

The Libya intervention (2011): neither lawful, nor successful

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Abstract

The intervention in Libya in 2011 was claimed to have been a triumph in two respects: on the one hand the UN Security Council, by passing resolutions 1970 and 1973, had demonstrated its ability to react to humanitarian crises without any of the five permanent members of the council resorting to a veto. On the other hand the concept of humanitarian intervention in its more recent guise of the “responsibility to protect” was seen by some as having finally gained recognition within the international community as a legal concept.

More than three years after the intervention it will be argued here that such optimistic claims were premature. It will be shown that the way a coalition of NATO and other states implemented resolution 1973 was not in accordance with that resolution and therefore violated international law. As a direct consequence of this, the Security Council has now reverted to its former paralysis, as Russia and China are, understandably, no longer willing to grant NATO states a mandate for action. This has been most evident in respect of the civil war in Syria. Moreover, developments in Libya since the intervention have done more to discredit the concept of the “responsibility to protect” than any criticism from an international law perspective possibly could.

INTRODUCTION

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Almost four years after the intervention it will be argued here that such optimistic claims were premature. It will be shown that the way a coalition of NATO and other states implemented resolution 1973 was not in accordance with that resolution and therefore violated international law. As a direct consequence of this, the Security Council has now reverted to its former paralysis, as Russia and China are, understandably, no longer willing to grant NATO states a mandate for action. This has been most evident in respect of the civil war in Syria. Moreover, developments in Libya since the intervention have done more to discredit the concept of the R2P than any criticism from an international law perspective possibly could have done.

The article will first set out the events in Libya and beyond, leading up to the use of force by a coalition of certain NATO member and other states following resolution 1973. It will then deal with the legality of the resolution's implementation and the intervenors' general adherence to it, before briefly describing the aftermath and consequences of the intervention in Libya. It will be concluded that not only was the way resolution 1973 implemented legally unsound, but also counter-productive in the long run.

It should be noted that this article will not deal with the controversial issue of whether the Security Council itself acted *ultra vires*, and therefore contrary to international law, by passing resolution 1973 in the first place; nor will possible violations of international humanitarian law be discussed.

DEVELOPMENTS IN LIBYA PRIOR TO RESOLUTION 1973

Colonel Muammar Gaddafi came to power in Libya in 1969 following a coup d'état. He proceeded to develop a unique system of government. The country was officially run by People's Congresses and Revolutionary Committees and has been referred to as a 'State of the Masses'.¹ In effect, though, internal dissent was not tolerated and the country was in truth run by Gaddafi and his close associates, often family members.

Following internal unrest and rebellion in other Arab states, a period often

¹ Roberts 'Who said Gaddafi had to go?' *London Review of Books* 17 November 2011; 1–31, 8–9; available at: www.lrb.co.uk/v33/n22/hugh-roberts/who-said-gaddafi-has-to-go.

referred to as the ‘Arab Spring’, demonstrations spread to Libya, the first of which occurred on 15 February 2011, in Benghazi. Subsequently, unrest erupted and demonstrations took place in various locations all over the country. Gaddafi refused to entertain these protests, remained defiant, threatened anti-regime Libyans with punishment, and vowed rather to die in Libya as a martyr than surrender.

Meanwhile anti-government forces managed to take control of various towns in eastern Libya, including Misrata, and the regime suffered its first defections. In late February it was reported that Gaddafi was employing mercenaries from other African states, deploying his air-force in order to quell dissent, and was quite prepared to ‘slaughter’ Libyan civilians in order to save his regime. This prompted the Arab League, the African Union, and the Human Rights Council to condemn the use of force against civilians in Libya. By 21 February, according to Human Rights Watch, 233 people had been killed in Libya.² It must, however, be noted that to this day no compelling evidence for many of the gravest allegations against Gaddafi has been provided (as will be outlined later in greater detail).³

On 26 February, the UN Security Council unanimously passed resolution 1970 which demanded an immediate end to the violence in Libya. The situation was referred to the International Criminal Court, an arms embargo was imposed, and members of the regime’s inner circle were subjected to a travel ban and an asset freeze.

Nevertheless, the crisis in Libya showed no sign of abating. The leadership of the anti-Gaddafi forces, rebranded as the (Interim) National Transitional Council (NTC), declared itself to be the sole legitimate representative of Libya, a move rapidly recognised by France on 10 March. Libya’s membership in the Human Rights Council had been suspended on 1 March. Meanwhile it was reported that Gaddafi forces had bombed Brega and taken back control of Zawiyah. Gaddafi forces were closing in on Benghazi, the

² *Id* at 21; Roberts points out that the death toll during the unrest in Tunisia and in Egypt was much higher without the West feeling compelled to intervene.

³ Kuperman ‘Lessons from Libya: how not to intervene’ *Policy Brief* Belfer Center for Science and International Affairs, Harvard Kennedy School, September 2013, available at:
http://belfercenter.ksg.harvard.edu/publication/23387/lessons_from_libya.html.

main anti-regime stronghold,⁴ which prompted Gaddafi's son to claim that everything would be 'over in 48 hours'.⁵

On 12 March 2011 the Arab League, citing 'the crimes and violations being perpetrated by the Libyan authorities against the Libyan people, in particular the use of military aircrafts, mortars and heavy weaponry against the civilians', asked the Security Council to impose a 'no-fly-zone on Libyan military aviation'.⁶ On 14 March the Office of the High Commissioner for Human Rights expressed its concern 'regarding cases of summary executions, rape, torture and disappearance' in Libya.

Against this backdrop the UN Security Council, on 17 March, passed resolution 1973 by 10:0 votes with five abstentions (Russia, China, Brazil, South Africa and Germany).⁷

IMPLEMENTATION OF RESOLUTION 1973 AND INTERNATIONAL LAW

In resolution 1973, the Security Council, explicitly acting under Chapter VII of the UN Charter, imposed a no-fly zone over Libya⁸ and reconfirmed the arms embargo already put in place by resolution 1970 (op paras 4, 13–16).

Furthermore, in its most controversial decision, the Council 'authorized Member States...to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya'.⁹

On 19/20 March, France, the UK and the USA initiated the use of force. Early military action was targeted at implementing the no-fly zone, but was

⁴ Payandeh 'The United Nations, military intervention, and regime change in Libya' (2012) 52 *Virginia Journal of International Law* 355–403, 376–377.

⁵ 'TIMELINE – Libya's uprising against Muammar Gaddafi' *Reuters.com* 30 March 2011.

⁶ The Outcome of the Council of the League of Arab States Meeting at the Ministerial Level, 12 March 2011, Res. No.: 7360; available at: http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya_19_Outcome_League_of_Arab_States_Meeting.pdf.

⁷ Security Council Approves 'No-Fly Zone' over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions, 17 March 2011, SC/10200, *United Nations Meetings Coverage and Press Releases*, available at: <http://www.un.org/press/en/2011/sc10200.doc.htm>.

⁸ Operative paragraphs 6–12.

⁹ Paragraph 4, UN SC Resolution 1973 (2011).

later supplemented by attacks on Gaddafi's forces throughout the country. By 28 March the military partners had already flown 619 sorties, of which 365 were 'strike sorties', and by the end of March, fourteen NATO states were contributing militarily to the mission, although not all of these states were participating in actual attacks on Libyan forces. NATO states were joined by a few non-members, such as Sweden, Qatar and the UAE. As of 31 March NATO assumed control of all military action intended to implement resolution 1973. The campaign was to continue for several months.

In October 2011, having been acknowledged as the new government of Libya by more than 100 states, the National Transitional Council declared Libya 'liberated'. In the course of the rebels' advance, Gaddafi was killed on 20 October in controversial circumstances.¹⁰ By the end of the military campaign on 31 October, NATO claimed to have flown more than 26 500 sorties, of which 9 700 had been strike sorties, and 5 900 military targets were claimed to have been destroyed.¹¹

The military intervention in Libya by NATO states and others has been controversial from the beginning. Some argue that resolution 1973 itself violated article 2(7) UN Charter and was thus illegal.¹² As already pointed out, this issue will not be discussed here.

Many more have criticised the actual implementation of the resolution as violating the resolution's terms and therefore illegal.¹³ Notably, Russia has repeatedly declared NATO's use of force to have been contrary to interna-

¹⁰ Campbell *Global NATO and the catastrophic failure in Libya* (2013) 75, 117, 171–178.

¹¹ NATO 'Operation Unified Protector, Final Mission Stats' 2 November 2011 available at: http://www.nato.int/nato_static/assets/pdf/pdf_2011_11/20111108_111107-factsheet_up_factsfigures_en.pdf.

¹² Merkel 'Die Militärintervention gegen Gaddafi ist illegitim' *Frankfurter Allgemeine Zeitung* 22 March 2011.

¹³ Booth 'Libya: coalition bombing may be in breach of UN resolution's legal limits' *The Guardian* 28 March 2011; in the article a number of British international lawyers are quoted as expressing severe doubts as to the legality of NATO's continued attacks in/on Libya.

tional law.¹⁴ Even within NATO, some member states, notably Germany¹⁵ and Turkey,¹⁶ seemed to have doubts as to whether NATO coalition states were exceeding the authorisation granted in resolution 1973. Officially, NATO has, however, always maintained that all its actions were in conformity with resolution 1973 and thus authorised by the Security Council.¹⁷

There have been two major allegations of illegality as far as the use of force and NATO's conduct in general are concerned, which will be examined in turn.

- NATO went way beyond protecting civilians and instead took sides in a civil war by actively supporting the anti-government forces.¹⁸ Closely related to this allegation, it is claimed that NATO was actively pursuing a regime-change agenda not authorised by the Security Council, as evidenced by NATO's targeting of Gaddafi and his family.¹⁹
- By ignoring Gaddafi's repeated offers of a ceasefire, NATO violated the terms of resolution 1973 which were intended to protect Libyan civilians.²⁰ This conduct and its reliance on massive aerial bombing led to many civilian deaths, counter-acting the Security Council's intentions.²¹
- NATO members and other states openly violated the arms embargo,

¹⁴ Dejevsky 'Putin attacks Britain and US for "violating Libya resolution"' *The Independent* 12 November, 2011; Vasovic & Tanner 'NATO war in Libya violates UN mandate, Russia says' *Reuters.com* 19 April 2011.

¹⁵ In the *House of Commons Interpretation* of the resolution it is claimed that the German Foreign Secretary, Westerwelle 'is reported to have suggested in a European Council meeting that the attacks by the coalition exceeded the authorisation of the UN resolution'; see: *House of Commons Interpretation of Security Council Resolution 1973 on Libya* 6 April 2011 Standard Note: SN/LA/5916, par 11.2.

¹⁶ The *Daily Mail* reported that 'Turkish Foreign Minister Ahmet Davutoglu suggested that air strikes launched after a meeting in Paris hosted by France on Saturday had gone beyond what had been sanctioned by a U.N. Security Council resolution'; see: 'Who's in charge? Germans pull forces out of NATO as Libyan coalition falls apart' *Daily Mail* 23 March 2011; Campbell n 10 above at 119, 129–130.

¹⁷ NATO Secretary-General Rasmussen repeatedly asserted that NATO operations in Libya were in accordance with Resolution 1973; see, for example: 'Nato rejects Russian claims of Libya Mission Creep' *The Guardian*, 15 April 2011; Davis 'How good is NATO after Libya?' NATO Watch *Briefing Paper* No 20, 8 September 2011 1–6, 2.

¹⁸ Merkel 'Der illegitime Triumph' *Die Zeit* 13 September 2011 1–6 3.

¹⁹ *Id* at 2.

²⁰ *Id* at 2–3.

²¹ Merkel n 18 above at 1; Kucinich 'Libya and beyond: how did we get there and what happens next?' *Huffington Post* 23 August 2011; available at: <http://www.huffingtonpost.com/rep-dennis-kucinich/libya-and-beyond-how-did-b-934101.html>. Dennis Kucinich is a Member of the House of Representatives in the USA.

imposed in resolution 1970 and reconfirmed in resolution 1973.

Did NATO exceed the mandate granted by the Security Council while claiming to implement resolution 1973 and, if so, was this action contrary to international law?

Based on the facts there seems little doubt that NATO and its supporters took sides in the internal Libyan conflict. While the early military action, intended to implement the no-fly zone, could still be viewed as enforcement of a clear directive issued by the Security Council, subsequent actions were clearly not intended to achieve a stalemate, in order to perhaps enable a ceasefire, but were intended to propel the rebels to victory.

Not only were the rebels provided with close air cover when proceeding against Gaddafi forces,²² but there is not one instance when NATO states intervened in order to protect allegedly pro-Gaddafi Libyan civilians, despite it being known that rebel forces, too, committed serious crimes against civilians who were deemed to be supporters of the regime.²³ Not only were such incidents not met with a NATO reaction, but they were hardly ever reported in any detail. Furthermore, leading politicians made it clear that they saw no future for Libya under Gaddafi and that Gaddafi had to go.²⁴ Whether Gaddafi was personally targeted has remained controversial, but the fact that his son and numerous grandchildren were killed in one NATO attack, and the circumstances surrounding Gaddafi's death on 20 October strongly suggest that Gaddafi was a target,²⁵ even if an attempt may have been made to create a situation whereby his death could be claimed to have

²² Ulfstein & Christiansen 'The legality of the NATO bombing in Libya' (2013) 62 *International and Comparative Law Quarterly* 159–171, 169; Campbell n 10 above at 155–161.

²³ Roberts n 1 above at 22 (he mentions the lynching of fifty alleged pro-Gaddafi mercenaries on 19 February 2011); Campbell n 10 above at 163–169; Amnesty International *The battle for Libya, killings, disappearances and torture* (September 2011) 70–78, 80; Kafala "'Cleansed' Libyan town spills its terrible secrets' BBC News, 12 December 2011; available at: <http://www.bbc.co.uk/news/magazine-16051349>.

²⁴ Obama, Cameron & Sarkozy 'Libya's pathway to peace' *International Herald Tribune* 15 April 2011 7.

²⁵ Paech 'Libyen und das Völkerrecht' in Becker & Sommer (eds) 'Der Libyen-Krieg, das Öl und die "Verantwortung zu schützen"' in 26/2 *Schriftenreihe zur Konfliktforschung* ch 3, 61–76, 71; McKinney 'Anatomy of a murder' in Mc Kinney (ed) *The illegal war on Libya* (2012) 51–54; Campbell n 10 above at 132.

been a coincidence.²⁶ Against this backdrop there can be no doubt that the military action undertaken went beyond creating conditions for a ceasefire, and instead was intended actively to support the rebellion against Gaddafi.²⁷

However, it must now be established whether such conduct on the part of the ‘coalition’ actually contravened the terms of resolution 1973 as claimed by Russia and others.

Many acknowledge that NATO actively supported the rebellion against Gaddafi but argue that this was in conformity with resolution 1973. By authorising member states to take all necessary measures to protect civilians and civilian populated areas under threat of attack, the Security Council granted those states implementing the resolution wide discretion as to the means of achieving that goal.²⁸ In order to prevent further human rights violations of the kind allegedly committed by the Gaddafi regime, it was necessary to attack Gaddafi forces in order to halt their advance. Any intervention in such a situation would of necessity automatically benefit anti-regime forces. Furthermore, it is argued, even a regime change agenda on the part of the intervenors was not prohibited by resolution 1973. While it may be difficult to claim that regime change was a *goal* compatible with the resolution, it could nevertheless legitimately be argued that regime change (perhaps even including targeting Gaddafi himself) was a necessary, and therefore legal, *means* by which properly to protect civilians in Libya. Siding with the rebels was, therefore, the argument goes, a necessary step to implement resolution 1973.²⁹

These arguments fail to convince. At the outset it must be conceded that the fact that the Security Council authorised all ‘necessary measures’ to protect civilians and civilian populated areas did not in itself limit implementation to only such actions which could be claimed to be strictly necessary in order to protect civilians.³⁰ It is overwhelmingly agreed that the phrase ‘all necessary measures’ is a euphemism the Security Council has in the past

²⁶ Iyi ‘The duty of an intervention force to protect civilians: a critical analysis of NATO’s intervention in Libya’ (2012) 2 *Conflict Trends* 41–48, 45.

²⁷ *Id* at 48; he accuses NATO of becoming ‘obsessed with regime change’; Ulfstein & Christiansen n 22 above at 169; Davis n 17 above at 1, 2.

²⁸ Payandeh n 4 above at 383–385; Davis n 17 above at 2.

²⁹ Payandeh n 4 above at 386–390; Pippan ‘The 2011 Libyan uprising, foreign military intervention, and international law’ (2011) 2 *Juridikum* 159–169, 167–169; Roberts n 1 above at 15–16.

³⁰ Payandeh n 4 above at 385.

reverted to in order to authorise the use of force by UN member states.³¹

It does, however, not follow, as many argue, that this automatically leads to the conclusion that the states enforcing resolution 1973 had wide discretion as to what means they adopted in pursuing the resolution's goals as long as they could somehow plausibly claim that these means helped protect civilians. This line of argument is sometimes supported by the statement that the intervening states would not have accepted any other interpretation³² – a statement of little relevance when interpreting a resolution adopted by a UN organ and also supported by states that were not part of the 'coalition'.

In order to establish correctly which means states were authorised to adopt in order to implement resolution 1973, it is necessary to interpret the relevant operative paragraph 4 in the context of the resolution's full text and of resolution 1970.

When considering operative paragraph 4, the first limit imposed on states that wanted to implement resolution 1973 was that any action undertaken had to have as its goal the protection of 'civilians or civilian populated areas' that were '*under threat of attack..., including Benghazi*'.³³ Without any doubt this necessitated an actual threat of attack.³⁴ Many have either ignored this specification or again claimed that this phrase allowed wide discretion on the part of the states acting under the resolution and certainly did not demand an impending threat.³⁵

There can, however, be no serious doubt that resolution 1973 did not allow states to proceed on the basis of a theoretical, potential future, or even non-existent threat of an attack against civilians (or civilian populated areas). This becomes evident when the context in which the resolution was adopted is considered. Government forces loyal to Gaddafi, had been closing in on Benghazi, the main opposition stronghold, and it was feared an attack by government forces with potentially devastating effects on the civilian

³¹ Merkel n 18 above at 3–4; Payandeh n 4 above at 384–385; Pippan n 29 n 26 above at 160.

³² Eriksen *Libya: the legality of intervention* (MA dissertation, University of Oslo 2012) 41; Roberts n 1 above at 16.

³³ Brunner & Frau 'Die Maßnahmen des Sicherheitsrates der Vereinten Nationen in Bezug auf Libyen 2011' (2011) *Humanitäres Völkerrecht-Informationsschriften* 192–201, 198; Eriksen n 32 above at 30, 40.

³⁴ Ulfstein & Christiansen n 22 above at 162; Brunner & Frau n 33 above at 199.

³⁵ Eriksen n 32 above at 43–44.

population was imminent³⁶ – a fear augmented by partly incoherent threats made by Gaddafi himself.³⁷ This was the kind of threat the UN Security Council had in mind when resolution 1973 was passed, as evidenced by the specific inclusion of Benghazi.³⁸ This explicit example of a perceived actual and imminent threat in fact serves to bar a generous interpretation of operative paragraph 4 – as adopted by the intervenors – and certainly rules out an interpretation whereby even regime change was covered by operative paragraph 4. The argument that the Gaddafi regime itself, as long as it was in power, constituted such a threat of attack against the civilian population of Libya, conveniently overlooks the fact that, in terms of the resolution, Libya's civilian population was to be protected whether under threat of attack by government *or by rebel forces*.³⁹

The way NATO and other states implemented resolution 1973 was therefore clearly contrary to operative paragraph 4 as illustrated by the following sample of NATO actions: in late March 2011 the Gaddafi stronghold of Surte was bombed; on 21 April 2011 NATO bombed Gaddafi's control centre in Tripoli; on 25 April a 'military building' used by Gaddafi was destroyed; and on 30 April NATO bombed a building in Tripoli killing one of Gaddafi's sons and three of his grandchildren.⁴⁰ All these targets had extremely tenuous links to any actual threat of attack against civilians or civilian populated areas. This was even more the case when a Libyan TV station was bombed on 7 June and three TV transmitters on 30 July.⁴¹ On 22 July NATO bombed the Brega pipe factory which supplied the pipes necessary for the water supply originating from the 'Great Man-Made River'.⁴² Furthermore, British, French and other special forces trained the rebels and provided them with intelligence.⁴³ These measures were in truth unrelated to the protection of civilians or civilian populated areas, but were

³⁶ Iyi n 26 above at 42

³⁷ Ulfstein & Christiansen n 22 above at 164.

³⁸ *Id* at 163.

³⁹ *Id* at 164; Brunner & Frau n 33 above at 199.

⁴⁰ Merkel n 18 above at 4; McKinney n 25 above at 51–54.

⁴¹ 'NATO bombs Libyan TV transmitters' *The Guardian* 30 July 2011; 'NATO Bombs Libya TV station' *AlArabiya* (Video) 7 June 2011; available at: <http://www.youtube.com/watch?v=W8gHihpNf5s>; Merkel n 18 above at 2.

⁴² Metcalfe 'Nato bombs the great man-made River' in McKinney n 25 above at 55–62.

⁴³ Starr 'Foreign forces in Libya helping rebel forces advance' CNN, 24 August 2011; Schmitt & Myers 'Surveillance and coordination with NATO aided rebels' *New York Times* 21 August 2011; Hughes 'Britain's secret war in Libya: British Special Forces uncovered on the ground' *Daily Mirror* 1 June 2011; Ulfstein & Christiansen n 22 above at 168; Campbell n 10 above at 117, 147–148, 156.

undertaken in order to achieve regime change.

Resolution 1973 did, however, clearly not authorise NATO states to take sides in an internal civil war,⁴⁴ irrespective of any actual threat of attack against civilians or civilian populated areas. While it is true that attacks on government forces undertaken to protect civilians would automatically benefit the rebels, the assumption that this therefore also indirectly provided the basis for actively supporting the rebels militarily, is based on the incorrect interpretation of the resolution adopted by the intervenors' 'coalition' which seemed to imply their duty was only towards anti-Gaddafi civilians.

Doubts on whether civilians not supporting the rebels would be protected had already been expressed in an 21 April 2011 interpretation of resolution 1973 provided to the UK House of Commons by the International Affairs and Defence Section:

If the rebel forces were to gain in strength to the point where they could inflict large-scale damage on a government-held town, inflicting collateral damage on the civilian population, it is not clear the coalition would intervene to prevent them.⁴⁵

As already indicated, states implementing resolution 1973 were clearly required also to protect pro-Gaddafi civilians, who, according to some estimates,⁴⁶ amounted to about fifty per cent of the Libyan population, so that any weakening of government forces would have, to some extent, been

⁴⁴ Ulfstein & Christiansen n 22 above at 168–169; Paech n 25 above at 71; Brunner & Frau n 33 above at 199; Campbell n 10 above at 71; as to the situation in Libya amounting to a civil war, see, for example: Campbell n 10 above at 67; Payandeh n 4 above at 372–373, 379.

⁴⁵ House of Commons Interpretation of Security Council Resolution 1973 on Libya, 6 April 2011, Standard Note: SN/LA/5916 par 5.

⁴⁶ Riley-Smith, 'Don't underestimate Libyan support for Gaddafi' *The Week* 15 August 2011; available at: [PERLINK"http://www.theweek.co.uk/politics/3069/don%E2%80%99t-underestimate-libyan-support-gaddafi;"](http://www.theweek.co.uk/politics/3069/don%E2%80%99t-underestimate-libyan-support-gaddafi;) "t" blank" <http://www.theweek.co.uk/politics/3069/don%E2%80%99t-underestimate-libyan-support-gaddafi;> Liz Sly, *Many Libyans appear to back Gaddafi* *Washington Post* 24 March 2011; available at: https://www.washingtonpost.com/world/many-libyans-appear-to-back-gaddafi/2011/03/24/ABHShIRB_story.html; Richard Seymour, "Gaddafi is stronger than ever in Libya" *The Guardian*, 29 July 2011; available at: <http://www.theguardian.com/commentisfree/2011/jul/29/gaddafi-libya-nato>.

counter-balanced by a weakening of rebel forces had NATO and other states taken their UN mission seriously. That there were instances when such anti-rebel action would have been required, is evidenced, among others, by Amnesty International which, after outlining crimes committed by Gaddafi forces,⁴⁷ went on to state:

Opposition fighters and supporters have abducted, arbitrarily detained, tortured and killed former members of the security forces, suspected al-Gaddafi loyalists, captured soldiers and foreign nationals wrongly suspected of being mercenaries fighting on behalf of al-Gaddafi forces. No independent or credible investigations are known to have been carried out by the NTC, nor effective measures taken to hold to account those responsible for these abuses.⁴⁸

Hugh Roberts has therefore commented:

No one supporting the Gaddafi regime counted...they could not be among the civilians to be protected, even if they were civilians as 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 [the date the international community leaped into action].⁴⁹

Furthermore, the preamble to resolution 1973 emphasises the UN Security Council's 'strong commitment' to Libya's 'sovereignty, independence' and 'national unity'. Allowing NATO and other states to decide who should in future govern Libya by deposing the current regime, a regime possibly supported by up to half of the population, obviously seriously undermined Libya's sovereignty and did nothing to promote national unity. Resolution 1973 also clearly envisages negotiations between Gaddafi and the rebels, as spelt out in operative paragraph 2, which undermines the claim that regime change was indirectly authorised as a means of proceeding to implement resolution 1973. It is also notable that the arms embargo imposed in resolution 1970 and confirmed in resolution 1973, was imposed on both sides of the Libyan civil war, strongly indicating that actively supporting the rebels was *not* seen as a sensible or promising way of protecting civilians and civilian populated areas.

⁴⁷ Amnesty International n 23 above at 57–69.

⁴⁸ *Id* at 70–78, 80 (quote at 70).

⁴⁹ Roberts n 1 above at 24 (the explanation in brackets is by the author).

Nor can it be overlooked that operative paragraph 1 ‘demands the immediate establishment of a cease-fire and a complete end to violence...’. The fact the rebels rejected all Gaddafi’s offers of a cease-fire without actually ever establishing whether these offers were made in good faith,⁵⁰ itself amounted to a violation of operative paragraph 1.⁵¹ The fact that many NATO states supported the rebels’ immediate rejections of all offers of a ceasefire,⁵² while at the same time emphasising that they thought regime change was necessary,⁵³ evidences, firstly, that NATO had moved away from protecting civilians to outright support of a party to a civil war⁵⁴ – as a cease fire would have obviously been the most promising way of protecting civilian lives instead of supporting a rebel advance which was bound to lead to many more civilian deaths – and, secondly, that NATO’s actions were not only no longer authorised by UN resolution 1973, but actually in contradiction to it and therefore a violation of article 25 of the UN Charter.⁵⁵

Lastly, the contrary interpretation, which argues that NATO’s regime change agenda and bombing campaign was in accordance with resolution 1973 because it served the goal of protecting civilians, is contradicted by the facts. In late March 2011 the head of the French Air Force, General Jean-Paul Paloméros, declared: ‘The goal in Libya was to protect civilians. That goal has been achieved.’ It was now time to achieve a ‘strategic turning point’.⁵⁶

⁵⁰ For example, on 11 April 2011 South African President Zuma managed to persuade Gaddafi to accept a proposed mediation plan which involved an immediate cease-fire. This was rejected by the rebels because Gaddafi had not been forced to immediately resign; see McGreal *et al* ‘Libyan revolutionary council rejects African Union’s peace initiative’ *The Guardian* 11 April 2011; Ulfstein & Christiansen n 22 above at 165; Paech n 25 above at 71; Roberts n 1 above at 17–18.

⁵¹ Merkel n 18 above at 3; Roberts n 1 above at 17–18.

⁵² NATO Secretary-General Rasmussen, when confronted by the African Union Peace Plan and an imminent ceasefire in Libya, maintained that it was ‘too early for this’ *The Guardian* n 50 above; Ulfstein & Christiansen n 22 above at 165; Paech n 25 above at 71; Chomsky ‘On Libya and the unfolding crises’ Noam Chomsky interviewed by Stephen Shalom and Michael Albert, 30 March 2011, available at: <http://www.chomsky.info/interviews/20110330.htm>, 1–8, 3; Roberts n 1 above at 17–18; Kuperman n 3 above.

⁵³ In supporting the rebels’ rejection of the African Union’s Peace Plan, British Foreign Secretary William Hague argued that first ‘Gaddafi must go’; *The Guardian* n 50 above; see also: Obama, Cameron & Sarkozy n 24 above at 7; Paech n 25 above at 69–70.

⁵⁴ Iyi n 26 above at 44–45; Campbell n 10 above at 116; Kuperman n 3 above.

⁵⁵ Merkel n 18 above at 3.

⁵⁶ ‘Washington plant Waffenlieferungen’ *Frankfurter Allgemeine Zeitung* 30 March 2011, 1–2, 2 (the quotes were provided by the newspaper, the translation into English by the author); see also: Davis n 17 above at 3; he claims the objective of the resolution was achieved ‘within days’ of the passage of Resolution 1973 without a further resolution

Nevertheless, the bombing campaign continued for many months afterwards. The complete disregard NATO showed towards the UN resolution is further underlined by the NATO attacks on the town of Surte. As Karim Fahin and David Kirkpatrick reported in the *New York Times* on 29 March:

His remarks came after American and European bombs battered the coastal town of Surt [sic] – the rebels’ next objective... Left open, as well, was how the allies could justify airstrikes on Colonel Qaddafi’s [sic] forces around Surt if, as seems to be the case, they enjoy widespread support in the city and pose no threat to civilians.⁵⁷

There can, therefore, be no doubt that the ‘coalition’s’ actions during the Libyan civil war were in violation of resolution 1973.

Leaving aside the question of whether UN member states can justify their actions on the basis of general public international law once the UN Security Council is seized of the matter and has passed a resolution authorising a specific course of action, it needs to be pointed out that the intervening states could in any case not rely on any other international law justification to justify their actions.

NATO intervened in a civil war and therefore violated articles 2(7) and 2(4) of the UN Charter. Taking sides in a civil war by actively supporting one side is prohibited under international law.⁵⁸ By supporting regime change, NATO states and others presumed to decide who should govern Libya in future.⁵⁹

This, despite there being no clear evidence of the atrocities alleged to have been committed by Gaddafi ever having been produced.⁶⁰ In early March

authorising further action having been obtained; a similar claim is made by Campbell n 10 above at 116.

⁵⁷ Fahin & Kirkpatrick ‘Rebel advance halted outside Qaddafi’s home town’ *New York Times* 29 March 2011 (online 28 March 2011); Chomsky n 52 above at 3.

⁵⁸ Ulfstein & Christiansen n 22 above at 169; Paech n 25 above at 71; Pippan n 29 above at 161; Brunner & Frau n 33 above at 199; the author has already dealt with the general topic of foreign interventions in civil wars in some detail, see: ‘Afghanistan’s civil war (1979–1989): illegal and failed foreign interventions’ (2011) 31 *Polish Yearbook of International Law* 107–164, 112–126.

⁵⁹ Merkel n 18 above at 1; Kucinich n 21 above; Roberts n 1 above at 24.

⁶⁰ As Iyi points out there are ‘now questions about whether the threshold for intervention was reached...or whether the crackdown by Gaddafi was exaggerated and manipulated to justify resolution 1973’; Iyi n 26 above at 42.

2011 both US Defence Secretary Gates and Admiral Mullen told the US Congress that they ‘had no confirmation of reports of aircraft controlled by Gaddafi firing on citizens.’⁶¹ In November 2011 Hugh Roberts summarised the factual situation as follows:

But in retaking the towns the uprising had briefly wrested from the government’s control, Gaddafi’s forces had committed no massacres at all;... What was decided was to declare Gaddafi guilty in advance of a massacre of defenceless civilians...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.⁶²

As already pointed out, it is also by no means assured that the majority of Libyans wanted Gaddafi to be deposed. It is even more doubtful whether a majority supported the rebels, an organisation consisting of many different groups ranging from extremist Islamists to opportunist members of Gaddafi’s inner circle who managed to jump ship in time. Despite the – on this occasion – extremely biased reporting in the western media, which attempted to portray the conflict as a conflict between the population and the ruler, there is no supporting evidence for this claim:

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 enjoyed a substantial measure of support...⁶³

⁶¹ ‘Q: Do you see any evidence that he actually has fired on his own people from the air? There were reports of it, but do you have independent confirmation? If so, to what extent? Sec Gates: We’ve seen the press reports, but we have no confirmation of that. Adm Mullen: That’s correct. We’ve seen no confirmation whatsoever.’ Available at: <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4777>; Roberts n 1 above at 22–23; Campbell n 10 n 7 above at 67.

⁶² Roberts n 1 above at 19–21 (quote at 19); he also lists a number of media stories (such as that Gaddafi was attacking defenceless citizens with his air force) which turned out to be untrue; see also: Kuperman n 3 above.

⁶³ Roberts n 1 above at 23; Phelan ‘Living through a full-blown media war’ in McKinney n 25 above at 38–50, 38; she, too, mentions the massive pro-Gaddafi demonstrations in Tripoli in July 2011; Vladimir Socor, writing for the Atlantic Council, concludes that ‘The coalition underestimated the resilience of Colonel Muammar Gaddafi’s base of social support in the country’s west.’ See: ‘Under NATO’s flag: an interim assessment of the mission in Libya (part three)’ available at:

Troops fighting for Gaddafi, presumably supporters of the regime, were either ignored, or portrayed as foreign mercenaries – again without any credible evidence being provided.⁶⁴ Geneviève Garrigos, President of Amnesty International, France, who in February 2011 had claimed that Gaddafi was employing mercenaries to fight civilians later recanted and admitted that there was ‘no evidence that Gaddafi employed mercenary forces’.⁶⁵

NATO’s decisive intervention in Libya’s civil war therefore finds no support in international law.⁶⁶ Some have tried to rely on the controversial R2P doctrine. Despite there being scant evidence of the doctrine having become part of customary international law,⁶⁷ R2P would also not offer the justification sought. R2P is meant to end a crisis situation and stop the shedding of blood. It does not justify regime change if there is no clear evidence that such a measure is absolutely necessary in order to achieve that goal. R2P only justifies the minimum action necessary to end a crisis situation, not the implementation of an agenda imposed by foreigners on a country. As repeatedly pointed out, the Libya intervention fails that test.

Others have tried to argue that the intervention was of the ‘pro-democracy’ kind. Leaving aside the fact that there is no rule in customary international law which would allow foreign states to intervene in order to impose ‘democracy’ in another country,⁶⁸ it is and was evident that the vast majority of the rebels were far from being democrats, as also evidenced by the

http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=38295&no_cache=1#.VAyRvxHIqM8.

⁶⁴ Teil ‘Was the case for R2P based on fraud? The universal periodic review of Libya’ in McKinney n 25 above at 140–155, 146–147.

⁶⁵ Interview with Geneviève Garrigos ‘The Gaddafi mercenaries and the division of Africa’ available at:

<http://www.youtube.com/watch?v=opmQIkSvYgY&list=PL4A5200C8E0A38C7C>.

⁶⁶ Kucinich n 21 above; Davis n 17 above at 2; he points out that the ‘offensive interpretation’ of Resolution 1973 by some NATO states, such as the USA, the UK, and France was not shared by other NATO states, such as Germany and Poland. This further undermines the arguments put forward by those advocating the legality of NATO’s actions in Libya if even NATO states were in disagreement over the scope of actions allowed.

⁶⁷ In 2009 the Special Adviser to the UN Secretary General, Edward Luck, claimed that R2P was a ‘political, not legal concept’; available at:

<http://www.un.org/en/preventgenocide/adviser/pdf/EL%20GA%20remarks%202009.pdf>;

see also: Merkel n 18 above at 5; Brunner & Frau n 33 above at 196; Eriksen n 32 above at 15; Boyle *Destroying Libya and world order* (2013) 154–172.

⁶⁸ Merkel n 18 above at 1.

massive support they received from the UAE and Qatar, both notoriously authoritarian states.⁶⁹ It must therefore be concluded that NATO and other states actively supporting the intervention violated resolution 1973 and articles 25, 2(7) and 2(4) of the UN Charter.

Arms embargo

Shortly after resolution 1973 had been adopted by the UN Security Council, France started arming the rebels.⁷⁰ Other states followed suit.⁷¹ In a rather tangled legal argument this was justified as being in conformity with resolution 1973. Because the Security Council had authorised all necessary means to protect civilians and civilian populated areas it was legal to arm the rebels as ensuring their victory was the best way of achieving that goal.⁷²

Such an interpretation can clearly not be reconciled with resolution 1973. As the preamble and many of the operative paragraphs emphasise the main goal of the resolution was to ensure the protection of Libyan civilians. Arming the rebels, with the inevitable deaths resulting from the ensuing fighting thus encouraged, obviously and clearly countermands the resolution's intent. But, what is more, this interpretation goes against the explicit text of the resolution. While resolution 1970 had already imposed an arms embargo on all sides of the Libyan conflict, resolution 1973 explicitly reconfirmed the arms embargo in operative paragraph 4 ('...notwithstanding paragraph 9 of resolution 1970 (2011)'). In the interpretation of resolution 1973 provided to the House of Commons, it is therefore stated that: 'Resolution 1970 imposed an arms embargo on Libya...The second resolution, 1973, did not change the terms of the arms embargo imposed by Resolution 1970 ...'.⁷³

Consequently, it becomes impossible to argue that resolution 1973 in any way authorised delivering arms to the Libyan rebels.⁷⁴ This is also confirmed

⁶⁹ As to the severe doubts within the German government regarding the rebels, see: Rinke 'Eingreifen oder nicht?' (2011) 4 July/August *Internationale Politik* 44–52, esp 46–47. The author claims that the dubious nature of the various rebel groups and leaders was one of the main reasons the German government abstained in the vote on Resolution 1973.

⁷⁰ Fahim 'France says it gave arms to the rebels in Libya' *New York Times* 29 June 2011; Birnbaum 'France sent arms to Libyan rebels' *Washington Post* 29 June 2011.

⁷¹ 'Libya conflict: France air-dropped arms to rebels' BBC News 29 June 2011; the article specifically also mentions Qatar; Davis n 17 above at 2 (UAE and Qatar).

⁷² BBC News n 71 above, referring to the US legal justification for providing weapons.

⁷³ *House of Commons Interpretation of Security Council Resolution 1973 on Libya* 6 April 2011, Standard Note: SN/LA/5916 par 8.

⁷⁴ Paech n 25 above at 72; Brunner & Frau n 33 above at 198; Eriksen n 32 above at 45–46; Chomsky n 52 above at 3–4; Roberts n 1 above at 16.

by a statement made by French Foreign Secretary Juppé, who, in late March 2011, declared that the delivery of arms to the rebels was not provided for in resolutions 1970 and 1973, and that France was in favour of a strict interpretation of these resolutions.⁷⁵

By delivering arms to the Libyan rebels, France and other ‘coalition’ states therefore once again disregarded resolution 1973 and violated article 25 of the UN Charter.⁷⁶ The fact that France and others decided to recognise the NTC as the legitimate government of Libya is irrelevant in this context as such a new government would nonetheless have been subject to the arms embargo imposed by the UN Security Council on the whole country.

AFTERMATH

Following Gaddafi’s death, his sons’ arrests, and the installation of a new government based on the NTC, it did not take long before things were again falling apart in Libya. As was to be expected by any interested or informed observer, the new government, consisting of various opposition groups that were barely on speaking terms, began to collapse. Only a few months after the new rulers had taken over, the UN came to the conclusion that the human rights situation in Libya was now worse than at any time under Gaddafi’s rule.⁷⁷ Militias started taking over government functions in various parts of the country, and fighting erupted in many places. On 12 September 2012 the American Ambassador to Libya was killed in an ambush. By mid-2014, things had become so bad that foreign embassies, including those of the erstwhile intervenors, were transferring their personnel out of the country.⁷⁸ Headlines declaring Libya’s descent into ‘failed state-status’ had begun to appear⁷⁹ and in September 2014 the Libyan central government announced

⁷⁵ *Frankfurter Allgemeine Zeitung* n 56 above at 1–2, 2.

⁷⁶ US Congressman Kucinich has accused NATO of ‘usurping the United Nation’s traditional role ‘by look[ing] the other way’ as the arms embargo was openly violated by UN member states’ Kucinich n 21 above.

⁷⁷ Sengupta ‘Revealed: Libya’s new reign of terror; UN: abuses of human rights rife in new Libya’ *The Independent* 24 November 2011.

⁷⁸ Stephen ‘Britain to close embassy and withdraw staff from Libya’ *The Guardian* 2 August 2014; Soergel ‘International diplomats evacuate Libya as violence escalates’ usnews.com 30 July 2014; Dettmer ‘US diplomats and marines close embassy and flee Libya fighting’ TheDailyBeast.com 27 July 2014.

⁷⁹ Fetouri ‘Libya’s “friends” desert failed state’ Al-Monitor.com 17 June 2014; Gehlen ‘Libyen steht vor dem Zerfall des Staates’ *Stuttgarter Zeitung* 31 July 2014, 6; Markey & El Yaakoubi ‘Libya an armed free-for-all teetering towards failed state’ Irishtimes.com 31 July 2014.

it had lost control even of the capital, including ministry buildings,⁸⁰ this following on from suspected bombing raids against alleged Islamist targets within Libya, carried out by the UAE with Egypt's support.⁸¹ In February 2015, Egypt itself bombed newly-established ISIS positions in Libya after it emerged that the Islamist organisation had murdered 21 Coptic Egyptians there.⁸²

What is more, many argue that the civil war that erupted in Mali, which of course led to another French military intervention, was a direct consequence of the toppling of Gaddafi and the instability this created.⁸³ Instability has meanwhile spread further, threatening at times to engulf neighbouring Niger.⁸⁴

As is by now well-known, the aftermath of the Libyan intervention also produced a lot of evidence of western hypocrisy and of the close relationship that had developed between Western, particularly British, security services and their Libyan counterparts.⁸⁵ It seems that the UK even actively supported cases of rendition of alleged terrorists to Libya, while later claiming that the Gaddafi regime was so unsavoury it had to be deposed. In fact, one of the leading rebels is currently suing the British government for its involvement in his and his wife's rendition.⁸⁶ Western hypocrisy was further demonstrated by the west's complete inaction in the face of the brutal suppression of the Shia majority in Bahrain by that state's authoritarian Sunni govern-

⁸⁰ Laessing & Stonestreet 'Libyan government says has lost control of most Tripoli ministries' *Reuters.com* 1 September 2014; Kirkpatrick 'Libyan militias seize control of capital as chaos rises' *New York Times* 1 September 2014.

⁸¹ Kingsley *et al* 'UAE and Egypt behind bombing raids against Libyan militias, say US officials' *The Guardian* 26 August 2014; Hasni 'Libya in turmoil as US says UAE, Egypt bombed Islamists' *Yahoo News* 26 August 2014.

⁸² Kirkpatrick 'Hitting ISIS, Cairo enters Libya chaos' *International New York Times* 17 February 2015, 1.

⁸³ Douthat 'Libya's unintended consequences' *New York Times* 7 July 2012; Murphy 'Did Libya's revolution topple Mali into crisis?' *Christian Science Monitor* 6 April 2012; Fessy 'Gaddafi's influence in Mali's coup' *BBC News* 22 March 2012; Boyle n 67 above at 179; Campbell n 10 above at 262.

⁸⁴ Leymarie 'The Sahel falls apart' *Le Monde Diplomatique* (English ed April 2012); Boyle n 67 above at 179.

⁸⁵ Campbell n 10 above at 121–122; he also quotes Polish Prime Minister Tusk as suggesting that the way Gaddafi had been treated in the past by Europe, laid European states open to charges of hypocrisy.

⁸⁶ Norton-Taylor 'Government pays Libyan dissident's family [GBP] 2.2m over MI6-aided rendition' *The Guardian* 13 December 2012; and 'Libyan dissident appeals to UK judges over MI6 rendition' *The Guardian* 21 July 2014.

ment, aided by Saudi Arabian troops, in 2011.⁸⁷

CONCLUSION

Far from being a triumph for the UN and/or the R2P doctrine, the Libya intervention has been nothing short of a disaster.

I have shown that some NATO and other states disregarded resolution 1973 and therefore violated articles 25, 2(4) and 2(7) of the UN Charter by actively intervening in the Libyan civil war and supporting the rebels in order to pursue their own agenda. The episode has therefore been an embarrassment for the UN Security Council,⁸⁸ and has led Russia⁸⁹ and China⁹⁰ to block any attempts by western powers to seek authorisation to intervene in Syria⁹¹ – a reaction one may or may not regret, but which is certainly understandable, given the west's past record of blatant disregard of international law and Security Council resolutions.

The R2P doctrine has been discredited.⁹² The way the intervention in Libya was conducted clearly illustrates the dangers associated with the concept. It is prone to be exploited by powerful states following their own agendas at variance with the noble goal of ending human suffering.⁹³ Nothing makes this more obvious than the disregard shown towards the suffering of pro-Gaddafi civilians and the repeated rejection of cease fire offers on the part

⁸⁷ Bronner & Slackman 'Saudi troops enter Bahrain to help put down unrest' *New York Times* 14 March 2011; Hammond 'Bahrain used "excessive force" in crackdown: inquiry' Reuters.com 23 November 2011; Bandow 'US hypocrisy on parade: Washington arms Bahrain, denounces Russia for arming Syria' *Forbes* 18 June 2012; Watt 'Anger as Cameron invites Bahrain crown prince to No 10' *The Guardian* 20 May 2011; Paech n 25 above at 67; Boyle n 67 above at 178; Campbell n 10 above at 71.

⁸⁸ Merkel n 18 above at 5–6. Iyi n 26 above at 47; he points out that, given the Libya experience 'future UNSC resolutions authorising interventions in Africa will find it more difficult to attract support from African States'; Davis n 17 above at 3; he claims the 'criticism from China, Russia, India and others, makes it less likely that a similar R2P intervention would gain international backing'.

⁸⁹ Charbonneau 'Russia UN veto on Syria aimed at crushing West's crusade' Reuters.com 8 February 2012; Lutka & Sudakov 'Russia made big mistake, supporting UN Security Council Resolution on Libya' Pravda.ru 17 December 2013; Krever 'Why won't the UN Security Council intervene in Syria?' CNN.com 14 January 2012, 1–4.

⁹⁰ Yun Sun 'Syria: what China has learned from its Libya experience' (2012) 152 *Asia Pacific Bulletin*.

⁹¹ Ulfstein & Christiansen n 22 above at 170.

⁹² Merkel n 18 above at 2; Ulfstein & Christiansen n 22 above at 169–171; Davis n 17 above at 5; Roberts n 1 above at 23; Teil n 64 above at 148–150; Kuperman n 3 above.

⁹³ Merkel n 18 above at 5–6; Iyi n 26 above at 47–48; Chomsky n 52 above at 7–8; Roberts n 1 above at 2, 18–19; Boyle n 67 above at 188.

of Gaddafi's regime during the Libya intervention. By some estimates, the intervention – which was meant to protect civilians – led directly or indirectly to some 50 000 deaths.⁹⁴ US Congressman Kucinich has therefore accused NATO of 'recklessly bomb[ing] civilians in the name of saving civilians'.⁹⁵

Furthermore, R2P has always failed to answer one question: what happens next? It may sound very tempting to intervene in a country in order to end human suffering, but the advocates of the doctrine have failed to come up with a concept of how to deal with post-conflict societies. Libya is a prime example of the difficulties involved, with many arguing that the situation of most ordinary Libyans is now much worse than at any time under Gaddafi's rule. The only alternative would seem to be that intervening states and /or the UN engage in post-conflict nation-building. Unfortunately, there is very little evidence that states are interested in making the effort, or investing the money and time necessary, so that the 'do-good' approach inherent to the R2P concept may, in reality, actually end up making a bad situation worse.

⁹⁴ Merkel n 18 above at 1 (50000); Boyle n 67 above at 181 (50000); Paech n 25 above at 73; Iyi n 26 above at 44–45; Davis n 17 above at 3–4; Roberts n 1 above at 23; Phelan n 63 above at 46; Campbell n 10 above at 142–143, 182–183; Kuperman n 3 above; Milne 'If the Libyan War was about saving lives it was a catastrophic failure' *The Guardian* 26 October 2011; Amnesty International 'Libya: the forgotten victims of NATO airstrikes' available at: <http://www.amnesty.org/en/library/asset/MDE19/003/2012/en/90392486-2b90-4237-a0b8-a83ca41c3bf5/mde190032012en.html>. Amnesty claims that 'scores' of civilians were killed by NATO airstrikes, found evidence of unjustified attacks, and laments NATO's refusal to investigate or even acknowledge the civilian deaths caused by its air campaign; as does Human Rights Watch, see: 'Unacknowledged Deaths, Civilian Casualties in NATO's Air Campaign in Libya' available at: <http://www.hrw.org/reports/2012/05/13/unacknowledged-deaths>.

⁹⁵ Kucinich n 21 above.