and repression, full respect for human rights and international law, and accountability for those responsible for the violence.”³¹³

³⁰⁸ “S/PC.6491, (2011),” *UNSC*, 8.

³⁰⁹ *Ibid.*, 8.

³¹⁰ “S/RES/1970 (2011),” preambular para 3.

³¹¹ *Ibid.*, para 14.

³¹² “A/HRC/17/45(2011),” *HRC*, 4, 10.
See also General Assembly Resolution 65/265.

³¹³ “S/PV.6491,” *UNSC*, 2.

He stated that resolution 1970 was a “powerful signal of the determination of the international community to stand with the people of Libya and defend their rights to determine their own future.”³¹⁴ Mr. Hardeep Singh Puri (India) condemned the loss of innocent lives and use of force during the Libyan protests and stated, “[India] would have preferred a calibrated and gradual approach” to the Libyan crisis.³¹⁵ Puri sought the safety, exit, and welfare of all foreign nationals in Libya.³¹⁶

Mr. Sangqu (South Africa) stated that the Resolution sent a “clear and unambiguous message to the Libyan authorities to end the carnage against their people.”³¹⁷ Sangqu complemented the “decision of the African Union Peace and Security Council, which strongly condemned the indiscriminate and excessive use of force against peaceful protesters.”³¹⁸ Mrs. Ogwu (Nigeria) stated: “[the] Security Council has taken decisive action today to address the crisis. We support the package of sanctions in the resolution to the extent that their impact is targeted and does not exacerbate the burden upon Libyan citizens”.³¹⁹ Ogwu condemned the mass atrocities in Libya, and maintained that the implementation of the Resolution would “swiftly and effectively address the crisis.”³²⁰

Ms. Rice (United States of America) stated, “Resolution 1970 is a strong resolution ... And, for the first time ever, the Security Council has unanimously referred an egregious human

³¹⁴ Ibid.,

³¹⁵ Ibid., 2.

³¹⁶ Ibid., 3

³¹⁷ Ibid.

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ Ibid.

rights situation to the International Criminal Court.”³²¹ Rice supported the universal rights of Libyans and stated: “These rights are not negotiable. They cannot be denied”³²². She warned the Libyan authorities, and held them accountable for “failing to meet their most basic responsibilities to their people.”³²³ Mr. Salam (Lebanon) condemned various acts of violence, use of foreign mercenaries, live ammunition, and heavy weapons against the peaceful protests in several Libyan cities. Salam urged an “immediate halt to all acts of violence, a resort to national dialogue, a response to the legitimate demands of the Libyan people.”³²⁴

Mr. Churkin (Russian Federation) supported Resolution 1970 and stated that, “[a] settlement of the situation in Libya is possible only through political means.”³²⁵ Churkin however, warned that the direct sanctions would not resolve the issue. Rather they would be a “forceful interference in Libya’s affairs, which could make the situation worse.”³²⁶ Mr. Li Baodong (China) stated that resolution 1970 explicitly denoted the turbulent situation in Libya and stated China’s determination to support the “cessation of violence, bloodshed, and civilian casualties, restore stability and normal order as soon as possible, and resolve the current crisis through peaceful means, such as dialogue.”³²⁷

Mr. Osorio (Colombia) stated that the Council’s measures exhibited a responsible attitude to address the clear demands of the Libyans: “Violence must [be ceased] and those responsible for

³²¹ Ibid.

³²² Ibid.

³²³ Ibid., 4.

³²⁴ Ibid.

³²⁵ Ibid.

³²⁶ Ibid.

³²⁷ Ibid.

attacks against the population must answer for their crimes.”³²⁸ Mr. Moraes Cabral (Portugal) stated that the Resolution 1970 sent a clear and strong message to the criminals and guaranteed basic freedom to the Libyan people. Cabral highlighted all the human rights violations: “Killing of civilians and intolerable abuses of human rights must cease forthwith.”³²⁹

Mr. Araud (France) stated: “Responsible parties of the Libyan regime will hear the message of the international community and put an end to the unacceptable violence committed against their own people.”³³⁰ Araud maintained that the Resolution set an aspiration of liberty and provided a historic significance “beyond Libya, a new era for the international community as a whole.”³³¹ Mr. Witting (Germany) stated that the Resolution 1970 expressed the unity of Member States, that would not “tolerate the gross and systematic violation of human rights by the Libyan regime,”³³² [and a] “clear warning to those who perpetrated systematic attacks against their civilian population that they will be held accountable.”³³³

Mr. Barbalic (Bosnia and Herzegovina) stated that Resolution 1970 “[imposed] appropriate measures to ensure the end of violence and to prevent further escalation or spillover effects”³³⁴ and “contribute to strengthening international peace and stability.”³³⁵ Mr. Mounagara Moussotsi (Gabon) specified that the Resolution sent a “clear and strong message from the

³²⁸ Ibid., 5.

³²⁹ Ibid.

³³⁰ Ibid., 5-6.

³³¹ Ibid., 6.

³³² Ibid.

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Ibid.

Security Council, in accordance with the responsibility entrusted to it by the Charter of our Organization.”³³⁶ Moussotsi supported the Resolution by affirming the “legitimate rights of the Libyan people to free speech and peace in their country.”³³⁷

Mrs. Viotti (Brazil) argued that Resolution 1970 sent a clear message to end violence in Libya by ensuring protection of civilians and the promotion of international law. Viotti speculated that Resolution 1970 might possibly provide a quick solution to the crisis and stated that the “[R]esolution can contribute to bringing an end to the violence in Libya, so that the country can quickly find a solution to the crisis through dialogue and reconciliation.”³³⁸ Viotti believed that the Resolution ensured that the “bloodshed stops definitively and that stability returns to Libya.”³³⁹

Thus, it is clear by aforementioned statements of the Council Members that the Council was seriously committed to take actions to stop the ongoing violence in Libya.³⁴⁰ The first lesson is clear in examining Resolution 1970, that the Libyan political regime must act in the best interests of its own citizens, and may no longer engage in practices repulsive to the norms of R2P. Similarly, Qaddafi was held accountable for his actions, and for the actions of his regime that not only caused casualties, but also clearly showed his intention to continue the atrocities. Therefore, Resolution 1970, from this perspective, rightfully reflects R2P. It also remains sufficiently

³³⁶ Ibid.

³³⁷ Ibid., 6.

³³⁸ Ibid., 7.

³³⁹ Ibid.

³⁴⁰ “S/PV.6490, (2011),” *UNSC*, 3.

explicable that the conflict, in particular at the early stages of Resolution 1970, had an international dimension.

Resolution 1973

It is evident from Resolution 1970 and the UNSC proceedings that the UNSC was reluctant to use forcible methods, and warned the Libyan government to resolve the crisis peacefully. Very quickly, it became clear that the sanctions were unable to resolve the situation. Instead, the crisis began to raise regional and international security tensions. Qaddafi's forces continued the violence to stop protests. This compelled the NTC to seek military intervention. Since force was to be used as a Last Resort to end the violence, it is crucial to examine whether the Responsibility to React was applied according to the R2P standards, which included proportional means in stopping the military actions of the Libyan government against its own people.

In order to examine the third principle, Last Resort, it is first important to determine whether all non-coercive actions were applied adequately to settle the Libyan crisis peacefully. The Last Resort principle urged the international community to monitor all coercive actions with good faith, honesty, and encouraged the UNSC to use all diplomatic measures to resolve the conflict. Thus, it is also important to examine whether Resolution 1973 met the Last Resort criterion in providing a clear direction to interveners to identify and enforce coercive measures against the Qaddafi regime.

On 17th March 2011, the Council adopted Resolution 1973: "Recalling its resolution 1970 (2011) of 26 February 2011"³⁴¹ on the basis of the "failure of the Libyan authorities to comply

³⁴¹ Ibid., preambular para 1.

with resolution 1970,”³⁴² Resolution 1973 requested the conflicting parties to “intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people.”³⁴³ The Council urged the Libyan Government and conflicting parties to “bear the primary responsibility to take all feasible steps to ensure the protection of civilians.”³⁴⁴ The Resolution stated that, the international community should take “all necessary measures...to protect civilians and civilian populated areas under the threat of attack.”³⁴⁵

To testify whether Resolution 1973 successfully protected civilians, it is important to notice that the UNSC imposed additional measures related to human rights violations in Libya, which specifically included the “authorization to protect civilians and civilian populated areas under threat of attack in Libya.”³⁴⁶ It allowed for the establishment of a no-fly zone and a “ban on flights of Libyan aircraft.”³⁴⁷ The Resolution called for the use of all necessary measures corresponding to the human rights violations by Qaddafi regime.³⁴⁸ The Resolution excluded however, a “foreign occupation force of any form on any part of Libyan territory.”³⁴⁹

The Resolution signaled the adaptation of precautionary measures and “[imposed] a no-fly zone on Libyan military aviation, and [...] establish safe areas in places exposed to shelling.”

³⁴² Ibid., preambular para 2.

³⁴³ “S/RES/1973 (2011),” *UNSC*, para 2.

³⁴⁴ Ibid., preambular para 4.

³⁴⁵ Ibid., para 4.

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

³⁴⁹ Ibid.

³⁵⁰ The Council urged Member States to resolve the Libyan situation by invoking Chapter VII and “[Demanded] the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians.”³⁵¹ It sought a “facilitating dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution” and “[demanded] that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians.”³⁵² It also recognized the important role of the League of Arab States under Chapter VIII of the UN Charter, and expressed its serious concerns on “matters relating to the maintenance of international peace and security in the region”³⁵³ “to cooperate with other Member States.”³⁵⁴

On 17 March 2011, the Council’s members expressed their concerns over the extreme situation in Libya. The majority of the member states welcomed the use of force while Brazil, Germany, Russia, India, and Lebanon expressed reservations and urged a peaceful resolution to the crisis. Mr. Juppe (France) stated that the Resolution 1973 allowed “States to take all measures necessary, over and above the no-fly zone, to protect civilians and territories, including Benghazi, which are under the threat of attack by Colonel Al-Qadhafi’s forces.”³⁵⁵ Juppe stressed:

Every hour and day that goes by increases the burden of responsibility on our shoulders. If we are careful not to act too late, the Security Council will have the distinction of having ensured that in Libya law prevails over force, democracy over dictatorship and freedom over oppression.³⁵⁶

³⁵⁰ Ibid., preamble para 12.

³⁵¹ Ibid., para 1.

³⁵² Ibid., para 3.

³⁵³ Ibid., para 5, preambular para 22.

³⁵⁴ Ibid.,

³⁵⁵ “S/PV.6498,” *UNSC*, 3.

³⁵⁶ Ibid.

Sir Mark Lyall Grant (United Kingdom) supported Resolution 1973 and stated “We, along with partners in the Arab world and in NATO, are now ready to shoulder our responsibilities in implementing resolution 1973 (2011).”³⁵⁷ Grant further stated, “The central purpose of the resolution is clear: to end the violence, to protect civilians and to allow the people of Libya to determine their own future, free from the tyranny of the Al-Qadhafi regime.”³⁵⁸ Ms. Rice (United States of America) stated, “the Council’s purpose is clear — to protect innocent civilians.”³⁵⁹ The Resolution acted as a “powerful response to [Resolution 1970] call and to the urgent needs on the ground.”³⁶⁰ Significantly, Rice also highlighted “[the] future of Libya should be decided by the people of Libya. The United States stands with the Libyan people in support of their universal rights.”³⁶¹

Mr. Barbalic (Bosnia and Herzegovina) stated: “We strongly believe that resolution 1973 is for the benefits of the Libyan people and their aspiration to peace and democracy.”³⁶² Mr. Osorio (Colombia) stated, “We are facing a situation that clearly constitutes a threat to international peace and security and that, furthermore, has already taken a high toll in terms of human lives.”³⁶³ Osorio further argued: “Colombia is convinced that in the case of Libya, all of

³⁵⁷ Ibid., 4.

³⁵⁸ Ibid.,

³⁵⁹ Ibid.

³⁶⁰ Ibid., 5.

³⁶¹ Ibid.

³⁶² Ibid.

³⁶³ Ibid., 7.

the conditions are present for the Council to act under Chapter VII and take measures additional to the sanctions adopted previously.”³⁶⁴

Mr. Salam (Lebanon) also condemned the brutal repression of the Libyan regime and urged the Council to protect Libyan civilians: “[the Libyan] authorities have lost all legitimacy. Today’s resolution is aimed at protecting Libyan civilians.”³⁶⁵ Salam stated that Libyans were “[facing] with the great suffering being experienced by the Libyan people, the loss of life and the great dangers that still exist, although this resolution falls short of our expectations.”³⁶⁶ Mr. Moraes Cabral (Portugal) encouraged the Libyan authorities “to consolidate national political dialogue”³⁶⁷ and seek an “end to violence; to protect civilians; to allow for unimpeded humanitarian aid; and to lead to a national dialogue among the Libyans conducive to the establishment of a democratic State.”³⁶⁸

Mrs. Ogwu (Nigeria) stated that Resolution 1973 “was necessitated by the persistently grave and dire situation in Libya.”³⁶⁹ Ogwu stated: “We acknowledge the language in resolution 1973 (2011) that specifically carves out that possibility, constraining the actions of States seeking to play a role in the quest for peace.”³⁷⁰ Mr. Sangqu (South Africa) supported the political aspiration of Libyans:

Security Council has responded appropriately to the call of the countries of the region to strengthen the implementation of resolution 1970 (2011), and has acted responsibly to

³⁶⁴ Ibid

³⁶⁵ Ibid.

³⁶⁶ Ibid., 4.

³⁶⁷ Ibid., 9.

³⁶⁸ Ibid.

³⁶⁹ Ibid.

³⁷⁰ Ibid.

protect and save the lives of defenceless civilians, who are faced with brutal acts of violence carried out by the Libyan authorities.³⁷¹

Furthermore, Mr. Li Baodong (China) stated:

China is gravely concerned by the continuing deterioration of the situation in Libya. We support the Security Council's adoption of appropriate and necessary action to stabilize the situation in Libya as soon as possible and to halt acts of violence against civilians.³⁷²

However, several delegations expressed reservations about Resolution 1973. Mrs. Viotti (Brazil) argued that resolution 1973 “may have unintended effect of exacerbating tensions on the grounds and [was] causing more harm than good to the very same civilians we are committed to protect.”³⁷³ Viotti “[demanded] an immediate ceasefire and a complete end to violence and all attacks against civilians, and [stressed] the need to intensify efforts conducive to the political reforms necessary for a peaceful and sustainable solution.”³⁷⁴ Mr. Manjeev Singh Puri (India) reiterated: “The Council has today adopted a resolution that authorizes far-reaching measures under Chapter VII of the United Nations Charter, with relatively little credible information on the situation on the ground in Libya”³⁷⁵ and warned it “will mitigate and not exacerbate an already difficult situation for the people of Libya.”³⁷⁶ Mr. Witting (Germany) supported only the “political transformation of Libya through peaceful process” and stated:

The use of military force are always extremely difficult to take. We have very carefully considered the option of using military force — its implications as well as its limitations. We see great risks. The likelihood of large-scale loss of life should not be underestimated.³⁷⁷

³⁷¹ Ibid., 10.

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ Ibid., 6.

³⁷⁶ Ibid.

³⁷⁷ Ibid., 5.

Mr. Churkin (Russian Federation), argued that the “quickest way to ensure robust security for the civilian population and the long-term stabilization of the situation in Libya is an immediate ceasefire.”³⁷⁸ Churkin warned, “Provisions were introduced into the text that could potentially open the door to large-scale military intervention.”³⁷⁹ Churkin said, “[R]esponsibility for the inevitable humanitarian consequences of the excessive use of outside force in Libya will fall fair and square on the shoulders of those who might undertake such actions.”³⁸⁰

It is clear that the Libyan situation was alarming and Qaddafi was perpetrating mass atrocities in Libya. The situation led, notwithstanding some reservations regarding military intervention, the UNSC to implement coercive measures. The UNSC did attempt to resolve the crisis peacefully and explored all peaceful means to initiate diplomatic negotiations between the conflicting parties. On 18th March 2011, the African Union sent its Ad Hoc High-Level Committee on Libya to Tripoli to seek a peaceful settlement of crisis among the conflicting parties.³⁸¹ Resolution 1973 also requested the UNSG to send his Special Envoy to Libya, Al-Khatib, and the UN Humanitarian Coordinator to seek a political solution to the crisis with the Libyan Foreign Minister.

On 24 March 2011, the UNSG noted that the NTC in Tobruk was still requesting “their call for a ceasefire and for the lifting of the siege imposed by Libyan Government forces on some

³⁷⁸ Ibid., 8.

³⁷⁹ Ibid.

³⁸⁰ Ibid.,

³⁸¹ “S/2011/151 (2011),” *UNSC*, last modified 18 March, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/151, 1-2.

cities in rebel hands”³⁸² and requested that the Council dispatch a humanitarian assessment mission to observe the situation.³⁸³ On 24th March 2011, the UNSG sent his Special Envoy who conducted meetings with the Libyan Foreign Minister and NTC. On 24 March 2011, the Libyan representative at the UN responded to the Special Envoy: “[It] had been forced to act as it has by perceived threats from Al-Qaida and Islamist terrorists”³⁸⁴ and stated, “[it had proposed] amnesty to rebels who laid down their arms.”³⁸⁵ The Special Envoy responded, “Mechanisms should be put in place so that rebel forces are also required to abide by any ceasefire.”³⁸⁶ However, the Envoy also reported that the Libyan authorities claim that a ceasefire had been established was erroneous: “Fierce battles continue in or around the cities of Ajdabiya, Misratah and Zitan [...] [and] there is no evidence that Libyan authorities have taken steps to carry out their obligations under resolutions 1970 (2011) or 1973 (2011).”³⁸⁷ The UNSG also decided to send the African Union Commission, under the Chairman Jean Ping, and the Special Envoy to Addis Ababa to come up with a political solution to the crisis, and encouraged the conflicting parties to comply with the ceasefire.³⁸⁸

On 24 March 2011, the UNSG stated his serious concerns that “[the] United Nations Humanitarian Coordinator and his team has limited access.”³⁸⁹ He also specified that no specific

³⁸² “S/PV.6505,” *UNSC*, last modified on 24 March 2011.
http://repository.un.org/bitstream/handle/11176/15176/S_PV.6505-EN.pdf?sequence=3&isAllowed=y 3.

³⁸³ *Ibid.*

³⁸⁴ *Ibid.*, 2.

³⁸⁵ *Ibid.*, 3.

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*, 2.

³⁸⁸ *Ibid.*

³⁸⁹ *Ibid.*

actions were discussed with the Libyan government to conduct a inter-agency needs-assessment mission, and an independent international commission of inquiry.³⁹⁰ He concluded:

My special Envoys mission was too brief to reach definitive conclusions about human rights situations, but he found many worrying signs, including threats and incitement against the armed opposition. Colonel Al-Qadhafi's threats were aired repeatedly on national television. Journalists continued to be arrested. Foreign reporters in Tripoli told the United Nations mission about the population's general state of fear, tight control by the security services, and insistence of arrest and disappearances.³⁹¹

As the Libyan authorities failed to comply with the provisions of resolution 1973 (2011) the Responsibility to Prevent shifted to Responsibility to React.

Proportional means, the fourth principle of R2P directly relates to the various military actions undertaken by members of the international community. The Commission explicitly contends that the scale, duration, and intensity of a military operation should be minimally targeted on perpetrators in order to protect civilians as the key indicator to assess R2P.

At the start of the military operations on 22 March 2011, the interveners deployed naval and aviation forces.³⁹² Later on 29 March 2011, it established maritime surveillance, air control and anti-aircraft missions.³⁹³ On 29 March 2011, interveners also patrolled the Libyan airspace for civilian protection against the Government forces.³⁹⁴ On 14 April 2011, fighters based in

³⁹⁰ Ibid., 3.

³⁹¹ Ibid.

³⁹² "S/2011/175(2011)," *UNSC*, last modified 22 March, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/175.

³⁹³ "S/2011/212," *UNSC*, last modified 29 March, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/212.

³⁹⁴ Ibid.

Singonella, Italy, conducted raids on a daily basis and provided mission reports to the UNSC.³⁹⁵ On 30 March 2011, Gérard Araud (France) notified, “[T]hese operations were conducted in cooperation with other countries”... with the purpose to “protect civilians and civilian populated areas under threat of attack” and to “enforce compliance with the ban on flights imposed by paragraph 6” of resolution 1973.³⁹⁶ Furthermore, on 30 March 2011, NATO’s Secretary General, Anders Fogh Rasmussen informed the UNSC that NATO started its military operation on 27th March 2011 in “accordance with Security Council resolution 1973 (2011) to protect civilians and civilian populated areas under threat of attack in Libya.”³⁹⁷ Rasmussen stated, “[B]oth a maritime and air component, will be conducted from the maritime flank of Libya in and over the central Mediterranean Sea.”³⁹⁸

On 30 March 2011, the Libya Contact Group³⁹⁹ (LCG) demonstrated its unity against the Government and the “participants agreed to continue their efforts until all conditions [were] fulfilled”. The LCG affirmed, that “The Libyan regime will be judged by its actions and not its words”⁴⁰⁰. The LCG also indicated, that “The Libyan people must be free to determine their own

³⁹⁵ “S/2011/246(2011),” 2 *UNSC*, last modified 14 April, 2011, http://repository.un.org/bitstream/handle/11176/15282/S_2011_246-EN.pdf?sequence=3&isAllowed=y

³⁹⁶ “S/2011/212 (2011),” *UNSC*, last modified 30 March 2011, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Libya%20S%202011%20212.pdf>.

³⁹⁷ “S/2011/203 (2011),” *UNSC*, last modified 30 March 2011, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Libya%20S%202011%20203.pdf>, 2.

³⁹⁸ *Ibid.*, 2-4.

³⁹⁹ Libya Contact Group included the foreign ministers and leaders from the United Nations, the League of Arab States, the African Union, the Organization of the Islamic Conference, the European Union and NATO gathered in London to discuss the situation in Libya.

⁴⁰⁰ S/2011/204, last modified on 30 March 2011, http://repository.un.org/bitstream/handle/11176/15208/S_2011_204-EN.pdf?sequence=3&isAllowed=y, 3.

future.”⁴⁰¹ As the fighting intensified until 4 April 2011, pro-Qadhafi forces successfully captured several Libyan cities, including Ras Lanouf,⁴⁰² Ajdabia, Brega, Misratah, Zawiyah, and Zintan and continued the bombardment of towns in the southwest of Tripoli.⁴⁰³ On 4 April 2011, Al-Khatib, UN Special Envoy of the Secretary-General to Libya, stated that the intense fighting had caused the interruption of supply-lines, regular services and medical assistance, and subsequently increased civilian suffering.⁴⁰⁴

On 13 April 2011, the Coalition Group on Libya⁴⁰⁵ welcomed the cooperation of the Interim National Council and supported it as a “legitimate interlocutor that represents the aspiration of the Libyan people” for “dialogue, reconciliation, free and fair elections, civil society, human rights and constitutional and economic reforms, represent important elements of an inclusive and representative political process.”⁴⁰⁶ On 26 April 2011, Personal Protective Equipment (PPE) and non-lethal weapons were provided by France⁴⁰⁷, Italy⁴⁰⁸, UK⁴⁰⁹ and the

⁴⁰¹ Ibid.

⁴⁰² “S/PV.6509 (2011),” *UNSC*, last modified 4 April, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.6509.

⁴⁰³ “S/2011/246(2011),” *UNSC*, last modified 14 April 2011, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Libya%20S%202011%20246.pdf>. 2, 3.

⁴⁰⁴ “S/PV.6509 (2011),” *UNSC*, 3.

⁴⁰⁵ This also refers to Libya Contact Group.

⁴⁰⁶ “S/2011/246(2011),” 3.

⁴⁰⁷ Ibid.

⁴⁰⁸ “S/2011/270 (2011),” *UNSC*, last modified 26 April, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/270.

⁴⁰⁹ “S/2011/269 (2011),” *UNSC*, last modified 26 April, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/269.

USA⁴¹⁰ to deter threats on the ground. Meanwhile, a pre-assessment of the post-conflict contingency plan was discussed in six areas; security, rule of law, human rights, economy, human rights, public administration, and physical infrastructure.⁴¹¹ On 27 April 2011, the interveners agreed to send a small team of military advisors from France to advise the opposition's internal structure on how to⁴¹² “manage its resources and improve its communications.”⁴¹³ Early contingency plans were drawn up by the military advisors to improve the internal structure and buildup communication on the grounds.⁴¹⁴

On 3 May 2011, the implementation of no-fly zone was objected to by Al-Khatib, UN Special Envoy of the Secretary General to Libya, who informed the Council that Colonel Al-Qaddafi had reported that “NATO had bombed his family's home and had killed his son, Saif Al-Arab, and some of his grandchildren and that he and his wife had survived the attack.”⁴¹⁵ This raised concerns regarding proportional means. Was Qaddafi's home a military necessary target, especially if women and children were present? Similarly, on the same date, Al-Khatib reported that the TNC⁴¹⁶ submitted its own transitional programme and sought status as the “legitimate and

⁴¹⁰ “S/2011/372 (2011),” *UNSC*, last modified 17 June, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/372.

⁴¹¹ “S/PV.6541 (2011),” *UNSC*, 5.

⁴¹² “S/2011/274 (2011),” *UNSC*, last modified 27 April 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/274.

⁴¹³ *Ibid.*

⁴¹⁴ *Ibid.*

⁴¹⁵ “S/PV.6527 (2011),” *UNSC*, 2,

⁴¹⁶ Note: Also used as National Transitional Council.

sole interlocutor between the Libyan people and the international community”.⁴¹⁷ As the negotiations remained stalled, on 3 May 2011 Al-Khatib stated:

The challenge in the communications and negotiations is a multifaceted and sensitive one that is time-bound, where the difficulty lies in how to link a credible and verifiable ceasefire with a lasting political process that remains inclusive of all relevant parties. The main difficulty at this stage is getting all sides to agree on the essential elements of a political process that meets the aspirations of the Libyan people.⁴¹⁸

In the same capacity, on 9 May 2011, Valarie Amos, the Under Secretary – General for Humanitarian Affairs and Emergency Relief coordinator, complained that “[T]he manner in which the sanctions were implemented and monitored is causing serious delays in the arrival of commercial goods”.⁴¹⁹ The conflicting parties remained far apart in resolving the conflict peacefully, even though the UN, the AU, the LAS, the OIC and the EU urged them to negotiate and resolve the crisis peacefully.⁴²⁰

As the implementation of no-fly zone was objected to by Al-Khatib, UN Special Envoy of the Secretary General to Libya,⁴²¹ Lieutenant-General Charlie Bouchard, the Commander of Operation Unified Protector, informed that Operation Unified Protector aimed to protect civilians from “attack or the threat of attack.”⁴²² It is important to note that on 9th April 2011, NATO updated that Qaddafi forces used civilians as a human shields and that Qaddafi’s

⁴¹⁷ “S/PV.6527 (2011),” *UNSC*, 4.

⁴¹⁸ “S/PV.6527, (2011),” 4.

⁴¹⁹ “S/PV.6530 (2011),” *UNSC*, 3

⁴²⁰ “S/2011/307 (2011),” *UNSC*, last modified 16 May, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/307, 2.

⁴²¹ See page 92.

⁴²² http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2011_11/20111108_111107-factsheet_up_factsfigures_en.pdf.

weapons systems were placed close to civilian's homes and worship places. NATO objected that Qaddafi forces were "hiding behind women and children,"⁴²³ which clearly violated international law. The mandate was clearly defined under Resolution 1973 and it aimed only to protect civilians against Governments attacks by implementing all necessary measures. NATO only deterred threats against civilians by conducting strikes against Qaddafi forces, military equipment, communication channels, and military infrastructure. On 13 May 2011, Carmen Romero, the NATO Deputy Spokesperson, stated: "[Qaddafi] as such is not a target as an individual because in our mission we are not targeting individuals and our mandate is to protect civilians."⁴²⁴ Rasmussen clarified this point:

[NATO] will do so until all attacks and threats against civilians and civilian populated areas have stopped. We will do so until the regime has pulled back all its forces – including its snipers and its mercenaries – away from civilian centres and back to their bases. And until there is a credible and verifiable ceasefire, paving the way for a genuine political transition and respecting the legitimate aspirations of the people of Libya.⁴²⁵

On 31 May 2011, Lynn Pascoe, the UN Under-Secretary General for Political Affairs, regretted the failure of a peaceful resolution to the conflict and stated: "The parties in Libya remain far apart on even beginning negotiations to resolve the conflict."⁴²⁶ He informed the Council about the latest development of conflict: "It seems apparent from the reports that Colonel Al-Qadhafi held to the well-known Libyan positions repeated by his Prime Minister and other

⁴²³ http://www.nato.int/cps/en/natohq/news_72192.htm?selectedLocale=en.

⁴²⁴ Ibid.

⁴²⁵ Ibid. As of 25 September 2011, NATO and partner aircraft conducted over 24,200 sorties, including over 9,000 strike sorties. NATO actions have destroyed over 5,900 military targets including over 400 artillery or rocket launchers and over 600 tanks or armored vehicles. NATO has also struck over 400 military command and control centres to halt the Qadhafi regime's ability to give orders to its forces. Targeting is done with extreme care and precision, using the weapon with the smallest yield possible, to avoid harm to the Libyan people and their infrastructure.

⁴²⁶ "S/PV.6541 (2011)," UNSC, 3.

Government spokesmen.”⁴²⁷ On 15 June 2011, Ms. Valarie Amos, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, called for an urgent humanitarian pause to the fighting so that humanitarian agencies could deliver urgent humanitarian assistance to civilians.⁴²⁸

The delivery of humanitarian assistance in Libya must remain distinct from the military activities of all parties to the conflict... [only] as a last resort will the military assets that have been generously offered by some Member States be mobilized. We have not yet reached that point. In this complex and charged environment, a loss of confidence by any of the parties to the current hostilities in the strictly neutral, impartial and independent character of humanitarian action would jeopardize our ability to reach the people who need help.⁴²⁹

As the crisis continued, on 28 July 2011, Pascoe, the Under-Secretary-General for Political Affairs, stated that humanitarian aid had been affected by intense fighting and urged the negotiation of a “ceasefire tied to transitional arrangements that address the aspirations of the Libyan people as the only sustainable political solution to the crisis in Libya.”⁴³⁰ As the conflict continued on the ground with no political solution between the conflicting parties, Al-Khatib, the UN Special Envoy of the Secretary General to Libya, stated: “[I]t is still very difficult to know how long it will take for the Libyan conflict to be resolved. However, responsibility for finding a solution lies with the Libyan people themselves.”⁴³¹

As the war continued, on 28 July 2011 the Libyan Contact Group took responsibility to provide leadership and political direction to NATO. This was done in collaboration with the

⁴²⁷ Ibid., 4.

⁴²⁸ “S/PV.6555 (2011),” 5.

⁴²⁹ Ibid.

⁴³⁰ “S/PV.6595,” *UNSC*, 2.

⁴³¹ “S/PV.6509 (2011),” *UNSC*, 4.

United Nations, the AU, the AL, the OIC, and the EU to assist the NTC to provide civilians with the longer term assistance. Al-Khatib, the UN Special Envoy of the Secretary General to Libya, continued diplomatic efforts and stated: “At that time, both sides expressed their readiness to study the proposal and discuss it further. The proposal is designed to simultaneously establish a credible ceasefire and create an institutional mechanism for the management of the transition.”⁴³²

Within a few months, the NTC defeated the pro-Gadhafi forces and the conflict turned into a decisive victory for the opposition forces. It is clear that NATO interpreted resolution 1973 as allowing itself to deter attacks by the Qaddafi regime on the Libyan opposition and provide close air support legitimized by the Council to support the Libyan opposition movement. On 25 October 2011, the Permanent Representative of Libya to the United Nations, Abdurrahman Mohamed Shalgram, appreciated the Council’s efforts in helping the Libyan people. Shalgram stated, “[D]anger that justified the call for a no-fly zone over Libya no longer exists, and that the new Libyan authorities are able to protect civilians without outside assistance” and requested the Council to end the No-fly zone on 31st October 2011.⁴³³ He stated:

After 42 years of autocracy, terrorism and human rights violations, 20th October 2011 was a historic day for the Libyan people, when it was proclaimed that the dictatorship was over and a new Libya was born, a democratic Libya that respects human rights and protects fundamental freedoms.⁴³⁴

⁴³² S/PV.6595 (2011),” 2-4.

⁴³³ “S/2011/660 (2011),” *UNSC*, last modified 25 October 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/660.

⁴³⁴ *Ibid*.

Resolution 2016 (2011) was unanimously adopted on 27th October 2011,⁴³⁵ to terminate the asset freeze and no-fly zone.⁴³⁶ The Report of the Security Council Committee established pursuant to Resolution 1970 on 13 January 2012 stated, “The Council provides an exemption to the arms embargo for supplies to Libya of non-lethal military equipment intended solely for humanitarian or protective use and related technical assistance or training, as approved in advance by the Committee.”⁴³⁷ The sanction committee explicitly stated: “No objection was raised with regard to the shipment to Libya of certain items, the request having been submitted without reference to any paragraph of the relevant resolutions.”⁴³⁸

The Council members expressed their solidarity, and provided moral support to affirm their responsibility to protect Libyans clearly indicates that Right Authority, centered upon R2P, was satisfied adequately. The adaptation of both Resolutions 1970 and 1973 by the UNSC shows that the UNSC was enabled to resolve the crisis. It is also clear that Just Cause and Right Intention were evoked under Article 41, Chapter VII of the Charter, and Last Resort and Proportional Means were evoked under Article 42, Chapter VII. Importantly, the UNSG was frequently informed about the coercive military actions undertaken. The UNSC monitored the situation by taking several initiatives through the UN Secretary General, UN High Commissioner of Human Rights, Special Representative of the Secretary General for Children and Armed Conflict, Special Representative of the UNSG on Sexual Violence Conflict, Human

⁴³⁵S/RES/2016 (2011).” *UNSC*, 27 October, 2011. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/567/10/PDF/N1156710.pdf?OpenElement>.

⁴³⁶ Ibid, 8(b), para 6.

⁴³⁷ “S/2012/32 (2011),” *UNSC*, last modified on 4 May, 2012. http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/320, 6.

⁴³⁸ Ibid.

rights Council, Office of Coordination of Humanitarian Affairs, Special Envoy of the UNSG, UN Humanitarian Affairs and Emergency Relief Coordinator. The UNSC also established regular coordination with the Libya Contact Group, African Union, and Under Secretary-General for AU Ad Hoc High-Level Committee on Libya. The involvement of these bodies clearly indicates, that the UNSC acted as a Right Authority to resolve the crisis.

The intervention was conducted by the NATO, that is the most sophisticated and advanced military alliance in the world, which indicates the establishment of Reasonable Prospects centered upon R2P. The involvement of NATO and non-NATO countries signified an obvious achievement and advancement of successful military cooperation. This can be observed on 16 September 2011 when the UNSC adopted Resolution 2009 that established the United Nations Support Mission in Libya (UNSMIL) by supporting the Libya national efforts to “public security,”⁴³⁹ “political dialogue,”⁴⁴⁰ “economic recovery,”⁴⁴¹ “humanitarian needs,”⁴⁴² “strengthening institutions of civilian government, and civilian public infrastructure,”⁴⁴³ and “resumption of banking sector.”⁴⁴⁴ Later, Resolution 2016 was adopted on 27 October 2011 that “[welcomed] the positive developments in Libya which will improve the prospects for a democratic, peaceful, and prosperous future.”⁴⁴⁵ Resolution 2016 “[decided] also that the

⁴³⁹ S/RES/2009, *UNSC*, Para 12 (a), 16 September, 2011, http://www.nato.int/nato_static/assets/pdf/pdf_2011_09/20110927_110916-UNSCR-2009.pdf.

⁴⁴⁰ *Ibid.*, 12 (b).

⁴⁴¹ *Ibid.*, 12(e).

⁴⁴² *Ibid.*, 12 (i).

⁴⁴³ *Ibid.*, 12 (iv).

⁴⁴⁴ *Ibid.*, 12(v).

⁴⁴⁵ S/RES/2016, *UNSC*, para 1. 27 October, 2011, <http://www.globalr2p.org/media/files/libya2016.pdf>.

provisions of paragraph 6 to 12 of resolution 1973 (2011) [related to no fly zone] shall be terminated [...] on 21 October 2011.”⁴⁴⁶

Conclusion

Resolution 1973 appeared as well-drafted legal mandate to legitimize the use of military force to protect civilians. It granted member states the authority to use “all necessary measures” to protect Libyan civilians, threatened by Libyan military forces. Empirically, under the three pillar framework of the R2P, it is clear that the Libyan intervention under Resolution 1970 and 1973 is an R2P case. The objectives outlined in the ICISS report are narrow in scope, but involved a broad range of measures under both resolutions to build prevention and protection mechanisms.

Pillar I was invoked under Resolution 1970 demonstrating that the Libyan state violated its primary responsibility to protect its populations from genocide, war crimes, crimes against humanity. Pillar II was not invoked because of Qaddafi response to Resolution 1970 (2011). Instead Pillar III, was invoked by passing Resolution 1973, clearly stating that the Libyan government was unwilling to protect its populations and was perpetrating these crimes. Therefore, the international community took responsibility to take collective actions in a timely and decisive manner to prevent and halt mass atrocities.

The actions taken under Resolutions 1970 and 1973 involved the use of broad range of political, economic, humanitarian, and peaceful means, which enabled adequate coercive and non-coercive measures in accordance with the UN Charter. Resolution 1973 under “all necessary measures” created flexibility for interveners and authorized the interveners. By testing the basic criteria of R2P on the UN proceedings, and examining the documents, the Council’s proceedings

⁴⁴⁶ Ibid., para 6.

attests that the intervention and the military objectives followed the original parameters of the UNSC's mandate, and adequately matched all means to ends and averted mass atrocities in Libya.

CHAPTER FIVE

Conclusion

Libya came to be seen as the first case for R2P. The political events in Libya started with demonstrations against the Qaddafi regime on the 15 February 2011, and resulted in a civil war. This war received regional and international attention quickly with condemnation of the Maummar Al-Qadhafi's regime for perpetrating violence against demonstrators.⁴⁴⁷

In connecting Qaddafi's actions with R2P, it is important to note that the doctrine has a wider scope: pillar one refers to the protection responsibilities of sovereign states; pillar two refers to international assistance and capacity-building, and pillar three relates to timely and decisive international responses to actual and potential atrocities. The Libyan regime failed to uphold its responsibilities associated with pillar one. It failed to protect its people through mobilizing its military forces against them, and this led to a legitimate military intervention in Libya.

In order to resolve the academic debate, surrounding Libya and R2P, this thesis explored the links between R2P and UNSC Resolutions 1970 and 1973. This thesis tested the proposition as to whether or not the military intervention in Libya was a R2P case and whether the Resolutions employed language of R2P. The analysis demonstrated that implementation of R2P in Libya reflects the growing legitimacy of the concept of sovereignty as responsibility, and that international peace and security is not about whether to act, but rather how to act in response to mass atrocities.

⁴⁴⁷ (No Author), "Chapter One: Arab Militaries and the Arab Awakening; Combat and Capability: Military trends Since 9/11; The War in Afghanistan," *The Military Balance* 112, no. 1, (2012):9, doi: 10.1080/04597222.2012.663210, 9.

The second chapter examined the academic debate on the military intervention in Libya, and outlined pro and anti-R2P arguments. It revealed that the academia is clearly divided into two camps and suggested that it is imperative to resolve this debate. The chapter highlights that the controversial arguments cannot be reconciled relative to different interpretations of Just Cause, Right Intention, Last Resort, and Proportional Means. These were inadequately applied. The chapter also concluded that the academic debate lacks clear objectivity. It stresses that without the proper understanding of the nature and importance of R2P, it is impossible to make any conclusion on whether Libya is R2P in action.

The third chapter advanced the conceptual and normative evolution of R2P based upon the new nature of warfare, the challenges faced by UN peacekeeping operations and their inability to resolve the significant humanitarian crises of 1990s. These crises not only revealed the weakness of the UN peace enforcement operations, but also revealed tensions and gaps in civilian protection under international humanitarian law and human rights. The chapter focuses on the work undertaken by Francis Deng, Boutros Boutros Ghali, Kofi Anan, and Lakshmi Brahimi, that emphasized the wide new range of demands, and the changed nature of threats to international peace and security. The chapter also examined the UN Charter to provide a wider sense of human security that was raised since the end of the Cold War. The chapter indicates that “the real problem is ‘in humanitarian non-intervention.’”⁴⁴⁸ It concluded by discussing the ICISS Report and the four principles of R2P: Just Cause, Right Intention, Last Resort, and Proportional Means. The thesis also stresses out that it is imperative to understand that R2P is not related with just military intervention, but it is a step based approach ranging from non-coercive to coercive measures and has various tools to respond to catastrophic events.

⁴⁴⁸ Marie-eve Loiselle, “The Normative Status of the Responsibility to Protect after Libya,” *Global Responsibility to Protect* 5, 317-341, (2013): 324, doi: 10.1163/1875984X-00503005.

The fourth chapter linked R2P principles and the Council's proceedings. It analyzed the UNSC proceedings and resolutions relative to R2P. The analysis reveals that the Libyan intervention remained consistent with the systematic and organizational evolution of the R2P doctrine. It also revealed that interveners were committed to a morally justified mission with the aim to protect civilians. The chapter concludes that the intervention in Libya clearly reflects R2P.

The intervention in Libya clearly indicates that the international community felt its responsibility to protect Libyans in the 2011 crisis, and acted on this basis. Intervention decisively averted mass atrocities by the Qaddafi regime. The analysis finds that Just Cause, Right Intention, Last Resort, and Proportional Means were evenly applied during the intervention. The failure of the Qaddafi regime to protect its people resulted in massive human rights violations driving the international community to fulfil its responsibility on the basis of Just Cause. The statements made by the UNSC's members clearly shows the serious commitment of the international community to resolve the crisis and the intervention was characterized as humanitarian in nature, which accomplished the second principle, Right Intention. Last Resort was applied when all peaceful measures were exhausted, the intensity of the conflict was increasing and mass atrocities were imminent due to the persistent actions and threats by Qaddafi. The multilateral military intervention was authorized when the political solution failed. Fourth, the Proportional Means remained a complex principle to evaluate the military commitment, but there was absence of political divergence among the interveners in assisting and flying combat air patrols. All military actions were taken to protect civilians and civilian populated areas and successfully deterred Qaddafi's forces and helped the rebels to overcome the imminent threats. The UNSC took non-coercive and coercive measures and

qualified Right Authority criterion. Also, Reasonable Prospects was evident with the involvement of NATO and non-NATO countries to avert mass atrocities.

The Arab Spring poses many “new questions and uncertainties by affecting assumptions about regional power balance, military capabilities, and deterrence.”⁴⁴⁹ Liberal interventionism claimed that their cause is evident in the Libyan intervention.⁴⁵⁰ The intervention reinforced new security sector reforms under R2P, which include “political, cultural, doctrinal and organizational changes.”⁴⁵¹ The intervention further indicates that comprehensive reforms of international customary law were the clear byproduct. The military intervention in Libya has the potential to shape a new political order. It can preserve the institutional power and autonomy of the UN, limit and monitor governmental internal functions, and highlights war crimes and crimes against humanity among the gravest crimes in international law. The intervention in Libya therefore, is very important because it was authorized by the UNSC. Big and small states agreed with the decision of the UNSC. Indeed, regional organizations were also instrumental in supporting and legitimizing Resolutions 1970 and 1973. No changes were made to the territorial boundaries of Libya, and the amount of force used was proportional, limited in scope and duration as NATO exited quickly.

Indeed, the new criticisms of the intervention in Libya are not so much about whether or not R2P was applied, but whether or not the international community was too conservative in its use of the R2P doctrine, and didn’t stay long enough or commit enough resources. While one case is not enough to conclude that R2P is now a norm, the fact that it was outlined in two

⁴⁴⁹ (n.a), “Arab Militaries,” 10.

⁴⁵⁰(n.a), “Arab Militaries,” 17.

⁴⁵¹ Ibid., 12.

resolutions means the world has a concrete example of a practical and meaningfully implementable concept.”⁴⁵²

The decades before the development of R2P clearly shows the lack of moral legitimacy and unsuccessful humanitarian intervention. R2P cleared the misconception about the moral use of force in identifying the real aggressor under four crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. To avoid repetition of the same pattern of mutual hostility within state borders anywhere in the world, R2P establishes an international norm by providing a clear structure for future state behavior to fulfill the expectations of human rights. Additionally, states leaders are obliged to protect human rights within their countries. The Arab Spring relative to Resolutions 1970 and 1973 reconciled many issues on human rights violations in relation to the right of a democratic government.⁴⁵³

The sufferings of the Libyans were acknowledged internationally. The intervention was authorized for the defense of Libyans. The use of force, however, has been questioned by many because it resulted into a full scale conflict. Noticeably, strategists and military planners highlighted the risks involved in low-cost military operations, and warned that this would be more likely involved in any future humanitarian intervention. The very light footprint of the UN worked very well in Libya.

The intervention potentially developed the significance of R2P into a “practical and meaningfully implementable [the] concept.”⁴⁵⁴ The reference of R2P was featured in the UNSC

⁴⁵² Ibid., 157.

⁴⁵³ Gary Wilson, “Applying the Responsibility to Protect to the ‘Arab Spring’,” *Liverpool Law Rev* 35:157-173, (2014): 158, doi: 10.1007/s10991-014-9151-6.

⁴⁵⁴ Ibid., 157.

proceedings. In the UNSC's debates and proceedings, regarding the adaptation of Resolutions 1970 and 1973, made clear references to R2P. The intervention proved that R2P does not threaten national sovereignty. In retrospect, Libyan sovereignty was respected under Resolution 1973. R2P does not entail any formal legal duty on the international community to respond to humanitarian catastrophes, but the UNSC showed its seriousness to resolve the crisis and the P-5 maintained a code of conduct to restrict the use of veto when R2P was invoked in the Resolution 1973.⁴⁵⁵

R2P has achieved the status of a legal norm in international law. It established a clear mandate, attained regional and international support, and paved the way for its further development. R2P is not an entirely a new concept. Its roots can be found during the post-Cold War period during the humanitarian crisis in Rwanda, Somalia, and Former Yugoslavia when the Council invoked Chapter VII of the UN Charter. In this respect, both resolutions continued the trend of the UNSC's decision making process and were the "product of a classical legal reasoning based on the UN charter."⁴⁵⁶ Significantly, R2P highlighted the serious commitment of the UNSC to humanitarian objectives under Chapter VII of the Charter.⁴⁵⁷ Importantly, in the aftermath of the Libyan intervention, the UNSC acted under Chapter VII to enforce its mandate in Yemen, South Sudan, and Cote d'Ivoire to protect civilians.⁴⁵⁸

The UNSC has to be more serious in dealing with mass atrocities and addressing human rights issues. Resolutions 1970 and 1973 were grounded upon the Libyan authorities

⁴⁵⁵ Ibid., 160.

⁴⁵⁶ Loisele, "The Normative Status," 333.

⁴⁵⁷ Wilson, "Applying the Responsibility to Protect," 170.

⁴⁵⁸ Berti, "Forcible intervention," 37-38.

responsibility to protect its civilians, even though the Resolutions in the later stages were proven problematic by Russia, India, Brazil, China, and Germany, which were hesitant to support the Libyan intervention.⁴⁵⁹ Skepticism from the BRICS (Brazil, Russia, India, China, and South Africa) and NAM (Non-Aligned Movement) also highlights many disagreements over R2P.⁴⁶⁰ Whereas Libyan intervention clearly indicates the adaptation of the core R2P principle of the responsibility of governments to protect its citizens, and the importance of the international action, the final step concerning coercive military intervention remains contentious.

The intervention was not a NATO based intervention. Rather it was a multilateral military intervention. The credibility goes to NATO due to its quick response. Half of the Allied members participated during the intervention, along with non-NATO members,⁴⁶¹ Qatar and the UAE⁴⁶². This adds value to NATO's credibility compared to its Afghanistan, Iraq, and Kosovo operations.⁴⁶³ This also suggests that NATO has clearly expanded its objectives from state-centric approaches to the individualization of international security after Cold War, and affirmed that international security is based on ethics.⁴⁶⁴

⁴⁵⁹ Wilson, "Applying the Responsibility to Protect," 170.

⁴⁶⁰ Ibid., 171.

⁴⁶¹ Mota, "The Libyan Spring," 2.

⁴⁶² "S/2011/158(2011)," *UNSC*, last modified 19 March, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/158

⁴⁶³ Ibid., 4.

⁴⁶⁴ Ibid., 6.

Human rights awareness and advocacy is infused within the UN system. The UNSC should be assertive in taking collective actions at the preventive stage of a conflict. The Council's arrangements and capacity building mechanisms are key to prevent atrocities.⁴⁶⁵

Massive atrocities are occurring in many countries and the protection of populations at risk is both a national and international responsibility. The UN General Assembly, Human Rights Council, Security Council, Peacebuilding Commission, specialized agencies, country teams, and independent human rights mechanisms strengthen the pillar II⁴⁶⁶ agenda of R2P. Exemplary, under Pillar II, the UNCHR helped the Columbians in developing a new legal framework for their intelligence service. Similarly, the UNDP and donor states helped Kenya's Independent Electoral Boundaries Commission prevent post-election violence in 2013.⁴⁶⁷

Human security has emerged partially as a function of Libya, as a key component of Article 39 and Chapter VII of the UN Charter with clear humanitarian dimensions in authorizing military measures.⁴⁶⁸ R2P is a reliable tool for preventive humanitarian intervention. It enables the UNSC to identify risks to, and vulnerabilities of local populations. Today, many people are being killed in civil wars, ethnic cleansing, and acts of genocides. International peace is only achievable by protecting vulnerable people, promoting human rights, and economic and social reforms.

⁴⁶⁵ Joao Paulo Nunes Vicente, "Back to the Future: Aerial Warfare in Libya," *JANUS.NET* 4, no.1, 59-72 (May-October 2013): 60-61, ISSN: 1647-7251.

⁴⁶⁶ If a population is suffering from serious harm as a result of internal war, state failure, and insurgency it is the responsibility of the state to protect the affected population to avert mass atrocities.

⁴⁶⁷ "Summary of the United Nations Secretary General's Report on the Responsibility to Protect: Filling Our Collective Responsibility: International Assistance and Responsibility to Protect," *Global Centre for Responsibility to Protect*, last modified August 13, 2014, <http://www.globalr2p.org/publications/319>.

⁴⁶⁸ Wilson, "Applying the Responsibility to Protect," 159.

One of the major lessons that can be drawn from the intervention was the importance of timing, which paved the way to a successful military intervention. Critically, if there was no action taken by UNSC, then the R2P would be criticized as a silent doctrine. Analyzing contemporary crises, it seems that humanitarian catastrophes are likely to continue. Future events should not be judged on political narratives, but rather than on humanitarian needs. If force is not used for moral reasons, R2P may change its course from humanitarian to state based intervention and⁴⁶⁹ this will make it difficult to avoid the politicization of humanitarianism under geopolitical, social, political, and economic interests.⁴⁷⁰

⁴⁶⁹ Wilson, "Applying the Responsibility," 165.

⁴⁷⁰ Mota, "The Libyan Spring," 7.

APPENDIX

United Nations

S/RES/1970 (2011)



Security Council

Distr.: General
26 February 2011

Resolution 1970 (2011)

**Adopted by the Security Council at its 6491st meeting, on
26 February 2011**

The Security Council,

Expressing grave concern at the situation in the Libyan Arab Jamahiriya and condemning the violence and use of force against civilians,

Deploring the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government,

Welcoming the condemnation by the Arab League, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that are being committed in the Libyan Arab Jamahiriya,

Taking note of the letter to the President of the Security Council from the Permanent Representative of the Libyan Arab Jamahiriya dated 26 February 2011,

Welcoming the Human Rights Council resolution A/HRC/S-15/2 of 25 February 2011, including the decision to urgently dispatch an independent international commission of inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, to establish the facts and circumstances of such violations and of the crimes perpetrated, and where possible identify those responsible,

Considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,

Expressing concern at the plight of refugees forced to flee the violence in the Libyan Arab Jamahiriya,

Expressing concern also at the reports of shortages of medical supplies to treat the wounded,

Recalling the Libyan authorities' responsibility to protect its population,

11-24558 (E)



Please recycle A small graphic of a recycling symbol, consisting of three chasing arrows forming a triangle.

Underlining the need to respect the freedoms of peaceful assembly and of expression, including freedom of the media,

Stressing the need to hold to account those responsible for attacks, including by forces under their control, on civilians,

Recalling article 16 of the Rome Statute under which no investigation or prosecution may be commenced or proceeded with by the International Criminal Court for a period of 12 months after a Security Council request to that effect,

Expressing concern for the safety of foreign nationals and their rights in the Libyan Arab Jamahiriya,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya.

Mindful of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

Acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41,

1. *Demands* an immediate end to the violence and calls for steps to fulfil the legitimate demands of the population;

2. *Urges* the Libyan authorities to:

(a) Act with the utmost restraint, respect human rights and international humanitarian law, and allow immediate access for international human rights monitors;

(b) Ensure the safety of all foreign nationals and their assets and facilitate the departure of those wishing to leave the country;

(c) Ensure the safe passage of humanitarian and medical supplies, and humanitarian agencies and workers, into the country; and

(d) Immediately lift restrictions on all forms of media;

3. *Requests* all Member States, to the extent possible, to cooperate in the evacuation of those foreign nationals wishing to leave the country;

ICC referral

4. *Decides* to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court;

5. *Decides* that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor;

6. *Decides* that nationals, current or former officials or personnel from a State outside the Libyan Arab Jamahiriya which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the

Libyan Arab Jamahiriya established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State;

7. *Invites* the Prosecutor to address the Security Council within two months of the adoption of this resolution and every six months thereafter on actions taken pursuant to this resolution;

8. *Recognizes* that none of the expenses incurred in connection with the referral, including expenses related to investigations or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily;

Arms embargo

9. *Decides* that all Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to the Libyan Arab Jamahiriya, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel whether or not originating in their territories, and decides further that this measure shall not apply to:

(a) Supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee established pursuant to paragraph 24 below;

(b) Protective clothing, including flak jackets and military helmets, temporarily exported to the Libyan Arab Jamahiriya by United Nations personnel, representatives of the media and humanitarian and development works and associated personnel, for their personal use only; or

(c) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee;

10. *Decides* that the Libyan Arab Jamahiriya shall cease the export of all arms and related materiel and that all Member States shall prohibit the procurement of such items from the Libyan Arab Jamahiriya by their nationals, or using their flagged vessels or aircraft, and whether or not originating in the territory of the Libyan Arab Jamahiriya;

11. *Calls upon* all States, in particular States neighbouring the Libyan Arab Jamahiriya, to inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to and from the Libyan Arab Jamahiriya, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited by paragraphs 9 or 10 of this resolution for the purpose of ensuring strict implementation of those provisions;

12. *Decides* to authorize all Member States to, and that all Member States shall, upon discovery of items prohibited by paragraph 9 or 10 of this resolution,

seize and dispose (such as through destruction, rendering inoperable, storage or transferring to a State other than the originating or destination States for disposal) items the supply, sale, transfer or export of which is prohibited by paragraph 9 or 10 of this resolution and decides further that all Member States shall cooperate in such efforts;

13. *Requires* any Member State when it undertakes an inspection pursuant to paragraph 11 above, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspections, the results of such inspections, and whether or not cooperation was provided, and, if prohibited items for transfer are found, further requires such Member States to submit to the Committee, at a later stage, a subsequent written report containing relevant details on the inspection, seizure, and disposal, and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report;

14. *Encourages* Member States to take steps to strongly discourage their nationals from travelling to the Libyan Arab Jamahiriya to participate in activities on behalf of the Libyan authorities that could reasonably contribute to the violation of human rights;

Travel ban

15. *Decides* that all Member States shall take the necessary measures to prevent the entry into or transit through their territories of individuals listed in Annex I of this resolution or designated by the Committee established pursuant to paragraph 24 below, provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory;

16. *Decides* that the measures imposed by paragraph 15 above shall not apply:

(a) Where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation;

(b) Where entry or transit is necessary for the fulfilment of a judicial process;

(c) Where the Committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in the Libyan Arab Jamahiriya and stability in the region; or

(d) Where a State determines on a case-by-case basis that such entry or transit is required to advance peace and stability in the Libyan Arab Jamahiriya and the States subsequently notifies the Committee within forty-eight hours after making such a determination;

Asset freeze

17. *Decides* that all Member States shall freeze without delay all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities listed in Annex II of this resolution or designated by the Committee established pursuant to paragraph 24 below, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, and decides further that all

Member States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the individuals or entities listed in Annex II of this resolution or individuals designated by the Committee;

18. *Expresses* its intention to ensure that assets frozen pursuant to paragraph 17 shall at a later stage be made available to and for the benefit of the people of the Libyan Arab Jamahiriya;

19. *Decides* that the measures imposed by paragraph 17 above do not apply to funds, other financial assets or economic resources that have been determined by relevant Member States:

(a) To be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services in accordance with national laws, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant State to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets or economic resources and in the absence of a negative decision by the Committee within five working days of such notification;

(b) To be necessary for extraordinary expenses, provided that such determination has been notified by the relevant State or Member States to the Committee and has been approved by the Committee; or

(c) To be the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered into prior to the date of the present resolution, is not for the benefit of a person or entity designated pursuant to paragraph 17 above, and has been notified by the relevant State or Member States to the Committee;

20. *Decides* that Member States may permit the addition to the accounts frozen pursuant to the provisions of paragraph 17 above of interests or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen;

21. *Decides* that the measures in paragraph 17 above shall not prevent a designated person or entity from making payment due under a contract entered into prior to the listing of such a person or entity, provided that the relevant States have determined that the payment is not directly or indirectly received by a person or entity designated pursuant to paragraph 17 above, and after notification by the relevant States to the Committee of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for this purpose, 10 working days prior to such authorization;

Designation criteria

22. *Decides* that the measures contained in paragraphs 15 and 17 shall apply to the individuals and entities designated by the Committee, pursuant to paragraph 24 (b) and (c), respectively;

(a) Involved in or complicit in ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in the Libyan Arab Jamahiriya, including by being involved in or complicit in planning, commanding, ordering or conducting attacks, in violation of international law, including aerial bombardments, on civilian populations and facilities; or

(b) Acting for or on behalf of or at the direction of individuals or entities identified in subparagraph (a).

23. *Strongly encourages* Member States to submit to the Committee names of individuals who meet the criteria set out in paragraph 22 above;

New Sanctions Committee

24. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council (herein "the Committee"), to undertake the following tasks:

(a) To monitor implementation of the measures imposed in paragraphs 9, 10, 15, and 17;

(b) To designate those individuals subject to the measures imposed by paragraphs 15 and to consider requests for exemptions in accordance with paragraph 16 above;

(c) To designate those individuals subject to the measures imposed by paragraph 17 above and to consider requests for exemptions in accordance with paragraphs 19 and 20 above;

(d) To establish such guidelines as may be necessary to facilitate the implementation of the measures imposed above;

(e) To report within thirty days to the Security Council on its work for the first report and thereafter to report as deemed necessary by the Committee;

(f) To encourage a dialogue between the Committee and interested Member States, in particular those in the region, including by inviting representatives of such States to meet with the Committee to discuss implementation of the measures;

(g) To seek from all States whatever information it may consider useful regarding the actions taken by them to implement effectively the measures imposed above;

(h) To examine and take appropriate action on information regarding alleged violations or non-compliance with the measures contained in this resolution;

25. *Calls upon* all Member States to report to the Committee within 120 days of the adoption of this resolution on the steps they have taken with a view to implementing effectively paragraphs 9, 10, 15 and 17 above;

Humanitarian assistance

26. *Calls upon* all Member States, working together and acting in cooperation with the Secretary General, to facilitate and support the return of humanitarian agencies and make available humanitarian and related assistance in the Libyan Arab Jamahiriya, and requests the States concerned to keep the Security Council regularly informed on the progress of actions undertaken pursuant to this paragraph, and expresses its readiness to consider taking additional appropriate measures, as necessary, to achieve this;

Commitment to review

27. *Affirms* that it shall keep the Libyan authorities' actions under continuous review and that it shall be prepared to review the appropriateness of the measures contained in this resolution, including the strengthening, modification, suspension or lifting of the measures, as may be needed at any time in light of the Libyan authorities' compliance with relevant provisions of this resolution;

28. *Decides* to remain actively seized of the matter.

Annex I

Travel ban

1. Al-Baghdadi, Dr Abdulqader Mohammed
Passport number: B010574. Date of birth: 01/07/1950.
Head of the Liaison Office of the Revolutionary Committees. Revolutionary Committees involved in violence against demonstrators.
2. Dibri, Abdulqader Yusef
Date of birth: 1946. Place of birth: Houn, Libya.
Head of Muammar Qadhafi's personal security. Responsibility for regime security. History of directing violence against dissidents.
3. Dorda, Abu Zayd Umar
Director, External Security Organisation. Regime loyalist. Head of external intelligence agency.
4. Jabir, Major General Abu Bakr Yunis
Date of birth: 1952. Place of birth: Jalo, Libya.
Defence Minister. Overall responsibility for actions of armed forces.
5. Matuq, Matuq Mohammed
Date of birth: 1956. Place of birth: Khoms.
Secretary for Utilities. Senior member of regime. Involvement with Revolutionary Committees. Past history of involvement in suppression of dissent and violence.
6. Qadhaf Al-dam, Sayyid Mohammed
Date of birth: 1948. Place of birth: Sirte, Libya.
Cousin of Muammar Qadhafi. In the 1980s, Sayyid was involved in the dissident assassination campaign and allegedly responsible for several deaths in Europe. He is also thought to have been involved in arms procurement.
7. Qadhafi, Aisha Muammar
Date of birth: 1978. Place of birth: Tripoli, Libya.
Daughter of Muammar Qadhafi. Closeness of association with regime.
8. Qadhafi, Hannibal Muammar
Passport number: B/002210. Date of birth: 20/09/1975. Place of birth: Tripoli, Libya. Son of Muammar Qadhafi. Closeness of association with regime.
9. Qadhafi, Khamis Muammar
Date of birth: 1978. Place of birth: Tripoli, Libya.
Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.

10. Qadhafi, Mohammed Muammar
Date of birth: 1970. Place of birth: Tripoli, Libya.
Son of Muammar Qadhafi. Closeness of association with regime.
11. Qadhafi, Muammar Mohammed Abu Minyar
Date of birth: 1942. Place of birth: Sirte, Libya.
Leader of the Revolution, Supreme Commander of Armed Forces.
Responsibility for ordering repression of demonstrations, human rights abuses.
12. Qadhafi, Mutassim
Date of birth: 1976. Place of birth: Tripoli, Libya.
National Security Adviser. Son of Muammar Qadhafi. Closeness of association with regime.
13. Qadhafi, Saadi
Passport number: 014797. Date of birth: 25/05/1973. Place of birth: Tripoli, Libya.
Commander Special Forces. Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.
14. Qadhafi, Saif al-Arab
Date of birth: 1982. Place of birth: Tripoli, Libya.
Son of Muammar Qadhafi. Closeness of association with regime.
15. Qadhafi, Saif al-Islam
Passport number: B014995. Date of birth: 25/06/1972. Place of birth: Tripoli, Libya.
Director, Qadhafi Foundation. Son of Muammar Qadhafi. Closeness of association with regime. Inflammatory public statements encouraging violence against demonstrators.
16. Al-Senussi, Colonel Abdullah
Date of birth: 1949. Place of birth: Sudan.
Director Military Intelligence. Military Intelligence involvement in suppression of demonstrations. Past history includes suspicion of involvement in Abu Selim prison massacre. Convicted in absentia for bombing of UTA flight. Brother -in-law of Muammar Qadhafi.

Annex II

Asset freeze

1. Qadhafi, Aisha Muammar
Date of birth: 1978. Place of birth: Tripoli, Libya.
Daughter of Muammar Qadhafi. Closeness of association with regime.
 2. Qadhafi, Hannibal Muammar
Passport number: B/002210. Date of birth: 20/09/1975. Place of birth: Tripoli, Libya. Son of Muammar Qadhafi. Closeness of association with regime.
 3. Qadhafi, Khamis Muammar
Date of birth: 1978. Place of birth: Tripoli, Libya.
Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.
 4. Qadhafi, Muammar Mohammed Abu Minyar
Date of birth: 1942. Place of birth: Sirte, Libya.
Leader of the Revolution, Supreme Commander of Armed Forces.
Responsibility for ordering repression of demonstrations, human rights abuses.
 5. Qadhafi, Mutassim
Date of birth: 1976. Place of birth: Tripoli, Libya.
National Security Adviser. Son of Muammar Qadhafi. Closeness of association with regime.
 6. Qadhafi, Saif al-Islam
Passport number: B014995. Date of birth: 25/06/1972. Place of birth: Tripoli, Libya.
Director, Qadhafi Foundation. Son of Muammar Qadhafi. Closeness of association with regime. Inflammatory public statements encouraging violence against demonstrators.
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**Security Council**

Distr.: General
17 March 2011

Resolution 1973 (2011)

**Adopted by the Security Council at its 6498th meeting, on
17 March 2011**

The Security Council,

Recalling its resolution 1970 (2011) of 26 February 2011,

Deploring the failure of the Libyan authorities to comply with resolution 1970 (2011),

Expressing grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties,

Reiterating the responsibility of the Libyan authorities to protect the Libyan population and *reaffirming* that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians,

Condemning the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions,

Further condemning acts of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel and *urging* these authorities to comply with their obligations under international humanitarian law as outlined in resolution 1738 (2006),

Considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,

Recalling paragraph 26 of resolution 1970 (2011) in which the Council expressed its readiness to consider taking additional appropriate measures, as necessary, to facilitate and support the return of humanitarian agencies and make available humanitarian and related assistance in the Libyan Arab Jamahiriya,

Expressing its determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel,

Recalling the condemnation by the League of Arab States, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that have been and are being committed in the Libyan Arab Jamahiriya,



Taking note of the final communiqué of the Organisation of the Islamic Conference of 8 March 2011, and the communiqué of the Peace and Security Council of the African Union of 10 March 2011 which established an ad hoc High Level Committee on Libya,

Taking note also of the decision of the Council of the League of Arab States of 12 March 2011 to call for the imposition of a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in the Libyan Arab Jamahiriya,

Taking note further of the Secretary-General's call on 16 March 2011 for an immediate cease-fire,

Recalling its decision to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court, and *stressing* that those responsible for or complicit in attacks targeting the civilian population, including aerial and naval attacks, must be held to account,

Reiterating its concern at the plight of refugees and foreign workers forced to flee the violence in the Libyan Arab Jamahiriya, *welcoming* the response of neighbouring States, in particular Tunisia and Egypt, to address the needs of those refugees and foreign workers, and *calling on* the international community to support those efforts,

Deploing the continuing use of mercenaries by the Libyan authorities,

Considering that the establishment of a ban on all flights in the airspace of the Libyan Arab Jamahiriya constitutes an important element for the protection of civilians as well as the safety of the delivery of humanitarian assistance and a decisive step for the cessation of hostilities in Libya,

Expressing concern also for the safety of foreign nationals and their rights in the Libyan Arab Jamahiriya,

Welcoming the appointment by the Secretary General of his Special Envoy to Libya, Mr. Abdel-Elah Mohamed Al-Khatib and supporting his efforts to find a sustainable and peaceful solution to the crisis in the Libyan Arab Jamahiriya,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya,

Determining that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Demands* the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians;

2. *Stresses* the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people and *notes* the decisions of the Secretary-General to send his Special Envoy to Libya and of the Peace and Security Council of the African Union to send its ad hoc High Level Committee to Libya with the aim of facilitating dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution;

3. *Demands* that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance;

Protection of civilians

4. *Authorizes* Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and *requests* the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council;

5. *Recognizes* the important role of the League of Arab States in matters relating to the maintenance of international peace and security in the region, and bearing in mind Chapter VIII of the Charter of the United Nations, requests the Member States of the League of Arab States to cooperate with other Member States in the implementation of paragraph 4;

No Fly Zone

6. *Decides* to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians;

7. *Decides further* that the ban imposed by paragraph 6 shall not apply to flights whose sole purpose is humanitarian, such as delivering or facilitating the delivery of assistance, including medical supplies, food, humanitarian workers and related assistance, or evacuating foreign nationals from the Libyan Arab Jamahiriya, nor shall it apply to flights authorised by paragraphs 4 or 8, nor other flights which are deemed necessary by States acting under the authorisation conferred in paragraph 8 to be for the benefit of the Libyan people, and that these flights shall be coordinated with any mechanism established under paragraph 8;

8. *Authorizes* Member States that have notified the Secretary-General and the Secretary-General of the League of Arab States, acting nationally or through regional organizations or arrangements, to take all necessary measures to enforce compliance with the ban on flights imposed by paragraph 6 above, as necessary, and *requests* the States concerned in cooperation with the League of Arab States to coordinate closely with the Secretary General on the measures they are taking to implement this ban, including by establishing an appropriate mechanism for implementing the provisions of paragraphs 6 and 7 above,

9. *Calls upon* all Member States, acting nationally or through regional organizations or arrangements, to provide assistance, including any necessary over-flight approvals, for the purposes of implementing paragraphs 4, 6, 7 and 8 above;

10. *Requests* the Member States concerned to coordinate closely with each other and the Secretary-General on the measures they are taking to implement

paragraphs 4, 6, 7 and 8 above, including practical measures for the monitoring and approval of authorised humanitarian or evacuation flights;

11. *Decides* that the Member States concerned shall inform the Secretary-General and the Secretary-General of the League of Arab States immediately of measures taken in exercise of the authority conferred by paragraph 8 above, including to supply a concept of operations;

12. *Requests* the Secretary-General to inform the Council immediately of any actions taken by the Member States concerned in exercise of the authority conferred by paragraph 8 above and to report to the Council within 7 days and every month thereafter on the implementation of this resolution, including information on any violations of the flight ban imposed by paragraph 6 above;

Enforcement of the arms embargo

13. *Decides that* paragraph 11 of resolution 1970 (2011) shall be replaced by the following paragraph : “Calls upon all Member States, in particular States of the region, acting nationally or through regional organisations or arrangements, in order to ensure strict implementation of the arms embargo established by paragraphs 9 and 10 of resolution 1970 (2011), to inspect in their territory, including seaports and airports, and on the high seas, vessels and aircraft bound to or from the Libyan Arab Jamahiriya, if the State concerned has information that provides reasonable grounds to believe that the cargo contains items the supply, sale, transfer or export of which is prohibited by paragraphs 9 or 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, *calls upon* all flag States of such vessels and aircraft to cooperate with such inspections and authorises Member States to use all measures commensurate to the specific circumstances to carry out such inspections”;

14. *Requests* Member States which are taking action under paragraph 13 above on the high seas to coordinate closely with each other and the Secretary-General and *further requests* the States concerned to inform the Secretary-General and the Committee established pursuant to paragraph 24 of resolution 1970 (2011) (“the Committee”) immediately of measures taken in the exercise of the authority conferred by paragraph 13 above;

15. *Requires* any Member State whether acting nationally or through regional organisations or arrangements, when it undertakes an inspection pursuant to paragraph 13 above, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspection, the results of such inspection, and whether or not cooperation was provided, and, if prohibited items for transfer are found, further requires such Member States to submit to the Committee, at a later stage, a subsequent written report containing relevant details on the inspection, seizure, and disposal, and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report;

16. *Deplores* the continuing flows of mercenaries into the Libyan Arab Jamahiriya and *calls upon* all Member States to comply strictly with their obligations under paragraph 9 of resolution 1970 (2011) to prevent the provision of armed mercenary personnel to the Libyan Arab Jamahiriya;

Ban on flights

17. *Decides* that all States shall deny permission to any aircraft registered in the Libyan Arab Jamahiriya or owned or operated by Libyan nationals or companies to take off from, land in or overfly their territory unless the particular flight has been approved in advance by the Committee, or in the case of an emergency landing;

18. *Decides that* all States shall deny permission to any aircraft to take off from, land in or overfly their territory, if they have information that provides reasonable grounds to believe that the aircraft contains items the supply, sale, transfer, or export of which is prohibited by paragraphs 9 and 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, except in the case of an emergency landing;

Asset freeze

19. *Decides* that the asset freeze imposed by paragraph 17, 19, 20 and 21 of resolution 1970 (2011) shall apply to all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the Libyan authorities, as designated by the Committee, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by the Committee, and *decides further* that all States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the Libyan authorities, as designated by the Committee, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, as designated by the Committee, and directs the Committee to designate such Libyan authorities, individuals or entities within 30 days of the date of the adoption of this resolution and as appropriate thereafter;

20. *Affirms* its determination to ensure that assets frozen pursuant to paragraph 17 of resolution 1970 (2011) shall, at a later stage, as soon as possible be made available to and for the benefit of the people of the Libyan Arab Jamahiriya;

21. *Decides* that all States shall require their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in the Libyan Arab Jamahiriya or subject to its jurisdiction, and any individuals or entities acting on their behalf or at their direction, and entities owned or controlled by them, if the States have information that provides reasonable grounds to believe that such business could contribute to violence and use of force against civilians;

Designations

22. *Decides* that the individuals listed in Annex I shall be subject to the travel restrictions imposed in paragraphs 15 and 16 of resolution 1970 (2011), and *decides further* that the individuals and entities listed in Annex II shall be subject to the asset freeze imposed in paragraphs 17, 19, 20 and 21 of resolution 1970 (2011);

23. *Decides* that the measures specified in paragraphs 15, 16, 17, 19, 20 and 21 of resolution 1970 (2011) shall apply also to individuals and entities determined by the Council or the Committee to have violated the provisions of resolution 1970

(2011), particularly paragraphs 9 and 10 thereof, or to have assisted others in doing so;

Panel of Experts

24. *Requests* the Secretary-General to create for an initial period of one year, in consultation with the Committee, a group of up to eight experts ("Panel of Experts"), under the direction of the Committee to carry out the following tasks:

(a) Assist the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011) and this resolution;

(b) Gather, examine and analyse information from States, relevant United Nations bodies, regional organisations and other interested parties regarding the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;

(c) Make recommendations on actions the Council, or the Committee or State, may consider to improve implementation of the relevant measures;

(d) Provide to the Council an interim report on its work no later than 90 days after the Panel's appointment, and a final report to the Council no later than 30 days prior to the termination of its mandate with its findings and recommendations;

25. *Urges* all States, relevant United Nations bodies and other interested parties, to cooperate fully with the Committee and the Panel of Experts, in particular by supplying any information at their disposal on the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;

26. *Decides* that the mandate of the Committee as set out in paragraph 24 of resolution 1970 (2011) shall also apply to the measures decided in this resolution;

27. *Decides* that all States, including the Libyan Arab Jamahiriya, shall take the necessary measures to ensure that no claim shall lie at the instance of the Libyan authorities, or of any person or body in the Libyan Arab Jamahiriya, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolution 1970 (2011), this resolution and related resolutions;

28. *Reaffirms* its intention to keep the actions of the Libyan authorities under continuous review and underlines its readiness to review at any time the measures imposed by this resolution and resolution 1970 (2011), including by strengthening, suspending or lifting those measures, as appropriate, based on compliance by the Libyan authorities with this resolution and resolution 1970 (2011).

29. *Decides* to remain actively seized of the matter.

Libya: UNSCR proposed designations

<i>Number</i>	<i>Name</i>	<i>Justification</i>	<i>Identifiers</i>
Annex I: Travel Ban			
1	QUREN SALIH QUREN AL QADHAFI	Libyan Ambassador to Chad. Has left Chad for Sabha. Involved directly in recruiting and coordinating mercenaries for the regime.	
2	Colonel AMID HUSAIN AL KUNI	Governor of Ghat (South Libya). Directly involved in recruiting mercenaries.	

<i>Number</i>	<i>Name</i>	<i>Justification</i>	<i>Identifiers</i>
Annex II: Asset Freeze			
1	Dorda, Abu Zayd Umar	Position: Director, External Security Organisation	
2	Jabir, Major General Abu Bakr Yunis	Position: Defence Minister	Title: Major General DOB: --/--/1952. POB: Jalo, Libya
3	Matuq, Matuq Mohammed	Position: Secretary for Utilities	DOB: --/--/1956. POB: Khoms
4	Qadhafi, Mohammed Muammar	Son of Muammar Qadhafi. Closeness of association with regime	DOB: --/--/1970. POB: Tripoli, Libya
5	Qadhafi, Saadi	Commander Special Forces. Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations	DOB: 25/05/1973. POB: Tripoli, Libya
6	Qadhafi, Saif al-Arab	Son of Muammar Qadhafi. Closeness of association with regime	DOB: --/--/1982. POB: Tripoli, Libya
7	Al-Senussi, Colonel Abdullah	Position: Director Military Intelligence	Title: Colonel DOB: --/--/1949. POB: Sudan

Entities

1	Central Bank of Libya	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.
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<i>Number</i>	<i>Name</i>	<i>Justification</i>	<i>Identifiers</i>
2	Libyan Investment Authority	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	a.k.a: Libyan Arab Foreign Investment Company (LAFICO) Address: 1 Fateh Tower Office, No 99 22nd Floor, Borgaida Street, Tripoli, Libya, 1103
3	Libyan Foreign Bank	Under control of Muammar Qadhafi and his family and a potential source of funding for his regime.	
4	Libyan Africa Investment Portfolio	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	Address: Jamahiriya Street, LAP Building, PO Box 91330, Tripoli, Libya
5	Libyan National Oil Corporation	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	Address: Bashir Saadwi Street, Tripoli, Tarabulus, Libya

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