

International Intervention in Libya since 2011 and Its Political Implications

Abstract

This study seeks to discuss the evolution of international interventions in Libya since 2011 through three main pivots where it makes an interpretation to the concept of intervention in a broader trans-disciplinary sense. In the same context, the study sheds lights on the “Responsibility to Protect” doctrine and relying on this doctrine as a vehicle for international intervention.

All over the period, the international intervention had taken its place in establishment some rules to run the political process through military actions and the UN and its Libya-focused institutions like the sanctions committee, the UNSMIL and the Libya panel of experts; as well as focusing on the Arab League stance and decisions on Libya. By focusing on the policies of intervention in Libya mainly: military intervention, counter-terrorism, national dialogue and building a consensual national army and arms embargo.

The study tried to observe some conclusions on the unconscious role of international institutions which appeared in conflict relations rather than resolution, as well as, the hardness of status quo in Libyan politics and its interactions with regional politics vice versa.

Keywords: Libya, International Intervention, Security Council, United Nations, France

Dr. Khiry M. Omar
Sadeq A. I.
Alshaikheid

Assistant Professor, Middle East Institute, Sakarya University,TR, rr.khiry@gmail.com

PhD student, IR, Faculty of Social Sciences, Sakarya University,TR, s.alshaikheid@gmail.com

Received:22-08-2019
Accepted:05-12-2019

2011'den Günümüze Libya'ya Yönelik Uluslararası Müdahale ve Siyasi Etkileri

Öz

Bu çalışma, 2011'den günümüze Libya'ya yönelik uluslararası müdahalenin gelişimini, müdahale kavramının disiplinlerarası anlamda daha geniş bir şekilde yorumlandığı üç ana eksen aracılığıyla tartışmayı amaçlamaktadır. Bu bağlamda çalışma, "Koruma Sorumluluğu" (R2P) doktrinine ışık tutmakta ve söz konusu doktrini bir uluslararası müdahale aracı olarak ele almaktadır.

Süreç boyunca, uluslararası müdahale; askeri eylemler, BM ve BM'nin yaptırım komitesi, Libya'daki Birleşmiş Milletler Destek Misyonu (UNSMIL) ve Libya uzmanlar paneli gibi Libya odaklı kurumları aracılığıyla siyasi süreci yönetme noktasında kimi kuralların belirlenmesinde önemli rol oynamaktadır ve Arap Birliği'nin tutumu ile Libya kararlarına odaklanmayı ihmal etmemektedir. Temel olarak Libya'ya yönelik müdahale politikalarına, bir başka deyişle askeri müdahale, terörle mücadele, ulusal diyalog, ortak bir ulusal ordunun kurulması ve silah ambargosunun uygulanması konularına odaklanmaktadır.

Çalışma, çözümlenmeden ziyade çatışma ilişkilerinde ortaya çıkan uluslararası kurumların bilinçdışı rolünün yanı sıra Libya siyasetindeki statükonun sertliği ve bunun bölgesel siyasetle etkileşimi gibi bazı sonuçlara varmaya çalışmaktadır.

Anahtar kelimeler: Libya, Uluslararası müdahale, Güvenlik Konseyi, Birleşmiş Milletler, Fransa

Dr. Khiry M. Omar
Sadeq A. I.
Alshaikheid

Dr. Öğr.Üyesi, Ortadoğu
Enstitüsü, Sakarya
Üniversitesi, rr.khiry@gmail.com

Doktora öğrencisi, Sosyal
Bilimler Enstitüsü, Sakarya
Üniversitesi, s.alshaikheid@gmail.com

Geliş Tarihi:22-08-2019
Kabul Tarihi:05-12-2019

التدخل الدولي تجاه ليبيا منذ عام 2011 و حتى يومنا هذا و آثاره السياسية

ملخص

تهدف هذه الدراسة الى مناقشة تطور التدخل الدولي تجاه ليبيا منذ عام ١١٠٢ و حتى يومنا هذا عن طريق المحاور الثلاثة الأساسية التي يتم فيها شرح و تحليل مفهوم التدخل على نطاق أوسع في مجال ما بين التخصصات. و في هذا النطاق تسلط الدراسة الضوء على عقيدة «مسؤولية الحماية» (R2P) و تدرس هذه العقيدة على أنها أداة مداخلية دولية.

التدخل الدولي طيلة الفترة؛ تلعب الأعمال العسكرية دورا مهما في تحديد بعض القوانين و القواعد المتعلقة بإدارة الفترة السياسية بواسطة المؤسسات التي تركز على ليبيا مثل الأمم المتحدة و لجنة العقوبات التابعة للأمم المتحدة، و بعثة الأمم المتحدة للدعم في ليبيا (UNSMIL) و فريق خبراء ليبيا، كما أنها لا تهمل التركيز على موقف الجامعة العربية و قراراتها تجاه ليبيا. و تركز بشكل أساسي على سياسات التدخل في ليبيا، بمعنى آخر التدخل العسكري، مكافحة الإرهاب، الحوار الوطني، تشكيل جيش وطني مشترك و تطبيق منع التسليح.

تهدف هذه الدراسة الوصول الى بعض النتائج مثل دور المؤسسات الدولية التي تظهر في علاقات الصراع بالإضافة الى صلابة الوضع الراهن في سياسة ليبيا و تفاعله مع السياسة الإقليمية،

الكلمات المفتاحية: ليبيا ، التدخل الدولي ، مجلس الأمن ، الأمم المتحدة ،

الدكتور خيرى م. عمر

صادق أ. ي. الشايخيد

دكتور في معهد الشرق الأوسط في جامعة
صقارية.

معهد العلوم الاجتماعية في جامعة صقارية

Introduction

This study seeks to discuss the evolution of the UN role in Libya. This role reflects one of the most important cases of intervention in international law, especially with regards to the implications based upon UNSCRs since the outbreak of the revolution of February 17, 2011. The study also examines the change in the intensity and grade of international intervention during the following years

The United Nations' role was based on Chapter VII of the UN Charter and the "responsibility to protect" doctrine as well and the latter was considered as an evolutionary step in the policies of intervention in the internal affairs of states. In the case of Libya, the United Nations policies went through two stages: the first one was a NATO military intervention and imposition of large-scale sanctions and an international siege on the Libyan government. The second stage was characterized by placing Libya under the broad concept of intervention, so that the UN role extends to following up and nurturing the setup of the new political system. In this stage, the intervention aims to support the transitional phase and the political process to form a new regime.

Despite the clarity of international intervention in the overthrow of Muammar Gaddafi's regime, the consequences witnessed a UN absence in building a political transition type. Realistically, the UN role was downgraded from imposing policies for the installation of a new regime but it went down to the supervision and follow-up of the political process. UNSMIL's policies have been more closely related to the vision of the "Special Envoy", raising the debate about a change in UN policy towards the Libyan crisis.

In this type of intervention, Libya has been undergoing a situation of disintegration and open conflicts, where the role of the UN Mission became closer to the political crisis without a clear vision for resolving or mitigating it. So, it seems important to discuss and analyze the contexts of the UN and other international actors.

In addition, there was a lengthy transitional period, stumbling with the constitution, and the disintegration of state powers provoking controversy over UNSMIL role, where the suspension of military operations on 27 October 2011 and launching the political process didn't lead the country to peace but to civil war. So, the study argues that the UNSMIL along with the UNSCRs on Libya interpret a failed transition. The UN policy didn't make up alternative conflict resolutions but left the crisis in open struggle between a lot of international actors.

The framework of humanitarian intervention expanded to include the political processes run by the Government of Libya. This was expected to decrease the role of the UN in Libya towards a UN exit under the framework of Chapter VII. But over time, the increasing involvement of the UN in internal affairs, especially in national dialogue management, raises questions about the factors that contributed to the prolongation of the intervention of the UN and its implications for constitutional policies and the opportunity to get out of the political crisis.

In this context, it is difficult to limit dealing with the effects of international intervention to the legal form. So, it is important to tackle the transformational nature of the UN and its Libya mission from military intervention to peaceful intervention, especially with regard to the different international and regional interests that have motivated military or humanitarian intervention to protect civilians after the outbreak of armed conflict in Libya, along with the disparities of intervention policies and their impact on the pervasion of civil war.

1. International intervention in the UN Charter

Although the common rule in inter-state relations is non-interference and prohibition or threat of use of force, there are exceptions that allow the international community the right to intervene to maintain international peace and security in accordance with Chapter VII of the Charter of the United Nations, which the charter considered as supreme goals in the current international system.¹ Article 1/1 was more specific in emphasizing on peace-keeping through preventive measures to ward off threats to peace through peaceful resolution / settlement of international disputes.

1.1. The concept of intervention in Libyan case

From the binging, the Security Council estimated that military actions reflect a major threat to international peace and security and the estimate has contributed to the redefinition of the factors that pose a threat. There are a typical forms of military action that have not only been confined to the state as an actor in international relations and foreign policy nor even as a juridical figure. In this context, aggression has been one of the most famous examp-

¹ UN Charter, Article 6

les of a breach of peace. However, the expansion of the Security Council in defining the sources of the threat of peace and security to include internal conflicts has brought about a shift in standards relating to issues under the consideration of the United Nations.

According to Article 39 (Chapter VII), the UN interpreted the government campaigns against civilians as a threat to peace and security. This article was interpreted by the Security Council in such a way as to give itself full-fledged discretion and freedom in the legal adaptation of a situation / situations of threat to peace and security. These include violations of human rights and the denial of democratic principles, as well as other areas of economic, social, military and environmental natures such as WMD, piracy, and environmental protection. So, the UNSC considers instability in one of these fields to be a threat of international peace and security.²

In this way, Article 39 put philosophical and legal bases for intervention under Chapter VII. It was one of the most controversial articles in using powers under the UNSC to settlement international peace and security. Based on those powers, the UNSC is the only body to determine the circumstances under which punitive measures provided for in Chapter VII of the Charter can be used, with absolute discretion for the UNSC.³

The Security Council resolutions had two types, military and non-military measures such as economic sanctions, which are set forth in Articles 40 and 43, as well as UNSCRs 1970 and 1973 on Libya. In these the use of force and intervention to protect civilians until the overthrow of Qaddafi's rule was based on the adaptation by the Security Council of the situation in Libya, which ruled that Gaddafi regime practices threaten international peace and security. The UNSC defined these practices as war crimes for renunciation of the Libyan state to protect its population and ceded its legal obligation in this regard.⁴

² Rabhi Lakhdar: international intervention between international legitimacy and concept of State Sovereignty (PHD Thesis), Faculty of Law and Political Science, Abi Bakr Belkaid Tlemecan, 2015 pp. 162-164

³ Article 39 of the UN Charter: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

⁴ Rabhi Lakhdar, Op. Cit, p 169

1.2. “Responsibility to Protect” in Action

The concept of “Responsibility to Protect” emerged as an evolution of “humanitarian intervention”. The international community believed that the issue of Libya should come under the “Responsibility to Protect” principle. Under this concept, the international community is alerted for intervention when consequences of war affect the stability and security of the population and these consequences lead to mass killings, ethnic cleansing and crimes against humanity. The United Nations therefore found the Security Council an appropriate vehicle to take action in the Libyan situation and to implement the principle of “Responsibility to Protect” as a framework for international intervention. This approach introduced after the Kosovan War and its mantle covers war crimes, ethnic cleansing and crimes against humanity.⁵

Another aspect of responsibility on the international community is to help governments meet their commitments and to benefit from cooperation between Member States, regional arrangements, civil society and the private sector; which is to reflect a shift in the concepts of “humanitarian intervention” into “Responsibility to Protect”, which characterize state powerlessness to protect its citizens / commit massive and widespread violations against its civilians. This happened in Libya in 2011, as described by the United Nations Special Envoy on February 24, which formed the legal basis, in addition to the resolutions of the Arab League on Libya.⁶

Regardless of the nature of the intervention under the responsibility of protection, a debate over the balance between the right to intervene and state sovereignty has been raised. The mantle of sovereignty is also debatable as long as the concept is too wide and undecided regarding the control over all constituents of state: territory, government and population. The “responsibility to protect” doctrine is based on a view of sovereignty that emphasizes the ability to provide protection, not control of the territory, and works to respect human rights, classifying it as the fourth cornerstone of the characteristics of the Westphalia with the other three: territory, government and population: and sovereignty is shared among these components.⁷

There are some debates on the new intervention concepts, which emerged after the NATO intervention in Kosovo in 2000 and the civil war in Rwanda,

⁵ Ibid, P. 312

⁶ Ibid. PP 291-293

⁷ Eve Massingham: Military intervention for humanitarian purposes: does the Responsibility to Protect doctrine advance the legality of the use of force for humanitarian ends?, International Review of the Red Cross (Geneva, ICRC, Volume 91, Issue 876, December 2009). P 158

where Kofi Annan (the former UN Secretary-General) raised the question of how the international community should respond to gross and systematic violations of human rights, which affect every principle of our common humanity, and the legal treatment of intervention in order to protect human beings so that intervention does not lead to a state of chaos or that the principle of sovereignty would form an obstacle to the international order.⁸

With the proliferation of internal conflicts over the past decade, new concepts of international intervention have emerged aimed at protecting the population from genocide, as referred to in the 2005 United Nations World Summit Outcome. The UN document considered that the principle of non-interference in the internal affairs of other States is invalid in the case the state renounces protection of its citizens or has remained powerless to protect them, especially if there are signs of genocide. On this basis, the concept of responsibility for protection has emerged on three pillars: liability for prevention, responsibility for restitution and responsibility for reconstruction.⁹ In terms of military intervention, a fourth element emerged as a “last resort”, where military intervention comes after search, exhaustion and ineffectiveness of extra means in preventing a humanitarian crisis, or existence of reasons and indicators of the impossibility of the effectiveness and success of non-military options.¹⁰

Given the intertwining of international interests and the internal affairs of states, it is difficult to distinguish between the humanitarian motives of intervention and the impartiality in the decisions of intervening states. The internal assessment of every state for its intervention translates its interest, which explains the multiplicity of standards of intervention despite the similarity of crimes against humanity.¹¹ The applications of the principle of responsibility for protection have revealed various aspects of contradictions, where the principle is used by the major powers as a justification for the right to intervene. On the other hand, this principle provides protection of the rights of individuals from repressive practices of regimes that harbor the idea of absolute sovereignty. However, the idea of intervention is no longer a normative issue. In many Arab and African countries, there has been no

⁸ Eve Massingham: *ibid*, p 160

⁹ *Ibid*. P 158

¹⁰ *Ibid*, p 162.

¹¹ Karzan Mustafa: *Responsibility to Protect Principle in the Principles and Rules of the General International Law* (PHD Thesis), Faculty of Law and Political Science, Abi Bakr Belkaid Tlemecan, 2015, P 312

application of the responsibility to protect principle despite the wide-spread human rights violations. It was just for issues linked to political dimensions, as in Iraq, Somalia and Libya.¹²

2. The Security Council Resolutions and Intervention in Libya

Since the outbreak of the political crisis in Libya, many international resolutions have been passed on the United Nations and the Arab League, which allow for international intervention under the concept of responsibility for protection of civilians. This series began simultaneously from the United Nations and the League of Arab States.

2.1. The UN sanctions and its consequences

The Security Council issued several resolutions addressing the crisis in Libya, the first of which was UNSCR 1970 on February 26, 2011, and UNSCR 1973 on 17 March, with the aim of establishing a broad framework of intervention, notably the imposition of a no-fly zone for the protection of civilians. The Security Council affirmed the continued prohibition of the entry of arms into Libya over the subsequent period through the issuance of the other 21 UNSCRs.

International sanctions

In accordance with paragraph 6, resolution 1973 imposed an air ban on the airspace of the Libyan Arab Jamahiriya to protect civilians, with the exception of humanitarian flights (para. 7), which include medical supplies, food and humanitarian workers, or the evacuation of foreign nationals from the Libyan Arab Jamahiriya. But on 31 October 2011, NATO declared a halt to its military operations for the purpose of protecting civilians in accordance with Resolution 2016, paragraph 5, and cessation of the air ban, as per paragraph 6 of the same resolution, was declared.¹³

¹² Amina Shamami: Responsibility to Protect: An international duty or a new form of humanitarian intervention? PP 78 – 79 <https://www.google.com.tr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjhsPXJ2M3XAhUFCMAKHehCAykQFggnMAA&url=https%3A%2F%2Fwww.asjp.cerist.dz%2Fen%2FdownArticle%2F290%2F1%2F1%2F10626&usq=AOvVaw0TKISEgNsRIIJM7GyBs-65>

¹³ UNSCR 2016, meeting 6640, 27 October 2011

By the end of October 2011, it became clear that the object of international resolutions was to impose restrictions on Muammar Gaddafi's forces and prevent them from deployment, either against civilians or insurgents. However, in the next phase, the arms embargo was imposed on the parties to the armed conflict. The 2009 resolution was passed on 16 September 2011 to regulate the use of arms in Libya to address the chaos of arms proliferation in the hands of the anti-Gaddafi militias and to investigate war crimes.

In accordance with these decisions, Libya has not been able to lift the arms embargo, despite the declaration of elected governments, since the elections of the General National Congress (GNC) in July 2012. After the (GNC) formation, Resolution 2174 was issued in August 2014 to regulate the arms supply policy through the UNSMILE. The resolution mandated the Mission to monitor the Libyan ports and to report on the possibility of stopping the embargo. The resolution named 11 items containing various forms of violence control, securing weapons and ammunition, preventing them from the hands of terrorist groups, enrolling those involved in crimes and referring them to the International Criminal Court.

In March 2016, the UN Security Council passed Resolution 2278 to extend the arms embargo until July 2017. It concerns the prohibition of arms exports to Libya. At the same time, its emphasis was on countering illicit oil trade. The UNSCR decisions did not reflect any qualitative change in the international situation; despite the fact that many States had declared their support for lifting or easing the embargo to assist in the formation of State bodies.

Sanctions Committee

The Security Council established a sanctions committee (Article 24), which includes all its members. The committee is tasked with the preparation of sanctions and exemption lists, as well as follow-up of UNSCR implementation.¹⁴ The committee is primarily tasked with implementation of the UNSCR

¹⁴ UNSCR 1970, February 2011

UNSMIL missions pursuant to UNSCRs 170 & 1973

(a) manage the process of democratic transition, including through technical advice and assistance to the Libyan electoral process and the process of preparing and establishing a new Libyan constitution, as set out in the National Transitional Council's Constitutional Roadmap, and assistance that improves institutional capacity, transparency and accountability, promotes the empowerment and political participation of women and minorities and supports the further development of Libyan civil society;

(b) promote the rule of law and monitor and protect human rights, in accordance with Libya's international legal obligations, particularly those of women and people belonging to vulnerable

to contain all financial assets related to the Libyan government, based on the full determination of all Member States to freeze all funds and financial assets of the Libyan government and all other economic resources of the Libyan Government outside Libya being owned or controlled, directly or indirectly, by entities or individuals.¹⁵ However, UNSCR 2009 exempted the Central Bank of Libya, The Libyan Arab Foreign Bank, Libyan Investment Authority and the Libya Africa Investment Portfolio from the freezing resolution.¹⁶

UNSCRs have defined mandate of the “Committee” to assist the Libyan government to identify national needs and priorities, foremost among which is (7 / a) managing the process of democratic transformation, providing technical support to the requirements of the political process and improving the capacity of official and civil institutions; strengthening (7 / b) the rule of law and the protection of human rights; (7 / c) to re-establish public security, including through the provision of appropriate strategic and technical advice and assistance to the Libyan Government to establish capable institutions and effective national security coordination mechanisms, and to assist in countering illicit proliferation of all weapons (7 / d); but excluded (paragraph 9) the obtaining of military equipment for humanitarian and training purpo-

groups, such as children, minorities and migrants, including through assisting the Libyan authorities to reform and build transparent and accountable justice and correctional systems, supporting the development and implementation of a comprehensive transitional justice strategy, and providing assistance towards national reconciliation, support to ensure the proper treatment of detainees and the demobilization of any children remaining associated with revolutionary brigades;

(c) restore public security, including through the provision of appropriate strategic and technical advice and assistance to the Libyan government to develop capable institutions and implement a coherent national approach to the integration of ex-combatants into Libyan national security forces or their demobilization and reintegration into civilian life, including education and employment opportunities, and to develop police and security institutions that are capable, accountable, respectful of human rights and accessible and responsive to women and vulnerable groups;

(d) counter illicit proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, clear explosive remnants of war, conduct demining programmes, secure and manage Libya’s borders, and implement international conventions on chemical, biological and nuclear weapons and materials, in coordination with the relevant United Nations agencies, the Organization for the Prohibition of Chemical Weapons, and international and regional partners;

(e) coordinate international assistance and build government capacity across all relevant sectors set out in relation to paragraphs 6 (a) to (d), including by supporting the coordination mechanism within the Libyan government announced on 31 January 2012, advice to the Libyan government to help identify priority needs for international support, engaging international partners in the process wherever appropriate, facilitation of international assistance to the Libyan government, and establishing a clear division of labour and regular and frequent communication between all those providing assistance to Libya;

7. Encourages UNSMIL to continue to support efforts to promote national reconciliation, inclusive political dialogue and political processes aimed at promoting free, fair and credible elections, transitional justice and respect for human rights throughout Libya;

¹⁵ UNSCR 1970, Meeting 6491, 26 February 2011

¹⁶ UNSCR 2009, Meeting 6620, 16 September 2011

ses; which was regarded as an easing of the restrictions contained in the resolution 1970, paragraph 9 / A, while the UNSCR retained the arms embargo and the fight against its proliferation in Libya.¹⁷

UNSMIL as a sanctions tool

The United Nations Support Mission in Libya (UNSMIL) was established pursuant to UNSCR (2009/12) and is chaired by the Special Envoy of the UN Secretary-General for an initial period of three months but has been extended annually over the transitional periods. Regarding UNSMIL's terms of reference, it can be seen that it is similar to the terms of reference of the "Sanctions Committee" and thus can be classified as the successor to the Sanctions Commission, but with terms of reference supporting the options of the Libyans on the following issues and tasks:

1. Restore public order and security and strengthen the rule of law.
2. Conduct a political dialogue that includes all national spectra, and to initiate the process of drafting the constitution and the electoral process;
3. Stretching State authority, including nascent accountable institutions and public services bodies.
4. Promotion and protection of human rights, particularly for those belonging to vulnerable groups, and support for transitional justice.
5. Take the immediate steps required to start economic recovery
6. Coordination of support that may be requested from other multilateral and bilateral actors.

Experts' committee as promoting reporters

The Panel of Experts (Eight experts) was formed, pursuant to UNSCR 1973, for an initial period of one year, in consultation and supervision of the Committee to carry out technical tasks; particularly analyzing the information received by the UN on the implementation of the measures set out in UNSCR 1973 and identifying cases of non-compliance. The Committee extended mandate of the Experts' committee until now.¹⁸

¹⁷ UNSCR 2095, Meeting 6934, March 2013.

¹⁸ UNSCR 1973, Meeting 6498, 17 March 2011

The Panel of Experts is tasked with the following:

(a) Assist the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011) and this resolution;

In general, the philosophy of UNSCRs on Libya reflects a tendency to impose further restrictions on individual movements. UNSCR 2174/4 decreed inclusion of individuals and entities that transgress international humanitarian law, threaten peace and stability, undermine or support undermining political transformation, planning or carrying out attacks against state facilities, providing support to armed groups and criminal networks, or working for those listed on the international criminal list. These classifications open up the possibility of accusing and arresting Libyans by any state without specific charges, particularly in the light of the large powers for all Member States (2174/11) in the United Nations to conduct inspections for all Libyans under this resolution, whether individuals or entities.

Therefore, UNSMIL has broad executive powers in determining responsibility for violations and preparing lists of accused, which is a serious responsibility in light of the lack of clear requirements for investigation of crimes amid power disputes and the spread of violence, which also raises concerns about the overlap of political considerations in the formation of criminal lists or in the assessment UNSCR violations concerning the arrangements for the prohibition of arms exports to the country. UNSMIL does not manage international forces to secure and control the Libyan borders and just mandates neighboring countries to inspect individuals and shipments going out from or going in to Libya, this being in accordance with domestic and international law and the law of the sea.

2.2. Arab League catalysis intervention in Libya

The Arab League's policies towards Libya began with early intervention in Libyan affairs. A decision was made at a meeting at the level of representatives to stop the participation of the delegations of the Government of the Libyan Arab Jamahiriya in the meetings of the Council of the League and all its satellite organizations and agencies until the Libyan authorities stop attacking civilians and achieve social peace.¹⁹

(b) Gather, examine and analyse information from States, relevant United Nations bodies, regional organizations and other interested parties regarding the implementation of the measures decided in UNSCRs 1970 (2011), 1973 (2011), 2146 (2014), 2174 (2014) and modified in UNSCRs 2009 (2011), 2040 (2012), 2095 (2013), 2144 (2014) and 2213 (2015), in particular incidents of non-compliance;

(c) Make recommendations on actions the Council, or the Committee or State, may consider to improve implementation of the relevant measures;

(d) Provide to the Council an interim report and a final report with its findings and recommendations;

¹⁹ Statement by LAS Council at a meeting on the level of permanent representatives on Serious developments in Libya, Statement 136 (22/02/2011)

Following the issuance of the UNSCR (1973), the Arab League went on to formulate its policies towards Libya, based on several principles, foremost of which is the rejection of foreign intervention and the maintenance of national unity and territorial integrity but, at the same time, stated intervention should be limited to providing humanitarian aid. The Arab League also revealed a biased stance against the Libyan authority, when it supported demonstrations and popular protests.²⁰

On March 12, 2011, the Arab League witnessed a qualitative shift in its view of the political crisis in Libya, when it asked the Security Council to take measures to impose an immediate no-fly zone on Libyan air forces and to establish safe havens in bombarded areas as preventive measures to protect Libyan nationals and residents from different nationalities. Upon this shift, LAS policy moves from the stage of taking preventive measures to the stage of direct intervention against the existing authority in Libya.

This development was accompanied by the Arab League's call for the Security Council to communicate with the Transitional National Council; stripping the Libyan government of its legitimacy due to violations against civilians and what LAS considered to be serious crimes.²¹ The LAS orientation became fully integrated with the UNSCR 1973 after LAS call for stopping the broadcasting of the Libyan channels on the Arab Satellite Network (ARABSAT).²²

The Arab League and United Nations positions and policies have converged on the crisis in Libya during the period prior to the overthrow of Gaddafi, but they have witnessed a chasm in the next phase. Despite the full agreement on freezing funds of Libyan state and high officials, Libyan funds remained frozen despite the LAS demand to lift freezing of funds, property and assets belonging to the state "immediately"²³. In spite of Libya's transitional crises, the Security Council's response was inadequate to the complexities of the economic situation.

The Arab League has tended to develop a vision based on supporting the transitional institutions (the General National Congress) to achieve security,

²⁰ LAS Council on the Ministerial Level, Serious Developments in Libya, no 7298 / 135, 2/3/2011

²¹ The Council of the League at the ministerial level, at its extraordinary session, the repercussions of the current events in Libya and the Arab position towards it, Cairo: The General Secretariat in Cairo, 12/3/2011

²² The Council of the League at the ministerial level at its extraordinary session, the suspension of the broadcast of Al-Jamahiriyia satellite channel on the frequencies of Arabsat, Cairo: Secretariat, 15/5/2011.

²³ Council of the League of Arab States held at an extraordinary session at the ministerial level, the situation in Libya, Cairo: Secretariat General, Statement No. 158: 24/11/2011.

national reconciliation and judicial cooperation, so as to prepare the environment for the establishment of a democratic system.²⁴ The League also supported the political transitional process in Libya, specifically measures related to constitution and national reconciliation. As well, the Arab League regarded the establishment of the Constituent Assembly as representing an important development in Libyan politics and welcomed the outcome of the Rome Conference on Security in Libya (March 6, 2014).²⁵

With the outbreak of armed conflict, the League turned to denounce the “Dawn of Libya” alliance as armed groups outside the mantle of the state, and considered that the statement of the Group of Neighboring Countries of Libya (25/8/2014) and Security Council Resolution 2174 to support the necessary policies of the legitimate government, counterterrorism and the arms embargo. Hence, the emergence of the group of Libya’s neighboring countries which reveals a new mechanism in the management of the political crisis in Libya.²⁶

However, in 2015, the Arab League began to demand that the Security Council lift the arms embargo on the Libyan government which became the legitimate authority that should be enabled to impose security, counter terrorism and arming of the Libyan army. The League also demanded the prevention of arms access to terrorist organizations and groups, in line with the Arab draft resolution on Libya in the Security Council.²⁷ The League completed its call for the Security Council to lift the embargo by supporting resolution 2214 on combating terrorism, demanding that the Government’s requests for weapons be swiftly resolved and that another mechanism should be established to prevent the arrival of arms to terrorist groups.²⁸

²⁴ LAS Council at Ministerial Level, Developments in Libya, Cairo: Secretariat, 9/5/2012, 1/9/2013.

²⁵ LAS Council at Ministerial Level, Developments in Libya, Cairo: Secretariat, 9/03/02014.

²⁶ LAS Council at Ministerial Level, Developments in Libya, 7/9/2014.

- The Council of the League at the ministerial level held in extraordinary session, Developments in in Libya, Cairo: Secretariat, 15/1/2015.

²⁷ Council of the League at ministerial level, developments in Libya, 9/3/2015.

- While Qatar reserved the decision on 10 March 2015, Algeria expressed its reservation to talk about lifting the arms embargo without linking it to the political context. The Algerian delegation explained that it falls within the framework of consensus solutions and the formation of sovereign power as the only way to resolve the Libyan crisis. The formation of a national unity government that will meet the challenges and risks in Libya, exercise sovereign tasks, combat terrorism, and thus have the infrastructure necessary to obtain support and security and military assistance. It is clear that the Algerian position is based on the fact that the conflict in Libya revolves around the acquisition of power between fragmented powers and governments. Therefore, the arrival of arms to one side will further complicate the state crisis.

²⁸ Council of the League at the summit level, serious developments in Libya: approval to Security Council resolution 2214, Cairo: 29/3/2013.

3. Intervention policies in Libya

3.1. Military intervention

NATO's military intervention was based on UNSCR (1973), which stipulated that the States concerned should take the necessary measures to implement the air ban, as stated in Articles 8 and 9. The Alliance also relied on Arab League Resolution No. 7298 of March 2011, which calls on the Security Council to shoulder its responsibility for the deteriorating situation in Libya. NATO then drafted the legal justifications for an air campaign against Libya. Although the resolutions of the Arab League and the Security Council were limited to the imposition of a flight ban to protect civilians, the military operations exceeded the bombing of headquarters and official sites. Expansion of the NATO operations may come under its assessment of the strategic importance of Libya as a passage to the Sahel countries as well as the increased likelihood of the emergence of terrorist groups in these regions. It was remarkable that the NATO announced the cessation of operations after the death of Gaddafi.²⁹

France's recognition of the Transitional National Council in Benghazi shaped a new development in the course of the Libyan crisis where it was the first European country to recognize the National Council and ex-French president Sarkozy promised to prepare a four-point plan to end Gaddafi's rule:³⁰

- Jamming of Gaddafi-affiliated battalions.
- Bombing the headquarters of al-Aziziyah, where Gaddafi was holed up.
- Recognition of the Transitional National Council.
- Announcement of a no-fly zone in Libya.

Given the mandate of the United Nations in accordance with resolution 1973, it can be seen that international intervention has gone beyond the principle of the protection of civilians, so that the question of regime change was a major objective. Former French Defense Minister , Gérard Longuet, said at a press conference in Paris on April 14, 2011, that US president "Barack Obama" and his French and British counterparts do not imagine the future of Libya in the presence of "Muammar Gaddafi" means that UNSCR 1973 is surpassed, because it did not address the future of Gaddafi and did not talk about his removal.³¹

²⁹ AbdelKarim Ba Ismail: NATO Military Interventions in the Arab Region, Booklets of Politics and Law Journal, Issue 12 (2015), p 222

³⁰ Rabhi Lakhdar, Op. Cit, pp 308 - 309

³¹ Ibid, 314 – 315

- The statements of Tarek Mitri (October 8, 2013) indicate that the kidnapping of al-Rafi'i as a Libyan citizen gives Libya the right to defend its sovereignty. This view does not include criticism of the Libyan government as much as it defends its right to exercise sovereignty over its territories. This

It is argued that the objective of international intervention was not to protect civilians, but was linked to the overthrow of the regime, which was consistent with developments following the results of international intervention, because the United Nations was unable to protect civilians or prevent civil war. Libya has been placed in a situation closer to international guardianship, where international intervention has contributed to the exacerbation of armed conflict.³²

3.2. Fighting terrorism policy

In its policy for fighting terrorism, the UN has increased its attention to counterterrorism in Libya and has developed its vision to deal with terrorist organizations and entities, including those belonging to terrorist organizations or those providing financial or technical assistance. Referring to ISIS, supporters of Sharia and groups and entities associated with Al Qaeda, paragraph (7) of the UNSCR 2214 directed the sanctions committee to expedite in consideration of applications by the Libyan army for import of arms, and asks the States to assist Libya in building its security capacity.³³

Despite neighboring countries non-interference in Libyan internal affairs as an independent state, they gave reasons to intervene under the pretexts of fighting terrorism. The idea that occupied the attention of neighboring countries of Libya aimed only to enable the government of the House of Representatives to restore and extend its authority and sovereignty, through means including the use of weapons to stop the activity of armed groups, and countering terrorism and violence. These orientations sought to find justifications for military intervention to support what they consider “the legitimate government”.³⁴

The decisions of the Cairo meeting came in the context of the intensification of the armed conflict in Libya and the aspirations that Haftar-led operations were to achieve political and military victories. This can be interpreted by two sets of factors; At the internal level, the formation of the House of

observation seems to be important in deciding whether or not to be included in the assessment of the situation in Libya. However, the abduction of Prime Minister Zidane has cast a shadow over the assessment of Libya’s status, both in UNSMIL reports and in the reports and observations of the Secretary-General to the Security Council.

³² Yusuf M. Alsawanni, *US and Libya: Contradictions of the intervention and the future of the Libyan entity*, Arab Future Journal, Center for Arab Unity Studies, Beirut, pp 17 - 19

³³ UNSCR 2214, 27 March 2015

³⁴ Final communiqué of the meeting of neighboring countries of Libya, Cairo: 25 August 2014.

Representatives in Tobruk, gave a big push to the Haftar-led “Dignity” campaign and supported its efforts to contain and control Libyan institutions. At the external level, concerns have been raised among regional parties about the strong grip of “Dawn of Libya” and its control over vast areas.

The Rome Declaration affirmed the support for full implementation of Security Council resolution 2213, March 2015. The resolution focuses on the fight against terrorism and extremism as threats to peace and security. It was noticed that the Rome Conference expanded the definition of terrorism to include those responsible for violence and undermining and disrupting the democratic transition in Libya. This trend was a kind of coercion to enter into the agreement of “Sokhirat”, indicating that the security files is a key priority of the Government in Libya and going with the Security Council resolution (paragraph 10) that stressed on the imposition of sanctions include prohibition of travel and freezing of financial and real estate assets; those lists are to be updated according to political developments.³⁵

UNSCR 2259 was consistent with the Rome Declaration as set forth in paragraph 3 and its support for the Libyan Political Agreement. In paragraph (2), the resolution called for the completion of the security arrangements that are necessary to achieve stability in Libya, urging the existing militias and armed groups to respect the authority and leadership of the National Accord Government and the government’s imposition of a policy of power monopoly and arms control in Libya.

European and American debating was on dangers derived from terrorism and illegal immigration and considered that a unified government would help combat terrorism, while stating that division provides a fertile environment for growing armed and terrorist organizations. Therefore, the European Union supported the formation of the National Accord Government.

In order to empower the government with state resources, the Rome Declaration and Resolution 2259 called for subjugating monetary authority and the Oil Corporation to government supervision. He also referred to “the immediate acceptance of a comprehensive ceasefire throughout Libya” and the provision of conditions for humanitarian assistance. Paragraphs 16 to 19 of UNSCR 2259 also reveal a tendency to expand the role of the UNSMIL in Libya. It was remarkable that UNSMIL was empowered to report any increase in the number of its staff and adjustments made to its functions to the

³⁵ Ministerial Meeting for Libya: Joint Statement, Rome: 13/12/2015

Secretary-General and to notify the Security Council with it; in order to give a dynamic character to the role of the international envoy in the follow-up to the Libyan affairs.

3.3. National dialogue under the UN control

The national dialogue has witnessed many stages, but it has not been able to complete the tasks of the transitional period. The good endeavors of Tarek Mitri, the former Special Envoy of the UN Secretary-General on the June 5, 2014 platform can be seen as a broad framework reflecting Libyan society. The preamble of the initiative included a number of principles for managing the political crisis based on the doctrine that “political action cannot be sustained with the continuation of violence and that democratic competition is incompatible with exclusion, and that the strength of argument is the safest alternative to the argument of force in the context of commitment to dialogue in order to ensure peaceful coexistence.” He said that, these principles constitute the essence of solving the problems related to establishment of democracy, achieving security and building the army. But with the outbreak of armed conflict in Tripoli and eastern Libya, an environment unfavorable to political dialogue emerged. In general, the initiative of the UNSMIL presented a perspective to address the Libyan crisis that is different from the proposals made by the Rome Conference on Libya in March 2014. The Rome Conference focused on security policies and counter-terrorism in building democracy.³⁶

In another wise, the resolution (2174/3) was limited to addressing the House of Representatives and the Constituent Assembly. The United Nations considered the Council of Representatives the sole constitutional authority in Libya. Therefore, the arrangements of the Ghadames dialogue (29 September 2014) were limited to completing the constitutional form of the Council and to postpone consideration of the other files of political conflict. Hence, negotiations of “Ghadames” as a dialogue between parliamentarians convened in the same time the conflict between the House of Representatives and the National Congress on the legislative authority was rocketing to the sky.

In this context, the Libyan delegate to the United Nations (Ibrahim al-Dabashi) agreed on the Security Council orientation in focusing on disarming armed groups, especially from heavy weapons, as a single guarantee to

³⁶ UN Secretary-General Report on UNSMIL, New York: 5 September 2014, pp 10 - 14

stop the armed conflict and to preserve the lives of young people.³⁷ Despite UNSCR 2174 which came in the context of the dispute over the constitutionality of the powers of the State, the Security Council's focus, through subsequent resolutions on combating various forms of violence and preventing the access of arms to Libyan territory, was to secure arms and ammunition. Counterterrorism was seen as a higher priority to the Security Council than building of national institutions.

In 2015, the United Nations went on to impose a formula for a political agreement with Bernardino León's draft of the dialogue in May 2015. Though, it remained subject to amendment until the majority of the parties initialed it and the fifth draft was issued on September 20 of the same year. However, despite the amendments, the majority refused to approve the draft "Libyan agreement" in Sokhirat, hence Bernardino León continued in gathering parties to support the dialogue, initially, he received support during the session of the UN General Assembly. Though, this orientation did not receive momentum due to the complicated internal conflicts as well as the depth of regional and international divisions on Libya.³⁸

With Martin Kobler's nomination as a Special Envoy, he worked to complete the path of his predecessor Leon. He therefore refused to recognize the course of the inter-Libyan dialogue that began in Malta between the Presidents of the House of Representatives and the National Congress. Despite the signing of the Declaration of Principles in Tunis in December 2015, Kobler continued to support the United Nations track and held meetin-

³⁷ UNSC Meeting, 26 August 2014

Al-Dabbashi concluded that subduing to the decisions of the Council of Representatives to dissolve the armed formations is the only option for the militants to live in a normal life and according to one of the two alternatives; either handing over weapons to the army without specifying a role for the "militants" inside the state institutions, or the militants agree on calling a limited pan-Arab or pan-Islamic force to receive, store and secure the weapons. Given the two options, there is no significant differences between them, as the both go in the direction of the imposition of arms delivery as a single solution without setting a political framework for the role of insurgents (just subdue to the evaluations of the new leadership on the validity of attachment of the militants to the state institutions or demobilizing them at all).

Article 2 is the core of the disarmament policy, which includes "the surrender of all militias and armed agents in a step-by-step on a gradual approach within the framework of a political agreement between all parties that renounce violence and an independent mechanism under regional auspices from neighboring countries and international support". It was also highly emphatic on the commitment of the external parties to refrain from supplying the illegal parties with weapons of all kinds and to strengthen control over all Libyan maritime, air and land ports to achieve this objective. It is not permitted to import any kind of weapons except at the request of the Libyan state after the approval of the Security Council sanctions committee, and all these terms refer to the components of "Dawn of Libya".

³⁸ UN Secretary-General report on UNSMIL, New York, 13 August 2015, pp 3 - 18

gs with Khalifa Haftar as commander of the army. In contrast, his interest in the constitutional authorities was less; which can be explained by the fact that the division of legislative power has pushed the UN mission towards those who hinder the implementation of the national dialogue. From this point of view, the United Nations seeks to engage Haftar in the political agreement, and to reassure him of his role in building the army in exchange for support for the agreement.

Despite the refusal of the “Kobler” agreement to a declaration of principles between the “House of Representatives” and the “National Congress”, the United Nations was unable to provide adequate protection to “Skhirat” agreement. The report of the Secretary-General on Libya stated that the UNSMIL tried to search for obstacles to the implementation of the agreement, but concluded that it’s the strong polarization that prevented progress in the consolidation of security arrangements. As a result, violence flared among the various factions; raising controversy over the maturity of their perception of the Libyan crisis as well as doubts about the ability to support the political solution. The problem faced by the UN mission was the controversy over the formation of a political consensus government and the collapse of the timetable for a political agreement.³⁹

The present attempt by the United Nations on the Special Envoy Ghassan Salama’s plan to resolve the crisis in Libya by neutralizing and activating the legitimacy of the institutions. Salama’s plan focused on the political agreement as the only framework to end the crisis. Although it is a complement to the United Nations vision of a political solution, it seeks to create the actions of others and incorporate them into the political process.

But we have a challenge here due to the existence of constitutional institutions’ roles (the House of Representatives and the Constituent Assembly) working as a basis for the transitional period. The challenge here is not only with regard to the negative role of these two institutions in the previous phase, but also with regard to the ability to eliminate their structural flaws and the constraints that may impede political transition, so that this plan ends with nationwide elections.⁴⁰

³⁹ UN Secretary-General report on UNSMIL, New York, 1 December 2016, p 21

UN Secretary-General report on UNSMIL, New York, 4 April 2017, p 2

⁴⁰ Address by UN Special Envoy Ghassan Salama, High Level Meeting on Libya, New York, 20 September 2017

Though many Libyan parties had adopted the resolutions of the SC, the UN was hesitant towards supporting economic or military tasks, thereby increasing the liquidity of the Sokhirat agreement and making it subject to permanent negotiation and review. It was interesting to note that the European sanctions against the Speaker of the House of Representatives (Aqila Saleh) and the President of the National Congress (Nuri Bousahmien) due to their obstruction of the political solution, did not include Haftar, who declared his opposition to the political agreement.

3.4. The UN, building the army and weapons ban

Reference of the report of the Special Envoy (September 2013) to the slow process of building the army and the defense system of the state, is considered as an attempt to draw attention to the importance of political consensus on the directions of building the military institution; which refers to the observance of the application of the laws issued during that period. Hence, the activation of the Commission on Integrity and Reform of the army reflect a position against polarization in Libya.

The arms embargo was due to the dispute over the leadership of the army and the absence of a reliable military establishment. Military entities in Libya can be classified as groups of regular forces, mercenaries from Sudan or Chad and some tribal forces, in addition to Misratah militias. The UNSMIL concluded that the components of the army are non-existent, and therefore its armament does not contribute to resolution of the political crisis.⁴¹

The slow pace in formation of the army and the continued arms embargo can be explained by the tense relationship between the United Nations and some Islamic and armed groups due to discrepancies in conceiving political solutions for Libyan problems. This tension contributed to classification of some armed groups in Libya as terrorist outlaws. This explains the state of concern over the acceptance of some armed formations in the army, despite their contribution to maintaining security and combating extremism and terrorism.

In general, the United Nations does not appear to be decisive on the arrangements of the Libyan National Army. Despite repeated statements about the Presidential Council's role as senior military command, it has remained

⁴¹ Martin Kobler Interview, Al-Arab Newspaper, London, 2/6/2016

unenthusiastic about providing military support to the National Accord Government nor supporting plans to unify the army and integrate militants.

Controversy behind the slowdown in the construction of the military such that, despite the report of the Commission of Experts, the United Nations has not taken action against violations of the arms embargo. The report included a reference to the increase in the military equipment of a number of armed groups in violation of the arms embargo imposed on Libya. In this context, the report monitored repeated violations of arms embargoes by the UAE and Saudi Arabia, in recent years and up to 2015, reached the armed groups of the interim government (East Libya), including planes imported from Belarus as a final user, But they were subsequently transferred to Libya without notification to the state of origin or the United Nations, to be included in the equipment of the Khadim airport (paragraphs 122-131), armored weapons received in April 2016 (paragraph 160) and the supply of workshops for fixing weapons on civilian vehicles in Tobruk , with civilian and military equipment. According to the paragraphs (162-163), these weapons were transported via Saudi shipping companies from the Jebel Ali and Jeddah Islamic ports.⁴²

During the transitional period, it was clear that the continued imposition of the arms embargo was linked to the instability of the governments since July 2012; when they could not solve the security problems or begin to build the army. On the one hand, the security and military institutions deteriorated and the political assassinations intensified. On the other hand, no government has adopted an economic policy that supports state authorities in controlling arms.

This change may reflect a kind of flexible handling of the issue of arms embargoes, but it has revealed international policy concerns about the access of arms to terrorist-classified groups. The continued imposition of arms embargoes has been linked to two factors: the escalation of armed conflict and its transformation into civil war; in the absence of the ability of the House of Representatives or the National Accord Government to extend its control. The conflict over the army has been one of the important factors in the continuation of the arms embargo, as the absence of coherent regular forces strengthened the status quo; despite the decisions of the "House of Representatives" to restructure The Libyan army were not able to prove the House's ability to

⁴² Committee of Experts (Security Council) report on Application of Arms Embargo, New York, 1 June 2017.

build the army. The new military leadership headed by Khalifa Haftar failed to prove its capability to build the army nor make a qualitative progress in the eastern region that could be built upon. These problems had led to conflicts and divisions within the GNC and HOR. Finally, the institutions demise was the common result of the international intervention which took its place in armed conflict from May 2014.

Conclusion

The experience of international intervention in Libya indicates that the emergence of the political crisis in Libya is linked to inconsistencies in United Nations policies, not only with respect to the commitment of Security Council resolutions, but also from the lack of technical and political readiness to deal with the effects of humanitarian intervention and subsequent transitional policies.

It is possible to observe that UN and Arab League had pro situation to internationalize the internal crisis, so they didn't do enough to pay attention for leading Libya to peace state. Where UN and Arab League positions paved the way for the intervention of the Security Council against the Libyan government under the umbrella of Chapter VII, using broader interpretation of the right of intervention.

Despite the broad mandate of the UNSMIL, it was not clear that there was a strategy for the Mission to protect the Constituent Assembly as a constitutional authority and to support its task in completing the draft constitution. This had prolonged the transition period and participated in the outbreak of civil war and armed conflict. The draft constitution of July 28, 2017, was not adequately supported by the United Nations, reflecting the absence of a strategy or objective of intervention; whether to protect society from civil war or to build a new political order.

The democratization attitudes occupied the largest part of the UN path. The policy went through two stages: The first was to deal with the political transition as a process and did not pay attention to define the political and social structure in Libya. The UN policy was based on an already existing Libyan consensus on political transition and post - Qadhafi era. Therefore, its role was limited to monitoring the mechanisms of the new institutions without intervening to protect them from collapse or curbing the outsiders;

especially with regard to the National Congress being exposed to the storming and raiding of the militants and being under threat.

The second phase began with decline of political process and the emergence of armed conflict and where the UNSMIL sees political dialogue as its foremost priorities as a way out of the political crisis. It was remarkable that it focused on security issues and the collection and prohibition of weapons. In this context, trends have emerged to classify some movements as terrorist organizations. Thus, the fundamental observation of the role of the UN is that it presents its vision of a political solution in the context of the contradictions of arms collection and democratization without a clear horizon for constitutional stability or clarity of policies of institutional formation and the direction towards good governance.

Finally, the gap between UN resolutions and the regional parties' behavior resulted in cutting the political process in Libya, creating polarization and making dissolute the arms embargo. The lack of attention to the pro-economic and institutional policies and protection of the oil wealth has led to the loss of state power and increasing social divisions; which stand as negative aspects of international intervention.

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