

**NATO INTERVENTION IN LIBYA: IMPLICATIONS ON THE  
NORM OF PROTECTION**

**BY**

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## **DEDICATION**

I dedicate this piece of work to my whole family for the social and material support, especially my dear guardians Dr E. Chitsika and Mrs P. Chitsika.

My heartfelt appreciation goes to the Almighty who strengthens me at all times and make all things possible.

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## ABSTRACT

Humanitarian intervention under has been executed throughout history with authorisation of the United Nations Security Council resolutions. With the development of the Responsibility to Protect (R2P) and the Protection of Civilians (POC) doctrines, intervention has been legalised for the purpose of protecting civilians in the event of grave humanitarian crises or armed conflict. Resolution 1973/2011 authorising humanitarian intervention in Libya – principally enforced by the Operation Unified Protector led by the North Atlantic Treaty Organisation – aimed at enforcing these doctrinal norms in Libya. Thus, this study was undertaken to examine the implications of this Operation Unified Protector on the norm of protection in Libya. A qualitative case study research design was used to carry out empirical inquiry wherein, purposive or expert sampling was used to identify skilled personnel acknowledged for having in-depth information in the study. Interviews were conducted with those key informants to get primary data while documentary search was relied upon in collecting secondary data. Thematic analysis was used to analyse data. The findings of the study revealed that the post-intervention political situation in Libya has been marked by instability, growing insecurity and sporadic violence. The study found that the social welfare of the Libyans did not improve, rather, in the aftermath of the intervention, it is characterised by fall in the standards of living, and continued human rights abuses, killings, kidnappings with targets including both Libyan and foreign officials perpetrated by violent non-state actors such as Muhammad Jamal Network and Libyan Islamic Fighting Group. The intervention left a power vacuum, without a legitimate and firm government to assume power which has escalated sporadic violence attributed to uprisings by non-state actors. It was concluded that in Libya, intervention was flawed by underlying motives of regime change and geostrategic interest which changed the game play of Operation Unified Protector and nullified the mandate to protect. OUP took eclectic approach in implementing POC and R2P. NATO was only able to stick to POC rules of engagement by reporting a low civilian casualty and executing intervention in short period of time. The finding revealed that OUP mission violated right intent and just cause by pursuing regime change. Intervention violated reasonable prospects by worsening the Libyan situation without a legitimate central government to stabilize and progress the nation. Preventive measures were not fully exhausted in the intervention operation. The mission neglected the responsibility to re-build norm leaving the Libyans fragmented and scrambling for power. The mission left Libya as breeding ground for violent non-state actors exposing Libyans to human rights violations and abuses, eroding the purpose of safe guarding the Libyans and upholding of protection norms. Intervention by West is motivated given that their interests are at stake proving less rooted in protection of humanity. The study therefore suggests that there is need to carry out process evaluation to collect actual information surrounding the humanitarian crisis and record of adversities, incorporate non-intrusive measures of peacekeeping, diplomacy, regional organisations' consent and mediation in responding to crisis. Incorporate post jus bellum and rebuilding measures to war torn states to prevent repulsive effects of intervention. The legitimization and authorisation should not be limited to UN Security Council alone but come from the General Assembly and incorporate a multilateral approach to decision making in event of crisis.

## **ACRONYMS**

AU	African Union
GC	Geneva Convention
HDI	Human Development Index
ICC	International Criminal Court
ICISS	International Commission and State Sovereignty
ICRC	International Committee of the Red Cross
IHL	Interactional Humanitarian Law
ISIS	Islamic State of Iraq Syria
LAS	League of Arab State
NATO	North Atlantic Treaty Organization
NTC	National Transition Council
OUP	Operation Unified Protector
PHR	Physician for Human Rights
POC	Protection of Civilian
R2P	Responsibility to Protect
UNDP	United Nations Development Program
UNSCR	United Nations Security Council Resolution

UN	United Nations
UNHRW	United Nations Human Rights Watch
WHO	World Health Organization
WMD	Weapon of Mass Destruction

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## **CHAPTER 1: INTRODUCTION**

### **1.1 Background to the Problem**

The concept of humanitarian intervention can be traced back to the sixteenth and seventeenth century classical writers on international law, Grotius, in his *De Jure Belli ac Pacis* of 1625, who stated that states are entitled to exercise the right vested in a society of beings on behalf of oppressed individuals (Grotius 1625). The Grotian perspective entails a full-scale use of force by another state or external actors to end human suffering in another independent sovereign state. Humanitarian intervention entails use of military force in order to protect civilians' lives and welfare of suffering civilians in a foreign state ensuing as a result of disintegration or abuse of authority of the state by the incumbent government, and assisting to frame a structure conducive for civil authority to emerge (Finnemore 1996).

In the international system, the principle of humanitarian intervention emerged from the Western liberal notion of universal human rights. Informed by the Just War Tradition, the Fourth Geneva Convention of 1949 among others successively established legal protection of individuals who are not or are no longer participating in hostilities, and their property as well as protection of those attempting to provide humanitarian assistance (O'Callaghan and Pantuliano 2007). Furthermore, the Rome Statute was developed in July 1998 and came into force on 1 July 2002 as part of safeguarding international norms. The Statute was established to limit heinous crimes (international crimes; war crimes genocide and crimes against humanity) and to prosecute individuals responsible for crimes such as with the Nuremberg trials. Heinous crimes had been committed amid and post-world war I and II. The multiple crimes (men-slaughter and torture) committed by Serbian president Slobodan Milosevic, including prison guards in the Yugoslav war, the Rwandan genocide are some of the cases that precipitated the establishment of the ICC (Bassiouni 2007). The International Criminal Court, under the Rome Statute can only investigate and prosecute where states are incapable or reluctant to do so themselves (Scharf 1998). Broader normative advancements saw the development of a new protection norm specific to mass atrocities (genocide, war crimes, crimes against humanity and ethnic cleansing) which is code named the Responsibility to Protect (R2P). The R2P was unanimously adopted by member states at the UN World Summit in 2005 in attempt to reframe States' understanding of the relationship between state sovereignty, human rights and security by establishing a new norm regarding

appropriate international responses to the most egregious violations of human rights (Wheeler 2003). It has not yet reached the third stage of norm internalisation, and is not yet evolved into binding International Humanitarian Law (IHL). However, the international community has unequivocally begun to accept that it holds the primary moral responsibility to protect. Examples include UN peacekeeping mission of April 10th 2014 was to protect Central African Republic civilians under Chapter VII of the UN Charter (UNMINUSCA Report, 2014), and the United Nations Mission in the Republic of South Sudan was concerned with the protection of civilians since 2011 (UNMISS Report, 2011). The challenge that persists is: how can the international community exercise this responsibility to protect civilians in cases where the sovereigns are resistant to such obligations as enshrined in international norms such as the R2P? If they successfully intervene, are the civilians beneficiaries of the protection mission? These questions bear on the analysis in this study in relation to North Atlantic Treaty Organisation's (NATO) intervention in Libya.

The Libyan conflict that led to the overthrow of the country's long serving leader Muammar Gaddafi in 2011 is a classic example where the norm of protection was subjected to a litmus test. The roots of this conflict lies in the internal upheavals associated with Arab Spring protests that spread from Tunisia to Egypt and beyond in early 2011 (Bellamy and Williams 2011: 838). Protests in Libya emerged peacefully and were geared towards meeting demands of the people in improving their civil and political rights turned out violent in mid-January and Libya became a victim. In response to the demonstrations, Gaddafi was quoted in a statement made on the 23rd of February in words that remind the international community about the 1994 Rwandan genocide massacre, informing the world that officers have been deployed in all areas and regions so that they can purify the rebellious mindset from those cockroaches and any Libyan national who takes weapons or guns against Libya will be executed (Bellamy and Williams 2011: 838).

Following this Gaddafi utterance of war, evidence that grave human rights violations were taking place became significant and compelling. Judging from wide media reports, the Gaddafi regime's response to the demonstrations was brutal indeed. Crimes against humanity were reported throughout the conflict, The Times reported that the 32nd Brigade on 23 February 2011 shot at unarmed protesters killing seven, on 6 June 2011 18 detainees died due to suffocation exacerbated by increasing room temperatures as they were held in poorly ventilated metal

containers by Gaddafi force in Al Khums, on 23 August 2011, as Tripoli fell, the guards killed dozens by throwing grenades into the warehouse and firing through the door, (The Times March 2011). Of the 157 detainees, only 51 survivors were confirmed (The Commission 2012). The colonel had used violent means to contain the 2011 rebellion, this was interpreted by League of Arab States (LAS) leaders as human rights abuses on the civilian populace; thus, basic human rights had to be restored (O'Brien and Sinclair 2011). LAS, then called upon the United Nations Security Council to establish a no-fly zone in Libya to create safe zones in places exposed to shelling as a precautionary measure that permit the protection of the Libyan national.

Irrespective of the rebuke and condemnation, Gaddafi continued and warned the residents of Benghazi in a speech on the morning of 17 March that his soldiers would “be coming tonight” and would “show no mercy” (Karam et al 2014). This speech was afterwards used as a justification for the decision of the UNSC only hours later. On 17 March, the UNSC adopted resolution 1973 that represented the legal base for an intervention in Libya and stated that states should ensure protection of civilians and in highly populous areas under threat of attack in the Libyan Arab Jamahiriya. The intervention was led by North Atlantic Treaty Organisation (NATO) under mission Unified protector and Gaddafi was removed from power and his murder took place on October 20. By mid-November, the governments of all major foreign states had formally recognized the National Transitional Council (NTC) as the official government of Libya. Operation Unified Protector formally ended on October 31 after the NTC declared Libya liberated.

However the post-intervention situation in Libya did not attribute to the improvement and safeguarding of the rights and liberty of the Libyan nationals. NATO's 2011 intervention created the devastation and chaos in Libya that enabled the rise of Islamic State militants and has created a breeding ground for militant groups (such as Islamic State of Iraq and Syria (ISIS), Ansar al-Sharia, Libya Dawn, Benghazi Revolutionaries Shura Council and Derna Mujahidin Shura Council (Kabir, 2011). This has exposed the Libyan nationals to ongoing civil wars and human rights abuses attributed to the predominance of anarchy and absence of legitimate government. This erodes the sore mandate of humanitarian intervention which seeks to uphold and respect the human welfare and dignity under auspices of the norm of protection. Before the intervention, it was recorded under the rule of Gaddafi that Libya had Libya a ‘high’ development status in

public health care, access to electricity and a wide array of privileges such as free electricity, health facilities, housing facilities interest free loans, newlyweds benefit packages and so forth from period 2005-2010 (UNDP HDI 2010). However Libya's post-intervention has witnessed dramatic and catastrophic collapse in Libya's overall development. With oil production just a fifth of potential, revenues have plummeted, pushing fiscal and current account deficits to high records while inflation had accelerated by 24% during 2016, further eroding real incomes (Laremont 2013). This has given rise to questions on the utility of humanitarian interventions that purport to protect civilians, casting a shadow on the future of the norm of protection. This has raised serious concerns on the future of humanitarian intervention in Africa and elsewhere.

## **1.2 Statement of the Problem**

The United Nations Development Programme's Human Development Index (HDI 2010) gave Libya a 'high' development status; public health care was regarded the best in Africa by the World Health Organization (WHO) in 2005 and United Nations Educational, Scientific and Cultural Organization (UNESCO) prior to the 'humanitarian intervention'. In addition, the Nations Encyclopaedia attests Libya's sustained and phenomenal independent development in housing, health, water supply and sanitation during the pre-2011 intervention period. However, the post-intervention state of Libya has witnessed dramatic and catastrophic collapse in Libya's overall development. The State of Libya has been somewhat dissolved, fracturing into quasi-feudal fiefdoms reigned violently by vying Warlords who constitute of various tribes that constituted Libya (Armstrong and Lambert 2012). Levels of stability and pressures worsened after enduring a civil war and subsequent instability led to an index rating of 87.8% (The Fragile States Index 2014). This has exposed the Libyan nationals to human rights abuses and civil wars in what was called a protection mission, which further puts into question the post-hoc legitimacy of intervention. Amnesty International, documented stories of migrants and refugees who faced killings, torture, rape and starvation - mostly at the hands of traffickers in Libya and people held hostage for ransoms (Amnesty International Report 2016). The Human Rights watch reported that nationals and migrants were held in farms, warehouses, houses and apartments secured by smugglers, traffickers and armed groups, more than 200 men were held in a room that could reasonably hold less than 40 in Tripoli near Mitiga Airport during October 2016 (UNHRW 2016). The sole mandate of humanitarian intervention is to uphold human rights, respect of human life

and dignity but what has been experienced in Libya brews more doubts. In fact, the essence of a humanitarian intervention is that the situation must ameliorate humanitarian rather than precipitate the security situation after intervention has occurred. This has raised skeptic questions about the future of the norm because of the status of Libya in the aftermath of the NATO intervention.

### **1.3 Objectives of the Study**

The general objective of the study is to examine the implications of NATO's military intervention in the Libyan conflict on the international norm of protection.

Specific objectives of the study are to:

1. Examine and reflect on the tenets of the international norms of protection;
2. Analyse the course of events that led to the UN resolution 1973;
3. Examine the effects of the NATO led intervention on the human rights situation in Libya;
4. Investigate the implications of NATO intervention on the norms of protection in relation to the aftermath of NATO intervention in Libya.

### **1.5 Justification of the Study**

Existing studies within the realm of international relations have much focused on the controversies underpinning humanitarian intervention. Debates centralised on the issue of non-intervention (I.C.J Reports 1949: 35), use of force (Jolly et al 2009), regime change (Riesman 2004) and neo-colonial extension (Haegeman 2015) with less emphasis on post intervention concerns (Bianchini et al 2015), post-conflict rebuilding (Murphy 2012), (Howorth 2013) and responsibility to re-build (Mckay 2011). This study examines implications of pre-mature interventions and their repulsive effects on the local natives to avoid a repetition of the Libyan experience. The study contributes to existing body of literature and offer policy insights for future humanitarian military operations.

## **1.6 Research Design, Methodology and Data Collection**

The research design used in this study was a case study. A case study research design is an empirical inquiry that searches on a contemporary phenomenon within the context of real life and applies if boundaries between phenomenon and context are not distinctly evident paving way for multiple sources of evidence to be utilized (Yin 1984). It is an approach in which the researcher explores a single entity of phenomenon brought together by activity and time and compile advanced data by using different information procedures. Yin (1994) cites that a researcher can make use of case study approach to answer how or why question asked about a set of events over which the researcher has little or no control case study research is useful. This research sought to answer how the action of NATO during and after the intervention in Libya implicates the norm of protection. The Libyan intervention as a means to provide liberty and protection of nationals under the norm of protection has become evidently a problematic topic, hence the need to explore its implications.

### **1.6.1 Research Methodology**

The study used a qualitative research methodology to collect, analyse and present data. Qualitative research methodology seeks to give descriptive validity or an accurate account of events that most people (including researchers and participants) observing would agree is true (Nyawaranda 2003). The methodology was considered necessary for capturing data on intervention process (authorization and use of force), opinions or perceptions on the implications on the norm of protection and challenges faced by the affected. It also captures arguments that were put forward during the Libya debates on the role of the use of force to protect civilians against the will of a functioning state. Data was gathered through in-depth interviews with key informants and documentary search. The methodology allows the researcher to collect information on the natural setting as the direct source of data hence coming up with physical or current events and activities on the ground (Nyawaranda 2003) pertaining the dynamics of the intervention in Libya and its implications on the norms of protection.

### **1.6.2 Population**

A population can be defined as all individuals from whom the study draws its data which can be generalised to them and these individuals have certain characteristics of interest to the researcher



(Ary et al 1970: 125). The study will consult key informants such as the University of Zimbabwe (UZ) lecturers who are experts in international relations, Zimbabwe Human Rights Association (ZIMRIGHTS) which performs oversight on human rights abuses, Amnesty International, Senior United Nations members, Libyan nationals and migrants. Diplomatic and consular staff from Libya, France, Britain, China, South Africa and America were also consulted.

### 1.6.3 Sampling Techniques

The study used non-probability sampling techniques – purposive sampling in particular. A sample is part of a statistical population which is finite and whose properties are examined to acquire data (Webster 1985). When dealing with people, it can be defined as a set of respondents (people) selected from a larger population for the purpose of a survey. In a purposive sampling, the researcher chooses those people with in-depth knowledge on the subject matter under study. In this case, purposive sampling was chosen in order to gain access to expertise data on the UN/NATO intervention in Libya and implications on the norms of protection. Targeted respondents included diplomatic and consular staff and senior (non-governmental organizations) human rights personnel from Libya, France, Britain, China, South Africa and America.

### 1.6.4 Data Collection Methods

Data collection is the process of gathering information from primary and secondary sources in pursuit of research objectives of the study. This study used in-depth interviews with key informants and documentary search as its key data collection methods.

#### *1.6.4.1 In-depth Interviews with Key Informants*

In-depth interviews were used as the sole method for collecting primary data on the implications of UN/NATO intervention in Libya on the international norms of protection. The key informants interviewed included officials from five human rights NGOs, diplomatic and consular staff from both the Zimbabwean embassy in Libya and Libyan embassy in Zimbabwe and senior diplomatic officials from North Atlantic Treaty Organisation (Britain, France and America). The researcher also interviewed four senior diplomats in Permanent Missions to the United Nations. The interview guides were used as data collection tools, their questions served in identifying the implications of the Libyan intervention on the norms of protection. The rationale for using this data collection method is captured in Robson (1995) who posits that, interviews give the best of

information since the interviewer asks questions of his interest and concern. The outline in this approach increases the comprehensiveness of the data collection. Since all the questions in interview guides used were open-ended, the respondents were given more latitude to express their views.

#### *1.6.4.2 Documentary Search*

This study relied on documentary search as its sole method for collecting secondary data. Document or documentary analysis is a social research method and is an important research tool on its own right and is a valuable part of most schemes of triangulation. It refers to the various procedures involved in analyzing and interpreting data generated from the examination of documents and records relevant to a particular study (Scott 1990). This study consulted a wide range of secondary sources to address the research questions as follows: Legislation (UN documents, the Security Council's resolutions, World Summit Documents, media, public records); the websites of international organizations. These assisted the researcher in identifying the evolution and the basis of the norms of protection. Documentary analysis was also used to trace the course of events that led to the passing of resolution 1973 and intervention in Libya.

#### *1.6.5 Data Analysis*

This study used thematic analysis as its data analysis strategy. It entails pinpointing, analysing, and recording theme patterns within data. Themes are patterns within data sets that are essential to the description of a phenomenon and are exclusive to certain research questions (Kellehear and Gliksman 1997: 11). The themes become the categories for analysis. Analysis for this study was performed through the process ...various stages of coding to create established, logic patterns. The stages include familiarization with data, coming up with themes from codes, assessing themes, describing and naming themes and lastly the production of the final report. The study identified repeating words in the text and then highlight by underlining them. A list of the underlined words was compiled. From the compiled list of words repeating concepts or ideals were highlighted through underlining and put into subcategories based on the similitude or meaning. From the subcategories themes were then drawn to present data. For instance repeating ideas or concepts such rape, pillaging, killing, torture or enforced disappearances relate to one another thus they fall under crimes. Reasonable prospects, just cause, right intent, use of force or right authority govern operations and behavior hence they fall under norm

## **1.7 Delimitation**

The scope of this study was delimited to the study of the dynamics of the UN/NATO intervention in Libya in 2011 and its implications on the international norms of protection. The time frame of the study was pegged from 2011 to 2017.

## **1.9 Dissertation Overview**

### Chapter 1

Chapter one consist of the background of the problem, it reflects on the matters that surrounded demonstrations in Libya leading to the conflict and how the international community decided to intervene. Statement of the problem and objectives illustrate the motive of the research. Justification of the study articulates the significance of the research. The methodology section outlines the sources of data, the target population and the sampling frame.

### Chapter 2

This chapter builds up the theoretical framework for the discussion about humanitarian intervention in Libya, and discusses the idea of protection of civilians and responsibility to protect, examining how they evolved over time to build on the umbrella term – the norm of protection. This chapter unfolds the legal framework that legitimises humanitarian military intervention and highlights the agents of intervention that make it permissible. The quandary surrounding humanitarian intervention will be discussed. This section will briefly integrate the concept of humanitarian intervention in the political theories of international relations.

### Chapter 3

This chapter will analyse the course of events that led to the passing of United Nations Resolution 1973 to intervene in Libya, from involvement of LAS, United Nations and uptake of mission by NATO. This section will focus on observable evidence of atrocities or iniquities committed by Gaddafi loyalist forces during the early phase of the Libyan revolt against the regime of Muammar Gaddafi. Evidence is revealed to determine beyond reasonable doubt whether violations of human rights met such a criteria for protection action and whether the potential, at least, existed that humanitarianism featured as a motivating factor in Operation Unified Protector.

## Chapter 4

This chapter will examine the theoretical issues relating to the Libyan intervention. The chapter will examine how theories of international relations explain the conflict in Libya and the execution of the intervention by NATO assessing their relevance as well. The framework of analysis will be based on the liberalism and normative theory.

## Chapter 5

This chapter will present the major findings of the research examining on the implication of NATO intervention on the human rights and assessing whether they improved changing the live of the Libyans or not. The chapter will evaluate the implication of the intervention on the norm of protection based on the post-intervention Libya and the future of humanitarian operations.

## Chapter 6

This chapter will present the conclusion of the study. Those conclusive summaries will reflect on the objectives of the study particularly the implications of the evidence produced on the norm of protection and execution of protection missions in the future. It will also document recommendations on the practice of humanitarian intervention for future purposes.

## **CHAPTER 2: AN OVERVIEW OF THE ORIGINS AND DEVELOPMENT OF THE NORM OF PROTECTION**

### **2.1 Introduction**

The norm of protection has a history deep-rooted in academic thought than state practice. To give a descriptive background requisite to the understanding and analysis of the implications of humanitarian intervention in Libya on the norm of protection, this chapter examines literature on the genesis, development and current nature of the norm of protection. This is done through a survey of previous studies and cases of humanitarian intervention, international humanitarian law and its enforcement in the pre-modern and modern epoch in relation to the norm of protection. This chapter also illustrates how the responsibility to protect or humanitarian intervention doctrine and the principle of protection of civilians go hand-in-glove as key variables within the body of the norm of protection.

### **2.2 Evolution of Humanitarian Intervention and Protection of Civilians**

Humanitarian intervention and/or the norm of protecting civilians before and during war can be traced to Aristotle, a Greek philosopher (384-322 BC) who made propositions about natural law outlining that one part of it which is politically just is natural, and the other part legal. The natural directs the rational actions of humans, treating all humans equally (Verwey 1985). Francisco de Vitoria and Alberico Gentili, also laid foundations for international law based on natural law, that complimented those of Aristotle in the framework of humanitarian intervention. It is from this humanitarian thinking that human rights originated and later their enforcement and protection theories and practices. The just war theory (*bellum justum*) linked to the writings of Saint Tomas Aquinas (1225-1274) which posited that, in order to wage war, there must be a just cause (defending oppressed, self-defense or peace restoration) and right intent further developed the norm of protection by introducing justice for war and justice in war (Walters 1971). Later on, Grotius' (1604/05) legal theory developed and conceptualized the notion of natural law in the scope pertaining to international law and thus his Law of Nature molded the Law of Nations (to advance security and prosperity within a community (Freeman 1994). To Grotius, individuals possessed inherent rights which are supposed to be protected by the state and this limits the

internal sovereignty of a nation-state (Freeman 1994). Therefore, if a sovereign state violates the basic human rights of its people, that state would have transgressed its jurisdiction and thus other states will have and exercise the right to intervene and re-institute the order of the Law of Nature (ibid). At this point, international relations thought developed the mechanism and/or practice usable by states or a community thereof for protecting human rights against a sovereign state.

### 2.2.1 Nature of Intervention in the 19<sup>th</sup> Century State Practice

In the 19<sup>th</sup> century, the doctrine of right to self-preservation evolved which comprised lesser measures of use of armed force which did not aggregate war such as reprisal, self-defense or pacific blockade (Brownlie 1963). Practice of lesser measures of force was sooner or later developed to comprise interventions warranted on humanitarian grounds (ibid). In 1827, Western supremacies intervened in Greece to protect Greek Christians from the subjugating Turks (Brownlie 1963). France also intervened in Syria under the Ottoman Empire in 1860, to rescue severely persecuted Christians (Abiew 1999). The intervention was sanctioned by leading European countries at the Conference of Paris in 1860 (Brownlie 1963). Russia intervened in Herzegovina, Bosnia and Bulgaria in 1877, to halt heinous crimes committed against Christians which were also under Ottoman rule, upon authorisation from numerous European powers (Abiew 1999). Thus, it can be argued that intervention to save humanity from heinous crimes done by their states by commission nor omission became part of state practice in the international system.

### 2.2.2 Interventions During the Cold War, 1945-1989

1945 marked the establishment of United Nations to handle inter-state conflicts, and in due course expanded to cover contemporary intra-state conflicts. Art 2(4) of the UN Charter prohibits any member state from the threat or use of force against any other state, and the UN reserves the right to authorize interventions through the United Nations Security Council. However, this article left many questioning whether use or threat of force against nationals of a state by their state is prohibited and whether the UN was authorized to take action to prevent it.

Examples of cases of humanitarian intervention at this point show a stringent approach, for instance, the Belgian and US intervention in Congo on 24 November 1964 to liberate almost 2000 people of various nationalities held captive by rebellious forces which was formally labeled

as humanitarian mission did not specifically intend to protect Congolese nationals (Verwey 1985). It was executed to avoid bloodshed and not to engage the rebel forces in warfare (Abiew 1999). India also invaded East Pakistan on 5 December 1971, and assisted in establishing Bangladesh as an independent state after West Pakistani army conducted mass killings and other atrocities against East Pakistan, leading to appeals to UN and subsequent Indian intervention (Wheeler 2000).

Hand-in-glove with the development of humanitarian intervention was the development of the principle of Protection of Civilians (POC) following a long history of debate rooted in an increasing recognition during the twentieth century of the burdens that civilians bear in times of crisis, be it nature-related or man-made. The Fourth Geneva Convention of 1949 firmly established legal protection of individuals who are not or are no longer participating in hostilities, their property, as well as protection for those attempting to provide humanitarian assistance (O'Callaghan and Pantuliano 2007).

### 2.2.3 Post-Cold War Era and Changing Context of Interventions

The end of the Cold War has experienced an extensive revolution in the notion of humanitarian intervention as well as in the practice. The end of the 20<sup>th</sup> Century was marked by a change in the nature of armed conflict. Civilians now make up the greater magnitude of casualties attributed by internal conflicts that have replaced inter-state conflict as cited by (Leitenburg 2006: 14, Freeman 1997, Walzer 1979, Wheeler 2002). The emergence of many conflicts with non-state actors as primary executors of large-scale violence demanded a strengthened international legal framework regarding state obligations to protect civilian populations. International community portrayed massive failures to prevent atrocities and genocides in countries such as Rwanda, Bosnia and Cambodia, as well as crimes against humanity in East Timor, Darfur and Kosovo (Terry 2002). After these failures, there was a recognized need to shift the focus/debate about crisis prevention and response. Priorities for national and international policies should have security of the community and the individual at the forefront, not only the state.

Norms relating to the protection of individual rights have progressively received general reception, principally among the European states (Donnelly 1993). Humanitarian interventions are not only limited to responding to the suffering caused by repressive governments, but also

they are focused to circumstances produced by internal conflicts, state disintegration as a consequence of which human rights are grossly violated (Ramsbotham 1998). Humanitarianism is no longer confined to guarding fundamental human rights, but is protracted to include the demand for upholding international humanitarian laws of warfare (war crimes or crimes against humanity) and providing humanitarian support (to lessen gross deprivation and starvation) (Ramsbotham 1998). Tribunals were established to reprimand such crimes. International Criminal Tribunal for the former Yugoslavia (ICTY) (body of United Nations) was established through Resolution 827 of Security Council on 25 May 1993 to prosecute and try perpetrators of crimes committed during the Yugoslav Wars. ICTY has indicted former Serbian president Slobodan Milosevic for a multiplicity of crimes, including prison guards and police commanders for manslaughter and torture (Bassiouni 2007).

International Criminal Tribunal for Rwanda (ICTR) established by Resolution 955 of Security Council in November 1994 to apprehend perpetrators of the Rwandan Genocide. The tribunal has authority over genocide, war crimes crimes against humanity which are well-defined as defilements of Common Article 3 and Additional Protocol 2 of the Geneva Conventions (these oversee internal struggles/ conflicts) (Bassiouni 2007). Examples include the Economic Community of West African States (ECOWAS) intervention in Liberia in 1990 (Abiew 1999), NATO states undertook 'Operation Allied Force', intervening in the Kosovo region of Yugoslavia to stop the Serbian oppression of Kosovar Albanians in 1999 (Damrosch 2000), this intervention precipitated the establishment of ICC. The ICC is a law court of last resort, to be turned to only if a government is unable or reluctant to impeach these crimes. This marked the birth of the Rome Statute of the International Criminal Court (ICC) accepted at a diplomatic conference in Rome on 17 July 1998 and enforced on 1<sup>st</sup> of July 2002 (Scharf 1998).

## **2.3 Contemporary State of the Norm of Protection**

### **2.3.1 The Protection of Civilians Principle**

Protection of Civilians (POC) may be broadly understood to encompass actions to protect the lives and dignity of civilians in and/or during armed conflict. In the aftermath of the Second World War, the Protection of Civilians principle emerged in International Humanitarian Law (IHL) particularly in response to the brutal treatment of civilians during the conflict. Protection of



Civilians in Armed Conflict since the 1990s has been a separate thematic issue on the UN agenda. Series of crises in the 1990s – including Somalia, Rwanda and Srebrenica massacres of civilians – underscored the toll of conflict on civilians. Thus, POC-related norms and policies have dramatically expanded (Wheeler 2001) following these developments. Key developments included UN Secretary-General Boutros Boutros-Ghali's Agenda for Peace in 1992 highlighting the concept of human security; the establishment of the International Criminal Court (ICC) with the hope that it would enhance compliance with IHL and help prevent gross and systematic violations of human rights, (Ghali 1992). Developments also ranged in focus from the protection of children in armed conflict to the banning of landmines and cluster munitions (Holt et al 2009).

The norm has been contemporarily repeatedly used in case-specific mandates in the context of UN peacekeeping operations. Listed are some of those protection of civilian case examples: the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) (March 2014), UN Mission in South Sudan (UNMISS) (March 2014), UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) (June 2014), UN Assistance Mission for Iraq (UNAMI) (July 2014), AU/UN Hybrid Operation in Darfur (UNAMID) (August 2014) and AU Mission in Somalia (October 2014) (AMISOM) (UN Peacekeeping Missions Report, 2015). However, as of now, the problem remains that neither states nor armed groups sufficiently or consistently comply with these provisions. This also raises sceptic thinking and wondering whether NATO, in its conduct and alleged pursuit of humanitarianism element is cognisant of the provisions that shape norm of protection.

### 2.3.2 The Responsibility to Protect Doctrine

The R2P doctrine came into being after Kofi Annan seriously challenged the international community stating that no principle at law or even sovereignty can ever prevent crimes against human nature and the fact that the international community cannot protect people everywhere is no reason for doing nothing when we can. As a result, the International Commission on Intervention and State Sovereignty (ICISS) was established in September 2000 (Gareth 2006). In 2001, the ICISS came up with its report named 'The Responsibility to Protect' which re-categorised sovereignty as responsibility rather than control.

The R2P is a newly emerging concept that, as defined by the 2005 World Summit Outcome Document notes that individual States should take the mandate of responsibility to protect its nationals from acts of genocide, ethnic cleansing, war crimes and crimes against humanity (ICISS 2001). R2P consists of three pillars: (i) the state's responsibility to protect its citizens from mass atrocities and their incitement; (ii) the international community's responsibility to encourage and assist individual states in meeting that responsibility and (iii) the international community's responsibility to use diplomatic means or using coercive force – to protect those populations if the state cannot or will not live up to its responsibility (O'Callaghan and Pantuliano 2007).

R2P, as articulated in the report, stressed that sovereignty carries with it a responsibility of the state to protect its people. The Commission denotes that sovereignty implies a dual responsibility in which states externally are expected to respect the sovereignty of other states and internally to respect the rights and dignity of all the nationals within the state (ICISS 2001: 8). When it fails to do so, its sovereignty may be breached. The Commission assigns responsibility to the Security Council on deciding on tough matters of intervention cases that override state sovereignty (ICISS 2001: 49). Notably, the report related international responsibility to the UNSC's task to uphold international peace and security, but detached R2P from humanitarian intervention by highlighting the primary use of non-coercive means by the international community and the use of force only as a measure of last resort. It added an emphasis on preventative action. 'Prevention is the single most important dimension of R2P (ICISS 2001: 69). This last provision which states that intervention with aid of military can only be justified when non-military measures to the crisis has been fully exhausted, with bases to illustrate lesser measures would not have prevailed has aroused much controversy. Notwithstanding the need for UN Security Council's authorisation of any military intervention, many fear it will lead to the violation of state sovereignty and will be used to legitimise military aggression or regime change.

The Commission's judgement determining relevant decision making criteria can be summarized under the following six themes or topics which include right authority (United Nations Security Council and in accordance with UN Charter), justifiable cause, honourable/ proper intention, last resort and proportional means. Military intervention according to the Commission is justifiable under circumstances to avert massive death, genocide, ethnic cleansing, intended ill-treatment –

rape, torture or murder (as outlined by framework of the 1948 Genocide Convention and defined in the Geneva Conventions and Additional Protocols) (ICISS 2001: 32).

It may not always be the case that the humanitarianism is the only motive that aid states to intervene even within the Security Council-authorized intervention framework. Mixed motives in the international community relations stand to be a reality. It will be a fallacy to assume that complete disinterestedness or the absence of any self-interest at all is ideal in international relations. The high budgetary cost and high risk to personnel involved in any military missions may explain or illustrate political imperativeness for the intervening state to carry some degree of self-interest in the intervention cases.

The use of military force in accordance to the Responsibility to Protect (R2P) concept is not in any way the main tool of the doctrine, force should only be used as a measure of last resort, if use of peaceful means prove inadequate in order to prevent atrocities from taking place. Other tools to be considered prior to considering the use of force include: capacity building, mediation, and sanctions directed towards a country that fails to protect its population.

### 2.3.3 Conjunction of POC AND R2P

POC and R2P share the same concern civilian suffering from mass human-induced violence but each has its own nuances and limitations. The two circles of R2P and POC can overlap for example, when war crimes against civilians or crimes against humanity (including ethnic cleansing and genocide) are committed during armed conflict (Bassiouni 2007). A situation that would fall under POC, but not R2P, is the protection of civilians threatened by escalating armed conflict if mass atrocities are not planned and committed. And a situation that would trigger R2P, but not POC, is a threat from mass atrocities planned outside an armed conflict. Security Council Resolution (SCR) 1970 (of 26 February 2011) describes atrocities against peaceful demonstrators in Libya not yet an armed conflict and raises R2P (crimes against humanity) concerns; but this, technically, is not yet a POC situation (UNSC/RS 2011). A second resolution, 1973 (of 17 March 2011) describes the situation in Libya as a civil war, no longer as protests and riots, thus POC now comes into consideration, in parallel with R2P (BBC 2011). Another interesting element in SCR 1973 is that POC is an obligation not only of the Gaddafi regime, but of all

parties in conflict; it urges the rebels also to protect civilians. If R2P is a matter for States only, POC can be an obligation for non-State actors.

*Table 2.1: Comparison between the legal sources for R2P and POC*

<b>R2P- Responsibility to Protect</b>	<b>POC- Protection of Civilians</b>
1949 Geneva Conventions and their Additional Protocols (war crimes)	1949 Fourth Geneva Convention (POC), domestic and international humanitarian law, <i>jus in bello</i> traditions
1948 Genocide Convention (genocide)	UN Security Council Resolutions: thematic (Res. 1894) and country-specific mandates to POC
1998 Rome Statute for ICC (crimes against humanity, forceful deportation)	Refugee Laws (1951 Convention, 2009 AU Convention on IDPs (the Protection and Assistance of Internally Displaced Persons))
Domestic Law (Pillar One); Bilateral, Regional Law (Pillar Two)	Ottawa protocol banning land-mines
UN Charter, Chapter VI, VII, VIII measures (Pillar Three)	2010 Convention on Cluster Munitions
Relevant Human Rights Laws – for example, non-discrimination of ethnic minorities	Relevant Human Rights Laws – for example, prohibition of recruitment of children in armed forces

*Source: (Popovski 2011)*

#### 2.3.4 Limitations

For POC, the main limitation is that the concept emerged as relevant to situations of armed conflict only. If there is no armed conflict where civilians are defined as the opposite of combatants POC transforms itself to protection of citizens in time of peace, covered by the well-developed and comprehensive body of human rights. POC is narrower than R2P in that all war crimes trigger R2P, but not all war crimes would fall under POC as some war crimes are not committed against civilians, but against wounded or captured soldiers. On another hand, R2P is narrower than POC and would not apply in every armed conflict, but only in those in which mass atrocities have been systematically planned as part of the war strategy (Popovski 2011).

#### **2.4 Roots of Norms of Protection in International Law**

The need to protect the lives of civilians and other non-combatants has been universalized and codified in international humanitarian law. Failures to protect civilians in major armed conflicts in the last two decades Bosnia-Herzegovina, Liberia, Somalia, Rwanda, Burundi, Timor-Leste, Democratic Republic of the Congo, Sierra Leone, Kosovo, Darfur and elsewhere, POC has

become a central matter of international concern (Terry 2002). International humanitarian law (IHL) are the principles which seek to limit adverse effects of armed conflict in humanitarian intervention missions (ICRC 2013). The roots of norms of protection stem from International humanitarian law.

The four Geneva Conventions of 1949 and Additional Protocols I & II of 1977 which relate to the protection of victims of armed conflicts and the 2005 Additional Protocol III which govern the adoption of an additional distinctive emblem by all parties in conflict (distinctive insignias are envisioned to identify and protect medical and relief workers) (ICRC 2013) are sources of international law. The norms of protection are based on these sources of international law. Common Article 3 of 1949 GCs is contained in the all four Geneva Conventions contain which extend to cover on protection of civilians in conflicts not of an international character (Siordet 1950). When an armed conflict not of international nature erupts in the territory of contracting parties, each party to the conflict shall be bound by this Common article.

IHL in protection of children against any kind of indecent assault is stipulated in Article 132 of (GC IV, articles). IHL prohibits the enrolling of child soldiers and participation in armed conflict; child combatants are entitled to advantageous treatment which is covered by Article 77 of additional protocol 1 (Pictet 1954). Specific provisions include: Articles 13, 32, of the Fourth Geneva Convention state that civilians are to be protected from killings, torture or brutal treatment and not to be discriminated on the basis of political opinion race, nationality, ethnicity and religion. IHL Protection for Women states that special protections should be accorded to women, expectant mothers, mothers of small children in Geneva Convention IV & API: states that attack on honour, rape, enforced prostitution, or assault is forbidden in the international realm (Bugnion 2000). The Additional protocol II Article 4 also prohibits despicable acts such hostage-taking, killings, brutal treatment, terrorism, slavery, wrath on personal dignity, blanket punishment and pillaging (ICRC 2013). All these foundations of International humanitarian law seek to regulate the conduct of war and protection of combatants and non-combatants in event of conflict.

The International Criminal Court (ICC) was established by the Rome Statute of the International Criminal Court of 1998, which went into effect in 2002 to buttress the attempt to provide adjudication of violations of the norms of protection. This is the same time within which

responsibility to protect doctrine came into light, with similar purposes and are expected to work in tandem to temper international politics and to end impunity. The ICC is an independent, permanent court with authority over the crimes of racial extermination, crimes against humanity, and war crimes (Ainley 2015). This institution re-enforces the norms of protection through legal framework of the Rome statute.

The United Nations with aid of the international community reserves the responsibility to use peaceful means, diplomatic measures, humanitarian and other measures in accordance with Chapters VI (that deals with peaceful settlement of disputes), Chapter VII (maintain peace) and VIII (which deals with regional arrangements in dealing with issues and authorisation by Security council to help protect populations (Schweigman 2001). UN acts as agent to ensure compliancy to international law.

The main purpose of these laws is to protect persons who are not, or are no longer, participating in hostilities. In addition to these conventions, several tribunals have been established to bring wrongdoers to justice, with the further aim of deterring future abusers and promoting reconciliation. For instance the International Criminal Tribunal for the former Yugoslavia (ICTY) has indicted former Serbian president Slobodan Milosevic for a variety of crimes, as well as police commanders and prison guards for murder and torture, and common soldiers for rape, among other crimes. International Criminal Tribunal for Rwanda (ICTR) indictees include former prime minister Jean Kambanda for inciting genocide, among other crimes, newspaper editor Hassan Ngeze for propagating hate media, and Mayor Jean-Paul Akayesu for his part in widespread killings and in the systematic rape of Tutsi women (Mills and Kira 2002).

POC-related norms and policies have dramatically expanded. Key developments included UN Secretary-General Boutros Boutros-Ghali's Agenda for Peace in 1992 highlighting the concept of human security; the establishment of the International Criminal Court (ICC), with the hope that it would enhance compliance with IHL and help prevent gross and systematic violations of human rights; the first UN Security Council Open Debate on the Protection of Civilians in 1999; and numerous international conventions highlighting POC, ranging in focus from the protection of children in armed conflict to the banning of landmines and cluster munitions (Holt et al 2009).

## **2.5 Conclusion**

Humanitarian intervention concept came into existence as means to halt the heinous crimes during the World War I and II and has been evolving in the past centuries with advance in policies. Humanitarian intervention was framed under natural law which directs rational actions of human beings and rendering them equal. This concept is the bases for the then human rights. The concept of humanitarian intervention warrants the right of member states to intervene given that a sovereign state is in violation of fundamental human rights, to assist the oppressed or to restore peace. Institution such as United Nations was established to maintain international peace and security. International Criminal Court was established to reprimand, try perpetrators and deter crimes. Humanitarian intervention is framed from international humanitarian law (based on customary international law, Geneva and Hague Conventions) to protect individuals and property/entities that are (or may be) affected by warfare and restrict the rights of parties to a war. The two concepts of Protection of civilians (POC) and Responsibility to protect (R2P) were conjoined as norm of protection to give understanding of the ulterior motive that motivated the intervention in Libya under Operation Unified Protector.

## **CHAPTER 3: THE DYNAMICS OF THE CIVIL WAR AND SUBSEQUENT INTERVENTION LIBYA**

### **3.1 Introduction**

This chapter examines the course of events leading to the UN sanctioned humanitarian military intervention in Libya. It looks into the origins of the conflict, development of the civil war and reaction from various organisations such as the regional organisations (League of Arab States and African Union) and international organisation such as the United Nations. The chapter also examines the factors that influenced the North Atlantic Treaty Organisation to take military action in Libya. The main intent of the chapter is to give background data from which to evaluate the justifiability of invoking the norm of protection as a just cause for a humanitarian military intervention in Libya.

### **3.2 Origins of the Civil War in Libya**

#### **3.2.1 Background to the Civil War**

The origins of the crisis in Libya lie in the political upheavals related to the Arab Spring protests that blow out from Tunisia to Egypt and yonder in the early months of 2011 (Bellamy & Williams 2011: 838). The unrest in Libya was partly raised by discontent with underprivileged performance of the ruling government, insufficient living conditions, dishonesty, exploitation and by the dejection of greater parts of the populace over botched expectations that Libya's international political recuperation of the modern past would advance the democratic, economic, social day-to-day living in country (Bellamy & Williams 2011). Anti-government demonstrations took place in Benghazi on February 15 2011 led by protesters infuriated by the capture of a human rights lawyer, Fethi Tarbel. The main objective of protesters changed into a regime change agenda that called for Gaddafi to step down alongside discharge of political prisoners. To contain the civil strife, the Libyan security team at first used rubber bullets and water cannons against the mobs, causing a number of injuries (Bellamy & Williams 2011: 838). However, as protests deepened, with protesters taking hold of Benghazi and unrest diffusing to Tripoli, the government of Libya began using fatal force against protesters. Security services and squads of mercenaries dismissed live ammunition into masses of protesters (Bellamy & Williams 2011).



The newly equipped rebel militaries were able to eject most pro-Qaddafi troops from the eastern parts of Libya, comprising the city of Benghazi, and several western cities by February 23 (Bellamy & Williams 2011: 838). Gaddafi went on to utter threats against the rebel stronghold in Benghazi when he voiced the world that officers had been located in all areas and regions so that they can filter all judgments or rebellious mindset from the cockroaches (the people) and any Libyan who takes guns against the regime will be dealt with on 23rd of February 2011 (Bellamy & Williams 2011: 838).

The repression responses against demonstrators by Gaddafi forces violated the principles of the Great Green Charter of Human Rights of the Jamahiriyan Era of 1988. This charter states that democracy to be practiced in Libya entails common power, not common expression. The affiliates of Jamahiriyan society pronounce that power fits or belong to the People (Great Green Charter of Human Rights 1988). The charter condemns violence as a means intended to dictate ideas and thoughts, but should adopt the democratic dialogue as the one and only routine of deliberation. Gaddafi regime did not respect and act according to the Green Charter if Libya but resorted to violent repression.

### 3.2.2 Nature of the Civil War and its Implications

The conflict in Libya escalated to an armed warfare, attributed to Gaddafi lethal reactions. The National Transitional Council retorted in bloody fashion to loyalist troops who rallied behind Gaddafi due to his legacy of favouritism; its punitive retort was predetermined by Gaddafi's insolent and violence-heavy rhetoric Human Rights Watch (2011) reported on 20th of February 2011 that at least 233 persons had been killed in the preceding week, and government forces was indiscriminately targeting civilians. Thus, as Collier and Hoeffler (2000) postulate, the Gaddafi's repression, segregation from reality, and unwillingness to transform heightened the grievances of the Libyan populace and prompted backlash of violent and steadfast attacks. Crackdowns by Gaddafi forces acted as the immediate reason for NTC to militarize as means to increase its podium strength. Harsh retorts both provoked conflict and enticed larger popular backing, broadening protests into violent denunciation of Gaddafi with no possibility of concession. Regime radicalism thus coagulated the bloody nature of encounter by forcing the NTC's hand and thwarting negotiations, thus making civil war generally inevitable (Collier and Hoef 2000).

## **3.2 External Reaction to the Libyan Civil War**

### **3.2.1 Stance of the League of Arab States**

The League of Arab States (LAS) reacted to the crisis following an emergency consultation on 22 February 2011 by suspending Libya from taking part in council meetings and issued a proclamation reproving the crimes against the peaceful widespread complaints and demonstrators in numerous Libyan cities (Bellamy 2011). The colonel had used violent means to contain the 2011 rebellions which were interpreted by LAS leaders as human rights abuses and government oppression of populace; thus, basic human rights had to be restored (O'Brien and Sinclair 2011).

The Arab League advocated for and consented to United Nations Security Council declaration of a no-fly zone over Libya Arab Jamahiriya in a bid to safeguard lives and rights of civilians from airborne attack in the continuing clashes. The regional bloc also emphasised that it had forbidden any external military intervention in Libya (Bellamy & Williams 2011). The League deliberated on the legality of the National Transition Council and outlined they would create contacts with the umbrella group and calling on states to provide it with immediate assistance. The Gulf Cooperation Council (GCC) in turn also backed the enforcement of a no-fly zone and denounced the legitimacy Muammar Gaddafi government (O'Brien and Sinclair 2011). The pronouncement of the LAS in favour of the no-fly zone proved to be diplomatic game changer illustrating that without involvement of the League, Russia and China ought to have undoubtedly vetoed Resolution 1973 (Bellamy 2011: 4).

### **3.2.2 The Reaction of the African Union**

The AU in its reaction to the Libyan case was guided by Lomé Declaration on Unconstitutional Changes in Government (2000) and the African Union Constitutive Act of the (2002), Article 4 (e) peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly. A head of states meeting was held on 10 March 2011 to forge the African diplomatic response to the Libya crisis. The Peace and Security Council (PSC) created a high-level ad hoc committee made up of Heads of State, antedating that this would have the necessary clout and stimulus to facilitate a conveyed resolution in Libya and assemble the international community after the AU's efforts (Kannyo 2011). The African Union proposed a road map to the Libyan crisis. The agenda of the meeting included the necessity for a

ceasefire, need for humanitarian assistance (including the saving of African migrant workers), and for a comprehensive peace arrangement coupled with a democratic transition (Kannyo 2011).

The African Union was likewise explicit in its denunciation, decrying the undifferentiating and extreme use of force and deadly weapons against peaceful demonstrators, as this was in violation of human rights and International Humanitarian Law, in retort to the legit desires of the persons of Libya for egalitarianism, political reform, impartiality and socio-economic development (Bellamy & Williams 2011: 839). The AU invoked pillar one of responsibility to protect doctrine that entails that the ruling government is mandated to safeguard its populations from mass atrocity crimes which include genocide, war crimes, crimes against humanity and ethnic cleansing as stated in ICISS (2001).

The AU set up an ad hoc High Level Commission whose board members flew to Libya on the 19 of March 2011 to resolve conflict and initiate dialogue between government of Gaddafi and the NTC. The Ad Hoc Committee met again in Nouakchott on the 9<sup>th</sup> of April 2011, and flew to Tripoli after permission by UN to meet with Gaddafi for peace talks and negotiation. Transitional National Council leadership refused the AU roadmap including the ceasefire and negotiations citing that the initiative did not include the instantaneous departure of Gaddafi (Bellamy 2011: 4). The peace initiatives by the AU were futile.

### 3.2.3 The United Nations' Reaction

The United Nations (UN) with aid of the international community reserves the responsibility to use peaceful means, diplomatic measures, humanitarian and other measures in accordance with Chapters VI that deals with peaceful settlement of disputes, Chapter VII (maintain peace) and VIII which deals with regional arrangements in dealing with issues and authorisation by Security council to help protect populations (Schweigman 2001). The UN principles and purposes are focused on resolving conflicts through non-invasive or forceful measures. In addition to those, UN Chapter VI (peaceful settlements of disputes) Article 33 stipulates that states in conflict must seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. It also gives room for regional organization to take precedence in resolving conflicts through dialogue (Article 52 and 53 of the UN Charter 1945).

Concerning the Libyan crisis, the UN General Assembly decided to suspend Libya from the Human Rights Council on the 25<sup>th</sup> of February 2011 (UNGA 2011). On the diplomatic facade, the UN Secretary-General's Special Envoy Abdel Elah Al-Khatib made contact with the Libyan officials and the opposition trying to assist in initiating political agreement to end the crisis to no avail. Organization's pre-eminent human rights body expressed its profound concern about the use of violence against demonstrators, violating human rights in that nation in the wake of Muammar Al-Gaddafi's ferocious clampdown on anti-Government demonstrators (Bellamy & Williams 2011).

United Nations Security Council Resolution 1970 was adopted on February 26 2011. It summoned the Libyan authorities' responsibility to protect the Libyan persons, called for immediate end to the violence, enforced arms embargo, targeted sanctions, and raised the issue to the International Criminal Court for probable action for war crimes and crimes against humanity committed by regime (Bellamy & Williams 2011). This was to send a robust indication to the Libyan ruler Muammar Gaddafi and his commanders, as well as other regimes in the region, that the international community will not accept the malicious suppression of peaceful protesters (Human Rights Watch 2011).

When the non-military actions authorized in Resolution 1970 proved futile to dissuade Gaddafi from articulating explicit intent to attack the populace in Benghazi and avert the mass vehemence on demonstrators, the Council adopted Resolution 1973 on the 17<sup>th</sup> of March 2011 which sanctioned international military intervention by UN member states to protect civilians in Libya (UN 2011). China, Russia, India, Brazil and Germany refrained from voting. Resolution 1973 sanctioned member states to take all necessary measures, notwithstanding paragraph 9 (protection of civilians in populous areas and to exclude foreign occupation force of any form in Libya) of resolution 1970 to safeguard nationals and civilian populated areas under risk of attack in the Libyan Arab State (UNSC/RS 2011). The UNSC resolution was approved by ten votes in support and, astonishingly, with five abstaining (Bellamy & Williams 2011). The UN acted under pillar two of responsibility to protect doctrine which encourage member states to assist individual states in meeting responsibility to protect human rights and pillar three which calls for collective action by international community in protection of civilians (ICISS 2001).

### **3.3 NATO Military Action**

#### **3.3.1 Background to NATO Military Action**

After passing of Security Council resolution 1973 on March 17<sup>th</sup>, a no-fly zone was declared and NATO, acting within the sphere of authority given by this resolution began an airstrike attack on Libya to terminate their airborne defences (Martin 2011). The certified code names for the interventions by the alliance members were mission Harmattan by France; mission Ellamy by the United Kingdom; mission Mobile for the Canadian participation and United States' Operation Odyssey Dawn (Norington 2011). Military intervention in Libya arose as combatant jets of the French Air Force demolished several pro-Gaddafi vehicles progressing on rebellious stronghold Benghazi. America and Britain submarines then launched over 110 Tomahawk cruise missiles at marks throughout Libya, sternly incapacitating the regime's airborne defence competence and permitting a broader enforcement of the no-fly zone (ibid). NATO took govern of the arms embargo on 23<sup>rd</sup> of March under mission Operation Unified Protector (Norington 2011). NATO took this operation to protect the people of Libya from massacre.

The intervention succeeded in averting pro-Gaddafi forces from seizing Benghazi. Chomsky (1992) has argued that European military intervention into Libya was in explicit breach of UNSCR 1973 since it invalidated the endeavours for a ceasefire that were stipulated by the resolution and received by Gaddafi. Therein NATO states (France and Britain in the prime and the United States ensuing) desecrated the resolution, drastically and converted the air force of the rebels. Nothing in the resolution vindicated that. Though it called for "all necessary strides" to safeguard nationals, there is an immense dissimilarity between safe guarding civilians and being the airborne power for the rebels (Bailey 2012).

#### **3.3.2 Key Strategic Interests**

The important tenet of the realist worldview is that the pursuing of resources is key and imperative and can be the main driving forces of foreign policy (Kennedy 1989, Yergin 1991). NATO intervening states had concrete national interests to preserve in Libya. Libya exported approximately 85% of oil to numerous Western countries, which included Italy, France, and Britain as result western states needed to restore access to Libya's oil reserves (Anderson 2011). Libyan oil accounted for more than 28% of Italian oil imports, 8% of UK's oil imports and 17%

of French oil imports (Anderson 2012). During the Libyan conflict, oil production dropped marginally, amounting to less than 20% of Libya's domestic needs. This fall in supply was likely to initiate damage to the economies of those oil importing European states. Therefore, ending the armed conflict to restore Libya's oil production was the principal tenacity of their intervention rather than prioritising civilian protection.

### **3.4 Conclusion**

The conflict in the Libyan state erupted and turned out bloody after rebels took up arms and Colonel Gaddafi responded using indiscriminate lethal force that attracted the attention of the international community. The international community responded using non-invasive measures highlighted in resolution 1970 and peace initiatives by the African Union which were discarded by the National Transitional Council (NTC) which demanded immediate removal of Gaddafi and this hampered peace efforts between the conflicting parties. The resistance and friction between Gaddafi forces and NTC resulted in Gaddafi uttering ruthless statements to cleanse Libya of cockroaches (dissidents who demonstrated for political reforms). As a result, UN resolution 1973 was passed which sanctioned member states to take all necessary action to protect civilians in Libya. The resolution was not vetoed by China or Russia and not contested by other states in fear that civilians in Benghazi might be massacred as in an African classical fashion experienced with the Rwandan genocidal case in the 1990s. Thus NATO took over the mission and intervened and removed Gaddafi from power and halted the massacre. After the assassination of Muammar Gaddafi on 20 October 2011, NATO mission ended 31 October leaving many questions unanswered on the protection of civilians in the aftermath of the humanitarian military intervention. Thus, the following chapter presents a theoretical framework through which the implications of the humanitarian military intervention in Libya on the norm of protection will be evaluated.

## **CHAPTER 4: THEORETICAL PERSPECTIVES ON THE NORM OF PROTECTION**

### **4.1 Introduction**

The chapter reviews main international relations theoretical perspectives - normativism and liberal institutionalism, vis-à-vis the norm of protection. The normative theory explains the foundations of norms in the international system, why and how they are used and protected. Liberal institutionalism on the other hand explains the institutionalisation of universal humanitarian norms, means of norm protection (humanitarian military intervention) and expected outcomes. These theories together assist in shaping the analysis of the implications of the actions of a UN sanctioned NATO military intervention in Libya on norms of protection.

### **4.2 The Liberal Institutionalism and Foundations of Humanitarian Intervention**

#### **4.2.1 Background to Liberal Institutionalism**

The Liberal institutionalism in general lies on basic assumptions of anarchy and rationality to explain environment and behavior within a (global) political system. Liberal theorists include Richard Cobden, John Stuart Mill, Adam Smith and Immanuel Kant (Elman 2001). Liberal institutionalism argues that prominence must be positioned on global governance and international institutions as a way of enlightening international relations. Institutionalism places importance on the role that mutual goals play in the international system and the capability of international organizations (such United Nations, NATO and the European Union) to get countries to cooperate. Institutional liberalism is rational and utilitarian (Keohane and Sorensen 2006). Another assumption is that states operating in an international political system are treated as rational

#### **4.2.2 Basic Assumptions on Role of Norms and Inferences on Intervention in Libya**

Liberal institutionalism explains the Libyan intervention in the context that it accentuates protection of fundamental human rights. Classical liberals (Richard Cobden John Stuart Mill, Adam Smith and Immanuel Kant) argue that individuals possess “fundamental natural rights to liberty lying in the right to do whatever they deliberate as appropriate to uphold them provided they do not infringe the equal freedom of others unless their own preservation is imperiled

(Charvet and Kaczynska-Nay 2008). The Libyans should exercise their right to liberty and call for freedom through protests or campaigns as call for political reforms. Liberal interventionists want to see human rights defended and liberal values protected.

The Universal Declaration of human rights as component of norms internationalize human rights by transmuting issues that had beforehand subjected to exclusive domestic jurisdiction and sovereignty into issues of international concern, assigning them permanently on the international political agenda, and plying the basis for a robust edifice of international norms and organisations. International norms of protection have consequently become an appropriate theme for diplomacy, international law and international organisations (Henkin 1999). Thus intervention is imminent given indiscriminate words by head of state towards citizens in Libya; states coupled with international organisations ought to cooperate to intervene to stop the massacre in Benghazi. Thus member states in international community should respect and uphold norm of protection. Therein states must apply multilateral approach to the Libya case as propounded by liberal institutionalism.

#### 4.2.3 Assumptions on State Sovereignty visa-vis Protection of International Norms

Liberal institutionalism acknowledges that the international system is anarchic and acknowledges the existence of traditional principle of state sovereignty. The establishment of the United Nations and NATO illustrates how states have fashioned a regional community to pact with policy or security and human rights matters which also elevate questions on whether sovereignty is certainly sacrosanct (Caporaso and Jupille 1999). Liberal institutionalism acknowledges the existence of state sovereignty and states that sovereignty can be overridden given the prevalence threat to human security and human lives; this should align with protection of civilians as defined in the responsibility to protect doctrine (ICISS 2001). Rome Statute (1998) of the International Criminal Court (ICC) through Article 7 was established to protect and enforce norms in the global village as a means to reprimand perpetrators of crime and in future. Thus United Nations Security Council should assume the mandate to refer the Libya case to the ICC. Cooperation of states should ensure compliance with international norms.



#### 4.2.4 Role of Institutions in Norm Protection

Liberal institutionalism entails that states can cooperate for mutual gain and acknowledge existence of states interest which they might wish to share or gain which can make domestic and international cooperation probable this cooperation leads to formation liberal institutions to execute, adjudicate and enforce liberal norms and values . This is explains the emergence of international organizations, such as the United Nations or North Atlantic Treaty Organisation, the AU and the LAS as a specimen of prevalence of regional cooperation (Walt 1998). International organizations such as the United Nations are based on rubrics, norms and principles that assist govern the interface of states and non-state actors on matters like human rights.

The liberal Institutionalism explains the validity of humanitarian intervention established on liberal considerations of a moral obligation to safeguard human rights. Tesón (2003: 94) states that liberal countries have an ethical obligation to liberate victims of anarchy or despotism. Therein liberal countries, in turn, have an ethical imperative to intervene against an unjust, autocratic regime because as Immanuel Kant puts it, democracies never go to war against each other but fight autocracies everywhere every time. In this regard, the United Nations Security Council as a custodian of maintaining international peace, security and international law is expected to act or authorize action against violation of liberal norms. Through this liberal prism, violations of human rights are sufficient prompt for humanitarian intervention by the UN through NATO (Tesón 2003). Member states and international organisations are therefore required in their execution intervention operations to adhere to rules engagement as outlined in 1949 Geneva Conventions and also to improve the welfare of the people in the victim state.

### **4.3 The Normative Theory and Norm of Protection**

#### 4.3.1 Brief Overview of Normativism

Normativism means the principles or ideals that govern human behaviour or the means to determine what is wrong or right. Immanuel Kant, Aristotle and Thomas Aquinas are the advocates of normative theory (Johnson 2011). Normative statements in philosophy determine how things or events should and/or are supposed to be, they also determine what is good or what is bad and distinguish what actions are right or wrong (Foot 2009). Normative theory is based on empirical assumptions to interpret how or what the world (or country) should be.

### 4.3.2 Internationalisation of Basic Human Rights

Norms produce an environment which defines ‘what is acceptable’, or legitimate which is drawn from international environment and developments within the domestic environment to create ideas that constitute actor identity (Hampson 2002). Normative ethics have two central concepts: the right and the morally good. The concept of the right is, roughly, the concept of duty, the concept of which actions we ought to perform, which it would be wrong not to perform (Cavalier 2014). Norm internationalisation has been driven by emergence of norm entrepreneurs such as Kofi Annan and Boutros Boutros Ghali in order to create a new legitimate norm- a consensus on the standard of appropriate behaviour based on existing moral, legal and constitutional normative context (Finnermore 1996).

So, a normative theory aims to answer the question on what makes actions right or wrong. This usually amounts to drawing out basic principles as standards of right action. Drawing up of the principles is outlined by international humanitarian law (law that regulates the conduct of war before, during and after to protect both civilians and their property) and comprises Geneva Conventions of 1949 and Additional protocols I and II of 1997 (ICRC 2015). R2P doctrine (ICISS 2001), Universal Declaration of Human Rights (1948), (Gordon 2016) and conventions on racial discrimination (1969), torture (1987), and the rights of the child (1989), as well as a Security Council Resolution on Women, Peace and Security (2000), and a series of Security Council Resolutions on the Protection of Civilians in Armed Conflict (1999, 2000, 2006) (ICRC 2015) aimed at upholding international norms of protection. These basic principles may be employed as a moral guide to human beings in their lives, deciding whether particular courses of action or particular types of action are right or wrong (Johnson 2011).

The international system consents human rights as constitutional rights that are agreed upon moral principles, the people should enjoy under the constitutional-legal systems in their society. However, national protections for accepted human rights are often deficient (as with the Libyan situation). International human rights are therefore projected to supplement, rather than to supplant, the national safeguarding of human rights, and to encourage countries to rectify those deficiencies. The international law of human rights is executed largely by domestic law and institutions; it is contented if domestic laws and organisations are sufficient (Henkin 1999).

In the case of Libya the limits of the UN Resolution are illustrated, and undeniably some of the wide-ranging problems with the concept of intervention in backing of human rights. UNSC 1973 permits for 'all procedures necessary' to safeguard the civilian populace but does that include supporting a civilian militia which is on the attacking or working against Gaddafi's regular forces? Therein all means necessary' does not warrant regime change (Finnemore 1996).

#### 4.3.3 Normative Approach to State Sovereignty and Responsibilities

The normative approach to interventions for humanitarian tenacities is widely recognized under authorisation by the United Nations Security Council under the provisions of the Chapter VII of the Charter of the United Nations. The notion of sovereignty as non-interference and non-intervention is also reaffirmed in the Charter of the United Nations in the article 2(4) that entail members to desist in their international relations from the peril or application of force against the territorial integrity or political independence of any country or state (UN, 1945 art. 2.4).

States and international organisations (such as United Nations and NATO) according to the responsibility to protect doctrine have responsibility to intervene in another state given existence of gross human violations. In the context of upholding of norms and safeguarding of human rights state sovereignty is termed not absolute. The notion that sovereignty is not absolute in face of living conditions of people in a nation as expressed by St. Augustine who denotes that in absenteeism of justice, what is sovereignty but systematized brigandage? (Augustine 1950:195). The concept of norm of protection and human security progressively gained acceptance in the international community (King and Murray, 2001: 585). In upholding norms, state sovereignty can no longer be prioritised over the welfare and dignity of people. This notion subtly suggests that, when the safety of a community is extremely threatened, notions as the non-interference in the domestic affairs of a country that fit to a traditional definition of sovereignty cannot epitomize an absolute inhibition to the protection of human lives (ibid). Thus in the revolution against Colonel Muammar Gaddafi, the League of Arab state ought to call for intervention which should be authorised by Security Council. In perspective of the theory interventions are therefore expected to yield betterment of the lives of the nationals of victim by averting threats to security based on the guiding principles of international law.

#### **4.4 Conclusion**

This chapter presented the theoretical framework of this study which aims at explaining the humanitarian military intervention in Libya and the expectations regarding the state of human rights in the aftermath of intervention. It was explained under liberal institutionalism and normativism that states as rational actors and peace loving entities cooperate to form a global village with agreed mutual norms and regulations that govern their cooperative and guarantee human liberty and create institutions to protect those mutual norms particularly human liberty. State sovereignty is therefore subject to the sovereignty of the general will – the global village and its norms and regulations. From these theories, it was also extrapolated that the UN, AU, LAS and their authorised agents (NATO) were mandated to protect human rights threatened by the Gaddafi government in Libya and create a strong environment that will enhance the existence and development of such rights in the aftermath of the intervention. This is the framework through which the implications of humanitarian military intervention in Libya will be evaluated in this study. The following chapter therefore presents a critical evaluation of the implications of the UN-sanctioned NATO military action in Libya on the norm of protection.

## **CHAPTER 5: INTERVENTION IN LIBYA – IMPLICATIONS ON HUMAN RIGHTS AND NORMS OF PROTECTION**

### **5.1 Introduction**

The chapter analyses the crimes and atrocities committed by Gaddafi forces that impelled North Atlantic Treaty Organisation to intervene in Libya and assess whether they prompted use of military force. It evaluates the implications of Operation Unified Protector (OUP) on the norms of protection – particularly, the POC and R2P doctrine, the effects of the activities of OUP on the state of human rights in Libya and what OUP and effects thereafter entail about relevance of major theories (adopted in this study) in explaining state behavior and international peace and security matters. The foci of the chapter is to examine the extent to which humanitarian military intervention actually impacts and implies on norms of protection that it sought to enforce in Libya and elsewhere.

### **5.2 Did events in Libya warrant Humanitarian Military Intervention?**

#### **5.2.1 War Crimes**

The Geneva Convention of August 12, 1949 provides for Protection of Civilian Persons in time of war. Articles 13, 32 state that civilians are to be protected from unlawful killings/ murder, torture or inhumaneness (ICRC 2013). War crimes include intentionally killing civilians or prisoners, torture, destroying civilian property, taking hostages, perfidy, rape and using child soldiers. Whereas crimes against humanity constitute murder, exterminations, dehumanization, human experimentation, extrajudicial punishments, death squads, forced disappearances, military use of children, abductions, unjust imprisonment, servitude, anthropophagy, torment and rape (ICRC 2013). Responsibility to protect doctrine protects people from war crimes, crimes against humanity, genocide and ethnic cleansing; violation of these is prohibited by international law because these are considered jus co-gens (ICISS 2001). R2P therein states that intervention is thus justifiable or warranted if there is serious and irreparable harm occurring to individuals (ibid).

### *5.2.1.1 Attacks on Civilians, Civilian Objects, Protected Persons and Objects*

The city of Misrata suffered the most extended combat during the conflict. Between March and May 2011 Misrata was under siege when Gaddafi forces retreated from the centre of the town (HRW 2011). Indiscriminate shelling of the city continued sporadically until August 2011 (Amnesty International 2011). Unlike other areas, where the civilian populace was evacuated, nationals were stuck inside Misrata city. The port, as the only way of evacuation of war-wounded and civilians as well as pathway for humanitarian aid, was also targeted by Gaddafi forces.<sup>1</sup> Senior Gaddafi military officers interviewed by the Commission confirmed that there were attempts, some of them fruitful, to mine the Misrata port. Therefore gross violation of POC, principle of distinction and R2P provisions against war crimes and crimes against humanity justifies the mandate for forceful military intervention.

Gaddafi forces violated IHL principles, Additional Protocol I Article 51 - prohibits indiscriminate attacks on civilian populations and destruction of their water and food needed for survival, Article 54 and Additional Protocol II Article 13-14, 16 (prohibits attacks on civilians and on objects indispensable to civilian survival) according to the International Committee of the Red Cross (2013). Responsibility to Protect states that any state party can bring to trial any person accused of such crimes and universal jurisdiction is in that case termed to exist under customary international law for crimes against humanity or war crimes (ICISS 2001).

### *5.2.1.2 Prohibited Weapons*

Gaddafi forces violated the Protocol II to the Convention on Certain Conventional Weapons (which prohibits the use of landmines) and Convention on cluster Munitions Article 1 (prohibits use of unguided munitions), that cause indiscriminate effects on civilians (Convention on Cluster Munitions 2008). Gaddafi forces employed anti-personnel landmines, anti-vehicle landmines and cluster munitions including in civilian areas according to Amnesty International (2011). In April 2011 substantial evidence of use of mines and cluster munitions was found in Misrata by the UN Commission. Cluster munitions when fired split in mid-air and scatter small explosive components or devices over a wide area, making targeted aim difficult and harming human beings indiscriminately according to United Nations Development Program Crisis Prevention and Recovery Report (2011). Many of the mines utilized contained low metal content, obscuring

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<sup>1</sup> Interviews: Harare, May 2017.

detection and removal, further jeopardizing civilians.<sup>2</sup> Human Rights Watch (2011) confirmed the use of landmines by government forces in the Nafusa Mountains, plastic antipersonnel mines were placed in Khusha (coordinates N 32° 02.448', E 012° 12.710), about 10 miles north of the town of Zintan. These mines pose high danger to civilians as they are hard to identify even with intention to de-mine. Al-Qawalish, west of al-Malayab (coordinates N 31° 59' 2.26" E 12° 40' 29.58") was detected to possess land mines (BBC news report on April 17). Human Rights Watch reported that Muammar Gaddafi's forces laid both antipersonnel and anti-vehicle mines in Misrata. This violation of international law mounts to forceful intervention given the dangers and scale of injuries pertaining to the use of prohibited weaponry such as anti-personnel that are difficult to detect, they will always pose a threat as long as they have not been identified (Benner 1999).

#### *5.2.1.3 Pillaging*

Protocol I additional to the Geneva Conventions of 12 August 1949, Articles 51, 54 prohibits the destruction of food, water and additional materials needed for survival. The Fourth Geneva Convention Articles 33-34 outlaws pillaging. Another way in which armed forces intentionally targeted civilians was by pillaging civilian food and livelihoods, hindering civilians' ability to survive with limited resources.<sup>3</sup> Official military orders retrieved in Misrata provide strong evidence that Gaddafi ordered troops to starve Misrata inhabitants (Stephen 2011). In addition to pillaging food stores, Gaddafi forces restricted or blocked opposition-populated areas from receiving humanitarian aid including food despite food instability and shortages (Nebehey 2011). Gaddafi forces also destroyed ships attempting to bring humanitarian aid into Misrata, exacerbating food insecurity.<sup>4</sup> Such acts constitute a war crime under international law and its prohibition has been declared a norm of customary international humanitarian law applicable in both international and non-international conflict (Cousier 1950). Pillaging itself is not substantive enough to trigger humanitarian and the evidence presented illustrate this was small scale targeted at few believed might have been pro-Gaddafi. This is the least of the violations that were committed by Gaddafi with isolated cases that would mount justifiable cause for intervention. This is not substantive for forceful intervention.

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<sup>2</sup> Ibid.

<sup>3</sup> Interviews, May 2017.

<sup>4</sup> Ibid.

#### *5.2.1.4 Rape*

In-depth interviews were carried out by Physicians for Human Rights with six Libyan civilians, including two obstetricians/ gynaecologists, who gave credible reports of military-sanctioned rape as well as of honour killings that occurred in response to these rapes (PHR 2011). One 20-year resident of Tomina reported to Physicians for Human Rights (PHR) that Gaddafi forces from Tawergha transformed a Tomina elementary school into a detention site where they reportedly raped women and girls as young as 14 years old (Dagher 2011). Rape in armed conflict violates the terms of the Geneva Conventions Additional Protocol II, Article 4(2) (ICRC 2017). Islamic law classifies rape as a war crime, and Libyan domestic protocols outlaw rape as an “offence of unlawful wounding according to the Libyan Arab Jamahiriya Consideration of Reports (2002). From the evidence above these rape cases against Gaddafi forces are not substantial and they seemed abrupt however they could have occurred on a smaller scale but not substantial enough to mount intervention by the North Atlantic Treaty Organisation. The rape reports presented were more from third person narratives, without forensic evidence.

#### *5.2.1.5 Using civilians as human shields*

Physicians for Human Rights (PHR) investigators received corroborated testimonies from four eyewitnesses that Gaddafi troops forcibly detained 107 civilians and used them as human shields to guard military munitions from NATO attacks south of Misrata during April and May 2011. PHR also documented that Gaddafi forces used civilians to physically shield them from active fire and that they shielded weaponry in civilian areas, including markets, mosques, and schools. International humanitarian law requires parties to a conflict to distinguish between military and civilian targets. Using civilians to shield otherwise legitimate military targets violates this norm. The Geneva Conventions, specifically the Fourth Geneva Convention and the Additional Protocol II (Article 4 – hostage taking is equated as use of human shields thus constitute a crime), prohibit the use of civilians to shield military objectives or operations in international conflict. The use of human shields mounts justifiable cause to use force as the offenders disregard the welfare of the people they use to sacrifice in order to protect their lives.



## 5.2.2 Crimes against Humanity

### 5.2.2.1 *Un-lawful killings*

Additional Protocol II to the Geneva Convention Article 4 prohibits acts of murder or un-lawful killing of civilians or non-combatants. On 23th of August 2011 guards affiliated to the regime threw grenades into the warehouse and then fired through the door; killing dozens in in Tripoli, however, some survived and managed to escape and testified (UN Commission 2011). Of the 157 detainees, only 51 survivors were confirmed according to the Commission on Inquiry (2011). Gargur, in Tripoli, was the site of another unofficial detention centre. On 23 August 2011 evidence was found relating to killings carried out by the forces of Gaddafi was found in Bab Al Aziziyah, a witness revealed that he assisted gather 15 bodies, all people in civilian clothes and others handcuffed (ibid).

### 5.2.2.2 *Arbitrary detentions and enforced disappearances*

Article 7 of the Rome Statute outlaws enforced disappearance of individuals by means of arrest, detention or abduction of people and this constitutes crime against humanity which R2P doctrine outlaws as well (ICISS 2001). The United Nations Commission of Inquiry discovered evidence of illicit imprisonments in Tripoli, Al Zawiyah and the Nafusa Mountains. Detainees were not given access to counsel and many were not permitted to contest the legality of their detention. The detainees were tortured according to UN Commission (2011).

Walker (2011) noted that over 1,170 people have been recorded as missing in Misrata and the United Nations also confirmed that at least 1,000 have been kidnapped or disappeared since February 2011 (Schlein 2011). Physicians for Human Rights (PHR) investigators received substantiated testimonies from four local Kerzaz residents and facility staff outside of Misrata who reported that Gaddafi forces demolished a home for the elderly and abducted its 36 resident disabled, elderly, and homeless civilians. As of this writing, their whereabouts remain unknown. Statistical data from Transitional National Council census released to Physicians for Human Rights, recorded that of 11,379 inhabitants of Kerzaz and Tomina, 190 are reported missing (1.7%) and 34 were reported killed (0.3%) (Human Rights Report (2011). The disappearances and detention of civilians attributed to the conflict are substantive but might not amount to justify use force because of the inconsistencies in the reports of missing people and this might imply data

distortion. Cautioning by the international community without use of force would have been most appropriate.

#### *5.2.2.3 Torture and other forms of ill-treatment*

Article 7 of the Rome Statute outlaws all forms of ill-treatment such as torture, slavery, murder, extermination and any other acts that cause human injury. Under the doctrine of responsibility to protect this constitutes crime against humanity which the doctrine outlaws (ICISS 2001). 35 people who were tortured by forces of Gaddafi were interviewed The UN Commission. Torture measure ranged from serious beatings such as on the soles of the feet (falaqa), electric shocking of the genitals, burning, threatening with dogs, being hanged on bars, and being locked in confined spaces or rooms long periods of hours (UN Commission 2011). Such acts were committed in several prisons that include Ein Zara, Jdeida Abu Salim, Yarmouk and Al Khums area. Physically harming any accused or detained person violates the Libyan Constitutional Proclamation and Libya's Great Green Charter of Human Rights, and torturing a person accused of a crime violates the Libyan Penal Code. Libyan Law No. 20 prohibits summary executions and guarantees citizens the right to a trial according to the Libyan Constitutional Proclamation (1969). The ill-treatment and torture violates international law but they do not constitute great weight to trigger military intervention or use of force. Such acts required international cautioning coupled by diplomatic talks to avert them.

### **5.3 Effects of OUP on the state of Human Rights in Libya**

Human Rights examined here are classified into following classes: civil, political, economic, social and cultural rights. This is followed by an examination of the implications of the Operation Unified Protector on each aspect of human rights in Libya, analysing whether these rights were safeguarded, enhanced or not. By definition, human rights are guiding principles which define and shape acceptable standards, legally regulated and rooted in municipal and international law which human beings are entitled to these rights by virtue of being human beings irrespective of their ethnicity, nation, location, language, religion, race, culture or any other status (United Nation Commission of Human Rights 2014). They are termed egalitarian (meaning they are uniform or same for every being) and universal (implying they are for everyone everywhere) according to Nickel (2013), thus, according to the normative theory, their enforcement ought to be afforded to everyone by anyone anywhere.

### 5.3.1 OUP vis-à-vis Civil and Political Rights in Libya

As summarised in Sieghart (1983), civil and political provided for in the International Convention on Civil and Political Rights and other regional and in-country instruments include right to liberty and security of the person, property rights, right to private and family life, right to freedom of expression, right to freedom of assembly, freedom of movement, rights to be free from torture and right to equal protection before the law. Civil and political rights seek to protect individuals' freedom from infringement by social organizations, private individuals or by powers of the governments. Absence of security throughout the country following OUP's destruction of the central authority and failure to setup an alternative de facto government has deprived Libyans of right to right to liberty and security stated in article 3 of the Universal Declaration of Human Rights. The various violent non-state actors (VNSAs) who collectively control so much territory in Libya are not only hostile to the frail central government, but also to each other.<sup>5</sup> Competing VNSAs search for any advantage or bargaining chip in their rivalries, kidnappings have become common, with targets including both Libyan and foreign officials, as well as businessmen with non-state actors taking advantage of the porous and weak security system of the central government in Libya.<sup>6</sup> Gunmen in Libya kidnapped Jordan's ambassador, Tunisia's embassy advisor and another Tunisian diplomat was also kidnapped, they broke into Portugal's embassy (Gartenstein 2014). This is a blatant violation of Articles 5, 6 of the AU Charter on Human and Peoples Rights (1989) that grants personal freedom and liberty to any person in Libya and the Vienna Convention on Diplomatic Immunity. As a result Libyans and foreigners live in fear of their lives. It can be argued therefore, that, if OUP was never sanctioned in Libya, the strong Gaddafi administration would have continued the people's enjoyment of these rights. OUP failed to return these rights to the people it sought to protect, thus the R2P like other interventions in the name of the norms of protection such as the intervention in Iraq and Afghanistan, stands criticised and viewed synonymous to the 'responsibility to install a state of nature.'

Participation in political life of Libyans has been hampered because of the absence of a legitimate central government or the Hobbesian state of nature. This has broken new ground for anarchy. The National Transitional Council (NTC) has not been strong enough to unify the country

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<sup>5</sup> Interviews, May 2017, Harare.

<sup>6</sup> Interviews, May 2017. Harare.

politically (Chivvis and Martini 2014) nor to enhancing the rights of the people. Thus, it can be argued that the UNSC has so far failed to enforce the norms of protection in a manner consistent with the human rights-centred spirit in them. Rather, the intervention in Libya made norms of protection more violated than protected.

Libyans are left prone to a whole lot of human rights abuses from the various violent non-state actors (VNSAs) such as Muhammad Jamal Network (MJN), Libyan Islamic Fighting Group (LIFG) and Ansar al-Sharia in Libya (ASL) without legitimate authority to reprimand them (King 2014). Absence of national legitimate government impacts negatively on civil rights of the Libyans. Boundaries have become porous paving smooth flows of illicit arms into Libya were which fuels existing conflicts and enriching the arsenals of a range of non-State actors in the region and beyond (Gartenstein 2014). A panel of experts pursuant to Security Council resolution 1973 in U.N. Security Council Report (2011) noted significant quantities of arms and fighters have been diffusing from Libya into Egypt and the Sahel. In cognisance of these developments, it can be argued that OUP is an epitome of poor and inefficient enforcement of the norms of protection. This has left many wondering if such norms, when their enforcement results in the state of human rights violations in Libya, are any better than life under the worst dictatorship government. Responsibility to protect must include creating and maintaining a de-facto government that respects human rights if it is to qualify as a humanitarian principle.

Article 21 of the Universal Declaration of Human Rights provides that everyone has the right to take part in the Government of his/ her country, in any manner whatsoever. Operation Unified Protector has robbed Libyans of such a right leaving Libya a breeding ground of violent non-state actors because the mission had no forward plan or post-intervention strategy (King 2014). The central government in Libya has not been able to disarm, demobilize and reintegrate process of independent militias as a measure to increase and grip national security.<sup>7</sup> Most cities, like Misrata function as “de facto city-states”, run by distinct tribes backed by strong armed militias that actively defy the central government, making it difficult to implement any state-level strategy that can improve the civil and political rights of the great majority (Chivvis 2013). The Universal Declaration of Human Rights Article 18 confers that everyone shall have the right to freedom of religion; Libyans are no longer able to exercise such a right in their defined public

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<sup>7</sup> Key informant interviews, May 2017. Harare

vicinities result of fear of organised killings by the non-state actors (ibid). This raises questions around the actual driving force behind the intervention in Libya. The US with its counterterrorism policy ought to perceive the possible impact of destroying a central government and leaving a failed state behind, the same had happened everywhere where it intervened in its counterterrorism agenda. One wonders if the genuine motive was to protect civilians or to create a world police power-seeking desires of NATO forces and to threaten any future possible opposition to US selfish interests anywhere.<sup>8</sup>

### 5.3.2 Socio-cultural Rights in Post OUP

The Libyan conflicts impacted negatively on health, especially mental health. The selection, supply, quality control, regulation and use of medicines were serious challenges, which led to waste as large stockpiles of expired medicines were disposed of, to the development of a pharmaceutical black market, and to the rise of multi-resistant bacteria (Amnesty International, 2013). An exact number of casualties caused by the conflict have never been determined. Estimates made towards the end of the conflict (in September 2011) range from 25,000 to 30,000 killed and around 50,000 wounded (Black 2013). So it follows that without a responsible effective government, the situation has worsened. A total of 1402 health facilities were identified in year 2012 after a survey by the Ministry of Health in Libya. The conflict caused an overall moderate damage of 16% to hospitals, nine districts suffered damage to health facilities, Misrata suffered a severe damage of 75% of its facilities and Al- Gebal Elgharbi suffered 43% damage (El-Zanaty 2012). The service availability pre- and post-conflict index was 52.77% and 54.58% respectively (El-Zanaty 2012). The Universal Declaration of Human Rights in Article 25 entail that in event of sickness each person has the right to access health facilities. The Libyan state's health system has not improved after intervention, and access to health facilities is shrinking because of increased security and instability.<sup>9</sup>

Libyans have been displaced and lost their right to which is contrary to the spirit of national and international peace and security stipulated in Article 33 of African Charter on Human and Peoples Rights (1989). Libyans have been displaced from their homes and most of them rely on charity hand-outs and live in makeshift camps especially in Tawergha, a coastal town east of

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<sup>8</sup> Ibid.

<sup>9</sup> Interviews, May 2017, Harare.

Misrata (Fetouri 2015). Benghazi has been left merely a ghost town. The armed conflict destroyed almost the entire town's homes and businesses (Fetouri 2015). Massive refugee migrants (about 4 000 migrant refugees) have been recorded by Doctors Without Borders (MSF) most of whom were stranded in Tunisia. About 18000 were reported to have landed onto Italian shores by boat (Kannyo 2011). However women, men and children approximately 1800 never made it and were presumed drowned on the perilous crossing by the United Nations High Commissioner for Refugees. These migrants are highly susceptible especially unaccompanied minors, pregnant women or children and fall victims to violence, torture or human trafficking (United Nations High Commissioner for Refugees UNHCR 2011). The level of destitution, displacement and sorrow brings not only imply the half-baked nature of UN mechanism for enforcement of the norms of protection, it also implies that such norms are half-baked too.<sup>10</sup> Protection of civilians is never complete when actors claiming responsibility to protect act and leave a trail of destruction that causes human suffering and without reconstructing and reinstalling peace.

Libyans have been robbed of their right to adequate standard of living including right to food stipulated in the Universal Declaration of Human Rights which in Article 25 which recognises the right to food, housing and transportation. Life for the Libyans in cities and remote villages has been marked by daily struggles as a result of high prices in basic commodities attributed to resource shortages (Fetouri 2015). The most hit are large families that benefitted sorely from state subsidies during the Gaddafi rule and these have now dried up.<sup>11</sup> Libyans now have to spend 500 Libyan dinars (\$368) to purchase cooking gas cylinders if available on the black market and usually cost five times what they used to be before the war. This is the real case in point where men have to come to terms with the realist notion that normative principles serve the interests of the powerful states and are norms when they are worthwhile shield in pursuing power and nothing beyond that.<sup>12</sup> It is a classic uncovering of this reality, no foreign state worries about aliens in Libya unless such aliens are useful in protecting and perpetuating their interests. Thereafter, self-help is the rule of the game, no unified protector has shown up in Libya to deal with the sorry state of human rights described above.

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<sup>10</sup> Interviews, Harare, May 2017.

<sup>11</sup> Interviews, Harare, May 2017.

<sup>12</sup> Interviews, Harare, May 2017.

Security concerns in Libya have affected the rights of the Libyans to access education without constraints provided for in Article 26 of Universal Declaration of Human Rights. It has become difficult for children to go to school. Parents are no longer sure whether it is safe enough to let their children go to local schools without the company of any adult. An individual or person is likely to be declared missing if not back home by 10 p.m. at night (Fetouri 2015). This serious breakdown of society calls the R2P in particular into questioning, while, the universality of human rights and their applicability across socioeconomic and geographic variations has been more weakened following the Libyan experiment. One can argue with refreshed boldness that in some circles limiting human liberty is better than giving freedom to people to destroy even themselves and threaten future generations with the scourge of war.

### 5.3.3 Economic Rights

In March 2014, a militia held Libya's eastern ports and not only did this prevent the government from profiting from oil exports, but the militia actually attempted to export oil itself, loading up a North Korea-flagged tanker (Markey and Laessing 2014). The shutdown of Libya's ports and oilfields has reduced oil production from 1.4 million barrels per day down to 200,000 bpd (Markey and Laessing 2014). However after the war mounting instability and insecurity proved to be an impediment to progress on other economic tasks. Violence distracted the central government and this has scared off foreign direct investment and foreign workers both of which were needed for successful economic growth and stabilization (Russia Today 2012).

Blocked access to Libya foreign assets has crippled foreign trade and thereby negatively impacting on imports. This reflected in a cut of the country's current account balance, from a surplus of 21% of GDP in 2010 to 4.5% in 2011(ibid). Libyans no longer enjoy the economic benefits which accrued from oil production during Gaddafi's government. The death of Gaddafi coupled with political turbulence and the weak-ness of the Libyan state has created a loophole for gangs and militias to take control of multiple oil production facilities. Oil production has been driven back down to dangerously low levels, illustrating the vulnerability of the economy. This has limited the benefit of oil production to non-state actors at expense of great majority (Russia Today 2012). The right to work for Libyan has been hampered, infrastructure and production facilities were destroyed in Libya during the conflict and this resulted in industrial production in Libya dropping by a half (ibid). Banking activity was disrupted for most of the year while

foreign workers employed in most industries left the country (RT 2012). Such observations imply that the R2P has to be developed further to include responsibility to protect even after the conflict and responsibility to reverse adverse effects of intervention under the R2P flag.

## **5.4 Implications of OUP on the Norms of Protection**

### **5.4.1 Right intention**

The right intention principle entails that the primary purpose of the intervention must be to stop or avert human suffering (ICISS 2001). NATO however armed the militias that were in rebellion against the Gaddafi forces the alleged right intention being to help them depose Gaddafi who was seen as the cause of human suffering. This sorely implicated the right intention principle in which the mission Operation Unified Protector. Right intention is better assured with multilateral operations, clearly backed by regional consent and the victims concerned (ICISS 2001). NATO, Turkey and European states which make up the organised Libya Contact Group rebuffed the African Union's peace-making and negotiation initiation efforts. Nevertheless, these powerful states continue to pay lip service to the relevance of the organization brushing aside its suggestions (Kannyo 2011). This questions the real intent of R2P whether it was still geared towards protection of Libyans at large or Western interests in Libya. Propaganda system did its job of demonization and stimulation of hysteria against Gaddafi and such effects possibly exceeded those for Serbia (procurement of Viagra, systematic rape, concentration camps, aiding extremism) and also those used against Iraq (weapons of mass destruction, terrorism and urgent threat). The Western left succumbed once again and reluctantly agreed that bombing to protect civilians was here justified, yet Gaddafi strongly opposed the Al Qaeda and Islamic extremism and he fought them at home (Herman 2014). If the mission OUP carried right intent of safeguarding the life and human dignity of Libyans, propaganda system would not have been used against Gaddafi, this was just used as scapegoat to topple the Gaddafi regime.

Human Rights groups such as the Human Rights Watch and Amnesty International welcomed the intervention of NATO in Libya even though they later reported the NATO and rebel abuses of human rights they claimed to be busy trying to protect. These reports were however weak and illustrated an element of bias for they only portrayed support of intervention, whereas failing to call for action against rebel and imperial war crimes (Herman 2014). It will appear as if these



international organisations had been politicised only to tarnish the image of Gaddafi neglecting their mandate of reprimanding states to honour their duty of protecting the citizens. Such actions erode the legitimacy of international organisations in the preservation of norm of protection.

#### 5.4.2 Use of Force as Last Resort

The western powers violated Resolution-1973 as they ignored efforts and calls by the African Union and Gaddafi to cease fire. The resolution called for immediate establishment of a cease-fire to increase efforts to find a solution to the crisis through dialogue (UN 2011). The Western states and the rebels did not take heed which nullifies the sore mandate of humanitarian intervention to protect the people. The imperial-West used civilian protection as a “fig leaf” cover for their underlying objective—regime change and the removal of Gaddafi from power. The Obama administration unilaterally decided to end peace negotiations between the US Africa Command and the Gaddafi regime despite Gaddafi’s military leaders’ proposal for a peace plan (Chollet et al 2015). The mandate of NATO was to stop Gaddafi from committing a massacre in Benghazi not to massacre Gadhafi and his close allies. Surely another R2P would have been invoked the very moment killing Gadhafi and his supporters got in the OUP menu and that of its allies. The quick response the Libyan crisis received from the Security Council has come under scrutiny as equally or even more appalling human rights abuses in Rwanda, Syria and Yemen were over-looked for an unpredictably long time. It took the Council almost a year after the start of the Yemen uprising to pass a resolution (Resolution 2014 – October 21, 2011), yet in Libya, it was a matter of hours.

#### 5.4.3 Proportional Means

The proportional means principle stipulates that the magnitude, intensity and time period of the planned intervention mission should be minimal and significant to secure the outlined human protection objective (ICISS 2001). The duration of the Libyan armed conflict began on 15 February 2011 and ended on 20 October 2011, marking the fall of Gaddafi. OUP mission was able to contain the fighting which lasted for a period of 8 months. The civilian casualty attributed to the mission was however recorded to be low which illustrates that OUP indeed followed the rules of engagement ascribed in international humanitarian law (IHL). However, the mission OUP problematizes question of ‘proportionality’ and ‘necessity’ in IHL as the number of

civilians saved by NATO bombing have been outweighed down by the number of civilians killed in the ensuing chaos after the intervention. Tawergha, a coastal town east of Misrata has entire population of 40,000 displaced living on charity and staying in makeshift tents (Fetouri 2015). This implies that by ‘means proportional to achieve the objective’, intervening countries must understand that insufficient part-time interventions fall short of being proportional because they entice more insecurities when they are ended when resultant peace and security is premature.<sup>13</sup> If this is ignored, the objective will never be achieved. Killing the trouble causer does not necessarily guarantee protection of civilians thereafter because norms like security, peace and wellbeing are contingent on having a strong functional state. If that state has been dependant on the dexterity of one man – the ruler – killing that man must be done with a prepared legitimate package to take over government or risk a Hobbesian state of nature.

#### 5.4.4 Reasonable Prospects

The reasonable prospects doctrine entails intervention carried out must portray reasonable opportunity of success in halting or averting the strife for it to be justifiable. The repercussions of actions should not likely to be worse than the repercussions of inaction (ICISS 2001). The actions of mission OUP turned out to be adverse. Spill over effect of wars and conflict into other regions has had implications on norms of protection. The social movement that started in Libya in 2011 has moved on to affect northern Mali. The root causes of the conflict that spilled over to Mali can be found analyzing some UNSC hazardous decisions and errors committed during the NATO operation. For instance, the UNSC was not concerned with arms gained by the Tuareg until they had already formed the NMLA (Un.org, 2014). The Tuareg militant group has been reportedly fuelling conflict in Libya. Such an adversity cripples the faith and confidence of R2P in member states in other regions such Africa, Asia and Middle East.

Displacement of populations has been caused the fighting that erupted since 2011 in which nearly 800,000 people fled Libya to neighbouring countries. Of these, 45% were third- World countries’ nationals who had been living in Libya prior to the conflict (Blasius 2013). By the end of September 2011, the International Organization for Migration (IOM) evacuated 40,000 people attempting to escape fighting and trapped in Misrata, Sebha, Gatroun, Tripoli and Benghazi, through a variety of means of transportation such as sea, land, and air (Head 2013). OUP mission

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<sup>13</sup> Interviews, Harare, May 2017.

was meant to be a protection mission not a displacement mission, its failure defeats the sore purpose of protection of civilians and responsibility to protect. OUP military intervention mission rhetorically suffered from a lack of genuine interest in civilian protection and humanitarian aspirations.

#### 5.4.5 Elements of Responsibilities and Protection

Responsibility to re-build incorporated in the R2P doctrine has been neglected by intervening states that illustrate less or no commitment to it at all. This is the same with mission Operation Unified Protector. Soon after the fall of Gaddafi, no action was taken to engage states and the international community or the intervening states to initiate post-war reconstruction. As a result, Libyans have been left to tear each other apart with the rise of violent non-state actors. States should reconcile conflicting parties, advocate for security for every citizen and stimulate development in the post-conflict country (ICISS 2001). This will impact and add weight to the doctrine of R2P and strengthen protection of civilians.

Responsibility to prevent is another salient norm of protection that was not implemented by the mission OUP. Responsibility to prevent is geared to address both the sources and direct causes of internal conflict and other man-made crises putting populations at risk. The Obama administration unilaterally decided to end peace negotiations between the US-Africa Command and the Muammar Gaddafi regime's proposal for a peace plan and went to bomb Libya (Chollet et al 2015).

#### 5.4.6 Right Authority

This principle entails that there is no better or more significant body than the United Nations Security Council to authorize military intervention for humanitarian purposes (ICISS 2001). R2P doctrine is geared to make the Security Council work better than it has been. However, the Security Council is made up of the 5 permanent members who yield veto power. This can implicate decision making based on the interests of the 5 members who can either veto or vote a resolution in the matters of human protection. This creates a selective approach to the intervention operations. This has been illustrated by OUP mission in Libya. The Bahrain uprising was squashed with tear gas and Saudi Arabian military repression, but a peace-deal for a permanent cease-fire was not imposed, as such the uprising is technically still ongoing and no

resolutions have been passed (Gregg 2013). Same case with the Yemen crisis no resolution or action has been made and Syrian leader is said to have used Chemical weapons against protestors (ibid) but nothing has been done to him. Resolution in Syria can be blocked by Russia because they are close allies and trade partners whereas US will veto any resolution in Bahrain because of US's fifth fleet stationed there. This implicates norms of protection as self-seeking actions will always overshadow humanitarian concerns if they don't coincide with the interests of the P5.

## **5.5 Conclusion**

The chapter outlined that the events of conflict that took place in Libya and the force applied by Gaddafi against demonstrations violated International Humanitarian Law and amounted to war crimes and crimes against humanity. On the contrary, research and evidence from civil society organisation groups such as Human Rights Watch and Amnesty International portray that evidence of gross human rights violations as attributed in the contemporaneous media was not as great as the scenario the Administration used to build up an intervention. Thus force was not the last resort as portrayed in the research and that a quick hasty decision was made to intervene in Libya without having given non-coercive diplomatic initiatives time to take effect. NATO-led Operation Unified Protector (OUP) has had negative implications as compared to the overall objective it sought to serve. This has been portrayed by the non-improvement of the human rights of people in Libya. The research evidence portrayed that the Libyans had better access to social amenities and enjoyed subsidized facilities during the Gaddafi regime as compared to post-intervention Libya. OUP has also impacted negatively on the norms of protection as the operation created a vacuum that resulted the in fracturing of the Libyan government and marked by the rise of violent non-state actors who have sparked outrage, spiralling conflicts and continued human rights abuse. The OUP reflected that use of force can have adverse effects and can breed violence given privation of post-intervention measures.

## **CHAPTER 6: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

### **6.1 Introduction**

This chapter presents the summary of the key findings of the study, gives the conclusion of the study and implications of the findings. The purpose, objectives, methodology and framework of

analysis of the study are restated herein to put conclusions and recommendations presented in this chapter into context.

## **6.2 Summary of Findings**

### **6.2.1 Purpose of the Study**

Political upheavals emanated in Libya following the peoples' call for reformation in the socio-political systems of Libyan state. The long serving leader Muammar Gaddafi responded with crude and ruthless measures to repress the demonstrations and uttered indiscriminate words that raised the concern of the international community. North Atlantic Treaty Organisation assumed the mandate to intervene to protect the civilians after authorisation by United Nations Security Council passing of Resolution 1973. However the intervention under Operation Unified Protector left the Libya fragmented, dissolved and ruled by violent non-state actors characterised by various tribes. The life of Libyans was left prone to spiraling conflicts and continuous human rights abuses. The purpose of study was to examine the intervention in Libya and how it served the purposes of civilian protection under the auspices of the norm of protection.

### **6.2.2 Restatement of Objectives**

The study examined the UNSC sanctioned use of force in Libya (OUP) and its implications on norms of protection by;

- ❖ Examining and reflecting on tenets of the international norms of protection;
- ❖ Analysing the course of events that led to the passing of UN resolution 1973 and use of force in Libya to ascertain the justifiability of its use;
- ❖ Examining the effects of the NATO led intervention on the nature of human rights in Libya; and
- ❖ Investigating the implications of NATO intervention on the norms of protection in relation to Libya case.

### **6.2.3 Restatement of Research Methodology**

The study used a qualitative case study methodology, in-depth interviews and documentary research were used as qualitative instruments to collect data. Selection of respondents was

achieved through purposive or expert sampling and snowballing. Documentary research included use of books, journals, government reports, online materials such as websites of international organizations, reports, conference reports and newspapers.

#### 6.2.4 Framework of Analysis

The study made use of the normative theory to explain the foundations of international and norms of protection. The liberal institutionalism theory was applied to explain the basis for intervention and the agencies for intervention (member states and international organisations). The liberal institutionalism championed by John Stuart Mill, Adam Smith and Immanuel Kant (Elman 2001) explained that states cooperate in order to achieve unanimous objective to uphold norm of protection and maintain peace. The theory outlines that state sovereignty can be overridden in order to preserve and protect human such with the Libyan intervention case under OUP with approval from UN Security Council. The normative theory outlined the foundations for international law and how they define and regulate the behavior of states internationally and respect of fundamental human rights in domestic sphere.

### 6.3 Limitations

The study was challenged by inaccessibility of local Libyan key informants, data was hence collected from the internet and through telephone interviews as Libya is currently hostile and faces political instability. As a result, respondents from the native country Libya it was close to impossible to get in-depth information from them because of their fear of victimization and escalation of violence. Key officials were hard to meet for interviews due to busy bureaucratic schedules. This study relied on Skype and telephone interviews to counter this challenge and also review of secondary sources.

### 6.4 Summary of Findings and Analysis

- Examining and reflecting on tenets of the international norms of protection: these were outlined in chapter 2 under the protection of civilians and responsibility to protect doctrine. The roots of norms were articulated under the roots of norms in international law. The study found out norms of protection was developed after World War I and II to curb adversities and inhuman acts attributed to armed conflict. Protection of civilians (POC) was rooted in Universal declaration of Human Rights (1948), Geneva Convention

of 1949 and Additional Protocols and Convention Against torture (1987) and these laws regulated warfare. Advances in norms saw development of Rome Statute of the ICC (1998) and responsibility to protect doctrine (R2P) to universalize, internationalise norms as guiding principles and ensure compliance in protecting civilians.

- Analysing the course of events that led to the passing of UN resolution 1973 and use of force in Libya: This was outlined in chapter 3. The chapter revealed that the indiscriminate words by Muammar Gaddafi were used as justification for use of force fearing massacre of civilians in Benghazi. These events were examined under origins and nature of conflict. The reactions and response by international institutions (United Nations and NATO) and regional organisations (African Union and League of Arab States) was outlined under the external reactions to the Libyan civil war. The UN passed resolution 1970 but proved futile and resolution 1973 followed, as immediate reaction to impending threat to Libyan nations from the Gaddafi regime.
- Examining the effects of the NATO led intervention on the nature of human rights in Libya: The effects are presented in chapter 5 and they were categorized under civil and political; social and economic rights. These were examined in comparison pre and post-intervention. Comparison illustrated that the human rights and welfare of the Libyans did not improve but deteriorated after intervention. The study revealed that Libyans had better access to social amenities compared to post-intervention. NATO intervention created a power vacuum that which resulted in the emergence of violent non-state actors which have been spiralling conflicts in Libya making it difficult for Libya to establish a firm central government.
- Investigating the implications of NATO intervention on the norms of protection in relation to Libya case: Implications are presented in chapter 5 under implications of Operation Unified Protector (OUP) on norms of protection. These were analysed looking at the tenets of norms protection (right intent, just cause, reasonable prospects, proportional force, responsibility to protect, react and re-build) and how they have been impacted by the intervention. NATO led intervention has caused a lot of consternation and has impacted negatively on norms of protection. Humanitarian intervention in Libya in future has been embroiled in regime change agenda and branded as extension of imperialistic foreign policies concealed in protection of civilians and upholding of human

rights. The OUP took an eclectic approach to implementation of norms violated the just cause and right by pursuing regime change. Responsibility to re-build was neglected leaving the Libyans fragmented and scrambling for power. Preventive measures were not fully exhausted.

## **6.5 Lessons**

Thus, deriving from the experiences of the nexus between OUP and the norms of protection, lessons imply that there should be;

- ❖ Process evaluation before launch of intervention to get the actual information on ground surrounding issue of concern. Accurate independent investigation should be undertaken to assess the nature of actual humanitarian crisis on the ground as means to counteract the overrated humanitarian concerns which can be amplified by relief agencies and the media. This process evaluation will address the inconsistencies by media reports and surpass media propaganda by verifying the accuracy of information.
- ❖ Full incorporation of peacekeeping, diplomacy, regional organisations' consent and mediation in responding to crisis. There is need to trace and track history of preventive measures in victim state to ensure that all have been exhausted and proved beyond reasonable doubt that they were futile before intrusive and forceful measures are implemented. Incorporate post jus bellum as this is vital in a country that has been war torn. Post-intervention measures have been neglected in several intervention cases which have seen repulsive effects of sporadic violence
- ❖ Legitimization and authorisation should not be limited to UN Security Council alone but come from the General Assembly. This will neutralize the issue of state personalised interests and the extension of foreign policies by states in the name humanitarian intervention.

## **6.6 Conclusion of the Study**

The NATO led Operation Unified Protector has portrayed failure in Libya marking structural and power deficiencies in the international community. The intervention did not improve the human on rights and social life of the Libyans instead it was embroiled in deteriorating living standards,



continued violence and human rights abuse. This was attributed to by NATO's quick hasty move to implement military intervention without having fully exhausted preventive measures. The study has established that the drive and push of this intervention was not solely pure and moral but rather it was embroiled by sinister motives of regime change, geopolitics and geostrategic interests. This has implicated on the norm of protection as interventions are now viewed as extension of foreign policies which has seen Operation Unified Protector defeating the sore mandate of civilian protection. Therefore the study found that institutionalized power without integrated power does not yield conditions for peace and can breed violence. Democracy should not be enforced by outsiders as the insiders might not hold on to it firmly but it should be incorporated through electoral systems.

### **6.7 Recommendations**

The following are suggested policy measures to enhance the use of UNSC sanctioned military force to enforce norms of protection;

- ❖ Investigations of scale and magnitude of threats to humanity in the conflict at hand through process evaluation to gain accurate information so as to surpass magnified media propaganda before intervention.
- ❖ The need to undertake considerate evaluation of the nature or type and source of conflict or situation to gain voracious understanding of the underlying context to evade repulsive effects of intervening (ideological, religious or political conflict).
- ❖ Strengthened and coordinated approach to intervention and implementation of post-intervention mechanisms such as recovery, rebuilding, reconstruction and transitional justice.
- ❖ Implement a hybrid of invasive and non-invasive measures to integrate peacekeeping to de-escalate conflict, aid negotiation and changing of attitudes through peace-building.

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