

NATO'S ALLEGED VIOLATIONS OF UN SECURITY COUNCIL RESOLUTIONS IN LIBYA

Fikry Latukau*, Muhammad Zacky**

Faculty of Law Tangerang Raya University, Indonesia*

Postgraduate Master of Law Programme, Padjadjaran University, Indonesia**

Abstract

The Security Council resolution against Libya emphasises that any State has the right to intervene if it commits crimes against humanity or causes civilian casualties. This paper examined the issue of Security Council intervention through NATO against Libya in relation to international criminal law. This research employs a normative juridical approach to analyse cases related to the UN Security Council Resolution on Libya. The results show that the Security Council has the right to intervene. However, in reality the intervention carried out by NATO is not in accordance with the resolution issued by the Security Council. In fact, that NATO's actions have caused civilian casualties and an increase in the number of refugees leaving Libya to save themselves.

Keywords: Security Council, Libya, NATO, intervention

A. Background

The "Arab Spring" began in 2010 with widespread demonstrations across the Middle East. It was sparked by Mohammed Bouazizi's self-immolation in Tunisia, leading to a revolution, armed conflict, and the resignation of long-time leader Ben Ali, initiating a change in leadership.¹ Similar protests erupted in Egypt due to unemployment and government corruption, culminating in President Hosni Mubarak's resignation on January 25, 2011, and the military taking control. These movements subsequently spread to other countries, including Algeria, Yemen, Jordan, Syria, Bahrain, and Libya.²

Libya, a North African nation with a significant area and population, had been under Muammar Qaddafi's rule since 1969, following his overthrow of King Idris.³ As the Arab Spring reached Libya, protests began on February 15, 2011, in Benghazi, sparked by the arrest of human rights lawyer Fathi Terbil. Police violently dispersed demonstrators, causing injuries and escalating into fierce clashes. Anti-Qaddafi protesters, including the National Front for Salvation of Libya (NFSL), ignited government buildings in an event dubbed the "Day of Rage," signaling an explicit aim to depose Qaddafi and resulting in numerous civilian deaths.⁴

By February 18, rebels had captured Benghazi and Bediya after security forces withdrew. They seized the Katiba Military Base following a two-day battle involving petrol bombs, bulldozers, homemade grenades, and stolen weapons, resulting in

* fikrylatukau@untara.ac.id

¹ Apriadi Tamburaka, *Revolusi Timur Tengah: Kejatuhan Para Penguasa Otoriter di Negara-negara Timur Tengah*, Yogyakarta: Narasi, 2011, hlm. 20.

² Ahmad Rizky Mardhatillah Umar, dkk., *Media Sosial dan Revolusi Politik: Memahami Kembali Fenomena "Arab Spring" dalam Perspektif Ruang Publik Transnasional*, Jurnal Ilmu Sosial dan Ilmu Politik, Volume 18, Nomor 2, 2014, hal. 131

³ <https://www.kemlu.go.id/tripoli/id/Pages/profil-negara-libya.aspx>, diakses tanggal 11 Januari 2025, jam 20.00.

⁴ <https://globalnews.ca/news/168180/timeline-libyan-civil-war-february-15-october-20-2011/>, diakses tanggal 11 Januari 2025, jam 21.00.

hundreds of casualties.⁵ A suicide car bombing on February 20 ultimately led to the military's full retreat, securing Benghazi for the rebels. By this date, armed rebels, comprising local and Islamic militants mostly equipped with stolen weapons, had overrun several cities, driving out government forces from key areas like the ports of Ra's Lanuf and Brega and the Misrata airfield, actively working to overthrow Qaddafi.⁶ Libya entered a full-scale conflict as Qaddafi's forces initiated massive military operations against the encroaching rebels. Following the rebel capture of Benghazi and Bediya, government forces used conventional tactics against protesters in government-controlled cities, reportedly killing 1000 people.⁷

The international community swiftly condemned Qaddafi's actions. On February 20, 2011, the United States and the European Union denounced the use of lethal force against unarmed protesters. Qaddafi responded with explicit threats against the rebels. The UN called for a ceasefire, and the Arab League, through Amr Moussa, froze Libya's membership. The African Union also condemned the excessive force used against peaceful demonstrators.⁸ On February 26, 2011, the UN Security Council passed Resolution 1970, condemning violence, human rights abuses, civilian deaths, and incitement to hostility by high-ranking Libyan officials. The next day, rebels formed the National Transitional Council (NTC) in Benghazi, and NATO began considering a no-fly zone to protect the opposition.⁹

The UN convened to discuss the escalating conflict, with Britain, France, and the US advocating for military intervention to protect civilians. On March 17, the UN Security Council adopted Resolution 1973, authorizing no-fly zones and the use of force for civilian defense, strictly prohibiting foreign occupation. Five Security Council members (China, Russia, Brazil, Germany, India) abstained, expressing concerns about a lack of clear parameters for military force and potential unintended consequences, though they did not veto. Despite a nationwide ceasefire declared by the Libyan government and an offer to negotiate, both sides violated it.¹⁰ The intervention by the US, UK, and France faced mixed opinions, particularly from developing countries wary of developed nations using the UN Security Council to legitimize interventions that might serve national interests rather than purely humanitarian ones, potentially infringing on sovereignty.¹¹

Based on these events and UN Security Council Resolutions 1970 and 1973, this paper aims to analyze the justification of these resolutions and NATO's actions (involving the US, UK, and France) under international criminal law, considering the factual outcomes in Libya, including the fall and death of President Muammar Qaddafi.

⁵ Paul Schemm, Battle at Army Base Broke Gadhafi Hold in Beghazi, <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/25/AR2011022505021.html>, diakses tanggal 12 Januari 2025.

⁶ Al Jazeera and Agencies, Gaddafi Defiant as State Teeters, 2011, <https://www.aljazeera.com/news/africa/2011/02/20112235434767487.html>, diakses tanggal 11 Januari 2025, jam 11.30.

⁷ Libya Civil War (2011), <https://www.globalsecurity.org/military/world/war/libya-civil-war.htm>, diakses tanggal 11 Januari 2025, jam 12.00.

⁸ Emily O'Brien and Andrew Sinclair, *The Libyan War: A Diplomatic History*, New York University: Center on International Cooperation, 2011, hal. 7.

⁹ James Siebens and Benjamin Case, *The Libyan Civil War: Context and Consequences*, THINK International and Human Security, 2012, hal. 16.

¹⁰ *Ibid.*

¹¹ J.G. Starke, *An Introduction to International Law*, 3rd Edition, London: Butterworth & Co. Ltd, 1954, dikutip dalam M. Syaprin Zahidi, *Intervensi Kemanusiaan, Kewajiban Untuk Melindungi dan Kepentingan Dibalikannya, Mozaik Kebijakan Sosial Politik Menuju Masyarakat Ekonomi ASEAN*, Malang, 2016, hal. 73.

B. Research Methods

This research employs a normative juridical approach to analyze cases related to the UN Security Council Resolution on Libya. It connects these cases with established rules, theories, and principles within international criminal law, international law, and international humanitarian law. The analysis is qualitative and presented descriptively. More details in this study researchers used the following research methods:

1. Research Approach

This study falls under normative juridical research, which primarily involves examining secondary data or library materials.¹² The core aim is to understand both the normative objectives of the UN Security Council Resolution on Libya from the perspective of international criminal law and to analyze and evaluate how this resolution should function in practice according to international criminal law principles.

2. Research Specifications

The research uses a descriptive analytical specification.¹³ This means it aims to provide a comprehensive and accurate account of the subject matter: "How the UN Security Council Resolution in Libya is viewed under International Criminal Law."

3. Data Source

The research relies on secondary data, specifically library materials relevant to the UN Security Council Resolution on Libya and international criminal law. These secondary data sources include:¹⁴

a. Secondary legal data:

- 1) Primary legal materials: These are binding legal documents such as international conventions, agreements (MOUs), other international laws and regulations, and national laws relevant to the topic (e.g., the 1945 UN Charter, principles of international relations).
- 2) Secondary legal materials: These offer explanations and interpretations of primary legal materials. Examples include research findings, academic works, unratified conventions, and relevant legal theories or concepts that serve as analytical frameworks.¹⁵
- 3) Tertiary legal materials: These provide guidance and clarification for primary and secondary legal materials, such as legal dictionaries and encyclopedias.

b. Primary data

In addition, materials from the field are also used which are sourced from interviews with resource persons from related academics.

4. Data Analysis Method

The qualitative data analysis method is employed. This involves analyzing, interpreting, and drawing conclusions from the collected secondary data. The findings are then presented systematically in a descriptive narrative.

¹² Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: rajawali pers, 2014), 13.

¹³ Suharsimi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktik* (Jakarta: rineka cipta, 2010), 37.

¹⁴ *Ibid.*

¹⁵ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif - Suatu Tinjauan* (Jakarta: grafindo presada, 2001), hal. 29.

C. Research Findings and Discussions

1. Authority of the UN Security Council and the Concept of Intervention

The UN Charter outlines the principles of state sovereignty and non-intervention, especially in Articles 2(1), 2(4), and 2(7). However, Chapter VII of the Charter allows for enforcement measures when peace and security are threatened. UNGA Resolution 2625 (XXV) further emphasizes peaceful dispute resolution while affirming conditions for intervention in cases where internal conflicts threaten global peace. The UN upholds global peace and security through the Responsibility to Protect (RtoP), holding states accountable for protecting their people. If they fail, the international community must help using diplomacy or sanctions first. Military action is a last resort, needing Security Council approval to prevent mass atrocities. The Security Council is specifically tasked with resolving disputes that jeopardize national peace and security, including threats, breaches of peace, or acts of aggression.¹⁶

International intervention may be justified in situations involving severe human rights violations within a country. Intervention is defined as a deliberate action by a state, multiple states, or an international entity against another state's policies without its consent.¹⁷ It can also be characterized as coercive interference in a nation's internal affairs, potentially involving force or economic pressure.¹⁸ Boer Mauna defines it as a state or international organization overseeing and directing internal conflicts a country cannot manage domestically, necessitating external military involvement.¹⁹ However, armed humanitarian interventions can negatively impact civilians, exacerbating their suffering and increasing humanitarian needs.²⁰

Starke categorizes state interventions into internal, external, and punitive types.²¹ He argues that intervention in a state's sovereignty is generally prohibited, but allowed in specific cases: UN-authorized actions, protecting citizens abroad, self-defense, established protectorate ties, or serious international law violations. This shows humanitarian intervention can be lawful under certain international legal frameworks.²² Additionally, the International Law Commission's Draft on State Responsibility implies that intervention is permissible for issues requiring international resolution, suggesting that domestic jurisdiction is not an absolute barrier in international law, especially concerning human rights.²³

The UN Security Council, empowered by Chapter VII (Articles 39-51) of the UN Charter, can act swiftly to prevent or halt armed conflicts by addressing threats to peace, breaches of peace, or acts of aggression. This chapter permits two forms

¹⁶ J.G. Starke, *Introduction to International Law*, Tenth Edition, London: Butterworth, 1989, hal. 517.

¹⁷ Coady, C.A.J., *The ethics of armed humanitarian intervention*. Washington: United States Institute of Peace, 2002, hal 10.

¹⁸ Donnelly, J., *Human Rights, Humanitarian Intervention, and American Foreign Policy*. New York: Columbia University, 1983, hal 311.

¹⁹ Boer Mauna, *Hukum Internasional: Pengertian, Peranan, dan Fungsi dalam Era Dinamika Global*, edisi ke-2, Bandung: PT Alumni, 2005, hal. 648.

²⁰ Scott Fairley, *State Actors, Humanitarian Intervention and Interventional Law: Reopening Pandora's Box*, *Georgia Journal of International and Comparative Law*, No. 10, 1980, hal. 63.

²¹ J.G. Starke, *An Introduction to International Law*, 3rd Edition, London: Butterworth & Co. Ltd, 1954, dikutip dalam M. Syaprin Zahidi, *Intervensi Kemanusiaan, Kewajiban Untuk Melindungi dan Kepentingan Dibalikannya*, *Mozaik Kebijakan Sosial Politik Menuju Masyarakat Ekonomi ASEAN*, Malang, 2016, hal 70.

²² *Ibid.*

²³ Ardiyah Leatemia, *Intervensi Pihak Asing Dalam Penyelesaian Konflik Internal Suatu Negara Menurut Hukum Internasional*, *Jurnal Lex et Societatis*, Vol 1, Nomor 4, 2013, hal. 17.

of intervention: collective action mandated by the Security Council and self-defense.²⁴ Beyond Chapter VII, the UN also employs various measures including fact-finding missions, early warnings, and negotiations to maintain international peace. If negotiations fail, economic, communication, and diplomatic ties can be severed. As a final recourse, military force can be deployed in cases of severe mass violence when a state fails to protect its citizens and peaceful options are exhausted.²⁵

UN Security Council Resolutions 1970 and 1973 on Libya were considered lawful under international law, based on the severe humanitarian crisis and the Qaddafi regime's violence against its population. The resolutions aimed to protect civilians, enforce a no-fly zone, and authorize force without permitting foreign occupation aligned with the Responsibility to Protect (R2P) doctrine. However, NATO's subsequent operations Operation Odyssey Dawn and Operation Unified Protector led by the U.S., U.K., and France, sparked controversy over their compliance with the Security Council mandate. While initial actions halted government attacks on Benghazi and disabled Libya's air defenses, critics argued that further strikes on government forces and infrastructure exceeded Resolution 1973's limits. The Arab League Secretary-General and countries like Russia, China, South Africa, and Germany expressed concern over the operation's scope.

NATO was increasingly seen as pursuing regime change rather than merely protecting civilians. Military aid and advisors from France, Qatar, and the U.K. to rebel groups, and coordination with them, allegedly undermined African Union peace efforts and prolonged the conflict. Qaddafi's capture and death without ICC trial, along with rising civilian casualties, suggested political objectives overtook humanitarian aims raising legal questions of aggression. The UN's commitment to global peace is significantly enhanced through collaboration with regional organizations. This cooperative framework is notably reinforced by UN General Assembly Resolution 2625 (XXV) of October 24, 1970. Known as the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States, this resolution aims to solidify fundamental principles of international law, promoting peaceful dispute resolution, non-intervention, self-determination, and human rights in international relations.²⁶

The UN Security Council works with regional bodies like NATO, a transatlantic alliance conducting crisis management. Since the 1990s, NATO has supported UN peace efforts. In Libya, NATO acted under Resolutions 1970 and 1973 to protect civilians and enforce a no-fly zone during the humanitarian crisis. The severe civilian casualties in Benghazi, Libya, in February 2011 prompted calls from nations like France, the United Kingdom, and the United States for a UN Security Council session. This culminated in the unanimous adoption of Security Council Resolution 1970 on February 26, 2011.²⁷ Resolution 1970, under Article

²⁴ Imam Mulyana dan Irawati Handayani, Peran Organisasi Regional dalam Pemeliharaan Perdamaian dan Keamanan Nasional, *Jurnal Cita Hukum*, Vol. II, Nomor 2, 2015, hal. 248.

²⁵ Emi Eliza, dkk., Intervensi Kemanusiaan (Humanitarian Intervention) Menurut Hukum Internasional dan Implementasinya dalam Konflik Bersenjata, *Fiat Justisia Jurnal Ilmu Hukum*, Volume 8, No. 4, 2014, hal. 635-636.

²⁶ Relations with the United Nations, https://www.nato.int/cps/en/natohq/topics_50321.htm?#, diakses pada tanggal 14 Januari 2025.

²⁷ Security Council resolution 1970 (2011) [on establishment of a Security Council Committee to monitor implementation of the arms embargo against the Libyan Arab Jamahiriya] | Refworld, diakses pada tanggal 18 Juli 2025.

41, imposed 28 non-military measures on Libya, including arms embargoes, asset freezes, and ICC referral, condemning violence against civilians and urging humanitarian access.

Amidst the escalating crisis, international discussions about potential intervention intensified. Initially, NATO Secretary-General Anders Fogh Rasmussen stated NATO had no plans to interfere in Libya's internal affairs. However, this position began to shift as British Prime Minister David Cameron and US Secretary of State Hillary Clinton indicated that no-fly zone plans were under active consideration. Clinton also revealed US contact with, and readiness to assist, the rebels.²⁸ On March 1, the National Transitional Council (NTC) declared itself Libya's sole legitimate government.²⁹ A week later, President Barack Obama confirmed US talks with NATO regarding military options. In response, Muammar Qaddafi invited EU observers to Libya, denying exaggerated reports of government atrocities against civilians by opposition and foreign press.³⁰

France and the UK strongly supported military intervention and a no-fly zone, with France recognizing the NTC. Libya's defiance of Resolution 1970 led to Resolution 1973, backed by regional support, authorizing all necessary measures to protect civilians, enforce a no-fly zone, and banning foreign occupation to address the worsening crisis. NATO, led by the U.S., U.K., and France, enforced Resolution 1973 through *Operation Unified Protector*, initially to protect civilians. However, its actions soon drew criticism for exceeding the mandate, appearing to pursue regime change. NATO's involvement reflected the urgency of Libya's crisis, invoking the Responsibility to Protect (R2P) when peacekeeping was unfeasible due to Qaddafi's defiance.

2. UN Security Council Resolution on Libya Under International Criminal Law: Mandate and Early Controversies

The UN resolution on Libya aimed to protect civilians, influenced by pressure from the EU and U.S. Under international criminal law, intervention is unlawful if it violates a state's sovereignty or involves coercive, violent interference in its political or economic affairs. Actions not fitting these specific prohibitions are not considered illegal interventions.³¹

In response to the escalating Libyan crisis, which saw approximately 180,000 people displaced between February 20 and March 2, 2011, the international community intensified its actions.³² UN Security Council Resolution 1973, adopted on March 17, 2011, provided the critical legal authority. This resolution explicitly sanctioned "all necessary measures" to protect civilians and civilian-populated areas from attack, and to enforce a no-fly zone over Libya, while strictly prohibiting any foreign occupation of Libyan territory.³³ This mandate underscored the international community's adherence to the Responsibility to Protect (R2P) principle in light of the Qaddafi regime's ongoing atrocities.

²⁸ James Siebens and Benjamin Case, *Op.Cit*, hal 18.

²⁹ Emily O'Brien and Andrew Sinclair, *Op.Cit*, hal 9.

³⁰ *Ibid*.

³¹ J.G Starke, *Pengantar Hukum Internasional-Edisi Kesepuluh*, Jakarta: Sinar Grafika, 2012, hal. 135-136.

³² Alex Thurston, "Who are Libya's sub-Saharan Africans?" *The Christian Science Monitor*, March 7, 2011. <https://www.csmonitor.com/World/Africa/Africa-Monitor/2011/0307/Who-are-Libya-s-sub-Saharan-Africans>, diakses tanggal 22 Januari 2025.

³³ C.J. Chivers and David D. Kirkpatrick, Libyan Rebels Complain of Deadly Delays Under NATO's Command, <http://www.nytimes.com/2011/04/05/world/africa/05libya.html>, diakses tanggal 11 Januari 2025, jam 13.00.

Following this mandate, an international coalition, predominantly led by France, the United States, and the United Kingdom, launched "Operation Odyssey Dawn." The operation commenced swiftly on March 19, 2011, with French warplanes striking Libyan forces near Benghazi, quickly followed by British aircraft and US Navy missile strikes. These initial military actions successfully halted the advance of government forces in Benghazi, forcing the Libyan army to retreat. The enforcement of the no-fly zone also effectively dismantled Libya's air defense capabilities, as authorized for civilian protection.³⁴

The implementation of Resolution 1973 soon faced criticism for exceeding its mandate. Coalition attacks on Libyan forces and facilities appeared to go beyond protecting civilians or enforcing a no-fly zone, prompting accusations of a shift toward regime change. International dissent emerged just one day after the intervention began. The Arab League Secretary-General openly criticized the coalition's operation, asserting it had surpassed the original intent of the Arab League's call for a no-fly zone.³⁵ The UAE, though initially offering fighter jets, chose to provide only humanitarian aid. Russia, China, and South Africa called for a ceasefire, while Germany withdrew from NATO operations. African leaders criticized the intervention as interference in African affairs, highlighting growing international disapproval of the military escalation. By March 23, 2011, US officials declared that "Operation Odyssey Dawn" had successfully incapacitated the Libyan Air Force, making Libya virtually defenseless against coalition air power within five days.³⁶

On March 23, 2011, NATO launched *Operation Unified Protector*, taking full military command of the Libya intervention and enforcing an arms embargo. The no-fly zone was officially transferred to NATO the next day, and *Operation Odyssey Dawn* ended by March 31. This operation was based on UN Resolution 1973, which allowed "all necessary measures" to protect civilians and enforce the no-fly zone, but prohibited foreign occupation. However, NATO's actions soon raised concerns for potentially exceeding this mandate. Thousands of airstrikes were conducted, including in Tripoli and other government-held areas, even after the immediate threat to Benghazi had diminished. Critics argued this shift went beyond civilian protection, aiming instead to weaken the Qaddafi regime. NATO's air support also significantly strengthened rebel forces, raising concerns that the operation was no longer neutral. This perceived bias and strategic escalation suggested the intervention may have veered toward regime change, challenging the legal and humanitarian intent of Resolution 1973.

Since the launch of "Operation Odyssey Dawn" and throughout NATO's subsequent intervention, Libya's humanitarian situation severely worsened. Hundreds of thousands fled to neighboring countries, and the refugee crisis deepened. Tragically, many attempting to cross the Mediterranean perished from hunger and thirst, with concerns raised about NATO's alleged inaction regarding these maritime deaths. A UN report indicated at least 60 civilian fatalities and 55

³⁴ Resolusi 1973 (2011), https://www.nato.int/nato_static/assets/pdf/pdf_2011_03/20110927_110311-UNSCR-1973.pdf

³⁵ James Siebens and Benjamin Case, *Log.Cit*, hal. 18.

³⁶ *Ibid*.

injuries during NATO's intervention.³⁷ The outcomes of the Libya intervention raise concerns about adherence to Resolution 1973, which focused on protecting civilians and prohibited foreign occupation. Widespread displacement, civilian deaths, and maritime tragedies during the intervention contradict its humanitarian aims. Although the resolution allowed “all necessary measures” for civilian protection, the high civilian toll and inadequate response to the refugee crisis suggest a failure to fully uphold its intent. These shortcomings undermine the legitimacy of the intervention’s execution.

The Libya case also has lasting implications, particularly due to its connection with the Responsibility to Protect (R2P) doctrine and UN backing. R2P was developed to legitimize international action in cases of mass atrocity, where states fail to protect their populations. It gained global recognition in the 2005 World Summit Outcome Document, endorsed through UN General Assembly Resolution A/60/1 and reaffirmed in Security Council Resolution 1674. The Libya intervention, while rooted in R2P, exposed challenges in its application, especially regarding intent and proportionality.

The R2P doctrine emerged from acknowledging that humanitarian concerns often led to violations of the non-intervention principle, as seen in interventions in (Iraq, 1991; Somalia, 1992; Kosovo, 1999). The legitimacy of these humanitarian interventions often relies on interpretations of UN Charter Article 2(4), suggesting it limits, rather than absolutely prohibits, intervention, provided it does not permanently infringe upon territorial integrity, political independence, or UN objectives.³⁸ The underlying premise is that humanitarian interventions solely aim to restore human rights, not to permanently seize territory or undermine a state's political freedom, thus remaining consistent with the UN Charter.

R2P obliges states to protect populations from atrocity crimes, with international support if a state fails to do so. If a state clearly demonstrates an unwillingness or inability to protect its people, the responsibility to safeguard human rights then falls to the international community.³⁹ This concept, initially developed by The International Commission on Intervention and State Sovereignty (ICISS) in 2000, redefined sovereignty not as an absolute shield against external interference, but as a responsibility for states to protect their own populations. Consequently, a state cannot simply claim sovereignty to avoid intervention if it fails to protect its people from severe human rights violations.⁴⁰

At the 2005 World Summit, R2P was formally adopted in paragraphs 138 and 139 of the Outcome Document. These sections not only endorse the principle but also obligate the international community to protect populations from genocide, ethnic cleansing, and crimes against humanity, thereby legitimizing humanitarian intervention when states cannot manage such crises independently.⁴¹ UN Secretary-General Ban Ki-moon further elaborated R2P in his 2009 report,

³⁷ Neil MacFarquhar, U.N faults NATO and Libyan Authorities in Report, *The New York Times*, March 2, 2012, <https://www.nytimes.com/2012/03/03/world/africa/united-nations-report-faults-nato-over-civilian-deaths-in-libya.html>, diakses tanggal 22 Januari 2025.

³⁸ Yoram Disntein, *War, Agreesion and Self Defence*, Second Edition, Australia: Cambridge University Press, 1994, hal. 89.

³⁹ Ira Handayani, Responsibility to Protect: A New Form of Humanitarian Intervention?, *Padjadjaran Journal of International Law*, Volume 1, Number 1, 2017, hal. 60.

⁴⁰ *Ibid.*

⁴¹ Carsten Stahn, “Political Rhetoric or Emerging Legal Norm”, *The American Journal of International Law*, Vol. 101, No. 1, 2007, hal. 99-120.

"Implementing the Responsibility to Protect," through three core pillars of implementation:⁴²

The Responsibility to Protect (R2P) consists of three core pillars.

Pillar 1 emphasizes a state's primary duty to protect its population from mass atrocity crimes. In Libya, the Qaddafi regime failed this responsibility by launching systematic attacks and violence against civilians, including using lethal force against peaceful protesters. This failure justified international action under R2P.

Pillar 3 mandates a timely and decisive international response when a state clearly fails to protect its people. NATO's intervention—first through *Operation Odyssey Dawn* and then *Operation Unified Protector*—was authorized by UN Resolution 1973. Initially aimed at protecting civilians, its halted Qaddafi's advance on Benghazi. However, NATO's operations soon faced criticism for exceeding the civilian protection mandate, particularly due to support for regime change, expanded airstrikes, and rising civilian casualties.

Pillar 2 involves building state capacity to prevent atrocities through international assistance, including governance reform and security sector support. In Libya, this pillar was largely neglected after the intervention. The lack of post-conflict rebuilding efforts led to prolonged instability, civil conflict, and weak governance. This failure exposed a major gap in R2P's implementation and underscored the need for sustained long-term support, not just short-term military action.

NATO's alleged lack of support for sub-regional organizations in diplomatic efforts inadvertently contradicted the very essence of the "Responsibility to Protect" (R2P) doctrine. By mid-April 2011, a clear shift in the intervention's objectives became evident: regime change officially became NATO's policy. The United States, France, and the United Kingdom explicitly stated that a future Libya without Qaddafi was inconceivable.⁴³ Western nations, including Italy, sent military advisors and backed rebels with air power, leading them to reject peace talks without full government surrender. NATO's support undermined African Union peace efforts, prolonging the conflict and causing more deaths. By June 2011, NATO directly aided rebel advances, with airstrikes sometimes contributing to civilian casualties, exceeding Resolution 1973's humanitarian intent. Furthermore, in late June, France admitted to supplying substantial quantities of weapons and equipment to rebel groups, controversially asserting this did not violate the UN arms embargo.⁴⁴ Similarly, Qatar acknowledged providing weapons to rebels and deploying hundreds of troops to train, command, and fight alongside them, with its forces explicitly acting as a liaison between rebels and NATO.⁴⁵ The United Kingdom also engaged in training, arming rebels, and coordinating their actions with NATO.⁴⁶

NATO's actions raised concerns for exceeding Resolution 1973, which allowed force only for civilian protection, not regime change. In June 2011, as the

⁴² General Assembly, *Implementing the Responsibility to Protect*, U.N. Doc. A/63/677, 2009

⁴³ Emily O'Brien and Andrew Sinclair, *Op.Cit*, hal 15.

⁴⁴ Libya Civil War (2011).

⁴⁵ Ian Black, <https://www.theguardian.com/world/2011/oct/26/qatar-troops-libya-rebels-support>, diakses tanggal 11 Januari 2025, jam 15.00.

⁴⁶ Mark Urban, *Inside Story of the UK's Secret Mission to Beat Gaddafi*, <https://www.theguardian.com/world/2011/oct/26/qatar-troops-libya-rebels-support>, diakses tanggal 12 Januari 2025, jam 11.30.

conflict persisted, the African Union continued its persistent efforts to mediate talks between the rebels and Qaddafi's government, aiming for a peaceful resolution.⁴⁷ However, by July, the diplomatic landscape significantly shifted as approximately 40 countries involved in the conflict collectively recognized the National Transitional Council (NTC) as the only legitimate government. This international recognition provided substantial political leverage to the rebels, arguably diminishing the incentive for a negotiated settlement. As NATO intensified operations in Tripoli and rebel forces breached the city's defenses, Qaddafi, facing imminent defeat, expressed willingness to negotiate with both NATO and the rebels. Yet, emboldened by international recognition and military gains, the rebels refused talks, instead demanding the immediate resignation of Qaddafi and his son.⁴⁸ This rejection of negotiation, despite Qaddafi's apparent readiness, further highlighted the intervention's shift from civilian protection to an overt goal of regime change. It also demonstrated how the diplomatic, strategic, and material support provided to the rebels by intervening states, previously noted as potentially exceeding Resolution 1973's mandate, ultimately undermined efforts for a peaceful political solution, contributing to the war's prolongation and contradicting the broader R2P framework, which prioritizes peaceful means before force.

By the end of August 2011, Tripoli was largely under rebel control. Qaddafi's remaining forces were surrounded and scattered in western towns, notably in Sirte and Bani Walid. Several members of Qaddafi's family fled Libya in August and September. Qaddafi's remaining sons continued to lead loyalist forces through September and October until their capture and death.⁴⁹ On October 20, 2011, a French drone and warplane attacked a convoy attempting to transport Qaddafi out of Sirte. Although the attack did not kill him, rebels subsequently found him wounded and hiding in a drainpipe. He was then dragged, beaten, and shot dead by rebels while attempting to surrender, and his body was publicly displayed for days in a meat market.⁵⁰ Western governments, having agreed with the NTC to bring Qaddafi to the ICC to face charges for his wartime actions, condemned his execution.⁵¹

NATO's intervention in Libya, led by the U.S., U.K., France, and Italy, initially justified under R2P, resulted in mass civilian harm. The author argues it amounted to aggression, prioritizing regime change over protection, based on UN Resolution 3314's definition of aggression as force violating a state's sovereignty. Article 3 of the same resolution further lists specific actions considered acts of aggression, regardless of a formal declaration of war:⁵²

⁴⁷ James Siebens and Benjamin Case, Op.cit. hal 20.

⁴⁸ Missy Ryan, Libya Wants More Talks as NATO Strikes Hit Capital, <https://www.reuters.com/article/us-libya/libya-wants-more-talks-as-nato-strikes-hit-capital-idUSTRE76H06X20110723>, diakses tanggal 12 Januari 2025, jam 12.00.

⁴⁹ James Siebens and Benjamin Case, Log.Cit. hal 20.

⁵⁰ K Kareem Fahim, Anthony Shadid, and Rick Gladstone, Violent End to an Era as Qaddafi Dies in Libya, <http://www.nytimes.com/2011/10/21/world/africa/qaddafi-is-killed-as-libyan-forces-take-surt.html>, diakses tanggal 12 Januari 2025, jam 13.30.

⁵¹ Damien Mc Elroy, Gaddafi's Death: Libya's New Rulers 'Stained' by Manner of His Death, Say Philip Hammond, <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8844744/Gaddafis-death-Libyas-new-rulers-stained-by-manner-of-his-death-says-Philip-Hammond.html>, diakses tanggal 12 Januari 2025, jam 15.00.

⁵² Resolution 3314 (XXIX), 1974

- a. Invasion or Attack on Territory: While UN Security Council Resolution 1973 explicitly forbade a "foreign occupation force," NATO's extensive aerial bombing campaigns and naval blockades represented a significant "attack by armed forces... on the territory of another State." Despite the "no foreign occupation" clause aiming to prevent ground troops, the air and sea operations clearly fit the description of an armed attack. Therefore, NATO's actions arguably violated this definition of aggression, even if justified by UNSC Resolution 1973 under the R2P doctrine.
- b. Bombing or Use of Weapons Against Territory: This point directly aligns with NATO's operational methods. NATO forces extensively bombed Libyan territory and employed various weapons (missiles, bombs) against targets within the country. NATO's actions explicitly fulfill this definition of aggression, with any justification resting on the UNSC mandate, not on the absence of such acts.
- c. Blockade of a Harbor or Coast: NATO enforced a naval blockade off the Libyan coast as part of the arms embargo mandated by UNSC Resolution 1973. This action directly corresponds to this definition of aggression.
- d. Attack with Combined Forces (Land, Sea, Air, Marines on Airfields): NATO primarily utilized air and sea forces. While large-scale ground forces or marines were not deployed to Libyan airfields, the comprehensive nature of the air and sea campaign against Libyan state infrastructure and forces certainly had the impact of a multi-force attack.
- e. Use of Armed Forces in Another State Incompatible with Consent: This clause is not directly applicable because NATO's intervention occurred without the consent of the Libyan government. This provision addresses situations where initial consent was granted but then violated.
- f. Allowing Territory to Be Used for Aggression Against a Third State: This refers to a third state facilitating aggression, not the direct aggressor. While NATO member states used their territories to launch operations, this clause applies when a state permits another state to use its territory to attack a third state.
- g. Dispatch of Armed Bands or Substantial Involvement in Their Acts: While NATO didn't deploy traditional armed groups, it gave substantial indirect support to Libyan rebels through airstrikes, intelligence, and strategic coordination helping them weaken Qaddafi's forces. This support has sparked debate over whether it qualifies as "substantial involvement" under UN definitions. Critics argue NATO's role blurred the civilian protection mandate and enabled regime change by proxy. If indirect support enabling armed rebel actions is included in the definition, NATO's involvement, especially beyond the initial phase, could arguably meet this threshold though legal and political views on this remain divided.

Despite the UN General Assembly's unanimous approval of the definition of aggression in Resolution 3314 (1974), its legal authority remains questionable because Assembly decisions are merely recommendatory (lacking binding force, unlike Security Council resolutions).⁵³ This raises the critical question of who holds

⁵³ Sumaryo Suryokusumo, Agresi dalam Perspektif Hukum Internasional, Jurnal Hukum Internasional, volume 3 Nomor 1, 2005, hal. 38.

the authority to prosecute the actions of both NATO and rebel forces against civilians in Libya. Libyan courts should ideally try crimes on their soil, but institutional collapse and instability hinder fair trials. Some countries may apply universal jurisdiction to prosecute grave crimes committed in Libya, though this is rare and usually limited to suspects found within the prosecuting country's territory.

International criminal law also includes the International Criminal Court (ICC), established to prosecute individuals for crimes committed during international or internal armed conflicts, particularly those directly targeting civilian populations through acts such as murder, extermination, enslavement, deportation, detention, torture, rape, and various forms of oppression and inhumane acts.⁵⁴ The ICC operates under the principle of complementarity, meaning it respects the primary jurisdiction of national courts. Before taking on an international crime case, the ICC will defer to any state willing to genuinely investigate and prosecute the matter.⁵⁵

The 1998 Rome Statute, which established the ICC, grants it jurisdiction over the most serious crimes of international concern, specifically listing:

- a. Genocide
- b. Crimes against humanity
- c. War crimes
- d. The crime of aggression

However, unlike the detailed explanations provided for the other three categories, the Statute's definition of the crime of aggression is less clear, merely referencing the UN Charter. The Charter itself does not elaborate on the crime of aggression but empowers the Security Council under Chapter VII to take escalating measures, including deploying multinational forces, in response to threats to international peace and acts of aggression.

The lack of legal clarity in prosecuting NATO for civilian harm in Libya reveals major accountability gaps. International law struggles to address crimes by powerful actors. While some frameworks exist, like DARIO and the ICC, they face limits, leaving NATO's actions largely beyond effective legal accountability.

D. Conclusions

While the initial UN Security Council resolution authorizing intervention in Libya appeared justified under the Responsibility to Protect (R2P) doctrine, NATO's actions primarily led by the United States, United Kingdom, and France significantly deviated from its original mandate. The author concludes that these actions amounted to aggression under international law. Aggression by NATO: though framed as a humanitarian mission, NATO's conduct including aerial bombings, naval blockades, and coordinated attacks aligns with the UN General Assembly Resolution 3314 (1974) definition of aggression. These military operations went beyond civilian protection and reflected offensive use of force against Libya's sovereignty. Deviation from Mandate: NATO's "Operation Unified Protector" rapidly shifted focus from protecting civilians and enforcing a no-fly zone to facilitating regime change. This included targeting Libyan government infrastructure, arming rebel forces, and disregarding African Union peace efforts. These actions indicated a political agenda inconsistent with Resolution 1973.

⁵⁴ Rubiyanto, Kedudukan Mahkamah Internasional dalam mengadili Perkara Kejahatan Kemanusiaan, *Jurnal Hukum dan Dinamika Masyarakat*, Vol. 15, No. 2, 2018, hal. 186.

⁵⁵ Didi Prasatya, *Op.Cit*, hal. 4.

Humanitarian Deterioration: Despite claims of civilian protection, the intervention caused severe humanitarian harm thousands of civilian deaths, mass displacement, and a worsening refugee crisis. The death of Muammar Qaddafi, despite earlier plans to bring him to the International Criminal Court, symbolizes the collapse of legal and humanitarian commitments. Political Prioritization: The intervention, according to the author, prioritized Western political interests especially Qaddafi's removal over the R2P objective of protecting civilians. Accountability Gap: There remains a significant legal gap for prosecuting NATO's actions. The crime of aggression, as defined in the Kampala Amendments, is not retroactively applicable and has strict jurisdictional limits. No binding legal mechanism exists to hold NATO accountable as an organization, highlighting international law's limitations in addressing abuses by powerful actors.

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