Dropped in Tripoli; Exploded in New York:
Assessing the Collateral Consequences of NATO’s 
[Mi]sleading Intervention in Libya

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“The strong do what they have the power to do and the weak accept what they are forced to accept” – the Melian Dialogue.

Few days after the bloodied former Libyan President, Colonel Muammar al-Gaddafi was arrested and hurled into a steaming vehicle and subsequently killed by his captors – an image that not only became an instant hit on YouTube but nearly bested that of the pop sensation, Justin Bieber – NATO announced the end of its “humanitarian mission” in Libya. While the mood in the African region, at best, was that of subdued resignation, in the West, there was a palpable air of accomplishment as leaders and the media celebrated what was regarded as the epiphany of a renewed commitment by the international community to military intervention in armed conflict in another state based on humanitarian ground, with the media curiously predicting that “after Gadafi, Libya’s oil will flow – slowly.” This paper interrogates NATO’s military intervention in the Libyan crisis. It argues that the entire notion of “humanitarianism” on the basis of which NATO intervened was an insidious facade behind which lay the real purpose – vengeance and preservation – retaliation against Libya for the release of the Lockerbie bomber Abdelbaset al-Megrahi, and an unabashed desire to protect the economic interests of the hegemonic western power. The paper concludes that rather than reflecting an acceptable new paradigm, the manner of NATO’s operation in Libya, not only reinforces the scepticism and suspicion of the Third World countries concerning the concept of humanitarian intervention, which they view as an instrument of neo-colonialism, but also makes future similar United Nations Security Council (UNSC) resolution almost impossible.

INTRODUCTION

In October 2011, and following the killing of the Libyan President Muammar Gaddafi, the North Atlantic Treaty Organisation (NATO) announced the end of its United Nations-backed

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† The correct spelling of the name has remained as enigmatic as the bearer. Such variants as “Gadhafi”, “al-Qadhaﬁ”, “Al-Qadhaﬁ”, and so on, are often too common. In fact, the literature is replete with different variations of the name – an abnormality which has been attributed by an online website to the “inherent difficulties of transliterating written and regionally-pronounced Arabic.” According to the same website, “an article published in
military mission in Libya. It was the end of an intervention that was patently marketed as being calculated to protect the civilians, but would later emerge as a latent contraption for a regime change – in which the United Nations (UN) Resolution 1973, would become a pun in the chessboard of international politics. From Paris to Washington and Rome to London, there was a palpable air of victory as, one after another, leaders of the West triumphantly mounted the podium to address their ecstatic citizens and the divided world, flaunting what one of them described as “what collective action can achieve in the 21st century.”² In the court of the West’s public opinion, too, NATO’s intervention was a huge success, especially in the context of being able to avert a humanitarian catastrophe at a minimal financial and human cost, and “creat[ing] an opportunity for freedom and constitutionalism on behalf of a long-oppressed people.”³

The depiction of Libyans as “a long-oppressed people” as a justificatory phrase for NATO’s intervention is perfectly consistent with both what a writer classically described as the human rights metaphor of “savages, victims and saviours”⁴ and the familiar heroic narrative of humanitarian intervention, “in which international institutions are the bearers of progressive

human rights and democratic values to local people in need of those rights and values . . .” 5 In the West, and long before the Libyan crisis began, the personal identity of Gaddafi and the entire administrative apparatus of the Libyan state, of which he was the head, had, through the process of reconstruction largely orchestrated by the Western media, effectively became synonymous with savagery, barbarism, cruel, terrorism, and “a negation of humanity.” 6 The citizens, therefore, were viewed as victims of the savagery of the state, oppressed, helpless, and innocent, and in desperate need of “the saviour, or the redeemer, the good angel who protects, vindicates, civilizes, restrains, and safeguards.” 7 The role of the Western mass media in masking NATO’s mission in Libya will be explored later in this paper.

Characterisation of the leaders of the Third World countries, 8 whose socio-economic and political ideologies are at odds with that of the West, as “rogue” or “evil” has long become an


6 Makua, supra note 4, at 202.

7 Ibid at 204.

8 The term “Third World” does not lend itself to a universally acceptable definition. Historically, it emerged in the 50s as a catch-phrase to group together the non-aligned nations-states which refused to support either the U.S. or the former USSR during the Cold War until it was officially adopted at the Bandung Conference of 1955. See Mark T. Berger, The End of the ‘Third World’? 15 Third World Quarterly 257, 259 (1994). “Third World Scholarship,” however, is not a recent phenomena but rather “is a part of a long tradition of critical internationalism, stretching all the way to Latin American de-colonisation movements and the Afro-Asian anti colonial struggles of the 1940s-1960s”. See James Thou Gathii, Rejoinder: TWAILing International Law 98 Mich. L. Rev. 2066, 2066 (2000). For the purposes of this paper, Michelson’s definition of the concept is useful. According to her, “In a purely descriptive sense, ‘Third World’ is frequently used interchangeably with other terms such as ‘less-developed,’ ‘developing,’ or
intrinsic part of international politics. The current dialectical relationship between the West, on one hand, and Havana, Caracas, and Tehran, on the other hand, and the attendant stereotypical (re)construction of the identities of the leaders and governments of the latter by the former is only but one example. The case of Tehran is particularly very interesting. “The international community must prevent Iraq from acquiring a nuclear weapon,” has become the popular soundtrack of the hegemonic music of the West, whose motivation is predicated on a purportedly genuine desire to prevent a “game change” – a nuclear armed race – in the Middle East region. But what is hardly mentioned in the narrative is the fact that Israel, a staunch ally of the West, is the World’s sixth most powerful nuclear state “with a stockpile of more than 100 nuclear

‘underdeveloped’ countries, and, increasingly, ‘the South.’ The referent are the countries of Africa, Asia, and Latin America that have traditionally been classified as lagging behind the ‘West,’ ‘North,’ ‘First World’ or ‘developed countries’ in terms of economic growth and indicators of economic prosperity. Building on this quasi-geographical rubric, another layer is frequently added -- that these countries are the marginalized within international society.”

See Karin Mickelson, Rhetoric and Rage: Third World Voices in International Legal Discourse 16n Wis. Int’l L.J. 353, 354 (1998). However, some scholars have criticised the term “Third World” both for being geographically amorphous and for lumping together developed countries (such as China, Taiwan, Singapore, etc.) and the underdeveloped nations like Bhutan, Mauritania and Jamaica. See James H. Mittleman & Mustapha Kamal Pasha, OUT FROM UNDERDEVELOPMENT REVISITED: CHANGING GLOBAL STRUCTURES AND THE REMAKING OF THE THIRD WORLD 23 (New York: St. Martins Press, 1997). Another related critic is that such categorization fails to acknowledge the existence of a “Third World” within the “First World” and vice versa. See ibid. In debunking this argument, however, Okafor argued that rather than a “monolithic third-world category,” what is important is the existence of a group of people who share a common historical and continuing experience of subjugation, or what an author has described as “geographies of injustice. See Obiora Chinedu Okafor, Newness, Imperialism, and International Legal Reform in our Time: A TWAIL Approach 43 Osgoode Hall L.J. 172, 174 (2005).
weapons” – an achievement which would not have been possible but for the assistance of France and the United States.⁹ Although an in-depth examination of this issue is not part of this paper, what is significant, in the context of NATO’s military mission in Libya, however, are two interconnected points. The first relates to the manner in which the characterisation of Gaddafi by the West helped to emasculate any critical interrogation of the actual purpose of the operation, how the declared goal of “protecting the Libyan citizens” metamorphosed into a regime change, and why any accusation of neo-imperialism against the West might be viewed by some as far-fetched. The second, on the other hand, speaks to the eternal susceptibility of international law vis-á-vis humanitarian intervention to selectivity – a choice often driven by the socio-political and economic interests of some powerful nations – and one which has continued to reinforce the belief of most Third World scholars that “the regime of international law is illegitimate” and calculated to plunder and subordinate the Third World by the West.¹⁰ These issues are explored in the succeeding parts of this paper.

This paper proceeds in three parts. Part one examines Gaddafi in the eyes of the West, particularly before the Libyan crisis. By highlighting the frosty nature of the relationship between Gaddafi and the West, the next part connects the dots of both the unusual dispatch with which the “international community” intervened in Libya, a nation located in a region in respect

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⁹ France was reported to have provided the fillip for Israel’s emergence as a nuclear power through its building, in the 1950s, of the Dimona reactor – Israel’s major source of Plutonium which is the main source of its nuclear weapon fuel – while the U.S. was said to have initially supplied a small 5 megawatt (thermal) research reactor at Nahal Soreq. See Israel’s Nuclear Weapon Capability: An Overview, available at http://www.wisconsinproject.org/countries/israel/nuke.html.

of which its previous policy had been one of “neutrality or, at best, passive involvement.” ¹¹ and the unabashed transformation of its mission from “protection” to “assistance” – and regime change. Part two discusses the Libyan crisis, not necessarily from the “victims’” perspective but in the context of the involvement of the “international community.” The Part interrogates the actual mission of the West in Libya and argues that, contrary to the hackneyed notion of humanitarianism, at the centre of NATO’s intervention was a premeditated intention to engender a regime change in Libya both as a vindictive response to the release of the convicted Libyan Lockerbie bomber Abdelbaset al-Megrahi by Scotland and in order to advance their hegemonic socio-political and economic interests. This part also examines the role of the media, on the one hand, in the (re)construction and perpetuation of stereotypical identity of Gaddafi through the use of maliciously descriptive terms, ¹² and, on the other hand, in catalyzing the intervention, and argues that the current lack of appetite on the part of most scholars to critique what, arguably, was an abuse and misuse of the United Nation’s Security Council’s (UNSC) resolution on Libya by NATO stems from this. ¹³ Finally, the last part, which is the conclusion, argues that rather than reflecting an acceptable new paradigm, the manner of NATO’s operation in Libya reinforces the scepticism and suspicion of the Third World countries concerning the concept of military

¹¹ Eberechi Ifeou, FROM CONSENT TO SUSPICION: UNDERSTANDING THE AFRICAN UNION’S EMERGING RESISTANCE TO THE ENFORCEMENT OF INTERNATIONAL CRIMINAL JUSTICE IN THE AFRICAN REGION 92 (Verg: VDM Verlag 2009).


intervention, which they view as an instrument of neo-colonialism, and also makes future similar UNSC resolution more difficult.

**FROM “BIRTH” TO DEATH: GADDAFI THROUGH THE EYES OF THE WEST**

From the inception of Gaddafi’s regime until its demise in 2011, “the West, fascinated and regularly horrified, had watched Col. Qaddafí’s every move.”\(^{14}\) Until his assassination in 2011, and for the most part of his reign as the president of Libya, his anti-Western posture had made him an object of the West’s odium and scorn only comparable to the United States’ hatred of Fidel Castro of Cuba and Britain’s disdain for Nasser of Egypt.\(^{15}\) The Western media, too, could not resist the magnetism of his perceived clairvoyance and the gravitas of his ascribed sense of delusion. Very often, he was depicted as barbaric, despotic, and erratic,\(^ {16}\) and described in terms that evoked a Hitler-like memory. The title of an article in the New York Times – “Col. Muammar el-Qaddafí: An Erratic Leader, Brutal and Defiant to the End,”\(^ {17}\) sums up the media’s construction of the identity of Gaddafi.

The West, especially the US always had its motivation to go after Gaddafi. The event of 2011 had been a long time in the making, and the history of the relationship between Gaddafí and the


West offers a prism. Right from the inception of what eventually became over four decades of reign as the president of Libya,\textsuperscript{18} Gaddafi defined himself in opposition to the West and was determined to alter the political and economic landscape of Libya, which he viewed as neo-colonialist and pro-Western.\textsuperscript{19} As a start, he clashed with the United States and Britain over their military bases in Libya and successfully ordered that they be relocated, and clashed with Italy, its former colonial master, as a result of which its nationals were forced to leave Libya.\textsuperscript{20} As soon as the US eventually complied with his order and completed the removal of its base on June 11, 1970, less than a year after his rise to power, Gaddafi “symbolically renamed the day ‘Uqba bin Nafi’ after the Muslim Arab commander who led the Arab conquest of North Africa in the seventh century.”\textsuperscript{21} He interfered in the dispute between Britain and Malt by supporting the latter’s claim over the bases on the island, and, until recently, supplied arms to the Irish Republican Army, a rebel group opposed by London.\textsuperscript{22} In 1972, the United States withdrew its ambassador from Tripoli following Gaddafi’s renunciation of his previous agreements with the West and his unhidden anti-Western posture.\textsuperscript{23} And after a mob attack on the US Embassy in

\textsuperscript{18} Col. Muammar el-Gaddaf\texti{i}, born in 1942, came to power on the 1\textsuperscript{st} day of September, 1969, through a successful coup that overthrew the government of King Idris who was generally viewed as pro-West. \textit{i}bid. at 2.

\textsuperscript{19} \textit{i}bid.

\textsuperscript{20} \textit{i}bid. at 79.

\textsuperscript{21} Yehudit Ronen, QADDAFI’S LIBYA IN WORLD POLITICS 11 (United States: Lynne Rienner Publishing, Inc., 2008).


\textsuperscript{23} El-Qaddafi, \textit{supra} note 14.
Tripoli in 1979, it cut off diplomatic relations with Libya.\textsuperscript{24} Relations with France also plummeted because of the conflict in Chad. France supported the then President Hissène Habré while Libya supported former president Goukkouni Wuedei.\textsuperscript{25} In fact, his radical “Afro-Arabcentric” foreign policy, which led to his support of anti-West radical organisations around the world and his opposition of Israel made him a perceived threat to Western interest and to the stability of the Middle East and North Africa.\textsuperscript{26}

Realising the power of energy in the global politics, Gaddafi leveraged his country’s oil richness in his attempts to fend off the West. One of his strategic moves in this direction was his confrontation with the oil companies. In 1970, he demanded for a 20 percent increase in the price of Libyan oil, and before the end of the year had persuaded OPEC to renegotiate new price between oil exporting countries and the oil companies.\textsuperscript{27} He enacted a law nationalizing the oil industry, and by 1 September, 1973 – the 4\textsuperscript{th} anniversary of the revolution – his government had

\begin{itemize}
\item \textsuperscript{24} \textit{Ibid.}
\item \textsuperscript{25} Zoubir, \textit{surpa} note 22, at 403.
\item \textsuperscript{26} \textit{Ibid.}
\item \textsuperscript{27} Dennis Sammut, \textit{At Forty, the Libyan Revolution Finally Matures} Mediterranean Politics 437, 438 (2009).
\end{itemize}

According to Henry Kissinger, then US President Nixon’s National Security Adviser:

Libya triggered a process by which host governments gradually discovered and began to exercise their dominant power over the oil market. There were three discernible stages in the revolution about to unfold: first a creeping increase in prices; then the host government’s gradual de facto takeover of the ownership and operational control from the oil companies; and finally the resulting ability to link the sale of oil to political conditions, especially in the context of Arab-Israeli conflict. See Henry Kissinger, \textit{THE KISSINGER DIARIES, VOL. 2: YEARS OF UPHEAVAL} 861 (Canada: Little, Brown and Company Ltd 1982).
nationalised fifty-one percent of all remaining foreign oil company. But this would come, in the long run, at a great price. According to Arnold: “the elimination, or at least the severe reduction, of Western oil-power was something rather different, suggesting that Gaddafi was going to prove considerably more dangerous to Western economic interests than the average nationalist leaders then emerging in the newly independent countries of the African continent.”

Perhaps no other conflict better defined the relationship between the West and Gaddafi than the dispute over the allegation of Libya’s involvement in terrorism – in particular the bombing of Pan Am 10 over 3 Lockerbie, Scotland, in 1988, which killed all 243 passengers and 16 crew on board as well as 11 residents on the ground. For the enormously greater part of his reign, he was associated with terrorists attacks all over the world, and for the US, Gaddafi, not Osama bin Laden, envisioned the face of international terrorism. Although the subject matter of terrorism and the extent, if any, of Gaddafi’s/Libya’s involvement is not within the purview of this paper, the contextualization of some of the allegations, including the trial and conviction of the Lockerbie bomber Abdelbaset al-Megrahi, is important to foreground a primordial hegemonic desire to get rid of him, especially from power. The defining context in this regard is the fallout from Gaddafi’s policies during the Cold War era. At the end of the analysis, it will become

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28 Ronen, supra note 21, at 13. In February 1974 and in response to President Nixon’s conference of oil consumers in Washington, Gaddafi nationalised three US oil companies – Texaco, Asiatic Oil of California and the Libya-American Oil Company – all which accounted for about five percent of Libyan oil output. See Arnold, supra Note 13, at 91.

29 Arnold, supra note 15, at 79.


obvious that there is a valid argument to be made that even the characterisation of Gaddafi as a
terrorist by the West stemmed from his alignment with a perceived political enemy state, and not
necessarily borne out of empirical evidence, and that his ouster and killing with the active
connivance of the West was a payback for his earlier “political indiscretions”.

**NATO’s Intervention in Libya as the Ricochet of the Cold War Era**

For so many decades, the world witnessed a battle between the then two superpowers – the
defunct United Soviet Socialist Republic (USSR) and its allies, and the US and its Western
friends over ideological control of the hemisphere – a period popularly known as the “Cold War
era.” Like most Third World heads of states at the time, Gaddafi was unpremeditatedly cut in the
web of this conflict, thus, requiring him to make a policy choice based, in part, on his prerogative
and, in part, on the considered interest of his nation. According to a commentator, “with
capitalism pitted against communism in a battle for supremacy, the geological size of the combat
soon expanded as more states, particularly from the Third World, were conscripted by either side
in exchange for some forms of economic assistance.” Having made no secret of his disdain for
the US, Gaddafi embraced the USSR, to the exasperation of the US government which feared
that the growing tie between Tripoli and Moscow would catalyze Soviet expansionism in the
Middle East and Africa. The Kremlin’s pledge in 1981 to construct an 800 MV nuclear power
station in Libya, coupled with the visit of Abdul al-Salam Jallud, Gaddafi’s confidant, to
Moscow to secure additional weapons only served to fuel the raging fire of Washington’s

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33 Ronen, *supra* note 21, at 14.
apprehension.\textsuperscript{34} Due to this concern, Washington not only imposed sanctions against Libya but also arbitrarily ranked Libya fourth – after the Soviet Union, China and North Korea – in its annual report of potential enemies,\textsuperscript{35} citing Gaddafi’s “irresponsible support for international terrorism”, his support for various anti-Western “liberation movements” around the world, and his attempts to undermine pro-Western regimes.\textsuperscript{36} Labeling Libya as a state sponsor of terrorism,\textsuperscript{37} therefore, became to Washington and the West both a sword and a shield – an incentive to launch military attacks which were often calculated to either eliminate or weaken Gaddafi, and a defence against criticisms and condemnations by concerned states.

For instance, in 1980, there was a military attack which downed an Italian airliner in midflight over Ustica, a small island north of Palermo, killing 81 passengers on board. After years of inquiry, it was revealed that the DC-9 had been accidentally hit by a missile fired “in a joint Franco-US operation meant to shoot down a plane carrying the Libyan leader to Poland.”\textsuperscript{38} The evidence, which became public following the seizure of some document from the retired head of the Italian counter-espionage service, Demetrio Cogliandro, after a long cover-up, derives from the statement of an Italian military radar technician who confessed that the DC-9 “was caught in

\textsuperscript{34} Ibid. at 21.

\textsuperscript{35} Cuba came fifth. Ibid. at 15

\textsuperscript{36} The International Herald Tribunal (29-30 January 1977).

\textsuperscript{37} Beth, supra note 31.

\textsuperscript{38} Fitzgerald Patrick, \textit{Counting the Cost of the West's Cold War with Libya}, New Statesman and Society (26 November, 1996).
the wrong place during an attempt by NATO fighters to blast Colonel Muammar Gaddafi out of the skies with a missile.”

After this incident, other attempts were made on Gaddafi’s life based on the same allegation of terrorism. In fact, between March 1981 and January 1996, the US naval force carried out not less than 18 military operations near the Libyan coast, seven of which were undertaken inside Libyan territory – operations estimated to have involved 30 ships and 26,000 men. But it was the April 15, 1986 bombing of Libya by the US that clearly demonstrated the West’s interest to get rid of Gaddafi. Two separate incidences of terrorist attacks on 2 and 5 April 1986 in Karachi and West Berlin respectively “provided Washington with the excuse it clearly sought to take more stringent action against Gaddafi.” The latter which occurred in a discotheque frequented by US soldiers, killed two US servicemen and injured 230 people, seventy-nine of who were American citizens. Despite his plea of innocence, the US, supported by Britain, as usual, accused their common enemy – Gaddafi – of being the mastermind of the attacks and would, on that basis, launch a targeted military attack dubbed Operation El Dorado against Libya on the morning of 15 April 1986. By the time the 11½ minutes war in which Gaddafi barely survived was over, 130 deaths, including Gaddafi’s adopted daughter, was recorded. Although the White House publicly denied that killing Gaddafi was one of the intentions of the attack, many commentators

39 The independence (8 January 1996).
40 Arnold, supra note 15, at 99.
41 Ibid.
42 Ronen, supra note 21, at 31.
43 Ibid. at 32.
44 Arnold, supra note 15, at 100.
believed that the primary aim of the raid had been to kill Gaddafi. For Seymour Hersh, an American journalist writing in both *the New York Times* and *the Sunday Times*, “there is no question they were looking for Gaddafi” and had instructed the Air Force fliers to that effect.\footnote{Ibid. at 102-3.} President Reagan was quoted to have said that “if the bombs had fallen differently, the U.S. might have eliminated one of its principal adversaries in that long battle”\footnote{Church George J, Beckwith David, et al, *Cover Stories Hitting the Source U.S. Bombers Strike at Libya’s Author of Terrorism, Dividing Europe and Threatening a Rash of Retaliations*, Time (28 April, 1986).} and admitted that he had authorised a plan to make Gaddafi “go to bed every night wondering what he might do.”\footnote{UNITED STATES, 528 (Britannica book of the year, 1987).} Privately, too, Reagan’s aides left no doubt that, “to put it mildly, they would not have been unhappy if Gaddafi just happened to die in the raid.”\footnote{Church, *supra* note 46.}

The bubble of U.S.’s covert intent to eliminate Gaddafi under the guise of anti-terrorism would burst a few months after its attack on Libya. Yehundit described the drama thus:

The United States’ antiterrorism policy suffered grave setbacks in the fall and winter of 1986 as a result of two public relations disasters. The first was the exposure of a plot against Qaddafi, thought up by the US administration and coupled with manipulation of the US media that the US National Security Council had launched a disinformation campaign aimed at further blackening Qaddafi’s image, stating that he was planning to launch a new wave of terrorism. The purpose of this manipulation was to foster an anti-Qaddafi’s atmosphere within Libya and, subsequently, to enhance the prospects of a coup against him. The second was the revelation that, despite its formal arms embargo against Iran, Washington was supplying weapons to Tehran with the hope of bringing home US nationals held hostage by pro-Iran terrorists in Lebanon. The publicization of these affairs heavily damaged the moral standing of the US as a champion of anti-terrorism, and, in turn benefited Qaddafi’s Libya.\footnote{Ronen, *supra* note 21, at 34.}
To be sure, not every traditional Western ally of the U.S. supported the April 1986 attack on Libya. For instance, France and Spain advised against it and even refused the U.S. from using their airspaces.\textsuperscript{50} Even in Britain, opposition was rife. Tony Benin, from the left of Labour Party expressed outrage over the attack and argued that \textquotedblleft the act of terrorism for which Libya was allegedly guilty was never proved.\textquotedblright\textsuperscript{51} And as it would later turn out, Syria, not Libya, was discovered to be almost certainly responsible for the said attack,\textsuperscript{52} leading a commentator to wonder why Syria and Iran, even with their clear acts of anti-Western-terrorism was always overlooked by the U.S.\textsuperscript{53} Although the issue of selectivity as a fundamental platform on which the Third World views international law with suspicion will be discussed later in this paper, it is important to note that much of the solidarity which Gaddafi enjoyed from most Third Word states during these confrontations stemmed from this scepticism. According to Tony, \textquoteleft\textquoteleft the Third World was almost unanimous in supporting Gaddafi, following the raid. The American now

\textsuperscript{50} \textit{Ibid.}


\textsuperscript{52} Arnold, \textit{ibid.} at 101

\textsuperscript{53} \textit{Ibid.} In his biography, Gaddafi biographers argued that the only reason why Libya was constantly target by the US, as opposed to Syria was because Libya was considered a \textquoteleft soft target\textquoteright. According to them:

The reasons (for the raid) had more to do with internal American policy than the threat from Libya. The administration had been made to look impotent by terrorism since the bombing of the marine base and the embassy in Beirut in 1983. It needed a successful show of force. Although Syria appeared from intelligence reports to be a more vigorous supporter of international terrorism than Libya, an attack on Syria carried dangers of a confrontation with the Soviet Union, and the chances of a strike without major casualties were slim. Libya was a soft target and the administration rightly predicted that no one, not even the Arab countries, would really care about Gaddafi’s fate. See David Blundy and Andrew Lycett, \textit{QADHAFI AND THE LIBYAN REVOLUTION 17} (Corgi books, 1988).
behaves like cowboys fighting Indians: if you are a Third World country, the Americans can just do what they like – they can invade you, shoot you, bomb you.”54

The Innocence of Confession: The Nuclear Weapon’s Claim and the Lockerbie Bombing admission

After the unsuccessful bomb attack by the Reagan administration, the war against Gaddafi’s regime took a different approach. In late 1988 and early 1989, the US claimed, for the very first time, that Gaddafi was manufacturing chemical weapons in – “largest chemical weapons – the production plant the CIA has detected anywhere”, located in Rabta, southwest of Tripoli, and would subsequently follow it up with an attack on two Libyan MiG-23 jet fighters over the Mediterranean off the Libyan coast.55 Libya denied this allegation and insisted that the plant was solely for the production of pharmaceuticals,56 and branded the US attack as an act of terrorism.57 But it was an event that occurred in 1988 that would not only prove decisive both in the context of breaking Gaddafi’s resistance to the hegemonic West but would, in part, arguably engender his ouster from power and assassination in 2011.

On December 21, 1988, a US-bound Pan Am Flight 103 crashed over Lockerbie, a town in Scotland, killing all on board, including 270 passengers, most of who were American citizens. After nearly three years of investigation into the cause of the crash conducted jointly by US and UK authorities, Western governments accused Libya of masterminding the bombing and

54 Ibid. at 102.
55 Ronen, supra note 21, at 35.
56 JANA, (12 January 1987).
57 Ronen, supra note 21, at 35.
requested that two Libyans – Abd-al-Bassit Ali al-Megrahi and al-Amin Khalifah Fahimah – be
handed over for trial.\footnote{Sammut, \textit{supra} note 27, at 440.}

According to the investigation, the accused persons had carried out the
attack by inserting a Semtex bomb into an unaccompanied luggage which had found its way into
the flight.\footnote{Steven Stottlemyre, \textit{Libya and the International System: Retracing the Aftermath of the Lockerbie Bombing} 20
Digest of Middle East Studies 50, 54 (2011).}

A key piece of evidence for the investigators were controversial interviews in which
a Maltese clothing salesman had claimed that the clothe which was found inside the suitcase
containing the bomb had been sold by him to a Libyan man only a few days prior to the incident
– and he identified al-Megrahi as the man during an identification parade.\footnote{\textit{Ibid.}}

Based on this
indictment, US, UK and France issued a “tripartite declaration demanding Libya hand over the
suspects,”\footnote{\textit{Ibid.}} and also moved the UN Security Council to impose sanctions on Libya.\footnote{Sammut, \textit{Supra} note 27, at 440.}

On its part, Libya initially denied any form of involvement in the said bombing, reiterated a “condemnation
of terrorism in all its forms” and called for an investigation of the charges against the two Libyans by a “neutral international investigation committee” or International Court of Justice.\footnote{Arnold, \textit{supra} note 15, at 145-6}

Although the bombing of Flight 103, with its concomitant devastation, provoked a justifiable
sense of outrage across the world, the usual attempt by the West to hang it squarely on the head
of Gaddafi, even when there was the possibility of Syrian or Iranian responsibility\footnote{For instance, in a report by one of American television network, CBS, Yousef Behbahani Iranian defector, who
claimed to have been an Iranian senior intelligent operative at the time of the bombing had alleged that he had
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demonstrated a desperation to undermine a leader who had become a problem to the interest of the West. On both sides of the Atlantic, people expressed their scepticism both on the accuracy of the findings of the investigation and the legitimacy of the claim of the West. Reacting to President Bush’s warning indicating that he might use military strikes if Libya refused to hand over the two suspects, an Egyptian newspaper *Al-Jumhuriyah*, warned that such attack “would not punish Gaddafi, but rather the Arab friends of the USA.” Also, Tam Dalyell, the Labour member, in his address to the British House of Commons in 1994, accused the previous British Prime Minister (Margret Thatcher) and two previous US Presidents (Reagan and Bush) of lying about Lockerbie: “I believe that by March 1989 the British and the American Government were in little doubt about what had happened – and it had nothing to do with the Libyans.” He further argued that:

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proposed the bombing of the airliner to avenge the killing of 290 Iranians when a U.S. cruiser in the Gulf, the Vincennes, shot down an Iranian passenger jet in July 1988, ostensibly mistaking it for an attacking warplane. He also claimed to have coordinated the operation with a Syrian-based Palestinian faction leader Ahmad Jibril, and had involved some Libyan operatives. This allegation was, however, denied by Tehran and received with scepticism by Washington. *See What if Iran did Prove to be Behind the Lockerbie Bombing?* Mideast Mirrow (6 June 2000). To a commentator, there was a troubling proximity between Iran and the bombing incident. He queried thus: “Two days after Lockerbie, $11 million was paid from sources in Iran to a bank in Lausanne. The money then moved to the Banque National de Paris, and onwards to the Hungarian Development Bank, ending up at the Popular Front for the Liberation of Palestine, General Command - the original Lockerbie suspects two years before Libya came into the frame. Is this a coincidence?” Tam Dalyell, *The Lockerbie Scapegoat*, The Spectator (17 August 2002) *available at* http://www.highbeam.com/doc/1P3-155635751.html.

65 Arnold, *supra* note 15, at 144-5.

The so-called forensic evidence of the timing devices was the only so-called hard evidence against the Libyans. Bollier (whose Zurich firm produced the timing devices for the bomb) stated in The Observer of 23 January that the fragment of the timing devices might have been planted by the Western intelligence agents seeking to frame Colonel Gaddafi’s regime.67

On “economic gunpoint,”68 Libya accepted responsibility for the bombing69 while simultaneously maintaining its innocence.70 From all indications, admission of guilt became a

67 Furthermore, Dalyell argued that the circumstances of the case was such that an alternative to the Libyan responsibility should have been acknowledged by the Crown Office:

I guess the Lord Advocate’s Office and the Department of Justice in Washington must be praying that the two Libyans are never brought near to trial, because the case would be laughed out of court. Finally, as time does not permit more, it has never been explained how the United States Government knew enough to warn their staff at the Moscow and Helsinki embassies not to travel on Pan Am 103, to warn Pik Botha and senior South African chiefs of staff to avoid that flight, but allowed the kids – Flora Swire, the young Cadman boy and those 32 students from the University of Rochester, New York – to board the doomed aircraft. See Dalyell, supra note 67, at 152.

68 This phrase is used to refer to an extraction of admission or acceptance from a weak state by a powerful nation based on some undue economic influence such as real or threat of sanctions. Although in international politics, this approach has always been successfully applied against Third World countries in their economic relationship with the West, this paper argues that such admission, confession or acceptance, where the necessitating subject-matter becomes a subject of international litigation, must be declared inadmissible for having been obtained under duress.

In the case of Libya, and at the pain of sanction, the West insisted that Libya must (a) hand over the two suspects to them for trial; (b) accept responsibility for the bombing of Pam Am Flight 103; and (3) pay compensation to the families of the victims. See “Libya ‘Close to Admitting Lockerbie Bombing,’” The Financial Times, August 8, 2003. Apart from some crippling unilateral sanctions imposed by Western countries against Libya, the following harsh measures were also taken through the UN to extract a confession of guilty from Gaddafi: UN Security Council Resolution 731 (January 1992), which called upon Libya to provide “a full and effective response so as to contribute to the elimination of international terrorism” and warned it to hand over the two suspects for trial to the West or risk retaliation; Resolution 748 (March 1992) imposed some sanctions, including a ban on Libyan aircraft flights; and
politically correct option in the face of a tsunami of sanctions by the West that had not only severely impacted the Libya economy but also left the administration mathematically vulnerable to mutiny.\textsuperscript{71} According to Libyan data, between 1992 and 1995, the state’s losses totaled US$19 billion and caused as many as 21,000 deaths, and most of the victims were patients in need of urgent medical treatment abroad or medication and vaccine at home. The agricultural sector, too, was also hit with an estimated loss of US$5.9 billion due to export sanction.\textsuperscript{72} Based on the above, therefore, Libya handed over the two suspects for trial in the Netherlands on 5 April 1999 where one of them – Abd-al-Bassit Ali al-Megrahi – was subsequently found guilty and sentenced to life imprisonment which would be served in Scotland. The second accused person was acquitted.\textsuperscript{73}

As was earlier pointed out, despite Libya’s admission of responsibility and its subsequent payment of the sum of $2.7 billion to the families of the victim of the Flight 103 bombing,\textsuperscript{74} it continued to plead its innocence. In a BBC Radio interview, Shukri Ghanem, the Libyan Prime Minister and a man known for his candor offered an explanation to why the government accepted responsibility thus: “we thought it was easier to buy peace (from the United Kingdom

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\textsuperscript{69} Libyan Government Takes Responsibility for Lockerbie Bombing, Airline Industry Information (30 April, 2003).

\textsuperscript{70} Libya Politics: Case Closed (1), EIU View Wire (August 21, 2009).

\textsuperscript{71} Ibid.

\textsuperscript{72} Ronen, supra note 21, at 49.

\textsuperscript{73} Ibid. at 56.

\textsuperscript{74} US and Libya Clear Final Hurdle, Energy Compass (13 March 2003).
and the United States), which is why we agreed to compensation in the Lockerbie case.”

Although at the instance of the British government, the Libyan government retracted the statement, it reinforced a fairly widely held scepticism about genuineness of the entire allegation against Libya including the conviction of al-Megrahi who at all material times maintained his innocence.

For instance, some commentators argued that al-Megrahi was wrongfully convicted while even some of the families of the victim expressed doubt about the guilt of the convict. A report by the Organisation of African Unity’s (OAU, but now the African Union - AU) commission of jurists who were delegated to observe the trial concluded that “the case against Megrahi cannot by any stretch of the imagination be said to have been proved and the entire conviction is based upon flawed premises.” The distinguished Australian jurist Dr. Hans Kochler, an international observer nominated by the then UN Secretary General Kofi Anan, had this to say about the trial:

As far as the material aspects of due process and fairness of the trial are concerned, the presence of at least two representatives of a foreign government in the courtroom during the entire period of the trial was highly problematic. The two state prosecutors from the US Department of Justice were seated next to the prosecution team. They were not listed in any of the official information documents about the court's officers produced by the Scottish Court Service, yet they were seen


77 St. John, *supra* note 75, at 135.

talking to the prosecutors while the court was in session, checking notes and passing on
documents. For an independent observer watching this from the visitors’ gallery, this created the
impression of 'supervisors' handling vital matters of the prosecution strategy and deciding, in
certain cases, which documents (evidence) were to be released in open court or what parts of
information contained in a certain document were to be withheld (deleted). . . Because of the role
they played during the trial, the continued presence of the two US representatives introduced into
the appeal proceedings a political element that should have been avoided.79

In 2007, and With the Lockerbie trial a continuous object of controversy, the Scottish Criminal
Review Commission (SCRC), after an exhaustive three-year investigation, recommended that al-
Megrahi be granted a second appeal to enable him present new evidence which might prove his
innocence.80 According to the report:

Between the initial submissions and the additional submissions received during the course
of the interview, the Commission identified a total of 48 principal grounds for consideration
and review by the Commission . . . In relation to 45 of the original 48 grounds identified, the
Commission has concluded that it does not believe that a miscarriage of justice has occurred. Of the remaining grounds, some of which resulted from the Commission’s own
investigations, the Commission has identified 6 grounds where it believed that a miscarriage of
justice may have occurred and it is in the interest of justice to refer the matter to the court
of appeal.81

Although there was a chance that an appeal might have been sustained on the ground of
miscarriage of justice, it was never filed.82 However, in 2009, tension between the West and

79 Dalyell, supra note 67.

80 Libya Politics: Megrahi Backlash, EIU ViewsWire (Sept 1, 2009) available at
wReg&page_title=Latest+regional+analysis&rf=0

81 Scottish Criminal Case Review Commission, Press Statement, Abdelbast Al Mohmed Al Megrahi (28 June, 2007)
available at online: http://www.sccrc.org.uk

82 A writer has argued that there might have been a deal between the UK and the convict whereby the latter agreed to
drop his appeal in exchange for being allowed to return to Libya – a deal brokered at the behest of the UK
Gaddafi escalated after al-Megrahi was released from prison by the Scottish government on compassionate grounds, having been diagnosed with a terminal prostate cancer. There is an unconfirmed report, however, that there had been a $900 million oil-and-gas exploration agreement between the British energy giant BP and Libya’s National Oil Company which was reached in May 2007. The United States expressed outrage, while the Scottish government accused US and Britain of “international politicking” over the bomber. But even as commentators patiently wait on the “Wikileaks” for some revelations on the politics of al-Megrahi’s release, the reaction of the US, the tension which it generated, and the desperation on the part of the UK government to control a potential diplomatic damage between it and Washington, shades some light not only on the UK’s unusually hawkish posture during the Libyan crisis – to impress its most dependable ally, the US – but also on what arguably was an unprecedented abuse of the UN resolution authorising a humanitarian military intervention in Libya, by NATO.


government to prevent a potential international embarrassment arising from the likely acquittal of the convict. See St. John, supra note 75.


Having established the historically tensed relationship between the West and Gaddafi, the analysis will now turn to the examination of NATO’s military intervention in the Libya conflict based on the UN mandate. The key theses here are that; (1) contrary to the prevailing argument, a regime change could not have been remotely contemplated by the UN Resolution 1973 that authorised the use of “all necessary measures” in order to “protect civilians and the civilian populated areas under threat of attack” in Libya;\(^{87}\) (2) the West saw the Libyan crisis as the much needed opportunity to, once and for all, “solve the Gaddafi puzzle,” which it grabbed with both hands, while simultaneously downplaying a similar situation at the time in other places such as Yemen; (3) Western media was complicit in this grand design; and (4) Libya was considered a “soft target,” lacking in military sophistication and mathematically unlikely to drag the West and the other powerful nations like Russia and China into a significant diplomatic confrontation. The analysis begins with a brief account of the Libyan crisis.

**The Libyan Crisis of 2011**

The Libyan uprising started as a protest in January and early February 2011, but escalated in the later part of the second month following media and NGO reports that the government used sophisticated weapons against the protesters.\(^{88}\) For instance, there were media reports about the

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\(^{87}\) *Resolution, supra* note 13.

government’s use of aircrafts to fire at protesters, bombing raids, and even a report that it “hired mercenaries to fight against the opposition.” Although the role of the Western media in the Libyan crisis is examined next, suffice it to say that some of these reports, however, lacked independent verification.

In other to be recognised by the international community as an organised democratic movement with all the rights and privileges that come with it, the opposition forces consisting of civilians and former members of the Gaddafi regime and of the armed forces that had defected formed the National Transition Council (NTC) with its provisional headquarters in Benghazi. Although what immediately followed was very instructive, it was definitely not surprising to those who had followed the love/hate relationship between the West and Gaddafi. Almost immediately, France announced its recognition of the Council as the legitimate government of the Libyan

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92 Libya, supra note 88.

people. The next day, the European Union (EU) issued a statement condemning the violence against civilians in Libya and recognizing the NTC as a “political interlocutor” of the Libyan people. The U.S. “officially” recognised the NTC on the 15th of July, 2011, having viewed Gaddafi as lacking legitimate authority over Libya, while the U.K. took the diplomatic acknowledgement to the next level by not only recognising the NTC but expelled “the last remaining pro-Gaddafi diplomats from London” and invited the NTC to “appoint a new diplomatic envoy to take over the Libyan Embassy.”

With the righteous wind of the West at their back, the opposition gathered more momentum in their determination to capture Tripoli and depose Gaddafi, but met stiff resistance from the government forces who were predictably determined to retain control of the country. As the fight between the regime and the rebels intensified, the media, too, was thoroughly engaged, as disturbing images and numbers of casualties hit both the print and the electronic media, with most of the reports, especially in the West, deliberately skewed to not only correspond with some certain primordial stereotype of Gaddafi but tilt the scale of global sympathy in favour of the rebels.

**The Western Media and the Libyan Crisis**


In analyzing the Western media’s coverage of the Libyan crisis, perhaps the most interesting place to start is to reflect on the popular scholarship of a human rights lawyer, Geoffrey Robertson. In his book on the fundamentality of humanitarian intervention, he argues that the world is entering a “a third age of human right” – human rights enforcement – which, in his view, is the effective mixture of faith in the power of media images of suffering to galvanise public sentiment or the “indignant of the civilized world,” to action, and the enforcement of international human rights norms through the establishment of an international criminal justice system. According to Robertson, the legitimacy of humanitarian intervention should no longer be assessed in the context of whether or not it is authorised by the UNSC but rather on “the dimension of the evil” to be addressed by the intervention. For him, this can be ascertained through the global media, where “television pictures of corpses in Racak, Kosovo, put such obscure places on the map of everyone’s mind and galvanised the West to war.” He amplified his thesis by stating that today’s human rights activists are motivated by “revulsion against atrocities brought into their homes through a billion television sets and twice as many radios” and that “modern media coverage of human rights blackspots is rekindling the potent mix of anger and compassion which produced the Universal Declaration and now produces a democratic demand not merely for something to be done, but for the law and courts and prosecutors to do it.”

98 Geoffrey, Robertson, CRIME AGAINST HUMANITY: THE STRUGGLE FOR GLOBAL JUSTICE 450 (Ringwood, 1999).
99 Ibid. at 444.
100 Ibid. at 438.
101 Ibid.
Considering the devastating impact of armed conflicts, the horrific experiences of those cut in their webs, and the “empire of victims” which they create, it is hard not to appreciate Robertson’s sentiment. However, the idea that a justification of humanitarian military intervention can be predicated on some unconfirmed YouTube videos and news reports which the media, in some cases, “cannot independently verify” is, mildly put, a troubling proposition. A commentator had warned that we should never underestimate the power of the image of a US journalist “standing on the street in Beijing, speaking a language which is not Chinese, condemning the Chinese government.” Worse still, his concept of “global media” proceeds from the premise that, in the context of influencing global politics, there is an incontestable balance in power among the media regardless of geographical extraction, and that media reportage, irrespective of demographics, is often undeniably unbiased. Unfortunately, this is never the case, especially in the context of the Western media’s reportage of the Third World, which is often produced as spectacle, entertainment and monstrosity for those watching the media in the “First World.” Discussing the meaning of massacre in Tiananmen Square, Rey Chow argued that:

the “Third World,” as the site of the “raw” material that is “monstrosity,” is produced for the surplus-value of spectacle, entertainment, and spiritual enrichment for the “First World.” The intense productivity of the Western newsperson leads to the establishment of clear boundaries. Locked behind the bars of our television screens, we become repelled by what is happening “over there.”

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102 Ifeonu, supra note 11, at 92.

103 Rey Chow, Violence in the Other Country: China as Crisis, Spectacle and Woman, in Chandra Talpade Mohanty, Ann Russo and Lourdes Torres (eds.) THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM 85 (Bloomington, 1991).

104 Ibid .at 84.
In international relations and politics, the power of the Western journalists in the creation and recreation of information, particularly as it relates to the Third World, is unmatched. Citing Chow, Orford argues that “the ‘freedom’ that makes it possible for such journalists to produce knowledge about the ‘non-west’ is not a basic existential condition to which all are entitled (though that is the claim that is made) but a network of demands, negotiations, and coercions that are themselves bound by historical determinants constructed on slaughter and bloodshed.”

With a comparative fiscal advantage, a vastly literate readership base, and a government that better understands the democratic power that they wield, the Western media influences both the domestic and international politics by urging their governments to action or warning them to refrain, based on a number of factors one of which is perception, which, in some cases, is socially constructed. This is where the coverage of the Libyan crisis comes in to demonstrate how Gaddafi’s pre-crisis characterisation by the media helped to embolden the rebels to fight, the West to support, and the UN resolution to be tragically abused by NATO.

As this paper had previously highlighted, Gaddafi’s daring opposition to the West, his perceived endorsement of terrorism, and his “crude” leadership style earned him the opprobrium of the West. In the U.S., for instance, the hate was so strong that during a UN General Assembly meeting in New York, granting Gaddafi permission to stay in any part of the U.S. became a hot political issue. The media, too, were cut-up in the frenzy, often referring to him as

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“delusional,”107 the “Libya’s madman,108” “the quintessential 20th century dictator,”109 and an evil leader whose more than four decades of “iron fist” leadership had left his country grappling with poverty and underdevelopment.110 While a valid debate could be had concerning the legitimacy of some of the characterisations, others are, at least, distortive of empirical facts and deliberately calculated to proverbially “give a dog a bad name in order to hang it.”111 In fact, under Gaddafi, Libya became the highest ranked nation in Africa in the UN Human Development Index, which assesses living conditions, life expectancy, and education.112 The flowing statistical facts are very instructive:


• Libya’s Gross Domestic Product (GDP) (per capita) stands as one of the highest in Africa.\textsuperscript{113}

• While most countries, especially in Africa are burdened with public debts, Libya is not. For instance, the public debt of Egypt and Tunisia, Libya’s geographic neighbours, amount to 75% and 42% of their total GDP respectively.\textsuperscript{114}

• As at 2011, the poverty rate in Libya was lower than those in many countries. While only 7.4% of its population was living below the poverty line, the rate was higher in places such as Algeria – 23%, Egypt – 20% and Morocco – 15%.

• In education, Libya equally ranks highest among North African countries. A combination of free pre-university education and “mobile school projects” designed to take education to the Libyan hinterlands have ensured that its literacy rate surged to 82%, whereas Algeria stands at 69%, Egypt – 71%, Morocco – 52%, and Tunisia – 74%.

• Health care, too, witnessed an unparallel improvement with increases both in manpower and infrastructure. Consequently, Libya’s infant mortality index is one of the lowest in Africa – 20/per 1000 live births coupled with the highest life expectancy in Africa – 78 years.\textsuperscript{116}

During the Libyan crisis, the Western media’s bias against Gaddafi was evident as he was presented as a leader whom the “entire” country despised and deserted, except his families, and perhaps, his tribe, and his death announced with an air of celebration.\textsuperscript{117} While the media paid more attention to the ant-government protests throughout the duration of the crisis, occasional clips of some pro-government protests were quickly dismissed as having received huge sums of money from the government. Many in the media were willing to endorse the rebel’s description

\textsuperscript{113} \textit{Index Mundi, available at} \url{http://www.indexmundi.com}.

\textsuperscript{114} International Monetary Fund, \textit{available at} \url{http://www.info.org}

\textsuperscript{115} \textit{Libya all about Oil or Central Banking?} Asia Times, 14 April 2011, \url{http://www.atimes.com}; “Skills Around the World: Libya,” British Learning Council, \url{http://www.britishcouncil.org}; \textit{Index Mundi, supra} note 113.

\textsuperscript{116} \textit{Index Mundi, supra} note 113.

\textsuperscript{117} Jehan Perera, \textit{Triumphant Tone by Western Media on Gaddafi’s Violent Death is Offensive}, (Lanka Standard, 0ct. 23, 2011) \textit{available at} \url{http://www.lankastandard.com/2011/10/triumphant-tone-by-western-media-on-gaddafi-death-offensive/}
of themselves as peaceful citizens exercising their democratic rights, but none was interested in Gaddafi’s claim that some al-Qaida members had infiltrated the group and were taken the opportunity to unleash mayhem on the country.\textsuperscript{118} And there was at least a piece of evidence to support this claim. Abdul Hakim Belhadj (also known as Abu Abdallah al-Sadiq) who was appointed by the NTC into the newly created post of military commander of Tripoli, was a leader of the Libyan Islamic Fighting Group, a movement which conducted terrorist operations against Libya in the 1990s, and went on to provide recruits to al-Qaida.\textsuperscript{119} Furthermore, the media, for the most part, avoided any characterization of the group that would have betrayed its illegitimacy. According to Huge, “the ‘rebels’ name has changed several times in the Western media’s lexicon: first they were peaceful demonstrators, democracy protesters, civilians, the (a belated admission) rebels; and, finally, revolutionaries . . . .”\textsuperscript{120}

As the war progressed, everyone was inundated with “Hollywood-style” amateur internet videos, horrifying newspaper pictures and headlines and satellite images of Gaddafi’s atrocities against his own people. What was rather fascinating was that these images were beamed by the news media some of who had no direct access to the sites of these alleged atrocities due to the government’s restriction on international media coverage. To be fair, in some cases, some of these media establishments were upfront in warning viewers about their inability to

\textsuperscript{118} Hugh Roberts, \textit{Who Said Gaddafi Had to Go?} (17 November 2011) available at http://www.lrb.co.uk/v33/n22/hugh-roberts/who-said-gaddafi-had-to-go.

\textsuperscript{119} Ibid.

\textsuperscript{120} Ibid.

independently verify the content of the videos or some of the particular information,\textsuperscript{122} even though the effect of such warnings seems to be as impotent as the ant-smoking warnings at the back of cigarette packs. Furthermore, some of the reporters were embedded with the rebel forces. The implication of this, in the context of objectivity, cannot be simply wished away. According to Raeesah, “as in Iraq, the embedding (in Libya) has produced similar results with journalists reporting on the conflict from the perspective of only one of the parties to the conflict. The challenge of embedding lies in the fact that the military/rebel force is given full power over what journalists see, where they go, and thus what they will report.”\textsuperscript{123}

Arguably, no other story graphically captures the media’s portrayal of Gaddafi as a demon than the highly advertised supposedly imminent massacre at Benghazi, on the basis of which NATO launched its military operation, having been likened to “another Rwanda” or “a second Srebrenica.” To be fair, considering Gaddafi’s antecedent of quelling revolts and executing the ringleaders, coupled with his “survivalist outlandish comments,” the NTC and other rebel leaders had a legitimate reason to fear that their lives would be in danger if Benghazi was re-captured. However, except to appeal to the worst media’s stereotype of Gaddafi, the notion that the “battle for Benghazi, though would have been bloody, would have turned into an ethnic cleansing was untenable.\textsuperscript{124} In any case, there could hardly be anything genocidal in international law, where a government uses its exclusive instrument of coercion to re-take its territory from a rebel group.

\textsuperscript{122} Libyan Air force, \textit{supra} note 89.

\textsuperscript{123} Cachalia, \textit{supra} note 110.

\textsuperscript{124} Roberts, \textit{supra} note 118.
Closely related is the media’s cannibalisation of Gaddafi as one who was “killing his own people, which was one of the solid planks on which the West’s case for military intervention rested. According to Huge:

“Killing his own people” is a hand me-down line from the previous regime change war against Saddam Hussein. In both cases, it suggested two things: that the despot was a monster and that he represented nothing in the society he ruled. It is tendentious and dishonest to say simply that Gaddafi was “killing his own people;” he was killing those of his own people who were rebelling. He was doing in this respect what every government in history has done when faced with a rebellion. We are free to prefer the rebels to the government in any given case. But the relative merits of the two sides aren’t the issue in such situation: the issue is the right of a state to defend itself against violent subversion. That right, once taken for granted as the corollary of sovereignty, is now compromised. Theoretically, it is qualified by certain rules.125

And so, from the misleading opening sentence, “the strafing and bombardment in Tripoli,” in one newspaper article,126 to the inability of the media to connect the dots relating to the apparent but unusual dispatch with which Washington, London and Paris approached the Libyan crisis, the Western media, indeed, dropped the ball, and actively supported both the intervention and the regime change in Libya.127 To suggest, therefore, that this wielded no influence in the manner in which NATO conducted its operation in Libya seems a touch impossible. With the devils and the angels effectively identified, and the Western media’s outraged attention fully engaged, the “international community” had to respond. The NATO’s intervention in Libya is explored next.

125 Ibid.
126 Ibid.
The Mathematical Conundrum: 1970 + 1973 = Regime Change? The UN-Backed NATO’s “Humanitarian” Intervention in Libya

The concept of humanitarian intervention appears to be jinxed. From both normative and pragmatic standpoints, the legality of humanitarian intervention in international law has long been a subject of controversy, but has, after the recent UN-backed NATO’s operation in Libya, never been more explosive. From Bachanan and Johnson who, from a feminist’s perspective, view humanitarian intervention as a “muscular” narrative “in which the masculinised hero (the UN, NATO or the US) rescues the feminised developing state,” to

128 The term “intervention” in the context of international law is not easy to define. For Stowell, it is “the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice.” Ellery C. Stowell, INTERVENTION IN INTERNATIONAL LAW 53 (Washington DC: John Byrne and Co., 1921). Tesón sees it as the “the proportionate transboundary help, including forcible help, provided by governments to individuals in another state who are being denied basic human rights and who themselves would be rationally willing to revolt against their oppressive government.” See Tesón R. Fernando, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY 5 (Ardley-on-Hudson, New York: Transnational Publishers, 1988). Finally, Farer defines humanitarian intervention as “the use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the government of the state within whose territory force is applied.” Tom J. Frazer, “Humanitarian Intervention Before and After 9/11: Legality and Legitimacy” in J.L. Holzgrefe and Robert O. Keohane, (eds.), HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS 55 (Cambridge University Press 2003).


Orford who argues that there is a necessary relationship between intervention and imperialism,\textsuperscript{131} skepticism towards the concept is fairly formidable. On the other hand, some scholars have endorsed the principle of humanitarian intervention based on different grounds. Abiew anchored his on his theory of the interconnectedness of fundamental rights and state sovereignty, arguing that the doctrine of state sovereignty seizes to apply the moment such a state fails to protect the rights of its citizens.\textsuperscript{132} The benefit of sovereignty therefore is coterminous with the burden of human rights protection, he argues. Harvey’s take on the issue is much more hawkish. For him, a world without an international policeman is doomed, and that the US, with or without NATO (for him the UN is not important), must assume the role of a policeman in order to ensure global security.\textsuperscript{133} An indebt examination of the merit or otherwise of each of these schools of thought is not within the contemplation of this paper.

Who will argue that the concept of humanitarian intervention is not jinxed, or, in the aftermath of the Libyan episode, doomed? Except in few instances,\textsuperscript{134} every case of intervention (or lack of it) has occurred at the pain of controversy. Prior to 2011, much of the debate about intervention centred on the legality or otherwise of “unilateral” intervention or intervention absent the UN Security Council’s (UNSC) approval – a debate largely stimulated by two incidences: the ghost

\textsuperscript{131} Orford, \textit{supra} note 105, at 40.

\textsuperscript{132} Abiew, \textit{supra} note 129, at 23.

\textsuperscript{133} Robert Harvey, \textsc{The Return of the Strong} 282-83 (London: Macmillan, 1995).

\textsuperscript{134} All of these instances involved UN-authorised forces, for example, in Haiti, Somalia, and Bosnia. Thomas M. Frank, \textit{Interpretation and Change in the Law of Humanitarian Intervention}, in J.L. Holzgrefe & Robert O. Keohane, (eds.), \textsc{Humanitarian Intervention: Ethical, Legal, and Political Dilemmas} 216 (Cambridge University Press 2003).
of the 1994 Rwandan genocide, which is generally believed, could have been prevented but for the inaction of the international community, and the 1999 UN-unauthorised NATO’s intervention in Kosovo. In their collective opposition of unilateral intervention, most Third World scholars argue that any endorsement of such a doctrine would hand the West a blank cheque to invade the weak nations for their selfish economic and political interests, under the guise of “humanitarianism.” But no one, arguably, could have predicted that such an argument would even be relevant with respect to UN-authorised military mandates, but for the events of 2011 in Libya.

Following the escalation of crisis in Libya and other places such as Bahrain and Yemen, the UN decided to react. Other than series of press releases, the UN Security Council, in the case of

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Libya, passed two resolutions: 1970 and 1973. Resolution 1970 reiterated the position of other organs of the UN to the effect that Libya had been guilty of gross human rights abuses, called on the Libyan government to stop further violations, referred the situation in Libya to the International Criminal Court (ICC), and placed sanctions on the Gaddafi regime. Emboldened by the apparent international support to its cause, the rebel group launched coordinated attacks and captured some Libyan cities, strategically important sites, and oil infrastructure. Determined to re-take control of the lost cities and sites and to safeguard its hold on political power, the regime responded with counterattacks – a confrontation which predictably created further human rights abuses from both sides, though the West ensured that the narratives were skewed to excluded any implication of the opposition forces.

In light of the escalation of violence, the call, championed by Paris and London, and supported by Washington, and the Organisation of Islamic Conference (OIC), for a no-fly zone over Libya became rife. The idea, itself, appears to have originated from Benghazi – the headquarters of the rebels – and marketed by the media. The NTC, leveraging both the world’s post-1994

137 Payandeh, supra note 91, at 376.
paranoid about news of potential genocide and the West’s primordial disdain for Gaddafi, raised an international alarm. ¹⁴¹ He warned that Gaddafi, whose army had reportedly encircled Benghazi in his bid to re-take the city from the rebel’s hold, would order the killing over half a million people.¹⁴² Gaddafi, too, was alleged to have lent credence to this fear by announcing that he would “show no mercy” to those who did not surrender.¹⁴³ Unlike some scholarships on this subject, this paper raises no objection to the normative principle underlining the call for a no-fly zone over Libya, except to add that heated rhetoric merely calculated to frighten an enemy combatant into submission is not an unlawful act known to the laws of war.

The position of the African Commission on Human and People’s Rights (ACHPR) was rather muted and carefully expressed, and so was the African Union’s. Without accusing any specific group, nor supporting a no-fly zone, the ACHPR expressed outrage at the escalation of human rights violations in Libya and called on “the responsibility of the African Union (AU), the Peace and Security Council (PSC) of the AU and the international Community to take all necessary political and legal measures for the protection of the Libyan population . . . .”¹⁴⁴ The AU adopted the position of the ACHPR and expressed its opposition to any form of foreign military


¹⁴² Payandeh, supra note 91, at 377.

¹⁴³ Ibid. at 378.

intervention. The Council of Arab States also adopted a position similar to that of the AU, except that while rejecting all forms of foreign intervention, it endorsed the idea of a no-fly zone over Libya to protect the civilian population.

It was against this backdrop that the UNSC adopted Resolution 1973 on March 17, 2011, to, among other things, authorise member states to “take all necessary measures” in order “to protect civilians and civilian populated areas under threat of attack in Libya while excluding a foreign occupation force of any form on any part of Libyan territory.” The resolution also called for the establishment of a no-fly zone, banned all flights in Libyan airspace for the purposes of protecting civilians, and authorised member states to “take all necessary measures to enforce compliance.” The resolution was adopted by a vote of ten in favour, none against and five abstentions: permanent members Russian Federation and the People’s Republic of China, and non-permanent members Brazil, Germany and India.

Before discussing NATO’s intervention in Libya pursuant to the above Resolution, it is important to highlight two important points. First, the UN’s initial press statements condemning gross violations of human rights did not only target the situation in Libya but also other places.

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147 S.C., supra note 12.
149 Ibid. Paras. 6 and 8.
such as Yemen and Bahrain, where situations of equal measure were simultaneously taking place. Why no motion was ever brought at the floor of UNSC requesting similar action as in Libya’s case against these other regimes is anybody’s guess. At this point, except to say that this act of ‘singling out’ of the Gaddafi regime further confirms the thesis of this paper about the West’s desperation to ‘deal with’ an arch enemy, the effect of selectivity on the legitimacy of humanitarian intervention is explored later in this paper.

Second, although the resolution authorising military intervention in Libya by the Council was described in some places as the dawn of a new era of global endorsement of humanitarian intervention, a critical examination of both the reaction of the international community and the exit poll of the UNSC Resolution 1973, reveals an entrenched suspicion of the West by the rest of the international community, particularly the African region. For instance, the AU, though deeply concerned by the situation in Libya, refused to endorse the idea of a foreign military intervention under any guise. To be fair, many of the leaders of the states in the region might have individually and collectively felt compelled to demonstrate a spirit of solidarity with one of their own, partly due to his leadership in the Continent and partly as a disincentive to further acts of violent revolution in the continent. Beyond this, however, the AU’s opposition could have been predicated on its skepticism of the actual interest of the West, in view of the West’s catastrophic relationship not only with the region but also with Gaddafi. The events that subsequently followed would tragically confirm this suspicion.

From Suspicion to Reality: NATO’s Military Intervention and Regime Change in Libya

151 Richard Falk, NATO intervention in Libya: Acting Beyond the UN Mandate, available at
Armed with Resolution 1973, NATO, led by Britain and France, quickly launched its military operation in Libya, hitting Gaddafi’s military positions and targets, while providing air support to the rebels. For instance, on the 25th and 30th of April, 2011, NATO-guided bombs were dropped on Gaddafi’s residential building in Tripoli, and in the case of the latter, killing one of his sons and three of his grandchildren, with a media report that Gaddafi narrowly survived the attack. This sparked controversy as to whether Gaddafi was one of the targets of the operation – a suggestion which was initially debunked by a NATO official. With the help of NATO, the opposition gained control of Tripoli in August 2011, and eventually deposed the regime.

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153 According to Col. Gen. Leonid Ivashov, President of the Moscow Academy for the Geopolitical Problems, “the West changed its tactics in Libya . . . Now Western political and military strategists hired mercenaries, formed armed groups of local residents, paid them, and supported them from air.” See West Aggressive Policy Becomes Conspicuous as Libyan Opposition Advances: Russian Expert, Xinhua (23 August, 2011), available at http://english.people.com.cn/90777/90853/7577178.html

154 Payandeh, supra note 91, at 329.


156 Fahim & Kirkpartrick, Ibid.


So much has been said by the West about how broad the endorsement of their intervention in Libya was and how central this support, particularly from the Arab states, was in influencing their decision to intervene. What, unfortunately, is excluded from this narrative is the fact that while there was a fairly broad-based support for the need for a no-fly zone in Libya, the same cannot be said of the manner in which the operation was executed. It was not until few days into the operation that the West “unilaterally expanded and qualitatively shifted the mission authorised, and almost immediately acted to help the rebels win the war and to make non-negotiable the dismantling of the Gaddafi regime,”\footnote{Falk, supra note 151.} revealing in the process their true intention in Libya. The manner in which the mission was executed, in the context of the targets of NATO’s strike, began to reveal an intent to engender a regime change in Libya, forcing most of the non-Western states that had called for or supported the Resolution nearly to engage their reverse gears. At the risk of blasphemy, for those familiar with the Christian Bible, the subsequent reactions of these states evoke the memory of Judas’s encounter with the Jew’s chief
priest and the elders in the Mathew’s account of the crucifixion of Jesus Christ. In his crude penitence, and having realised that the Jews had, for a fee, deceived him to betray an innocent man to death by concealing their true intent, Judas ran to them, “threw the coins down in the Temple and left; then he went off and hanged himself.”

Like Judas, these states suddenly realised that the West had been premeditatedly economical with the truth about their actual intention in Libya when they asked for the blessing of the international community to intervene, and, within the limits of diplomatic courtesy, expressed their uneasiness with what had become the turn of events. For instance, the OIC issued a communiqué in which, without necessarily withdrawing its previous support for the intervention, called for “a maximum restraint in the ongoing military operation” and “argued for a political solution” to the crisis.

Furthermore, the AU, while expressing its support for Resolution 1973, expressed concern over the military operation, declaring the need for a peaceful solution through a process that would end in a democratic election, under the auspices of the AU.

The South African President Zuma was even more critical, bemoaning that “those who have the power to bomb other countries have undermined the AU’s efforts and initiatives to handle the situation in Libya” and that “powerful nations abused the UNSC resolution 1973 ‘to further interests other than to protect civilians and


163 Payandeh, supra note 91, at 380

assist’ Libyans.”

The Arab League was no less bemused. While supporting the UN Resolution, it stated that the military operation had already gone too far, and argued that the sole goal of the Resolution was to protect the civilian population, not to assist the rebels or cause a regime change in Libya. “What is happening in Libya,” said the League’s Secretary General, Amr Musa, “differs from imposing a no-fly zone.” Statements from China and Russia – two of the permanent members of UNSC who abstained – were equally critical of the West’s involvement in Libya.

To be sure, the metaphor of Jesus and Judas employed above is neither an assertion of the innocence of Gaddafi nor a suggestion that states that supported the UN Resolution 1973, should condemn themselves to self-annihilation. Rather, it is to highlight what the on-going debates about NATO’s operation in Libya, especially in the context of the regime change, have failed to capture. Scholars have focused largely on the legality or otherwise of the regime change vis-à-vis the UN Resolution, with little discussion on the equally important issue of legitimacy.

165 Tekle, Ibid.


167 Ibid.


169 For instance, Dapo Akande seems to be of the opinion that a regime change could be justified under the Resolution by arguing that Gaddafi could be targeted “if it can be shown that targeting (him) is the only way of stopping a particular attack or attacks.” See Dapo Akande, What Does UN Security Council Resolution 1973 Permit? available at http://www.ejiltalk.org/what-does-un-security-council-resolution-1973-permit/. In what he
These scholars forgot that unlike domestic laws, international law is a subject often cut in the cross-current of two evenly important elements—legality and legitimacy—and, therefore, its effectiveness and, in fact, survival rests on its ability to maintain an equilibrium. Thus, while neither the intention of the acting state is relevant in the evaluation of the legality of a certain act under international law, nor selectivity as a defence, what is certain is that states’ voluntary cooperation, rather than coercion, which has proven to be the most effective means of international law enforcement, runs on the wheels of both legality as well as legitimacy of the acts of international institutions.

Instead of exclusively focusing on the purport, the scope or the contemplation of the said Resolution—an exercise which has collaterally narrowed the conversation, this paper seeks to
dubbed as an “intermediary approach,” Payandeh argues that the Resolution was broad enough to include regime change, if necessary, and that “the mere fact that the intervening states were at the same time also contributing to the overthrow of Gaddafi or even acting with political intention of achieving this goal does not render their attacks illegal.” See Payandeh, supra note 91, at 389.

Admittedly, the concept of legitimacy defies definition. However, this paper adopts Thomas Frank’s description of the concept in his renowned treatise on the subject-matter. According to him, the binding nature of international law is predicated, not in its coercive characteristics but on a sense of legitimacy—“a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principle of right process”. See Thomas M. Frank, THE POWER OF LEGITIMACY AMONG NATIONS 24 (New York: Oxford University Press, 1990). Right process for him, has four components: determinacy, symbolic validation, coherence, and adherence. Ibid at 49.

According to the ICJ in the Nicaragua case, whether or not the US intended to overthrow the government of Nicaragua was irrelevant; what was relevant were the object facts surrounding the intervention. Military And Paramilitary Activities in and Against Nicaragua (Nicar v. U.S.), 1986, I.C.J. 14.
broaden the inquiry by asking two important questions: (1) was it even remotely suggested during the debate leading to the Western-sponsored Resolution 1973, that a regime change in Libya was a potential collateral implication of the military operation, at least, in the spirit of diplomatic good faith; (2) If the answer is in the negative, would the outcome of the Resolution have been different if there had been such a disclosure. The aim is to, having regard to the previously highlighted historical tension between the West and Gaddafi, establish a case of concealment of material facts against the West, which might have affected the outcome of the UN Resolution, and argue that the consequences of this on future authorisation of humanitarian intervention by the UNSC are very grave.

From the available evidence, regime change in Libya was never discussed by the UNSC before the passage of Resolution 1973, even though, as subsequent events suggested, it was within the contemplation of the West. Although it had previously denied that its intention was to kill Gaddafi,\(^{172}\) the West, after the intervention had commenced, began to openly acknowledge that regime change was, in fact, the final objective of the military operation.\(^{173}\) They took an active part in assisting the rebels’ campaign to overthrow the government . . . and made several efforts to assassinate Gaddafi through bomb attacks all done to “protect civilians and civilian populated areas under threat of attack.”\(^{174}\) In a letter dated 15th April, 2011, U.S. President Obama, French President Sarkozy, and U.K. President Cameron, while insisting that their duty under the

\(^{172}\) Fahim & Kirkpartrick, \textit{supra} note 155.

\(^{173}\) Payandeh, \textit{supra} note 91, at 382.

\(^{174}\) Eric A. Posner, \textit{Outside the Law: From Flawed Beginning to Bloody End, the NATO intervention in Libya Made a Mockery of International Law}, Foreign Policy, (25 October, 2011) \textit{available at}\n
\texttt{http://www.foreignpolicy.com/articles/2011/10/25/libya_international .htm}
Resolution did not extend to the removal of Gaddafi, paradoxically added that, “it is impossible to imagine a future for Libya with Qaddafi in power” and further argued that it is “unthinkable that someone who had tried to massacre his own people can play a part in their future government.”

The Group of Eight later met at a summit in France on May 26 and 27 at the end of which they issued a final communiqué affirming, in clear terms, a determination of the “international community” to cause a regime change in Libya: “Gaddafi and the Libyan government have failed to fulfil their responsibility to protect the Libyan population and have lost all legitimacy. He has no future in a free and democratic Libya. He must go.”

On the second issue, there is little doubt that the outcome would have been different had there been any disclosure that a regime change in Libya was even a remote possibility. Apart from the purpose of reinstating an overthrown legitimate government, the UNSC has never authorised a regime change in any of its member states. The concept of sovereign equality of


177 Defined by a scholar as “the forcible replacement by external actors of the elite and/or governance structure of a state so that the successor regime approximates some purported international standard of governance.” See Michael W. Reisman, Why Regime Change is (Almost Always) a bad Idea 98 Am. J. Int’l. L. 516, 516 (2004).

178 For instance, with the blessing of the UN and the Organisation of American States (OAS), the U.S. invaded Haiti to oust the military dictatorship of Gen. Raoul Cendras and reinstated the democratic government of Jean-Bertrand Aristide. Ibid. at 517.
states is a fundamental fulcrum around which international law revolves and, subject to limited exceptions, prohibits interference by one state in the domestic affairs of another. Historically, therefore, regime change has usually been initiated at the behest of a powerful nation or a collection of states – and has often drawn a wild condemnation – “not for the sake of the people that were suffering under a regime, but in order to advance the strategic, economic or ideological agenda of some external regime changer.”

And so, as soon as the West was armed with the UN mandate arguably obtained under false pretences, it quickly became obvious what its real intention in Libya was – a regime change. Hardly had the Resolution been adopted when Gaddafi, whose forces camped on the edge of Benghazi, announced a ceasefire in accordance with Article 1 of the Resolution and proposed a political dialogue pursuant to Article 2. However, his ceasefire was immediately rejected by the NTC, and dismissed by Western governments with David Cameron declaring that they “will judge him by his actions not his words.” Intrinsically in this declaration, therefore, was a strange expectation by the West of Gaddafi to unilaterally disarm and deliver a complete ceasefire by himself, absent the reciprocity of the opposition for whom nothing short of Gaddafi’s ouster was


181 Payandeh , supra note 91, at 356.


183 Roberts, supra note 118.
acceptable.\textsuperscript{184} As if Cameron’s position was not asymmetrical enough, President Obama issued a statement in which he insisted that for Gaddafi’s ceasefire to count, he would have to withdraw his forces “not only from Benghazi but also from Misrata and from the most important towns his troops had re-taken from the rebellion, Ajdabiya in the east and Zawiya in the west – in order words, he had to accept strategic defeat in advance. These conditions, which were impossible for Gaddafi to accept, were absent from Article 1.”\textsuperscript{185} Akande captured this lopsidedness better when he, in response to a question by someone who was rightfully confused by the apparent NTC’s immunity from the application of Resolution 1973, said that “given the fact that leading NATO countries have made it clear that they wish to see Gaddafi go and are now openly providing support to the rebels it is unlikely that NATO will actually do this” (that is compel the NTC to comply with the Resolution).\textsuperscript{186}

In hindsight, it is not difficult to understand why such layers of difficult pre-conditions, beyond what Article 1 actually envisaged, were set by the West. Since regime change was central to its involvement in the crisis, to allow a ceasefire would have involved negotiation about such issues as peace line, and then about fundamental political differences – all of which would have undermined the primary purpose of the intervention. After all, France had since March 10, 2011, recognised the NTC as the sole legitimate representative of the Libyan people, thus, negotiating with Gaddafi would have been diplomatically embarrassing to Sarkozy: “The mission was

\textsuperscript{184} Ibid.

\textsuperscript{185} Ibid.

\textsuperscript{186} Akande, supra note 169.
always a regime change, truth obscured by the hullabaloo over the supposedly imminent massacre at Benghazi.”

If Libya, why not Yemen or Bahrain? Selectivity and the Crisis of Legitimacy of Humanitarian Intervention in Libya

There is another index from which a legitimate determination can be made concerning the West’s non-humanitarian interest in Libya. As of the time of the Libya crisis, there were other states embroiled in internal conflicts of equal proportion of gross human rights violations but against which no similar action was taken by the “international community.” The overarching question, therefore, is if Libya, why not Yemen or Bahrain? The answer is simple: they are allies of the West, especially the US and, therefore, any attempt by the UNSC to pass a resolution authorising intervention as it did in the case of Libya would have been vetoed by Washington, Paris and London.

In Bahrain, violent crackdown against protesters by the government received only muted condemnation by the U.S. government which continued its support of the regime. Part of the U.S. calculation was that to back the Shia-majority population to topple the Sunni-minority led government would hand over victory to Iran. In an interview with Christiane Amanpour of ABC News, Adm. Mike Mullen, US Chairman of Joint Chiefs of Staff, betrayed the tragedy of humanitarian intervention, and shaded light on why the US intervened in Libya. Responding to

187 Ibid.


question why the U.S. failed to respond in Bahrain and Yemen where it has an interest, Mullen said: “we (the US) haven’t had a relationship with Libya for a long, long time. The Bahrainis and that country has been a critical ally for decades. So we are working very hard to support a peaceful resolution there, as tragic as it has been . . . I just think the approach there needs to be different.” It is easy to understand where Mullen was coming from and why he thought that, “as tragic as the crisis in Bahrain might have been,” it would be a bad idea for U.S. to intervene. Bahrain for instance, houses the Fifth Fleet of the U.S. Navy, and is located close to the Saudi Arabia’s Eastern Province, which holds the majority of Saudi’s oil reserve - Saudi being both America’s ally and one of its highest suppliers of oil.

Yemen, too, offers a good example of the “international community’s” double standard. For months, the government’s crackdown on protesters left thousands dead and many others injured. In fact, government brutality got to a level that several military leaders defected and joined the protesters. The government also enacted an emergency law and suspended the democratic constitution of the country. Apart from the usually tepid and hollow condemnation of the violence, the U.S. neither supported the protesters nor called on President Ali Abdullah Saleh, who had been a dependable ally of the U.S., to step down, as it did in Libya. In a deal brokered between the rebel groups and Saleh and supported by both the U.S. and the UN nearly a

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year after the crisis broke out, Saleh, rather than being indicted by the International Criminal Court for gross violation of human right as was the case with Gaddafi, was granted immunity from prosecution.  

Reflecting on Mullen’s differentiation of Bahrain and, by necessary implication, Yemen from Libya, what becomes striking is the gradual but insidious introduction of the phrase, “a different society,” in the lexicon of the West to justify their selectivity. Only recently, NATO Secretary-General Anders Fogh Rasmussen, announced that NATO wouldn’t be intervening in Syria even if mandated by the UN on the ground that Syria is “a different society.” According to him, “. . . Syria is also a different society, it is much more complicated ethnically, politically, religiously. That is why I do believe that a regional solution should be found.”  

What is intended to be conveyed is either that Gaddafi’s regime was so demonic that the wickedness of any other regime pales into insignificance, or that Libya, in comparism with others, is a weaker target. It is very fascinating to see his belief in the ability of the regional body to handle the situation; no such confidence was ever reposed in the AU in the case of Libya.

Rising in defence of selective enforcement of international law, however, Weis had argued thus:

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197 Davis defined selectivity thus: “when an enforcement agency or officer has discretionary power to do nothing about a case in which enforcement would be clearly justified, the result is a power of selective enforcement. Such
Too many pleas for consistency or against inevitable selectivity amount to arguing that the United Nations should not intervene anywhere unless it can intervene everywhere. But in light of genocide, misery, and massive human rights abuses in war zones around the world, should Pontius Pilate be the model for both the American and the international responses? The fatalism and the isolationism that flow from the most objections to humanitarian intervention are as distressing as the situation in the countries suffering from ethnic conflict where such action is required. . . A purely noninterventionist position amounts to abstention from the foreign policy debate.198

Stewart and Knaus appear to have endorsed this argument in their book when, in defending the West over the allegation of selective intervention, argued that: “It is not a question of what we (the West) ought to do but what we can do: of understanding the limits of Western institutions in the 21st century and of giving credible account to the specific context of a particular intervention.”199

While the normative wisdom contained in the above quote can hardly be faulted, what this paper challenges is the notion that this “inevitable selectivity” has been random, rather than studied. What is at stake here is not the legality, but the legitimacy of international law and the sanctity of UN Charter-guaranteed right of the weak nations to co-exist with the strong states without fear of invasion. From a Third World standpoint, the issue is less about selectivity but more about the facade of “humanitarianism” purportedly underpinning power goes to selection of parties against whom the law is enforced. Selective enforcement may also mean selection of the law that will be enforced: an officer may enforce one statute, never enforce another and pick and choose in enforcing the third. See Kenneth K. Davis, DISCRETIONARY JUSTICE: A PRELIMINARY ENQUIRY 63 (Baton Rouge: Louisiana State University Press, 1969).


interventions, such as NATO’s operation in Libya. It is an assurance that those who are similarly situated would be similarly dealt with irrespective of power, position or military strength.\textsuperscript{200}

According to Frank:

If a rule is inconsistently or unequally applied, its legitimacy should be questioned. If the inequality cannot be explained to the person’s satisfaction by reference to a generally applicable principle then the rule’s resultant incoherence will deplete its legitimacy and thereby weaken its pull to compliance\textsuperscript{201}

For the Third World states, therefore, even if selectivity in the enforcement of international norms has become an intrinsic reality of international relations, an insistence in some measure of disclosure of facts and transparent honesty on the part of the “international community” in its dealing with the rest is the least they could hope for.

Perhaps this facade could not be more obvious than Italy’s involvement as part of NATO’s force in Libya. From an economic standpoint, Libya and, in fact, the entire North Africa has been of cardinal interest for which, according to the most Strategic Concept (2005) issued by the Italian Defence Ministry, “the political authorities are more likely to take action” to safeguard it.

\textsuperscript{200} In explaining why NATO may not intervene in Syria despite its success in Libya, Roff and Momani argued, among other things, that the Syrian military strength was a factor: “Syria’s military is more than eight times what Col. Gaddafi’s was. Raw numbers show Syria’s airpower twice the strength of Libya’s former air force. President Bashar al-Assad has nine times the number of operable tanks, almost four times the amount of land weapons and three times the amount of towed artillery. There is, frankly, much more to contend with in terms of manpower and military capability. This is not to say that a NATO-led invasion could not face the Syrian forces . . .but it would come with significant higher cost.” Heather Roff and Bessma Momani, The Tactics of Intervention: Why Syria Will Never be Libya, The Globe and Mail, (25 October, 2011), available at http://www.globeandmail.com/opinions/opinion/the-tactics-of-intervention.

\textsuperscript{201} Frank, \textit{supra} note 170 at 153
According to the Concept, this requires, “trained forces that can rapidly configure to their different typologies, capable of being projected, mobile, sustainable in time, highly interoperable and flexible.” 202 At the early stages of the crisis, however, Italy decided not to get involved, believing instead that diplomacy, not sanction or force, was the best course of action – a policy choice which put it at loggerheads with the rest of the West. 203 However, as the West drifted towards military intervention, coupled with the rebels’ declaration that future economic ties (that is opportunities) would be scaled to the level of support given by European partners, Italy changed its policy and joined the rest in order to protect its interest in Libya. 204 According to President Berlusconi, “Europe and the West cannot remain spectators of this process and above all, we (Italy) cannot do that. The events of the past few weeks affect our trade relations, our energy supply and our security.” 205

Other developments also facilitated Italy’s policy change. Franco Prattini, Italy’s Foreign Minister met with the rebels’ NTC in London at which he extracted from the rebels that, if supported to overthrow Gaddafi, they would honour “agreements entered with the Gaddafi’s regime at the international level,” including those with ENI, a Libyan-based Italian oil company,

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204 Ibid. at 33.

and to ensure “continuity in economic action.” With this assurance in the bags, Italy announced six days later that it would become the third nation to recognise the NTC as the legitimate representative of the Libyan people: “Any solution for the future of Libya,” Frattini said, “has a pre-condition: that Qadhafi’s regime leaves . . . that Qadhafi himself and his family leave the country.”

From the foregoing, it is evident that the policy choice which Italy, and by extension the West, made and its decision to participate in the NATO mission was informed not by any sense of humanitarianism but to protect its economic interest in Libya. The initial ambivalence only allowed it to properly gauge the situation – to prognosticate on Gaddafi’s survivability – and soon as it became obvious to it that the West had crossed the Rubicon in their decision to cause a regime change in Libya, it aligned its policy with the rest. According to Lombardi:

A policy based on “in for a penny, in for a pound” only made sense to Rome once Washington had made clear that it supported regime change in Libya, an aim that went beyond the strictest interpretation of UNSC Resolution 1973. Then, over the course of several weeks as it sought to protect its interests as best as it could, Italy came to the conclusion that Qadhafi’s days were numbered, and Italy went to war.

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208 Lombardi, *supra* note 203.
CONCLUSION: AN ELEGY TO FUTURE UN-BACKED HUMANITARIAN INTERVENTION

Within the academic ambience of some international lawyers, there is an air of optimism about the abundant promises of humanitarian intervention, especially following the “successful” mission of NATO in Libya, with some hailing it as a positive model for “a 21st century less cruel than the 20th.”209 To them, “the ultimate success of NATO’s intervention has provided for a positive record for all.”210 These scholars, while representing international law and international institutions as the agents of democracy and human rights, dismiss any attempt to associate intervention with imperialism as being preposterous.211 Embodied in this belief is the reinforcement of the identity of these institutions, and of the major powers, especially the U.S., as the bearers of these progressive values.212 According to Cohen, “a successful Libyan intervention does not mean one in Syria is feasible – but the idea that the West must at times be prepared to fight for its value against barbarism is the best hope for 21st century less cruel than the 20th.”213

As seductive as this argument might be, what transpired between the “international community” and Gaddafi, including NATO’s intervention in Libya, should never be a reason for celebration. In fact, a commentator has warned about the “Pandora’s Box” effect of using this as a


211 Orford, supra note 105, at 20.

212 Ibid.

213 Cohen, supra note 209.
If anything, it demonstrates not only the general weakness in the international system of collective security but also an unmitigated confirmation of the historic scepticism with which the entire concept is viewed, particularly by the Third World. The manner in which the West exploited the UN mandate to further its own political and economic interest in Libya represents both an unprovoked assault on the hallowed global institution – the UN – and an affront on the individual and collective integrity of states. So interest-dominated was every step taken throughout the crisis that it is hard to argue that an article, which was curiously published the exact minute the death of Gaddafi was announced captioned, “after Gadhafi, Libya’s oil will Flow – Slowly,” was a mere co-incidence and not reflective of the interest of the West in Libya. In fact, it “evokes collective memory of colonial era.” As a result, what now hangs

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217 There are compelling speculations that that the West masterminded the regime change in Libya to safeguard their oil interest. For instance, there is a report that US cable released by Wikileaks shows that the US had become incensed over Gaddafi’s policy which forced its oil companies in Libya to renegotiate their contracts under the latest Libya’s Exploration and Production Sharing Agreement (EPSA IV), his threat in a 2009 video conference with Georgetown University Students to nationalise the oil and gas industry, and his attempt to force international oil companies to contribute to the US-Libya Claims Compensation Agreement – agreement which established a fund for victims of bombing involving the two countries. See Syed Rashid Husain, *Cables Show NATO’s Intervention in Libya is all About Oil*, available at http://arabnews.com/economy/article480491.ece?service ; Milne, *supra* note 174 (suggesting that the intervention was to secure West’s oil interest in a deeply uncertain environment); Sunday E. A. Ebeye, Frank N. Enor, et al., *NATO and the Libyan Crisis: A Looming Case of Neo-Dictatorship*, 1 Am. Int’l J.
over future UN-authorised intervention is a cloud of improbability, the event in Libya having become a reference point, especially for all the wrong reasons. The legitimacy and effectiveness of UN runs on the wheel of the confidence of its member states, particularly the 177 less powerful nations who are not permanent members of the UNSC, that there will always be “a close correspondence between what was authorised and what was done, especially when force is authorised and sovereign rights encroached upon.” And so, with a golden opportunity to demonstrate the virtue of collective security and to assuage the fears of the weak nations having been effectively blown by the West, in pursuit of their narrow political and economic interest in Libya, what is now left are the old skeletons of suspicion. Although it is difficult to predict the implications of this in the broader sphere of international relations among states, what is fairly certain is that the world might have unpremeditatedly bade farewell, even in clearest situations of need, to future UN-backed humanitarian interventions. International law has, indeed, taken “a drubbing” from the West – and may never recover from it. NATO’S bombs, though dropped at their targets in Tripoli, might have actually exploded at the UN building in New York. And, perhaps, the current lack of appetite for a UN mandate for humanitarian intervention in Syria,

Contemp. Research 174, 176 (2011) (arguing that “NATO’s intervention was to enable the West gain access to strategic mineral, business opportunities, energy sources and market.


Falk, supra note 151.

Posner, supra note 173.
Despite the presence of all the factors on the purported basis of which the West intervened in Libya, is a comprehensive communique on the issue.