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**APA 7th ed.**

Bakar, Mohammad Ibrahim. (2016). *The Litmus Test of R2P: An Analysis of the Legality and Legitimacy of Military Intervention in Libya*. *Journal of Law, Policy and Globalization*, 56, 87-93.

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**MLA 9th ed.**

Bakar, Mohammad Ibrahim. "The Litmus Test of R2P: An Analysis of the Legality and Legitimacy of Military Intervention in Libya." *Journal of Law, Policy and Globalization*, 56, 2016, pp. 87-93. HeinOnline.

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# The Litmus Test of R2P: An Analysis of the Legality and Legitimacy of Military Intervention in Libya

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## Abstract

The intervention in Libya in 2011 was the first litmus test the doctrine of the Responsibility to Protect. The doctrine is an extension of responsibility on states to ensure adequate protection of civilian population under threat of attack. Sovereignty under the new doctrine comes with the responsibility. The crux of the paper is the analysis of the legality and legitimacy of the military intervention in Libya. It is the contention of the author that the intervention does not conform with the stated objective spelled out in the United Nations Resolution 1973 which was basically to take measures that will protect the vulnerable population under threat of attack in Libya. Among other things, the author argues that the intervention was overstretched in order to fulfill the ulterior motive of regime change. The paper argues that the principle of the Responsibility to Protect was subordinated and the western powers could not exhaust all peaceful measures before opting for the use of force as provided in the Charter of the United Nations. It is the contention of the author that regime change was instead pursued to guarantee the interest of the western powers in the oil-rich state of Libya. Secondary sources such as books, peer review articles, newspapers and magazines were utilised.

## Introduction

Since the United Nations Security Council (UNSC) passed the famous Resolution 1674 which gave birth to the official enunciation of the concept of the Responsibility to Protect (R2P), the bounds of international humanitarian intervention kept expanding.<sup>1</sup> The resolution contended among other things the focus of the “new responsibility”<sup>2</sup> upon states within the international system to ensure “each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity”.<sup>3</sup> But before the coming of the new responsibility code, the international system was bonded by statist legality encrypted to protect the sovereignty of member states in the United Nations Charter, particularly Article 2(7) which states that “the United Nations has no authority to intervene in matters which are within the domestic jurisdiction of any State”.<sup>4</sup> The founding fathers of the United Nations had thought of ensuring the independence of states irrespective of their size, wealth and power. This understanding predates the United Nations as contended by De Vattel, in his Treatise on Nation states entitled “The Law of Nations or the Principles of Natural Law”<sup>5</sup>.

However, a careful observation of post-Cold war order would suggest dramatic change in regard to the practice of respect for sovereignty among independent states. With the transformation of power equation as a result of the collapse of Union of Soviet Socialist Republic (USSR), there seems to be a formidable change which has since transformed the manner in which sovereignty is married to responsibility.<sup>6</sup> This is also as a result of the changing face of conflicts. Since the end of the Cold War, there has been a monumental rise in the number of intra-state conflicts that have also witnessed the rise in humanitarian crises with new forms of violations of the human dignity. This has been witnessed in Bosnia, Rwanda, Somalia and recently in DRC, South Sudan and now in Syria. While these new waves of conflicts emerge, the international community and new actors (non-state actors) who have featured prominently continue to present different shades of opinions on the best possible way to react to new sources and forms of conflicts. However, many observers and commentators became more concern with the increasing disregard for international humanitarian law by state authorities on vulnerable populations.

The shifting position of the international community in regard to protection of vulnerable populations continue to attract practitioners. Former UN scribe, Javier Perez de Cuellar noted “we are witnessing what is probably an irreversible shift in public attitudes towards the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents”.<sup>7</sup> The emergence of the R2P that seeks to caution states’ responsibility in prosecuting wars and engendering ethical codes on any nation state has been applauded but without criticism from statist thinkers and realism theoreticians. More criticism has greeted the extension of

<sup>1</sup> The author is a PhD candidate at Coventry University, United Kingdom.

<sup>2</sup> Thomas G Weiss, “Principles, Politics and Humanitarian Action,” in *Ethics and International Affairs*, Vol 13 (1999).

<sup>3</sup> The United Nations General Assembly, 2005 World Summit Outcome, A/60/L.1, Article 138, 15 September 2005

<sup>4</sup> Mosler, Hermann, Andreas L. Paulus, and Eleni Chaitidou. *The Charter of the United Nations: a commentary*. Ed. Bruno Simma. Vol. 2. Oxford: Oxford University Press, 2002.

<sup>5</sup> De Vattel, E. (1758). *The Law of Nations or the Principles of Natural Law. Book II*.

<sup>6</sup> Contzen, Jean-Pierre, and Jacques Groothaert. "The Collapse of the Soviet Union." *Agriculture, Human Security, and Peace: A Crossroad in African Development* (2008): 35.

<sup>7</sup> Greenwood, C. (1993). Is there a right of humanitarian intervention? *The World Today*, 49(2), 34-40.

the R2P which authorizes the use of force on sovereign states that refuses to comply with the demand of the international system to protect vulnerable civilians and prevent egregious violations of international humanitarian law. The passage of the R2P now enable states to guard against gross violations of international humanitarian law and even permits states or organisations to ensure enforcement measures are taken against defiant states and individuals or groups.<sup>1</sup>

But since the passage of the resolution that gives birth to the new international humanitarian law regime, Libya became its first litmus test.<sup>2</sup> With the backing of the North Atlantic Treaty Organisation and states such as France and America, the R2P doctrine was invoked and military intervention was undertaken in 2011.<sup>3</sup> However, the military intervention has been subjected to criticism for what one observer described as “stretching the application of the R2P doctrine to serve ulterior interests”.<sup>4</sup>

This paper focuses on an analysis of the experience of military intervention for humanitarian purpose. The basic question which the paper seeks to answer is whether or not the NATO campaign conforms with the stated objective of R2P or not and whether it is legitimate. This paper will in a way analyse the acceptability of the intervention and the responses of willing actors in regard to the expected outcome.

### Understanding the Concept of R2P

The idea and concept of R2P is an international reaction to the continued violations of international humanitarian law by states, groups, and individuals across different regions around the globe. It was born in 2011 when The International Commission on Intervention and State Sovereignty Report was released under the title “The Responsibility to Protect”. Among many other things, the document contended that: “Sovereign states have a responsibility to protect their own citizens from avoidable catastrophe- from mass murder and rape, from starvation- but that when they are unwilling or unable to do so, that responsibility must be taken by the broader community of states”.<sup>5</sup> The report went further to emphasized the important role that prevention may after all, be the best way the international community can avoid humanitarian crises. Thus, it cautioned states against the use of coercion when there are less coercive measures that can be exploited. This implies that the use of force majeure should actually be the last resort; when it has become eminent that peaceful measures may not after all guarantee success in regard to protection from violations of humanitarian law.

Some few years later, the world’s most exclusive body, the UNSC adopted the famous Resolution 1674 after the UN World Summit of 2006. It contended the unanimous decision of states who accepted that “each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>6</sup> They further advised the international community to give support to states in ensuring that responsible measures are always taken promptly to prevent human disasters. It was explicitly emphasized that in the event of any state’s showing signs of “unwillingness or incapability”<sup>7</sup> in regard to protection against the outlined four designated crimes against humanity, the international community shall not hesitate to take collective actions through the UNSC in accordance with the Charter of the UN.<sup>8</sup>

The R2P has three recognizable pillars which are the basic role the R2P seeks to do. Firstly, the protection and responsibility of the State. In this, R2P seeks to remind states of their responsibility to protect vulnerable populations within its borders from the four crimes outlined in the document which includes to “protect its population and country from genocide, war crimes, crimes against humanity, and ethnic cleansing”.<sup>9</sup> Secondly, the issue of international assistance and capacity building serves as the second pillar of the R2P. It is a sort of commitment by the international community to provide assistance of all kinds in order to help states fulfill the obligation of preventing humanitarian catastrophe. It also seeks to coordinate the assistance of states, regional bodies, group of states, civil societies in ensuring protection of populations under danger. And finally, timely and

<sup>1</sup> Badescu, C. G., & Weiss, T. G. (2010). Misrepresenting R2P and Advancing Norms: An Alternative Spiral?. *International Studies Perspectives*, 11(4), 354-374.

<sup>2</sup> Bellamy, Alex J., and Paul D. Williams. "The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect." *International Affairs* 87.4 (2011): 825-850.

<sup>3</sup> Hehir, Aidan. "The permanence of inconsistency: Libya, the Security Council, and the Responsibility to Protect." *International Security* 38.1 (2013): 137-159.

<sup>4</sup> Global Centre for the Responsibility to Protect, “Implementing the Responsibility to Protect, The 2009 General Assembly Debate: An Assessment”, GCR2P Report, August 2009

<sup>5</sup> The Security Council Resolution 1674 of 2006. This mandate reaffirmed the provisions of paragraphs 138 and 139 of the Responsibility to Protect Report.

<sup>6</sup> The Security Council Resolution 1674 of 2006. This mandate reaffirmed the provisions of paragraphs 138 and 139 of the Responsibility to Protect Report

<sup>7</sup> Global Centre for the Responsibility to Protect, “Implementing the Responsibility to Protect, The 2009 General Assembly Debate: An Assessment”, GCR2P Report, August 2009.

<sup>8</sup> Kumar, K. S. (2012). Libya And R2P: A Year After UNSCR 1973. *Institute of Defense Studies and Analysis, Issue Brief*, 23.

<sup>9</sup> Morris, Justin. "Libya and Syria: R2P and the spectre of the swinging pendulum." *International Affairs* 89.5 (2013): 1265-1283.

decisive response is the third pillar of R2P. Among other things, it seeks to ensure that the international community intervene in states which have shown high degree of “unwillingness or incapability” to protect civilian populations under threat. When this lackluster attitude towards protection of civilian population becomes glaring, it beacons on the international community to first employ diplomacy but can also use force when peaceful and diplomatic measures proves ineffective in tackling the menace of humanitarian disaster.<sup>1</sup>

Be that as it may, the subject of military intervention has always attracted debates and counter-debates for understandable reasons. As one observer argues:

The R2P doctrine is not merely a new name for humanitarian intervention and is not a sanction for the immediate use of force. Humanitarian intervention is about the right of states to act coercively against others to stop atrocities whereas the R2P doctrine is about protecting civilians.<sup>2</sup>

R2P licensed states to employ force as last resort in order to ensure protection of civilian populations but cautioned intervening states against violations of what one scholar refers to as “just cause threshold”. The following observation captures the basic idea about conditions which ought to be followed during intervention:

Just Cause Threshold must be employed. Military intervention should only be undertaken for human protection purposes and is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur such as large-scale loss of life and large scale ‘ethnic cleansing’.<sup>3</sup>

Even the precautionary principles required states to established that the intention of intervention should be premised on preventing or rather averting human disaster. Besides, the use of force must not be the first option available to states, rather must be exploited as the last resort. In all cases, the use of force should not be considered when other diplomatic or peaceful measures have not been exploited. At best, it should be regarded only when all non-military options have proven to be failed. This is explicitly captured by one observer in the following words:

Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing that lesser measures would not succeed.<sup>4</sup>

Apart from the precautionary principles, the proportional principles required states to ensure that the magnitude of attack, time and even intensity of any military campaign must be proportional to the aggressor force. At must, it should only be able to prevent or avert the danger in view. The objective should not exceed human protection. This is summarised below:

The Right Authority must endorse the intervention and the Security Council is the supreme body to authorize and authorization should in all cases be sought prior to any military intervention action being carried out.<sup>5</sup>

On the other hand, UN Charter Article 2(4) prohibits states from the use of force in the territory of independent states. In fact, they are challenged by the same Article from threatening to do so. This is simply put:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.<sup>6</sup>

Can we argue that the military intervention in Libya in 2011 was conducted in line with laws of intervention in respect to R2P? Did the international community accept the way and manner in which it was conducted? This and more will be our focus in the following sub-title. However, the only exception is provided in Chapter VII, specifically Articles 39 and 51 where the use of force is guaranteed provided it is for the purpose of self-defense.<sup>7</sup>

### **The Libyan Intervention**

The military intervention in Libya was the product of the regional protest against Arab dictatorship and lack of democracy within the Arab society. It began in Tunisia, then later Egypt then Libya, Bahrain and Syria. Unlike the case in Tunisia where the public protest was largely peaceful and led to the overthrow of the dictatorial reign of Ben Ali, the experience of Libya produced violence and Civil War that culminated into intense confrontations and eventually intervention by NATO. The confrontation started on February 15, 2011 when about 200 peaceful

<sup>1</sup> Adams, Simon. *Libya and the Responsibility to Protect*. Global Centre for the Responsibility to Protect, 2012.

<sup>2</sup> Thakur, Ramesh. "R2P after Libya and Syria: Engaging emerging powers." *The Washington Quarterly* 36.2 (2013): 61-76.

<sup>3</sup> Stuenkel, Oliver. "The BRICS and the Future of R2P." *Global Responsibility to Protect* 6.1 (2014): 3-28.

<sup>4</sup> Williams, Paul D., and Alex J. Bellamy. "Principles, politics, and prudence: Libya, the responsibility to protect, and the use of military force." *Global Governance: A Review of Multilateralism and International Organizations* 18.3 (2012): 273-297.

<sup>5</sup> The Responsibility to Protect, 2001, Report from the International Commission on Intervention and State Sovereignty.

<sup>6</sup> Charter of the United Nations, Chapter I, Article 2(4)

<sup>7</sup> Charter of the United Nations, Chapter VII, Article 36 & Article 51

demonstrators surrounded the policy headquarters of the Muammar Gaddafi regime in Benghazi after the arrest of Fathi Terbil, famous for human right activism. With increasing police crack-down on protesters, the plight of the demonstrators began to attract the sympathy of the members of the international society. Soon the international community began to criticize the Gaddafi regime for employing heavy tanks, machine guns, snipers against peaceful protesters with placards and marching in solidarity.

In order to present an official front that will organize the protest, the opposition in March of 2011 had established the National Transitional Council which later became the sole representative of the people of Libya against the wishes of Gaddafi who was killed by the intervening forces. In response to the extreme use of force against the Libyan protesters, the UN scribe, Ban Ki Moon, Arab League and the leaders of the Western World such as Barack Obama and Nicholas Sarkozy all criticized the Gaddafi regime for the flagrant violations of international humanitarian law. But by the end of February, 2011, it has become clear to the Security Council that the defiant posture of the Gaddafi regime needs the engagement of the rest of the world. The UN immediately reacted by ensuring the passage of Security Council Resolution 1970 which outlined peaceful measures to be taken to mitigate the crises which already was escalating across Libya with Gaddafi threatening to kill civilian populations as “cockroaches”.<sup>1</sup> The Security Council Resolution 1970 was intended to create a platform for peaceful negotiation between the civilian protesters and the Gaddafi regime which had continued with its already unpopular military campaign against vulnerable populations. On its part, the regime discarded as falsehood reports of crackdown on civilians and violations of the international humanitarian law. But the deteriorating conditions of the various crimes against humanity and the continued use of hard military weapons against protesters culminated in the passage of Resolution 1973 which mandated the use of all necessary measures to end the continued hostility against the vulnerable populations. The resolution reads:

*Authorizes* Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and *requests* the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council.<sup>2</sup>

The resolution instituted a no-fly zone to prevent the continuation of brutal inhuman attacks on the civilians and to limit the potential of any external power that may want to directly intervene in Libya. In the wisdom of the Council, this will limit the sufferings of the civilians since the Gaddafi regime would not be able to spray the civilians with air power which the civilians never had. It was barely 24 hours after the institutionalization of the no-fly zone that the Gaddafi forces began to consciously violate the terms of the ceasefire which would later provoke the Western powers, who became actively involved in the intervention that was led by NATO. With their intervention, NATO became the commanding organisation for the intervention in Libya.

### **The Legality/Legitimacy of the Intervention or Otherwise**

The principle of the Responsibility to Protect is centered on the fact that as soon as “national authorities manifestly [fail] to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity,”<sup>3</sup> such a responsibility is automatically shifted to the international community which is expected to take measures that will lead to the protection of vulnerable populations. The NATO initiative in 2011 was taken in light of this understanding. However, the application of Resolution 1973 and the results it provided calls for deeper reflection on the legality or legitimacy of the intervention.

Again, the idea of the just cause argues that military intervention can only be justified when it is undertaken solely for the purpose “human protection” and especially when other peace-related measures may have failed to yield the expected result of preventing or protecting human populations under danger. The only conditions upon which military intervention is warranted is when vulnerable populations are exposed to serious harm that have the potential of causing large-scale loss of life. No doubt, the civilian population in Libya were in danger of imminent attack from their own government, led by the cruel dictator- Gaddafi. This was captured by the International Committee of the Red Cross who submitted that “it is apparent that Libya is now in a state of civil war.”<sup>4</sup> The UN would later put the number of civilian casualties at 1,000 and number of displaced persons at over

<sup>1</sup> Rieff, David. "R2P, RIP." *The New York Times* 7.11 (2011): 2011.

<sup>2</sup> Global Centre for the Responsibility to Protect, “Implementing the Responsibility to Protect, The 2009 General Assembly Debate: An Assessment”, GCR2P Report, August 2009.

<sup>3</sup> Dunne, Tim, and Jes Gifkins. "Libya and R2P: Norm Consolidation or a Perfect Storm?." (2011).

<sup>4</sup> Williams, Paul D. "Road to Humanitarian War in Libya, The." *Global Resp. Protect* 3 (2011): 248.

250,000. Gaddafi directed his threats to residents of Benghazi and publicly announced that the Libyan army will crush all rebellion with heavy military attack. He was quoted as saying “we will show no mercy and no pity.”<sup>1</sup> To argue that international assistance was not needed would be to deny the level of threat of the regime. The Arab League immediately called for actions that will shield the vulnerable population of Libya who are threatened by their own government. When one considers the extent of the threat posed by Gaddafi and the sympathy of the Arab League, it will be unlikely to present a contrary position to the military intervention in Libya. However, a closer review of the manner in which the international community reacted to the danger posed by the Gaddafi forces raises doubt as to the legitimacy of the intervention.

Firstly, Patrick Stewart, a widely-quoted authority on international politics, argued that the international community has been selective in its application of just cause principles of intervention. He argued that there have been cases of grave human catastrophes, “such as in the Ivory Coast in 2011, or in response to the violent and bloody protests in Yemen, Bahrain, and most controversially no united, Security Council endorsed, intervention in Syria since the conflict emerged in 2011”<sup>2</sup>. Also, the international community did not take any reasonable action against continued bombing of Gaza by Israel which resulted in the killing of over 1,400 Palestinian civilians between 2008 and 2009. Even though the intervention was said to have been undertaken because of the urgent need to protect vulnerable populations of Libya under threat of attack from their government, it is important to critically analyse if the invading forces have hidden agenda which they wanted to achieve.

Many authorities have speculated in the past that the invading forces of Western states wanted to have access to the oil resources of Libya. This position has been maintained by the world oil and business press who suggested that the key reason for intervening in Libya was for the advanced economies to have access to the energy resources of the state of Libya. It is common knowledge that Libya is excessively rich in oil resources and western powers have continued to have disagreements with the dictator Gaddafi. In some cases, such disputes have no clear justifications but often times, they are based on issues of human rights and disregard for civil authority. One author advanced the position that:

Libya is the 12th largest exporter of oil in the world, and the largest supplier in Africa. Several of the world’s major oil companies have invested in Libya, including ENI of Italy, Total of France, Conoco-Phillips of the US, and BP of Britain, among many others. At the time of the popular uprising against Gaddafi, there was considerable anxiety in oil circles about the possibility of generalized political breakdown and chaos, with attendant threats to oil supplies and investments and this concern was noted repeatedly in the world oil and business press. Further, as time passed, there was a growing sentiment within the United Nations that the civilian protection operation in Libya had been expeditiously co-opted by Western supporters of regime change. It was felt that NATO was no longer acting solely as a defensive shield for populations at risk, but as the Libyan rebels’ air force. India’s Ambassador to the UN, Hardeep Singh Puri, described NATO as the “armed wing” of the Security Council and argued that the objective in Libya had shifted from protecting civilians in Benghazi to overthrowing the regime in Tripoli. This argument seems to uphold further when one looks at what was requested by the Libyan opposition when they originally called for intervention. Originally, what the Libyan opposition, as well as the Arab League, asked for was a “no-fly-zone” which Resolution 1973 did provide. However, it is hard to argue that the Arab League wanted a foreign military intervention. In fact, the Arab League criticized the definition of protecting civilians that NATO used.<sup>3</sup>

Strengthening the above position, Thomas G. Weiss concluded that “What has happened in Libya differs from the goal of imposing a no-fly zone and what we want is the protection of civilians and not bombing other civilians.”<sup>4</sup> The objective of the intervention was overstretched and the result actually overwhelmed the people of Libya as the country was thrown into unnecessary chaos which later culminated into regime change.

Therefore, the question of legality in regard to the principle of just cause cannot be queried because in the real sense, there was genuine reason to protect civilian populations under threat of attack and it will be unlikely for anyone to void actions taken to protect the people. But whether or not the intention of the international community exceeds the need to protect the people under threat of attack is another issue entirely which requires serious evaluation. Like Mohammed concludes “this makes the legitimacy behind the just cause questionable”<sup>5</sup>.

Firstly, the Precautionary principles specify that any military intervention should aimed at protecting human beings from brutal attack. However, the use of such force should only be undertaken as a last resort. This

<sup>1</sup> Hehir, Aidan, and Robert Murray. *Libya, the responsibility to protect and the future of humanitarian intervention*. Springer, 2013.

<sup>2</sup> Patrick, Stewart. "Libya and the future of humanitarian intervention." *Foreign Affairs* 26 (2011).

<sup>3</sup> Hall, Ian. "Tilting at windmills? The Indian debate over the responsibility to protect after UNSC resolution 1973." *Global Responsibility to Protect* 5.1 (2013): 84-108.

<sup>4</sup> Weiss, Thomas G. "RtoP alive and well after Libya." *Ethics & International Affairs* 25.03 (2011): 287-292.

<sup>5</sup> Mohamed, Saira. "Taking Stock of the Responsibility to Protect." *Stanford Journal of International Law* 48.2 (2012): 63.

means that all other peaceful measures must have been proven to be ineffective in protecting the people under threat of attack before military action is invoked. This implies that military action that is undertaken when other possible peaceful measures have not been exhausted is presumed to be illegal. Again, the rule of proportionality must be exploited so that any action taken should be seen to be proportional to the scale of the aggression deplored. Accordingly, "the scale, duration, and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective".<sup>1</sup> This position has been emphasized in Charter of the United Nations and that such measures must be approved by the United Nations Security Council. A closer review of the experience in Libya with the above principles presents serious challenges. Many international actors criticized the case of Libya for various reasons. Gareth Evans posited that "the international military intervention in Libya is not about bombing for democracy or Muammar Qaddafi's head." Evans further stressed, "it has only one justification: protecting the country's people."<sup>2</sup> If the position advanced by Evans is the reality, then the intervention was expressly designed to kill Gaddafi and imposed democracy on the oil-rich state. Clearly, this was not captured in the Resolution 1973 which was the basis upon which the intervention was permitted. In fact, it cannot be justified under the moral principle enshrined in the famous doctrine of the Responsibility to Protect.<sup>3</sup> Though it can be argued that the dethronement of the egregious violators of international humanitarian law is not entirely illegal, such motive should not constitute the primary objective of the intervention. The real motivation of R2P should be the protection of vulnerable populations under threat of attack from their own government. This was expressed in both Resolution 1970 and 1973 which permitted intervention. However, as noted above, it seems the intervening forces took measures which actually overstretched the ambition of the resolutions.

Drawing from the above view, peaceful measures were not exhausted before the invading forces took military actions endorsed under resolution 1973. Marjorie Cohn concludes that:

"all necessary measures" should first have been about exploring peaceful measures to settle the conflict and, in the case of Libya, these peaceful means were not exhausted before western powers began bombing Libya. In Libya, a peaceful agreement between parties had not been sought; sanctions had been applied, travel bans placed, and assets frozen, but negotiations had not been tried. In fact, NATO actually dismissed a delegation of African Union members sent to start negotiations with Libya from the country before they could have achieved any results"<sup>4</sup>.

This paper argues that the intervening forces deliberately took military actions at the time when peaceful measures have not been clearly exhausted. In other words, the invading forces of western militaries were quick to resort to the use of force when peaceful measures have not been explored. Peaceful measures such as "opening borders and appropriate facilities to allow Libyan civilians to flee regime violence" was consciously isolated and in its place the use of force was preferred. There was no any serious measure that was taken to ensure that fleeing Libyans were accommodated in neighbouring states. Again, the intervening forces and their governments did not explore the option of providing direct humanitarian aid to the Libyan civilians within Libya through the creation of "aid convoys to eastern Libya through Egypt and to western Libya through Tunisia"<sup>5</sup>. Furthermore, there was no action taken to ensure that the frozen assets of Gaddafi were converted and used for the development of the state of Libya. The frozen assets have continued to remain so and the intervening forces and their government have not taken serious measures to ensure it is returned to the victims of the circumstances created by Gaddafi. Additionally, there was no any measure taken to sever relations with Libya and to also ensure that all contracts on military supplies were immediately cancelled or revoked. This would have weakened the military capacity of Libya. Finally, the western powers would have placed an arms embargo on Libya in order to prevent the state from taking steps capable of emboldening the army. The embargo would have prevented the army from utilizing the available military hardware at its disposal since there was no assurance of supplies. Also, the state of Libya would have been prevented from enjoying foreign supplies of military hardware. In some instances, the sanctions would have also helped in preventing the movement of military materials and other forms of services that may help to advance the ambition of the Libyan military. Instead, the western powers opted for the use of force for whatever interest therein. As clearly advanced, it is the contention of the author that the western powers neglected alternatives to the use of force and opted for the use of force which actually created more grievous conditions for violations of international humanitarian law. Therefore, the doctrine of R2P was compromised for the ulterior motives of the intervening forces. No wonder, many years after such an intervention, Libya continues to attract the attention of the United

<sup>1</sup> Bajoria, J. (2011). Libya and the Responsibility to Protect. *Council on Foreign Relations*, 24, 03-11.

<sup>2</sup> Çubukçu, Ayça. "The responsibility to protect: Libya and the problem of transnational solidarity." *Journal of Human Rights* 12.1 (2013): 40-58.

<sup>3</sup> Evans, Gareth, Ramesh Thakur, and Robert A. Pape. "Correspondence: Humanitarian intervention and the responsibility to protect." *International Security* 37.4 (2013): 199-214.

<sup>4</sup> Cohn, Marjorie. "The Responsibility To Protect—The Cases Of Libya And Ivory Coast." *Global Research* 16 (2011).

<sup>5</sup> Bellamy, Alex J., and Paul D. Williams. "The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect." *International Affairs* 87.4 (2011): 825-850.

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Nations as peace has not return and the state can at best be referred to as a “failed state”<sup>1</sup>.

### **Conclusion**

The various issues raised above about the legality or legitimacy of the intervention in Libya can only be resolve when one looks critically at the body language of Resolution 1973. In accordance with the doctrine of R2P, the aim of the intervention should have been limited to the protection of vulnerable populations under threat of attack from the Gaddafi forces. Regime change or the change of the Libyan regime was not covered in the resolution nor does it in anyway constitute the mandate of the United Nations. The worry now is that the intervention was overstretched to also include overthrow of the Gaddafi regime and this has created instability not only in Libya but around the region. Generally, the intervention in Libya may not have followed the rules guiding intervention and thus its legality can be questioned. Again, it is also evident that the intervention was not in the best interest of the people of Libya and its legitimacy is questionable as humanitarian conditions was worsened. In essence, the intervention may have been inspired by regime change.

However, a closer analysis of the various issues raised above shows that the intervention may have been reasonably legal but not legitimate. Even at that, the use of force is not legal. Even the transparency required of an intervention was totally absent and this may have emboldened the question of its legitimacy. Patrick Stewart advanced the position that, “there is bound to be selectivity and inconsistency in the application of the responsibility to protect norm given the complexity of national interests at stake in U.S. calculations and in the calculations of other major powers involved in these situations.”<sup>2</sup>

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<sup>1</sup> Engel, Andrew. "Libya as a failed state: Causes, consequences, options." *The Washington Institute for Near East Policy, Research Notes* 24 (2014).

<sup>2</sup> Patrick, Stewart. "Libya and the future of humanitarian intervention." *Foreign Affairs* 26 (2011).