

37  
JULY  
2011

## LIBYA, From Positive Precedent to Collective Frustration

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As the Security Council set about approving resolutions 1970 and 1973, the French Ambassador to the UN proclaimed, "The world is changing for the better." His words reflected western diplomacy's deep satisfaction about the negotiations that had led, for the first time, to the inclusion of the Responsibility to Protect (R2P) in a resolution that would then give way to an international military intervention. The international community was thus behaving without discernible divisions or suspicions of hidden agendas. Two days later, the great powers and the countries in the region would intervene together to halt what appeared to be an imminent massacre in Benghazi. Everything seemed to indicate that, after the rifts caused by Kosovo and Iraq, a positive precedent for future international military interventions under the principle of R2P was being set.

But the reality has been otherwise. Four months after the start of the mission, with more than 15,000 dead and hundreds of thousands of refugees and displaced persons, few appear satisfied with the uncertain results of the military intervention in Libya. For the United Kingdom and France, the countries most involved in the mission, and for the Libyan rebels themselves, the frustration rises from the fact that the

U.S. and a few European allies are not sufficiently involved militarily to achieve the only end that, according to them, could guarantee the protection of the Libyans; the fall of Gaddafi.

On the other hand, for many other countries and observers who initially supported the mission, the mandate to protect civilians has been extended inappropriately to the objective of achieving the end of the Gaddafi regime. For them, added to the sense of failure is a sense of deceit. They are asking themselves how, once the possible slaughter of civilians in Benghazi has been averted, NATO forces can justify continuing the increasingly intense bombardments in Libya and that France has even provided the rebels with arms in clear violation of the embargo decreed by the UN.

This evolution of the mission has poisoned what was initially, following the approval of the Security Council and regional support for a military intervention under R2P (only possible in the context of the successful revolts in Tunisia and Egypt) a positive precedent. But to abuse a limited mandate that ruled out the use of land forces or the delivery of weapons (fruit of a consensus among countries with different sensibilities) in order to hasten the fall of the Gaddafi

**The initial legitimacy of the mission in Libya, with the approval of the UN Security Council and regional support, was possible thanks to an extraordinary context, fruit of the first Arab revolts.**

**Many countries that supported the mission have questioned some of the measures led by France and the United Kingdom, considering them to be excessive and detrimental to the legitimacy of the intervention.**

**The lack of a common vision regarding the means and objectives of the mission have been an obstacle to the "political solution" now being sought in Libya.**

**The stagnation of the mission and the Euro-Atlantic divisions that have arisen will probably lead to Libya being remembered as a negative precedent for the Responsibility to Protect and for military interventions in general.**

regime (an objective not considered in the resolution) has undermined the legitimacy of the mission for some.

Though the mere stagnation of the conflict already indicates failure—especially for the citizens of Libya—the damage this mission can cause to the R2P is even worse. Independently of whether the initial objective of stopping the possible massacre in Benghazi was achieved, and the Gaddafi regime could soon fall, it can already be said that military intervention in Libya will not be remembered as the positive precedent that the defenders of the R2P were looking for so that the use of the principle could take hold. On the contrary, it will appear as a case in which some western powers abused their mandate in order to carry out objectives not agreed upon. With no clear political solution in sight, for now, the result of the intervention is one of collective frustration for the international community.

## The approval of resolution 1973 reflected the extraordinary moment that the beginning of the Arab revolts represented, till that point mostly peaceful and wholly successful

### Initial legitimacy in the context of the Arab revolts

The Security Council's approval of resolution 1973 enjoyed the support of the Arab League and the African Union, initially bestowing on the military mission an unquestionable international legitimacy. The resolution authorized the creation of a Libyan no-fly zone and a naval embargo and gave the Member States the faculty to adopt "all necessary measures... to protect civilians" except a "foreign occupation force" on land. Some analysts read the consensus around this resolution as a historic victory for a more interventionist approach to global affairs in protection of human rights, a victory that would indicate a new phase in favor of greater collective responsibility had begun.

For Presidents Obama and Sarkozy, and for Prime Minister Cameron, the memory of their predecessors' errors in Srebrenica and Rwanda weighed heavily in their decision to intervene. The possibility of a slaughter in Benghazi seemed real, with Gaddafi having threatened to "clean Libya house by house" and the American NGO *Human Rights Watch* informing that 223 civilians had died in one week. Obama had to overcome the concerns of Secretary of Defense Robert Gates and many others, Democrats and Republicans alike, who argued that Libya was not "a priority" for the U.S., given its scant geopolitical relevance and the fact that the Armed Forces already had their hands full in Afghanistan and Iraq.

Nevertheless, in both the U.S. and Europe the decision to launch a military intervention came about as a result of a series of factors that went beyond the desire to fulfill the ethical principle of protection of civilians. In the words of Gareth

Evans, the former Australian Minister of Foreign Affairs and one of the proponents of the R2P, "the stars were well and truly aligned in the Libya case."

First, because the approval of resolution 1973 reflected the extraordinary moment that the beginning of the Arab revolts represented, till that point mostly peaceful and wholly successful. For Obama, Cameron and Sarkozy it seemed to be a golden opportunity for rehabilitation in the face of public opinion after their initial support for the regimes (the case of France in Tunisia), timorous support for the demonstrators (the U.S. in Egypt) or general skepticism (all of them in both cases) until then.

The abstention of China and Russia in the Security Council—despite the historical reluctance of both to place any limits on the principle of sovereignty in favor of human rights—must also be framed in this context. The relative geopolitical irrelevance of Libya for both did not sufficiently justify the risk of appearing before history as a country that allowed a horrible slaughter at the hands of an eccentric leader whom, in any case, they had never trusted.

But what was truly extraordinary was the support of the Arab League for the international military intervention, key for its initial legitimacy. In the words of the former Foreign Minister of Jordan, Marwan Muasher, it was "the first time that the group voted unanimously to rebuke or sanction another Arab State." A fact that surprised many governments and experts for which it was unthinkable that a military intervention in the Arab world would be supported when so many had been so critical of the R2P. One need only remember, for example, the declarations of the Algerian President, Abdelaziz Bouteflika, in the general debate of the 1999 UN General Assembly when he defended the inviolability of national sovereignty as "the last defense against the rules of an unjust world." But in the context of the revolts in Tunisia and Egypt, for Bouteflika and the other leaders of the regions, the fear of becoming the next Ben Ali and the desire to distinguish themselves from regimes like Gaddafi's before their uneasy populations and the expectant international community had become their primary concern.

### A mandate in question

The fact that the leadership of the mission was not decided until days after the United Kingdom and France convinced the U.S. of the need to launch an intervention had the initial negative effect of creating an image of improvisation. Initially, leadership fell to the U.S., which moreover took the leading role in a large proportion of the first attacks. But only two days after approval of resolution 1973, Obama decided that the U.S. would transfer command of the mission and go on to play a limited role (though indispensable for the continu-

ance of the mission) centered on the tasks of reprovisioning, surveillance, and selective drone attacks.

With this decision Obama heeded the warnings of his Armed Forces that without land forces the mission would not have a clear outcome and that guaranteeing a no-fly zone would imply bombing Libyan air defenses with the resulting risk of civilian deaths, which indeed has been the case. But more significantly, his decision distanced the U.S. from the United Kingdom and France in giving preeminence to the objective of stopping the slaughter of civilians and not what the latter would come to favor in the following days: the fall of the Gaddafi regime.

Once NATO had rejected leadership of the mission by the Contact Group of countries participating in the mission, it assumed command despite the concerns of some allies, Germany and Turkey among them. A short time later, a series of powerful attacks on Libyan air installations unleashed a battery of criticism. The spokesman for the Russian Ministry of Foreign Affairs accused the coalition of attacking non-military targets and warned: "We believe that the mandate handed down by a resolution of the UN Security Council—controversial in and of itself—should not be used to achieve objectives that fall outside this mandate." The Secretary General of the Arab League, Amr Mousa, reacted with a statement he later claimed had been badly translated (though his unease was clearly manifested): "What is happening in Libya differs from the aim of imposing a no-fly zone. What we want is the protection of civilians, not the shelling of more civilians." For his part, Guido Westerwelle, the German Minister of Foreign Affairs—whose abstention as a non-permanent member of the Security Council (days before regional elections at home) had already undermined the unity of the EU—celebrated his decision in light of the first wave of criticism, with the reminder that "We calculated the risks and decided not to participate."

But military escalation has not ceased. In April, Italy, the U.K. and France sent military advisors to aid the rebels and before long the U.K. and France had begun to use combat helicopters to attack objectives such as vehicles, military hardware and campaign forces loyal to the Libyan regime. In its May 19 edition, *The Economist* reported that NATO had begun to attack retreating military units and control and command centers where Gaddafi or his family were thought to be (on April 30 one of his sons was killed in a bomb attack). In clear violation of the weapons embargo included in resolution 1973, and as a result of an article in *Le Figaro* that revealed the fact, on June 29 France admitted that it was supplying the rebels with "light arms and munitions."

Though practically the entire international community is now calling for Gaddafi's exit, there are still signs of dissent with the escalation of the mission. Following the revelation

of the arms supplies to the rebels, the Dutch Minister of Defense, Hans Hillen, reacted with indignation, insisting that the mission be limited to the mandate. The support of public opinion for the mission has also diminished. In France, for example, it went from 66% in March to less than 50% in June (*The Economist*). And this is not only because of the stagnation of the situation. Another key reason was expressed by Tom Kent, deputy managing editor of the *Associated Press*, when he explained that the agency had gone from calling the situation in Libya a "conflict" to calling it a "civil war" because it is no longer a struggle between a regime and a small insurrection, but between the regime and an organized group that fights for specific objectives of an internal nature. In this context, it is not hard to understand why support for the mission is declining and many countries, like Spain, are expressing their satisfaction at having chosen to remain within the strictures of the mandate and not take part in the attacks led by the United Kingdom and France.

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### **Euro-Atlantic Rifts**

With the mission having gone beyond the Kosovo mission's duration and with the United States, this time, relegating itself to a supporting role, the European military forces have found themselves hard put to sustain their military mission. The General charged with NATO logistics recently warned that if the mission in Libya went on much longer "the question of resources would become critical." The stock of laser-guided bombs is dwindling, Denmark has requisitioned replacements from Holland for its F-16 missiles, and the British fleet has warned that if the mission does not end soon, and sustains its current intensity, it will be necessary to transfer air and naval materiel from other missions.

In the U.S., despite their limited participation, the Obama administration has been faced with diverse battles in Congress to stop the attempts of some Democrats and Republicans to cut off financing for the mission and oblige Obama to ask for the authorization of Congress required for the participation of the U.S. in a situation involving troops in hostilities on foreign territory.

In this difficult context, divisions have arisen between allies. On the one hand, Alain Juppé, the French Minister of Foreign Affairs, has publicly declared, "We think the North Americans are not doing enough." On the other, Robert Gates has criticized Germany, Poland, Turkey, Holland, and Spain for not "wanting to share in the risks and costs." In his last visit to Europe as Secretary of Defense, remembering Afghanistan and Libya, he warned, "The future of the trans-Atlantic alliance is dim, if not dismal."

The extent of Gate's critique shows the U.S. level of frustration with the relatively meager European military capacities, a topic that is by no means new in transatlantic relations. What is significant is that in Libya, a mission on which the U.S. has decided, in the words of an anonymous advisor to Obama, "to lead from behind," Europe is not capable of assuming the necessary responsibilities to lead a major military mission.

Divided from the start by Germany's position in the Security Council and by the military measures taken by France and the United Kingdom, the European Union has continued acting on the basis of national calculations, with scant coordination, giving the impression that any kind of common foreign policy is still a distant objective. Aside from providing vital cargoes of humanitarian aid, the EU has remained on the sidelines of the conflict. Not even the logistical mission agreed upon to support the delivery of the humanitarian aid has gotten off the ground and the recognition of the National Transition Council (NTC) has taken place at national

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level and with scant sign of coordination. Nor has EU-NATO cooperation gotten any farther off the ground. In Libya the added value that the EU might have been able to offer as a "civil power" has yet to make an appearance. In a context of growing Euro-Atlantic reticence toward participation in international missions, Libya has consolidated the image of a Europe divided and in crisis and still dependent on the U.S. military.

### **Obstacles to a "political solution"**

The stagnation of the military conflict after the initial months of intervention gave way to the insistence of the international community on finding a "political solution" for Libya. Nevertheless, there has not been much clarity regarding the type of "political solution" needed. While countries like Turkey, South Africa and Russia have negotiated directly with the Libyan regime seeking agreement on a cease-fire, until the fourth meeting of the Contact Group on July 15 in Istanbul, the United Kingdom, France and the U.S. continued to oppose reaching a negotiated exit for Gaddafi, rejecting contacts with him and his inner circle.

On June 28, 100 days after the mission began, the International Criminal Tribunal (ICT) ordered the arrest of Gaddafi for alleged crimes against humanity. Like the arrest warrant of President Al-Bashir in Sudan, this arrest warrant seeks to

do justice and serve as a warning to other despots that their acts will not go unpunished. But, in practice, it has also put off the ceasefire that several countries have sought by pushing Gaddafi and his inner circle toward a zero sum game in which the perspective of ending up behind bars complicates any "political solution". In this case it seems as if the intent to do justice has turned out to be counterproductive for the goal that ought to be the absolute priority: putting an end to the conflict and putting a stop to the death of more Libyans.

Hence the "political solutions" that the international community was seeking until now have been undermined. The objectives of achieving a cease-fire agreement, a military end to the Gaddafi regime, or arresting and bringing Gaddafi to judgment before the ICT are different from one another and difficult to achieve together. Particularly pernicious has been the decision of the United Kingdom and France to maintain military pressure without considering the possibility of reaching an agreement with Gaddafi on a "political solution" that they now claim would be acceptable.

The meeting of the Contact Group in Istanbul in July signaled an attempt to correct previous errors by reaching a common position to seek a "political solution" that would be acceptable to all. The 32 countries and 7 international organizations that make up the Group decided to recognize the NTC

as the "legitimate governmental authority" (the U.S. had not yet recognized it), thus facilitating the possible transfer of Libyan funds frozen in foreign banks. In addition, Abdelilah Al-Khatib, the special envoy of the Secretary General of the UN, was designated as the sole emissary to establish contacts and present a road map that would include a cease-fire and the basic elements of a post-Gaddafi transition.

The arrival of Ramadan in early August seems to have accelerated the search for an accord. Though many countries had admitted to maintaining contact with the regime, the U.S. recognition of direct contacts with the Gaddafi regime, only days after the Istanbul meeting, is significant.

Even if a "political solution" is finally reached, serious challenges to a post-Gaddafi Libya will remain. The international community will have to convince the NTC of the need for an international mission, most likely led by the UN, whose legitimacy could depend to a large extent on the position assumed by the Arab League and the African Union. In any case, in a post-conflict scenario it will be important to include the more moderate sectors of the regime fostering a process of political reconciliation that will not marginalize the former members of the regime, as occurred in Iraq after the fall of Saddam Hussein. The rebels (accused by *Human Rights Watch* and other organizations of abuses against the civilian population) still sow a great deal of doubt with regard to their viability as the axis of a future Libyan government.

## The Responsibility to Protect after Libya

When Bashir al-Assad started the indiscriminate slaughter of civilians in Syria many wondered why the international community intervened under the R2P in Libya and not in Syria. It is reasonable for public opinion to pose this question but the response is evident for anyone with knowledge of the region. In Syria too many countries (the U.S., Israel, Iran, Turkey, etc.) have important interests at stake, making a military intervention with the approval on the UN Security Council and regional support, as was the case in Libya, almost impossible. It also seems probable that a military intervention in Syria could worsen the situation in other conflicts such as Lebanon, Iraq, or Afghanistan.

Nothing guarantees that post-intervention Libya will be a better place for Libyans and for the international community. The divisions among the rebels are cause for concern and it cannot be ruled out that the country could split, that another authoritarian military regime could take power or that the civil war will go on. But in Libya the international community opted for what Samantha Power, until recently a high level State Department official, calls and defends as “the predisposition to believe” that the slaughter could be imminent, as it appeared it might be in Benghazi. Conservative U.S. commentators brandish the argument that it didn’t make sense to put the R2P in danger in a mission of scant political relevance such as Libya and that the result would be that there would now be further demands for interventions under R2P. But the relative geopolitical irrelevance of Libya is precisely what allowed the international community—in the context of the Arab revolts—to support military intervention without divisions. That action cannot be taken in every case does not mean that actions should not be taken when it can be.

Nevertheless, the intervention in Libya will not be remembered as a positive precedent for the RtoP. The editor of a Chinese foreign affairs journal recently complained to a British journalist, “What we are really angry about is that we have spent a large amount of time trying to convince the North Koreans that they give up nuclear weapons and they will not be attacked by the West. We were using the Libya example. Now we cannot.” Though the argument that the international community ought not to attack the Gaddafi regime because that would make it more difficult for North Korea or Iran to abandon their weapons of mass destruction as Gaddafi did in 2003 is unacceptable, the Chinese reaction illustrates the frustration that the evolution of the mission in Libya represents for many countries.

The attempt to launch a limited intervention for the protection of civilians has ended up with the indignation of many for having gone beyond the agreed-upon mandate. In light

of the enormous difficulties that exist for finding lasting political solutions following the military interventions in Iraq, Afghanistan and perhaps now in Libya, this last mission may represent an important tipping point reinforcing the caution of political leaders in the U.S. and Europe when they are considering in the future the viability of a military intervention under the R2P or not. Though the final chapter on intervention in Libya has not yet been written, the initial optimism of the French ambassador to the UN now sounds entirely unjustified. The R2P still has a long way to go until it becomes a consolidated principle in the international community.

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