

Fighting the Colonel: Sanctions and the Use of Force

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This article begins by briefly examining the history of various sanctions on Libya during four decades of Colonel Muammar Qaddafi's rule. The analysis then focuses on the UN Security Council resolutions 1970 and 1973, which imposed fresh sanctions and authorised the use of force to protect Libya's civilian population. The article compares the text of the two resolutions and the different forms of support they gained. It also brings into consideration the concept of 'Responsibility to Protect'(R2P) and argues that R2P informs both of these two resolutions, and has been furthered by the international intervention in Libya. The article concludes with a discussion that addresses the difficult judgment whether the Security Council's actions on Libya represent a triumph or a danger for the emerging norm of R2P.

The relationship between the international community and the self-titled Libyan 'leader', Colonel Muammar Qaddafi, over the last four decades has been uneven, vacillating between confrontation and dialogue, sanctions and détente, and culminating in a comprehensive regime of sanctions and use of force, authorised by the UN Security Council in February - March 2011.

UNILATERAL SANCTIONS ON LIBYA

Qaddafi took power in Libya through a *coup d'état* in 1969. Although initially recognised by the US government, among other world powers, by 1972,

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Qaddafi was accused of sponsoring terrorism and the US ambassador was temporarily withdrawn from Tripoli. After a mob in Tripoli attacked the US embassy in December 1979, allegedly allowed to do so by the Qaddafi regime, much of the embassy's staff members were also withdrawn. In December 1981, American and Libyan jets exchanged fire in the Gulf of Sidra, and as a consequence, the US Administration banned imports of Libyan oil and established a strict control on US exports to Libya. The sanctions expanded in March 1984 with interruption of the US supplies to the Ras Lanuf petrochemical complex; and in April 1985, with the prohibition of all bilateral trade financing. In January 1986 the Ronald Reagan Administration banned all direct import and export, all commercial contracts and travel-related activities, and froze Libyan state assets in American firms.

Qaddafi also escalated his hostile acts – in April 1986, Libyan agents planted a bomb in a night club in Berlin, killing two American soldiers and numerous other civilians. President Reagan responded with a massive air bombing of Tripoli and Benghazi, killing numerous civilians, including Qaddafi's fifteen month-old adopted daughter. The bombing was condemned in the UN General Assembly resolution A/41/38 (20.11.1986). Qaddafi retaliated on December 21st, 1988, when Pan-American Flight 103 exploded over Lockerbie, Scotland, killing 270 people.

In December 1991, after the investigation confirmed that Libyan officials were involved in Lockerbie, the American, French and British governments filed eleven UN documents (S/23306 through S/23317), requesting Libya to: (1) accept official responsibility for the bombing; (2) disclose all information and allow full access to all witnesses, documents, and other evidence; and (3) pay compensations to the victims. Libya first denied responsibility for the Lockerbie incident and refused to extradite the suspects, but later announced that the matter would be investigated under the 1971 Montreal Convention on 'Suppression of Unlawful Acts against the Safety of Civilian Aviation'¹ and promised to prosecute the suspects.

The Convention does indeed compel states to investigate its citizens in matters of aviation security. However the American, British and French governments did not trust that Libya would pursue a genuine investigation and prosecution and utilized their permanent membership in the UN Security Council to impose sanctions under Chapter VII of the UN Charter. They had no problem – with the end of Communism and the

1 <http://www.fog.it/convenzioni-en/inglese/montreal-1971.htm>

disintegration of the Soviet Union, the Security Council (SC) had become more united and proactive.

SECURITY COUNCIL SANCTIONS

On January 21st, 1992, SC Resolution 731 was adopted. It urged Libya to immediately provide a full and effective response to the extradition requests and to contribute to the elimination of international terrorism. Libya declined to extradite, referring again to the Montreal Convention, and this time also to the Libyan Constitution, which does not permit extradition of nationals to another country in the absence of an extradition treaty with that country. On March 3rd, 1992, the Libyan government approached the International Court of Justice (ICJ), claiming that the pursuit of its citizens represents a violation of its rights under the Montreal Convention, and requesting provisional measures of protection (Article 41 of the ICJ Statute). The American and British governments did not wait for the ICJ's opinion and on March 31st, 1992, they pushed the SC to adopt Resolution 748, determining that Libya's failure to comply with the extradition requests represents a 'threat to international peace and security', and imposing the following measures: (1) aviation ban on all flights to and from Libya and closure of Libyan Airlines offices; (2) arms embargo; (3) reduction of diplomatic personnel; (4) travel ban abroad for certain Libyan officials.

The UN Charter makes the SC resolutions obligatory for all UN member-states. If all previous sanctions were unilaterally imposed by the American or the British government, the SC Resolution 748 made the regime of sanctions universal. With Resolutions 731 and 748 the SC in a precedent-setting mood stretched the interpretation of 'threats to the peace'. In previous situations, a failure to surrender terrorist suspects was hardly regarded as such an acute threat to the peace, as to persuade the SC to impose sanctions. The sanctions were controversial - aside from the effect on innocent Libyan civilians, they also caused tensions within the ICJ, and between the ICJ and the SC.

The ICJ faced its biggest challenge ever, as sovereign rights, claimed by Libyan government under the Montreal Convention, were contradicted by a SC Resolution, and the ICJ had to decide whether it had appropriate power to deliberate on the legality of the SC decisions. On April 14th, 1992, the ICJ with 11 to 5 vote dismissed the Libyan demand for provisional measures of protection, citing Art. 103 of the UN Charter, that makes the obligations under the Charter prevailing over obligations from other international treaties (Montreal Convention). However, in separate

dissenting opinions some of the judges signalled a willingness to question the unlimited powers of the SC. One of them appealed to the ICJ to be the ‘guardian of the legality for the international community.’² Another posed the rhetorical questions: ‘Are there any limits to the Council’s powers of appreciation? Is there any conceivable point beyond which a legal issue may properly arise as to the competence of the Security Council to produce such overriding results? If there are any limits, what are those limits and what body, if other than ICJ, can determine those limits?’³

The deliberation on potential ‘judicial review’ of the SC decision by the ICJ continued.⁴ The voices of support for such review, however, were not always met with enthusiasm – for example in 1998 the ICJ in the *Lockerbie (Preliminary Objections)* Judgment rejected the British and American objections to jurisdiction and upheld the admissibility of the Libya’s application. In a dissenting opinion one judge defended the traditionalist view, arguing that the Court

*‘is particularly without power to overrule or undercut decisions of the Security Council. The Court more than once has disclaimed a power of judicial review. The tenor of the discussions at San Francisco [where the UN Charter and the ICJ Statute were agreed] indicate the intention of the Charter’s drafters not to accord the Court a power of judicial review.’*⁵

Nevertheless after Lockerbie more and more international lawyers share the opinion that in the UN system, as in any constitutional system, there should be an organ empowered to deliberate and pronounce whether or not the SC actions conform to the law. The ICJ is the principal judicial organ of the UN and the silence of the Charter with regard to a judicial review should not necessarily be seen as prohibitive, rather as implied powers that characterize other UN concepts and activities.⁶

2 Judge Lachs separate opinions, *ICJ Reports*, 1992, p. 138

3 Judge Shahabuddeen separate opinion, *ICJ Reports*, 1992, pp. 140-42

4 Jose Alvarez, ‘Judging the Security Council’ in *American Journal of International Law*, 90, 1996, p. 81-99. He points that domestic supreme courts exercise judicial reviews without necessarily explicit constitutional license

5 Judge Schwebel, dissenting opinion in questions of interpretation and application of the 1971 Montreal convention arising from the aerial incident at Lockerbie, Judgment of 27 February 1998, p. 21 on <http://www.icj-cij.org/docket/files/88/7131.pdf>, also in *International Law Materials*, Vol. 37, 1998, p. 627. Lockerbie was not the final point of deliberation on the potential ‘judicial review’ - the ICJ faced a similar challenge when Bosnia-Herzegovina approached the Court for opinion, whether the SCR 713, imposing arms embargo on Former Yugoslavia, effectively denied the right of Bosnian people to defend themselves from genocide, see <http://www3.icj-cij.org/docket/index.php?p1=3&p2=3&k=f4&case=91&code=bhy&p3=90>

6 For example ‘peacekeeping’ is mentioned nowhere in the UN Charter, but has been a major UN activity throughout the history of the United Nations.

In June 1992, Libya proposed that the Lockerbie suspects be tried in a neutral court, monitored by either the League of Arab States or the UN. The British and American governments, however, refused to compromise. Moreover, they pushed the SC to adopt a new Resolution 883, expanding the sanctions further with the following restrictions: (1) asset freeze on Libyan government funds abroad; (2) ban on imports of oil-transporting equipment; and (3) further reduction of diplomatic personnel.

The SCR 883 can be regarded as the moment of the highest confrontation between Libya and the international community, prior to the 2011 Arab Spring. The goal of the SCR 883 sanctions regime went beyond bringing the two Libyan suspects to trial and delivering justice for the Lockerbie victims. An additional goal was to deter Libya from future terrorist acts. The UK for example specifically sought to restrict Libya's reputed support of the Irish Republican Army (IRA). By enhancing the sanctions, the authors of SRC 883 aimed at combatting the global terrorism. One may even argue that a hidden agenda of the sanctions were to see Qaddafi removed from power.

LIFTING OF THE SANCTIONS

The UN sanctions apparently exerted pressure on Qaddafi's regime, particularly the use of air embargo and the freezing of funds. As many states relied heavily on Libyan oil, the SC never imposed an oil embargo. However, the other SC measures indirectly jeopardised Libya's oil industry. David Cortright and George Lopez argued that the sanctions 'impeded Libya's aspirations to earn a larger international role commensurate with its great oil wealth.'⁷ The World Bank estimated that the sanctions cost Libya 18 billion in lost revenue, primarily from reduced investment in the oil industry.⁸

Pressure from sanctions had the desired effect, and in 1994 Qaddafi offered to disclose Libya's relationship with the IRA and to extradite the Lockerbie suspects to be tried in the Hague, Netherlands. The American and British governments however, were still dissatisfied and insisted on bringing the suspects to one of their criminal jurisdictions. Finally, in 1998, the Clinton and Blair administrations agreed to a trial in a special court, based in the Hague, but applying the Scottish law (territorial jurisdiction of the crime). In August 1998, the SC issued Resolution 1192, suspending

7 David Cortright and George Lopez, *The Sanctions Decade: Assessing the UN Strategies in 1990s* (Lynne Reiner 2000), p. 119

8 'Libya and the Bomber Airliners' in *The Economist*, 13-19 .03. 1999, p.56

the sanctions against Libya upon the delivery of the suspects to the Hague, which occurred on April 5th, 1999. The American government still insisted that Libya pay full compensation to the victims before lifting the sanctions. Libya agreed to compensate the victims, but only after the court pronounces the guilt. On January 31st, 2001 the Scottish trial in the Hague convicted one of the suspects Abdelbasset Ali Al-Megrahi⁹, but found insufficient evidence to convict the second one Al Amin Khalifa Fhimah. The sanctions from SCR 748 were finally lifted in September 2003, after Libya fulfilled all remaining requirements, including the renunciation of terrorism, acceptance of responsibility for the actions of its officials, and payment of compensations.

The 2011 CIVIL WAR AND THE INTERNATIONAL RESPONSE

In mid-February 2011, following popular revolts in neighbouring Tunisia and Egypt, the Libyan people began peaceful protests against Qaddafi's dictatorial regime. As a response the regime engaged heavy military force against civilians, producing hundreds of casualties within only a few days, and threatening the rebellious eastern part of the country with bloodshed. Various regional international organisations – the League of Arab States (LAS), the African Union (AU), the Gulf Cooperation Council (GCC), the Organisation of the Islamic Conference (OIC) – condemned the use of military force against peaceful demonstrators. On February 22nd, 2011, the LAS suspended Libya's membership until the regime applies a ceasefire against the demonstrators. On February twenty-third, 2011, the AU condemned 'the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and international humanitarian law', in response to the 'legitimate aspirations of the people of Libya for democracy, political reform, justice and socio-economic development.'¹⁰

The UN Secretary General phoned Qaddafi urging him to exercise restraint and impose a ceasefire¹¹. The UN High Commissioner for Human Rights, Navi Pillay, joined the efforts with a statement, declaring that a no-fly-zone

9 In August 2009 Al-Megrahi, after serving 8 out of 27 years in jail and diagnosed with terminal prostate cancer, was released by the Scottish Minister of Interior on ground of 'compassion'. Al-Megrahi returned to Tripoli, officially greeted by Qaddafi's son, Saif. Relatives of the Lockerbie victims protested the release, and so did the Obama administration. Though, at the time of the release, given three months to live, Al-Megrahi is still alive in Libya, two years on.

10 *AU Peace and Security Council Communiqué*, AU document PSC/PR/COMM(CCLXI), 23 Feb. 2011

11 Press Trust of India, Ban Ki-Moon blasts Qaddafi situation ; calls situation Dangerous, *Hindustan Times*, February 24, 2011, see <http://www.hindustantimes.com/Ban-Ki-moon-blasts-Qaddafi-calls-situation-dangerous/Article1-666108.aspx>

might be necessary to protect civilians.¹² The Human Rights Council also strongly condemned Libya for the use of force against civilians. The UN General Assembly expelled Libya from the Human Rights Council.

The SC held informal consultations on February 22nd, 2011, hearing a briefing by the Under-Secretary General for Political Affairs, Lynn Pascoe, and issuing a press statement that welcomed the LAS statement earlier that day. Mr. Pascoe expressed grave concern about the situation in Libya, condemned the use of force against civilians, and called on Libya to restrain and exercise responsibility to protect its citizens.

SECURITY COUNCIL RESOLUTION 1970

On February 26th, 2011, after further consultations the SC, using its overwhelming Chapter VII power to protect the Libyan people from the retaliatory actions of the Qaddafi regime, adopted SCR 1970 with a unanimous vote of 15-0 imposing mandatory sanctions and a referral to the International Criminal Court. SCR 1970 condemned the use of force against civilians, deplored the gross systematic violations of human rights and expressed deep concerns at the deaths of civilians as well as the incitement of hostilities by the Libyan government. SCR 1970 pointed that the widespread and systematic attacks against civilian population may amount to crimes against humanity and reminded the Libyan authorities of their responsibility to protect the population, an explicit reference to the concept universally adopted by the UN General Assembly in 2005 'Responsibility to Protect' (R2P).¹³

SCR 1970 was a strong and clear message that the world body could be determined to act swiftly and with all its powers, to restore international peace and security, especially when civilian lives were threatened by a hostile national government, in this case Libya. This fast move by the SC, a body often accused of being paralysed and obsolete, can be regarded as a triumph for the R2P, an emerging norm, envisaging that when states manifestly fail to protect their population from mass atrocities, the responsibility shifts to the international community. In this case, when Libyan Government not only manifestly failed to protect its citizens, but indeed threatened them with a mass atrocity, the SC took timely and decisive measures to protect people at risk.

12 "U.N. official says a no-fly zone may be necessary to protect civilians" *Los Angeles Times*, 23 February 2011, p.2

13 World Summit Outcome document, UN General Assembly, A/60/L.1, 20 Sept. 2005, paragraph 138-40;

In its substantive paragraphs, SCR 1970 demanded an immediate end of the violence, urged Libyan authorities to act with utmost restraint, respect human rights, ensure safety of all foreign nationals, allow safe passage of humanitarian and medical supplies, and lift media restrictions. More than just the usual concerns regarding human rights abuses, the resolution imposed the following practical measures:

1. Referral to the International Criminal Court (ICC): An impressive move, allowing investigation and prosecution of senior governmental officials, including Head of State. This was the second time when the SC made use of this option of Article 12 of the Rome Statute for the ICC, the first being Sudan, following the mass atrocities in Darfur;
2. Arms embargo: This is usually the first enforcement, introduced upon a determination of a 'threat to the peace' under Chapter VII. The embargo was strengthened with a call upon states to inspect all cargo that may reasonably be assumed to contain prohibited items;
3. Travel ban: This is an innovative measure, a 'smart sanction', targeted at designated government officials, to avoid the negative humanitarian effect on the rest of the population. Annex I of the resolution lists 16 Libyan officials against whom the ban applies, among them Qaddafi himself, some of his family members, and military leaders, thought to be involved in the violence against civilians;
4. Asset freeze: Another 'smart sanction' aimed at designated individuals. Annex II of the resolution lists six people – President Qaddafi, four of his sons and his daughter, as targets of the asset freeze.

On March 2nd, 2011, Qaddafi's regime responded to SCR 1970, declaring it premature and asking to suspend the sanctions until the allegations against Libya are confirmed. The SC ignored the request, continued to monitor the deterioration of the situation in Libya and began considering further actions. When Libya refused to permit humanitarian aid convoys into the besieged Misrata and Ajdabiya, the UN Secretary General called Qaddafi again and tried to persuade him to comply, but with no result. The search for a peaceful solution through the UN Special Envoy and the AU High-Level Committee continued, but gradually most governments, observers and UN officials realised that diplomatic efforts alone would not prevent a humanitarian catastrophe and that more decisive action may be required.¹⁴

14 Further in Bruce Jones, "Libya and Power of Responsibilities in *Survival* Vol. 53: Issue 3, 2011, p. 51-60

On March 10th, 2011, NATO moved additional ships into the waters near Libya to support humanitarian assistance efforts and to monitor the crisis.

The strong and unified international response in the SC became possible because of the firm positions taken by regional organisations, condemning the brutality of the Libyan regime. On March 12th, the LAS called on the SC to impose an immediate no-fly zone directed at the Libyan Air Force and establish safe areas as a precautionary measure to protect Libyan people. This firm stand and the request for a no-fly zone by the LAS proved to be decisive.¹⁵ Britain and France, supported by Lebanon (its government speaking also on behalf of the LAS) introduced a new draft Security Council resolution, proposing a no-fly zone under Chapter VII. In a parallel effort, Russia placed its own draft resolution, calling simply for a cease fire, followed by political dialogue.

SECURITY COUNCIL RESOLUTION 1973

On March 17th, 2011, SCR 1973 was adopted. Its paragraph four (under sub-title ‘protection of civilians’) authorised UN member states to engage military force against Libya, using the language ‘to take all necessary measures’, well known from previous instances, for example SCR 678 (1990), authorising the liberation of Kuwait from Iraq. The difference in Libya in 2011 was that the SC authorised use of force within the territory of a single state, while excluding a foreign occupation of any form on any part of that state.

The vote of SCR 1973 was much more problematic than the vote of SCR 1970. Five states – Brazil, China, Germany, India and Russia abstained. Two powerful permanent members and three rising powers and strong candidates for permanent membership expressed their reservations. Russia made a statement, reminding its own draft resolution, calling for a cease fire and dialogue, which it believed could save many lives. Given the fact that both SCR 1970 and SCR 1973 were aimed to compel the Libyan government to stop violence and seek dialogue, it is doubtful whether a resolution, as mild as the one Russia drafted, would have compelled Libya to stop shooting civilians. In fact, calls for a ceasefire were always abundant – many such had already been made by various UN organs and regional organisations, but to no avail. By contrast, Qaddafi regime’s announcement of a ceasefire occurred almost immediately after the adoption of SCR 1973.

15 For full account on how the LAS and other regional organisations urged actions and how the SC followed up adopting SCR 1973 and developing a new politics of protection of civilians, see Alex J. Bellamy, Paul D. Williams “The new politics of protection?” in *International Affairs* Vol. 87: Issue 4, 2011

The abstaining countries expressed a concern about how and by whom the resolution is going to be implemented. They were concerned also what limits would be placed on the military intervention. In fact, the text of SCR 1973 addresses both concerns. It allows any state notifying and in co-operation with the UN Secretary-General to undertake all necessary measures and engage in deterrent actions, leaving freedom to form coalitions and engage regional organisations, such as NATO. The SC resolutions normally never list particular states to implement them. The limits of the military engagement were also expressed - paragraph four of the resolution excluded foreign occupation force to be formed on any part of the Libyan territory. The objective of SCR 1973 was to protect civilians, not to change the regime or occupy Libya, thus representing the very essence of a limited engagement. In support of the resolution, the Lebanese delegation said that no inch of Libyan territory would be occupied. Paragraph five, which addresses the parameters of the no-fly zone, also has clear limitations - it does not apply to flights, delivering medical supplies, other humanitarian assistance and food; to matters concerning remaining personnel and evacuation of foreign nationals.

Germany, which abstained from SCR 1973 (the most surprising abstention from the five), expressed concern about unintended consequences, including possible large loss of life and expansion of hostilities throughout wider region. These are usual clichés, easy to raise, but one may argue in fact to the opposite - a large loss of life would have certainly occurred if there had been no SCR 1973, and the population in Benghazi remained at deadly risk from the Libyan air force. Also, no spreading of hostilities outside Libya has been seen. Germany stated also that if the resolution failed, it would be wrong to assume that any military intervention would be quick and efficient. One may argue that even if the resolution does not fail, it would be wrong to assume that any military intervention would be quick and efficient - the use of force is never easy and quick, it is a necessary, though painful, last resort option to deter murderous regimes.

COMPARING RESOLUTIONS 1970 AND 1973

In evolution from SCR 1970, SCR 1973 introduces the language of a civil war, or non-international armed conflict that brings into force obligations from the Geneva Conventions. SCR 1973 addresses all 'parties to armed conflict,' delegating responsibilities not only to the government, but also to the rebels, 'to take all feasible steps to ensure the protection of civilians'. This is an important progress from SCR 1970, which referred only to

peaceful demonstrations, repressed by the government. International humanitarian law obligations are not triggered by riots and demonstrations in peace-time. If the situation is determined to be a non-international armed conflict, as SCR 1973 implies, legal considerations regarding the jurisdiction of the laws and customs of war come to life, adding extra demands for compliance.

Both SCR 1970 and SCR 1973 warn that 'attacks against civilians may amount to crimes against humanity', signalling of an emerging R2P situation. However, whereas SCR 1970 devotes a whole separate paragraph on R2P, SCR 1973 does not. States may have different interpretations about the circumstances in which the concept of R2P is applicable and what type of duties it involves, however, they cannot defy clearly defined legal obligations arising from international humanitarian law. Most importantly, they cannot ignore the protection of civilians in armed conflict. Accordingly, the text of the preamble of SCR 1973 avoids R2P and attempts in a different way to build international consensus for the implementation of a no-fly zone and the authorisation to use 'all necessary measures'. SCR 1973 refers to the latest communiqués of the OIC and the AU and, most importantly, to the call by the LAS for the creation of a no-fly zone and safe areas to protect civilians. With the determination that the situation in Libya was no longer simply a peace-time riot, but already a civil war, the SC effectively prepared the ground-work for the internationalisation of the armed conflict, adding a greater legitimacy to the decision to authorise military measures.

The substantive parts of SCR 1970 and SCR 1973 begin with an appeal for a cease fire, as well as a peaceful solution, achieved through dialogue. They demand that Libya comply with its obligations under international law, take all measures to protect civilians and ensure rapid and unimpeded passage of humanitarian assistance. It is important to remember that SCR 1973 does not eliminate the efforts for a peaceful solution; in fact it repeats and extends them. The countries that abstained from SCR 1973 mentioned that they prefer a peaceful solution, but certainly nothing in the text of the resolution suggests that the diplomatic efforts to achieve such a solution should stop. One would have admired if states that opposed the authorisation to use force could demonstrate a more efficient engagement in diplomatic efforts. It is easy to stay away from a military intervention, watch it on the TV, and criticise it. If a state decides to do so, in parallel it may also try to engage in diplomacy and demonstrate in practice that a peaceful solution is preferable.¹⁶

16 One such example is the 1999 NATO military intervention over Kosovo, when Russia, opposing the intervention, engaged in active diplomacy (regular talks between ex-Prime Minister Chernomyrdin with the Serbian Ambassador in Moscow) to persuade Serbia to withdraw troops from Kosovo.

SCR 1973 strengthened measures, already adopted with SCR 1970. Paragraph thirteen of SCR 1973, enforcement of the arms embargo, replaced paragraph eleven of SCR 1970, inserting an additional authorisation to use force. After calling upon all flag states of vessels and aircraft to co-operate with the inspections of the arms embargo, the SC also authorises member states to use 'all necessary measures commensurate with the specific circumstances to carry out such inspections.' Similar precedents can be found enforcing the sanctions on Southern Rhodesia in SCR 221 (1966) or in SCR 665 (1990), enforcing the sanctions against Iraq over the invasion of Kuwait. This additional and limited authorisation to use force in SCR 1973 does not only target Libya; it can be applied against any state that may violate the arms embargo. Another new measure, imposed by SCR 1973, was a ban on flights – the UN member-states shall deny permission to Libyan aircraft to take off from, land in, or fly over their territories. The two Annexes of the SCR 1973 enumerated additional designations of individuals to whom the travel ban and the asset freeze, adopted with SCR 1970, will apply, increasing the designations of the sanctions.

SECURITY COUNCIL RESOLUTIONS ON LIBYA AND R2P

It is early, at the time of writing, to give a final assessment to what extent the UN sanctions and the use of force, imposed by resolutions 1970 and 1973, were instrumental in ending the suffering of the Libyan people from the Qaddafi's regime. Forty years history of sanctions – unilateral and multilateral – and various pressures on Qaddafi have not resulted in making him compliant with international law. Removing Qaddafi from power has never been an explicit goal of the UN sanctions; this had to be done only by the Libyan people's revolution. The UN sanctions and the authorisation to use force, particularly in the form of NATO air campaign against Libyan military targets, have assisted the Libyan people to advance to Tripoli and the hope is that they will finally prevail over the remnants of the Qaddafi regime who are on the run as this article goes into print.

Despite these uncertainties, I would not avoid to address the hard question as to whether SCR 1970 and 1973 on Libya represent a triumph of, or a danger for, the concept of R2P. Ironically, on one hand there seems to be an element of triumph, but on another, there is also an equal element of danger for R2P. The SC resolutions 1970 and 1973 fulfil the spirit of R2P, because for the first time since the concept emerged ten years ago, the full and deepest scope of the concept's implementation is being realised. The SCR 1970 explicitly reminded the first pillar of domestic responsibility to

protect of a member-state – Libya. It also adopted mandatory Chapter VII sanctions in the face of that state's manifest failure to protect its population – a third pillar international action by the SC. The UN and various regional organisations worked in concert and engaged the largest possible scope of actions - including negotiations, diplomatic pressure, sanctions, and when these proved to be ineffective, the last resort measure - use of military force.

R2P sceptics raised questions, such as how long the civil war may continue even after Qaddafi's fall, what will happen in Libya in the future etc. As important as these questions might be, technically they are outside the scope of R2P and the SCR 1970 and 1973. The civil war and the removal of Qaddafi from power, and the future political system in Libya have never been part of the SCR 1970 and 1973. Therefore, it is necessary to detach the judgement on R2P and the resolutions from these questions. The resolutions have always aimed at the protection of civilians, not at regime change. The regime change is an ultimate issue of the Libyan people only, not of the UN or the regional organisations. SCR 1970 and 1973 do not, and cannot address the future of the political system in Libya.

It is important to keep R2P what it is – an obligation to save people's lives from deadly risks and mass atrocities. Similarly, it is important to detach what the SC resolutions authorise from the overall military operations in Libya. If someone supplies Libyan rebels with weapons, this is not a part of, rather a violation of SCR 1970 (imposing arms embargo). If foreign troops occupy Libyan territory, this is a violation of SCR 1973. Libyan rebels, fighting Qaddafi forces, have equal responsibility to protect civilians. Distinguishing between what R2P is, and what R2P is not, should be done professionally, based on UN documents, General Assembly and SC resolutions and analysis of scholars.¹⁷

The foreign military intervention in Libya, that seeks to limit the harm to civilians, is neither injuring, nor contaminating the spirit or efficacy of R2P. The SC clearly authorised use of force in Libya with the only aim to protect civilians, and as such it affirmed the parameters of R2P. One cannot judge R2P by discussions on how long the civil war in Libya will last, or what the future of Libyan political system might be. These are military and political assessments. The R2P has neither been about regime

17 UN General Assembly, '2005 summit outcome', A/60/L.1, 20 Sept. 2005, paras 138–40; Gareth Evans, *The responsibility to protect* (Washington DC: Brookings Institution, 2008); Alex J. Bellamy, *Responsibility to protect* (Cambridge: Polity, 2009); Ramesh Thakur, *The responsibility to protect* (London: Routledge, 2011).

change, nor about civil war. Only a very small part of R2P has ever been about military intervention.

When judging R2P, the proper question to ask and answer is whether the civilians in Benghazi and elsewhere in Libya are safer today rather than before March 17th, 2011. The answer is 'Yes'. NATO air strikes reduced substantially the capabilities of the Libyan air force to threaten the civilian population and many thousands of lives have been saved. Unfortunately, there were civilian casualties from the NATO bombing too; nevertheless the final judgement would still need to be balanced of how much good and how much harm has been produced. It would be better to leave to the residents of Benghazi and elsewhere to make the final judgement, as to whether the use of 'smart' sanctions and air-raids, authorised by the Security Council, made their lives better, or worse, and whether the collateral harm has been limited or not.

Whether R2P can be in a danger is also a reasonable question. The answer is also 'Yes', but it comes from outside Libya. R2P may not survive the larger 'Arab Spring' test. Ironically, exactly because R2P was a success in Libya in terms of timely and decisive action by the SC and the regional organisations, such high level of determination might be missing, when similar situations occur elsewhere. The emerging norm R2P would ultimately suffer from the selectiveness of its application if the UN and regional organisations fail to act in other countries, where people are at similarly deadly risk. The problem with R2P is therefore not in Libya – it would be outside Libya, if governments and institutions choose to be selective and ignore civilian protection elsewhere. The judgement on R2P will always be time-specific and space-specific. R2P has triumphed in Libya, but at the same time the same concept could also be in jeopardy in Syria and elsewhere.