

## Syria, Libya and Security Council

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- **WORLD AFFAIRS**

## Syria, Libya and Security Council

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### Interview with Hardeep Singh Puri, Permanent Representative of India to the United Nations.

- **Hardeep Singh Puri: " I am one of those who believe that if you didn't have the United Nations, you would have to invent the United Nations."**

THE United Nations Security Council sits in a solemn "emergency room" in the heart of the U.N. complex in New York City. The 15 members of the Council, including the five permanent members, sit around a horseshoe table, under a mural done by the Norwegian artist Per Krogh. The panels of the mural showcase everyday life in northern Europe. At its bottom centre there is a phoenix, emergent from the flames, around which stand people who seem stereotypically "Eastern" (the women here have their faces covered, and the men wear turbans). A field artillery gun points at these people. It is their fate. Under an imagination that trusts in the good faith of the West and the perfidy of the East, the Council deliberates.

- After the U.N. was formed in the 1940s, serious-minded people in its orbit wondered if the organisation needed its own military force. When conflicts break out, the U.N. would only have the power of moral suasion, and perhaps the authority to call for trade embargos. Nothing more was possible. Article 47 of the U.N. Charter called for the creation of a "Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security". As the Cold War heated up, neither the Atlantic powers nor the Soviet bloc would permit the U.N. to create its own military force. The idea went into permanent hibernation.

Both the Atlantic powers and the Soviets built up their own military capacity, and the U.N. became the preserve of the Third World, which took refuge there to try and build an alternative to the dangers of a nuclear showdown and the proxy wars on their lands. The United States and Western Europe created the North Atlantic Treaty Organisation (NATO), a robust military alliance that has now outlived the context in which it emerged. That context was the contest with the Soviet Union, which ran out of steam in the 1980s and ended finally in 1991. NATO remained, and thrived. It has since expanded out of its original base and absorbed most of Europe, including Eastern Europe, and has created networks with countries outside its region (through the NATO-Russia Council and the Mediterranean Dialogue). The singular aim of protecting Europe is now gone. Remarkably, in NATO's 1991 Strategic Concept paper, a new mission appeared, "Allies could further be called upon to contribute to global stability and peace by providing forces for United Nations mission."

- The Atlantic powers had ignored or tried deliberately to undermine the U.N. through the Cold War, and this tendency remained in the musty corners of the Far Right in the U.S.

(represented by President George W. Bush's Ambassador to the U.N., John Bolton). NATO's 1999 Strategic Concept paper went a long way in establishing the centrality of NATO for "preserving peace, preventing war and enhancing security and stability" outside the lands of the member-states. But NATO would no longer act without seeking U.N. authorisation. The communiqué that was prepared by NATO's Defence Planning Committee meeting on December 7, 1990, pointed explicitly to U.N. Security Council Resolution 678, which "authorised the use of all necessary means if Iraq does not comply" with its withdrawal from Kuwait. NATO members would, the committee noted, "continue to respond positively to United Nations request", namely to go to war against Iraq. From 1991 onwards, NATO began to be the de facto military arm of the U.N. No other member had the capacity to bring "all necessary means" to bear on countries that did not follow through on U.N. resolutions.

- Since NATO is not the U.N.'s official military force, it is only the U.N. resolutions that NATO finds most in line with the national interests of its member-states that feel the full brunt of its military power: NATO did not act to protect Palestinian civilians in 2006, nor Congolese civilians during the long war from 1998 to 2007 that cost the region eight million lives. NATO members entered the Iraq war under a U.N. resolution; NATO went to war against Yugoslavia without U.N. authorisation but sought it afterwards; NATO threw itself into the War on Terror slowly in the 1990s and then forcefully after 9/11 (when it invoked Article 5 of its treaty, to defend one of its member-states that had been attacked and to go "out of area" to do so). There has been a substantial increase in the expansion of NATO's geographic domain, from the narrow confines of the North Atlantic to Afghanistan. It likes U.N. authorisation, but its troops do not put on the blue hats of the U.N. command.
- The Yugoslavian war allowed NATO to extend its own sense of itself. No longer was NATO simply a defensive pact. It was now to be the defender of human rights, and it permitted itself to abrogate national sovereignty if this meant that it would prevent atrocities from taking place outside its domain. The shadow of the 1994 Rwandan genocide hung heavy over this shift, as did the 1995 killings in Srebrenica (Bosnia). It was because of these grotesque events that the NATO member-states pushed the U.N. to consider what must be done to protect populations from harm. The Canadian government created the International Commission on Intervention and State Sovereignty in 2000, and its report (The Responsibility to Protect) was produced the next year. The idea of "responsibility to protect" (R2P) won out among the committee over the ideas of "right to intervene" and "obligation to intervene". The notion of intervention was to be kept out of the concept, although R2P is often seen as synonymous with Humanitarian Interventionism. In 2006, the U.N. adopted R2P as a mandate. NATO was to be its enforcer, and the International Criminal Court (which came into being in 2002) was to be its juridical arm.
- The entire ensemble of the U.N. Security Council, R2P, the ICC and NATO was tested in the 2011 Libyan war. No prior war had seen all of these elements on display in one conflict. At an informal meeting on R2P at the U.N. on February 21, 2012, India's Permanent Representative to the United Nations, Hardeep Singh Puri, said, "The Libyan case has already given R2P a bad name." Why was this so? "As soon as the [U.N. Security Council] resolution was adopted, the overenthusiastic members of the international community stopped talking of the [African Union]. Its efforts to bring about a ceasefire were completely ignored. Only aspect of the resolution [that was] of interest to them was 'use of all necessary means' to bomb the hell out of Libya. In clear violation of the resolution, arms were supplied to civilians without any consideration of its consequences. No-fly zone was selectively implemented, only for flights in and out of Tripoli. Targeted measures were implemented insofar as they suited the objective of regime change. All kinds of mechanisms were created to support one party to the conflict and attempts were made to bypass the sanctions committee by proposing resolutions to the Council. It goes without saying that the pro-interventionist powers did not ever try to bring about a peaceful end to the crisis in Libya." In other words, the "international community", namely the NATO member-states, used the U.N. Security Council resolution for their own ends, disregarding the protocols in the resolution itself.
- "The principle of R2P is being selectively used to promote national interest rather than protect civilians," noted Ambassador Puri. In August 2010, Puri reminded the General Assembly that "even the cautious go-ahead for developing R2P in 2005 emphasised the use of appropriate diplomatic, humanitarian and other peaceful means to help protect populations. The responsibility to protect should in no way be seen as providing a pretext for humanitarian intervention or unilateral action." Puri's rear-guard defence of the principles of R2P and the U.N. Charter runs up against the determination of the West to exercise its authority through the fog of "human rights".

When the February resolution on Syria failed to pass the U.N. Security Council, U.S. Ambassador Susan Rice called the Russian and Chinese veto "disgusting". Germany's Ambassador Peter Witting told reporters that it was a "disgrace". For the U.S. and its NATO allies, the protocols of their new system (UN-R2P-NATO-ICC) had to be put into motion. Smarting from the experience of Libya, the Russians and the Chinese decided to use their power to put a stop to it. India voted for the resolution, even though Ambassador Puri is one of the main figures who have offered an intellectual criticism of the way in which R2P has operated. In this interview in New York on February 18, Puri explains why India abstained from the vote on the Libyan resolution (1973) and why India voted for the Syrian resolution now.

- **India has been on the U.N. Security Council for a year now. You have been India's representative for the duration. What is the mood in the Security Council during this year? What has been India's role?**

The Security Council is primarily entrusted with the task of dealing with situations that constitute a threat to international peace and security. That has not changed over the years. What has changed and what is clearly demonstrable is that countries that wield political and economic power want to use the Security Council much more vigorously to deal with issues whose relationship with the maintenance of international peace and security is at best remote. This new approach started a few years ago. It is conditioned by the fact that in the major Western capitals there is a reinforced desire to seek legitimacy for their policy choices through the Security Council. Contrast this with the Bush administration, when they had a permanent representative here, John Bolton, whom my predecessor had the distinction of interacting with. Bolton said that if you knock 10 floors off the U.N. building the world would not be any worse off.

- In our small limited world of people who join the foreign services of their respective countries, our tribe is broadly divided into two categories – the bilateralists and those who have some kind of fascination for pluri-lateral or multilateral work. I have no hesitation in saying that, yes, bilateral work is extremely important. But for a country like India, which has both the civilisational past and the recent history as a young modern secular nation, and with aspirations to play a role, I don't think those objectives can be achieved without a multilateral arena. So I am one of those who believe that if you didn't have the United Nations, you would have to invent the United Nations.

The mood in the Security Council is determined by the overall global situation, the number of hot spots and so on. But the mood is also determined by those who have the capacity to influence and the capacity to mould the Council. There is a fundamental difference in the Council between those years of the Bush administration and [those of] the Obama administration. When we were first elected to the Council in October 2010, before we took our seat, we were invited to Washington for a discussion. President Barack Obama dropped in and engaged in a discussion of the major issues in which the Council was engaged. That shows the extent to which the U.S. under the Obama administration wants to utilise the Council and wants to pursue matters in the Security Council.

- This has to be nuanced. The interest in engagement by Washington doesn't mean that they want to bring all issues to the Security Council. In fact, the cynic would tell you that Western governments only bring those issues to the Security Council which they do not want to handle entirely by themselves, through coalitions of the willing, Afghanistan being a case in point. They went in alone first, and subsequently U.N. missions came in.

The mood is also determined by the fact that global hot spots have suddenly proliferated. I mean when we were elected, Côte d'Ivoire was simmering. Côte d'Ivoire was relatively a simple situation. This was a question on an election in which the U.N. had a certification role. When the election results came out, the incumbent, Laurent Gbagbo, refused to step down. The U.N. had a role to play. The talk at this time was, if Gbagbo does not step down, then let us get an interventionary force involved. The politics between ECOWAS [Economic Community of West African States] and the African Union interrupted this talk. You suddenly discover that talk about interventionary force is easier said than done. I think that in some capitals, the excitement of action gets the better of hard decision-making.

- **This excitement leaks into the Arab Spring, no doubt?**

The fact of the matter is that most of the governments affected by the Arab Spring had the support of the West. I think the relationship between Egyptian President Hosni Mubarak and the West is well documented. The situation of Egypt in the context of the Israeli security calculus is well known. The fact that there was a sense of ferment on the Arab Street was well known. You could witness that in places like Tunisia where all it required was an inspector and an act of oppression against a helpless fruit vendor. It's palpable everywhere. But then there was this expectation that the Arab Spring is going to result in an outcome, which would have a democratic ending. Democracy being defined in Western liberal terms, not in terms of whatever majority comes up, as is the case in the West Bank [when Hamas won the elections in 2006]. Everyone welcomes the fact that the people of a country must express themselves; they must articulate their aspirations. Up to there, everyone is in agreement.

But the minute the result is such that the composition of the Egyptian legislature is 60 per cent Islamic Brotherhood and 25 per cent Salafists, then people start saying, "you know, this is not what we bargained for". And the prospect of change as a part of the Arab Spring ushering in radicalised Islam is something which, I think, gives cause for concern to those who were operating on a Western liberal democratic template.

- **What about the role of the mood created by the non-permanent members?**

The mood in the Security Council during 2011 was, I think, determined by the fact that the Council had five aspiring members: Brazil, Nigeria, India, South Africa and Germany. So, at the very least, that makes for richness of debate. Therefore, the traditional, you know, somewhat apathetic approach to the Security Council was not on display. The permanent members, by virtue of their continued presence, tend to call the shots. But the non-permanent members do have views. However, the Council's outcomes are not always determined by those views.

- **Give me an example of when the five aspiring members were able to change the tone...**

In fact, I am going to make a different point. So the world is perceived as being divided between the five permanent members and the other 10. So the first baby steps that we took in the Council is that we formed a group called the E10: the Elected 10 or the Elegant 10! As with any organisation which is looking at real life issues that affect people, you invariably end up – as my experience in trade negotiations in Geneva showed – introducing what are called Coalitions of the Interested. Now it would not be correct for me to say that all five aspiring members invariably took positions and were on the same page. In terms of broad policy, yes. In terms of the nature of the statement that they made, yes. But there were aberrations. For instance, we repeatedly found one of the African members, a declared aspirant for permanent membership of the Security Council, adopting a very low-key approach and voting invariably with the West.

- **Including in Resolution 1973 on Libya.**

Including in Resolution 1973, if you are referring to a particular African state. You had another member from Africa which supported the resolution. Surprisingly, one of the European members did, too. Germany abstained. Well, one needs to understand why this took place. It is only when you get that clarity that you know what happened between U.N. Resolution 1970 (on Libya), 1973 (on Libya again) and then the Syria resolution, which was vetoed, and in between, the unanimous articulation of the Security Council's position on Syria in the Presidential Statement (PRST) on August 3, 2011, when I was chairing the Council. That will remain for a long time to come as the only such unanimous PRST. We got a lot of kudos for it then, but I think in retrospect not many people who focus on the Council's work realised the value of the August 3 statement, both its content and the manner in which we got it through. But we will come to that in a minute. In order to understand what happened in Resolution 1973, you have to understand what

happened prior to that, in Resolution 1970, which was the resolution of the Security Council on Libya that was unanimously voted.

- The only disagreement that I recall on 1970 was the formulation contained therein, referring Colonel Muammar Qaddafi and some others to the International Criminal Court. There was a lively discussion within the Council, and some of us said, "Look, the threat of a referral would be more appropriate, because once you've referred somebody to the ICC then the clock is ticking, and you don't have the leverage which is required." The Americans agreed with our view, but some of the European members were in a terrible rush. They said, "No, no, we have to [refer it to the ICC]. This is the minimum." So I said, "Alright, in which case, what will happen when you come back because the situation is not going to change." I mean the manner in which the situation in Libya was spiralling out of control in February. So the short point is that that we got a unanimous resolution (1970), even though there was unease in the Council on that resolution.

By the time we came to 1973, there were major disagreements. Why? That is entirely due to what was being proposed. It was very clear that many Western capitals were openly espousing regime change to begin with. Secondly, the language of 1973 contains explicit provisions for punitive and coercive action. It contains an explicit formulation, "all means necessary", which is a euphemism or code word for military action. Now you don't need knowledge of rocket science to realise what these provisions mean. We were going in for a Western-NATO military operation.

- In the negotiations for Resolution 1973, all people of goodwill tried to insert some formulations in there, such as the call for a ceasefire, an arms embargo, and so on and so forth. The final outcome of 1973: I knew that this was going to be a stepping stone to disaster. Why? Not because any of us wanted to hold a brief for Colonel Qaddafi. Let's be clear. India, in any case, did not have the kind of relationship with Qaddafi that some Western leaders had. You remember two visits by [British Prime Minister Tony] Blair to Qaddafi's tent in the desert, in 2008 and in June 2009. If you look at the nature of the relationship many Western capitals had with Qaddafi, it is well documented that many sold arms to him. And there are allegations that Qaddafi's money was not only subverting academic principles (at the London School of Economics), but also financing elections in Western Europe. India didn't have this kind of relationship. In fact, the only known interaction at head of government level that I can recall was when Indira Gandhi visited Tripoli in 1984.

Yes, there were Indian workers in Libya, about 18,000 of them. But they were not working as part of large commercial contracts that India had. These were poor people who were hired by Western economic entities. They were in a difficult situation. After the last Western citizens were pulled out, the West declared war on Libya. And China and India had to start, you know, locating their citizens, making arrangements for them being taken to safety.

- It's interesting that there were news reports that suggested that the reason India abstained from voting on Resolution 1973 was that it was preoccupied with the problem of its nationals.

I know a little bit about that because I was the person here negotiating, and I was the person in charge of the Mission in New York. No. We abstained because we understood what was happening. Nobody wanted to hold a brief for Colonel Qaddafi. But we realised that this is a society that is characterised by tribal animosities and that the use of force is going to exacerbate the situation. But the interesting thing here is we were not alone in that assessment. There were several others, including people who voted for the resolution. The South Africans have told me on a number of occasions that their vote for the resolution was a mistake. But they said that their decision was not influenced, but conditioned, by the expectation that Resolution 1973 would help bring peace to Libya. Our assessment was different. Our assessment was that this was going to result in an Iraq kind of situation, with a Security Council rubber stamp. And I think in retrospect we were absolutely right. Interestingly, Russia and China also abstained. But you talk to the Russians and the Chinese now; they say, "We made a mistake. We should have cast the veto."

- **What is their assessment? If they had vetoed Resolution 1973, how would events have played out?**

That is very difficult to say because that involves a hypothetical scenario. The military operations commenced on March 14, 2011. In the run-up to the commencement of the military operations, the question was, "where would the assets come from?" And it was very clear that it would have to be a NATO operation, and within NATO also there wasn't much of an appetite from the U.S. But they were talked into the situation, or they decided to get involved, and then they pulled back. All of us realised immediately that this talk about countries in the region participating was without a solid basis. I don't know how many Arab countries in the region could participate. But it was essentially a NATO military operation.

When military operations ostensibly concluded, it was clear that the post-conflict Libya would require a lot of attention. But during the military operation justified by Resolution 1973, the Council faced the spectacle of not being able to enforce a ceasefire, which was in the resolution. When we all asked for a ceasefire, we were told that, no, they were not in the mood until the entire Qaddafi establishment, the entrenched establishment, was overthrown. So even though Resolution 1973 does not talk about regime change, that was certainly the standard.

- **What about the arms embargo, which was also in 1973?**

You know the only reason the Council agreed to the arms embargo was that there was a desperate plea from the Arab League. And they said, if the Council does not intervene there will be rivers of blood, and they went on to say that the Council owed it to the poor people in Libya who were being slaughtered. Saif al-Islam [Qaddafi's son] had made a statement on the previous day that they would hunt down all the Benghazi rebels like rats. I remember the statement that I made in the Council. This was all in a closed session. I said, first of all, the phrase "rivers of blood" is the intellectual property of Enoch Powell, the Member of the British Parliament from Wolverhampton. Powell said that in the context of immigration of coloured immigrants from the Commonwealth. And you know, that turned out to be baloney. So we don't know what will happen.

In that atmosphere nobody wanted to be seen to be doing nothing, and the intentions of those who were asking for the resolution were not suspect till then. The arms embargo means that you will not be arming the Benghazi rebels while you are conducting military operations against Qaddafi. We kept asking this. I remember asking, "Do you know who these guys [the rebels] are? These chaps that you are arming, etc?" Now we know the facts of who these people are, such as Belhadj [Abdelhakim Belhadj, the emir of the Libyan Islamic Fighting Group] who had been handed over in a terrorism rendition case. They kept saying that this is a grand alliance between the people of Libya and the West in order to get rid of a tyrant. We kept telling them to listen, just think this one through. And now we are told by a senior human rights officer that about 8,000 people in detention centres are being held without trial in today's Libya... about the rampant abuse of human rights and extrajudicial killings: that's exactly what we were saying.

- **Is there a mechanism in the Security Council to go back and revisit the Libyan war, Resolution 1973, and exactly how you are laying it out? Is there a way for the U.N. to do this in order to understand the precedent set for the Council?**

Russia has asked for the Security Council to undertake an evaluation of protection of civilians, because Resolution 1973 is about protecting civilians. So what kind of damage was there, collateral damage to civilians, etc? There is great reluctance to undertake that. That is the issue. So I hope you are very clear as to why India abstained on Resolution 1973. You know, as students of history, one does not know how it's going to work, but with the benefit of hindsight, you should have voted against it. That is the predominant view on the Council. Those who clamoured for military action wanted it with enthusiasm.

Now they don't want to have a discussion about what is going on in Libya. That is why they don't want any open sessions.

- **What about Syria, then?**

Look clearly, given a situation in which the Alawites constitute 12 per cent of the population, with the total minority at about 26 per cent. Any society where there is a minority of 26 per cent and a majority of 74 per cent, there is going to have to be a social compact. That compact worked because different communities were co-opted. But one thing is very clear about Syria. As we proceeded in the Council, it became clear (and this also comes out in the [al-Dabi] report to the League of Arab States) that there is an armed component to the opposition. Those who want a strong condemnation of Damascus will tell you that helpless civilians turned to the opposition, and they armed themselves only when they were being slaughtered. Be that as it may. It is very difficult to calibrate as to when one became the other, when the peaceful became the armed, when a qualitative change took place. My sense is that you cannot get peace in Syria unless both sides walk back. Therefore, you need complete cessation of violence. You need an inclusive Syrian-led dialogue without preconditions, and you need the engagement of all sections of civilian society on issues related to constitutional reform.

- **Do you think the Libyan experience has made it impossible for both sides in Syria to take a step back?**

Well, there is some suggestion that President Bashar al-Assad might be willing to talk, but those who are financing and arming the opposition think that they will be able to succeed, drawing on the Libyan experience. I must say frankly: whether we vote for or against or abstain on the Syrian resolution is not the issue. Because of the Libyan experience other members of the Security Council, such as China and Russia, will not hesitate in exercising a veto if a resolution – and this is the big if – contains actions under Chapter 7 of the U.N. Charter, which permits the use of force and punitive and coercive measures. So your question is absolutely pertinent. And, you know, the Libyan experience means different things to different people. The unsettled state of Libya means that there are mercenaries who are operating in Libya, who are going back to Niger and Mali, bringing chaos.

Nothing that I've said should lead to any inference being drawn that we are unhappy with the transitional government. We want to see the people of Libya being able to vote, and we hope for a positive outcome. What we are doing here is understanding Resolution 1970 and Resolution 1973.

- We were able to get unanimity in the Council, under the Indian presidency, on the presidential statement in the Council on Syria on August 3, 2011. We stopped short of incorporating Chapter 7. We condemned the violence. We called on both parties to step back and we asked for a dialogue abjuring violence. That was the message we had given bilaterally through IBSA [India-Brazil-South Africa]. That is a message we have given collectively.

We were told we – that is, the PRST [U.N. Security Council President's Statement] – need unanimity. So our contribution, apart from making sure that we got the text that we wanted, was to get unanimity. We have seen statements by former U.S. diplomats who said, "Oh, this was not an Indian thing, this was negotiated between Brazil and France." I mean, I can tell you, you can talk to the Secretariat, the Indian presidency was the first time in the history of the Security Council when the President did the negotiating. I mean full marks to all the delegations because they came on board, but we were doing the negotiating. We were not only chairing. Then we knew that this would fall apart because Lebanon would not be able to join the PRST. So we looked for a precedent to allow them to disassociate from the statement. We found one in 1974. So we got a unanimous Presidential Statement in August 2011.

- Then two months later, on October 4, Britain and France brought a resolution before the Council which was essentially the same as the PRST, except it had a reference to Article

41. This would mean we would consider further measures, including from Article 41. Not that they will take these measures, but if this does not work, then they would. Two permanent members of the Security Council co-sponsored the resolution. Two permanent members [Russia and China] vetoed it, and the fifth, the U.S., under provocation from the Syrian ambassador, walked out.

So this is it. There is a complete difference between August and October. We abstained in October. So why did we vote in favour of the February resolution on Syria? Because the February resolution [which Russia and China vetoed] was explicitly clear that it was not under Chapter 7 [use of force]. So Resolution 1973 and this one are fundamentally different. So that's the reason why we supported one and didn't support the other.

**So you think now the sense is that people are going to be extremely concerned about Chapter 7?**

Yes.

[The Libya Mission One Year Later: The rules of engagement](http://www.ottawacitizen.com/news/Libya+Mission+Year+Later+rules+engagement/6176389/story.html)

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## • The Libya Mission One Year Later: The rules of engagement

By David Pugliese, The Ottawa Citizen February 18, 2012

- The radio on board HMCS Charlottetown crackled with the news. The Canadian warship's boarding party had struck pay dirt — a vessel in international waters loaded with weapons and ammunition trying to sneak into Libya.

It was May 2011, three months into Libya's civil war, and NATO had set up a ring of 20 warships to enforce a United Nations arms embargo. No weapons, military supplies or ammunition were to reach Libya, either for troops loyal to the country's leader, Moammar Gadhafi, or for rebels now fighting to overthrow him.

- "There are loads of weapons and munitions, more than I thought," the boarding officer radioed back to Charlottetown's commander, Craig Skjerpen. "From small ammunition to 105 howitzer rounds and lots of explosives."

The Libyan rebels operating the ship openly acknowledged they were delivering the weapons to their forces in Misrata.

Skjerpen radioed to NATO headquarters for instructions. The response was swift: let the ship sail on so the crew could deliver their deadly cargo.

A NATO senior officer, Italian Vice Admiral Rinaldo Veri had boasted just weeks earlier that the alliance's blockade closed the door on the flow of arms into Libya.

- Not quite. While the UN embargo was clearly aimed at preventing the delivery of weapons both to Gadhafi and those fighting him, NATO looked the other way when it came to the rebels. Hundreds of tonnes of ammunition and arms breezed through the blockade, exposing what critics say was Canada and NATO's real motive during the Libyan war — regime change under the guise of protecting civilians.

Qatar, one of two Arab nations to take part in the NATO-led mission, supplied rebels French-made Milan anti-tank missiles, with deliveries made by sea. The country also gave



them a variety of trucks and communications gear, while Qatari advisers slipped into Libya to provide training.

Egypt shipped assault rifles and ammunition, with U.S. support.

Poland supplied anti-tank missiles and military vehicles.

- Canada also didn't sit on the sidelines when it came to supplying hardware to the rebels.

Five months into the war, Canadian government officials set in motion a plan to provide surveillance drones to rebels so they could better attack Libyan troops, day or night.

The Aeryon Scout Micro-Unmanned Aerial Vehicle, designed and built in Waterloo, was a small spy drone that fit inside a suitcase.

The Canadian government put Aeryon in contact with the rebel's National Transitional Council, while Zariba Security Corp., a private security firm in Ottawa, was to make the delivery. In July, the \$100,000 drone was delivered to the rebels by Charles Barlow, president of Zariba and a former Canadian Forces officer. He took an 18-hour boat ride from Malta to the NTC training facility in Misrata, sailing without problems through NATO's blockade.

- Barlow showed the rebels how to fly the drone, using it to identify a Libyan military position, and left shortly after.

About a month before Barlow's trip, French aircraft, unchallenged by NATO fighters enforcing a no-fly zone, had dropped an estimated 40 tonnes of ammunition and weapons, including anti-tank missiles, to rebels fighting southwest of Tripoli.

The French, like the other nations pumping weapons into the hands of opposition forces, justified their actions in a response that seemed straight from George Orwell's novel *Nineteen Eighty-Four*. There was indeed an arms embargo in place, they acknowledged, but there was also another UN resolution allowing for all necessary measures to protect civilians under threat of attack.

- So the assault rifles and anti-tank missiles being dropped to rebel troops weren't for war. They were, French Foreign Minister Alain Juppé claimed, "weapons of self-defence" and because of that they didn't violate the UN resolution.

In the case of the order to HMCS Charlottetown to allow the rebel arms ship to proceed, NATO would later justify that action in a similarly convoluted fashion. Technically the rebel ship the Canadian frigate stopped was violating the arms embargo since it was in international waters and was sailing into Libya. But NATO claimed that since the ship was travelling from one location in Libya to another in the country, there was no violation. The weapons had come from Libya and were just being moved through international waters.

To this day, the official line from the Canadian government and military officers is that neither NATO nor Canada took sides in the war, although some occasionally let down their guard to outline what actually took place.

- After the war ended with Gadhafi's death in October, Vice Admiral Paul Maddison, the head of Canada's navy, would tell a meeting of Ottawa defence contractors that HMCS Charlottetown "played a key role in keeping the Port of Misrata open as a critical enabler of the anti-Gadhafi forces."

As with the arms embargo, NATO's public relations strategy on the ongoing airstrikes also claimed such attacks were not done in support of the rebels' war aims. But like the HMCS Charlottetown, NATO's aircraft were, in reality, "critical enablers" for the anti-Gadhafi forces.

Opposition forces freely admitted to journalists that from the beginning they were in contact with the coalition to identify targets, which would then be destroyed by NATO aircraft. "We work on letting them know what areas need to be bombarded," spokesman Ahmed Khalifa acknowledged in March.

- Another rebel by the name of Jurbran detailed for reporters how the system worked: "I called in the strike on this tank just after 4 a.m., relaying word of its position to our headquarters in Benina airfield, who passed on its location to the French," he explained. "They dealt with it quickly."

The NATO strikes were highly effective and almost every time Gadhafi armoured forces moved, even in retreat, they were destroyed. The rebels readily acknowledged the co-ordinated NATO attacks on Gadhafi's tanks and other armoured vehicles paved the way for them to capture a number of cities and towns.

But NATO's stated goal to protect Libyan civilians was seen by critics as a one-way street, with the focus being on protecting only those allied with the rebels. It would later emerge that rebel forces hunted down black Libyans they believed supported Gadhafi, as well as African guest workers.

- The BBC interviewed one Turkish construction contractor who told the news service he witnessed the massacre of 70 Chadians who had been working for his company.

There were also reports the rebels ethically cleansed the town of Tawergha, south of Benghazi, as well as other locations. Tawergha originally had more than 30,000 people, most the descendants of black slaves brought to Libya in the 18th and 19th centuries, but the town, which supported Gadhafi and provided soldiers for his cause, had been emptied. Some of its inhabitants had been killed, others fled.

People from Tawergha who sought safety in refugee camps have been chased down by rebel groups, taken away and disappeared, warned Amnesty International. Women from the town have been raped. "Others have simply vanished after being arrested at checkpoints or taken from hospitals by armed revolutionaries," Amnesty reported.

Canadian Lt.-Gen. Charles Bouchard, who directed the coalition's war effort, did not respond to a Citizen request for an interview.

- But he recently told a Senate defence committee he warned rebel forces about violence against civilians, informing them they too could be subject to NATO airstrikes. Bouchard also told the senators he was aware that the "fate of the individuals of Tawergha continues" to this day.

But he added: "Many of these individuals are still remnants of mercenaries who need to move out of the country and need to go home because there is no value in keeping them."

Exactly where these Libyans should go, Bouchard did not say.

Asked by the Citizen whether airstrikes were launched against rebel positions to protect civilians, Brig.-Gen. Derek Joyce, who oversaw Canada's air task force fighting in Libya, replied: "Not that I'm aware of."

- An equally controversial aspect of NATO's Libyan war centred on allegations it was trying to assassinate Gadhafi by killing him in an airstrike.

At first, U.S. and British politicians and generals claimed they didn't have a mandate to remove the Libyan leader from power. British Prime Minister David Cameron told his MPs the UN resolution did not provide any legal authority for such action.

But that soon changed.

U.S. President Barack Obama announced on March 25 that, "It is U.S. policy that Gadhafi has to go." Defence Minister Peter MacKay also reiterated the point, adding that the war's aims will "either include the departure or imminent demise of Gadhafi."

The U.S. and later NATO worked diligently to bring about that imminent demise. The first attacks on March 19 levelled one of Gadhafi's homes but he escaped the bombing.

- Bouchard, who took over command of the war after the initial attacks led by the U.S., claims no attempt was ever made to kill the Libyan leader. NATO bombs were only dropped on "command and control centres" that helped direct Libyan forces, he added.

But such reasoning allowed for much flexibility, military officers privately acknowledge. Gadhafi, his sons, and key government ministers could themselves be considered key parts of the command and control apparatus. If they were in a particular building, then that structure could be claimed to be a command and control centre and open to attack.

On April 30, a NATO airstrike killed Gadhafi's 29-year-old son Saif Al-Arab and three of Gadhafi's grandchildren. Gadhafi reportedly had left the residence just a few hours before missiles hit the structure. NATO said the building it attacked was a command and control

bunker.

- Two weeks later, NATO jets bombed a building reserved for hosting VIP guests. Again, it was deemed to be a command and control centre.

"We're picking up attacks on these command-and-control facilities," one officer told a British newspaper. "If he (Gadhafi) happens to be in one of those buildings, all the better."

In June, NATO jets bombed the compound belonging to Khoweildi al-Hamidi, a close Gadhafi confidant. Hamidi, whose daughter was married to one of the Libyan leader's sons, escaped unharmed. His two grandchildren weren't as lucky. They were among the 15 people killed.

A few days after that airstrike, U.S. House Armed Services Committee member Mike Turner acknowledged that U.S. Admiral Samuel Locklear, commander of the NATO Joint Operations Command, told him the alliance was actively targeting and trying to kill the Libyan leader.

- Because of NATO's relentless airstrikes, the days were indeed numbered for Gadhafi. Tripoli fell in August and NATO increased its bombing of Bani Walid and Sirte, Gadhafi's hometown.

NATO aircraft hammered the once prosperous Sirte into the ground. Rebel forces also bombarded the city with artillery and rockets, sparking criticism about indiscriminate shelling. But those among the rebel forces had little sympathy; they saw the civilians in Sirte as Gadhafi supporters.

Sirte soon took on an appearance similar to the bombed cities of the Second World War.

Brig.-Gen. Joyce told the Citizen the air attacks on Bani Walid and Sirte were necessary since pro-Gadhafi snipers were hiding in the rubble, targeting civilians.

By early October, the 69-year-old Gadhafi was trapped in Sirte, moving house to house with a force of about 150 men.

- He hadn't come to grips with the fact he had lost power. Gadhafi still believed Libyans would rise up against the rebels and NATO forces.

On Oct. 18, U.S. Secretary of State Hillary Clinton acknowledged the Libyan leader's whereabouts were unknown. But American and other NATO surveillance aircraft were conducting missions throughout the country, trying to pick up snippets of satellite or cellphone conversations that might indicate where Gadhafi was hiding.

Clinton was strangely predictive when in Tripoli, she told university students "we hope he can be captured or killed soon." Two days later, her wish came true.

On the morning of Oct. 20 a NATO aircraft spotted a convoy of vehicles travelling at high speed and attempting to break through the rebel gauntlet around Sirte.

- A NATO aircraft opened fire on a number of vehicles, while a U.S. Predator drone unleashed a Hellfire missile. Dozens of Gadhafi supporters in the convoy died instantly.

According to NATO spokesman Canadian Col. Roland Lavoie, the fleeing convoy was attacked because it was "conducting military operations and presented a clear threat to civilians."

Bouchard would later claim the alliance had no idea Gadhafi was in one of the vehicles.

But British reports indicate coalition forces did indeed know the Libyan leader was in the convoy after a surveillance aircraft intercepted a satellite phone call he made.

- Gadhafi survived the attacks and was soon a captive of rebel forces. Those fighters would later say he appeared dazed and had asked, "What's going on? What did I do?"

Videos taken of his capture show the Libyan leader's face covered in blood as rebels jostle him. Another video appears to show one of the men sodomizing him with a bayonet.

Shortly after, the colonel would be dead.

Libya's new prime minister, Mahmoud Jibril said Gadhafi had been "caught in the crossfire"

as he was being taken to hospital. He had been shot in the head and chest.

Some, however, believed the killing was nothing more than an execution. William Hague, Britain's foreign secretary, acknowledged the videos and photos suggested Gadhafi had been murdered.

- Still, western leaders and military officers rejoiced.

Foreign Affairs Minister John Baird brushed aside concerns Gadhafi had been executed.

Britain's defence chief, Gen. Sir David Richards, said the Libyan strongman's death brought to a close "one of the most successful operations NATO has conducted in its 62-year history." Gadhafi, Richards warned, had been a "latent threat to the U.K. and our citizens," noting he was responsible for arming the IRA and killing hundreds in terrorist attacks.

Richards, however, didn't explain why, if Gadhafi had been such a threat, the British military sent its special forces to train his commandos in 2009.

- Prime Minister Stephen Harper noted the apparent execution was not surprising considering Libya was "emerging from 42 years of psychotic dictatorship with killing and imprisonment on a massive scale."

But Harper didn't delve into why his government had, in 2009, sought closer economic times with the same man he now branded a psychotic dictator.

NATO and the rebels had succeeded in killing Gadhafi and two of his sons. Another son, Saif al-Islam was in custody and is to be tried by the new Libyan government. The rest of Gadhafi's family has escaped into exile.

NATO's job was done. "Let there be no doubt that the intervention in Libya was just and warranted," Bouchard would later say.

TOMORROW: A victory, but at what price? While the Canadian government celebrated Gadhafi's overthrow, the countries in the region were feeling the effects.

## [Libya outcome 'vitiates' UN Security Council — RT](http://rt.com/news/libya-syria-secutiry-council-217)

<http://rt.com/news/libya-syria-secutiry-council-217>

- Libya outcome 'vitiates' UN Security Council
- Published: 01 February, 2012
- The way some UN Security Council members used the body's resolutions on Libya to justify their backing for rebel forces in the country has created an obstacle to dealing with the civil conflict in Syria, India's Ambassador to the UN has told RT.

Hardeep Singh Puri says the world's top security body was hit hard by the Libyan experience, when nations sitting at the table ignored sections of the resolutions they were charged with implementing.

*"One of the difficulties we are having so far as the situation in Syria is concerned is that the Security Council's experience in respect of Resolutions 1970 and 1973 on Libya is now vitiating the atmosphere in terms of the approach towards how to deal with the situation in Syria,"* he explained, referring to the fact that despite all efforts, the UN Security Council has been failing to adopt any new document on the developing crisis in Syria for six months.

The Indian diplomat says while the Security Council did authorize the use of force in Libya, the stated goal was to stop violence, and nothing more.

*"Yes, the UN was to get involved. It would have to take action in order to enforce a no-fly zone. The Resolution 1973 also speaks of ceasefire. And when we tried to invoke the ceasefire provision, some other countries, which were involved in the military operation, said that they did not want to consider the possibility of a ceasefire until the regime had been dislodged. I'm not saying it was done for a regime change, but that's what it amounts to in the end,"* he said.

The creative interpretation of the UN SC's collective will is not the worst problem with the Libya scenario, however.

- *"There is a more serious issue. Resolution 1973 specifically refers to an arms embargo. But that resolution was interpreted, as some people said, as, 'Well it means you can carry out a military operation against Gaddafi, but arms embargo does not prevent you from arming the rebels'. I find that situation unacceptable,"* he stressed.

*"I have very often taken the lead in the Council to say that words have meanings. And therefore when we agree to a form or a set of words, we should be clear among ourselves as to what it is that we are agreeing to. The imposition of the will of those who have military clout – it appears that in the context of the moment, of the immediate crisis, this approach is an approach that can be adopted. But in the long run, these things don't work,"* he concluded.

## [Pambazuka - AU on Libya: Political solution needed](http://www.pambazuka.org/en/category/features/74462)

<http://www.pambazuka.org/en/category/features/74462>

### • **AU on Libya: Political solution needed**

**Ruhakana Rugunda**

**2011-06-29, Issue [537](#)**

- At a meeting between the UN Security Council and the African Union High Level Ad hoc Committee on Libya on 15 June, Dr Ruhakana Rugunda, Uganda's permanent representative to the United Nations, gave the African Union's stand on NATO's invasion of Libya.

- Mr. President,

1. Thank you for organising this interactive dialogue. It is good that the United Nations Security Council has met the African Union (AU) Mediation Committee (High-Level Ad hoc Committee on Libya) so that we can exchange views on the situation in Libya in a candid manner. This should have happened much earlier because Libya is a founding member of the AU. An attack on Libya or any other member of the African Union without express agreement by the AU is a dangerous provocation that should be avoided given the relaxed international situation in the last 20 years since the release of Nelson Mandela from jail and the eventual freedom of South Africa.

2. The UN is on safer ground if it confines itself on maintaining international peace and deterring war among member states.

3. Intervening in internal affairs of States should be avoided except where there is proof of genocide or imminent genocide as happened in Rwanda or against the Jews in Germany and the European countries that were occupied by the Third Reich.

- 4. There are differences on the issue of Libya as to whether there was proof of genocide or intended genocide. Fighting between Government troops and armed insurrectionists is not genocide. It is civil war. It is the attack on unarmed civilians with the aim of exterminating a particular group that is genocide – to exterminate the genes of targeted groups such as the Jews, Tutsis, etc. It is wrong to characterise every violence as genocide or imminent genocide so as to use it as a pretext for the undermining of the sovereignty of States. Certainly, sovereignty has been a tool of emancipation of the peoples of Africa who are beginning to chart transformational paths for most of the African countries after centuries of predation by the slave trade, colonialism and neo-colonialism.

Careless assaults on the sovereignty of African Countries are, therefore, tantamount to inflicting fresh wounds on the destiny of the African peoples. If foreign invasions, meddlings, interventions, etc, were a source of prosperity, then, Africa should be the richest continent in the world because we have had all versions of all that: slave trade, colonialism and neo-colonialism. Yet, Africa has been the most wretched on account of that foreign meddling.

- 5. Whatever the genesis of the intervention by NATO in Libya, the AU called for dialogue

before the UN resolutions 1970 and 1973 and after those Resolutions. Ignoring the AU for three months and going on with the bombings of the sacred land of Africa has been high-handed, arrogant and provocative. This is something that should not be sustained. To a discerning mind, such a course is dangerous. It is unwise for certain players to be intoxicated with technological superiority and begin to think they alone can alter the course of human history towards freedom for the whole of mankind. Certainly, no constellation of states should think that they can recreate hegemony over Africa.

6. The safer way is to use the ability to talk, to resolve all problems.

- 7. The UN or anybody acting on behalf of the UN must be neutral in relation to the internal affairs of states. Certainly, that should be the case with respect to African countries. The UN should not take sides in a civil war. The UN should promote dialogue, peaceful resolution of conflicts, and help in enforcing agreements arrived at after negotiations such as the agreement on the Sudan.

8. Regardless of the genesis of the Libyan problem, the correct way forward now is dialogue without pre-conditions. The demand by some countries that Col. Muammar Gaddafi must go first before the dialogue is incorrect. Whether Gaddafi goes or stays is a matter for the Libyan people to decide. It is particularly wrong when the demand for Gaddafi's departure is made by outsiders.

9. In order for dialogue, without pre-conditions, to take place, we need a ceasefire in place that should be monitored by the AU troops among others. This will help the AU to confirm the veracity of the stories of Gaddafi killing civilians intentionally.

- 10. That dialogue should agree on the way forward in the direction of introducing competitive politics. Gaddafi thinks he has the most democratic system in the world of people's authority, elected local committees. Since so much chaos in Libya has emerged on the issue, Gaddafi should see the wisdom of accepting competitive democracy. Gaddafi cannot ignore the fact that the rebels took over Benghazi and his authority melted away before NATO came in to confuse the picture. The pre-NATO uprising in Benghazi was, mainly, internal. Gaddafi may say that they were organised by Al Qaeda. Even if that is so, it is a fact that some Libyans in Benghazi threw out Gaddafi's authority. Therefore, Gaddafi must think of and agree to reforms, resulting into competitive politics.

11. A transitional mechanism could, then, be worked out and competitive elections would take place after an agreed timetable.

12. What about security for the opposition members? We have plenty of experience on such issues. What did we do in Burundi? We provided a protection force (a brigade) for the Hutu leaders who were living outside Burundi or were in the bush. One of them is now the President of Burundi after winning democratic elections.

- 13. How about those who are alleged to have committed war crimes – including Gaddafi and the rebels? Again, our decision in Burundi is useful here. We used the concept of "immunité provisoire" (provisional immunity), for all the stakeholders so that they could participate in the dialogue. After peace is realised, then a Truth and Reconciliation body could be set up to look into these matters. After democratic elections, trials of guilty parties can take place.

14. Long-term safety of everybody can be ensured by security sector reform and especially reform of the army, so that it takes orders from any elected President.

15. The intervention in Libya was premised on the basis of protecting civilians and preventing further civilian deaths. However, the humanitarian situation in Libya remains serious and continues to get worse with continued hostilities. Looking at how resolutions 1970 and 1973 are being implemented, the international community and the United Nations in particular, are being severely put to the test, as what is happening in Libya will undermine future efforts of the UN in the protection of civilians. There is, therefore, no need for any war-like activities in Libya because there is a peaceful way forward. There has been no need for these war activities, ever since Gaddafi accepted dialogue when the AU mediation Committee visited Tripoli on April 10, 2011. Any war activities after that have been provocation for Africa. It is an unnecessary war. It must stop.

- 16. The story that the rebels cannot engage in dialogue unless Gaddafi goes away does not convince us. If they do not want dialogue, then, let them fight their war with Gaddafi without NATO bombing. Then, eventually, a modus vivendus will emerge between the two parties or one of them will be defeated. The attitude of the rebels shows us the danger of external involvement in internal affairs of African countries.

The externally sponsored groups neglect dialogue and building internal consensus and, instead, concentrate on winning external patrons. This cannot be in the interest of that country. Mobutu's Congo as well as performance of all the other neo-colonies of Africa in the 1960s, 1970s, 1980s and their eventual collapse in the 1990s prove that foreign sponsored groups are of no value to Africa.

17. It is essential that the UN Security Council works with the African Union to ensure that a ceasefire is immediately established with an effective and verifiable monitoring mechanism and dialogue embarked upon, leading to a political process including transitional arrangements and the necessary reforms. The crisis in Libya requires a political solution and not a military one; and the AU Road Map is the most viable option.

## [R2P, the ICC and the Libyan arrests » The Hague Justice Portal](http://www.haguejusticeportal.net/eCache/DEF/12/998.TGFuZz1FTg.html)

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- R2P, the ICC and the Libyan arrests 24 Nov 2011

**Carsten Stahn, Professor of International Criminal Law and Global Justice at Leiden University, assesses the recent developments in Libya and the consequences for the International Criminal Court and the 'responsibility to protect' principle**

**R2P, the ICC and the Libyan arrests**, by Carsten Stahn\*

- **Context**

The arrest of Saif al-Islam Gaddafi and Abdallah al-Senussi constitutes a test case for international justice and the idea of 'shared responsibility'[1], embraced by Heads of State and Government at the 2005 World Summit Outcome in the framework of the 'Responsibility to Protect' (R2P) doctrine. In February 2011, the UN Security Council adopted a unanimous resolution (Resolution 1970) to refer the situation in Libya to the International Criminal Court (ICC) after the failure of the Gaddafi regime 'to protect its population'.[2] This resolution marked the first incident in which the ICC was expressly recognized in Council practice as a core element of preventing and adjudicating atrocities in line with the 'R2P' concept.[3] The R2P principle is based on the idea that domestic authorities maintain primary responsibility to 'protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.[4]

- It contains at the same time a commitment to an international response in accordance with the United Nations Charter, should 'peaceful means be inadequate and national authorities manifestly fail' to live up to their responsibility.[5] With the decision authorizing the use of force 'to protect civilians and civilian populated areas under threat of attack'[6] and the referral of the situation to the ICC under Chapter VII of the United Nations Charter, the protection against atrocity crimes took a central place in the collective response to the Libyan conflict. This type of reaction is likely to be perceived as a possible precedent for other contexts. With the Security Council referral, international justice has become one of the primary means of constraining violence and securing accountability, not only in the context of hostilities, but also in ensuring justice after conflict. The debate over the proper forum for proceedings against Saif al-Islam Gaddafi and Abdallah al-Senussi puts the interplay between domestic and international justice to a crucial test.
- **The Security Council and complementarity**

When the International Criminal Tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR) were established by the Security Council at the beginning of the 1990s, they were endowed with primacy of international jurisdiction[7] and had limited leeway to engage with domestic jurisdictions or refer cases to domestic institutions. They only did so after the end of hostilities and the start of trials, namely mainly in the context of their 'completion strategy'.[8] In the context of the ICC, interaction with domestic judiciaries is at the heart of the system of justice of the Statute, which embraces the principle of complementarity.[9] The Court's mandate is based on a division of responsibility between international and domestic authority. This leaves room to defer proceedings to national institutions. Domestic justice enjoys priority, and can be successfully invoked as an alternative to ICC proceedings, if it is supported by genuine investigations and prosecutions of international crimes, including application of principles of due process

under international law.[10]

- This framework applies to the Libyan context, although Libya is not a Party to the ICC, [11] because the situation was referred to the Court by the Security Council under Chapter VII of the United Nations Charter.[12] The Security Council highlighted the prospects of interaction with domestic justice initiatives in the context of its 2005 Darfur referral, when it encouraged the ICC to support international cooperation with 'domestic efforts' to combat impunity[13] and to consider the possibility of 'conducting proceedings in the region'.[14] Now, these prerogatives are once again in the spotlight in the Libyan context.
- **The ICC and domestic proceedings**

The ICC has not yet determined a firm policy or strategy with respect to engaging with parallel or competing proceedings at the national level. In the situation of the Democratic Republic of the Congo (DRC), the ICC considered the possibility of holding ICC trials in situ, following a self-referral of the situation by the DRC and proclaimed inaction by domestic authorities after transfer of defendants to the Court. The option 'to sit in a State other than' the host State is foreseen in the legal framework of the Court.[15] Despite initial proposals from the Bench[16], the Court refrained from using these powers, mostly due to concerns related to the security and protection of Court officials, witnesses or victims.

In the context of the investigation and prosecution of electoral violence in Kenya, the ICC Prosecutor used domestic 'consent' as a leverage and yardstick for the initiation of ICC proceedings. The Prosecutor agreed with Kenyan authorities to prioritize domestic justice, subject to certain conditions. The conditions were specified in Agreed Minutes[17] which set out clear benchmarks and timelines for investigations and prosecutions by Kenyan authorities.[18] The Office of Prosecutor decided to proceed with ICC investigations and prosecutions on its own motion for the first time in the history of ICC proceedings,[19] after domestic authorities failed to comply with the terms of the 'complementarity' arrangement.

- In the Libyan context, the situation is slightly different. The Court does not act on its own motion, but on the basis of a referral by the Security Council. This mandate makes the Court an agent of peace-maintenance. The Pre-Trial Chamber has issued warrants of arrest. An international 'case' exists, and judicial proceedings have started. This has an impact on subsequent action. There is less leeway to negotiate modalities and timing of justice outside the Courtroom. A deferral of proceedings to Libyan authorities following the issuance of warrants of arrest, and in the absence of prior international custody over defendants, would mark a novelty in international criminal justice. How the Court and the international community will deal with this issue is decisive for future cases.

The most radical option to bar the exercise of ICC jurisdiction is a request by the Security Council not to proceed with further investigation or prosecution for a renewable 12 month period. This possibility is mentioned in the Council referral[20] and Article 16 of the ICC Statute. This option has come under growing criticism in recent years. In 2010, African Union members encouraged the Council to use Article 16 in order to suspend the warrant of arrest against Omar al-Bashir and facilitate the peace settlement in Sudan.[21] This initiative failed to gain sufficient support inside the Council, partly due to U.S. opposition and concerns that interference in ongoing ICC cases would run counter to the stated aims of the resolution and compromise the Court's independence.

- A second possibility to seek priority for domestic justice lies with domestic authorities. As a State with jurisdiction over crimes on the basis of territory and nationality, Libya may use the mechanisms under the Statute to challenge the admissibility of ICC proceedings.[22] Such a motion has suspensive effect[23] but it does not affect the validity of previous ICC action or decisions.[24] As reiterated by the ICC, the final determination on admissibility rests with Chambers.[25]

The Statute sets a relatively high burden for an admissibility challenge. The Rules of Procedure and Evidence of the Court provide that a State may inter alia share information with the Court showing that its courts 'meet internationally recognized norms and standards for the independent and impartial prosecution of similar conduct', or that the case is 'being investigated or prosecuted'.[26] Investigations or prosecutions must in particular, target the same 'case'[27], which has been defined by the Court as



encompassing 'both the person and the conduct' charged.[28] This test might pose difficulties for domestic investigators and prosecutors, since domestic charges may have to reflect similar incidents, links or context associated with atrocity crimes (e.g., crimes against humanity[29], war crimes[30]).[31] If domestic trials are held, they only bar ICC proceedings under the 'double jeopardy' rule, if they relate to 'conduct also proscribed' under the core crimes provisions of the Statute.[32] If a domestic case relates to different conduct, the Statute typically foresees consultations between the ICC and a requested State under the cooperation regime to facilitate the sequencing of proceedings.[33]

- The ICC Statute does not include the death penalty in its sentencing regime. It is controversial to what extent potential human rights violations to the detriment of the defendant should be taken into account in the determination of admissibility assessments under the Statute since they concern primarily jurisdictional issues.[34] An argument to that effect might be based on Article 21 (3) which provides the applicable law of the ICC must be interpreted and applied consistently 'with internationally recognized human rights'.[35] Rule 11 bis of the ICTR Rules of Procedure and Evidence specified specifically that a case shall only be referred back by a Trial Chamber if the accused will receive a fair trial and if 'the death penalty will not be imposed or carried out'. [36] Accordingly, the Appeals Chamber of the ICTR held that 'Chamber designated under Rule 11 bis must consider whether the State has a legal framework which criminalizes the alleged conduct of the accused and provides an adequate penalty structure'.[37] But neither the ICC Statute, nor the complementarity provisions under Article 17 were directly intended to serve as a general incentive for the harmonization of sentencing provisions in domestic jurisdictions (let alone in non-State Parties), or to rule out the death penalty per se.
- At the Rome Conference, States were eager to maintain State sovereignty and different legal cultures, including divergent views on penalty regimes – a position expressly reflected in Part 7 of the ICC Statute.[38] They also sought to prevent that the ICC turns into a general human rights court. Contemporary developments concerning the death penalty, as well as the fact that other international courts such as the ICTR or the European Court of Human Rights[39] have recognized the death penalty as a bar to transfer of suspects might put this traditional understanding of admissibility under the ICC Statute to a test.[40] In particular, once a defendant has been surrendered to the Court, the Court would face difficulties to transfer a person to a state where the death penalty is practiced, in line with existing human rights jurisprudence on the prohibition of inhuman or degrading treatment or punishment.
- Finally, domestic authorities might ask the Prosecutor to withdraw[41] or amend charges before the ICC.[42] The closest precedent is the situation in Uganda where the option of the withdrawal of the arrest warrant against Josef Kony was discussed in the peace talks with the Lord's Resistance Army. In such situations, the final decision over such a request lies with the Pre-Trial Chamber.[43] If the Prosecutor comes to the conclusion that there is no longer a 'sufficient basis to prosecute' since the 'case is inadmissible', he cannot simply terminate proceedings, but must inform the Pre-Trial Chamber and the Security Council of 'his or her conclusion and the reasons for that conclusion'.[44] Any such assessment is likely to be based on the inadmissibility criteria set out in Article 17. The two logical steps in this inquiry have been set out by the ICC Appeals Chamber:

'[I]n considering whether a case is inadmissible under article 17(1)(a) and (b) of the Statute, the initial questions to ask are (1) whether there are ongoing investigations or prosecutions, or (2) whether there have been investigations in the past, and the State having jurisdiction has decided not to prosecute the person concerned. It is only when the answers to these questions are in the affirmative that one has to look to the second halves of sub-paragraphs (a) and (b) and to examine the question of unwillingness and inability'.[45]

- It is unlikely that the Office of the Prosecutor would invoke the 'interests of justice' clause to defer to domestic proceedings.[46] This would run counter to previous practice according to which there is a 'presumption in favor of investigation or prosecution'[47] and a distinction between 'interests of justice' and 'issues related to peace and security'.[48]

One possible option to reconcile domestic jurisdiction with accountability before the ICC may be a division of labor based on temporal jurisdiction. In line with the Council referral, the ICC enjoys jurisdiction as of 15 February 2011.[49] There is no conflict of jurisdiction with respect to crimes committed prior to that date. To frame accountability in light of this distinction may, however, pose significant challenges in practice. If proceedings go ahead first with respect to atrocity crimes before the ICC, and if defendants are sentenced,

chances of a subsequent trial in Libya are remote. The ICC will have to enter into an arrangement with respect to the enforcement of a possible sentence in a 'State designated by the Court' which indicated its 'willingness to accept sentenced persons'.<sup>[50]</sup> An enforcement of sentence in Libya would be unlikely, given its status as non-State Party, its detention regime and its current penalty provisions.<sup>[51]</sup> This would complicate a second domestic trial for conduct other than that adjudicated by the ICC.

- If the National Transitional Council simply goes ahead with its own process, there may be two parallel processes: domestic proceedings and proceedings before the ICC. In this situation, either Libya, or the Prosecutor can seek a ruling on admissibility by the Pre-Trial Chamber.<sup>[52]</sup> If the 'case' before the ICC is found to be inadmissible by the Chamber in light of genuine domestic investigations or prosecutions, domestic proceedings take precedence but remain under ICC scrutiny.<sup>[53]</sup>

If the National Transitional Council fails to cooperate with the ICC, the Prosecutor can return to the Security Council and insist on cooperation in line with SC Resolution 1970.<sup>[54]</sup> Ultimately, a Chamber might make a finding of non-compliance.<sup>[55]</sup> This would put the Council's commitment to the referral to a severe test.

- **Conclusion**

It is thus difficult to negate the role of international justice in the accountability efforts in Libya. Even if domestic proceedings against Saif al-Islam Gaddafi and Abdallah al-Senussi were given priority, this would not prevent continued ICC engagement. Admissibility challenges or the 'double jeopardy' rule<sup>[56]</sup> are confined to individual 'cases'. The scope of ICC engagement in relation to the 'situation' depends on the terms of the referral, and ICC criminal policy.<sup>[57]</sup> Even though some thought is now given inside the ICC to the proper scope, limits and closure of 'situations' under ICC jurisdiction<sup>[58]</sup>, the Libyan mandate is currently open-ended according to the terms of Security Council Resolution 1970. The ICC is thus likely to remain on the map of Libya for a while.

Increased attention to the full spectrum of justice options (e.g., international, domestic and internationalized proceedings) may cause differences of opinion or frictions at the moment of arrest. But from a systemic and long-term perspective, this development is rather encouraging. Dialogue across jurisdictions over the most appropriate venue of justice, and continued monitoring of domestic justice by international entities forms a corollary, and an integral part of a commitment to 'shared responsibility' in relation to atrocity crimes. One should thus embrace, rather than condemn it, in particular in the context of the first express use of the 'R2P' principle in collective security action.

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- [1] See generally André Nollkaemper and Dov Jacobs, Shared Responsibility in International Law: A Concept Paper, ACIL Research Paper No 2011-07, at <http://www.sharesproject.nl/wp-content/uploads/2011/08/Nollkaemper-Jacobs-Shared-Responsibility-in-International-Law-A-Concept-Paper.pdf>.

[2] See the preamble of SC Res. 1970 of 26 February 2011.

[3] SC Resolution 1593 of 31 March 2005 does not expressly mention the R2P principle in connection with the triggering of ICC jurisdiction in relation to Darfur. It simply makes reference to 'violations of international humanitarian law'. See the preamble of SC Resolution 1593.

[4] See World Summit Outcome Document, 15 September 2005, para. 138. For a study, see Carsten Stahn, Responsibility to Protect: Political Rhetoric or Emerging Legal Norm, 101 AJIL 99 (2007).

[5] Ibid., para. 139.

[6] See para. 4 of SC Res. 1973 of 17 March 2011.

[7] See Article 9 (2) of the Statute of International Criminal Tribunal for Yugoslavia and Article 8 (2) of the Statute of the International Criminal Tribunal for Rwanda.

[8] See e.g. Rule 11bis of the Rules of Procedure and Evidence of the ICTY and the ICTR. At the ICTY, cases were referred back as of 2005.

[9] See the preamble, Article 1 and Article 17 of the ICC Statute. For a recent account, see Carsten Stahn & Mohamed El Zeidy, The International Criminal Court and Complementarity: From Theory to Practice (Cambridge: Cambridge University Press, 2011).

[10] See Article 17, and in particular, Article 19 of the ICC Statute, as well as Rule 51 of

the Rules of Procedure and Evidence of the Court.

[11] See Article 12 (2) and 13 (b) of the ICC Statute.

[12] A Security Council referral triggers a fast-track procedure in which Article 18 is not applicable. The principle of complementarity, however, is applicable in the context of Security Council referrals. See Article 19 and Article 53 (3) (a).

- [13] See para. 4 of SC Resolution 1593 (2005).

[14] See para. 3 of SC Resolution 1593 (2005).

[15] See Rule 100 of the Rules of Procedure and Evidence of the ICC.

[16] See e.g., Adrian Fulford, *Reflections of a Trial Judge*, 22 *Crim. L. Forum* 215 (2011).

[17] See ICC, *Agreed Minutes of the meeting between Prosecutor Moreno-Ocampo and the delegation of the Kenyan Government*, The Hague, 3 July 2009, p.1.

[18] On 3 July 2009, the Prosecutor and representatives of the Kenyan government specified in *Agreed Minutes* that 'the Office of the Prosecutor will have no ground to intervene' if 'Kenyan authorities carry out genuine judicial proceedings against those most responsible'. *Ibid.*, p. 1. The Kenyan delegation agreed to provide the Prosecutor by end of September 2009 with 'information on modalities for conducting national investigations and prosecutions for those responsible for the 2007 violence through a special tribunal or other judicial mechanism adopted by the Kenyan Parliament with clear benchmarks over the next 12 months'. *Ibid.*, p.2

[19] *Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya*, ICC-01/09-19, 31 March 2010.

- [20] See the preamble of SC Resolution 1970.

[21] In its Ministerial Meeting on the Rome Statute of the ICC on 6 November 2009, the African Union made the following proposal for amendment to Article 16 of the Rome Statute (deviations from existing text of the Statute are marked in italics): Article 16 Deferral of Investigation or Prosecution:

I) No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

II) A State with jurisdiction over a situation before the Court may request the UN Security Council to defer a matter before the Court as provided for in (i) above.

Where the UN Security Council fails to decide on the request by the state concerned within six (6) months of receipt of the request, the requesting Party may request the UN General Assembly to assume the Council's responsibility under para 1 consistent with Res. 377 (v) of the UN General Assembly.

- [22] See Article 19 (2) of the ICC Statute.

[23] See Article 19 (7) of the ICC Statute.

[24] See Article 19 (9) of the ICC Statute.

[25] See ICC Press Release, 'Course of action before the ICC following the arrest of the suspect Saif Al Islam Gaddafi in Libya', ICC-CPI-20111123-PR746, 23 November 2011 ('Should the Libyan authorities wish to conduct national prosecutions against the suspect, they shall submit a challenge to the admissibility of the case before Pre-Trial Chamber I, pursuant to articles 17 and 19 of the Rome Statute of the ICC. Any decision on the admissibility of a case is under the sole competence of the Judges of the ICC').

[26] See Rule 51 of the ICC Rules of Procedure and Evidence.

[27] See Article 19 (2) ('challenges to the admissibility of a case'). For a study, see Rod Rastan, *What is a 'case' for the purpose of the Rome Statute?*, 19 *Crim. L. Forum* 435 (2008).

- [28] *Prosecutor v. Lubanga, Decision on the Prosecutor's Application for a Warrant of Arrest*, ICC-01/04-01/06-8-Corr, 24 February 2006, paras. 38-39.

[29] See Article 7 (1) and (2) of the ICC Statute.

[30] See Article 8 of the ICC Statute.

[31] ICTR case law conceded that an international indictment could be adapted to national provisions under Rule 11bis. See *Prosecutor v. Bagaragaza, Decision on Rule 11bis Appeal (AC)*, 30 August 2006, para. 17 ('The Appeals Chamber agrees with the Prosecution that the concept of a 'case' is broader than any given charge in an indictment').

[32] See Article 20 (3) of the ICC Statute.

[33] See Article 89(4) and Article 94 of the ICC Statute.

[34] In *Lubanga*, the Appeals Chamber gave a narrow reading to admissibility challenges under Article 17. It noted: 'Jurisdiction apart, admissibility is the only ground envisaged by the Statute for which the court may validly refrain from assuming or exercising jurisdiction in any given cause. Abuse of process is not listed as a ground for relinquishing jurisdiction in article 17 of the Statute'. See Appeals Chamber, *Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, 14 December 2006,*

para. 34.

- [35] The ICC Appeals Chamber held: 'Human rights underpin the Statute; every aspect of it including the exercise of jurisdiction of the Court. Its provisions must be interpreted and more importantly applied in accordance with internationally recognized human rights; first and foremost, in the context of the Statute, the right to a fair trial, a concept broadly perceived and applied, embracing the judicial process in its entirety'(emphasis added). *Ibid.*, para. 37.
- [36] Rwanda abolished the death penalty partly in order to be able to try cases referred back by the ICTR.
- [37] See ICTR, Prosecutor v. Bagaragaza, Decision on Rule 11bis Appeal (AC), 30 August 2006, para. 9, referring to Prosecutor v. Međakić et al., Decision on Joint Defence Appeal Against Decision on Referral under Rule 11bis (AC), 7 April 2006, para. 60
- [38] This is expressly enshrined in Article 80 of the Statute. It states: 'Nothing in this Part affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties in this Part'. This provision was inserted in light of contrasting views of delegations on capital punishment. See William Schabas, 'Penalties', in Antonio Cassese, Paola Gaeta, John Jones, *The Rome Statute of the International Criminal Court: A Commentary*, Vol. II (Oxford, Oxford University Press, 2002), 1497, 1505.
- [39] See e.g., European Court of Human Rights, *Soehring v. United Kingdom*, 11 Eur. Ct. H.R. (Ser. A) (1989); *Al Sadoon and Mufdhi v. United Kingdom*, Application No. 61498/08, 2 March 2010.
- [40] Practice of other courts and tribunals may be taken into account under Article 21 (1) (b) or Article 21 (3) of the ICC Statute.
- [41] Article 53 (4) of the ICC Statute.
- [42] Article 58 (6) of the ICC Statute.
- [43] Article 58 (4) of the ICC Statute. The Pre-Trial Chamber also enjoys the power to make admissibility determinations on its own motion. See Article 19 (1) of the ICC Statute. See ICC, Pre-Trial Chamber II, Prosecutor v Kony et al, Decision on the admissibility of the case under article 19(1) of the Statute, ICC-02/04-01/05-377, 10 March 2009, para. 45.
- [44] See Article 53 (2) of the ICC Statute.
- [45] See Appeals Chamber, Judgment on the Appeal of Mr Katanga against the Trial Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, 25 September 2009, para. 78.
- [46] See Article 53 (1) and (2) of the ICC Statute.
- [47] See OTP, Policy Paper on the Interests of Justice, September 2007, at 3, available at <http://www.icc-cpi.int/NR/rdonlyres/772C95C9-F54D-4321-BF09-73422BB23528/143640/ICCOTPInterestsOfJustice.pdf>
- [48] *Ibid.*, at 8.
- [49] See para. 4 of SC Res. 1970 (2011). See with respect to surrender also Article 101 of the ICC Statute (Rule of speciality).
- [50] See Article 103 of the ICC Statute.
- [51] See also the criteria listed in Article 103 (3) of the ICC Statute.
- [52] See Article 19 (2) and Article 19 (3) of the ICC Statute.
- [53] See Article 19 (10).
- [54] See para. 4 of SC Res. 1970 (2011).
- [55] Technically, Article 87 (7) of the Statute addresses only the consequences of non-compliance by a State Party, and leaves it open what happens in case of non-compliance by a Non-State Party following a Security Council referral. The Pre-Trial Chamber adapted needs to reality, and justified its judicial finding on non-compliance by 'inherent' powers. See Pre-Trial Chamber I, Prosecutor v. Harun and Ali Kushayb, Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan, 25 May 2010, ICC-02/05-01/07, at 7.
- [56] Article 20 (3) of the ICC Statute.
- [57] For judicial review of prosecutorial policy, see Article 53 (3).
- [58] In Prosecutor v. Mbarushimana, Pre-Trial Chamber Chamber held that referrals should not become instruments 'permitting a State to abdicate its responsibility for exercising jurisdiction over atrocity crimes for eternity' since this would be 'antithetical to the concept of complementarity'. See Pre-Trial Chamber I, Prosecutor v. Mbarushimana, Decision on the Defence Challenge to the Jurisdiction of the Court, 26 October 2011, ICC-01/04/01/10, para. 16.

[U.N. council slaps sanctions on Libya's Gadhafi - USATODAY.com](http://www.usatoday.com/news/world/2011-02-26-security-council-libya_N.htm)

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# • U.N. council slaps sanctions on Libya's Gadhafi

Updated 2/27/2011

- UNITED NATIONS (AP) — The [U.N. Security Council](#) moved Saturday to halt Libyan leader [Moammar Gadhafi](#)'s deadly crackdown on protesters, slapping sanctions on him, his five children and 10 top associates.
- Voting unanimously after day-long discussions interrupted with breaks to consult with capitals back home, the council imposed an asset freeze on Gadhafi, his four sons and one daughter and a travel ban on the whole family along with 10 other close associates. The council also backed an arms embargo.

Council members also agreed 15-0 to refer the Gadhafi regime's deadly crackdown on people protesting his rule to a permanent war crimes tribunal for an investigation of possible crimes against humanity.

- The council said its actions were aimed at "deploring the gross and systematic violation of human rights, including the repression of peaceful demonstrators." And members expressed concern about civilian deaths, "rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government."

The uprising that began Feb. 15 has swept over nearly the entire eastern half of the country, breaking cities there out of his regime's hold. Gadhafi and his backers continue to hold the capital Tripoli and have threatened to put down protests aggressively.

There have been reports that Gadhafi's government forces have been firing indiscriminately on peaceful protesters and that as many as 1,000 people have died.

- The day was consumed mainly with haggling behind closed doors over language that would refer [Libya](#)'s violent crackdown on protesters to the [International Criminal Court](#), or ICC, at the Hague.

All 15 nations on the council ultimately approved referring the case to the permanent war crimes tribunal.

- Council members did not consider imposing a no-fly zone over Libya, and no U.N.-sanctioned military action was planned. NATO also has ruled out any intervention in Libya.

The Libyan mission to the U.N., run by diplomats who have renounced Gadhafi, told the council in a letter that it supported measures "to hold to account those responsible for the armed attacks against the Libyan civilians, including through the International Criminal Court."

The letter was signed by Ambassador Mohamed Shalgham, a former longtime Gadhafi supporter who had a dramatic change of heart after the crackdown worsened. Shalgham pleaded with the council on Friday to move quickly to halt the bloodshed in his country.

Earlier Saturday, in Ankara, Turkey's Prime Minister [Recep Tayyip Erdogan](#) urged the council not to impose sanctions, warning that the Libyan people, not Gadhafi's government, would suffer most.

- Also Saturday, U.S. President [Barack Obama](#) said in a telephone conversation with German Chancellor [Angela Merkel](#) that Gadhafi needs to do what's right for his country by "leaving now."

The White House on Friday announced sweeping new sanctions and temporarily abandoned its embassy in Tripoli as a final flight carrying American citizens left the embattled capital. The U.S. put an immediate freeze on all assets of the Libyan government held in American banks and other U.S. institutions. The sanctions also freeze assets held by Gadhafi and four of his children.

Britain and Canada, meanwhile, temporarily suspended operations at their embassies in Tripoli and evacuated their diplomatic staff.

Gadhafi is no stranger to international isolation.

- U.N. sanctions were slapped on his country after suspected Libyan agents planted a bomb that blew up [Pan Am Flight 103](#) over the Scottish town of Lockerbie in 1988, killing 270 people, mostly Americans.

Libya accepted responsibility for the bombing in 2003 and pledged to end efforts to develop weapons of mass destruction. The U.S. and Libya in 2009 exchanged ambassadors for the first time in 35 years, after Libya paid about \$2.7 billion in compensation to the families of the Lockerbie victims.

In Geneva on Friday, the U.N. Human Rights Council called for an investigation into possible crimes against humanity in Libya and recommended Libya's suspension from membership of the world body's top human rights body.

### [Hugh Roberts · Who said Gaddafi had to go? · LRB 17 November 2011](#)

<http://www.lrb.co.uk/v33/n22/hugh-roberts/who-said-gaddafi-had-to-go>

- [Vol. 33 No. 22 · 17 November 2011](#)  
pages 8-18 | 12681 words

## • **Who said Gaddafi had to go?**

### **Hugh Roberts**

- So Gaddafi is dead and Nato has fought a war in North Africa for the first time since the FLN defeated France in 1962. The Arab world's one and only State of the Masses, the Socialist People's Libyan Arab Jamahiriyya, has ended badly. In contrast to the bloodless coup of 1 September 1969 that overthrew King Idris and brought Gaddafi and his colleagues to power, the combined rebellion/civil war/ Nato bombing campaign to protect civilians has occasioned several thousand (5000? 10,000? 25,000?) deaths, many thousands of injured and hundreds of thousands of displaced persons, as well as massive damage to infrastructure. What if anything has Libya got in exchange for all the death and destruction that have been visited on it over the past seven and a half months?
- The overthrow of Gaddafi & Co was far from being a straightforward revolution against

tyranny, but the West's latest military intervention can't be debunked as being simply about oil. Presented by the National Transitional Council (NTC) and cheered on by the Western media as an integral part of the Arab Spring, and thus supposedly of a kind with the upheavals in Tunisia and Egypt, the Libyan drama is rather an addition to the list of Western or Western-backed wars against hostile, 'defiant', insufficiently 'compliant', or 'rogue' regimes: Afghanistan I (v. the Communist regime, 1979-92), Iraq I (1990-91), the Federal Republic of Yugoslavia (over Kosovo, 1999), Afghanistan II (v. the Taliban regime, 2001) and Iraq II (2003), to which we might, with qualifications, add the military interventions in Panama (1989-90), Sierra Leone (2000) and the Ivory Coast (2011). An older series of events we might bear in mind includes the Bay of Pigs (1961), the intervention by Western mercenaries in the Congo (1964), the British-assisted palace coup in Oman in 1970 and – last but not least – three abortive plots, farmed out to David Stirling and sundry other mercenaries under the initially benevolent eye of Western intelligence services, to overthrow the Gaddafi regime between 1971 and 1973 in an episode known as the Hilton Assignment.

- At the same time, the story of Libya in 2011 gives rise to several different debates. The first of these, over the pros and cons of the military intervention, has tended to eclipse the others. But numerous states in Africa and Asia and no doubt Latin America as well (Cuba and Venezuela spring to mind) may wish to consider why the Jamahiriyya, despite mending its fences with Washington and London in 2003-4 and dealing reasonably with Paris and Rome, should have proved so vulnerable to their sudden hostility. And the Libyan war should also prompt us to examine what the actions of the Western powers in relation to Africa and Asia, and the Arab world in particular, are doing to democratic principles and the idea of the rule of law.
- The Afghans who rebelled against the Communist regimes of Noor Mohammed Taraki, Hafizullah Amin and the Soviet-backed Babrak Karmal, and in 1992 overthrew Mohammed Najibullah before laying waste to Kabul in protracted factional warfare, called themselves *mujahedin*, 'fighters for the faith'. They were conducting a jihad against godless Marxists and saw no need to be coy about it in view of the enthusiastic media coverage as well as logistical support the West was giving them. But the Libyans who took up arms against Gaddafi's Jamahiriyya have sedulously avoided this label, at least when near Western microphones. Religion had little to do with the upheavals in Tunisia and Egypt: Islamists were almost entirely absent from the stage in Tunisia until the fall of Ben Ali; in Egypt the Muslim Brothers weren't instigators of the protest movement (in which Coptic Christians also took part) and made sure their support remained discreet. And so the irrelevance of Islamism to the popular revolt against despotic regimes was part of the way the Arab Spring came to be read in the West. Libyan rebels and Gaddafi loyalists alike tacitly recognised this fact.
- The Western media generally endorsed the rebels' description of themselves as forward-looking liberal democrats, and dismissed Gaddafi's exaggerated claim that al-Qaida was behind the revolt. But it has become impossible to ignore the fact that the rebellion has mobilised Islamists and acquired an Islamicist tinge. On his first visit to Tripoli, Mustafa Abdul Jalil, the chairman of the NTC, then still based in Benghazi, declared that all legislation of the future Libyan state would be grounded in the Sharia, pre-empting any elected body on this cardinal point. And Abdul Hakim Belhadj (alias Abu Abdallah al-Sadiq), whom the NTC appointed to the newly created post of military commander of Tripoli, is a former leader of the Libyan Islamic Fighting Group, a movement which conducted a campaign of terrorism against the Libyan state in the 1990s and went on to provide recruits to al-Qaida. The democratic revolutionaries in Tunisia are now concerned that the re-emergence of the Islamist movement has diverted political debate from constitutional questions to toxic identity issues and may derail the country's nascent democracy; in this light, the Islamist aspect of the Libyan rebellion should put us on our guard. It is among several reasons to ask whether what we have been witnessing is a revolution or a counter-revolution.
- The rebels' name has changed several times in the Western media's lexicon: first they were peaceful demonstrators, democracy protesters, civilians; then (a belated admission) rebels; and, finally, revolutionaries. Revolutionaries – in Arabic, *thuwwar* (singular: *tha'ir*) – has been their preferred label at least since the fall of Tripoli. *Tha'ir* can simply mean 'agitated' or 'excited'. The young men who spent much of the period between April and July careering up and down the coastal highway in Toyota pick-ups (and the whole of September running backwards and forwards around Bani Walid), while firing as much of their ammunition into the air as at the enemy, have certainly been excited. But how many veterans of revolutions elsewhere, as distinct from Western journalists, would recognise them as their counterparts?
- The events in both Tunisia and Egypt have been revolutionary in intent, but the change that has occurred in Egypt falls well short of a genuine revolution: the army's return to power means that the country's politics has yet to transcend the logic of the Free Officers'

state established in 1952. But the way hundreds of thousands stood up against Mubarak last winter was a historic event Egyptians will never forget. The same is true of Tunisia, except that there a revolution has not only toppled Ben Ali but also ended the monopoly of the old ruling party. The Tunisians have entered the unknown. Whether they have the resources to cope with the Islamist movement may be their greatest test. The recent elections suggest they are coping pretty well.

- Libya was part of the wider 'Arab awakening' in two respects. The unrest began on 15 February, three days after the fall of Mubarak: so there was a contagion effect. And clearly many of the Libyans who took to the streets over the next few days were animated by some of the same sentiments as their counterparts elsewhere. But the Libyan uprising diverged from the Tunisian and Egyptian templates in two ways: the rapidity with which it took on a violent aspect – the destruction of state buildings and xenophobic attacks on Egyptians, Serbs, Koreans and, above all, black Africans; and the extent to which, brandishing the old Libyan flag of the 1951-69 era, the protesters identified their cause with the monarchy Gaddafi & Co overthrew. This divergence owed a lot to external influences. But it also owed much to the character of Gaddafi's state and regime.
- Widely ridiculed as the bizarre creation of its eccentric if not lunatic 'Guide', the Socialist People's Libyan Arab Jamahiriyya in fact shared many features with other Arab states. With the massive increase in oil revenues in the early 1970s, Libya became a 'hydrocarbon society' that resembled the states of the Gulf more than its North African neighbours. Libya's oil revenues were distributed very widely, the new regime laying on a welfare state from which virtually all Libyans benefited, while also relying on oil wealth, as the Gulf States do, to buy in whatever it lacked in terms of technology and consumer goods, not to mention hundreds of thousands of foreign workers. For Gaddafi and his colleagues the state's distributive role quickly became the central element in their strategy for governing the country.
- The 1969 coup belonged to the series of upheavals that challenged the arrangements made by Britain and France to dominate the Arab world after the First World War and the destruction of the Ottoman Empire. These took on a new vigour in the wake of the defeats of the Second World War and the supersession of British by American hegemony in the Middle East. These arrangements entailed the sponsoring, safeguarding and manipulation of newly confected monarchies in Saudi Arabia, Jordan, Iraq, Egypt, Libya and the Gulf statelets, and in most cases the challenges were precipitated by catastrophic developments in the Arab-Israeli conflict. Just as the Free Officers who deposed King Farouq and seized power in Egypt in 1952 were outraged at the incompetent way Egypt's armed forces were led in 1948, and the revolution in Iraq in 1958 owed much to increased hostility to the pro-British monarchy after Suez, so the Arab defeat in 1967, and crucially, frustration at Libya's absence from the Arab struggle, prompted Gaddafi and his colleagues to attempt their coup against the Libyan monarchy. However, beyond closing the US base at Wheelus Field and nationalising the oil, they didn't really know what to do next.
- Unlike his Hashemite counterparts, who came from Mecca and were foreigners in Jordan and Iraq, King Idris was at least a Libyan. He also had legitimacy as the head of the Sanussiyya religious order, which in the course of the 19th and early 20th centuries had established itself the length and breadth of eastern Libya, and had distinguished itself in the resistance to the Italian conquest from 1911 onwards. But like the Hashemites Idris came to the throne as a protégé of the British, who fished him out of Cairo, where he had spent more than 20 years in exile, to make him king and thereby recast Libya as a monarchy in 1951 when the UN finally decided what to do with the former Italian colony.
- The Sanussiyya, originally an Islamic revivalist order, was set up in north-eastern Libya, the province the Italians called Cyrenaica, by an immigrant divine from western Algeria, Sayyid Mohammed ben Ali al-Sanussi al-Idrisi, who founded his order in Mecca in 1837 but moved it to Libya in 1843. It took root throughout the eastern province in the interstices of Bedouin tribal society and spread south along the trade routes that crossed the Sahara into Sudan, Chad and Niger. It had less of a presence in western Libya: in Tripolitania in the north-west, which had its own religious and political traditions based on the Ottoman connection, and Fezzan in the south-west. The two western provinces have always been considered part of the Maghreb (the Arab west), linked primarily to Tunisia and Algeria, while eastern Libya has always been part of the Mashreq (the Arab east) and oriented to Egypt and the rest of the Arab Levant.
- The new monarchy's internal social basis was thus markedly uneven and Idris was badly placed to promote a genuine process of national integration, opting instead for a federal constitution that left Libyan society much as he found it while, out of deference to his



Western sponsors as well as alarm at the rise of radical Arab nationalism and Nasserism in particular, he insulated the country from the rest of the Arab world. Gaddafi's coup was a revolt against this state of affairs, and the otherwise baffling flamboyance of his foreign policy was evidence of his determination that Libya should no longer be a backwater.

- The new regime's inner circle was drawn from a small number of tribes, above all the Gadadfa in central Libya, the Magarha from the Fezzan in the south-west and the Warfalla from south-eastern Tripolitania. This background did not dispose Gaddafi and his associates to identify with the political and cultural traditions of the Tripoli elites or those of Benghazi and the other towns of coastal Cyrenaica. As the elites saw it, the 1969 coup had been carried out by 'Bedouin' – that is, country bumpkins. For Gaddafi & Co, the traditions of the urban elites offered no recipe for governing Libya: they would only perpetuate its disunity.
- The Mediterranean and the Middle East are not short of examples of lands made painfully into states based, not on the cosmopolitan societies of the seaboard, but on the bleak and hard regions of the interior. It was the austere society and sombre towns of the Castilian plateau, not sophisticated Barcelona or sunny Valencia or Granada, that brought forth the kingdom which, once joined to Aragon, united the rest of Spain at the expense of the rich culture of Andalucia in particular. In the same way Ibn Saud, ruler of the unforgiving Nejd plateau in the centre of the Arabian peninsula, had united the Arabs under the sword while forcing the townsmen of the Hijaz, near the Red Sea coast, who were nourished on the traditions of all four *madhahib* (legal schools) of Sunni Islam and well acquainted with the various Shia traditions, to bend the knee to Wahhabi dogmatism. Ibn Saud had the militant religious tradition of the *muwahiddun*, the disciples of the Nejd religious reformer Muhammad Ibn Abd al-Wahhab, behind him in his drive to unify Arabia by conquest. Even the revolutionaries of the FLN had religion going for them, not only because they were confronting a Christian colonial power but also as heirs to the al-Islah reform movement. But Gaddafi and his associates had no militant religious banner and organised Islam in Libya was minded to resist them.
- Pre-empted in the religious sphere by both the Sanussiyya in the east and the pan-Islamic tradition of the Tripolitanian *'ulama*, which dated from the Ottoman era, they were desperate to find a doctrinal source for the kind of ideological enthusiasm they needed to stir in order to reorder Libyan society. At the outset, they thought they had one in pan-Arabism, which, especially in its Nasserite version, had inspired enthusiasm across North Africa from 1952 onwards, putting the champions of Islam on the back foot. But Gaddafi & Co were latecomers to the Arab nationalist revolutionary ball and little more than a year after their seizure of power Nasser was dead. For some time Gaddafi persisted with the idea of a strategic relationship with Egypt, which would have helped to solve several of the new Libya's problems, providing it with an ally and shoring up the regime's efforts to deal with refractory currents in Cyrenaica. But Egypt under Sadat veered away from pan-Arabism and plans for an Egyptian-Libyan union, announced in August 1972, led nowhere. In late 1973 an anti-Egyptian campaign was launched in the Libyan press, and Libya's embassy in Cairo was closed.
- Gaddafi now tried to contract an alliance with his western neighbour, declaring a new 'Arab-Islamic Republic' with Tunisia's Habib Bourguiba in January 1974. This too proved stillborn. Many wondered what on earth the worldly, Francophile, secular and moderate Bourguiba could have been thinking and Houari Boumediène, Algeria's president, weighed in to remind Tunis that there could be no shift in the geopolitical balance of the Maghreb without Algeria's agreement. Following this logic, Gaddafi secured an alliance with Algeria, and in 1975 Boumediène and Gaddafi signed a treaty of mutual friendship. It appeared that Libya had at last entered an alliance it could rely on. Two years later, after Sadat's visit to Tel Aviv, Libya joined Algeria, Syria, South Yemen and the PLO in the Steadfastness Front, which was opposed to any rapprochement with Israel. But Boumediène died unexpectedly in late 1978. His successor, Chadli Bendjedid, emulating Sadat, abandoned Algeria's revolutionary commitments and the protective alliance with Tripoli; Libya was alone again. Gaddafi's desperation is evident in the short-lived treaty he signed with Morocco's King Hassan in 1984. It was his last attempt to fit in with fellow North African and Arab states. Instead, he looked to sub-Saharan Africa, where the Jamahiriyya could play the benevolent patron.
- All the states of North Africa have had African policies of a kind. And all but Tunisia have strategic hinterlands consisting of the countries to their south: for Egypt, the Sudan; for Algeria, the Sahel states (Niger, Mali and Mauritania); for Morocco, Mauritania, also a permanent bone of contention with Algeria. In pursuing their African policies, the North African states often compete with one another, but they have also been in competition with Western powers keen to preserve or, in the case of the US, to contract patron-client relations with these states. What distinguished Gaddafi's Libya from its North African neighbours was the extent of its investment in this southern strategy, which became central to the regime's conception of Libya's mission in the world.

- The Jamahiriyya's African policy had a darker side. Gaddafi's support for Idi Amin is the outstanding example, though even that seems less grotesque when weighed against the support of various Western governments for Mobutu Sese Seko. There was also Libya's involvement in Chad's civil war (and attempted annexation of the Aouzou Strip) and its sustained involvement in the Tuareg question in Niger and Mali. At the same time, it gave strong financial and practical support to the African Union, opposed the installation of the US military's 'Africom' on the soil of any African country and funded a wide range of development projects in sub-Saharan countries. Gaddafi planned to exploit the immense water reserves under Libya's Sahara, and to provide water to the Sahel countries, which could have transformed their economic prospects, but this possibility has now almost certainly been killed off by Nato's intervention, since Western (and perhaps particularly French) water companies are lining up alongside Western oil firms for their slice of the Libyan action.
- Gaddafi's African policy gave Libya a firm geopolitical position and consolidated its strategic hinterland while also benefiting Africa. That many African countries appreciated Libya's contribution to the continent's affairs was made clear by the AU's opposition to Nato's intervention and its sustained efforts to broker a ceasefire and negotiations between the two sides of the civil war. These efforts were dismissed with scorn by Western governments and press, with African opposition to the military intervention cynically derided as Libya's clients doing their duty to their patron, a self-serving judgment that was unfair to South Africa in particular. That the Arab League, whose support for a no-fly zone was invoked by London, Paris and Washington to claim Arab legitimation of Nato's intervention, had a membership almost entirely confined to Western powers' client states was never mentioned.
- The situation was full of irony for Libya. Gaddafi's son Saif al-Islam's contemptuous comment on the Arab League's resolution, 'El-Arab? Toz fi el-Arab!' ('The Arabs? To hell with the Arabs!'), expressed the family's bitter recognition that the pan-Arabism behind the 1969 revolution had long ago become obsolete as the majority of Arab states subsided into shamefaced submission to the Western powers. The problem for Gaddafi & Co was that the African perspective they had diligently pursued as a *solution de rechange* for defunct pan-Arabism consistent with their original anti-imperialist worldview meant little to the many Libyans who wanted Libya to approximate to Dubai, or, worse, stirred virulent resentment against the regime and black Africans alike. And so, in taking Libya into Africa while tending to remove it from Arab regional affairs, the Jamahiriyya's foreign policy, like that of Idris's monarchy, cut the Libyans off from other Arabs, especially the well-heeled Gulf Arabs whose lifestyle many middle-class Libyans aspired to. In this way, the regime's foreign policy made it vulnerable to a revolt inspired by events elsewhere in the Arab world. But there was another reason for its vulnerability.
- The authors of the 1969 coup initially took Nasser's Egypt for their model, imitating its institutions and terminology – Free Officers, Revolutionary Command Council – and equipping themselves with a single 'party', the Arab Socialist Union (ASU), like Nasser's prototype essentially a state apparatus providing a façade for the new regime. But within two years, Sadat's de-Nasserisation purges were underway and he was mending fences with the Muslim Brothers, while the beginning of *infitah* – his policy of opening up the economy – announced the retreat from 'Arab socialism' and the rift with Moscow presaged the turn to America. Thus the Egyptian model evolved rapidly into an anti-model, while the experiment with the ASU proved an instructive failure. The idea of a single party seemed to make sense in Libya as it had originally made sense in Egypt and also Algeria. Leaders of military regimes needed to set up a civilian façade so that they could offer a degree of controlled representation and bring the politically ambitious into the new dispensation. But in Egypt and Algeria the architects of the new single party were dealing with comparatively politicised populations. Gaddafi & Co confronted a politically inert society, with little in the way of a state tradition, pulverised by a brutal colonial conquest and reduced to onlookers as the country became a battleground in World War Two, then liberated from colonial rule by external forces and finally tranquillised by the Sanussi monarchy. In trying to launch the ASU, the new regime found little to work with in terms of political talent or energy in the wider population; instead it was the old elites of Tripoli and Benghazi who invested in the party, which not only failed to mobilise popular enthusiasm but became a focus of resistance to the revolution Gaddafi had in mind.
- Gaddafi accordingly began to develop an idea he voiced within weeks of seizing power in 1969: that representative democracy was unsuited to Libya. Other leaders in North Africa and the Middle East felt the same about their own countries. But in pretending to allow for representation they were acknowledging their vice in tacitly paying homage to virtue. In his *Green Book*, however, Gaddafi scandalised people by his refusal to be a hypocrite: he elevated his rejection of representation into an explicit constitutive principle which he called the State of the Masses. But the real problem was that his new course led Libya to a historic impasse.

- He dispensed with the ASU and the idea of a single ruling party, promoting instead People's Congresses and Revolutionary Committees as the key political institutions of the Jamahiriyya, which was proclaimed in 1977. The former were to assume responsibility for public administration and secure popular participation, the latter to keep the flame of the Revolution alive. The members of the People's Congresses were elected, and these elections were taken seriously, at least at the local level and for a while. But voters were not, in theory, electing representatives, merely deciding who among the candidates on offer they wished to assume the mainly administrative responsibilities of the bodies in question. The system encouraged political and ideological unanimity, allowing no voice for dissident opinion except on trivial matters. It drew many ordinary Libyans into a sort of participation in public affairs, although this was waning by the mid-1990s, but it did not educate them in other aspects of politics, and did not work well on its own terms either.
- Gaddafi's State of the Masses drew on ideas developed elsewhere. The championing of direct over representative democracy was a prominent feature of the utopian outlook of young Western leftists in the 1960s. And the strategic decision to mobilise the 'revolutionary' energies of the young to outflank conservative party apparatuses was central to Mao's Cultural Revolution and a feature of Boumediène's 'Révolution socialiste'. Where Gaddafi went further was in abolishing the ASU and outlawing parties altogether, but in this he could claim a doctrinal warrant: the notion that there should be no political parties in a Muslim country has long been advocated by some currents of Sunni Islamism, on the grounds that 'party' connotes *fitna*, or a division of the community of the faithful, the supreme danger. Kuwait, Oman, Saudi Arabia and the United Arab Emirates allow no political parties to this day. (Gaddafi's rule always had a more pronounced Islamic aspect than that of the regimes in Cairo and Algiers; his intolerance of Islamists owed a lot to the fact that he was intent on remaining the source of radicalism and unwilling to allow rivals.) Finally, the idea of direct popular participation in public administration could claim a local origin in the tradition of the Bedouin tribes known as *hukumat 'arabiyya* (meaning here 'people's government' not 'Arab government'), in which every adult male can have his say.
- The Jamahiriyya lasted 34 years (42 if backdated to 1969), a respectable innings. It did not work for foreign businessmen, diplomats and journalists, who found it more exasperating to deal with than the run of Arab and African states, and their views shaped the country's image abroad. But the regime was not designed to work for foreigners and seems to have worked fairly well for many Libyans much of the time. It achieved more than a tripling of the total population (6.5 million today, up from 1.8 million in 1968), high standards of healthcare, high rates of schooling for girls as well as boys, a literacy rate of 88 per cent, a degree of social and occupational promotion for women in many other Arab countries might well envy and an annual per capita income of \$12,000, the highest in Africa. But the point about these indices, routinely cited, naturally enough, by critics of the West's intervention in reply to the propaganda that has relentlessly blackened the Gaddafi regime, is that they are in one crucial sense beside the point.
- The socio-economic achievements of the regime can be attributed essentially to the distributive state: that is, the success of the hydrocarbons sector and of the mechanisms put in place early on to distribute petrodollars. But the central institutions of the Jamahiriyya, the tandem of People's Congresses and Revolutionary Committees, did not make for effective government at all, in part because they involved a tension between two distinct notions and sources of legitimacy. The Congresses embodied the idea of the people as the source of legitimacy and the agent of legitimation. But the Committees embodied the very different idea of the Revolution as possessing a legitimacy that trumped all others. At the apex of the Revolution was Gaddafi himself, which is why it made sense for him to position himself outside the structure of Congresses and hence of the formal institutions of government, neither prime minister nor president but simply Murshid, Guide, Brother Leader. The position enabled him to mediate in free-wheeling fashion between the various components of the system and broader public opinion, criticising the government (and thereby articulating public restiveness) or deploring the ineffectiveness and correcting the mistakes of People's Congresses and doing so always from the standpoint of the Revolution. The tradition of an Arab ruler making a virtue of siding with public opinion against his own ministers goes back to Haroun al-Rashid. But the way revolutionary legitimacy could override popular legitimacy in Gaddafi's system also resembles Khomeini's insistence that the interests of Iran's revolution could override the precepts of the Sharia – i.e. that political considerations could trump Islamic dogma – and that he was the arbiter of when this was necessary. It is striking that Gaddafi considered that the interest of the Revolution required the hydrocarbons sector to be spared the ministrations of People's Congresses and Revolutionary Committees alike.
- Words such as 'authoritarianism', 'tyranny' (a favourite bugbear of the British) and 'dictatorship' have never really captured the particular character of this set-up but have instead relentlessly caricatured it. Gaddafi, unlike any other head of state, stood at the apex not of the pyramid of governing institutions but of the informal sector of the polity,

which enjoyed a degree of hegemony over the formal sector that has no modern counterpart. It meant that the Jamahiriyya's formal institutions were extremely weak, and that included the army, which Gaddafi mistrusted and marginalised.

- One is tempted to say of Gaddafi, 'L'état, c'était lui.' But it was the more and more mystical idea of the Revolution, not heredity and divine right, that legitimated his power. And the intangible content of this Revolution, what Ruth First called its elusiveness, was closely connected to the fact that the Revolution was never over.
- A distinction between revolutionary and constitutional government was made in 1793 by Robespierre, when he wrote: 'The aim of constitutional government is to preserve the Republic; that of revolutionary government is to lay its foundation.' The effective historical function of the revolutionary government in Libya was to ensure that, while the country was modernised in important respects, it did not and could not become a republic. The Libyan Revolution turned out to be permanent because its objects were imprecise, its architects had no form of law-bound, constitutional government in view as a final destination and no conception of a political role for themselves or anyone else after the Revolution. The State of the Masses, *al-jamahiriyya*, was presented as far superior to a mere republic – *jumhuriyya* – but in fact fell far short of one. And, in contrast to states that call themselves republics but fail to live up to the name, its pretensions signalled that there was never an intention to establish a real republic in which government would truly be the affair of the people. The State of the Masses was in reality little more than a game to occupy and contain ordinary Libyans while the grown-up business of politics was conducted behind the scenes, the affair of a mysterious and unaccountable elite.
- The mobilisation of society in the French Revolution threw up several independent-minded leaders – Danton, Marat, Hébert et al as well as Robespierre – which made it psychologically possible for fellow Jacobins to rebel against Robespierre and set in train the tortuous process of superseding revolutionary by constitutional government. Something similar, up to a point, can be said of Algeria (where the independence struggle threw up a superabundance of strong-minded revolutionaries), although 49 years on, the winding road to the democratic republic still stretches far ahead, as it did in France. But the political inertia of Libyan society meant that its Revolution had one and only one leader. Gaddafi's closest colleagues no doubt had personal influence but only one of them, Abdessalam Jalloud, had it in him to disagree openly with Gaddafi on major issues (and he finally quit on his own terms in 1995). And so Gaddafi's rule can be seen as an extreme instance of what Rosa Luxemburg called 'substitutionism': the informal government that was the real government of Libya was a one-man show. Incarnating the nebulous Revolution, the imprecise interest of the nation and the inarticulate will of the people at the same time, Gaddafi clearly believed he needed to make the show interesting. His flamboyance had a political purpose. But how long can colourfulness command consent, let alone loyalty? A Pied Piper leading Libyans – mostly well fed, housed and schooled, but maintained in perpetual political infancy – to no destination in particular. The wonder of it is that the show had such a long run.
- Gaddafi seems to have realised years ago what he had done – the quasi-utopian dead end he had got Libya and himself into – and tried to escape its implications. As early as 1987 he was experimenting with liberalisation: allowing private trading, reining in the Revolutionary Committees and reducing their powers, allowing Libyans to travel to neighbouring countries, returning confiscated passports, releasing hundreds of political prisoners, inviting exiles to return with assurances that they would not be persecuted, and even meeting opposition leaders to explore the possibility of reconciliation while acknowledging that serious abuses had occurred and that Libya lacked the rule of law. These reforms implied a shift towards constitutional government, the most notable elements being Gaddafi's proposals for the codification of citizens' rights and punishable crimes, which were meant to put an end to arbitrary arrests. This line of development was cut short by the imposition of international sanctions in 1992 in the wake of the Lockerbie bombing: a national emergency that reinforced the regime's conservative wing and ruled out risky reform for more than a decade. It was only in 2003-4, after Tripoli had paid a massive sum in compensation to the bereaved families in 2002 (having already surrendered Abdelbaset Ali al-Megrahi and Al Amin Khalifa Fhima for trial in 1999), that sanctions were lifted, at which point a new reforming current headed by Gaddafi's son Saif al-Islam emerged within the regime.
- It was the fashion some years ago in circles close to the Blair government – in the media, principally, and among academics – to talk up Saif al-Islam's commitment to reform and it is the fashion now to heap opprobrium on him as his awful father's son. Neither judgment is accurate, both are self-serving. Saif al-Islam had begun to play a significant and constructive role in Libyan affairs of state, persuading the Libyan Islamic Fighting Group to end its terrorist campaign in return for the release of LIFG prisoners in 2008, promoting a range of practical reforms and broaching the idea that the regime should formally recognise the country's Berbers. While it was always unrealistic to suppose that he could

have remade Libya into a liberal democracy had he succeeded his father, he certainly recognised the problems of the Jamahiriyya and the need for substantial reform. The prospect of a reformist path under Saif was ruled out by this spring's events. Is there a parallel with the way international sanctions in the wake of Lockerbie put paid to the earlier reform initiative?

- Since February, it has been relentlessly asserted that the Libyan government was responsible both for the bombing of a Berlin disco on 5 April 1986 and the Lockerbie bombing on 21 December 1988. News of Gaddafi's violent end was greeted with satisfaction by the families of the American victims of Lockerbie, understandably full of bitterness towards the man they have been assured by the US government and the press ordered the bombing of Pan Am 103. But many informed observers have long wondered about these two stories, especially Lockerbie. Jim Swire, the spokesman of UK Families Flight 103, whose daughter was killed in the bombing, has repeatedly expressed dissatisfaction with the official version. Hans Köchler, an Austrian jurist appointed by the UN as an independent observer at the trial, expressed concern about the way it was conducted (notably about the role of two US Justice Department officials who sat next to the Scottish prosecuting counsel throughout and appeared to be giving them instructions). Köchler described al-Megrahi's conviction as 'a spectacular miscarriage of justice'. Swire, who also sat through the trial, subsequently launched the Justice for Megrahi campaign. In a resumé of Gaddafi's career shown on BBC World Service Television on the night of 20 October, John Simpson stopped well short of endorsing either charge, noting of the Berlin bombing that 'it may or may not have been Colonel Gaddafi's work,' an honest formula that acknowledged the room for doubt. Of Lockerbie he remarked cautiously that Libya subsequently 'got the full blame', a statement that is quite true.
- It is often claimed by British and American government personnel and the Western press that Libya admitted responsibility for Lockerbie in 2003-4. This is untrue. As part of the deal with Washington and London, which included Libya paying \$2.7 billion to the 270 victims' families, the Libyan government in a letter to the president of the UN Security Council stated that Libya 'has facilitated the bringing to justice of the two suspects charged with the bombing of Pan Am 103, and accepts responsibility for the actions of its officials'. That this formula was agreed in negotiations between the Libyan and British (if not also American) governments was made clear when it was echoed word for word by Jack Straw in the House of Commons. The formula allowed the government to give the public the impression that Libya was indeed guilty, while also allowing Tripoli to say that it had admitted nothing of the kind. The statement does not even mention al-Megrahi by name, much less acknowledge his guilt or that of the Libyan government, and any self-respecting government would sign up to the general principle that it is responsible for the actions of its officials. Tripoli's position was spelled out by the prime minister, Shukri Ghanem, on 24 February 2004 on the *Today* programme: he made it clear that the payment of compensation did not imply an admission of guilt and explained that the Libyan government had 'bought peace'.
- The standards of proof underpinning Western judgments of Gaddafi's Libya have not been high. The doubt over the Lockerbie trial verdict has encouraged rival theories about who really ordered the bombing, which have predictably been dubbed 'conspiracy theories'. But the prosecution case in the Lockerbie trial was itself a conspiracy theory. And the meagre evidence adduced would have warranted acquittal on grounds of reasonable doubt, or, at most, the 'not proven' verdict that Scottish law allows for, rather than the unequivocally 'guilty' verdict brought in, oddly, on one defendant but not the other. I do not claim to know the truth of the Lockerbie affair, but the British are slow to forgive the authors of atrocities committed against them and their friends. So I find it hard to believe that a British government would have fallen over itself as it did in 2003-5 to welcome Libya back into the fold had it really held Gaddafi responsible. And in view of the number of Scottish victims of the bombing, it is equally hard to believe that SNP politicians would have countenanced al-Megrahi's release if they believed the guilty verdict had been sound. The hypothesis that Libya and Gaddafi and al-Megrahi were framed is to be taken very seriously indeed. And if it were the case, it would follow that the greatly diminished prospect of reform from 1989 onwards as the regime batted down the hatches to weather international sanctions, the material suffering of the Libyan people during this period, and the aggravation of internal conflict (notably the Islamist terrorist campaign waged by the LIFG between 1995 and 1998) can all in some measure be laid at the West's door.
- Wherever the blame lies, the Jamahiriyya survived up to 2011 fundamentally unchanged in its key political features: the absence of political parties, the absence of independent associations, newspapers and publishing houses and the corresponding weakness of civil society, the dysfunctional character of the formal institutions of government, the weakness of the armed forces and the indispensability of Gaddafi himself as the originator of the Revolution that constituted the state. After 42 years of Gaddafi's rule, the people of

Libya were, politically speaking, not much further forward than they were on 31 August 1969. And so the Jamahiriyya was vulnerable to internal challenge the moment Arab mass movements making an issue of human dignity and citizens' rights got going. The tragic irony is that the features of the Jamahiriyya that made it vulnerable to the Arab Spring also, in their combination, completely ruled out any emulation of the Tunisian and Egyptian scenarios. The factors that enabled a fundamentally positive evolution to occur in both these countries once the mass protest movement started were absent from Libya. In both Tunisia and Egypt, the population's greater experience of political action gave the protests a degree of sophistication, coherence and organisational flair. The fact that neither president had been a founding figure allowed for a distinction to be made between a protest against the president and his cronies and a rebellion against the state: the patriotism of the protesters was never put in question. And in both cases the role of the armed forces was crucial: being loyal to the state and the nation rather than to a particular leader, they were disposed to act as arbiters and facilitate a resolution without the existence of the state being put in jeopardy.

- None of this applied to Libya. Gaddafi was the founder of the Jamahiriyya and the guarantor of its continued existence. The armed forces were incapable of playing an independent political role. The absence of any tradition of non-violent opposition and independent organisation ensured that the revolt at the popular level was a raw affair, incapable of formulating any demands that the regime might be able to negotiate. On the contrary, the revolt was a challenge to Gaddafi and to the Jamahiriyya as a whole (and thus to what existed in the way of a state).
- The situation that developed over the weekend following the initial unrest on 15 February suggested three possible scenarios: a rapid collapse of the regime as the popular uprising spread; the crushing of the revolt as the regime got its act together; or – in the absence of an early resolution – the onset of civil war. Had the revolt been crushed straightaway, the implications for the Arab Spring would have been serious, but not necessarily more damaging than events in Bahrain, Yemen or Syria; Arab public opinion, long used to the idea that Libya was a place apart, was insulated against the exemplary effect of events there. Had the revolt rapidly brought about the collapse of the regime, Libya might have tumbled into anarchy. An oil-rich Somalistan on the Mediterranean would have had destabilising repercussions for all its neighbours and prejudiced the prospects for democratic development in Tunisia in particular. A long civil war, while costly in terms of human life, might have given the rebellion time to cohere as a rival centre of state formation and thus prepared it for the task of establishing a functional Libyan state in the event of victory. And, even if defeated, such a rebellion would have undermined the premises of the Jamahiriyya and ensured its demise. None of these scenarios took place. A military intervention by the Western powers under the cloak of Nato and the authority of the United Nations happened instead.
- How should we evaluate this fourth scenario in terms of the democratic principles that have been invoked to justify the military intervention? There is no doubt that many Libyans consider Nato their saviour and that some of them genuinely aspire to a democratic future for their country. Even so I felt great alarm when intervention started to be suggested and remain opposed to it even now despite its apparent triumph, because I considered that the balance of democratic argument favoured an entirely different course of action.
- The claim that the 'international community' had no choice but to intervene militarily and that the alternative was to do nothing is false. An active, practical, non-violent alternative was proposed, and deliberately rejected. The argument for a no-fly zone and then for a military intervention employing 'all necessary measures' was that only this could stop the regime's repression and protect civilians. Yet many argued that the way to protect civilians was not to intensify the conflict by intervening on one side or the other, but to end it by securing a ceasefire followed by political negotiations. A number of proposals were put forward.
- The International Crisis Group, for instance, where I worked at the time, published a statement on 10 March arguing for a two-point initiative: (i) the formation of a contact group or committee drawn from Libya's North African neighbours and other African states with a mandate to broker an immediate ceasefire; (ii) negotiations between the protagonists to be initiated by the contact group and aimed at replacing the current regime with a more accountable, representative and law-abiding government. This proposal was echoed by the African Union and was consistent with the views of many major non-African states – Russia, China, Brazil and India, not to mention Germany and Turkey.
- It was restated by the ICG in more detail (adding provision for the deployment under a UN mandate of an international peacekeeping force to secure the ceasefire) in an open letter to the UN Security Council on 16 March, the eve of the debate which concluded with the adoption of UNSC Resolution 1973. In short, before the Security Council voted to approve

the military intervention, a worked-out proposal had been put forward which addressed the need to protect civilians by seeking a rapid end to the fighting, and set out the main elements of an orderly transition to a more legitimate form of government, one that would avoid the danger of an abrupt collapse into anarchy, with all it might mean for Tunisia's revolution, the security of Libya's other neighbours and the wider region. The imposition of a no-fly zone would be an act of war: as the US defense secretary, Robert Gates, told Congress on 2 March, it required the disabling of Libya's air defences as an indispensable preliminary. In authorising this and 'all necessary measures', the Security Council was choosing war when no other policy had even been tried. Why?

- Many critics of Nato's intervention have complained that it departed from the terms of Resolution 1973 and was for that reason illegal; that the resolution authorised neither regime change nor the introduction of troops on the ground. This is a misreading. Article 4 ruled out the introduction of an occupying force. But Article 42 of the 1907 Hague Regulations states that 'territory is considered occupied when it is actually placed under the authority of the hostile army,' a definition conserved by the 1949 Geneva Conventions. What Resolution 1973 ruled out was the introduction of a force intended to take full political and legal responsibility for the place, but that was never the intention; ground forces were indeed eventually introduced, but they have at no point accepted political or legal responsibility for anything and so fall short of the conventional definition of an occupying force.
- It may be that this misreading of the resolution was connived at by the governments that drafted it in order to secure the best (or least bad) tally of votes in favour on 17 March; this would of course be only one instance of the sophistry to which the *metteurs en scène* of intervention have resorted. And regime change was tacitly covered by the phrase 'all necessary measures'. That this was the right way to read the resolution had already been made clear by the stentorian rhetoric of Cameron and Hague, Sarkozy and Juppé, and Obama and Clinton in advance of the Security Council vote. Since the issue was defined from the outset as protecting civilians from Gaddafi's murderous onslaught 'on his own people', it followed that effective protection required the elimination of the threat, which was Gaddafi himself for as long as he was in power (subsequently revised to 'for as long as he is in Libya' before finally becoming 'for as long as he is alive'). From the attitudes struck by the Western powers in the run-up to the Security Council debate, it was evident that the cleverly drafted resolution tacitly authorised a war to effect regime change. Those who subsequently said that they did not know that regime change had been authorised either did not understand the logic of events or were pretending to misunderstand in order to excuse their failure to oppose it. By inserting 'all necessary measures' into the resolution, London, Paris and Washington licensed themselves, with Nato as their proxy, to do whatever they wanted whenever they wanted in the full knowledge that they would never be held to account, since as permanent veto-holding members of the Security Council they are above all laws.
- In two respects the conduct of the Western powers and Nato did indeed appear explicitly to violate the terms of Security Council resolutions. The first instance was the repeated supply of arms to the rebellion by France, Qatar, Egypt (according to the *Wall Street Journal*) and no doubt various other members of the 'coalition of the willing' in what seemed a clear breach of the arms embargo imposed by the Security Council in Articles 9, 10 and 11 of Resolution 1970 passed on 26 February and reiterated in Articles 13, 14 and 15 of Resolution 1973. It was later explained that Resolution 1973 superseded 1970 in this respect and that the magic phrase 'all necessary measures' licensed the violation of the arms embargo; thus Article 4 of Resolution 1973 trumped Articles 13 to 15 of the same resolution. In this way it was arranged that any state might supply arms to the rebels while none might do so to the Libyan government, which by that time had been decreed illegitimate by London, Paris and Washington. Scarcely anyone has drawn attention to the second violation.
- The efforts of the ICG and others seeking an alternative to war did not go entirely unnoticed. Apparently their proposals made some impression on the less gung-ho members of the Security Council, and so a left-handed homage was paid them by the drafters of Resolution 1973. In the final version – unlike any earlier ones – the idea of a peaceful solution was incorporated in the first two articles, which read:
  - [The Security Council ...]
    - (1) *Demands* the immediate establishment of a ceasefire and a complete end to violence and all attacks against, and abuses of, civilians; (2) *Stresses* the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people and notes the decisions of the secretary-general to send his special envoy to Libya and of the Peace and Security Council of the African Union to send its ad hoc High Level Committee to Libya with the aim of facilitating dialogue to lead to the political reforms

necessary to find a peaceful and sustainable solution.

- In this way Resolution 1973 seemed to be actively envisaging a peaceful alternative as its first preference, while authorising military intervention as a fallback if a ceasefire was refused. In reality, nothing could have been further from the truth.
- Resolution 1973 was passed in New York late in the evening of 17 March. The next day, Gaddafi, whose forces were camped on the southern edge of Benghazi, announced a ceasefire in conformity with Article 1 and proposed a political dialogue in line with Article 2. What the Security Council demanded and suggested, he provided in a matter of hours. His ceasefire was immediately rejected on behalf of the NTC by a senior rebel commander, Khalifa Haftar, and dismissed by Western governments. 'We will judge him by his actions not his words,' David Cameron declared, implying that Gaddafi was expected to deliver a complete ceasefire by himself: that is, not only order his troops to cease fire but ensure this ceasefire was maintained indefinitely despite the fact that the NTC was refusing to reciprocate. Cameron's comment also took no account of the fact that Article 1 of Resolution 1973 did not of course place the burden of a ceasefire exclusively on Gaddafi. No sooner had Cameron covered for the NTC's unmistakable violation of Resolution 1973 than Obama weighed in, insisting that for Gaddafi's ceasefire to count for anything he would (in addition to sustaining it indefinitely, single-handed, irrespective of the NTC) have to withdraw his forces not only from Benghazi but also from Misrata and from the most important towns his troops had retaken from the rebellion, Ajdabiya in the east and Zawiya in the west – in other words, he had to accept strategic defeat in advance. These conditions, which were impossible for Gaddafi to accept, were absent from Article 1.
- Cameron and Obama had made clear that the last thing they wanted was a ceasefire, that the NTC could violate Article 1 of the resolution with impunity and that in doing so it would be acting with the agreement of its Security Council sponsors. Gaddafi's first ceasefire offer came to nothing, as did his second offer of 20 March. A week later, Turkey, which had been working within the Nato framework to help organise the provision of humanitarian aid to Benghazi, announced that it had been talking to both sides and offered to broker a ceasefire. The offer was given what Ernest Bevin would have called 'a complete ignorral' and nothing came of it either, as nothing came of a later initiative, seeking a ceasefire and negotiations (to which Gaddafi explicitly agreed), undertaken by the African Union in April. It too was rejected out of hand by the NTC, which demanded Gaddafi's resignation as a condition of any ceasefire. This demand went beyond even Obama's earlier list of conditions, none of which had figured in Resolution 1973. More to the point, it was a demand that made a ceasefire impossible, since securing a ceasefire requires commanders with decisive authority over their armies, and removing Gaddafi would have meant that no one any longer had overall authority over the regime's forces.
- By incorporating the alternative non-violent policy proposals in its text, the Western war party had been pulling a confidence trick, stringing along a few undecided states to get them to vote for the resolution on 17 March: a war to the finish, violent regime change and the end of Gaddafi had been the policy from the outset. All subsequent offers of a ceasefire by Gaddafi – on 30 April, 26 May and 9 June – were treated with the same contempt.
- Those who believe in 'international law' and are happy with wars they consider 'legal' may wish to make something of this. But the crucial point here has to do with the logic of events and the policy choices associated with them. In incorporating the ICG's – or, more generally, the peace party's – suggestions into the revised text of Resolution 1973, London, Paris and Washington deftly headed off a real debate in the Security Council, one that would have considered alternatives, at the price of making their own resolution incoherent.
- London, Paris and Washington could not allow a ceasefire because it would have involved negotiations, first about peace lines, peacekeepers and so forth, and then about fundamental political differences. And all this would have subverted the possibility of the kind of regime change that interested the Western powers. The sight of representatives of the rebellion sitting down to talks with representatives of Gaddafi's regime, Libyans talking to Libyans, would have called the demonisation of Gaddafi into question. The moment he became once more someone people talked to and negotiated with, he would in effect have been rehabilitated. And that would have ruled out violent – revolutionary? – regime change and so denied the Western powers their chance of a major intervention in North Africa's Spring, and the whole interventionist scheme would have flopped. The logic of the demonisation of Gaddafi in late February, crowned by the referral of his alleged crimes against humanity to the International Criminal Court by Resolution 1970 and then by France's decision on 10 March to recognise the NTC as the sole legitimate representative of the Libyan people, meant that Gaddafi was banished for ever from the realm of international political discourse, never to be negotiated with, not even about the surrender of Tripoli when in August he offered to talk terms to spare the city further



destruction, an offer once more dismissed with contempt. And this logic was preserved from start to finish, as the death toll of civilians in Tripoli and above all Sirte proves. The mission was always regime change, a truth obscured by the hullabaloo over the supposedly imminent massacre at Benghazi.

- The official version is that it was the prospect of a 'second Srebrenica' or even 'another Rwanda' in Benghazi were Gaddafi allowed to retake the city that forced the 'international community' (minus Russia, China, India, Brazil, Germany, Turkey et al) to act. What grounds were there for supposing that, once Gaddafi's forces had retaken Benghazi, they would be ordered to embark on a general massacre?
- Gaddafi dealt with many revolts over the years. He invariably quashed them by force and usually executed the ringleaders. The NTC and other rebel leaders had good reason to fear that once Benghazi had fallen to government troops they would be rounded up and made to pay the price. So it was natural that they should try to convince the 'international community' that it was not only their lives that were at stake, but those of thousands of ordinary civilians. But in retaking the towns that the uprising had briefly wrested from the government's control, Gaddafi's forces had committed no massacres at all; the fighting had been bitter and bloody, but there had been nothing remotely resembling the slaughter at Srebrenica, let alone in Rwanda. The only known massacre carried out during Gaddafi's rule was the killing of some 1200 Islamist prisoners at Abu Salim prison in 1996. This was a very dark affair, and whether or not Gaddafi ordered it, it is fair to hold him responsible for it. It was therefore reasonable to be concerned about what the regime might do and how its forces would behave in Benghazi once they had retaken it, and to deter Gaddafi from ordering or allowing any excesses. But that is not what was decided. What was decided was to declare Gaddafi guilty in advance of a massacre of defenceless civilians and instigate the process of destroying his regime and him (and his family) by way of punishment of a crime he was yet to commit, and actually unlikely to commit, and to persist with this process despite his repeated offers to suspend military action.
- There was no question of anything that could properly be described as ethnic cleansing or genocide in the Libyan context. All Libyans are Muslims, the majority of Arab-Berber descent, and while the small Berber-speaking minority had a grievance concerning recognition of its language and identity (its members are Ibadi, not Sunni, Muslims), this was not what the conflict was about. The conflict was not ethnic or racial but political, between defenders and opponents of the Gaddafi regime; whichever side won could be expected to deal roughly with its adversaries, but the premises for a large-scale massacre of civilians on grounds of their ethnic or racial identity were absent. All the talk about another Srebrenica or Rwanda was extreme hyperbole clearly intended to panic various governments into supporting the war party's project of a military intervention in order to save the rebellion from imminent defeat.
- Why did the panic factor work so well with international, or at any rate Western, public opinion and especially governments? It is reliably reported that Obama's fear of being accused of allowing another Srebrenica tipped the scales in Washington when not only Robert Gates but also, initially, Hillary Clinton had resisted US involvement. I believe the answer is that Gaddafi had already been so thoroughly demonised that the wildest accusations about his likely (or, as many claimed, certain) future conduct would be believed whatever his actual behaviour. This demonisation took place on 21 February, the day all the important cards were dealt.
- On 21 February the world was shocked by the news that the Gaddafi regime was using its airforce to slaughter peaceful demonstrators in Tripoli and other cities. The main purveyor of this story was al-Jazeera, but the story was quickly taken up by the Sky network, CNN, the BBC, ITN et al. Before the day was over the idea of imposing a no-fly zone on Libya was widely accepted, as was the idea of a Security Council resolution imposing sanctions and an arms embargo, freezing Libya's assets and referring Gaddafi and his associates to the ICC on charges of crimes against humanity. Resolution 1970 was duly passed five days later and the no-fly zone proposal monopolised international discussion of the Libyan crisis from then on.
- Many other things happened on 21 February. Zawiya was reported to be in chaos. The minister of justice, Mustafa Abdul Jalil, resigned. Fifty Serbian workers were attacked by looters. Canada condemned 'the violent crackdowns on innocent demonstrators'. Two airforce pilots flew their fighters to Malta claiming they did so to avoid carrying out an order to bomb and strafe demonstrators. By late afternoon regime troops and snipers were reliably reported to be firing on crowds in Tripoli. Eighteen Korean workers were wounded when their place of work was attacked by a hundred armed men. The European Union condemned the repression, followed by Ban Ki-moon, Nicolas Sarkozy and Silvio Berlusconi. Ten Egyptians were reported to have been killed by armed men in Tobruk. William Hague, who had condemned the repression the previous day (as had Hillary Clinton), announced at a press conference that he had information that Gaddafi had fled Libya and was en route to Venezuela. The Libyan ambassador to Poland stated that

defections from the armed forces as well as the government could not be stopped and Gaddafi's days were numbered. Numerous media outlets carried the story that Libya's largest tribe, the Warfalla, had joined the rebellion. Libya's ambassadors to Washington, India, Bangladesh and Indonesia all resigned, and its deputy ambassador to the UN, Ibrahim Dabbashi, rounded off the day by calling a news conference at Libya's mission in New York and claimed that Gaddafi had 'already started the genocide against the Libyan people' and was flying in African mercenaries. It was Dabbashi more than anyone else who, having primed his audience in this way, launched the idea that the UN should impose a no-fly zone and the ICC should investigate Gaddafi's 'crimes against humanity and crimes of war'.

- At this point the total death toll since 15 February was 233, according to Human Rights Watch. The Fédération Internationale des Droits de l'Homme suggested between 300 and 400 (but it also announced the same day that Sirte had fallen to the rebels). We can compare these figures with the total death toll in Tunisia (300) and Egypt (at least 846). We can also compare both HRW's and FIDH's figures with the death toll, plausibly estimated at between 500 and 600, of the seven days of rioting in Algeria in October 1988, when the French government rigorously refrained from making any comment on events. But the figures were beside the point on 21 February; it was impressions that counted. The impression made by the story that Gaddafi's airforce was slaughtering peaceful protesters was huge, and it was natural to take the resignations of Abdul Jalil and the ambassadors, the flight of the two pilots, and especially Dabbashi's dramatic declaration about genocide as corroborating al-Jazeera's story.
- Goodies and baddies (to use Tony Blair's categories) had been clearly identified, the Western media's outraged attention totally engaged, the Security Council urgently seized of the matter, the ICC primed to stand by, and a fundamental shift towards intervention had been made – all in a matter of hours. And quite right too, many may say. Except that the al-Jazeera story was untrue, just as the story of the Warfalla's siding with the rebellion was untrue and Hague's story that Gaddafi was fleeing to Caracas was untrue. And, of course, Dabbashi's 'genocide' claim was histrionic rubbish which none of the organisations with an interest in the use of the term was moved to challenge.
- These considerations raise awkward questions. If the reason cited by these ambassadors and other regime personnel for defecting on 21 February was false, what really prompted them to defect and make the declarations they did? What was al-Jazeera up to? And what was Hague up to? A serious history of this affair when more evidence comes to light will seek answers to these questions. But I don't find it hard to understand that Gaddafi and his son should suddenly have resorted to such fierce rhetoric. They clearly believed that, far from confronting merely 'innocent demonstrators' as the Canadians had it, they were being destabilised by forces acting to a plan with international ramifications. It is possible that they were mistaken and that everything was spontaneous and accidental and a chaotic muddle; I do not pretend to know for sure. But there had been plans to destabilise their regime before, and they had grounds for thinking that they were being destabilised again. The slanted coverage in the British media in particular, notably the insistence that the regime was faced only by peaceful demonstrators when, in addition to ordinary Libyans trying to make their voices heard non-violently, it was facing politically motivated as well as random violence (e.g. the lynching of 50 alleged mercenaries in al-Baida on 19 February), was consistent with the destabilisation theory. And on the evidence I have since been able to collect, I am inclined to think that destabilisation is exactly what was happening.
- In the days that followed I made efforts to check the al-Jazeera story for myself. One source I consulted was the well-regarded blog Informed Comment, maintained and updated every day by Juan Cole, a Middle East specialist at the University of Michigan. This carried a post on 21 February entitled 'Qaddafi's bombardments recall Mussolini's', which made the point that 'in 1933-40, Italo Balbo championed aerial warfare as the best means to deal with uppity colonial populations.' The post began: 'The strafing and bombardment in Tripoli of civilian demonstrators by Muammar Gaddafi's fighter jets on Monday ...', with the underlined words linking to an article by Sarah El Deeb and Maggie Michael for Associated Press published at 9 p.m. on 21 February. This article provided no corroboration of Cole's claim that Gaddafi's fighter jets (or any other aircraft) had strafed or bombed anyone in Tripoli or anywhere else. The same is true of every source indicated in the other items on Libya relaying the aerial onslaught story which Cole posted that same day.
- I was in Egypt for most of the time, but since many journalists visiting Libya were transiting through Cairo, I made a point of asking those I could get hold of what they had picked up in the field. None of them had found any corroboration of the story. I especially remember on 18 March asking the British North Africa expert Jon Marks, just back from an extended tour of Cyrenaica (taking in Ajdabiya, Benghazi, Brega, Derna and Ras Lanuf), what he had heard about the story. He told me that no one he had spoken to had

mentioned it. Four days later, on 22 March, *USA Today* carried a striking article by Alan Kuperman, the author of *The Limits of Humanitarian Intervention* and coeditor of *Gambling on Humanitarian Intervention*. The article, 'Five Things the US Should Consider in Libya', provided a powerful critique of the Nato intervention as violating the conditions that needed to be observed for a humanitarian intervention to be justified or successful. But what interested me most was his statement that 'despite ubiquitous cellphone cameras, there are no images of genocidal violence, a claim that smacks of rebel propaganda.' So, four weeks on, I was not alone in finding no evidence for the aerial slaughter story. I subsequently discovered that the issue had come up more than a fortnight earlier, on 2 March, in hearings in the US Congress when Gates and Admiral Mike Mullen, chairman of the Joint Chiefs of Staff, were testifying. They told Congress that they had no confirmation of reports of aircraft controlled by Gaddafi firing on citizens.

- The story was untrue, just as the story that went round the world in August 1990 that Iraqi troops were slaughtering Kuwait babies by turning off their incubators was untrue and the claims in the sexed-up dossier on Saddam's WMD were untrue. But as Mohammed Khider, one of the founders of the FLN, once remarked, 'when everyone takes up a falsehood, it becomes a reality.' The rush to regime change by war was on and could not be stopped.
- The intervention tarnished every one of the principles the war party invoked to justify it. It occasioned the deaths of thousands of civilians, debased the idea of democracy, debased the idea of law and passed off a counterfeit revolution as the real thing. Two assertions that were endlessly reiterated – they were fundamental to the Western powers' case for war – were that Gaddafi was engaged in 'killing his own people' and that he had 'lost all legitimacy', the latter presented as the corollary of the former. Both assertions involved mystifications.
- '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 people who were rebelling. He was doing in this respect what every government in history has done when faced with a rebellion. We are all 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 situations: 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. But, as we have seen, the invocation of rules (e.g. no genocide) can go together with a cynical exaggeration and distortion of the facts by other states. There are in fact no reliable rules. A state may repress a revolt if the permanent veto-holding powers on the Security Council allow it to (e.g. Bahrain, but also Sri Lanka) and not otherwise. And if a state thinks it can take this informal authorisation to defend itself as read because it is on good terms with London, Paris and Washington and is honouring all its agreements with them, as Libya was, it had better beware. Terms can change without warning from one day to the next. The matter is now arbitrary, and arbitrariness is the opposite of law.
- The idea that Gaddafi represented nothing in Libyan society, that he was taking on his entire people and his people were all against him was another distortion of the facts. As we now know from the length of the war, the huge pro-Gaddafi demonstration in Tripoli on 1 July, the fierce resistance Gaddafi's forces put up, the month it took the rebels to get anywhere at all at Bani Walid and the further month at Sirte, Gaddafi's regime enjoyed a substantial measure of support, as the NTC did. Libyan society was divided and political division was in itself a hopeful development since it signified the end of the old political unanimity enjoined and maintained by the Jamahiriyya. In this light, the Western governments' portrayal of 'the Libyan people' as uniformly ranged against Gaddafi had a sinister implication, precisely because it insinuated a new Western-sponsored unanimity back into Libyan life. This profoundly undemocratic idea followed naturally from the equally undemocratic idea that, in the absence of electoral consultation or even an opinion poll to ascertain the Libyans' actual views, the British, French and American governments had the right and authority to determine who was part of the Libyan people and who wasn't. No one supporting the Gaddafi regime counted. Because they were not part of 'the Libyan people' they could not be among the civilians to be protected, even if they were civilians as a matter of mere fact. And they were not protected; they were killed by Nato air strikes as well as by uncontrolled rebel units. The number of such civilian victims on the wrong side of the war must be many times the total death toll as of 21 February. But they don't count, any more than the thousands of young men in Gaddafi's army who innocently imagined that they too were part of 'the Libyan people' and were only doing their duty to the state counted when they were incinerated by Nato's planes or extra-judicially executed en masse after capture, as in Sirte.
- The same contempt for democratic principle characterised the repeated declarations in the

West that Gaddafi had 'lost all legitimacy'. Every state needs international recognition and to that extent depends on external sources of legitimation. But the democratic idea gives priority to national over international legitimacy. With their claim of lost legitimacy the Western powers were not only pre-empting an eventual election in Libya which would ascertain the true balance of public opinion, they were mimicking the Gaddafi regime: in the Jamahiriyya the people were liable to be trumped by the Revolution as a source of superior legitimacy.

- 'If you break it, you own it,' Colin Powell famously remarked, in order to alert the Beltway to the risks of a renewed war against Iraq. The lesson of the mess in Iraq has been learned, at least to the extent that the Western powers and Nato have repeatedly insisted that the Libyan people – the NTC and the revolutionary militias – own their revolution. So, not owning Libya after the fall of Gaddafi, Nato and London and Paris and Washington cannot be accused of breaking it or be held responsible for the debris. The result is a shadow play. The NTC occupies centre stage in Libya, but since February every key decision has been made in the Western capitals in consultation with the other, especially Arab, members of the 'contact group' meeting in London or Paris or Doha. It is unlikely that the structure of power and the system of decision-making which have guided the 'revolution' since March are going to change radically. And so unless something happens to upset the calculations that have brought Nato and the NTC this far, what will probably emerge is a system of dual power in some ways analogous to that of the Jamahiriyya itself, and similarly inimical to democratic accountability. That is, a system of formal decision-making about secondary matters acting as a façade for a separate and independent, because offshore, system of decision-making about everything that really counts (oil, gas, water, finance, trade, security, geopolitics) behind the scenes. Libya's formal government will be a junior partner of the new Libya's Western sponsors. This will be more of a return to the old ways of the monarchy than to those of the Jamahiriyya.

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## • **Brazil Express Condemnation to NATO Violation of UNSC Resolutions 1970 and 1973**

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Brasilia, 06.08.2011 (JANA) The President, government and people of Brazil expressed condemnation of the NATO crusader violations of the UN Security Council resolutions 1970 and 1973. This came when the advisor to the President of Brazil for political affairs met in the capital Brasilia on Friday with the Secretary of the GPC for Transportation and Communication Dr. Mohamed Zaidan. The secretary handed the advisor Marco Garcia a message from the Leader of the Revolution to President Dilma, and expressed his greetings to the people of Brazil. For his part, the Brazilian official asked the secretary to convey greetings of President Dilma and her admiration of the courage of the Libyan people against the global forces of hegemony. During the meeting, the Secretary gave an elaborate explanation on reality of the events taking place in Libya, a colonial conspiracy against the Libyan people and the leader Muammer Algathafi, and a Atlantic aggression, which under the cover of Security Council targets civilians, civilian locations and the infrastructure of Libya. Advisor Marco Garcia reiterated Brazil's condemnation of the NATO aggression that deliberately kills civilians by bombarding residential areas and destroys the infrastructure of Libya. He expressed President's support for the African road map on Libya, which was adopted by the African Union summit in Equatorial Guinea, he also expressed Brazil's readiness to cooperate with Great Jamahiriya through its current Security Council membership. / JANA /