United Nations Security Council Resolution 1973 (2011): Libya in the Dock

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ABSTRACT[1]

This paper examines Libya's most recent (and ongoing) uprising—following the largely peaceful popular overthrows of the repressive governments in neighboring Tunisia and Egypt (and complemented by the more violent and still unresolved confrontations in Bahrain, Yemen, Syria, and in sub-Saharan Africa from Uganda to Swaziland as well) in the first months of 2011. Quickly as that uprising spread, however, from Benghazi in the eastern part of the country to al-Zawiya in the west, Libya's notorious leader marshaled his superior, if largely outdated, military resources, even against the multiple defections from within his own ranks, to brutally quell the opposition forces. This context serves for an exploration of how the "international community" and its institutions, especially at the United Nations, respond to similar events, and what these responses mean for the multiple narratives about human rights, their potential and pitfalls, their bright and dark consequences. By exploring some of the multiple narratives about events in Libya, this paper offers some elements to unweave the narratives of human rights discourses. Written in late spring/early summer 2011, our discussion, from our respective disciplinary and critical perspectives, offers some of the historical background and legal and political conundrums to the current developments in the Libyan situation – and the continuing questions that arise as Libya makes its way in post-Qaddafi circumstances.

KEYWORDS: Libya; human rights discourses; dark sides; United Nations

RESUMEN

Este ensayo examina la revuelta mas reciente (y actual) en Libia—después de los derrocamientos pacíficos de los gobiernos represivos en los países cercanos de Túnez y Egipto (y apoyaron por los confrontaciones violentes y todavía sin resolver en Bahrein, Yemen, Siria y en el África subsahariana desde Uganda a Suazilandia así) en los primeros meses de 2011. Como la revuelta se extendió, desde Benghazi en el este del país a al-Zawiya en el oeste, el líder de mala reputación reunió a los recursos militares superiores, si anticuados, y incluso en contra de las deserciones múltiples en sus propias filas, para sofocar brutalmente las fuerzas de oposición. Este contexto sirve para explorar como la "comunidad internacional" y sus instituciones, especialmente las Naciones Unidas, responden a eventos similares y muestran las narrativas múltiplas sobre derechos humanos, sus potenciales y escollos, sus consecuencias brillantes y oscuros. Escrito a final de primavera/principio de verano de 2011, nuestra discusión, desde nuestros respectivos puntos de vista disciplinarios y críticos, ofrece algunos de los antecedentes históricos y enigmas jurídica y política a la evolución de la situación en Libia – y las preguntas que se presentan como Libia hace su forma en las circunstancias post-Gadafi.

PALABRAS CLAVE: Libia; discurso de los derechos humanos; lados oscuros; Naciones Unidas

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1. INTRODUCTION: WHY LIBYA? WHY NOW?[1]

Libya's most recent (and ongoing) uprising—following the largely peaceful popular overthrows of the repressive governments in neighboring Tunisia and Egypt (and complemented by the more violent and still unresolved confrontations in Bahrain, Yemen, Syria, and in sub-Saharan Africa from Uganda to Swaziland as well) in the first months of 2011—is said to have to begun on February 15, when "fourteen black-robed lawyers demanded the release of Fathi Turbil, a fellow lawyer hauled in for questioning by Abdullah Sanussi, Qaddafi's intelligence chief and brother-in-law."[2] Two days later, on February 17, the judicial insurgency on behalf of Terbil[3] (who has been representing families of the victims of the infamous 1996 Abu Salim prison massacre and is now a member of the oppositional Transitional National Council) became a massive popular uprising against the more than 40-year dictatorship of Colonel Muammar Qaddafi. Quickly as that uprising spread, however, from Benghazi in the eastern part of the country to al-Zawiya in the west, Libya's notorious leader marshaled his superior, if largely outdated, military resources, even against the multiple defections from within his own ranks, to brutally quell the opposition forces. How would the "international community" and its institutions, both at the United Nations and regionally, respond?

In its statement of February 25, 2011, just over a week following the Libyan uprising, the UN Human Rights Council (of which Libya was at the time a member), "expressing deep concern at the deaths of hundreds of civilians and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government," decided at least to "remain seized of the matter" (A/HRC/S-15/2). Four days later, however, on March 1, the UN General Assembly, in an "unprecedented move," according to its press release, voted to suspend Libya's membership in the Human Rights Council (GA/11050). Meanwhile, just a day after the HRC's expression of "concern," on February 26, the UN Security Council unanimously adopted Resolution 1970 (2011), according to which the signatories decided to "refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court" (S/RES/1970 [2011]). At the same time, the UNSC also imposed an arms embargo, a travel ban, and an asset freeze on designated Libyan officials.[4]

Should Libya's membership in the Human Rights Council (HRC) have been suspended? Should its leadership have been referred to the International Criminal Court (ICC) for investigation and eventual indictment? According to Human Rights Watch (HRW) in its December 2009 report, "over the past decade Libya dramatically transformed its international status from a pariah state under UN, EU and US sanctions to a country that, in 2009 alone, held the Presidency of the UN Security Council, the chair of the African Union and the Presidency of the UN General Assembly."[5] HRW's country summary on Libya from its 2010 *World Report* (January 2011)

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[1] The original cut-off date for gathering data for this paper was June 1st, 2011. As this is an ongoing crisis, there will have been developments that complement or alter our narrative by the time of publication. We have, however, attempted to account for major events that happened between June 1st and publication.

[2] Nicholas Pelham. "The Battle for Libya," New York Review of Books, April 7, 2011. Available at http://www.nybooks.com/archives/2011/apr/07/battle-libya.

[3] Transliterations of Arabic names vary widely, and our usage will attempt to be consistent within our text, while maintaining the spelling in citations. This variation is especially apparent in the name of the main "protagonist," Mu'ammar al-Qaddafi, who we refer to as Muammar Qaddafi.

[4] Id.

[5] Human Rights Watch. *Truth and Justice Can't Wait: Human Rights Developments in Libya Amid Institutional Obstacles.* December 2009. Available at: http://www.hrw.org.

noted, however, that "government control and repression of civil society remain the norm in Libya, with little progress made on promised human rights reforms." Moreover, in his introduction to that same Report on the "misuse of dialogue and cooperation with rights abusers," HRW director Kenneth Roth berated those advocates for human rights who "profess a preference for softer approaches such as private 'dialogue' and 'cooperation'"[6]; such approaches, however, were subsequently foreclosed by Libya's suspension from the HRC and its investigation by the ICC. And indeed, observers have argued that just such an investigation could well be a reason why an indicted leader might not to relinquish power, an argument that has been variously debated by international human rights advocates, regional organizations including the African Union, the Arab League, and the European Union, as well as by critics-at-large of this latest imposition of UN sanctions on the Libyan state and its historically mercurial leader. As UCLA professor David Kaye has put it, "Prosecuting international crimes in countries where conflict is ongoing, or against sitting heads of state, is delicate work: it challenges not only accepted notions of state sovereignty but also the traditional territorial boundaries of criminal investigations."[7]

Libya's suspension from the Human Rights Council, then, together with its pending investigation by the International Criminal Court, raises critical questions for the efficacy of international human rights regimens and the desirability of the enforcement—whether institutional and/or military—of international humanitarian law. Should, that is, Libya have been suspended from the UN HRC? And should Libya be investigated for war crimes and crimes against humanity by the ICC? And what about the "no-fly zone"?

Complicating yet further, that is, these questions emanating from the serial UN resolutions and statements (the Human Rights Council, the General Assembly, and the Security Council) in early spring 2011 regarding Libya's continued status in the world body, is the UN Security Council Resolution 1973 of March 17, 2011, authorizing "all necessary measures" to protect civilians in Libya (S/RES/1973 [2011]), measures which included the implementation of a "no-fly zone," the "enforcement of the arms embargo," a "ban on flights," and an "asset freeze," but nonetheless explicitly prohibiting any "foreign occupation force of any form on any part of the Libyan territory." After more than two months of the enforcement of the "no-fly zone" through sorties flown daily by NATO (especially France and the UK) and the US, with limited support from other EU countries and Qatar and the United Arab Emirates from the Arab League, the Libyan leader remained implacably entrenched in the nation's capitol city of Tripoli, displaying a characteristic obduracy that endures despite even the bombing deaths of a son and three of his grandchildren, the defections of numbers of his military and ministerial colleagues along with the rank and file, and international pressure—including two visits of African leaders in early April and again in late May urging a cease-fire—to end, somehow, anyhow, the relentless confrontation.

With its recent history as alternatively a pariah/rogue state (especially in the 1980s and early 1990s until at least the resolution of the Lockerbie bombing) and as an important ally (vis-à-vis the Arab world in support of Palestine, in consort with other African nations, as a buffer between

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[6] Kenneth Roth. "A Façade of Action: The Misuse of Dialogue and Cooperation with Rights Abusers," Introduction to Human Rights Watch. World Report, January 2011. Available at: http://www.hrw.org.
[7] David Kaye. "Who's Afraid of the International Criminal Court," *Foreign Affairs* 90, 3 (2011): 118-129.

African/Arab/Asian migration flows and Europe, and even as a professedly unreliable partner in the "war on terror"), and situated as it is on the southern littoral of the Mediterranean, the northern shore of the African continent, and part of the Arab world, Libya's geographical disposition has significant ramifications, as the following sections propose to elaborate, for contemporary geo-political relations and international humanitarian commitments and engagements alike: Sections Two and Three look specifically at Libya's standing at the United Nations and with particular focus on its human rights record; Section Four, "Where in the world is Libya? (1)", reviews the consequences of the Libyan uprising for the multiple populations and peoples who have been affected by the inter/national conflict, from migrant workers to asylum seekers, and including alleged mercenaries recruited in neighboring African states by Qaddafi to prosecute his suppression of the resistance. Section Five, "Where in the world is Libya? (2)," turns more specifically to a contextualization of Qaddafi's relations to the Arab League on the one hand and the African Union on the other, with special reference to the implications of the investigation undertaken by the International Criminal Court into charges of "war crimes" and "crimes against humanity." Finally, by way of an epilogue, we hope to raise questions that will provoke further engagement with a critical, indeed crucial, challenge to received and perceived understandings of contemporary human rights, the cross-currents (if not cross-purposes) of humanitarian responsibilities, and world historical undertakings in sensitive, if not altogether volatile, geo-political environments.

2. LIBYA'S TRACK RECORD AT THE UN AND IN HUMAN RIGHTS MONITORING
Libya's human rights record is usually thought of as that of a pariah state, unmindful of its international human rights obligations, and rejecting any sort of international scrutiny into its internal affairs. However, in the past 10 years or so, while many international human rights observers have consistently shown concern towards Libya and the human rights situation in the country, some of them had been gradually "warming up" to Libya and were willing to recognize progress in the human rights record of the country.

This section will selectively look at reports on the human rights situation in Libya issued in four different venues: (1) the United Nations (UN) Commission on Human Rights (UNCHR) and Human Rights Council (HRC); (2) Amnesty International;[8] (3) Human Rights Watch;[9] and (4) the United States' State Department annual Country Reports on Human Rights Practices.[10] These four fora have been chosen because of their high profile and consistency in scrutinizing Libya over the past decade.

The U.S. State Department's Country Reports on Human Rights Practices have generally qualified Libya's human rights record as "poor." They have taken note of improvements in several years, but, for the most part, the improvements referred to were tokenistic, isolated actions, as opposed to pervasive reforms. The 1999 U.S. State Department Report, for instance, took note of the lifting of UN sanctions after the surrender of the accused of the Lockerbie terrorist bombing over Scotland.[11] The 2006 Report referenced a single positive step towards

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[8] Available at http://www.amnesty.org/en/region/libya/
[9] Available at http://www.hrw.org/en/publications/reports?filter0=**ALL**&filter1=232
[10] Available at http://www.state.gov/g/drl/rls/hrrpt/
[11] U.S. State Department, Bureau of Democracy, Human Rights, and Labor, **Country Reports on Human Rights Practices 1999 – Libya**, available at http://www.state.gov/g/drl/rls/hrrpt/1999/421.htm. The same information appears in the 2000 and 2001 reports.

improvement of Libya's human rights record, noting that "[t]he government took a positive step during the year. On March 2, the government released 132 political prisoners, including 86 members of the Muslim Brotherhood held since 1988 and journalist Abd Al-Raziq Al-Mansuri."[12] And the 2007 Report mentioned the release of the five Bulgarian nurses and the Palestinian doctor awaiting execution in Libyan prisons for allegedly intentionally infecting over 400 children with HIV.[13] However, the release happened amidst intense diplomatic pressure from the European Union and can hardly be considered to count in Libya's favor, although the Report looks at it in this pro-Libya way. The only broader positive note regarding Libya came in the 2005 U.S. State Department's Report, which said that "[t]he government's performance remained poor, although it took some steps to improve its human rights record."[14] Surprisingly, the U.S. State Department seems to have taken a tougher stance through these reports than highly reputable NGOs such as Human Rights Watch.

Human Rights Watch's World Reports in 2006 (the first year that Libya was included during the time period covered by our research) and in 2007 both say that "[h]uman rights conditions in Libya improved slightly … as the country continued its slow international reintegration" into the international community.[15] This language strongly suggests an attempt at redeeming Libya from its status as a "rogue state". But the organization soon began losing its patience, and the 2008, 2009 and 2010 Reports argue that "Libya's international reintegration accelerated … despite the government's ongoing human rights violations."[16] The 2011 Report, referring to 2010 events, took a still stronger stance, criticizing the government for the little progress made thus far on promised reforms to enhance human rights protection in the country.[17]

Amnesty International was overall the least seduced of the organizations represented here. The Amnesty International 2009 Report on Libya observed, for example, that "Libya's human rights record and continuing violations cast a shadow over its improved international diplomatic standing."[18] The U.S. State Department, which would appear at first sight to be prone to paying lip service to Libya for the sake of counter-terrorism cooperation, did not seem that optimistic, either. The reasons for Human Rights Watch's apparent optimism towards Libya are unclear, but its reference to the country's "reintegration" process might be hinting at the idea that by bringing a rogue state into the folds of the international community it might be possible to exert positive pressure to induce real change in the country.

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[12] U.S. State Department, Bureau of Democracy, Human Rights, and Labor, **Country Reports on Human Rights Practices 2006 – Libya**, available at http://www.state.gov/g/drl/rls/hrrpt/2006/78858.htm

[13] U.S. State Department, Bureau of Democracy, Human Rights, and Labor, **Country Reports on Human Rights Practices 2007 – Libya**, available at http://www.state.gov/g/drl/rls/hrrpt/2007/100601.htm

[14] U.S. State Department, Bureau of Democracy, Human Rights, and Labor, **Country Reports on Human Rights Practices 2005 – Libya**, available at http://www.state.gov/g/drl/rls/hrrpt/2005/61694.htm.

[15] Human Rights Watch, World Report 2006 – Libya, available at http://www.hrw.org/legacy/english/docs/2006/01/18/libya12227.htm; and Human Rights Watch, World Report 2007 – Libya, available at http://www.hrw.org/legacy/englishwr2k7/docs/2007/01/11/libya14712.htm.

[16] Human Rights Watch, World Report 2008 – Libya, available at http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/libya17612.htm; Human Rights Watch, World Report 2009 – Libya, available at http://www.hrw.org/en/node/79302; and Human Rights Watch, World Report 2010 – Libya, available at http://www.hrw.org/en/node/87729.

[17] Human Rights Watch, World Report 2011 – Libya, available at http://www.hrw.org/en/world-report-2011/libya.

[18] Amnesty International, Human Rights in Socialist People's Libyan Arab Jamahiriya – 2009 Report, available at http://www.amnesty.org/en/region/libya/report-2009

The UN track record of scrutinizing Libya went from a long period of omission to a quick shift from praise to ostracism. Before the now defunct UN Commission on Human Rights, between 1999 and 2005 (the year when the UNCHR was replaced by the HRC), there were no resolutions on the situation of human rights in Libya. This is an example of an endemic problem within the UNCHR, which is that states could block debates about their own human rights records by being successively elected for membership (or having one's "friends" elected), and thus use political maneuvering with other states wishing to avoid scrutiny to keep their records off the Commission's agenda. Libya was a member of the UNCHR four times: 1976-78, 1983-85, 1992-94, and 2001-03. During the latter period, which falls under the scope of our analysis, it was not once scrutinized by the UN human rights body.

In order to address the myriad of criticisms that jeopardized the legitimacy of the UNCHR, a new human rights body was created to replace it; and in 2005, the UN Human Rights Council came into being. One of the big innovations it brought was the Universal Periodical Review (UPR) mechanism.[19] The UPR submits all UN Member States, but in particular the HRC's 47 members, to close scrutiny of their human rights status, as a means of improving international human rights standards in these countries. The UPR works uses states to judge their peers, submit comments to the initial report, and ultimately decide whether a state complies with international human rights law at the UN level.

In late 2010, Libya was submitted to the UPR mechanism.[20] Somewhat surprisingly, the report goes to a certain length to praise the Libyan Arab Jamahiriya in its efforts to improve the situation of human rights in the country. For instance, "Qatar praised the legal framework for the protection of human rights and freedoms."[21] Syria, Pakistan and North Korea adopted similar language of "praising" the Libyan Arab Jamahiriya. Palestine, Saudi Arabia, Cuba, Oman, Egypt, Malaysia and Iraq "in turn commended" Libya.

"Western" countries, on the other hand, adopted a more critical stance. For instance, "Australia welcomed the Libyan Arab Jamahiriya's progress in human rights and its willingness to facilitate visits by Human Rights Watch and Amnesty International, which demonstrated the country's commitment to engaging with the international community on human rights," but it showed concern towards several of Libya's policies.[22] It is noteworthy that Australia adopted a language similar to Human Rights Watch's idea of including Libya in the "international community." The United States' comments adopted similar terminology.

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[19] Described in further detail in the Resolution that creates the HRC. See United Nations General Assembly, **Human Rights Council**, UN Doc. A/RES/60/251, 3 April 2006. The relevant provision of the resolution (Para. 5(c)) is the following: "Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session".

[20] United Nations Human Rights Council, **Report of the Working Group on the Universal Periodic Review – Libyan Arab Jamahiriya**, UN Doc. A/HRC/16/15, 4 January 2011.

[21] Id., at para. 30.

[22] Id., at para. 63.

But all this praise could in fact be a reproduction of the same problem that the UNCHR had previously faced, of "bad" states forming coalitions of sorts in order to limit any actual scrutiny. The big difference is that formal scrutiny is now unavoidable; hence, given that states cannot prevent scrutiny altogether, they can at least attempt to make the reporting process go smoothly for one another and trade compliments and positive comments among their peers. That is to say, the positive outlook on human rights in Libya by the UN is not necessarily representative of an improvement of human rights in the country but rather may just be a reflection of the political cover-up mechanism that had been perfected within the UNCHR and was adapted to circumvent the stricter requirements of the HRC.

Overall, it seems that the lead-up to the international response to the February 2011 events in Libya consisted of mostly condemnations, but there were hints of hope here and there, even if these came largely from within the UN machinery, which had already been criticized for the way in which certain states could play it so as to render it toothless and ineffectual. Despite efforts in denouncing Libya's human rights record, and in trying to bring that country into a better standing, one in which it would be more prone to accept external pressure, it was only the drastic actions of the United Nations Security Council that created avenues for actually enforcing international human rights in the Jamahiriya.

3. UN DECISIONS (MARCH 2011)
And then comes 2011, when, for the first time since it was created, the UN Human Rights Council actually expelled a member state, making use of a provision in the resolution that created the body.[23] In Resolution S-15/1, the Human Rights Council decided that the repression of civilians in Libya warranted its expulsion from the human rights body,[24] for which one of the conditions of membership is a demonstrable commitment to the protection of human rights.[25] But this was only the first in a chain of UN resolutions condemning Libya. And while it is important for setting up what came next, this UN resolution was not the one with the most serious consequences.

The two most important resolutions for the current crisis in Libya came from the United Nations Security Council (UNSC). The UNSC, acting under Chapter VII of the UN Charter, passed resolution 1970 (2011), which "[d]eplor[ed] the gross and systematic violation of human rights, including the repression of peaceful demonstrators, express[ed] deep concern at the deaths of civilians, and reject[ed] unequivocally the incitement to hostility and violence against the civilian

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[23] See United Nations General Assembly, **Human Rights Council**, UN Doc. A/RES/60/251, 3 April 2006, para. 8: "8. Decides that the membership in the Council shall be open to all States Members of the United Nations; when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto; the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights".

[24] United Nations Human Rights Council, **Resolution on the Situation of Human Rights in the Libyan Arab Jamahiriya**, UN Doc. A/HRC/RES/S-15/1, 3 March 2011, para. : *Recommends* that the General Assembly, in view of the gross and systematic violations of human rights by the Libyan authorities, consider the application of the measures foreseen in paragraph 8 of General Assembly resolution 60/251".

[25] See United Nations General Assembly, **Human Rights Council**, UN Doc. A/RES/60/251, 3 April 2006, para. 9: "9. Decides also that members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership".

population made from the highest level of the Libyan government."[26] It also "[c]onsider[ed] that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity."[27]

More importantly, the resolution "[r]ecall[ed] the Libyan authorities' responsibility to protect its population."[28] The "responsibility to protect", or R2P, is code for "humanitarian intervention", but in this resolution it was used to mean the responsibility of Libya, and not of the international community. The human rights language / imperative is still an essential part of resolution 1970 (and also of resolution 1973, below), but it is framed in more conciliatory terms, including references to the respect for Libya's territorial integrity and sovereignty,[29] which can be read to mean both a lesser human rights-based antagonizing and also a guarantee that the rebels will not be allowed to initiate a secessionist movement.

The resolution also referred the situation in Libya to the International Criminal Court, using its powers under Article 16 of the Rome Statute.[30] The UNSC's allegations that crimes against humanity may have been taking place in Libya not only justifies the referral to the ICC, but may also mean a legal finding of sorts. It is unclear, however, whether and to what extent this type of finding in UNSC resolutions will affect the ICC's assessment of crimes under its jurisdiction, given that the other situation referred to the ICC by the UNSC, Darfur, is still pending before the Court.

The resolution additionally imposed an arms embargo, travel ban and freezing of assets and created a sanctions committee to oversee these targeted sanctions. But these measures were not enough, as the situation on the ground continued to deteriorate. Thus, the UNSC adopted resolution 1973 (2011), also under Chapter VII, which indicated that states should undertake "all necessary measures" to protect civilians in the Libyan Arab Jamahiriya, but excluding a foreign occupation force.[31] The resolution also implemented a no-fly zone and strengthened the sanctions imposed by resolution 1970. It repeated Resolution 1970's language on crimes against humanity.

One significant question that arose once NATO airstrikes began was just what adopting "all necessary measures" to protect the civilian population actually entails. Is it an authorization for promoting regime change in the Jamahiriya or simply an attempt to bring things to a point where the parties to the conflict could negotiate a peaceful solution to the crisis? The latter seems to be the position adopted by the African Union (see below). But the former position has been advocated by some commentators, who argue that the resolution was not only about stopping and preventing international crimes but also about restoring peace, and that the restoration of peace required a change in regime and the ousting of Qaddafi.[32]

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[26] United Nations Security Council, **Resolution on the Peace and Security in Africa**, UN Doc. S/RES/1970 (2011), preamble.
[27] *Ibid*.
[28] *Ibid*.
[29] *Ibid*.
[30] *Id*., at para. 4.
[31] United Nations Security Council, **Resolution on the Situation in Libya**, UN Doc. S/RES/1973 (2011), para. 4.
[32] See Dapo Akande, *What does Security Council Resolution 1973 permit?*, **EJIL: Talk!**, March 23, 2011, available at http://www.ejiltalk.org/what-does-un-security-council-resolution-1973-permit/

Looking only at the text of the relevant UN documents, however, does little more than scratch the surface. The following sections try to bring back to light many narratives that seem to have been foreshadowed—and even overshadowed—by the immediate crisis in Libya, but that nevertheless have all contributed to and still fuel that crisis, while in turn being themselves reshaped by it.

4. WHERE IN THE WORLD IS LIBYA? (1): MIGRANTS, MERCENARIES, EVACUEES

From the start of the current conflict, the situation of foreign nationals in Libya has been among the various issues that have attracted the attention of observers. As fighting between anti-government protesters and Qaddafi supporters intensified during the first weeks of the conflict, several organizations released reports of violence "being specifically targeted towards the large groups of foreigners in the country, including refugees and asylum-seekers."[33] The spread of this violence and Qaddafi's threat of a fierce crackdown on protesters not only forced foreign nationals to use all the means at their disposal to flee the country but also led governments from a wide range of countries to engage in a scramble to evacuate their citizens. By mid-March 2011, about a quarter of a million foreigners were reported to have fled Libya and some 6,000 people were still crossing the Tunisian and Egyptian borders each day.[34] As of 26 May 2011, it is reported that 873,726 migrants had fled to Tunisia, Egypt, Niger, Algeria, Chad and Sudan.[35]

Before moving further in our understanding of the consequences of the Libyan uprising for the different groups of foreign nationals, let us examine first the various causes of the high number of foreigners in Libya. Throughout its modern history, Libya has had to import significant numbers of foreign workers, mainly as a result of its small population and work force. Since oil was discovered in Libya in 1959, thousands of expatriate workers—the majority from Arab countries—flocked to the country seeking employment. Helen C. Metz reports that, in 1964, there were 17,000 foreigners in Libya; in 1971, their number rose to 64,000, reaching 223,000 in 1975 and 280,000 in 1980. In 1983, Metz adds, more than 560,000 foreigners resided in Libya, about 18 percent of the total population. Among them, Egyptians formed the largest group with 174,000 individuals, followed by Tunisians (73,600). Italians formed the largest Western group with 14,900 individuals, followed by British (10,700). Metz notes that, "during 1984, however, a large portion of the foreign work force departed as a result of restrictions on repatriation of earnings. In 1985, for reasons that appeared more political than economic, Libya expelled tens of thousands of workers, including 20,000 Egyptians, 32,000 Tunisians, and several thousand from Mali and Niger. This exodus continued the following year when some 25,000 Moroccans were forced to depart."[36]

Oil, however, has not been the only factor to account for Libya's large inflow of foreign workers. Libya's reorganization of its social, health, and education system in the 1980s also called for significant imports of foreign workers. Regarding this demand, Otman and Karlberg note that,

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[33] UN High Commissioner for Refugees. *Protection Considerations with regard to People Fleeing from Libya - UNHCR's Recommendations (as at 29 March 2011) Update No. 1*, 29 March 2011, available at: http://www.unhcr.org/refworld/docid/4d959bf62.html [accessed 12 April 2011]
[34] International Organization for Migration. *IOM Evacuation of Foreigners Fleeing Libya Passes 21,000, Agency Appeals for International Funding*. March 2011. Available at http://www.iom.int
[35] International Organization for Migration. IOM Response to the Libyan Crisis: External Situation Report- 27 May 2011. May 2011. Available at http:// www.iom.int
[36] Helen Chapin Metz. *Libya*. Whitefish: Kessinger Publishing, 2004. pp. 87-88.

"as the drive for comprehensive health and education entered into high gear in the 1970s and 1980s, large numbers of Egyptians and Palestinians, and in the 1990s, Iraqis, entered and worked in Libya as health and education professionals. And, the very generous social security, health, and education benefit system in itself also attracted a huge number of immigrants, both legal and illegal"[37]

Throughout the 1990s, the flow of migrant workers into Libya witnessed an important change with the arrival of large numbers of individuals from sub-Saharan nations. Disappointed by the response of the Arab world to Libya's international isolation, Qaddafi's regime became more interested in strengthening its relation with governments from African nations, particularly sub-Saharan countries. And, after designing his policy of pan-Africanism and signing several multilateral agreements with countries such as Sudan and Chad, Qaddafi called on Africans to enter Libya and work without the need of a visa for three months.[38] However, not all Africans who entered Libya during and even after this period came to stay and work in the country. A large number among them actually intended to enter the country in order to more easily cross the sea into Europe, making Libya not only a destination country but also an important place of transit.

Nevertheless, up to the beginning of the 21st century, Libya was still dependent upon imported labor for essential skills and services. The decline in the number of resident foreigners in the mid-1980s and early 1990s was followed by a significant increase facilitated by Libya's moves to regain international respectability. As of 2005, the Libyan government estimated that 600,000 "legal" foreign workers and between 1 and 1.2 million "illegal" migrants resided in the country; and between 70,000 and 100,000 foreigners of both groups entered the country every year.[39]

To understand the consequences of the recent Libyan uprising for the different groups of foreign nationals – migrant workers, asylum seekers, and alleged mercenaries – it is useful to review the different issues that accompanied the mass exodus and the government-led evacuations of foreigners out of Libya following the uprising. Indeed, one of the first challenges that confronted the international community was the humanitarian crisis at the Tunisian and Egyptian borders where most people fleeing overland chose to cross.. Before the conflict started, it was estimated that Egypt had the highest number of citizens in Libya, around 1.5 million people,[40] and that 30,000 Tunisians lived in the country. By the end of February, the UNHCR and other international organizations at both borders had to deal with a daily inflow of 10,000-15,000 people, most of them in urgent need of onward transportation, food, water and temporary shelter.[41]

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[37] Waniss A. Otman and Erling Karlberg. *The Libyan Economy: Economic Diversification and International Repositioning.* Berlin: Springer, 2007. pp. 139.

[38] Human Rights Watch. *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees.* Vol. 18, No. 5(E), September 2006. Available at http://www.hrw.org/fr/node/11164/section/4

[39] Ibid.

[40] See Table 1 for comparison with the number of foreigners from other countries engaged in the evacuation of their citizens.

[41] UN High Commissioner for Refugees. *Over 140,000 Flee Libya to Egypt and Tunisia, UNHCR Steps up Efforts to Support Refugees and Civilians in Libya*. March 2011. Available at http://www.unhcr.org

Table 1: Estimates of Foreign Nationals in Libya as of February 2011[42]

Country	Population	Country	Population
Bangladesh	60,000	Jordan	300
Bosnia	1,500	Netherlands	70
Bulgaria	1,500	Philippines	30,000
Canada	350	Russia	500
China	30,000	South Korea	1,300
Egypt	1,500,000	Thailand	23,000
France	550	Tunisia	30,000
German	600	Turkey	25,000
Greece	250	Ukraine	3,000
India	18,000	UK	500
Italy	6,000	USA	600
Japan	60	Vietnam	10,000

Source: The World Bank, BBC, Euronews, The Associated Press, Reuters, France 24, RFI, The China Post, and The New York Times.[43]

In addition to the groups of Egyptian and Tunisian nationals, it is also reported that thousands of sub-Saharan Africans and Bangladeshis attempted with much pain to cross the Tunisian and Egyptian borders out of Libya.[44] For many days, the Tunisian and Egyptian governments denied them entry into their respective countries, making the humanitarian situation of these groups of people even more precarious, with thousands spending the night in the cold without any shelter. However, information from subsequent reports indicate that the Tunisian and Egyptian borders eventually were opened to all nationalities, allowing a total of 260,353 Third Country Nationals (TCNs) to enter both countries and large number of migrant workers to flee to Europe from Tunis and Cairo.[45]

Table 2: CROSS BORDER MOVEMENT ARRIVALS (from Libya)

Arrived in	Nationality	As of 26 May 2011
Egypt	Egyptians	97,407
	Libyans	131,282
	Third Country Nationals (TCNs)	74,911
	Total	303,600
Tunisia	Tunisians	47,414
	Libyans	203,778

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[42] This table does not take into account an important number of foreigners from other countries whose governments did not (or could not) engage in a mass evacuation of their citizens.

[43] Here are some of the stories, press releases, and reports from which some of these estimates were gathered: http://www.bbc.co.uk/news/world-africa-12535883 (BBC), http://www.euronews.net/2011/02/22/foreigners-flee-libya-they-re-shooting-people-randomly/ (Euronews), and http://www.reuters.com/video/2011/02/26/foreigners-flee-libya-violence?videoId=190150331 (Reuters).

[44] New Age, a Bangladesh news agency, reported that about 3,000 Bangladeshi remained stranded on Libya's border with Tunisia while 3,500 other Bangladesh nationals, in urgent need of water, food, and shelter, waited for the authorization to cross into Egypt and Niger. See Shahidul Islam Chodhury. "No Food, Water for Bangladeshis Stranded on Libyan Borders," New Age Online, March 2, 2011. Available at http://newagebd.com/newspaper1/frontpage/10023.html

[45] See Table 2 for details on the number of people arriving in Egypt, Tunisia, Niger, Algeria, Chad, Italy, Malta, and Sudan from Libya.

	TCNs	185,442
	Total	436,634
Niger	Nigerians	65,750
	TCNs	3,678
	Total	69,428
Algeria	Algerians	1,081
	Libyans	7,227
	TCNs	11,324
	Total	19,632
Chad	Chadians	26, 761
	TCNs	307
	Total	27, 068
Italy	Total	13,110
Malta	Total	1,454
Sudan	Total	2,800
TOTAL ARRIVAL		873,726
TOTAL TCN		275,662

Source: IOM. *IOM Response to the Libya Crisis: External Situation Report*- 27 May 2011

The Egyptian and Tunisian borders were not the only places where sites related to the flight of foreign nationals from Libya took place. The island of Lampedusa also experienced similar crises. The situation on the island reached an explosive point as tens of thousands of migrants and asylum seekers fleeing violence in Libya arrived. In the first months of the Libya conflict, the island of Lampedusa received more than 20,000 migrants. Most of them were Africans coming from Tunisian ports and the Libyan coast. The population of the island more than doubled, increasing widespread fears of health epidemics, and making the humanitarian situation even more critical. In addition, not all migrants who left the Libyan coast were actually able to reach the Italian island. The International Organization for Migration (IOM) reported, for example, the loss at sea of several hundreds of asylum seekers from Somalia, Nigeria, Bangladesh, Cote d'Ivoire, Chad, and Sudan.[46]

The crisis on the island of Lampedusa sheds light on the implications of the Libya conflict not only for the African continent but also for Europe. As the number of asylum seekers leaving Libya increases dramatically and Italy further opens its immigration floodgates, it is more than likely that European nations will respond with the tightening of national immigration laws.[47] Although it is difficult to predict at this point whether these new laws will be more effective in

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[46] International Organization for Migration. *More than 250 Migrants Lost at Sea after Shipwreck off Lampedusa.* April 2011. Available at http://www.iom.int

[47] The Italian government announced in April 2011 that it would grant travel permits to more than 20,000 African migrants who have managed to reach the island of Lampedusa from North Africa. These permits are supposed to grant to asylum seekers freedom of movement within the visa-free Schengen area. France has been one of the first European countries to respond angrily to the Italian decision, threatening to deny entry to any migrant who would not have appropriate documents. See Nick Squires, "Libya to Unleash Wave of Migrants on Europe," Telegraph, April 7, 2011. Available at http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8435884/Libya-to-unleash-wave-of-migrants-on-Europe.html

slowing the influx of migrants from North Africa,[48] what is certain is that the Libya conflict will have a significant impact on the demography of Africa and Europe.

Reacting to the loss at sea of about 600 African migrants at the beginning of May 2011, Moussa Ibrahim, a Libyan government spokesman, made it clear that Qaddafi's regime would no longer stop African asylum seekers from attempting to go to Europe by boat. He declared: "because of NATO aggression against our country and because our coastal border guard is being hit daily…we are unable to deal with this situation and that is why Europe is being flooded with illegal immigration. We cannot be the guards of Europe at this moment."[49] To understand Moussa Ibrahim's declaration, one might need to look back at the 'Treaty on Friendship, Partnership and Cooperation' signed between Italian Prime Minister Silvio Berlusconi and Qaddafi in August 2008 in Benghazi. The Treaty called for the implementation of previous agreements and protocols on immigration and the constant control of the approximately 2000 km of Libyan coast by mixed crews on patrol boats provided by Italy.[50] Despite the fact that this 'friendship' agreement has had a relatively positive impact on the illegal immigration to Europe from Libya by significantly reducing the number of migrants attempting to reach Italian islands, it has also raised important human rights concerns about the fate of asylum seekers who are captured as result of Italian-Libyan joint naval patrols. Nevertheless, the outbreak of the Libya conflict in February 2011 has led both parties to break their 'friendship' pact, with Libya using the threat of mass influx of African migrants as a blackmail tool.

In the past three years, Qaddafi has indeed used migration issues not only to regain international respectability, but also to coerce European nations into supporting his regime financially. In August 2010, speaking at a ceremony in Rome, the former Libyan leader warned that 'Europe [would] run the risk of turning black' unless the European Union provided at least €5 billion ($ 6.3 billion) a year to his regime to stem the flow of African illegal immigrants.[51] Trying to capitalize much more on the on-going—and growing—concerns of uncontrolled immigration to Europe, Qaddafi predicted that, if his regime did not receive the financial provision he was requesting, Europe could become 'another Africa,' adding that "Tomorrow Europe might no longer be European and even black as there are millions who want to come in…We don't know if Europe will remain an advanced and united continent or if it will be destroyed, as happened with the barbarian invasions."[52]

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[48] At the annual Italo-French Summit at Villa Madama in Rome, the French President Nicolas Sarkozy and the Italian Prime Minister reacting to the recent influx of migrants from North Africa, wrote a joint letter to the European President Herman Van Rompuy and European Commission (EC) chief Jose Manuel Barroso, calling for a revision of the Schengen treaty, a greater financial burden- sharing approach by the EU member states in handling the immigrant arrivals, more funds for the Mediterranean development and a reinforcement of the EU border agency Frontex. See Ian Traynor and John Hooper. "France and Italy in call to close EU borders in wake of Arab protests," The Guardian, April 27, 2011. Available at http://www.guardian.co.uk/world/2011/apr/26/eu-borders-arab-protests
[49] Frank Jordans. "Close to 600 may be Dead on Libyan Migrant Ship," Associated Press, May 11, 2011. Quoted from ABCNews. Available at http://abcnews.go.com/US/wireStory?id=13574630
[50] Natalino Ronzitti. "The Treaty on Friendship, Partnership and Cooperation Between Italy and Libya: New Prospects for Cooperation in the Mediterranean?" Paper presented at the Mediterranean Strategy Group Conference, Genea, 11-12 May 2009. pp.6 Available at http://www.iai.it/pdf/DocIAI/iai0909.pdf
[51] Nick Squires. "Gaddafi: Europe will 'Turn Black' unless EU Pays Libya £4bn a Year," Telegraph, August 31, 2010. Available at http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/7973649/Gaddafi-Europe-will-turn-black-unless-EU-pays-Libya-4bn-a-year.html
[52] Ibid.

The consequences of the Libyan uprising for foreign nationals in that country will certainly be felt within Europe and even beyond its limits. A look at some of the news reports on various issues confronted by different countries during the worldwide scramble to evacuate their citizens out of Libya reveals that the conflict, even from before its beginning, has had diplomatic and economic consequences for the various groups of foreign nationals who were present in Libya as the unrest broke out.[53] Diplomatically, the different problems surrounding the evacuation of foreigners out of Libya have strongly affected the already deteriorating relations between Libya and its former partners. This shift has been clearly demonstrated by Libya's imposition of landing and flight restrictions, complicating the attempts of several countries to evacuate their citizens. And economically, the return home of hundreds of thousands of migrant workers fleeing Libya has caused many poor countries—mainly from Africa and Asia—to face additional financial and economic challenges. A large number of migrant workers returned home empty-handed, after having lost or left all of their possessions in Libya. Most of them, as they arrived home, found themselves without employment/work or any source of income.

Table 3: Some news reports on various issues confronted by different countries during the scramble to evacuate foreign nationals out of Libya

Country	News reports (March 2011)
Bangladesh	Between 35,000-45,000 Bangladeshi workers remained stranded in Libya after losing their possessions during their walk to the border. Many had to trek through the desert to avoid robbery (Asia News Network)
Canada	Canada had to cancel one of its evacuation flights due to security concerns in Libya. Another Canadian plane returned empty as it found no Canadian at the Libyan airport (The Vancouver Sun)
China	China evacuated 35,860 people from Crete after they have been carried by a Greek ship from Libya. (Xinhuanet News, China Signpost)
Eritrea	Fifty-seven Eritreans, including 21 families and 27 minors, were evacuated from Tripoli to Italy with the help of the Italian Embassy in Tripoli, the Italian Council for Refugees (CIR), and Catholic Bishop Giovanni Martinelli of Tripoli (Assists News)
France[54]	The government sent planes and ships to evacuate French citizens and more than 5,000 Egyptians who were stranded on the Libya-Tunisia border (VOA News, Reuters)
Ghana	Ghana was slow in evacuating its citizens. Many remained stranded for many days on different borders (Modern Ghana)
Greece	Greece evacuated its nationals and helped to evacuate 15, 000 Chinese after a request from Beijing. The Chinese were transferred by ferries to the southern Greek island of Crete before being flown on to China (The Associated Press,

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[53] See Table 3 for details of some of these news reports.

[54] France, UK, U.S., Germany, Russia, and Greece have been among the few countries that have evacuated both their own citizens and non-nationals, following the UNHCR recommendation that "call(ed) on all governments in the region, as well as the international community, to cooperate in responding to this emergency and to provide support to the most affected countries in a spirit of international solidarity and burden sharing." Despite this recommendation and the French, Greek, and Canadian offer, many stranded people, especially from poor African and Asian countries died trying to leave Libya by sea or by land. UN High Commissioner for Refugees. *Protection Considerations with regard to People Fleeing from Libya - UNHCR's Recommendations (as at 29 March 2011) Update No. 1*, 29 March 2011, available at: http://www.unhcr.org/refworld/docid/4d959bf62.html [accessed 12 April 2011]

	The Canadian Press)
India	About 18,000 Indians were stranded in different Libyan cities, asking their government to evacuate them by sea route as flight landings became more difficult (New Delhi Television)
Netherlands	Dutch evacuation operation failed as three Dutch marines were captured by Pro-Gadhafi forces (Spiegel Online International)
Russia	Because of the tense situation in Libya, Russia cancelled the evacuation of its citizens by air (Ria Novosti)
South Africa	39 South Africans evacuated from Libya (Eye Witness News)
Turkey	Turkey's plane had to return empty as it was incapable of evacuating people due to landing restrictions in Libya (Hurriyet Daily News, Economic Review)
UK	UK's first efforts to evacuate nationals failed as the plane was delayed following a mechanical fault. The government had to borrow a jet from BP to evacuate its people from Libya (The Telegraph)
USA	U.S. government struggled to evacuate diplomats from Libya as local authorities refused to allow flights chartered by US government to land in Tripoli (The New York Times, Foreign Policy, VOA NEWS)

Foreign nationals from sub-Saharan African countries seem to have faced even more precarious situations than many Asian migrant workers. First, there have been several reports about African governments being either unwilling or simply incapable of rushing to the rescue of their citizens stranded in Libya, forcing many of these 'asylum-seeking' individuals to attempt to cross the Libyan border into Tunisia and Egypt by land or into Italy by boat. And second, there have also been alarming reports that migrant workers from sub-Saharan Africa have been harassed, attacked, or illegally imprisoned in Libya. Eleanor Acer, the Director of the Refugee Protection Program of Human Rights First, reported on March 8, 2011, that her office received "urgent inquiries on behalf of a number of African refugees who were staying in Libya, but who were in hiding in Libya because of concerns that they would be attacked by groups or individuals who are targeting African migrants and refugees in the wake of reports that the Gaddafi regime has hired some Africans as mercenaries."[55]

Although numerous photographs and videos of foreign passports and black bodies (surrounded by angry protesters) have been released, there has been actually scant evidence of the 'hiring' of sub-Saharan Africans as mercenaries by the Libyan government. Nevertheless, widespread and persistent news reports have described the presence of black and French-speaking troops trying to quell the uprising. One of the most intriguing reports about the possible use of sub-Saharan mercenaries in Libya has been issued by Press TV, an Iranian international news network. The network reported that an Israeli arms distribution company, Global CST, had supplied Libya with 50,000 African mercenaries with the authorization of Tel Aviv. The report added that the details of the agreement between the general manager of Global CST and the head of Libya Internal Intelligence, Abdullah Sanusi, were discussed in Chad from where most of the hired

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[55] Eleanor Acer. "Attacks on African Migrants and Refugees in Libya," *Human Right First*, March 2011. Available at
http://www.humanrightsfirst.org/2011/03/07/attacks-on-african-migrants-and-refugees-in-libya/

mercenaries came.[56]

All of these reports about the current presence and use of African mercenaries in Libya have raised complex issues as it is widely known that Qaddafi's regime has, in the past, frequently resorted to the use of mercenary forces.[57] Indeed, the Libyan dictator, soon after taking power, created his first international mercenary force called 'the Islamic Legion' (al-Failaqa al-Islamiya).[58] Most of the soldiers were recruited from Mali, Chad, Niger, and Sudan, Peter Pham observes that, "while the Islamic Legion was officially disbanded in the late 1980s, many of its members were either placed into special units within the regular Libyan military or otherwise resettled in Libya. In more recent years there have been reports of Africans with military experience transiting Libya as clandestine immigrants to Europe have been recruited."[59]

When examining Qaddafi's recruitment, training, and use of mercenary forces from African neighbors in the past years, one should keep in mind that during his rule, Qaddafi engaged in military conflicts with almost all of his neighbors and kept a constant use of mercenaries in almost all his military campaigns. As Kathryn Sturman notes, the list of these military campaigns "includes a four-day war with Egypt in 1977, territorial disputes with Algeria, Niger and Tunisia, the failed invasions of Chad in the 1980s and the withdrawal from the Aozou Strip by order of the International Court of Justice in 1994."[60] Besides fighting against foreign states, Qaddafi has also offered "military backing…to various incumbent and rebel leaders, such as the late Zairean dictator, Mobutu Sese Seko, in 1996 and more recently, MLC leader Jean-Pierre Bemba in the DRC and elected President Angé Felix Patassé of the Central African Republic. Cash-strapped governments, such as Zimbabwe and Malawi, have also been recipients of Qaddafi's largesse during his motorcade tours of Southern Africa between 2000 and 2002."[61]

If the role and identity of Qaddafi's mercenary forces have been clearly defined in the past years, the origin and agenda of those who are believed to be involved in the on-going conflict is less apparent. There have been contradictory reports about the countries they come from and about the role they are assigned to play in the conflict. What is certain is that Colonel Qaddafi's favorable—if fickle—policy towards African migrant workers in general and his legendary generous treatment of mercenaries in particular have not always been well received by Libyan citizens. Groups of African migrant workers have already faced reprisals from Libyans in the

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[56] Ash/Hrf. "Israel Provides Henchmen for Gaddafi," *Press TV*. March 2, 2011. Available at http://www.presstv.ir/detail/167814.html ; Such information, it its credibility is confirmed, would have some significant implications and would raise interesting questions concerning, for example, the current and future state of relations between Libya and Israel. Same information from Voltaire Network: "Israel Flies to the Rescue of Ally Khadafi, Reaping Millions," *Voltaire Network*. March 5, 2011. Available at http://www.voltairenet.org/Israel-flies-to-the-rescue-of-ally

[57] Other news reports about the use of mercenaries in Libya came from Michelle Faul and Diaa Hadid of The Associated Press, David Smith of The Guardian, Hanissa Haddadi of International Business Times, Huma Khan and Helen Zhang of ABC News International, and Joe Decapua of VOA News. The report from Nick Meo is of great interest since it deals with the treatment of Mercenaries who are captured in Libya. See Nick Meo. "African Mercenaries in Libya Nervously Await their Fate.," *The Telegraph*. February 27, 2011. Available at http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8349414/African-mercenaries-in-Libya-nervously-await-their-fate.html

[58] Peter Pham. "The Battle for Libya: Implications for Africa," *World Defense Review*. March 3, 2011. Available at http://worlddefensereview.com/pham030311.shtml

[59] Ibid.

[60] Kathryn Sturnman. "The Rise of Libya as a Regional Player," *African Security Review* 12, 2 (2003). Available at http://www.iss.co.za/Pubs/ASR/12No2/C2.html

[61] Ibid.

past. In October 2000, for example, during "race riots … an estimated 150 black migrants were killed and thousands expelled from the country."[62] In 2010, in an attempt to bring attention to Libya's history of racial discrimination and help put an end to its practices of racial persecution against black African migrants, UN Watch released a statement entitled, "Libya Must End Racism Against Black African Migrants and Others."[63] As J. Peter Pham put it, "it is likely that some of the talk of 'mercenaries' (might simply be) part of this backlash against primarily black Africans whom many Libyans, rightly or wrongly, view as being favored by the Qadhafi regime."[64]

5. WHERE IN THE WORLD IS LIBYA? (2): THE ARAB LEAGUE, THE AFRICAN UNION, AND THE INTERNATIONAL CRIMINAL COURT (ALONG WITH SCATTERED OBSERVATIONS FROM THE "COURT OF WORLD OPINION")

On March 12, 2011 the Arab League officially appealed to the United Nations to establish a "no-fly" zone over Libya. Five days later, on March 17, 2011 the UN Security Council duly passed UN S/RES/1973 authorizing the implementation of just such a "no-fly" zone. Two days later,, on March 19, 2011 France, the UK and the U.S. made haste and launched the first flights,. While the Security Council's positive vote registered no vetoes, the determination was nonetheless not at all unanimous: 10 members were in favor, but there remained 5 important abstentions. Those abstaining countries, were not insignificant, especially regarding the eventually changing geo-political dynamics registered most currently in the already volatile Middle East/North Africa (MENA) region and on down through the African continent, but with particular relevance as well to apparently emerging global eco-political reconfigurations. Abstaining were Russia, China, India, Brazil, and Germany (the latter alone among the EU recalcitrants). Only South Africa was missing from among the BRICS contingent, along with Nigeria also from the African Union. Nonetheless, as political scientist Mahmood Mamdani (Columbia and Makerere universities) has pointed out, "The UN process is notable for two reasons. First, the resolution [1973] was passed with a vote of 10 in favour and five abstaining. The abstaining governments – Russia, China, India, Brazil, Germany – represent the vast majority of humanity." Second, "though the Security Council is central to the process of justification, it is peripheral to the process of execution."[65]

The Arab League's request was, however, what seemed to turn the trick at the UN Security Council, in particular in finally engaging US support for the still controversial resolution. Hillary Clinton, U.S. Secretary of State, was most emphatic in that regard, as she noted in an interview with the BBC: there was, according to Clinton, ''a sense of urgency that was precipitated by the Arab League's courageous stand."[66] Although Clinton would seem to have made it clear at the same time that "there must be Arab leadership and Arab participation," and further ascertained that "how that will be defined will depend in large measure on what the Security Council decides to call for," Arab participation in the implementation of the no-fly zone was, and continues to be, partial at best. Just a day after the first bombing flights over Libyan targets, the Arab League had seemingly begun to retract some its initial enthusiasm for international military intervention:

[62] Ibid.
[63] UN Watch. *Libya Must End Racism Against Black African Migrants and Others. February 2010.* Available at http://www.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKISNqEmG&b=1313923&ct=8411733
[64] J. Peter Pham. "The Battle for Libya"
[65] Mahmood Mandani. "Libya: behind the politics of humanitarian intervention," Pambazuka News 524, April 6, 2011. Available at: http://www.pambazuka.org/category/features/72300
[66] http://www.bloomberg.com/news/2011-03-16/clinton-says-arab-league-vote-for-no-fly-zone-changed-minds-1-.html

"Arab League Secretary General Amr Moussa [speaking to reporters on March 20 in Cairo, where the Arab League is headquartered] said that the United Nations' implementation of the no-fly zone on Libya has gone beyond what the league wanted. He told reporters in Cairo that the league wants to protect civilians, not bomb them."[67] The implementation of S/RES/1973 nonetheless continued apace, with limited logistical support from Qatar, the United Arab Emirates, and several other Arab and European allies. By contrast, the African Union, Libya's other regional/continental affiliate, was adamant in its early rejection of international intervention in regional/continental affairs, however egregious, however threatening, however perilous, the situation in Libya might appear to be to all sides – and for all concerned. In a decision, furthermore, issued on May 25, 2011 more than two months into the bombing campaign, from an "extraordinary session" of the AU Assembly on the State of Peace and Security in Africa, the AU maintained that the "Assembly is of the well-considered view that the continuation of the NATO-led military operation defeats the very purpose for which it was authorized in the first place, i.e. the protection of the civilian population, and further complicates any transition to a democratic dispensation in Libya."[68] US President Barack Obama, by contrast, provided a rather lengthier narrative, in a statement made on March 18, 2011 the day before the bombs began to fall, proposing a somewhat differently escalating scenario: "Left unchecked," opined Obama, "we have every reason to believe that Qaddafi would commit atrocities against his people. Many thousands could die. A humanitarian crisis would ensue. The entire region could be destabilized, endangering many of our allies and partners. The calls of the Libyan people for help would go unanswered. The democratic values that we stand for would be overrun. Moreover, the words of the international community would be rendered hollow."[69]

Meanwhile, even as NATO forces continued their bombing forays over Libyan territory, other international organizations, part of the United Nations consortium to be sure, were issuing their own decrees as to the eventual fate of the current Libyan regime and its leadership, in particular Colonel Muammar Qaddafi. Would the International Criminal Court issue the arrest warrants requested by ICC Prosecutor Luis Moreno-Ocampo – and on what grounds? Where, that is, in the world is Libya anyway? And who should say? The Arab League? The African Union? The United Nations? The International Criminal Court? Would Colonel Qaddafi find himself now trapped within the regional/continental nets that he himself has for four decades variously cast – reaching out on occasion to Libya's fellow Arab nations, and/or alternatively looking to his continental neighbors south of the Sahara? Even as he seemed to challenge persistently, more often than not ruthlessly, the global status quo, from the Lockerbie bombing to the renunciation of "weapons of mass destruction," and on to Libya's subsequent rehabilitation within the international consensus and profiting from United States/European Union opportunism for oil and arms trade, the quixotic Libyan dictator, had for four decades flown his flying carpet across various and ever more conflicting (and competing) geopolitical terrains: the Arab world, the African continent, the Mediterranean, the international community. What has been going on with Libya anyway? Whose Libya?

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[67] http://www.voanews.com/english/news/Russia-and-China-Lead-Opposition-to-Air-Assault-on-Libya----118324124.html
[68] African Union. "Decision on the Peaceful Resolution of the Libyan Crisis." EXT/ASSEMBLY/AU/DEC/(01.2011). May 25, 2011
[69] Cited in Jeremiah Gertler, "Operation Odyssey Dawn (Libya): Background and Issues for Congress," Congressional Research Service, March 30, 2011. Available at http://www.crs.gov

The Arab League

When the Arab League was established in March 1945, it had just six members: Egypt, Iraq, Transjordan (later Jordan), Lebanon, Saudi Arabia, and Syria. Yemen joined the association two months later. Since 1945, the Arab League had expanded to 22, has been reduced and now consists of just 21 members, four observers, and one suspended. Libya, which had originally joined the League in 1953, two years after its national independence, was suspended on February 20, 2011, within days of the outbreak of the insurgency against Qaddafi's regime. Claims to represent Libya are now contested between Qaddafi's regime and the oppositional Transitional National Council (TNC) forces, with the international community, especially the United Nations, NATO, and their willing and not-so-willing supporters, aggressively—both militarily and diplomatically—endorsing the latter (TNC) with bombing raids (at first to "protect the civilian population," but more and more aimed at "regime change"), funding campaigns, and sporadic and ever shifting shuttle negotiations.

Under the appellation of "humanitarian intervention," or "responsibility to protect" (R2P), meanwhile, the multi-pronged international and institutional response (from Libya's suspension from the Human Rights Council, ICC indictments and arrest warrants against the country's leadership, "no-fly" zones over its airspace, to attempted targeted killings)—at the apparent originating behest of the Arab League—engaged no less multi-faceted reactions from the international humanitarian "court of world opinion," among academics and policy-makers alike, both taking sides and taking issue with the contextualization of the Libyan crisis and its regional and global significance. To summarize just a few of the claims that emanated from the raucous concatenation of opinions, particularly from the early days of the implementation of S/RES/1973, in mid-March: the byline to Bernard Kouchner's London *Guardian* opinion article "Libya: the morality of intervention," instructed its readers that the co-founder of Médecins Sans Frontieres (MSF) and, until 2010, foreign minister in Sarkozy's French government, considered that the "Libyan crisis has shown how a united Europe can be used as a force for common good."[70] Anne-Marie Slaughter, Princeton professor of political science and until recently a policy adviser in the ranks of Obama's Department of State, was more circumspect in describing official US enthusiasm for military action against the Libyan regime. As she wrote in a March 30, 2011 blog for the *New York Review of Books*, discussing "interests vs values" and contextualizing the debate within the unfolding events of what has come to be called the "Arab spring" with its disconcerting popularity both on the street and in the social media:

> This is a much more complex definition of interests, and much more complex game – so complex that it is hardly surprising that many foreign policy advisers would rather stick to the world of great power chess. Yet here is what it meant in practice. It means that Secretary of State Hillary Clinton was probably not arguing for a No Fly Zone because the people of Libya were tugging at her heart-strings or because of a patriotic commitment to American values, but because she had just returned from a trip to Egypt during which a number of members of the Egyptian youth movement refused to meet with her because of the perception that the US

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[70] http://www.guardian.co.uk/commentisfree/2011/mar/24/libya-morality-intervention-united-europe

had sided with Mubarak – and young people now make up to 60 percent of the population in the Middle East.[71]

Even Juan Cole, University of Michigan professor of Middle East politics, blogger at Informed Comment, and ardent critic of US foreign policy in the Middle East in general, nonetheless enthusiastically maintained on March 27, 2011 in an "open letter to the left on Libya," that he was "unabashedly cheering the liberation movement on, and glad that the UNSC-authorized intervention has saved them from being crushed." Cole went on to argue that, while "on the surface, the situation in Libya has pitched ethical issues of the highest importance, and has split progressives in unfortunate ways," it was nonetheless his hope that the Left would "learn to chew gum and walk at the same time. It is possible," he insisted, "to reason our way through, on a case-by-case basis, to an ethical progressive position that supports the ordinary folk in their travails in places like Libya."[72] Mary Kaldor, co-director of the Centre for the Study of Global Governance and professor at LSE, was even more portentous at the time than her Michigan colleague, proposing in dramatic terms that the "tragic events unfolding in Libya today represent a pivotal historic moment. People and rulers across the region are following, with bated breath, the news of heroism and savagery trickling out of Libya as well as the world's reaction to them. If the world gets this wrong…."[73]

In the meantime, however, it would seem that the "world" was – and still is – just trying to "get it," whether right or wrong, even while escalating both the aerial bombing (albeit descending closer to the ground with the supplement of Apache helicopters in June to complement the otherwise high fliers enforcing the "no-fly" zone over Libyan air space since March); the bombastic rhetoric that now identified along with the S/RES/1973 lofty goal of "protecting civilians" evolved into the project of removing Colonel Qaddafi, now identified as a "legitimate target," from power altogether, if necessary through a "targeted killing." After all, it was argued, S/RES/1973, "recognizing the importance of the League of Arab States in matters relating to the maintenance of international peace and security in the region," had authorized "all measures necessary" to that end (of "protecting civilians"), the sole exception being the supposedly irremediable exclusion of a "foreign occupation force of any form on any part of Libyan territory." Critiquing nonetheless the "rehabilitation of humanitarian intervention" that the Libyan crisis had seemingly provoked, Perry Anderson, in his *New Left Review* essay, "On the Concatenation of the Arab Spring," noted that indeed "No other part of the world has enjoyed the same level of continuous hegemonic concern"[74] as the Arab Middle East, noting further that, most recently, "with the discrediting of Arab nationalism and socialism, and the neutering of radical confessionalism, [there was left] only a washed-out Islam as a passe-partout. In these conditions," according to Anderson, "created by dictatorship, the vocabulary of revolt could not but concentrate on dictatorship – and its downfall – in a political discourse, and not more."[75] For Anderson, however, the question persisted: given that "anti-imperialism is the dog that has not – or not yet – barked in the part of the world where imperial power is most visible," whether in the form of military displays or diplomatic sorties, "can this last?"[76] For Anderson at least, and

[71] http://www.nybooks.com/blogs/nyrblog/2011/mar/30/interests-values-obamas-libya-strategy
[72] See Informed Comment: Thoughts on the Middle East, History and Religion, at www.juancole.com
[73] http://www.opendemocracy.net/mary-kaldor/libya-war-or-humanitarian-intervention
[74] Perry Anderson, "On the Concatenation in the Arab World," *New Left Review* 68 (2011), p. 7
[75] ibid, p. 11
[76] ibid, p. 14.

writing in spring 2011, Palestine would necessarily be the "litmus test of a democratic Arab dignity."[77]

Not just for Anderson, however, and not only in 2011, with the "concatenation" of the events of an "Arab spring," was Palestine critical to a reading of the succession of Libyan crises that have ensued ever since Qaddafi came to power in September 1969. One the earliest assessments of that precipitous convulsion on the Mediterranean littoral came from South African historian, critic, and anti-apartheid activist then living in political exile in London, in her still much-cited work, *Libya: The Elusive Revolution* (1974). Ruth First, whose previous work had focused on sub-Saharan Africa, including *South West Africa* (1963) and *Barrel of a Gun* (1972), a seminal study of military coups in Africa, first went to Libya in late 1969, in the early days of the formation of the new regime under Qaddafi. And her book was in press by the fall of 1973, even as the October War was being fought between Israel and Egypt and her Arab allies, some of whom First had visited in her research into the "elusive revolution." A quarter of a century later, First's analysis of Libya in the early years of its revolution remains telling. As Mansour El-Khikhia, whose own study, *Libya's Qaddafi: The Politics of Contradiction* (1997), presents one of the most probing and provocative inquiries into that history, maintains, "The process of development, as Ruth First noted, was characterized by the statist style of technocratic planning, where the state not only planned production but also actively intervened in it."[78] Such comments, however, represent a retrospective acknowledgement of First's reading of the Libyan revolution in *Libya: The Elusive Revolution*, a writing that she herself had concluded, as if in anticipation of the concatenations yet to come:

> *But it should be possible in Libya* to recognize the crisis as an opening for the exploited populations of the world, not in the interests of elite minority ruling groups exclusively, but an opening for the masses of the people; to use the power tilted in the direction of their countries to find the means to forge a concerted strategy of social transformation. This kind of change can, however, not be bureaucratically improvised from above without the mobilization of the masses of the people, and without their assertion of their need for social control of the productive forces and political systems of their countries. It is also not a change which can be asserted by military régimes bounded by the ideology and the aspirations of petite-bourgeois nationalism. So Libya may well miss her chance to re-make herself, and to take advantage of the power which her assertive policies in the sphere of oil have helped to achieve.[79] (emphasis added).

But, had it been possible.....? Or did Libya "miss her chance" after all?

Ruth First meanwhile had begun her study of Libya's "elusive revolution" with a reading of the event as nothing short of a "perverse revolution," asking with regard to the "contradictions and misjudgements of the Libyan revolution"[80] still another question: "What is it about Libya and Qaddafi in the seventies which explains their eccentricities -- this blinding gap between

[77] Ibid, p. 15.
[78] Mansour El-Khikhia. *Libya's Qaddafi: The Politics of Conradiction* (Gainesville: University Press of Florida, 1997), p. 43.
[79] Ruth First. *Libya: The Elusive Revolution*. Harmondsworth: Penguin, 1974, p. 257 (emphasis added).
[80] Ibid, p. 12

Libyan interpretation and Arab and world reality?"[81] She locates some of the manifestations of that petulant perversity in various sources. According to First, Libya's "late realization of her own identity is, for her, inseparable from the displacement of the Palestinians."[82] The Palestinian saga is yet again another story in itself, but be that as it may, in 1973, for First, "Libyan coup-makers" were, as she says, a "post-setback generation"[83] -- making thereby an important reference to the Arabic terms for the determining moments in Palestinian history: the 1948 *nakba* (or catastrophe) with the creation of the state of Israel and the 1967 *naksa* (or setback) that came with the end of the June/Six Day War of 1967. Still another apparent perversity is alleged to derive from the man himself, the "idiosyncratic character of Mu'ammar Gaddafi," but according to First, "this is not to reflect on the man and his motivation, but on the play of forces in the world in an epoch when every weakness, division, error and obfuscation among dependent peoples produces corresponding strengths for imperialism." As she goes on to say, "The obsession with the leader, even when it is the inimitable Gaddafi, is precisely what should be avoided, for the sake of any real perspective."[84] At least one perspectival focus, however, can be situated in what First identified as the "problems in understanding contemporary Libya [which] is to reconcile the significant and the seemingly absurd which flow from the use of fundamentalist religion to make a social revolution."[85] Nonetheless, for all that its "revolution" may seem to have been "perverse"—all about Palestinians, personalities, and political pieties—Ruth First concludes her introduction with the encomium that the "attempt should be made to treat Libya as an intelligible whole."[86]

First's pioneering study, *Libya: The Elusive Revolution*, might have rung only too true at the time. Yet they were indeed echoed but a few years later by Egyptian political economist, Samir Amin, in his foundational work, *The Arab Nation* (1976), to the effect that the Arab world (and not least Libya) had been but a "stop-over area, a turntable between the main areas of civilization of the Old World […] Europe, Black Africa, Tropical Asia."[87] Anderson then, almost as a matter of course, remarked their continued concatenation in the course of the "Arab spring" nearly half a century later, noting that, in terms of the Arab world specifically, "formal decolonization has been accompanied by a virtually uninterrupted sequence of imperial wars and interventions in the post-colonial period."[88]

The African Union
If the Arab League, following its initial appeal in March for international intervention into the ongoing Libyan contretemps, has since both backtracked and prevaricated—and not without warrant, as unrest persisted in Yemen (where the seriously wounded – both politically and physically – president decamped abruptly in June to Saudi Arabia for medical treatment),

[81] Ibid, p. 13
[82] Ibid, p. 18
[83] Ibid, p. 18
[84] Ibid, p. 20
[85] Ibid, p. 23
[86] Ibid, p. 27. Similarly, even in 2011, South African political economist, Patrick Bond, was insisting on the centrality of the "question of Palestine" to any analysis of an "Arab spring." See Patrick Bond, "Economic attacks against Arab democracy," Rosa Luxemburg Foundation in Palestine, June 1, 2011. Available at http://www.palestine.rosaluxorg
[87] Samir Amin. *The Arab Nation: Nationalism and Class Struggles*. Translated by Michael Pallis. London: Zed Press, 1978, p. 12. More recently, Amin has commented on the "Arab spring" with special reference to Egypt. For his extensive discussion, see Samir Amin, "2011: An Arab Springtime?", *Monthly Review*, June 6, 2011. Available at: http://monthlyreview.org/commenary/2011-an-arab-springtime
[88] Anderson, op.cit. p. 6.

violence escalated in Syria (and UN sanctions were being contemplated against the Assad government), and in Bahrain (where, of all things, the F1 Grand Prix already once rescheduled for October, was further postponed under protest from race-car drivers against the regime's continued repression of the kingdom's pro-democracy activists)—if, that is, the Arab League was at once hesitant and adamant in its ambivalent responses to the demands of the region's peoples, its neighbors to the south (south of the Sahara, in other words) were similarly, if for varying rationales, stumblingly stubborn in their own individual, concerted, diplomatic, and institutional responses to the conflagration unfolding on the northern coast of the continent.

Qaddafi himself was in no small part responsible for this multiply mixed reaction from his African Union compatriots. Having early on in his revolution drawn his inspiration from Nasserite pan-Arabism, opportunely championing the Palestinian cause in particular, Qaddafii had turned his sights and ambitions (not always welcome) toward sub-Saharan Africa. In particular, he sought , allies and adherents as Libya endeavored to withstand the political and economic sanctions imposed on the country by the United States, Europe, and other members of the international community. In 1998, for example, according to one critic, "Qadhafi declared that Africans and not Arabs, are Libya's real supporters. The Libyan state-owned radio 'Voice of the Arab World' was renamed 'Voice of Africa', a number of African leaders [including some less than savory, such as Liberia's Charles Taylor (now on trial before the Special Court for Sierra Leone, a UN-backed hybrid international criminal tribunal), and others of near untouchable integrity, like South Africa's first democratically-elected president Nelson Mandela] breached the UN embargo and a regional organization entitled 'Community of Mediterranean and Sahelian Countries' that included Libya and its sub-Saharan neighbors was created."[89] And as Yehudit Ronen has just as emphatically noted, "The speed and extent with which Libya had burst forth into the sphere of African diplomacy were not less than astounding. Within five years, between 1996 and 2001, Libya moved from a position of tight diplomatic isolation, suffocating under the UN sanctions, to one of diplomatic animation and activism, turning Africa into the diplomatic centrepiece of Tripoli's foreign policy agenda."[90] George Joffé, in turn, a noted specialist in MENA political history, offers a longer version of Libya's pivotal, if precarious, "current orientation as a state centred in Africa, despite its longstanding identity as part of the Arab world,"[91] a narrative that stretched from early trade routes across the Sahara, into Ottoman occupation, through "Nasirism in neighboring Egypt" and the "anti-imperialism of the Algerian revolution,"[92] to the later, sometimes disastrous, interventions in Uganda, Chad, Liberia, and the Colonel's coercive largesse, if not noblesse oblige, based on the well-endowed oil-rich Mediterranean state's economic assistance (indeed "bail-outs," if you will) to Mali and other impoverished African countries, who, for example, found themselves unable even to pay their membership dues to the African Union.

If Qaddafi's more than four-decade dictatorship in Libya is one of the longest-standing in post-independence Africa, its record-making (if inconsistent) longevity is not without significant

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[89] Asteris Huliaras. "Qadhafi's Comeback: Libya and Sub-Saharan Africa in the 1990s," *African Affairs* 100 (2001), p. 5
[90] Yehudit Ronen, "Libya's Diplomatic Success in Africa: The Reemergence of Qadhafi on the International Stage," *Diplomacy and Statecraft*, 13, 4 (2002), p. 71
[91] George Joffé, "Libya's Saharan Destiny," *The Journal of North African Studies*, 10, 3-4 (2005), p. 605. For more on the caravan routes, see, for example, Frank T. Kryza. *The Race for Timbuktu: In Search of Africa's City of Gold* (NY: HarperCollins, 2006).
[92] Ibid, p. 608

challenges from fellow African leaders. Incumbent presidential candidate Laurent Gbagbo, in Cote d'Ivoire, for example, had finally, in April, lost his brutal months-long electoral standoff with declared winner Alassane Ouattara, albeit not without considerable – and controversial – military intervention in his eventual unseating from United Nations and French forces; Robert Mugabe, the ruthless ruler of Zimbabwe since independence, following a protracted armed struggle, in 1980 – and despite international opprobrium and with the chary support of his erstwhile comrades, such as Thabo Mbeki and/or Jacob Zuma in South Africa, in Africa's independence movements – remained, if awkwardly, in the seat of power; but it was Yoweri Museveni, president of Uganda since 1986, following an extended war that had eventually succeeded in deposing the infamous Idi Amin in 1979, who was perhaps most effusive in describing on the part of African leaders the complicated relationship of Colonel Qaddafi with his sub-Saharan cohort.

Even as he faced his own restive opposition in the streets of the capital city of Kampala, Museveni felt himself compelled to describe, in his own words, "The Qaddafi I Know," for the columns of *Foreign Policy*. Writing on March 24, 2011, Museveni was not loathe to excoriate the Colonel for his misdemeanors and peccadillos – such as backing Idi Amin in the late 1970s, pushing for a United States of Africa, proclaiming himself king of kings, ignoring the plight of Southern Sudan, even for engaging in terrorism (after all, according to Museveni, stepping back momentarily from a position of Afro-Arab solidarity, "Middle Eastern radicals [are] quite different from the revolutionaries of black Africa"[93]). But more than berating Libya's Qaddafi for his earlier, even continued, shortcomings, Ugandan President Museveni was determined to declaim that, according to the article's subtitle, "the West was wrong to intervene in African affairs." To his credit, that is, the Libyan leader was celebrated by his Ugandan counterpart for being a nationalist, for having raised the price of oil, for building Libya, and, somewhat paradoxically by March 2011, for being a "moderate." Qaddafi's limitations notwithstanding, and his cited strengths in his favor, the larger argument made by Museveni regarding the implementation of UNSCR 1973 was directed against Western intervention in African affairs, and here his tortuous argumentation extended to no less than eleven points: 1. excessive external involvement always brings terrible distortions; 2. what about foreign-backed insurrections in larger countries (such as China?); 3. Western countries always use double standards; 4. Western countries are similarly prone to comment duplicitously on every problem in the Third World; 5. Western countries over-use their technological superiority; 6. preferable, according to Museveni, would be mediation via the African Union with Colonel Qaddafi in order resolve his problems with the Libyan opposition; 7. the AU's earlier efforts toward just such a resolution had already been thwarted when the visit of a high-ranking African delegation was deterred, on March 20, by the West's ongoing bombing campaign; 8 and 9. if the Libyan opposition were truly "patriotic," they would fight their own war; 10. as for those African nations (South Africa and Nigeria) who had voted for UNSCR 1973, they had done so against the express deliberations of the AU's Africa Peace and Security Council, undertaken in Addis Ababa on March 23, 2011. Finally, President Museveni called for a review of the entire process, noting, rather high-handedly at that point perhaps, that "it is high time we (sic) did more careful thinking."

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[93] Yoweri Museveni, "The Qaddafi I Know," Foreign Policy, March 24, 2011. Available at: http://foreignpolicy.com/articles/2011/03/24/the_qaddafi_i_know

Just over a week prior to President Museveni's statements Kenyan Nobel Peace Laureate and environmental activist, Wangari Maathai, had raised the very question of "where is the voice of the African Union?" Writing for the South Asian *Deccan Herald* on March 15, Maathai noted that, although "US president Barack Obama did include the AU in a list of partners for finding a solution [to the Libya situation]," she worried nonetheless that "by and large, the voice of the AU has been faint and largely ignored by the international media."[94] Was the problem that of the African Union and its "faint" voice? Or, alternatively, was it the international policy establishments and their media spokespeople who took such slight notice of the AU and its multiple organs in considering the options for responding to the crisis? After all, as Clinton had publicly declared, it was the behest of the Arab League (and not the cautions of the African Union) that had been decisive in securing the U.S. endorsement of S/RES/1973. According to Maathai, signaling once again the dubious economic thralldom in which Qaddafi might be said to hold his southern neighbors, "One problem the AU faces, along with many African nations, is that it is not financially independent. It must seek funds from the EU, the U.S. and others, including some of the wealthier member states despite their records on undemocratic governance and human rights violations. Libya, for example," Maathai went on, "is said to provide at least 15 per cent of the AU's overall budget. In 2009, Libya's now-embattled, Muammar Gadhafi, was elected to a one-year term as chairperson of the AU."

The African Union, however, had not been altogether quiescent as events unfolded in Libya – both on the ground and in the air. Whereas South Africa and Nigeria may well have acquiesced in the UN Security Council vote on Resolution 1973, various AU administrative bodies had repeatedly convened to discuss – and speak out on – the boding crisis, both for Libya as a national entity, and as a (indeed munificently) contributing member of its own ranks, not to mention Qaddafi as a leader only too well "known" (as Museveni had personally reminded his *Foreign Policy* readership) among Africa's leaders. On March 19, 2011 – even as the bombing campaign was being launched – the AU High-Level Ad Hoc Committee on Libya, meeting in Mauritania, had "made an urgent appeal to all parties concerned, namely the Government of Libya and the National Transitional Council (NTC) to observe, without any further delay, a comprehensive cessation of hostilities and to take other measures aimed at defusing tension and ensuring the protection of the civilian population." The AU Peace and Security Council, meeting in Addis Ababa on March 23, 2011 endorsed that same recommendation, and two days later, the African Commission on Human and Peoples' Rights, meeting in Arusha, Tanzania, on March 25, 2011 recommended, in the matter of African Commission on Human and Peoples' Rights v. Great Socialist People's Libyan Arab Jamahariya, an order (not without echoes of S/RES/1973 and its wording regarding the "protection of civilians") for "provisional measures," in particular that the "Great Socialist People's Libyan Arab Jamahiriya must immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the [AU] Charter or of other international human rights instruments to which it is a party." In a subsequent communiqué issued from Mauritania, the Ad Hoc Committee on April 9, 2011 reaffirmed its commitment to "dialogue between the Libyan parties and an inclusive transitional period," noting as well its concern for the "protection of foreign nationals, including African migrant workers living in Libya" [see above]. And in an "extraordinary session" of the Assembly of Union on the State of Peace and Security in Africa,

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[94] Wangari Maathai. "Where is the voice of the African Union?" *Deccan Herald*, March 15, 2011. Available at: http://greenbeltmovement.org/a.php?id=515&t=p

on May 25, 2011 in Addis Ababa, and just days before Jacob Zuma's unproductive second visit to the Libyan capital of Tripoli and his frustrated meeting with the besieged but unyielding Colonel Qaddafi on May 30, 2011 the AU Assembly "expressed Africa's surprise and disappointment at the attempts to marginalize the continent in the management of the Libyan conflict," recalling too that "Africa, particularly the countries of the region, are those that bear the greatest impact of the conflict in Libya, both in terms of security and socio-economic consequences."[95]

A critically important political and humanitarian consequence of the 2002 transformation of the Organization of African Unity (OAU) into the African Union (AU) was the new organization's reformulation of the continent's policy regarding respect for the national sovereignty of its member states and regulations restricting intervention into each other's affairs. Whereas the OAU, established in 1963, had been adamant in its investment in protecting the territorial boundaries (paradoxically the very same borders that had been drawn by European powers scrambling over Africa at the Berlin Conference in 1884-85) of the newly decolonized states, the Constitutive Act defining the AU's principles, asserted inter alia the "right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity." While much celebrated by students of African politics and advocates of humanitarian history, this new direction was also viewed skeptically by many of the same readers. The Nigerian jurist, Nsongurua J. Udombana, for example, worried already in 2002, over the Kiplingesque question: "Can the Leopard Change His Spots?" in an article subtitled, "The African Union Treaty and Human Rights". Udombana observes that "African 'rulers' are at it again. They have presented Africans with a freshly baked cake. It is teasing and tempting, though one cannot," continues Udombana, "at the moment determine if it is nutritious." Udombana finds the very ingredients suspicious, at least insofar as civil society representatives were not involved "in the baking."[96] The Nigerian critical reader is concerned not least that the "the spoils of office and the allurements of high life largely account for the sit-tight syndromes in the continent and the resultant civil conflicts,"[97] recalling instances in which, "like Nero's Rome, African leaders fiddled while the edifice called 'Africa' was engulfed in conflagrations," instances such as Burundi in 1972 and 1973, the Sudanese Civil War, Idi Amin's atrocities in Uganda, Bokassa in the ex-Central African Republic, Mobutu Sese Seko's Zaire, Nguema in Equatorial Guinea – and so on.[98] Even, Udombana continues, "in the cases where the OAU intervened, such as the 'Congo Crisis' (1964-65), the Nigerian Civil War (1967-70), the Angolan Civil War (1975-76), and the Chadian Civil War (1965-78), the presence of a threat of foreign intervention and consequent regional instability have been of more direct concern to the OAU than human rights concerns."[99]

Like Udombana, Bronwen Manby, of the African Governance Monitoring and Advocacy Project (AfriMAP), challenged what she referred to as the "missing agenda" in the professed commitment on the part of the AU and its corollary, NEPAD (New Partnership for Africa's

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[95] All documents available at: http://www.au.int/en
[96] Nsongurua J. Udombana. "Can the Leopard Change Its Spots? The African Union Treaty and Human Rights," *American University International Law Review* 17 (2002), p. 1178.
[97] Ibid, p. 1197
[98] Ibid, p. 1211
[99] Ibid, p. 1213

Development), to promote a rights-based program of development, citing once again the culture of "impunity" as a persistent obstacle to its implementation. "The failure of African states," Manby wrote, "to bring those who abuse power to justice is closely related to an atrophy both of institutions and of legislation since independence (with some exceptions, notably South Africa since 1994)."[100] In introducing her discussion of the "missing agenda" items in the AU/NEPAD programmatics (which include, in addition to impunity, HIV/AIDS, resource wars, and issues of migration, nationality, and citizenship), however, Manby contextualizes (and not without an echo of one of Museveni's subsequent critiques of several of Qaddafi's foibles – for a "United States of Africa") the foundation of the AU over and above the erstwhile OAU: "The transformation of the OAU," writes Manby, "into the AU started out as a grandiose project for continental unity pushed by President [sic] Muammar El Qaddafi of Libya, but was finally created by a Constitutive Act that envisions an institutional architecture more similar to the European Union than anything resembling a single federal state. In the process," she goes on, "the new organization also acquired human rights content no doubt far from the Libyan leader's thoughts."[101]

Despite such skepticism, whether critical or sardonic (or both), an equally pressing and related discussion was developing around the AU's role, especially on the continent itself, in promoting an emerging international consensus around the doctrine of "responsibility to protect" (R2P). (Even while the slogan's alleged use as an alibi for neo-imperial aggression remains in question.) General Marko D. Chiziko, for example, of the Malawi Defence Force and a PhD candidate at the University of the Witwatersrand, had wondered in 2007, but currently with particular relevance now to UNSCR 1973 (2011): "The Responsibility to Protect: Does the African Stand-By Force Need a Doctrine for the Protection of Civilians?" General Chiziko was particularly, indeed professionally, interested in the "tremendous paradigm shift in military thinking and culture" engaged in the exercise of peace and relief operations by the imperative of "trying to maintain a peaceful environment without the use of force."[102] Kwesi Aning and Samuel Atuobi, by contrast, were more focused on the role of Civil Society Organizations (CSOs) than on any military capacity (or incapacity, as the case may be) in assisting the AU in carrying out its "responsibility to protect," in suggesting instead that "in its transformation from the OAU the AU as the principal regional organization has undergone a normative shift by positing that non-interference does not mean indifference."[103] Bjorn Moller, of the Danish Institute for International Affairs, was no less concerned to investigate the ramifications of the critical paradigm shift entailed in transformation of the OAU into the AU, "establishing the right of the Union to intervene in domestic affairs of member states in cases of 'war crimes, genocide and crimes against humanity'."[104] Moller concludes his interrogative into the options available to "African solutions to African problems" not, however, without a certain optimism, suggesting that "It does not seem ethically justifiable to vest all African countries with special responsibilities for helping solve conflicts anywhere on the continent – usually conflicts for

[100] Bronwen Manby. "The African Union, NEPAD, and Human Rights: The Missing Agenda," *Human Rights Quarterly* 26, 4 (2004), p. 1009.
[101] Ibid, p. 984-5.
[102] Gen. Marko D. Chiziko. "The Responsibility to Protect: Does the Stand-By Force Need a Doctrine for Protection of Civilians," *Interdisciplinary Journal of Human Rights Law*, 2, 1 (2007), p. 76.
[103] Kwesi Aning and Samuel Atuobi. "Responsibility to Protect in Africa: An analysis of the African Union's Peace and Security architecture," *Global Responsibility to Protect* 1 (2009), p. 108.
[104] Bjorn Moller. "The African Union as Security Actor: African Solutions to African Problems?", London: Crisis States Working Paper Series, Working Paper No. 57, August 2009, p. 9.

which the rest of the continent's 53 states cannot possibly be blamed – but that the Africans accept this responsibility can only be applauded as heroic. The main problem with the [titular] phrase may thus be that it all too conveniently lets the West 'off the hook'."[105]

Meanwhile, on June 13, 2011 U.S. Secretary of State Hillary Clinton, as part of a three-nation (Zambia, Tanzania, Ethiopia) Africa tour, addressed the African Union in Addis Ababa, urging that the members cease their support for Colonel Qaddafi's intransigence and join in Western coalition efforts to oust the Libyan leader. an appeal that was, it seems, but tepidly received by the African organization's official audience. At that same time, the International Criminal Court was still considering whether to issue the arrest warrants that had been requested by ICC Prosecutor Luis Moreno-Ocampo for Muammar Qaddafi and two associates, following the delivery, on June 1, 2011, to the UN Human Rights Council of the "Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya." How would, in other words, the "right [and responsibility?] of the [African] Union to intervene in domestic affairs in cases of 'war crimes, genocide and crimes against humanity'" also be necessarily enlisted?

The International Criminal Court (ICC)
According to UCLA law professor, David Kaye, the ICC Prosecutor's arrest "warrants represent a high-risk move by Moreno-Ocampo. A positive ending to the story – the arrest of one or more of these perpetrators and their transfer to The Hague – would make the public perceive the ICC as a real player. But a bad outcome – no arrest, continued atrocities, a safe haven or something else for the Libya three – could further ingrain in the international community an image of the court as more of a tool than a valuable end in itself."[106]

While Libya's briefly rehabilitated international position and institutional status in the early years of the new century, plummeted precipitously in the weeks of late February and early March of 2011, with its suspension from membership in the HRC (A/RES/65/265) on March 1 to S/RES/1973 on March 17, authorizing the "no-fly" zone and "all necessary measures" to protect civilians in the country, it is the referral by the Security Council of the "situation in the Libyan Arab Jamahiriya since 15 February 2011" (S/RES/1970) on February 26, 2011 to the ICC for investigation that remains outstanding still, culminating as it finally did in the three warrants issued on 27 June 2011 for the arrest of Muammar Gaddafi, his son Saif Al-Islam, and his brother-in-law and head of internal Abdulla Al-Senussi.[107]

To be sure, the question of membership criteria and human rights history had been critical – and controversial – in the discussions that eventually prepared the creation of the UN Human Rights Council as a replacement for the UN Commission on Human Rights in 2006. Already, in 2005, international law scholar Philip Alston had argued vehemently during the deliberations relative to the impending transition on behalf the imperative of "promoting the accountability of members of the new UN Human Rights Council," maintaining that the "concept of accountability provides the overarching rationale for the establishment of an international human

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[105] Ibid, p. 16

[106] David Kaye. "Wanted: Qaddafi & Co: Can the ICC Arrest the Libya Three?" *Foreign Affairs*, May 19, 2011. Available at: http://www.foreignaffairs.com/print/67789

[107] International Criminal Court. Case No. ICC-01/11-01/11 Available at http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/icc0111/related%20cases/icc01110111/

rights regime,"[108] and recommending the "adoption of a human rights accountability index [HRAI]."[109] According to Alston, such an "index" would presumably serve to "provide an overall sense of the performance of governments and other actors in relation to specific rights issues [since] a dominant focus on individual cases is not only time-consuming and backward looking but does not enable them to provide the overall picture that is needed."[110] In tracing the historical genealogy of human rights at the United Nations, in particular in the move from the Commission on Human Rights to the Human Rights Council, Paul Gordon Lauren was no less concerned with the question of membership and the qualifications for sitting in judgment of fellow human rights violators. Was the new Human Rights Council, in other words, to be a "protector of the victims or a shield for the violators?" asked Lauren.[111]

The establishment of the International Criminal Court (ICC) has been perhaps even more controversial than the membership roster of the Human Rights Council. Since coming into being on July 1, 2002, however, the ICC – whose jurisdiction is currently limited to those cases of individuals charged with crimes against humanity, genocide, and/or war crimes, and in which the accused is a national in a state that is party to the Statute, or where the alleged crime occurred within the territory of such a state, or the situation is referred to the Court by the UN Security Council – as is the, till now unprecedented, case with regard to the "situation in Libya since 15 February 2011." To date, however, the ICC's record of investigations and prosecutions raises again Lauren's query regarding the Human Rights Council's agenda and its implementation – as a "protector of victims or a shield for the violators"? Although inquiries are pending elsewhere (Colombia and North Korea, for example), all six ongoing prosecutions and/or investigations – in the Democratic Republic of the Congo, Uganda, the Central African Republic, Darfur (Sudan), Kenya, and now Libya – derive from Africa alone. Kamari Clarke, legal anthropologist, has, for example, argued that the "African focus of the ICC is far from incidental,"[112] suggesting instead that the "ICC's emphasis on *command responsibility* through conceptions of 'justice' overlooks two important features of conflict in Africa: 1) colonial history and its continuing postcolonial effects; 2) the geo-political implications of widespread resource competition and the resultant interest of more powerful nation-states,"[113] leading perhaps to what David Kaye has noted as the ICC's apparent "lack of legitimacy among some African leaders."[114]

"Further investigation…" was the wording that provides the almost lyrical refrain or leitmotif that underscores the provocative orchestration of the "Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahirya," submitted to the UN Human Rights Council on June 1, 2011. Acting on instructions from and pursuant to HRC resolution S-15/1 of 25 February, with direct consequences for UNSCR 1970's referral of the "situation in Libya" to the ICC, the three-member commission, led by eminent international jurist M. Cherif Bassiouni (Egypt), and assisted by Asma Khader

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[108] Philip Alston. "Richard Lillich Memorial Lecture: Promoting the Accountability of Members of the New UN Human Rights Council," *Journal of Transnational Law and Policy* 15, 1 (2005), p. 50.
[109] Ibid, p. 51.
[110] Ibid, p. 78.
[111] Paul Gordon Lauren, "'To Preserve and Build on its Achievements and to Redress its Shortcomings': The Journey from the Commission on Human Rights to the Human Rights Council," *Human Rights Quarterly* 29 (2007), p. 334.
[112] Kamari Clarke, "Rethinking Africa through its Exclusions: The Politics of Naming Criminal Responsibility," *Anthropological Quarterly*, 83, 3 (2010), p. 631.
[113] Ibid, p. 628 (emphasis in original).
[114] David Kaye, op cit, *Foreign Affairs* (2011).

(Jordan) and Philippe Kirsch (Canada), conducted inquiries in Geneva, Libya, Egypt and Tunisia, gathering over a period of several months both first-hand information from eye-witnesses and government and opposition spokespersons, as well as consulting with NGOs and representatives of relevant UN agencies. While the specific time-frame designated for offenses to be documented dates from February 15, 2011, the Commission nonetheless interpreted its mandate as including "violations before, during and after the demonstrations witnessed in a number of cities in Libya in February 2011."[115] Noting furthermore the relatively short time frame in which it was obliged to conduct its investigations, as well as the restraints imposed by the continuing conflict in Libya, the Commission nevertheless presented its 92-page report as, at the very least, "illustrative of the main patterns of violation,"[116] infractions and abuses committed by both parties to the conflict, as well as with brief reference to NATO's use of force in its implementation of UNSCR 1973 and the imposition of the "no-fly" zone over Libya territory for the "protection of civilians." In other words, "given all these circumstances, the Commission is of the view that more time is necessary to carry out *further investigation* within Libya for a comprehensive inquiry, followed by appropriate time for analysis and the writing of additional reports."[117]

Following a brief background on Libya's geo-political and historical context, including the rather singular governmental apparatus ruling the country under Colonel Qaddafi (noting, for example, the neologism of "jamahariya," or "rule of the masses," to describe the regime, as opposed to more usual Arabic "jumhuriya," or "republic") the Commissioners divide their account of violations under both international human rights law and international humanitarian law (and eventually including international criminal law as well), into two "phases": phase 1, the "demonstration phase," and phase 2, the period of armed conflict that erupted in late February. Under each of the eleven categories of violations examined, the Commission found that, despite the persistent imperative of the need for yet "further investigation," serious infringements of both international human rights and international humanitarian law had been committed, with the preponderance of violations on the part of the Qaddafi's government forces. Those categories included: excessive use of force against demonstrators; arbitrary detention and enforced disappearances; torture and other forms of ill-treatment; denial of access to medical treatment; freedom of expression; attacks on civilians, civilian objects, protected persons and objects; prohibited weapons; use of mercenaries; migrant workers; sexual violence; and the exploitation of children in armed conflict. Regarding NATO's "use of force," the Commission concluded (unsurprisingly?) that it had "not seen evidence to suggest that civilian areas have been intentionally targeted by NATO forces, nor that it has engaged in indiscriminate attacks on civilians."[118] Even while describing the conflict in Libya as "*sui generis*,"[119] and admitting that it is "not in a position of identifying individual criminal responsibility or command responsibility for international humanitarian law violations as well [as] other potential violations of international criminal law,"[120] the Commission nonetheless recommended to the Human Rights Council the following:

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[115] HRC. "Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahariya," Advanced Unedited Version, A/HRC/17/44, June 1, 2011, para. 4.
[116] Ibid, para. 5.
[117] Ibid, para. 12. Emphasis added.
[118] Ibid, para. 235.
[119] Ibid, para. 242.
[120] Ibid, para. 255.

In view of the time frame within which it had to complete its work and considering the gravity and the complexity of the situation, the Commission considers it important that the Council remains seized about the situation through an extension of its mandate or the establishment of a succeeding mechanism with the ability to continue the necessary investigations into both the human rights and humanitarian law situations in the country for a one year period.[121]

Already, two weeks earlier, however, on May 16, 2011, ICC Prosecutor Luis Moreno-Ocampo had requested arrest warrants for crimes against humanity for Colonel Muammar Qaddafi, his son, Saif al-Islam Qaddafi, and Libyan chief of intelligence, Abdullah al- Sanussi. Should Libya's membership in the UN Human Rights Council, indeed in the African Union, have been suspended? Should the ICC have issued arrest warrants for Qaddafi, his son, and his chief of intelligence?

6. EPILOGUE: WHAT NEXT?

The situation in Libya, and its many weaving and unweaving narrative threads, shows how the stakes of human rights work. On the one hand, from a Western-liberal-civil society perspective, Libya went from pariah to regenerating-yet-still-troubled member of the international community, and then plunged back into the abyss. From the United Nations institutional perspective, however, the thick veil of political maneuvering (put in place mostly by non-western states, or so the mainstream narrative goes) largely prevented any sort of scrutiny until its rather precipitous fall when the violence escalated to the point where the situation became intolerable.

Then the UN took action, but its reception has been very mixed: the "western perspectives" have largely hailed the intervention (with some exceptions, including the abstaining states in the S/RES/1973 vote and voices within academia), while whatever enthusiasm there was elsewhere (particularly among the Arab League and the African Union, for whom the stakes are higher in the situation in Libya) has waned rather, perhaps all too, quickly. This waning of enthusiasm, however, might well relate to the multiple and conflicting narrative threads, ranging from the ghosts of colonialism and western imperialism to economic interests involving migrant workers and mercenaries (who are also in a way migrant workers, in the business of warfare).

What do all these interweaving and competing stories tell us, not only about Libya, but about international human rights making and un-making? They tell us that human rights are a banner of humanism and humanity, but carry as well the remains of an erstwhile civilizing mission; that the war in the name of human rights foregrounds interests that muster the most sympathy from the occasional observer, but at the cost of backgrounding deeper issues also related to human rights that cut across history – and that also cut that history up into useful and abused remnants; that this process of foregrounding and backgrounding can be used to validate history, as well as international institutions; that the quest for validation will come at too high a cost if the situation is looked at in the bi-dimensional manner it is across the board; and that human rights must

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[121] Ibid, para. 271.

address its limits should it want to stick to its claim as legitimate heir to the throne of world ideologies, lest it be replaced, yet again, but something else altogether….

Contextualizing the current situation in Libya against its history, within the current geopolitical moment, and in terms of the country's larger "place"—geographically and politically—in the world highlights the complexities involved in understanding humanitarian decision-making in a human rights framework. Libya's improved international standing prior to the recent conflict was not necessarily indicative of improved human rights conditions in the country. United Nations institutional restraints and political maneuvering, that is, largely masked on-going human rights violations, while optimistic reports by human rights organizations and country observers may be more indicative of an interest in improving relations with Libya as a way of exerting influence than as a manifestation of improved conditions on the ground.

As debate continues to surround the UN response to the violence in Libya—and as the conflict and the responses to it likewise persist—the numerous narrative threads involved in this conflict are often separated and de-contextualized. In attempting to weave all of these threads together, the paper hopes to highlight the interconnectedness of the various debates on Libya and to demonstrate the importance of such contextualization when considering human rights issues and the responses to apparent humanitarian crises from various actors, whether national, regional and/or international.