After NATO’s Libya Intervention: Any Implication for International Law?

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Summary

In response to the ‘Arab Spring’ uprisings in Libya during February 2011, after the deployment of a multi-state coalition, NATO then executed military operations (the “Libya Operation”) to implement the United Nations Security Council’s (UNSC) Resolution 1973. But this NATO operation, or, rather, humanitarian intervention (“HI”) which was meant to protect the civilian population from gross human rights violations, also ended with the overthrow of the Gaddafi regime. Resulting in a regime change, the Libya Operation conflicted with a fundamental principle of international law, ‘non-intervention in a sovereign state.’ Inevitably, this situation fueled debates about the legality and legitimacy of the NATO operation for such an unauthorized outcome. This article tries to assess the content and nature of UNSCR 1973 with a view towards whether the operation was in conformity with the Resolution or whether it exceeded the authority given by UNSC 1973. Having compared Resolution 1973 and its implementation by NATO, it concludes that the actors, timing and declared purpose of the Libya Operation were in conformity with the character of the Resolution, except for the consequences of its implementation. In other words, NATO exceeded its authority and in this situation raised some implications for international law, especially on the rules governing the use of force. In the near future, it may be predicted that human rights will be the most valid cause for intervening and that the trend of diminishing state sovereignty in humanitarian matters will continue. The Libya Operation showed that the dynamics of the current international system and events have made certain human rights norms more binding. Thus, new operations may occur against non-democratic governments, especially in the Middle East. Lastly, it should be added that there is an urgent need to revise the UN Charter and the composition of the UNSC into a more legal and regulatory mode of decision-making in using force, particularly in HIs.

Key Words


Introduction

In March 2011, following the intervention of a multi-state coalition, the North Atlantic Treaty Organization (NATO) executed military operations in Libya to implement United Nations Security Council Resolution (UNSCR) 1973, on the grounds of protecting the civilian
population from gross and systematic human rights violations. The Libya Operation, authorized by the United Nations, ended with the overthrow of the Gaddafi regime. NATO’s Libya intervention fueled debates involving the concept of humanitarian intervention. Furthermore, the regime change in Libya resulting from the Libya Operation, spawned debates on whether this end should be considered as the ‘inherent’ outcome of UNSC Resolution 1973. Not surprisingly, therefore, many questioned the legality and legitimacy of the NATO operation for such an unauthorized outcome. The concerns that led to such discussions are obvious: if it is accepted that the UN Security Council has the power to decide which regimes countries should have, it is then necessary to reconsider the meaning of the concept of ‘sovereignty;’ one of the fundamental principles of international law, as well as the principle of ‘non-intervention’, which flows from the concept of sovereignty. By the same token, if the NATO operation that aimed at a regime change should be considered as being in conformity with international law, then again we need to reconsider whether the rules governing the ‘use of force’ in the UN Charter respond to the needs of our time.

This article aims to assess the content and nature of Resolution 1973 with a view to exploring whether it is possible to regard NATO’s Libya Operation as a legitimate and lawful exercise of the authority given by Resolution 1973. In connection with this aim, the article will also briefly assess what implications this intervention may have on international law, especially on the rules governing the use of force.

The Concept of Humanitarian Intervention and Rules of Using Force under the UN Charter Regime

Although the debate on HI has attracted scholarly attention since the 17th century, as reflected in the works of Hugo Grotius and Alberico Gentil, its first encounter with international politics corresponded to the Greek Revolution of the 19th century. The intervention of the United Kingdom, France and Russia in Greece in 1827 (and that of France in Syria in 1860) supposedly to prevent ‘massacres’ in these areas of the Ottoman Empire, are accepted as the first examples of humanitarian interventions. However, it is necessary to note

that in Turkish history books these interventions are solely perceived as pretexts to gain control over Christian parts of the Ottoman Empire. Indeed at first glance, it is easy to discern an oxymoron in using the words ‘humanitarian’ and ‘intervention’ in the same sentence. Also, it can be discerned that the Turkish national memory has images about humanitarian intervention similar to that of some African countries, like Libya.

Technically, HI can briefly be described as a military intervention in a state with the purpose of preventing widespread suffering or death among the inhabitants. According to a more extensive definition it is the threat or use of force across state borders by a state or group of states aimed at ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied. Additionally, it is generally accepted that HIs should be limited, proportional and short term actions realized by states or recognized international organizations and based on proven evidence of gross human rights abuses. Also, the primary goal of the intervention must be to protect the welfare and freedom of those in another state, rather than to secure some advantage to the intervening state or its citizens. Authorization is another important point. HIs can be defined as unilateral or collective. It is unilateral when the intervention is carried out by one or more states acting without Security Council authorization; collective intervention, on the other hand, is one carried out with the

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3 For example according to Enabulele, “states which had exploited Africa and had accounted for massive losses of lives for a half century, now became the guardians of the human rights of people of faraway lands and champions of the Humanitarian Intervention. ... The main motive of this change can be seen as a self-interest of the global powers in the age of neo-colonialism.” Enabulele, ibid, pp.416-417; and Badmus has parallel ideas in ibid, pp.17-20.
authorization of the United Nations.  

It can be concluded that, in defining HI, the principles of temporality, compulsivity in action and humanity in intent are generally agreed to be involved. On the other hand, the necessity of UN authorization, the identity of people who have been assaulted and must be protected, and the tools and types of intervention to be used are seemingly controversial issues. Since Libya will be discussed in this article, the concept of HI will be limited to the use of force authorized by the UNSC, as distinguished from non-forcible interventions, such as the threat or use of economic, diplomatic or other sanctions.  

Also it will be limited to situations protecting citizens who have a different ethnic or religious identity from the interveners. Nevertheless, HI is still one of the most controversial subjects of international law, not particularly because of the accepted definitions but because of some recent practices of states. This controversy has been basically nourished by two related dilemmas.

First, the sovereignty of the state intervened upon is being violated. Sovereignty has several meanings; we can define sovereignty simply as the legal independence of a state from all other states or international organs. As well as independence, the importance of sovereignty stems from its relationship to the equality of states, which represents the basic constitutional doctrine of the law of nations. As an alternate point of view, the term sovereignty has been commonly used in at least four different ways: First, domestic sovereignty refers to the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity. Second, interdependence sovereignty refers to the ability of public authorities to control trans-border movements such as the flow of information, ideas, goods and people. International legal sovereignty refers to the mutual recognition of states. And finally, Westphalian sovereignty refers to the exclusion of external actors from domestic authority structures within its territory. This principle is also known as ‘absolute sovereignty,’ which is consistent with

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10 For the opposite ideas see Rogers, ibid, p.736 and Holzgreve, ibid, pp.18-19.


territorial sovereignty.\textsuperscript{14}

These four meanings of sovereignty are embedded in a fundamental distinction between authority and control. “Authority” involves a mutually recognized right for an actor to engage in specific kinds of activities. According to Krasner, a loss of control over a period of time could lead to a loss of authority. And if a mutually accepted rule fails to control behavior, its authority might be rejected over time.\textsuperscript{15}

If we compare this classification with the perspective of HI, it can be concluded that external interventions directly violate the domestic sovereignty of a state by preventing it from exercising control over its country, and the Westphalian sovereignty of that state directly as an external authority. However, one can infer from this description that sovereignty is decisive in any approach to HI. For example, according to this view, if a state loses its authority and legitimacy we cannot acknowledge its sovereignty and thus HI will not contradict with the principle of the absolute sovereignty of states. The UN Charter system is a system of independent and equal states whether they are democratically governed or not. Article 2 of the Charter accordingly adopted the principle of the sovereign equality of all states. Also, the UN General Assembly has declared:

“No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State. ... Consequently, armed intervention and all other forms of interference against the personality of the State or against its political, economic and cultural elements are condemned.”\textsuperscript{16}

Accordingly, in the UN Charter system, every state has an inalienable right to choose its political system without interference in any form by another state. For example in the case of Kampuchea the UN General Assembly consistently called for immediate withdrawal of all foreign forces from Kampuchea, with reference to the principles of non-intervention and non-interference. \textsuperscript{17} However, since the end of the Cold War there has been some decay in the absolute sovereignty of nation states, especially in matters involving human rights and

\textsuperscript{14} Enabulele, ibid, p.409.
\textsuperscript{15} Krasner, ibid, pp.9-10.
\textsuperscript{16} UN General Assembly Resolution 2131 (XX), Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and The Protection of Their Independence and Sovereignty, 21 December 1965. Note: All of the documents and resolutions were quoted from UN Official Web Site <http://www.un.org/en/documents/>.
\textsuperscript{17} UN General Assembly Resolution 43/19, The Situation in Kampuchea, A/RES/43/19, 3 November 1988.
democracy, with the increasing influence of globalization, individualism, international trade and the emergence of a multi-polar system.

The second dilemma is the use of armed force, which is been strictly prohibited by the UN Charter. Article 2(4) of the Charter prohibits the threat or use of force against member states. There are only two exceptions: self-defense as described by Article 51 and actions, including collective operations, authorized by the Security Council in the framework of Chapter VII. When the UNSC determines ‘the existence of any threat to the peace, breach of the peace, or act of aggression’; and deems the measures to be taken as ‘necessary to maintain or restore international peace and security’ it can authorize intervention.\(^\text{18}\) So the Charter does not mention HI directly, but the gross abuse of human rights is constituted as one of the tripod requirements of Chapter VII.

It is mostly accepted that the UN Charter regime prohibits all unilateral use of force, including HI. The Charter is also replete with provisions prohibiting the use of force in the domestic affairs of states. However, in recent years there can be seen an ascending viewpoint that unilateral HI is legal, or at least, that a limited right to HI exists.\(^\text{19}\) According to this view, there are three arguments aimed at reconciling HI with the rules governing the use of force under the UN Charter regime. First, it is argued that Article 2(4) forbids using force only when it is directed against the territorial integrity or political independence of any state. So, unless HI results in territorial conquest or political subjugation, it is not prohibited by Article 2(4). Second, according to Article 1(3) one of the chief purposes of the United Nations is “to achieve international co-operation in … encouraging respect for human rights and for fundamental freedoms for all without distinction.” So it can be concluded that HIs are consistent with the purpose of the UN Charter, whether they are authorized or not. And lastly, with an expansive interpretation of Article 39 of the UN Charter regarding HI, the use of force in response to "any threat to the peace, breach of the peace or act of aggression" should be legal.\(^\text{20}\)

Actually, Article 55(c) explicitly states that “respect for, and observance of, human

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\(^{18}\) UN Charter, Chapter VII, Article 39 and 42.


\(^{20}\) Holzgrefe, ibid, pp. 37-41.
rights and fundamental freedoms” is to be promoted. But existent international human rights law does not establish clear obligations concerning HI on the parts of states. HI is neither prohibited nor obligatory. Therefore, there is an idea that international law should be modified so that it imposes clear obligations upon states to engage in HI.\(^{21}\) On the other hand, foreign intervention in domestic uprisings is prohibited without an explicit invitation from a recognized government seeking external help. Further, the non-intervention norm applies without consideration as to the ‘legitimacy’ of the revolt or rebellion. Customary international law does not accord to states a right to intervene in an internal opposition in another state. Even if a domestic insurrection leads to the installment of a new government, other states may refuse to recognize it.\(^{22}\)

**Current Debates about Humanitarian Intervention**

It cannot be said that the UN Charter readily authorizes interventions.\(^ {23}\) The most prominent examples of humanitarian military interventions during the Cold War era were the intervention of India into East Pakistan in 1971, Vietnam into Kampuchea in 1978 and Tanzania into Uganda in 1979. But all of these interveners justified their actions on humanitarian grounds and argued that their actions were legal according to UN Charter Article 51. However there has been seen some variations in HI since the demise of the Cold War, particularly between 1991 and 1994, including military interventions in Kosovo, East Timor, Somalia, Afghanistan and Iraq. All of these were in one way or another collective; the UNSC defined all humanitarian crises as ‘a threat to international peace and security’ and military actions were supported widely by the public even though no vital national interests were at stake. This makes a profound conceptual difference to the whole nature of forcible HI.\(^ {24}\) Of all these, NATO’s intervention in Kosovo during 1999 is the most discussed example of non-authorized HI in the debate about the legality and legitimacy of HI. Finally, for the first time, former UN Secretary-General Kofi Annan officially noted the conflict between the


concept of state sovereignty and the moral duty to protect populations at risk. 25 Afterwards, with the experience of Rwanda, Somalia, Bosnia and Kosovo, the UN General Assembly promoted an ad hoc commission 26 aiming to reconcile this conflict. This commission completed its study and propounded a final report which offers a notion named “Responsibility to Protect” (RtoP) to resolve the conflict.

The notion of RtoP, after being mentioned in a report in 2001, was officially endorsed by the UN Summit in 2005. 27 At the heart of the notion of RtoP lies the belief that, while sovereign states have a responsibility to protect their populations from avoidable human suffering, this responsibility must be borne by the broader international community if states are unable or unwilling to do so. 28 Ideally, government should exist for the common goods of people, and its aim is to secure an organized protection of its people and territory. So it is asserted that if a state intends to eradicate some of their own citizens, the legitimacy and sovereignty of this state’s government becomes doubtful because sovereignty is not an inherent right of states. Rather, it derives from individual rights. Accordingly the UN should intervene in this kind of violation to prevent the situation from developing into a threat to regional peace and security. Indeed, most civil wars provoke massacres, huge emigration and refugee problems and create safe havens for terrorist organizations. It should be added lastly that RtoP is an umbrella concept, embracing not just the “responsibility to react”, but the “responsibility to prevent” and the “responsibility to rebuild” as well. 29 Therefore, according to this notion, UN Resolutions are essential to carry out HI operations. But sometimes UN resolutions are not sufficient by themselves and can encounter some obstacles in their implementation.

There are two main problems about implementing UN resolutions in the context of HI. First, the size and limits of such operations are sometimes unclear and therefore member states may be unwilling to participate. Second, these kinds of operations sometimes result in heavy casualties among the participating members and a more insecure condition overall. Furthermore, participants sometimes find it difficult to persuade their citizens. For example,

26 International Commission on Intervention and State Sovereignty (ICISS) which was established by Canada in December 2001, available at <http://www.iciss.ca>.
27 UN World Summit Outcome Document 2005, UN Doc A/RES/60/1, 16 September 2005, paras 138-139.
in Darfur or in Rwanda (although 800,000 civilians were slaughtered) few states wanted to assist with such a costly and risky operation. Moreover, the states which do volunteer normally take into consideration some economic and political advantages of their own to be gained as well. Therefore, it is necessary to admit ‘ab initio’ that all participation by member states in HIs has some tacit political and economic aspects.

At this point we must emphasize another aspect of HI. Even if ‘being governed by law and a democratic regime’ can be accepted as a human right, it is important to distinguish so-called democratization operations from HI. Because there is another lively debate about whether the political rights of a procedural democracy are a basic or a derivative human right and whether the lack thereof is adequate justification for military intervention itself. For instance, in the 1986 case of the US intervening against the legal government of Nicaragua, the ICJ held against the US and pointed out that ‘non-intervention is a right of every sovereign state to conduct its affairs without outside interference’ even if the intention of the intervener is promoting democracy. Likewise, as shown by the case of East Timor in 1999, although the UN clearly promotes democracy, as well as human rights, it didn’t want to promote elections in the absence of adequate measures to help protect the civilian population. In a recent example, the UN imposed sanctions on Côte d'Ivoire in 2011 and on the incumbent president, Laurent Gbagbo, because of his crimes against humanity and his refusal to give up power to the UN-certified winner of the latest election. It can be inferred from these examples that human rights openly predominate over the democratic rights. In the case of Libya the rebellion was launched to end the 42 year long dictatorship of Gaddafi and this was achieved with the help of NATO. The Gaddafi regime was certainly a dictatorship

30 The link between democracy and human rights is captured in Article 21(3) of the Universal Declaration of Human Rights, which states: “The will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage.” Also, according to the UN Human Rights Council, democracy deficits and weak institutions are the main challenges to the effective realization of human rights. Further, according to some legal scholars an enforcable right to democratic governance has emerged in international law and thus non-democratic governments should not be recognized as legitimate by international community and non-defensive international military interventions aiming to establish democracy may be morally justifiable as humanitarian intervention. About this hypothesis of ‘democratic peace’ see Thomas M. Frank, “The Emerging Right to Democratic Governance”, American Journal of International Law, 67, 1973; Stefan Halper and Jonathan Clarke, ‘America Alone: Neo-Conservatives and The Global Order’, Cambridge University Press, Cambridge, 2004.


32 For more example about this subject see: Buchanan, ibid, p.265.

like Iraq under Saddam Hussein; but it would overstate the situation to say that gross violations of the human rights of the Libyan people had been observed during this long period of Gaddafi except during his last month. So it can be argued that all recent HIs also have aspects of democratization.

**Analyzing Libya Operation in the Context of UNSCR 1973**

Resulting in a regime change in Libya, this implementation of HI conflicted with two fundamental principles of international law: non-intervention and state sovereignty. But was the intervention a corollary of Resolution 1973 or a distortion of it?

In this part, Resolution 1973 and its implementation, namely the first assault of coalition members and Operation Unified Protector of NATO, will be examined comparatively in matters of timing, the actors, its purposes and implementation. These aspects have been chosen to provide a comparison between Resolution 1973 and its implementation. Then, in light of its findings this part will also discuss and assess the lawfulness and legitimacy of the overall operations.

**Course of Events and Conformity of Timing**

After a series of uprisings in different parts of the Middle East, known as the "Arab Spring", protests also sprang up in Libya in February 2011. The Government responded to these protests very fiercely and unrest characterized the whole country within ten days. Afterwards, the UN Human Rights Council emphasized that “gross and systematic human rights violations” had taken place in Libya, including “indiscriminate armed attacks against civilians, extrajudicial killings, arbitrary arrests, detention and torture of peaceful demonstrators”; 34 and the U.N. Security Council adopted Resolution 1970 on 26 February 2011, which imposed non-forceful sanctions such as an international arms embargo and financial sanctions. 35 Meanwhile, some of the Libyan rebels established the Transitional National Council (“TNC”) on February 27th to act as the political face of the rebellion and to fight against forces loyal to the Libyan Arabic Jamahiriya. But Libyan authorities responded to these events by using military aircraft and heavy weaponry against civilians, and the Council of the League of Arab States called on the UN Security Council to provide for the

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imposition of a no-fly zone.

Only a few days later, on 17th March 2011, the UNSC adopted Resolution 1973, which stressed that measures under UN Charter Article 41 had not sufficed, that the situation had become worse and developed into a regional threat to peace and security. In this way, within two days, first France, and then the United Kingdom and the USA carried out air strikes. So it can be seen that, including the first sudden attack by France, the timing of the operation is in conformity with the resolution. At the same time we can observe the legal process in the use of force under the UN Charter; first as the precautionary measures of Article 6, then non-military sanctions and the limited use of military force and only lastly decisive use of force. However, we must also stress that the period of limited use of force and deterrence was too short in comparison with former collective operations.

**Actors**

Resolution 1973 authorized “all members for acting nationally or through regional organizations or arrangements”.36 Thus, a leading role in the initial air strikes was assumed by France and the entire operation was later handed over to NATO. At the same time, we saw a broad participation which has expanded to 16 members of NATO and all of the members of the Arab Union. For example, Belgium, Canada, Denmark, France, Italy, the Netherlands, Norway, Spain, and the United Kingdom all deployed fighter planes to the region. Turkey and Greece committed naval assets to enforce the arms embargo. But, France’s actions merit special attention, as France has been the most prominent actor in the Libya Case.

On March 10th 2011, France became the first country to recognize the Libyan Transitional National Council “as the legitimate representative of the Libyan people.” On March 19th French President Nicholas Sarkozy convened an emergency meeting about Libya with allied and Arab leaders in Paris. But even as the meeting was still under way, French planes began to attack Gaddafi forces in Benghazi. Therefore, this attack was reported as a ‘fait accompli’, to pressure the attendees to agree about intervention and was criticized by some of the participants.37 It was also reported that, in this meeting, while French officials had insisted on striking ground forces that potentially threatened civilian areas, their Turkish

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countering opponents vocally opposed any targeting of ground forces. Moreover it was reported in the international press that France had provided weapons to rebel forces. In this regard, it can be asserted that France had already lost its neutrality and legitimacy as an actor. But generally, weather the initial air strike launched by France had a political motive or not, the actors should be accepted as behaving legally and in conformity with UNSCR 1973.

**Purpose**

Within a week after passage of UNSCR 1973, both President Sarkozy and British Prime Minister David Cameron had publicly called for Gaddafi to hand over power and instructed their military staffs to begin working on plans for a no-fly zone over Libya. It can also be inferred from the Congressional Reports of the U.S. that their government planned to dislodge Gaddafi by supporting opposition forces, and that they were aware of the possibility of regime change, even if it might have unpredictable consequences for the long term stability of the country and the region.

On March 27, after just over a week of the coalition air operation under U.S. command, NATO took over command and control of ongoing military operations in Libya. NATO Secretary General Anders Fogh Rasmussen stressed the goal of the Operation Unified Protector: “to protect civilians and civilian-populated areas under threat of attack from the Gaddafi regime.” This entailed, first, enforcing a UN-mandated arms embargo, then enforcing a no-fly zone over Libyan territory, and also protecting civilians and civilian population areas from being attacked by Gaddafi forces. Rasmussen also emphasized several times that neither Gaddafi nor any other individual was being targeted. So it can be concluded that the purpose of operations, as far as declared, is quite consonant with the aim of UNSCR 1973. On the other side, though UNSCR 1973 clearly called for an immediate cease-fire and dialogue, neither Gaddafi in April nor Coalition Forces in August accepted mutual ceasefire offers of the other. So it can be inferred from the operation design that the coalition was aiming to overthrow the Gaddafi government from the beginning of the operation.

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38 Gertler and Belkin, ibid., p.16.
39 Gertler and Belkin, ibid., p.15.
Implementing UNSCR 1973

Resolution 1973 authorized taking “all necessary measures to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya”. The wording “all necessary measures” is commonly accepted as a standard phrase the Security Council uses to authorize states to act militarily. Based on this phrase, UNSCR 1973 can be accepted as the legal basis of the operation.

On the first day of the operation it was reported that Benghazi, Ajdabiya, Misrata and Zawiya had been identified as safe areas for civilians, and the Libyan Arab Jamahiriya Army was asked to pull back from these cities. Also, as cited above, the arms embargo and no-fly zone was expanded in conformity with the resolution. However, on March 27, Rasmussen announced that NATO would expand the scope of its mission to include air strikes on ground forces ‘loyal to’ Gaddafi. This was the most controversial aspect of the NATO mission. Since rules of engagement for the operation were not made publicly available, some participating governments prohibited their air forces from participating in any attacks on ground forces. On the other hand, air forces of the Coalition destroyed Libya’s air defense systems, its ground based armored vehicles and helicopter forces, all of which had the potential to attack civilians in the first week. So, after the first week of the operation, NATO acted as a partner of the TNC and considered the whole of Gaddafi’s loyal security forces as potential threat. In the end, the loyal Gaddafi forces were gradually weakened by NATO and finally Gaddafi was captured and killed by TNC Forces on 20th October 2011.

Discussions and Assessment

In the light of this comparative study it can be assessed that the actors, timing and declared purpose of the operations were in conformity with the character of UNSC 1973, except for the ultimate consequences of the implementation. Because it is understood that the

43 Gertler and Belkin, ibid., pp.9-11.
44 Gertler and Belkin, ibid., p.17.
45 Gertler and Belkin, ibid., pp. 9-11.
46 It should be noted that, the reference to “the protection of populated areas” could be interpreted by the Coalition and NATO as an authorization to attack Libyan security forces not directly engaged in attacks on civilians, even though they were far from the battlefront. Schmitt, ibid., p.56.
general plan was simply to support and protect rebel forces, and to exterminate those of Gaddafi. But, as stated before, the main objective was supposed to be saving innocent civilians. Hence it would have been more appropriate to focus on the non-combatant civilian population. So, it can be asserted that although the operations against the Gaddafi regime started lawfully in line with UNSCR 1973, they did not stay within it and were not in conformity with the resolution. By the same token, the TNC was accepted as the legal representative of the Libyan people by coalition forces and by NATO as well. But actually the TNC can be also seen as a non-state actor during the operation. Thus media often used the term ‘civil war’ in defining the situation in Libya. In the opinion of some, NATO’s direct support of the TNC in an internal armed conflict is reproachable.

The main reason for this situation is that authority for decision making was abandoned to the sole initiative of military specialists during the operation. Commanders in the battlefield normally give priority to the survival of their own forces and try to obtain their objectives in the shortest possible way. To a commander in a battlefield, ‘assaulting the most imminent threat’ is only a tactical necessity. To illustrate this, it is interesting to see that Ambassador Rice explained the U.S. vote in favor of Resolution 1973 by stating that the Security Council, “has responded to the Libyan people’s cry for help with the purpose of protecting innocent civilians.” while Air Force Chief of Staff General Norton Schwartz said “U.S. forces have to first neutralize Libyan air and anti-aircraft sites” on the same day, March 17, 2011. On the other hand, it must be admitted that UNSCR 1973 clearly prohibited any land operations and achieving the Libya Operation’s objective without any land operation was a difficult question. But, at least, the rules of engagements for these kinds of operations should be propounded in depth.

Another reason for NATO’s one-sided attitude may have been to keep civilian causalities at minimum level. However, media and independent human rights observers reported some abuses and human rights violations committed by rebel forces against neutral civilians. Also, it was reported in the international press in November 2011 that UN

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48 Gertler and Belkin, ibid., p.3.
49 UNSC stated “to take all necessary measures … while excluding a foreign occupation force of any form on any part of Libyan territory.” This is also in fully conformity with the RtoP Concept.
50 For examples of Gaddafi forces and anti-Gaddafi fighters who involved in torture and killings and civil casualties caused by NATO, see Report of Physicians for Human Rights, Witness to War Crimes: Evidence from
Secretary General Ban Ki Moon reported that some seven thousand people, including mostly members of pro-Gaddafi Forces, had been exposed to torture in Libyan prisons. Yet the aim of the operation was to prevent the murdering of innocents, not to replace the old regime with another also employing torture.

Consequently, in the beginning part of the resolution “the responsibility of Libyan Authorities to protect its people” is clearly mentioned two times and ‘violation of human rights’ three times. Therefore it is easy to connect the basis of UNSCR 1973 with the RtoP concept. But no sign about ‘uncompromising attitudes of the Libyan Government’, right of self-determination, democracy, or any other phrase implying a shift in the former regime of Libya can be detected. On the contrary, the resolution reaffirmed “its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya,” and its intention to “keep the actions of the Libyan authorities under continuous review” to reconsider the measures imposed by resolution 1973. So it can be established that a regime change was not incorporated in the resolution. To put it differently, it is possible to argue that the aim that the Libya Operation seems to have had was not in conformity with the reasons and content of the resolution itself. Thus it is safe to predict that such an excessive use of power will be consequential not only for the future implications of HIIs, but also on the concepts of the use of force, state sovereignty and the principle of non-intervention.

What Implications for International Law

First of all, it can be predicted that the trend of diminishing state sovereignty in humanitarian matters will continue, as it concerns the security of the individual as against that of the state. The Libya Case showed once more that despite the fact that the UN Charter stresses the importance of ‘non-interference in the internal affairs’ and ‘non-use of force in international relations’ principles, the dynamics of the current international system and recent events have made human rights norms more binding whether or not states have consented. As well as waxing neo-liberalism, globalization and technological innovations in communications are indirectly supporting this trend. From the increasing coverage of events

by international television and the internet, people everywhere can see images of gross human violations which were commonplace in internal crises but could not be seen three decades ago. Thus, people now perceive these evils not as confined to far away lands but as an imminent danger near to home and therefore give HI a little precedence over the principle of state sovereignty.

By the same token, it can also be predicted as well that new operations will occur involving non-democratic governments, especially in the Middle East. For example, recently the international community has been debating the situation and human rights abuses in Syria. But this time, the members of the UNSC are stepping very painstakingly, and, paradoxically, this situation has been causing more civilian causalities. Above all it should be remembered that NATO’s Libya Operation succeeded in changing the regime of a country, but did not succeed in establishing security and stability in the region completely. So it is important to implement the “responsibility to rebuild” aspect of RtoP in possible later cases.

Finally, as a result of the passing of time, changes in technology and globalization, it can be argued that UN Charter Regime is today out-dated and cannot respond to the needs of the international community. In this context it can bluntly be held that the international community has two options: first, it could be asserted that the UN Charter should be renegotiated or be abandoned at least partly or else should be interpreted towards state practices, especially those of major states, as the ‘guiding principles’. The reader can find a certain resemblance between this approach and the concept of ‘the living law’, which reflects the Anglo Saxon common law tradition that law has a living and evolving structure in line with social requirements. So a rule is considered valid and effective only when it is actually being obeyed and implemented as the norm. Furthermore, the interpretation of rules and the practices of major states may change according to their national interests, the balance of power and the conditions of the international system. It may also be asserted that, with respect to recent cases of HI, states have been reluctant to justify their actions in legal terms, for the reason that their arguments might be used by other states to justify their actions and a precedent for the future. So this option can lead to major powers using international law as a

tool of hegemony and an ‘open door’ to politically motivated interventions under the pretext of protecting human rights.

Second, it has been asserted that there is an urgent need to change the UN Charter and the composition of the UNSC towards a more legal and regulatory mode of decision-making; to prevent challenges to its legitimacy and waning role in HIs. This implication is simply very near the reformist approach. Recently, this approach has entailed enlarging the Security Council, changing its structure and decision making process, and also establishing new collective mechanisms to protect human rights and respond to crimes against humanity. Moreover, this approach is seen as beneficial in reducing the risk of any abuses if it clearly highlights the definable procedures and threshold for intervention by the global community.

Apart from these topics, after the Libya Operation fortuitously caused a regime change in a sovereign country, one can ask a question: what if UNSCR 1973 really implied a regime change, would it be fair? Does the UN have a right to qualify and choose the right regimes of countries which were set by their own people? If the answer is yes, then it evokes the Forcible Democratization Concept, which has come to the fore with recent debates on the ‘Bush Doctrine’. Actually, it is hard to answer these questions, because there is no consensus about the perfect model or an ideal description of democracy. Sometimes the UNSC’s own members, such as Russia and China, are criticized for their understanding of democracy. Different states have quite different cultures of democracy. Anyway, the Libya Case or rather the whole Arab Spring has demonstrated that it is not possible to restore a well-established democratic regime in a country solely via intervention or external support in an internal armed conflict. It cannot be said that every democratic government equally respects the human rights of its citizens. Therefore, changing the regime of a country to a more democratic one or establishing a democratic system should not be the duty of the UN or any other developed country. Even if parliamentary democracy can be accepted as the most modern system, all nations have a natural process of evolution to achieve this end and accelerating this process is not useful in every case.

54 It is also referred in the terms of 'a la carte multilateralism' and ‘exceptionalism’ in international relations. According to this approach for example USA is the only superpower of the current system and has a duty of assisting to non-developed countries with providing a peaceful, secure and stable international order. But as an architect of this system and its uniqueness USA must have some exceptional privileges such as right to act in a particular manner in changeable attitudes. Also rules designed by international community do not always bind USA; it can choose and pick the beneficial ones regarding its national interests.

Conclusion

Since it was authorized by the UNSC and in conformity with UNSCR 1973, the Libya Operation can be accepted as a collective HI even though it was not clearly mentioned in the text. The grounds for not mentioning a military operation directly in the UNSC resolution, and NATO’s not participating in the beginning of the operation, can be interpreted as a tactic to bypass any veto possibilities in the UNSC. The Libya uprising resulted with a victory of the rebels, a new government and probably a new regime; but this situation was achieved with the help of the international community in an unauthorized way, not by a solely inner endeavor of the Libyan people. But what is more to the point, the Libya Operation showed that the existing written international law governing the use of force is no longer valid regarding any violations of human rights. In other words, the practice of states overrode the rules of international law though UNSCR 1973 was perfectly in conformity with both the written and customary international law. So it can be concluded at least that the Libya Case supported the current arguments about the ‘hegemonic international law’ issue. In addition to this, it can be said that in the near future human rights will be the most valid cause to intervene in small countries.

As a consequence of these implications of the Libya Case, there are two related choices. First, the UN Charter should be renegotiated or reinterpreted and the practices of states should be the guiding principles for using force in HIs. The other choice is to revise the UN Charter and composition of the UNSC into a more legal and regulatory mode of decision-making for using force, particularly in HIs. Since the first choice could make the current international system more chaotic, the better option is in favor of supporting the latter which could be a more convenient way to observe generally accepted principles and consensus. Actually the UN Charter, as a production of the winners of the 2nd World War, today causes some misapplications and abuses by developed countries with strained interpretations and leads to debates about the legitimacy of the UN in the current international system. In this way, a more legal and legitimate UN could be provided and the concept of HI will be prevented from being used as an instrument of hegemony.

In this context, as shown by the Libya Case, the RtoP concept is useful but not sufficient in ending debates on the subject of sovereignty versus human rights. The HI concept should be enacted by explicitly setting out its principles and conditions in the UN Charter and unilateral interventions should be forbidden. Also, a wider recognition of the International
Criminal Court (ICC) may assist to fill this gap, and conditions reported by the ICC; namely, genocide, war crimes, crimes against humanity and gross violations of human rights may give rise to a right to collective intervention.

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July 2011 – July 2013

July 28, 2011: Rebel leader Abdul Fatah Younis is assassinated.  

August 21, 2011: Rebel fighters enter Tripoli.  

August 26, 2011: Rebels move their government to Tripoli.  

September 16, 2011: Rebels advance into Sirte, Gaddafi’s hometown and his last remaining stronghold.  

October 20, 2011: Gaddafi is killed after being captured by rebel forces. Sirte falls to rebels.  

October 27, 2011: In a step of reconciliation, NTC vows to prosecute Gaddafi’s killer.  

October 31, 2011: NATO officially ends its military operations in Libya, labeling the mission a success.  


February 10, 2012: Libya expels the Syrian ambassador in Tripoli, in protest of the Assad regime’s crackdown on demonstrators.  

March 7, 2012: Eastern Libya demands a measure of political autonomy, specifically with regards to budgetary, police and legal control issues.  

April 10, 2012: A bomb is thrown at a convoy in Benghazi carrying the head of the UN mission to Libya. The bomb explodes, but no one is injured.  

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May 2, 2012: Libya removes a ban on forming political parties based on religion, tribe, or ethnicity.67

May 8, 2012: About 200 former rebels attack the residence of the Prime Minister in Tripoli. The attack is easily repulsed, though one guard dies.68

May 22, 2012: A rocket-propelled grenade hit the offices of the Red Cross in Benghazi, leaving a hole in the side of the building. The building was empty at the time of the attack.69

June 4, 2012: Former Libyan intelligence chief Abuzed Omar Dorda is charged with mobilizing security forces to fire on demonstrators. Dorda is considered to have been a part of Gaddafi’s inner circle.70

June 4, 2012: 24 men from Ukraine, Belarus, and Russia are imprisoned after being accused of being mercenaries for Gaddafi during the Civil War. They claim that they are oil workers.71

June 4, 2012: Libyan government forces easily retake the airport in Tripoli after a tribal militia had briefly seized it.72

June 6, 2012: A bomb explodes outside the U.S. consulate in Benghazi. No one is injured, though there was slight damage to the building.73

June 10, 2012: Thirteen people are killed in clashed between the Libyan military and tribal militias in southeast Libya.74

June 11, 2012: Two Libyan members of AQIM are sentenced to 20 years in prison for the murder of two army officers.75


June 11, 2012: The British ambassador to Libya’s convoy is hit by rocket-propelled grenades in Benghazi. Two officers are injured.76

June 12, 2012: One person is wounded in a bomb attack on the Red Cross office in Misrata.77

June 12, 2012: Two militias that had been on opposite sides of the Civil War, fought south of Tripoli, resulting in two deaths.78

June 18, 2012: Gunmen storm the Tunisian consulate in Benghazi and hold it until Libyan forces retake it without a fight. No one is injured.79

June 26, 2012: The Tunisian consulate in Tripoli is damaged by a bomb attack. No one is injured.80

June 27, 2012: A militia blocks a major highway in Libya, cutting off access to one of its main oil refineries. The group is demanding more political representation.81

July 7, 2012: Libya holds its first elections in the post-Gaddafi era. A secular coalition (National Forces Alliance) led by Mahmoud Jibril wins the most seats by a large margin.82

July 16, 2012: Gunmen in Tripoli kidnap the president of Libya’s 2012 Olympic Committee. He is released on the 22nd.83

July 30, 2012: The convoy of a Libyan general who had been assigned to form a national army, is attacked in Benghazi. He is not injured.84

August 8, 2012: Power in Libya transfers from the National Transition Council to the democratically elected government chosen on July 7.85

79 “Gunmen storm Tunisian consulate in Libya’s Benghazi,” AFP, 18 June 2012, http://www.google.com/hostednews/afp/article/ALeqM5jAZwCkrE4s_UPJszwuZST-DYKYZw?docId=CNG.3b514d3dba56e52a43dabe1d0a85b243.d1
August 18, 2012: Three car bombs explode near several Libyan government buildings in Tripoli. Two are killed, and three are wounded.86

August 26, 2012: Armed militias bulldozed a Sufi mosque in Tripoli in the middle of the day, apparently without any interference from the police.87

August 29, 2012: Islamists attack a Turkish school in Tripoli, burning books and destroying graves in a nearby cemetery.88

September 11, 2012: U.S. Ambassador J. Christopher Stevens and three other Americans are killed at the U.S. diplomatic mission in Benghazi when Islamist militias stormed the building.89

September 21, 2012: A mob of Libyans protesting the attack on the American Consulate in Benghazi ten days earlier overrun the headquarters of Ansar al-Sharia without a shot being fired.90

September 23, 2012: The Libyan government comes to an agreement with militia leaders to put all militias under the control of the Libyan military or disband them.91

October 13, 2012: A car bomb in Benghazi explodes without killing anyone. The target is a police colonel who had remained loyal to Gaddafi, but kept his job after the regime fell.92

October 21, 2012: 22 people are killed and about 200 injured in clashes between pro-government forces and militias in the town of Bani Walid, a former Gaddafi stronghold.93

October 30, 2012: Demonstrators protesting a vote on a new government, storm to Libyan assembly building in Tripoli, derailing the vote.94

November 4, 2012: Two militias engage in a twelve-hour gun battle on the streets of Tripoli, firing guns and rocket propelled grenades at each other until the police stopped them.95

November 21, 2012: The head of the Benghazi Security Directorate, Faraj Mohammed Idris Drissi, is assassinated in a drive-by shooting in front of his house.  

December 17, 2012: Libya announces that it is closing its borders with Niger, Chad, Sudan, and Algeria because the security situation in the south of the country has deteriorated so much.  

January 19, 2013: Libyan Defense Minister survives an assassination attempt in Tobruk, which he later blames on a former deputy.  

February 11, 2013: Libya shuts its borders with Egypt and Tunisia in the run-up to the two-year anniversary of the beginning of the revolution that toppled Colonel Gaddafi.  

March 6, 2013: Mohammed Magarief, the speaker of the General National Congress, was shot at, in Tripoli by a mob demanding that former officials associated of Colonel Gaddafi be banned from holding positions in the new government. No one was injured.  

April 4, 2013: Ten armed men force their way into a police station in Tripoli and free three prisoners held there.  

April 23, 2013: A car bomb explodes outside of the French Embassy in Tripoli, injuring two guards.  

April 30, 2013: Armed men surround Libya’s justice ministry and demand that former aides of Colonel Gaddafi be banned from holding senior government positions.  

May 12, 2013: The protests that started in late April come to an end when a deal is struck with the former rebels, when a cabinet shuffle is promised.  

May 12, 2013: Two Benghazi police stations are bombed in the early morning. Another is torched three days later.

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May 13, 2013: 17 people are killed and 30 injured in a massive blast outside a Benghazi hospital. It is unclear if the blast was an intentional attack.  

May 15, 2013: Protestors force the closure of the Zueitina oil refinery in Eastern Libya. 20% of Libya’s oil flows through this refinery.  

May 29, 2013: One Libyan soldier is killed and three others wounded when gunmen attacked their patrol in Benghazi.  

June 9, 2013: Clashes in Libya between militias and protesters kill 31 people. The protests were over the continued independence of militias from security forces in Benghazi.  

June 15, 2013: Six Libyan soldiers were killed and five wounded in a clash with protesters in Benghazi.  

June 16, 2013: A judge was shot to death in Derna, Libya by gunmen about a week after the court there had reopened for the first time after the 2011 revolution.  

June 27, 2013: After clashes between militia groups in Tripoli, the Defense Minister of Libya resigns.  

July 7, 2013: Libyan protesters call for the disbandment of militia groups that have remained a factor in the country since the end of the war in 2011.  

July 10, 2013: Libyan government takes back the ministry of the interior building that was taken by militant forces.  

July 16, 2013: Armed protestors stormed Zueitina, to force workers to stop oil production.  

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July 25, 2013: Unknown assailants shot a rocket-propelled grenade at the United Arab Emirates embassy in Tripoli.\(^{117}\)

July 26, 2013: An unknown gunman in Benghazi killed a prominent Libyan political activist.\(^{118}\)

July 27, 2013: More than a thousand inmates escaped al-Kweifiya prison Benghazi\(^{119}\)

July 28, 2013: Three explosions went off in Benghazi, “in what appeared to be attacks on judicial institutions.”\(^{120}\)

July 29, 2013: An Islamist party office in Tripoli was attacked.\(^{121}\)

July 30, 2013: A car filled with bombs was parked outside a luxury hotel in Tripoli, but was dismantled by Libyan security forces.\(^{122}\)

August 1, 2013: Ahmed Ibrahim a former minister was sentenced to death for inciting violence against protestors.\(^{123}\)

August 2, 2013: Five people were wounded when a bomb exploded outside a police office in Benghazi\(^{124}\)

August 3, 2013: Awad al-Barasi, Libya’s deputy prime minister, resigned because he was not given enough powers to carry out his duties.\(^{125}\)

August 5, 2013: The government of Zintan, the Libyan federal government and the International Criminal Court are arguing over who will charge Saif al-Islam Gaddafi.\(^{126}\)


August 6, 2013: The United States has filed criminal charges on those responsible for the attack on the American Embassy in Benghazi.127

August 8, 2013: Libya's oil output is at its lowest levels since the 2011 civil war, serious affecting the economy.128

August 8, 2013: Human Rights Watch said that Libya has no functioning justice system.129

August 8, 2013: At least 51 people have been assassinated in Benghazi and Derna since the end of the 2011 civil war.130

August 12, 2013: Strikes by Libyan oil workers hit new oil factories

August 13, 2013: Berbers forced their way into the Tripoli parliament building, pressing for more rights.131

August 13, 2013: Benghazi gunmen kill Khawlija al-Amami, the third journalist to be killed in the last four days.132

August 16, 2013: Libya’s Prime Minister, Ali Zeidan, has threatened to use force to prevent those who were striking from selling the oil illegally133

August 17, 2013: A bomb exploded at the Egyptian consulate in Benghazi.134

August 18, 2013: Libya's Interior Minister, Mohammed Khalifa al-Sheikh, resigned in protest of the perceived interference by the prime minister and parliament”.135

August 18, 2013: Libyan officials estimate that the country lost $1.6 billion in oil revenues in just the past month, because of the ongoing oil worker strike.136

August 19, 2013: The Marsa al Hariga port resumed full operations after the workers stopped their strike.\textsuperscript{137}

August 19, 2013: The Libyan government agreed to open a third border crossing between Libya and Tunisia.\textsuperscript{138}

August 19, 2013: The Libyan government threatens military action to end the oil workers strike.\textsuperscript{139}

August 20, 2013: Libya’s military clash with striking oil workers who were attempting to sell the oil themselves at the Zueitina oil port.\textsuperscript{140}

August 20, 2013: Libya's navy stopped a tanker from "illegally entering" an Al-Sedra oil terminal.\textsuperscript{141}

August 20, 2013: Libya prepared to reopen some oil ports after seizing control back from the workers on strike.\textsuperscript{142}

August 21, 2013: EU Ambassador Nataliya Apostolova vehicle was attacked.\textsuperscript{143}

August 21, 2013: Libya’s state-run National Oil Corp. is no longer able to produce enough oil to meet its contracts.\textsuperscript{144}

August 23, 2013: A Libyan army colonel was killed in a drive-by shooting after leaving a Mosque.\textsuperscript{145}

August 26, 2013: Libya warned that it would attack and destroy any tanker trying to illegally exporting oil.\textsuperscript{146}

August 26, 2013: Oil exports from Marsa al Brega will begin after the military removed protestors from the oil port.\textsuperscript{147}

\textsuperscript{137} “Libya says Marsa al Hariga oil port resumes full operations,” \textit{Reuters}, 19 August 2013, \url{http://www.reuters.com/article/2013/08/19/wh-libya-oil-idUSL6N0GK1EC20130819}.

\textsuperscript{138} “Libya Approves Decision of Setting Up New Border Crossing Point With Tunisia,” \textit{All Africa}, 19 August 2013, \url{http://allafrica.com/stories/201308192032.html}.

\textsuperscript{139} Essam Mohamed, “Libya Vows to Protect Oil Production,” \textit{All Africa}, 19 August 2013, \url{http://allafrica.com/stories/201308200309.html}.

\textsuperscript{140} “Libya’s struggle with oil workers heats up,” \textit{Reuters}, 20 August 2013, \url{http://www.reuters.com/article/2013/08/20/libya-oil-idUSL6N0GL19Q20130820}.

\textsuperscript{141} “Libya navy stops tanker entering oil terminal,” \textit{Fox News}, 20 August 2013, \url{http://www.foxnews.com/world/2013/08/20/libya-navy-stops-tanker-entering-oil-terminal/}.


\textsuperscript{146} “Libya warns will destroy tankers illegally exporting oil,” \textit{Reuters}, 26 August 2013, \url{http://www.reuters.com/article/2013/08/26/libya-oil-tanker-idUSL6N0GRI620130826}. 
August 27, 2013: Security officials at Libya’s Ruwaimi prison thwarted an attempt to break out some of the prisoners.148

August 27, 2013: An armed group shut Libya’s largest western oil port after an attack on the pipeline.149

September 3, 2013: Armed groups are blocking oil fields and terminals choking the output to 1/10th of normal level and threatening the economy.150

September 5, 2013: Prime Minister Ali Zeidan said his patience was coming to an end with those who were still holding some of the country’s oil ports.151

September 11, 2013: The Ministry of Foreign Affairs was partially destroyed by a car bomb.152

September 11, 2013: The Libyan government issued arrest warrants for those who were leading the strike at the oil ports.153

September 16, 2013: Two unsuccessful car bombs fail to detonate in Benghazi.154

September 16, 2013: A report for the Security Council from the UN’s mission in Libya stated that “Targeted political assassinations, criminal activity and attacks and threats against the diplomatic community continue to plague the country, including Tripoli.”155

September 17, 2013: Imraja El-Uraibi, of the Benghazi Criminal Investigation Department was killed by a car bomb.156

September 17, 2013: Libya faces terrorism that has come from other counties, “and now it is trying to find a stronghold in Libya.”157

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