
Issues of Legality and Legitimacy

The Responsibility to Protect and NATO's intervention in Libya

Lesley Connolly

The United Nations (UN) Security Council Resolution 1674 of 2006, the *Responsibility to Protect (R2P)* doctrine, represented a significant development in humanitarian intervention and international diplomacy. By passing this resolution, the UN affirmed, "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity."¹ Before such a resolution, the international community was legally bound by the grip of Article 2(7) of the UN Charter, which stipulated "no interference in the domestic affairs of member states."²

This change took place at a time when there was a transforming power balance within the International Community. With the end of the Cold War came the rise of interstate conflict and warfare, including violence within the borders of countries such as Somalia, Rwanda, and Bosnia. There was a widespread disagreement over how states and international organizations should react to these situations.³ There was a growing public discontent with the increasing disregard for international humanitarian law by many heads of states, as well as of the direct targeting of

civilians and relief personnel, and in general, the increasing use of force to fuel conflict.⁴ As the former Secretary-General of the UN, Javier Perez de Cuellar, stated, "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."⁵ The passing of the R2P utilized the notions of just warfare and enabled states who felt morally responsible to stop the committing of widespread violations of human rights against people in a nation, whether it be their nation or another sovereign state, to take action.

The application of R2P in the North Atlantic Treaty Organization (NATO) intervention in Libya in 2011 was the first time the R2P had been used publically. However, this intervention, allegedly based on the notions of ethical warfare, has been criticized for stretching the application of the R2P doctrine to serve ulterior interests. The central question this paper is looking at is whether the application of the R2P to the NATO intervention in Libya was both legal and legitimate and if it has positively furthered the debate on humanitarian intervention. This paper will evaluate the legitimacy of the NATO intervention in terms of whether it was acceptable in terms of the standards and expectations held for actions undertaken by international actors within the international community.

The Responsibility to Protect In 2001, The International Commission on Intervention and State Sovereignty Report, entitled *The Responsibility to Protect*, declared that: "Sovereign states have a responsibility to protect their own citizens from avoidable catastrophe- from mass murder and rape,

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

² Charter of the United Nations, Chapter VII, Article 2(7)

³ Global Centre for the Responsibility to Protect, "Implementing the Responsibility to Protect, The 2009 General Assembly Debate: An Assessment", *GCR2P Report*, August 2009.

⁴ Thomas G Weiss, "Principles, Politics and Humanitarian Action," in *Ethics and International Affairs*, Vol 13 (1999).

⁵ Christopher Greenwood, "Is there a right of humanitarian intervention?" *The World Today*, Vol 43, No 2 (1993).

from starvation- but that when they are unwilling or unable to do so, that responsibility must be born by the broader community of states.”⁶ This report emphasized that prevention is the key to avoiding humanitarian disasters, and, with this end in view, it urged states to consider a range of less coercive measures before resorting to force.⁷

Four years later, at the 2005 UN World Summit, the R2P doctrine was adopted by the UN as Security Council Resolution 1674 of 2006. The heads of states and governments unanimously affirmed, “each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”⁸ They further agreed that the international community should assist states in exercising that responsibility and in building their protection capacities. When a state fails to protect its population from the four specified crimes and violations, it is confirmed that the international community was prepared to take collective action in a timely and decisive manner through the Security Council and in accordance with the Charter of the UN.⁹

There are three pillars to the process of R2P. Pillar I: the protection and responsibility of the State; Pillar II: International assistance and capacity building, and Pillar III: Timely and decisive response.¹⁰ Pillar I refers to a state’s responsibility to

protect its population and country from genocide, war crimes, crimes against humanity, and ethnic cleansing. Pillar II is the commitment of the international community to assist states in meeting the obligations of protection of its people from genocide, war crimes, and crimes against humanity. It seeks to draw on the cooperation of member states, regional and sub- regional arrangements, civil society and the private sector, as well as on the institutional strengths and comparative advantages of the UN system. Prevention, building on pillars one and two, is a key ingredient for a successful strategy for the responsibility to protect. Pillar III refers to a situation where a state has failed to protect its citizens from mass atrocity and peaceful measures are not working. When this happens, the international community has the responsibility to intervene at first through diplomacy, and then through coercive means but only use military force as a last resort.¹¹

The issue of intervention- both humanitarian and military- is a contentious one within the debate over R2P. 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.¹² The doctrine endorses the use of force in extreme situations only and there is a set of criteria, drawing from the Just War Theory, which need to be fulfilled. These principles states that there must be:

Just Cause Threshold must be employed. Military intervention

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

⁷ The Security Council Resolution 1674 of 2006

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ The three pillars of the responsibility to protect, as stipulated in the Outcome Document of the 2005 United Nations World Summit (A/RES/60/1, paragraphs 138-140) and formulated in the Secretary-General's 2009 Report (A/63/677) on Implementing the Responsibility to Protect.

¹¹ The United Nations General Assembly, 2005 World Summit Outcome, A/60/L.1, Article 138, 15 September 2005.

¹² Global Centre for the Responsibility to Protect, “Implementing the Responsibility to Protect, The 2009 General Assembly Debate: An Assessment,” *GCR2P Report*, August 2009.

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.'¹³

The Precautionary Principles state that intervention must have the purpose of halting or averting human suffering. The use of force must be the last resort. 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. Lastly, proportional means must be employed. The scale, duration, and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.¹⁴

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.¹⁵

However, when the R2P was passed these criteria were not formalized as part of the doctrine and therefore, at present, the official guideline to justify military intervention is that the use of force should only be used in the most extreme cases.¹⁶ However, the United Nations Charter does stipulate guidelines on the use of force and military intervention.

¹³ *The Responsibility to Protect, 2001, Report from the International Commission on Intervention and State Sovereignty.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Gareth Evans, "UN targets Libya with pinpoint accuracy," *The National Times*, March 24, 2011.

Article 2(4) of the United Nations Charter establishes that states should not use or threaten force against other states: "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."¹⁷ There are some exceptions to this provided in Chapter VII Articles 39 and 51, which state that the collective use of force is allowed, and is controlled entirely by the UN Security Council and should only be used in Self-defense - in response to an attack.¹⁸

The use of force in the NATO intervention in Libya was the first application of the R2P doctrine, but has been very contentiously viewed. The main issue of contention is that the application of R2P was seen, by the international community, as being stretched to justify the use of force when other means had not been ruled out.

The military intervention in Libya The 2011 Libyan Civil War was an armed conflict in the North African country of Libya, between Colonel Muammar Gaddafi and the liberation forces. The conflict officially started on February 15, 2011 with approximately 200 people demonstrating in front of the police headquarters in Benghazi following the arrest of human-rights activist Fathi Terbil. The protest grew to 800 and was eventually violently broken-up by the police. This was the start of what turned into a nationwide revolution to oust the Gaddafi government.

On February 26, 2011, days after the first attack on Benghazi by the Gaddafi forces, the UN passed UN Security Council Resolution 1970 which invoked that "the Libyan authorities [had the] responsibility to protect its population", condemned the

¹⁷ Charter of the United Nations, Chapter I, Article 2(4)

¹⁸ Charter of the United Nations, Chapter VII, Article 36 & Article 51

violence against civilians, demanded it to end, and enforced sanctions, an arms embargo, and the threat of International Criminal Court prosecution for crimes against humanity upon the Gaddafi regime.¹⁹

On March 12, the Arab League met with the UN and asked them to pass a 'no-fly-zone' over Libya and recognize the rebel movement as the legitimate government in the country, as an attempt to try to stop the violence and attacks on civilians. The Arab League hoped the move would increase the pressure on the United States and European nations to act in response to the conflict that had erupted in the country.²⁰ As a result of this call for help, on March 17, 2011, the UN Security Council passed UN Security Council Resolution 1973. The resolution was adopted under Chapter VII of the UN Charter, and demanded the immediate establishment of a ceasefire in Libya and a complete end to the violence and attacks against civilians. Originally the resolution imposed a no-fly zone²¹ over Libya, strengthened the arms embargo already placed upon the country, imposed a ban on all Libyan-designated flights, imposed an asset freeze on assets owned by Libyan authorities, and established a panel of experts to monitor and promote sanctions implementation. However, the United States of America (USA) refused to ratify the resolution until it went further than just a 'no-fly-zone' alone, and only ratified the resolution once it included the clause "all

necessary measures to protect civilians and civilian-populated areas."²²

On March 19, 2011, a multi-state coalition implemented this resolution with the start of a military operation in Libya. This coalition was initially made up of primarily UK and French forces with the command shared with the USA. However, it soon expanded to include 19 states, among them Belgium, Canada, and Spain. NATO took control of the embargo on March 23, 2011, named *Operation Unified Protector*. This decision was taken after a meeting of NATO members to resolve the disagreements over whether military action should include attacks on ground forces. The decision of using NATO created a two-leveled power structure overseeing the military operations. A NATO-led committee was in charge over politically overseeing the situation, whilst NATO alone was responsibility for the military action.²³

The NATO military intervention included patrolling the skies over northern Libya, which would limit, if not completely eliminate, the regime's ability to employ airpower against its population. Air-to-air missions included executing combat air patrols to counter Libyan air force assets. The exact number of serviceable aircraft is unknown, but the general assessment was that most were in various stages of disrepair.²⁴ It was questioned, by the international community, whether to institute a 'no-drive-zone', however, it was felt that it would be too hard to identify who was part of the pro-Gaddafi regime and who was against it, thus it was not used.²⁵

As of March 31, 2011, the intervention encompassed all international operations in

¹⁹ Global Centre for the Responsibility to Protect, "Implementing the Responsibility to Protect, The 2009 General Assembly Debate: An Assessment", *GCR2P Report*, August 2009.

²⁰ Richard Leiby and Muhammad Mansour, "Arab League asks U.N. for no-fly zone over Libya", *The Washington Post*, March 12, 2011.

²¹ A No-Fly Zone is an area in which aircrafts are not permitted to fly. Such zones are usually set up in a military context and usually prohibit military aircrafts of a belligerent nation from operating in the region.

²² CBS News, "CF-18 jets to help enforce Libya no-fly zone", *CBC News Online*, March 17, 2011.

²³ Jason Hanover and Jeffrey White, "U.S. and NATO Intervention in Libya: Options, Risks, and Benefits", *The Washington Institute*, February 28, 2011.

²⁴ *Ibid.*

²⁵ *Ibid.*

the country. NATO support was vital to the rebels' victory over the forces loyal to Gaddafi. The operation officially ended on October 31, 2011, after the rebel leaders, formalized in the National Transitional Council, declared Gaddafi dead on October 20, 2011 and Libya was officially liberated on October 23, 2011.

The legality and legitimacy surrounding the application of R2P in Libya

This section will unpack the intervention in terms of what was stipulated in the UN Resolution 1973, the principles of the R2P, and the guidelines within the UN Charter for the Use of Force looking at both the legality and legitimacy of the actions. In terms of the legality of the intervention, this paper evaluates to what extent it upholds UN Resolution 1973, what is dictated by the R2P, as well as what is upheld by the UN Charter. This is a relatively straightforward application of the facts behind the NATO intervention and the laws in place.

The question of legitimacy is much more challenging to define and measure. John Locke defines legitimacy in his Second Treatise of Government in 1689 as a type of authority that is wanted, chosen, and seen as right in the eyes of the people of that country.

²⁶ However, in regards to humanitarian intervention, the same definition of legitimacy does not necessarily apply. In regards to humanitarian legitimacy, there is a dominant discourse among humanitarian actors of what is considered correct. One could even say that the Code of Conduct for the International Red Cross and the Red Crescent Movement and the NGOs Disaster Relief could be considered the dominant code of humanitarian legitimacy. Not every NGO has signed this code, however, the principles it embodies are considered plausible, important, and not deeply controversial.²⁷ The difficulty

is that the notion of legitimacy is an evolving and changing dimension and it changes depending on the situation one is in, therefore often an organization has to define what is legitimate in that situation specifically.

THE RESPONSIBILITY TO PROTECT

The *Responsibility to Protect* stipulates that when “national authorities manifestly [fail] to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity,”²⁸ the international community should step in, and this is, in theory, what the NATO-driven intervention did. However, when we unpack the criteria for intervention, we find more challenges to the legality and legitimacy within this application.

Just Cause Threshold

The just cause threshold stipulates that military intervention should only be undertaken for human protection purposes and is to be used only in exceptional and extraordinary measures. 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.²⁹ In the case of Libya, there is no contention that the Libyan people were under threat by the Gaddafi regime. The International Committee of the Red Cross concluded that “it is apparent that Libya is now in a state of civil war.”³⁰ The UN stated that the conflict already

Humanitarianism in question: politics, power, ethics, ed. Michael N. Barnett, Thomas George Weiss (United States of America: Cornell University, 2008).

²⁸ The United Nations General Assembly, 2005 World Summit Outcome, A/60/L.1, Article 138, 15 September 2005.

²⁹ *The Responsibility to Protect*, 2001, Report from the International Commission on Intervention and State Sovereignty.

³⁰ Richard Leiby and Muhammad Mansour, “Arab League asks U.N. for no-fly zone over Libya”, *The Washington Post*, March 12, 2011.

²⁶ Alan Buchanan, “Political Legitimacy and Democracy” *Ethics*, Vol 112, No 4 (July 2002).

²⁷ Jennifer Rubenstein, “The Distributive Commitments of International NGOs”, in

had killed more than 1,000 people and forced more than 250,000 people to flee the country³¹ and even Gaddafi himself directly threatened Benghazi's residents, saying that the army was on its way and that "we will show no mercy and no pity."³² It cannot be denied that international aid was needed. In addition, it was the Arab League who called for the intervention and, according to the British Ambassador to the UN, Sir Mark Lyall Grant, "If you get a regional organization pressing for a particular course of action in the council, then that has a disproportionate influence."³³ Based on this, one can believe there a legal just cause for the intervention into Libya.

However, there are several issues of contention with how the international community reacted to the situation in Libya, which raises questions about its legitimacy. To start with, Patrick Stewart, a Council of Foreign Relations specialist, has argued that the international community has not applied the principles of intervening under a just cause when there is a threat to people universally. There has been no intervention in countries undergoing great 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 2012³⁴. Likewise, the resolution was not implemented to stop Israel from bombing Gaza in late 2008 and early 2009, which resulted in a loss of at least 1,400

Palestinian lives, mostly civilians.³⁵ Thus, as much as the intervention may have been executed with just cause of protecting a threatened people, one has to question if there were ulterior intentions behind the decisions to invade in this case.

The notion of an ulterior reasoning for the intervention has been raised several times by the world oil and business press suggesting that a central motivation was oil. Libya is the 12th largest exporter of oil in the world, and the largest supplier in Africa.³⁶ 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.³⁷

This argument seems to uphold further when one looks at what was requested

³¹ *Ibid.*

³² Simon Adams, "Libya and the Responsibility to Protect: Results and Prospects" *Global Policy Online*, March 28, 2014.

³³ BBC World News, "Why the UN acted over Libya and Ivory Coast- but not Syria", *BBC World News*, May 15, 2011.

³⁴ At the time of writing this paper, there had been no international intervention endorsed by the United Nations in Syria.

³⁵ Marjorie Cohn, "Stop Bombing Libya", *The Huffington Post: World Edition*, March 21, 2011.

³⁶ Christoph Hasselbach and Nicole Goebel, "Disruption to Libyan oil supply highlights need for EU energy diversification", *DW Online*, 3 January 2011.

³⁷ Adams, "Libya and the Responsibility to Protect: Results and Prospects."

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. “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,” Arab League secretary general Amr Mussa stated.³⁸ The intervention did not meet the expectations that Libyan people had - it was more severe and caused more harm and destruction than was necessary.

Thus, looking at the legality of a *just cause principle*, on paper there was a *just cause* to protect the people of Libya and the intervention, although destructive, did save lives. However, whether this was the real motivation behind the intervention and whether the international community acted with full transparency about their motives, makes the legitimacy behind the *just cause* questionable.

The Precautionary Principles

The Precautionary principles stipulate that a military intervention must have the purpose of halting or averting human suffering. The use of force must be the last resort. 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 lesser measures would not have succeeded. Lastly, proportional means must be employed. The scale, duration, and intensity of the planned military intervention should be the minimum necessary to secure

³⁸ Zesham, “Arab League criticizes NATO strikes on Libya”, *Zesham Blogspot Online*, March 20, 2011.

the defined human protection objective.³⁹ This is further stated in the UN Charter, which states that the use of force should only be used as a last resort and must be endorsed by the United Nations.

In terms of the justification behind the use of force in Libya, there has been wide criticism throughout the international community. Former Australian Foreign Minister and a principal author of the *Responsibility to Protect* concept, Gareth Evans argues that “the international military intervention in Libya is not about bombing for democracy or Muammar Qaddafi's head.” Evans suggests, “it has only one justification: protecting the country's people.”⁴⁰ However, Evans goes on to say that, “military action expressly designed to kill Gaddafi or force him into exile, to ensure rebel victory in a civil war, or to achieve a more open and responsive system of government in Libya is simply not permissible under the explicit legal terms of UN resolution 1973. Nor is it permissible under the moral first principles of the Responsibility to Protect doctrine.”⁴¹ However, it is true that the removal of perpetrators of mass atrocities can be a permissible outcome, but this motivation should not become the objective of such interventions. The R2P is mandated to protect civilians and this is what was intended with Resolutions 1970 and 1973 permitting intervention into Libya. However, this notion was stretched to justify actions, which were not necessarily imagined under the intentions of the resolutions.⁴²

Furthermore, it is clear that the use of force was not a last resort measure. Marjorie Cohn argues that ‘all necessary measures’

³⁹ *The Responsibility to Protect*, 2001, Report from the International Commission on Intervention and State Sovereignty.

⁴⁰ Gareth Evans and Mohamed Sahnoun, “The Responsibility to Protect”, *Foreign Affairs*, Vol 81, No, 6 (December 2002).

⁴¹ *Ibid.*

⁴² *Ibid.*

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.⁴³ 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 members⁴⁴ sent to start negotiations with Libya from the country before they could have achieved any results.⁴⁵

To elaborate on this point, this article argues there are a series of other measures, which could have been used prior to force in Libya. These include opening borders and appropriate facilities to allow Libyan civilians to flee regime violence. Considering various governments created exit routes through charter flights and land crossings for their own citizens, it should have been, not only possible, but also morally correct to create an exit mechanism for Libyans. Second, all available means for providing direct humanitarian assistance on the ground to the Libyan population should have been utilized, including aid convoys to eastern Libya through Egypt and to western Libya through Tunisia. Third, Gaddafi's assets and those of remaining elements of the regime should have been frozen and later used to promote reconciliation and development of the future government. Fourth, governments with ties to Libya should have immediately severed all military ties, withholding delivery of material and cancelling all outstanding contracts. Finally, an arms embargo should have been imposed preventing the sale or delivery of military equipment or personnel (including foreign mercenaries) to the Libyan state security forces. Sanctions that targeted

military material, services, and the movement of reinforcements from among foreign mercenaries should have been used. Sanctions that go beyond these aims would run the risk of causing more harm to civilians than to the regime.⁴⁶ Yet, instead of trying these tactics, the R2P was used as a justification for rapid military intervention.

Lastly, the notion of proportionality has been another area of contention in the case of Libya when looking at “does the ends justify the means,” or, in other words, was the attack and suffering proportional to the force used. The NATO intervention and seven-month conflict left Libya with thousands of people dead, material damage, completely destroyed towns, and left the country without a functioning government.⁴⁷ In the seven-month conflict, NATO had launched 9,700 strikes in an attempt to “dismantle the pro-Qaddafi military and militias.”⁴⁸ As can be expected, within these strikes, there were a significant number of civilian casualties. NATO admitted “a missile strike hit a civilian home in the Libyan capital of Tripoli today, killing a number of civilians including at least two toddlers. Though far from the first strike to kill civilians in the Libyan War, it is the first that NATO officials have admitted to.”⁴⁹ It is unknown the total number of civilians killed in the air strikes, but many questions have been asked about the targets of the NATO strikes.⁵⁰

The country, as it stands, has no functioning government and approximately 370,000

⁴⁶ Ash Bâli and Ziad Abu-Rish, “On International Intervention and the Dire Situation in Libya”, *Jadaliyya Online*, February 23, 2011.

⁴⁷ Adams, “Libya and the Responsibility to Protect: Results and Prospects.”

⁴⁸ C.J. Chives and Eric Schmitt, “In Strikes on Libya by NATO, an Unspoken Civilian Toll”, *New York Times*, December 17, 2011.

⁴⁹ Jayshree Bajoria. “Libya and the Responsibility to Protect”, *Council for Foreign Relations*, March 24, 2011.

⁵⁰ Chives and Schmitt, “In Strikes on Libya by NATO, an Unspoken Civilian Toll.”

⁴³ Cohn, “Stop Bombing Libya.”

⁴⁴ This delegation was made up from South Africa, Mauritius, Uganda, Mali and the Democratic Republic of Congo

⁴⁵ Cohn, “Stop Bombing Libya.”

people of concern, including internally displaced persons, refugees, and migrants as of December 2014.⁵¹ The migration crisis plaguing Europe at the moment is a result of the intervention in Libya, which lacked a long-term strategy for improving the lives of the Libyan people. As stated by Chives and Schmitt, “in Libya, NATO’s inattention to its unintended victims has also left many wounded civilians with little aid in the aftermath of the country’s still-chaotic change in leadership.”⁵²

Considering the use of force in the intervention was not a last resort nor did it seem in line with what the Libyan people wanted or was executed with as minimal damage as possible, the legality and legitimacy of the use of force are questionable within this intervention especially.

THE RIGHT AUTHORITY

The R2P resolution states that 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.⁵³ It is clear that the United Nation endorsed the intervention into Libya. As noted above, there is contention over the application of the use of force and interpretation of the mandate, but, in essence, the ‘right authority’ did endorse the intervention. However, one issue is the fact that even though the UN was asked to intervene in the conflict in Libya, it is hard to tell who exactly asked for this intervention and who was against it; there was very little clarity in the situation about who the enemy was. In addition, the request to intervene did

come from Libya, as stated above, but the strategy of the intervention was not in-line with what was requested - a no-fly zone and relief for humanitarian suffering.

Thus, when reflecting on all these points and the language behind the UN Resolution 1973, the legality and legitimacy of the intervention does come into question. The intervention, as endorsed by the United Nations, should have been driven by humanitarian intentions, aiming to save the people from being further harmed by Gaddafi forces. The idea of regime change and the removal of a leader was not within the mandate from the UN nor was the use of force explicitly mentioned. It is clear that the intervention and conflict has left the country destabilized and destroyed to a large extent.

Overall, it is also apparent that the legality of the intervention does meet some of the conditions of a legal intervention, but certain aspects of its application are questionable. However, in regards to the legitimacy, it is clear - the intervention was illegitimate and the actions taken were not in line with the best interest of the Libyan people or to prevent a destabilizing humanitarian situation, but were taken to remove a leader and incite regime change.

CONCLUSION

Ultimately, it is fair to conclude that the intervention in Libya was more legal than it was legitimate, but the legality of the use of force is questionable at best. Added to this, the legitimacy of the intervention in terms of upholding principles of honesty and transparency in action is lacking entirely. As Patrick Stewart argues, “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.”⁵⁴

⁵¹ “Libya Country Page”, <http://www.unhcr.org/pages/49e485f36.html> [accessed 09 November 2015].

⁵² Chives and Schmitt, “In Strikes on Libya by NATO, an Unspoken Civilian Toll.”

⁵³ *The Responsibility to Protect*, 2001, Report from the International Commission on Intervention and State Sovereignty.

⁵⁴ Bajoria. “Libya and the Responsibility to Protect.”

There has been widespread criticism of the intervention, especially given the current status of the country and lack of a long-term strategy from NATO. Gaddafi was killed on October 20, 2011, the war was officially declared over on October 23, 2011, and NATO forces left Libya on October 30, 2011, and yet there is growing lawlessness and deadly disputes between fractious militias in the country.

More immediately, however, the contrast between the Security Council's response in Libya and its inability to take timely and decisive action with regard to mass atrocities in nearby Syria has been an issue of contention. The application of the R2P in Libya was thought to set a precedent for intervention to save people persecuted by their own state and allowed the international community to avoid situations such as Rwanda in 1994. However, its application has not been consistent and the current lack of intervention in Syria to protect the Syrians is an illustration of how the NATO intervention has not contributed to the development of good norms and practiced in humanitarian intervention.

Ultimately, it can be concluded that the NATO intervention did take advantage of the UN Resolution 1973 and did manipulate the scope of the *Responsibility to Protect*. However, the intervention has contributed to the debate on effective humanitarian intervention by raising some serious questions for the international community about how and when to apply the Responsibility to Protect as well as when force can be authorized and the necessity for long-term strategies to any intervention.