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# The 2011 Military Intervention in Libya: Its Legality and Legitimacy

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ABHINAV BHALLA<sup>1</sup>

## ABSTRACT

*The military intervention in Libya in 2011 was deemed to be a success all around the world. It was the first case of enforcing the Responsibility to Protect doctrine and was considered a win against the Gaddafi forces. This paper contends that these claims of success are premature and argues that the NATO and other allied forces overstepped the mandate of the UNSC Resolution and have therefore violated international law. This paper also argues that this situation was a setback for the application and evolution of the Responsibility to Protect doctrine. The paper supports its arguments and analysis with the help of various scholarly and journal articles.*

**Keywords-** Libya, Military Intervention, UNSC, Human Rights.

## I. INTRODUCTION

Muammar Gaddafi came to power in Libya on September 1, 1969 after a bloodless and peaceful military coup, and replaced the existing government of Sanusi Monarchy. After assuming power Gaddafi became a very important part of the Revolutionary Command Council, and soon enough his powers became wide enough pursuant to which he became an authoritarian autocrat rather than a revolutionary leader.<sup>2</sup> The main source of Gaddafi's power came from his propaganda of social and revolutionary philosophy, and his act of capitalizing the nation's oil reserves.<sup>3</sup> In order to establish a firm leadership and dictatorship, his first act was to remove all British and American military bases from his country. After solidifying his control over the Libyan government, Gaddafi retained control continuously from 1969 to 2011 when he was killed and his government was overthrown.

Under the rule of Gaddafi, the Libyan government was blamed for the alleged commitment of various state-sponsored acts of terrorism and human rights violations. One of the most controversial violent acts was the infamous case of Lockerbie Bombing in 1988.<sup>4</sup> Following

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<sup>1</sup> Author is a student at O.P Jindal Global University, India.

<sup>2</sup> Geoff Simons, *Libya: The Struggle for Survival*, 161, 194 (1993).

<sup>3</sup> Dirk Vandewalle, *A History of Modern Libya*, 73,79 (2006).

<sup>4</sup> Yehudit Ronen, *Qaddafi's Libya in World Politics*, 43-45 (2008).

this case of infamous bombing and various other reports of human rights abuses, Gaddafi faced a lot of international pressure throughout the tenure of his rule, which included both economic and military interventions from various countries and supranational organisations.<sup>5</sup>

## II. ARAB SPRING UPRISING; THE FIRST LIBYAN CIVIL WAR

The crisis which led up to the civil war in Libya started in the country of Tunisia. The protests in Tunisia started after a young man set himself on fire in an act of disagreement and protest. This act was followed by a huge demonstration of protest, which comprised mainly of young people who were demanding work and employment from the government.<sup>6</sup> The then President of the country deemed these protests to be illegal and gave the order to punish and arrest the protestors.<sup>7</sup> This violent crackdown on the protests by the State formed an unstoppable wave of public anger. These protests resulted in the president dissolving his government and eventually stepping down from the post of president. The protests in Tunisia unleashed a wave of terror and nervousness across the authoritarian leaders of North Africa and the Arab region. Following the protests in Tunisia, the Egyptians also saw this as a moment to demonstrate their discontent with their existing government. The government crackdown on these protests involved a lot of force. However, the protests were successful and the then president of Egypt resigned from his post. Looking at the success of the protests in Tunisia and Egypt, the Libyans also took to the streets demanding an end to Gaddafi's reign.

The Gaddafi military regime had been in control for 42 years, and the rule of the country was based on Islamic Socialism and Gaddafi's philosophy of Islamic morals which was published in his famous '*Green Book*'. Anti-government rallies began in February 2011 which called for dissolution of the government and release of various political prisoners. Soon, the protests intensified and unrest spread to various important cities such as Benghazi and Tripoli, and the government started using lethal force to subdue the protestants.<sup>8</sup> Unlike the Tunisian and Egyptian governments, instead of stepping down, the Gaddafi regime resorted to violence and protest suppression in an attempt to maintain status quo.<sup>9</sup> The protestors soon took to arms and established a Transitional National Council (TNC).<sup>10</sup> The whole situation turned into a violent civil war with Gaddafi allegedly ordering for mass killings of protestors by way of live fire and

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<sup>5</sup> John J. Liolos, *Justice for Tyrants: ICC warrants for Gaddafi regime Crimes*, 35 Boston CILCLR 589, 591 (2012).

<sup>6</sup> Sarah Joseph, *Social Media, Political Change and Human Rights*, 35 B.C INT'L & COMP. L. REV. 145, 157, 163 (2012).

<sup>7</sup> *Id.*

<sup>8</sup> Human Rights Watch, *Libya: Commanders should face justice for killings* (22 February 2011).

<sup>9</sup> *Supra* note 6 at 162.

<sup>10</sup> Institute for Security Studies, *Peace and Security Council Report no 21* (April 2011).

airstrikes. The violent crackdown on part of the government resulted in a lot of death and destruction across the country and this forced the United Nations to intervene in the situation to help the protestors and civilians of the country.

There was huge pressure on the Libyan authorities on part of International and regional organisations such as the African Union, the Arab League and various offices of the United Nations. The UN Security Council released a statement which urged the Libyan governmental authorities to fulfil its responsibility of protecting its citizens.<sup>11</sup> The situation in Libya worsened, and the call for action to stop Libyan authorities from committing atrocities gained massive support in the international community. Pursuant to this, the UN Security Council unanimously chose to adopt Resolution 1970<sup>12</sup> acting under Chapter VII of the Charter. This resolution demanded an end to violence and authorized freezing assets of Libyan officials, an arms embargo and also restricted travel for high level Libyan leaders. Despite the condemnations from the international community and the implementation of this Resolution, the brutalities against the Libyan demonstrators did not stop. In this regard, the Regional Organisations such as the Organisation of Islamic Conference, Gulf Cooperation Council and the Arab League called for the establishment of a no-fly-zone in Libya.<sup>13</sup> This forced the UN to take even more stringent efforts towards this situation.

### **III. THE NATO MILITARY INTERVENTION**

Gaddafi held an upper hand in the civil war since he controlled the army and military resources of the country. The international community kept searching for alternate diplomatic or military responses, but they couldn't find any. In March, Qaddafi loyalists launched a very heavy assault on the rebels and the protestors which lead to a huge loss of life. This forced the United Nations to adopt Resolution 1973<sup>14</sup>. This resolution was passed with no opposition. It had ten votes in its favours and only five abstentions (Germany and the BRIC countries). Just like Resolution 1970, this move was also made under the mandate of Chapter VII, and the Security Council authorised the use of all necessary measures to stop the Gaddafi government from committing any more human rights violations. This means that according to this resolution, a license to use military pressure and force was granted to the international community to prevent attacks against civilian population. A no-fly zone was also enforced over Libya.

To enforce Resolution 1973, a coalition of states began aerial attacks (missile and airstrikes)

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<sup>11</sup> UNSC/10180, SC Press Statement on Libya (22 Feb 2011).

<sup>12</sup> UNSC Res 1970 (26 Feb 2011) UN Doc S/RES/1970.

<sup>13</sup> Geir Ulfstein, *The Legality of NATO Bombing in Libya* 62 INT'L COMP L.Q. 159, 161 (2013).

<sup>14</sup> UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973.

on Libyan government's air defence, strategic posts and other military targets.<sup>15</sup> By the end of the month, this operation had become an international military operation and was commanded over by NATO.<sup>16</sup> This operation helped to keep the citizens protected from attacks by Gaddafi and did everything that was stated by the resolution.

#### **IV. LEGALITY OF THE MILITARY INTERVENTION**

This part of the paper analyses the legality of the military intervention based on the mandate of the Resolution. This paper does not discuss whether NATO violated international humanitarian law, but only discusses the legality of the act in question in relation to the guidelines of UNSC Resolution 1973. For the purpose of this analysis, the military intervention by NATO will be divided into three parts; NATO's attack on Gaddafi forces which threatened rebels and citizens; NATO attacks during the alleged stalemate; and part three includes NATO forces helping the rebels in overthrowing the government.

In the first part of the attack, the NATO forces ruthlessly launched a number of airstrikes against Qaddafi's military infrastructure and command-control centres to weaken his army. They also did this to enforce the no-fly zone. The UNSC Resolution 1973 paragraph 4 stated that UN member states "take all necessary measures to protect civilians and civilian populated areas under threat of attack."<sup>17</sup> The phrase 'all necessary measures' implicates that the resolution gave NATO wide powers and discretion. However, it must be noted that paragraph 4 does not include deployment of a 'foreign occupation force'.<sup>18</sup> Paragraph 4 only provides for military measures which are taken in pursuance of protection of civilians, any military measure taken for any other goal will represent a very serious breach of Resolution 1973 and Article 2(4) of the UN Charter. On a close analysis of paragraph 4, it seems that the mandate only approves the protection of three objectives, which are expressly mentioned in the paragraph. These are protection of civilians, civilian populated areas, and Benghazi. The mandate, in no way, authorizes the NATO forces to take military measures to protect the entire geographical area of Libya or its entire population.

The Second part of the conflict was characterised by a stalemate between the two conflicting parties. It was a situation where the NATO forces felt that it was impossible to make any other move against the Libyan authorities. The Libyan authorities had adapted to the situation, and they started concealing their military equipment among civilian population and made it difficult

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<sup>15</sup> *Supra* note 13 at 161.

<sup>16</sup> NATO, *NATO and Libya: Operation Unified Protector* (2011).

<sup>17</sup> *Supra* note 14.

<sup>18</sup> *Supra* note 13 at 162.

for NATO to identify their assets. Gaddafi continued bombing the city and NATO couldn't prevent the bloodshed. There was an attempt to broker peace agreements between the rebels and Gaddafi, but these efforts bore no fruit.<sup>19</sup> In the following months, NATO took an extremely offensive approach and attacked a lot of complexes and command centres which were central to Gaddafi's military coordination and communication. This resulted in immense destruction and there was a huge debate whether this resulted in overstepping the mandate of Resolution 1973. Two members of the Security Council, Russia and China, disputed the interpretation of the Resolution by NATO and accused them of overstepping the mandate set forth by the Resolution.<sup>20</sup> The lawful aim of the military intervention was the protection of citizens and not for enforcing democracy, or overthrowing the regime.

Part three of the conflict is one of the most controversial aspects of this military intervention. It has already been mentioned that an analysis of the Resolution clearly shows that the aim and object of the intervention was to protect civilians and not overthrow the regime. This part of the conflict makes everything more complicated because the NATO forces started providing military and financial support to the rebels who were fighting against the rule of Gaddafi. NATO's airstrikes, superior military precision and knowledge helped the rebels in overthrowing Gaddafi forces from various cities. NATO along with the rebels crippled the military infrastructure of Libya. The mandate of the Resolution was limited, NATO was only meant to protect civilians and civilian areas which were under a threat of attack. The areas held by Gaddafi were obviously not under any threat of attack by him. On the contrary, when the rebels attacked the cities held by Gaddafi, the rebels were the ones who posed a threat to the civilians.

The purpose of Resolution 1973 was defensive, not offensive. NATO was meant to protect, not launch a full-fledged offensive against the government in support of the rebels. It is completely logical that NATO wanted to stop the Gaddafi regime from committing more acts of atrocities on innocent civilians, but providing air strikes and support to the rebels so that they could capture strong points held by Gaddafi was against the object of the Resolution and against the principle of prohibition of force under Article 2(4) of the UN Charter.

## **V. MILITARY INTERVENTION AND RESPONSIBILITY TO PROTECT**

The military intervention in Libya by NATO was the first case in the world where the Responsibility to Protect (R2P) doctrine was cited as the cause of a military intervention. This

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<sup>19</sup> NATO, press briefing on Libya (3 May 2011).

<sup>20</sup> *Supra* note 13 at 166.

part of the paper comments on the litmus test of the application of the R2P doctrine and states that the NATO overstepped the R2P doctrine for ulterior motives and interests.

The author would first like to clarify that the R2P is not a new name for Humanitarian Intervention. There is an inherent difference which exists between the two concepts. The doctrine of R2P is about protection of civilians, whereas, Humanitarian Intervention is the 'right of states to act coercively against others to stop atrocities'.<sup>21</sup> The principles of R2P state that military force and intervention should always be used as an extraordinary and last resort. The premise of an intervention on the basis of R2P should be based on preventing human atrocities and nothing else. Military intervention in a sovereign country can only be justified when all other remedies have been exhausted and there are reasonable grounds to believe that any lesser measure would not prove to be effective.<sup>22</sup>

The Just Cause principles state that military intervention can only be justified if it is done for the protection of civilians and nothing else.<sup>23</sup> It is acceptable that the population in Libya was under an objective threat by the government of Gaddafi, but a deeper analysis of the situation reveals that the reaction and use of force of NATO was neither legitimate, nor proportional. A widely quoted authority on international politics, Patrick Stewart, commented that this act of intervention represented selective application of the principles of R2P. He opined that there have been other grave humanitarian catastrophes such as 'Ivory coast, Yemen, Bahrain, Syria, Gaza'<sup>24</sup>. Even though the population in Libya was under threat, the fact that UN refused to intervene in the above-mentioned situations begs the question whether the intervention was propelled by any sort of a hidden agenda.

A speculation can be made that the ulterior motive behind the intervention was to secure active control of the Libyan oil assets and resources. Libya is extremely rich in natural resources such as oil and the western countries have always had disagreements with Gaddafi.<sup>25</sup>

This paper argues that the military intervention was out of its turn and other peaceful alternatives had not been exhausted. No facilities were established which would allow the Libyan people to flee the violence in their state, and no agreements were made with neighbouring countries to accommodate Libyan refugees.<sup>26</sup> There was no establishment of

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<sup>21</sup> Ramesh Thakur, *R2P after Libya and Syria: Engaging emerging powers*, 36 THE WASHINGTON QUARTERLY 61, 76 (2013).

<sup>22</sup> Mohammad Ibrahim Bukar, *The Litmus Test of R2P: An analysis of legality and legitimacy of military intervention in Libya*, 56 J.L POL'y & GLOBALIZATION 87 (2016).

<sup>23</sup> *Id.*

<sup>24</sup> Patrick Stewart, *Libya and the future of Humanitarian Intervention*, 26 FOREIGN AFFAIRS (2011).

<sup>25</sup> *Supra* note 22 at 91.

<sup>26</sup> *Id.*

direct humanitarian aid for the Libyan civilians, and no action has been taken regarding the frozen assets of Gaddafi, which could have been used to compensate the people affected by his violence. Instead of all these peaceful measures, the intervening forces directly resorted to extreme use of force. The situation in Libya worsened on a daily basis, but all peaceful measures had not been exhausted.

Reference to R2P was only given in the preamble of the Resolution. None of the operative paragraphs of the Resolution in question had mentioned the intervention to be in connection with R2P. There was also not much discussion regarding R2P in the UNSC before the military intervention.<sup>27</sup> The resolution only referred to the Libyan governments responsibility to protect its citizens, it did not talk about the duty of the international community to intervene if the government does not meet its duty. The authorisation of taking “all necessary measures” was only regarding the protection of civilians and not for the broader goal of overthrowing the government and taking care of all the people in Libya.<sup>28</sup>

NATO bombed the city of Sirte only for the reason that it was Gaddafi’s hometown and was perceived to be loyal to him. When NATO attacked Sirte, it was not an active battleground. Therefore, this act of NATO was neither necessary, nor protective.<sup>29</sup> In this way, NATO provided active military support to the rebels and attacked cities on their commands to help them overthrow the regime of Gaddafi. To pursue the doctrine of R2P, the legitimate aim of the intervening countries should to be neutralize the prevailing threat and not necessarily defeat the enemy.<sup>30</sup> Instead of concentrating on weakening the governments violent capability of destruction, NATO forces resorted to destroying the entirety of its armed forces, this is an issue that needs attention.

## **VI. POST – INTERVENTION**

The NATO and its allies took the full advantage of the R2P doctrine and overthrew the prevailing government of Gaddafi. They used their responsibility to protect, but what about their responsibility to improve? The NATO alliance destroyed the armed forces and all its infrastructure. The cities were demolished in the event of helping the rebels gain control. Once Gaddafi was killed, the UN and its forces left the region in turmoil. There were various factions

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<sup>27</sup> David Berman, *Intervention in Libya: Another nail in the coffin for Responsibility to Protect*, 14 INT’L COM. L. REV. 337 (2012).

<sup>28</sup> Jennifer Welsh, *Civilian Protection in Libya: Putting coercion and controversy back into R2P*, 25(3) Ethics and International Affairs, 255, 256 (2011).

<sup>29</sup> Heidarali Teimouri, *Responsibility to Protect and the International Military Intervention in Libya in International Law: What went wrong and what lessons could be learnt from it?*, 23 Journal of Conflict and Security Law 1, 7 (2018).

<sup>30</sup> *Id.*

which were fighting for political power, and eventually this resulted in another Civil War in the year 2014. It is not logical to overthrow a government and then expect the country to fend for itself where all its logistical, political and military apparatus has been destroyed. The UN and its forces have failed to maintain peace in the region after the killing of Gaddafi and they haven't taken efficient steps to restore the region.

## **VII. CONCLUSION**

The various issues that this paper highlights about the legality and the legitimacy of the NATO military intervention can only be resolved once the operative body of Resolution 1973 is critically analysed. The main objective of the resolution was for the protection of the civilians under threat by Gaddafi forces, the mandate of the resolution in no way covered an offensive attack on the Libyan authorities with the help of the rebels. The NATO forces effectively helped the rebels to overthrow the government and instituted a regime change, these acts are not in accordance with the principles of UN. This paper does not state that the act of protecting the civilians was illegal, the illegality stretched only to their act of supporting the rebels and helping them gain control of the government. The NATO intervention has not only created instability in Libya, but has created instability all over the region. The legality of this intervention can be questioned because it did not help the Libyans, humanitarian conditions have actually worsened in the country since 2011. The UN and NATO forces also lacked the transparency which a military intervention of this calibre should have had. Overstepping the mandate of the Resolution also had a huge negative impact on the credibility of the R2P doctrine which would make it difficult to use it in future human rights violations

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