

Libya, Resolution 1973 and the Responsibility to Protect (R2P)

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Abstract *This study charts the political, cultural and economic foundations of two inter-governmental bodies intended to emerge in the Black Sea region: the first, the Black Sea Union (BSU) was an idea developed by Ukrainian geopolitical specialist Yuriy Lypa before World War II. The second is the current Organisation of the Black Sea Economic Cooperation (BSEC) launched in 1992. By comparing these bodies, this research pursues three key goals: first, it traces the succession of ideas between the eras of the BSU and the BSEC and shows the existence of a specifically interwar mode of geopolitical thinking. Second, it highlights and explains the differences between the BSU's geopolitical objectives and their actual implementation in the BSEC. Finally, this work assesses current Ukrainian policies and perspectives in the Black Sea region.*

Keywords: Arab Spring, Libya, Gaddafi, Responsibility to Protect, United Nations Security Council, Resolution 1973, Just War Theory

Introduction: The Context behind UNSC Resolution 1973

The Arab Spring protests which commenced in Tunisia (2010), spread to Egypt (2010/1) and ultimately erupted in Libya (15 February 2011) have produced wide-scale impacts on the North African sub-region of the Middle East. Whether referring to the coup and counter-coup in Egypt, the recent spate of terrorist activities in Tunisia or Libya's propulsion into *Daesh's* clutches, it is clear that strong socio-political forces are converging to reshape those Arab Spring states. This work focuses on Libya since it is the only of the North African states to have

experienced a direct foreign military intervention (re: NATO) in reaction to mounting street violence. The main point of this work is to demonstrate that the manner in which UNSC Resolution 1973 was implemented and what it sought to achieve have done more to challenge both the very principle of the R2P approach and the essence of Libya's political and social harmony.

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Backgrounder

Libya's uprising began peacefully – as a reform movement – and only later turned violent in response to the Gaddafi regime, which began a campaign of violence against members of Libya's civil society.¹ As a result of the harsh crackdown, alienation and disillusionment rippled through Libya's armed forces and prodded many officers – senior and junior – to defect to the (now) pseudo-militia opposition and support the establishment of the country's *Interim Transitional National Council*. The initial uprising rapidly escalated into a full-fledged civil war which brought disparate tribal units together for the singular objective of ousting Gaddafi. But Gaddafi was unfazed and promptly declared war on the opposition and ordered the general call up and deployment of his special forces to the areas around Benghazi. By March (2011), Gaddafi's counter-offensive had gathered steam and regime loyalists were back in control of much of Libya. It seemed likely that the opposition would be overwhelmed, and subdued, in Benghazi.² Belamy and Williams (2011) indicate the threats to human rights made by Gaddafi against the opposition when noting that

In words that bore direct echoes of the 1994 Rwanda genocide, Qadhafi told the world that 'officers have been deployed in all tribes and regions so that they can purify all decision from these cockroaches and Libyan who takes arm against Libya will be executed.'³

The unfolding drama in Libya attracted an assortment of regional and sub-regional organisations – together with the UN – to unanimously condemn the regime's violations of human rights and established the grounds for a future intervention.⁴ For instance, on 22 February 2011, the UN High Commission for Human Rights called on the authorities to stop using violence against demonstrators, which may amount to crimes against humanity.⁵ On 22 February, UN officials announced that the situation in Libya is a concrete case of R2P. Ban Ki-Moon's Special Adviser on the Prevention of Genocide said that the

'regime's behaviour could amount to crimes against humanity and insisted that it comply with its 2005 commitment to R2P.⁶ The EU also condemned the violations of human rights in Libya via Catherine Ashton.⁷ Moreover, the League of Arab States (LAS),⁸ the Organisation of Islamic Countries (OIC),⁹ and the Peace and Security Council of the African Union (AU),¹⁰ vehemently condemned the brutal crackdown on the opposition. There was truly an international consensus on 1. recognising the Gaddafi regime's brutal suppression of the demonstrations-cum-insurgency, 2. the urgency of acting to prevent further bloodshed, and 3. the applicability of the UN's R2P. This consensus was bolstered by the tidal-waves of evidence of gross human rights violations being circulated by media outlets.

In response to the spiralling cases of documented atrocities, the global community charged the Gaddafi regime with crimes against humanity. The UNSC adopted Resolution S-15/1 and asked (25 February 2011) the Libyan regime 'to meet its responsibility to protect its population and immediately put an end to all human right violations.'¹¹ The Human Rights Council opened a Special Session on 'the situation of human rights in the Libyan Arab Jamahiriya' and passed a resolution that asked the Libyan officials to halt the further bloodshed.¹² As the violence escalated, the UNSC unanimously passed Resolution 1970 and expressed deep concern about the situation in Libya and considers that 'the widespread and systematic attacks...against civilian population may amount to crimes against humanity.'¹³

The resolution affirmed Libya's responsibility to protect its population and imposed an arms embargo and targeted sanctions on the Libyan administration and the Gaddafi family.¹⁴ The UNSC also referred the situation in Libya to the International Criminal Court (ICC) to convey a strong message to Gaddafi with the hope of deterring further aggression against Libya's civilian population.¹⁵ Consequently, the ICC established a *prima-facie* case that the Gaddafi regime was guilty of criminal atrocities.

Unfortunately, the aforementioned responses and diplomatic efforts by the global community did not manage to alter Gaddafi's behaviour. Instead, Gaddafi-loyal forces continued bombarding rebels and the humanitarian situation continued to deteriorate.¹⁶ On 12 March 2011, in an unprecedented move, the Gulf Cooperation Council called for the UNSC to 'take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya.'¹⁷

Eventually, attempts at a more robust response to Gaddafi were successful and the UNSC followed-up with Resolution 1973.¹⁸ On 17 March 2011 Gaddafi declared that he would stage an attack on Benghazi and threatened the rebels that ‘his troops would show no mercy and pity.’¹⁹ The time was ripe for international action.

UNSC Resolution 1973

Gaddafi’s speech acted as a stimulus for the decision of the UK, Lebanon, France and the US to put the (then) floating draft resolution to a vote. The result? Resolution 1973 was adopted with 10 votes in favour and five abstentions by China, Brazil, Germany, Russia and India.²⁰ The UNSC declared that the situation in Libya ‘continues to constitute a threat to international peace and security.’²¹ Pursuant to Chapter VII of the UN Charter, the UNSC passed several measures including the authorisation of the members of the UN to explicitly use military force.²²

Resolution 1973 also contains issues related to the protection of civilians, the creation of a no-fly zone, an asset freeze, the enforcement of the arms embargo and a ban on flights.²³ The most important part of the resolution is that it allowed the UN member States ‘to take all necessary measures...to protect civilians and civilian populated areas’²⁴ of Libya. Initially, the airstrike campaign began on 19 March 2011 and was conducted by a coalition of Western states and supported by Qatar, the UAE and the Arab League more generally. On 24 March, *Operation Unified Protector* (OUP) was launched under the umbrella of NATO.²⁵ NATO declared that OUP would be limited to the enforcement of Resolution 1973 and would be ended as soon as the Libyan government satisfied the following three demands:

1. End attacks against civilian populated areas,
2. Withdraw, to bases, all military forces
3. Permit unlimited humanitarian access.²⁶

Despite these demands and the promise by Gaddafi to fulfil them, it was soon clear that NATO had developed a more comprehensive set of goals regarding Libya. These may have begun as imposing the UN-mandated no-fly zone, but the quickly transformed into a programme of degrading Libya’s military capabilities, undermining Gaddafi’s ability to govern the country and, ultimately, regime change.²⁷ In a remarkable joint statement, Barak Obama, David Cameron and Nicolas Sarkozy reaffirmed their commitments to UNSC Resolution 1973 – with its militarily intervention mechanism – while pressing on

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with the narrative that ‘it is possible to imagine a future for Libya with Gaddafi in power.’²⁸ In other words, NATO was being explicitly tacit.

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The authorisation to deploy military force in defence of Libya’s citizenry was openly embraced by many in the UN since it provided the chance to implement the R2P doctrine and give teeth to it as both a concept and a policy; a fact endorsed by a number of scholars that saw in UNSC Resolution 1973 a great success for the R2P principle. At the same time, UN Secretary-General Ban Ki-Moon noted that

Resolution 1973 affirms, clearly and unequivocally, the international community’s determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government.²⁹

There was clearly an air of excitement in both UN and scholarly circles to produce the much envisioned R2P world order in which states would act in a responsible manner towards their citizens or else worry about the material consequences to their regimes. Consider that example of former R2P commissioner and one of the key authors of the R2P concept, Thakur, who was under the impression that UNSC Resolution 1973 was a concrete example of the military implementation of R2P and the intervention in Libya has guaranteed the future of the R2P doctrine. He went so far as to suggest that ‘Resolution 1973 marks the first military implementation of the doctrine of Responsibility to Protect....R2P is coming closer to being solidified as an actionable norm.’³⁰ The UN’s 2005 World Summit – where R2P was articulated – was finally being realised, a point underscored by former Australian Foreign Minister (and Co-Chair of the ICISS) Evans who remarked that

The international military intervention (SMH) in Libya is not about bombing for democracy or Muammar Gadhafi’s head. Legally, morally, politically, and militarily it has only one justification: protecting the country’s people.³¹

However, the case of Libya as a successful example of R2P and the implementation of Resolution 1973 has been – ever since its debut – under fire by many member states. For instance, Brazil (at the time) did not see the UNSC’s move as particularly helpful but thought (rightly, in hindsight) that the ‘use of force in Libya has made a political solution more difficult to achieve.’³² And, of course, while Resolution 1973 refers to R2P it does so only in a very pointed manner—on the responsibil-

ity of the state to protect its citizens.³³ There were no moral grounds to extend Resolution 1973 to prioritise regime change as an adequate strategy of civilian protection. So, the argument that Resolution 1973 reflects an international awareness of R2P, and feelings of moral justification in applying it, is not without its fair criticism. Indeed, many have voiced rejection of the equation that for civilians to be adequately protected the forced (external) removal of dictators is legitimate. The regime change that followed the invocation of UNSC Resolution 1973 may, after all, have produced irreparable damage to the R2P doctrine.

And...Reflecting on Just War Theory

The ICISS, based on *Just War Theory* (JWT), issued a 6-criterion programme which must be met before an intervention could legitimately be undertaken. These must be understood if an adequate picture of the UNSC's Resolution 1973, which authorised armed force deployments in Libya, is to be painted. The following points are meant to illustrate these points and, in keeping with the main theme of this work, link them to the case of the 2011 intervention in Libya.

The first point is in relation to a pre-existing *just cause* produced by a 'large scale loss of life...which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation.'³⁴ This was the situation in Arab Spring Libya, the state (under Gaddafi) was engaged in a brutal suppression of the country's civilian population while combating insurgents in the east of the country. This suppression was generating a heavy casualty rate of dead and injured people.³⁵ As one report by the International Commission of Inquiry of the UN Human Rights Council pointed out, 'international crimes, specifically crimes against humanity and war crimes, were committed by Gaddafi forces.'³⁶ It, of course, does not stop there; many reports, testimonials and an assortment of reliable evidence has been produced that shows the wanton use of force against civilians by Gaddafi's forces—in addition to the tit-for-tat violence deployed in combatting Benghazi-based insurgents.

Second there must be the 'right intention and the major intention of the intervention should be to halt or avert human suffering.'³⁷ As noted, a number of member states claim that NATO sought regime change under the pretext of protecting civilians. Thakur (2012) pointed out that '(i)f stopping the killing has been the real aim, NATO states would have backed a ceasefire and a negotiated settlement rather than repeat-

edly vetoing both.³⁸ There are three distinguishing benchmarks of the Libyan intervention which illustrate that the *right intention* criterion was fulfilled. Firstly, it is essential that an intervention is conducted multilaterally and the intervention in Libya was certainly multilateral, consisting of several NATO members and endorsed by the Arab League (etc.). Secondly, for an intervention to be considered legitimate, domestic support (among the population of the target state) must be clearly expressed. In this case, the population of Libya – through various rebel groups and the so-called National Transitional Council (a collection of citizens groups) – had formally requested international support (including intervention) in order to restrict Gaddafi’s force’s freedom of action and reduce gross human rights violations by the regime. Thirdly, an intervention must also be supported by other states in the region—those that may have to deal with the fallout of such an intervention. In this, the GCC and Arab League called on the international community to impose a no-fly zone in Libya and pledged much post-war support with the demise of the regime. All three benchmarks capturing the *right intention* for intervening in Libya were fulfilled.³⁹

The third criteria is in regards to conflict escalation in that any intervention must come after the exhaustion of other, non-violent, means of conflict resolution. This again corresponds to the realities of the Libyan situation—it was conducted as a *last resort*. Prior to the intervention, a string of diplomatic engagements were attempted in order to defuse the spiralling conflict. On failure, escalation occurred via an arms embargo, targeted sanctions followed by threats to use force and, finally, the actual deployment of force. Critics claim that the case of Libya cannot be described as a *last resort* because peaceful measures were not fully exhausted coupled with somewhat feeble attempts to apply peaceful methods to protect civilians and the speed of the intervention by NATO has been denounced as suspect.⁴⁰ Simmon (2011), for instance, noted that it ‘seems as though the UNSC was unwilling to pursue other options, and thus appears to have failed to take into account one of the primary precautionary principles enshrined by R2P.’⁴¹ The criticism is fair—but off-the-mark.

R2P’s fourth requirement is in regards to *proportionality*: the international response must be enough to overcome the source of the problem, but not so overwhelming so as to decimate the opponents—moderation and restraint are required. The Libya coalition mainly focused on imposing the UN-authorized no-fly zone; and it was effective.

Although there were several sorties that targeted forces on the ground, these were generally considered to be in support of the no-fly zone. In keeping – for the most part – within the contours of UNSC Resolution 1973, the force the coalition applied was proportional and in support of the wider mission of degrading Gaddafi's force capability to effectively wage war against Libya's civilians. This has been confirmed by many international legal analysts and scholars, notably Meyer (2011) who confirmed that 'there are no indications that the scale, duration or intensity were out of proportion to the Libyan military intervention.'⁴² On this point, the only serious concern is over NATO's arming of some rebel groups since doing so violates the R2P doctrine.⁴³

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The fifth criterion of the R2P doctrine asks whether there is a *reasonable prospect* (of victory) for the intervening states or coalition. To gauge this issue, Evans asks whether 'those at risk be overall better or worse off' as a result of the intervention?⁴⁴ The legitimacy of the intervention rests, in part, on the informed view that indeed they will be better off. On this point, the Libya drama gets sticky. While many believe that NATO's leadership and its operations protected many tens of thousands of Libyans⁴⁵ others – including abstaining (from Resolution 1973) UNSC members – believed that NATO overstepped and abused the UNSC's mandate, and have warned against prematurely suggesting that the operation was legitimate given the dire situation faced by the average Libyan in the wake of the regime change against Gaddafi.⁴⁶ Also, a considerable number of unarmed civilians were killed in the midst of NATO's air operations.⁴⁷ As highlighted above, critics condemn NATO for supporting Libya's rebels in pursuit of regime change and not observing the neutrality of civilian protection.⁴⁸ Findlay (2011), in this way, reminds us that 'R2P stands for the prevention of the massacre of innocent civilians and not for the support of Libyan rebels.'⁴⁹

In terms of the final criterion, that of seeking legitimacy through the *right authority*, the Libya case is clear since the R2P doctrine states that 'there is no better appropriate body than the United Nations Security Council to authorise military intervention for human protection purposes.'⁵⁰ Since the bulk of this work sought to examine UNSC Resolution 1973, it stands to reason that the UN was the key actor in authorising the deployment of armed force in support of Libya's civilians. The Libya intervention conforms with the right authority requirement, which is further enhanced by the multilateral dimensions

of the subsequent operations since R2P suggests that '(r)ight intention is better assured with multilateral operations, clearly supported by regional opinion [...].'⁵¹

Given the scope of Resolution 1973 and placing it in the wider concepts of R2P and JWT, it is clear that many of the key ingredients needed for legitimate action were fulfilled. This is not to dismiss any of the core criticisms that hold NATO to account, but rather to illustrate that the intervention itself does correspond to the general principles of the R2P.

Conclusion

Despite criticism, the case of Libya has been hailed as a successful first test of the R2P in action. However, another pillar of the R2P doctrine – the international responsibility to rebuild – which 'requires intervening actors to establish a clear and effective post-intervention strategy,'⁵² remains a critical issue—and has failed to materialise as the country slips from post-war crisis to crisis. The responsibility to react, to prevent and to rebuild are of great importance to the ICISS since it is about a

a continuum of intervention, which begins with preventive efforts and ends with the responsibility to rebuild, so that respect for human life and the rule of law will be restored.⁵³

In Libya, the self-declared success of the R2P has been significantly undermined by the failure of the international community to implement the responsibility to rebuild.⁵⁴ Libya remains a shell of what it once was and the death toll continues to rise day-on-day. The situation is so unstable that many Libyans have begun to ask whether it was not a mistake to support Gaddafi's overthrow at all, while NATO absorbs heavy criticism and ISIS consolidates its foothold in the country.⁵⁵ NATO has failed to assume international leadership over the responsibility to rebuild to deal with disarmament, national reconciliation and recovery built from the ruins of Libya's political infrastructure as well as sustainable development and economic growth in Libya. Ultimately, the current situation in Libya is primarily a result of that failure. What the future holds in store for Libya, for the post-Arab Spring states, for the R2P and JWT remains a mystery. However, it is really not enough to take a back seat; an international public discussion must be undertaken to answer important questions of what went right and...what went wrong in Libya.

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Notes

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