

AN INVITATION TO MEDDLE: THE INTERNATIONAL COMMUNITY'S INTERVENTION IN LIBYA AND THE DOCTRINE OF INTERVENTION BY INVITATION

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I. INTRODUCTION

The Great Socialist People's Libyan Arab Jamahiriya ("Libya") is a nation that has been the focus of the international community since well before its creation.¹ Once an Italian colony, then a monarchy, Libya has been ruled by (its now former) leader, Muammar Gaddafi ("Gaddafi") since 1969.² Gaddafi was often the bane of the international community with ties to terrorist acts and wars; as well as causing domestic unrest with his brutal constriction on freedom of expression that was a hallmark of his despotic rule.³ This domestic unrest came to a boiling point when Libya, under Gaddafi's reign, fell prey to the Jasmine Revolution that was rapidly spreading throughout the Arab world.⁴ Gaddafi responded to the domestic unrest with a brutal campaign against the civilian protesters involving bombing campaigns from the Libyan Air Force and armed clashes with Gaddafi's security forces.⁵ This campaign by Gaddafi led to the oppositional National Transitional Council clamoring for international intervention and left the international community attempting to navigate a tight rope between established international doctrine against intervention and the prevention of civilian casualties.⁶

¹ See generally Libya Country Profile, BBC NEWS (last updated May 21, 2011, 3:37 PM), http://news.bbc.co.uk/2/hi/africa/country_profiles/1819291.stm (describing the international community's colonial and history of occupation of Libya).

² Africa: Libya, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html> (last updated Oct. 3, 2011);

³ Ian Birrell, *Now Even Mad Dog Gaddafi Faces a Day of Rage*, DAILY MAIL ONLINE (Feb. 15, 2011), <http://www.dailymail.co.uk/debate/article-1356767/Egypt-protests-Now-Mad-Dog-Gaddafi-faces-Day-Rage.html>.

⁴ See *Libya Crisis: Rebellion or Civil War?*, BBC NEWS (Mar. 10, 2011), <http://www.bbc.co.uk/news/world-africa-12690713> (describing Libya's experiencing the effects similar to those of the protests in Egypt and Tunisia).

⁵ See generally *Libya: The fall of Gaddafi*, BBC NEWS (Aug. 16, 2011), <http://www.bbc.co.uk/news/world-africa-13860458> (describing the destabilizing violence between the rebel fighters and Gaddafi's forces).

⁶ See Ian Black & Patrick Wintour, *Libya: International Response Gathers Pace after Gaddafi Counterattacks*, THEGUARDIAN.COM (Feb. 24, 2011), <http://www.guardian.co.uk/world/2011/feb/24/libya-international-response-gathers-pace> (noting France considered implementing no-fly zones and Switzerland freezing Gaddafi's assets). See also *Qaddafi Vows to Fight to 'Last Man and Woman' as Loyal Forces Battle Rebels*, FOXNEWS.COM (Mar. 2,

This Article is not intended to condemn the armed intervention by the international community on behalf of the Libyan people, but rather this Article argues that the international community failed to timely recognize the National Transitional Council as Libya's legitimate government to justify use intervention by invitation.⁷ This Article provides a brief history of Libya and the Jasmine Revolution, and then examines how the Jasmine Revolution took hold of Libya in 2011.⁸ Next, this Article discusses the United Nation and international community's response to the situation in Libya.⁹ This Article then discusses how the United Nations deviated from its established commitment against armed intervention.¹⁰ Next, the international consensus against armed intervention is discussed and the Article argues that this consensus should have been followed in Libya.¹¹ Finally, the Article concludes with a discussion about the principle of intervention by invitation and how the international community's response to the situation in Libya was not justifiable under this principle.¹²

II. BACKGROUND

A. LIBYA: A BRIEF HISTORY

The Great Socialist People's Libyan Arab Jamahiriya ("Libya") is a nation that has been subject to foreign influence since its inception.¹³ Historically, Vandals, Arabs, Turks, and Byzantines targeted Libya for acquisition.¹⁴ The Ottoman Turks originally held the area that is now Libya until it fell to Italy in 1911.¹⁵ In 1943, Allied forces gained control of Libya following Italy's defeat in World War II.¹⁶ Italy then ceded control of Libya in a peace treaty in 1947.¹⁷

2011), <http://www.foxnews.com/world/2011/03/02/diplomats-nato-eu-mulling-libyan-fly-zone/> (describing the internal debates of the Libyan rebels and the international community's create plans to enforce a no-fly zone).

⁷ See *infra* notes 122-124 and accompanying text.

⁸ See *infra* notes 13-55 and accompanying text.

⁹ See *infra* notes 56-70 and accompanying text.

¹⁰ See *infra* notes 71-79 and accompanying text.

¹¹ See *infra* notes 80- 92 and accompanying text.

¹² See *infra* notes 93-118 and accompanying text.

¹³ See *generally* Libya Country Profile, BBC NEWS (last updated May 21, 2011, 3:37 PM),

http://news.bbc.co.uk/2/hi/africa/country_profiles/819291.stm (describing Libya's history as a territory being controlled by other nations).

¹⁴ *Id.*

¹⁵ Africa: Libya, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html> (last updated Oct. 3, 2011).

¹⁶ James Sullivan, *Libyan History and the 2011 Protests*, FINDINGDULCINEA.COM, (Feb. 26, 2011, 07:00 AM), <http://www.findingdulcinea.com/news/Middle-East/2011/Feb/Libyan-History.html>.

¹⁷ Treaty of Peace with Italy, 1947 art. 23(4), Feb. 10, 1947, (renouncing "all right an title to the Italian territorial possession in Africa, i.e. Libya, Eritrea, and Italian Somaliland").

Libya gained independence in 1951.¹⁸ In 1969, Colonel Muammar Gaddafi (“Gaddafi”) overthrew the monarch, King Idris, in a bloodless revolution.¹⁹

Gaddafi’s movement was based on ideas that he encapsulated in his Green Book, which aimed to create an alternative to capitalism and communism while adhering to a unique slant on Islam.²⁰ Gaddafi called this system the “Third Universal Theory.”²¹ He labeled this form of government a *jamahiriya*, which, when translated, means a “state of the masses.”²² In theory, various committees controlled the political power, although, in reality, Gaddafi ruled unopposed.²³ Gaddafi was inspired in his uprising by Gamal Abdul Nasser, an Egyptian nationalist figure of the 1950s and 1960s.²⁴ Gaddafi’s forty-one year reign was marked by a series of unpredictable ups and downs that, at times, took the spotlight on the world stage.²⁵ Under his leadership, Libya waged wars, supported acts of terrorism, and provided weapons to terrorist organizations.²⁶ This period of defiant existence in the international community came to an end when Gaddafi, in response to the war on terror, announced that Libya would abandon its attempts to create weapons of mass destruction.²⁷ He then opened Libya up to international tourism and trade.²⁸ Gaddafi’s reign, in spite of his attempt to reconcile with the international community, was not immune from the political pressures in the region.²⁹

B. ARMED UPRISING IN THE ARAB WORLD

A twenty-six year-old Tunisian man’s self-immolation on December 17, 2010, sparked a movement that rocked the Arab

¹⁸ Libya Country Profile, BBC NEWS (last updated May 21, 2011, 3:37 PM), http://news.bbc.co.uk/2/hi/africa/country_profiles/819291.stm.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Africa: Libya, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html> (last updated Oct. 3, 2011).

²² Libya Country Profile, BBC NEWS, http://news.bbc.co.uk/2/hi/africa/country_profiles/819291.stm.

²³ *Id.*

²⁴ *Id.*

²⁵ Ian Birrell, *Now Even Mad Dog Gaddafi Faces a Day of Rage*, DAILY MAIL ONLINE (Feb. 15, 2011), <http://www.dailymail.co.uk/debate/article-1356767/Egypt-protests-Now-Mad-Dog-Gaddafi-faces-Day-Rage.html>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See Libya Crisis: Rebellion or Civil War?*, BBC NEWS (Mar. 10, 2011), <http://www.bbc.co.uk/news/world-africa-12690713> (discussing the uprisings in Egypt and Tunisia where Gaddafi promised to “fight to the last bullet”).

world.³⁰ Mohamed Bouazizi, a street vendor, lit himself on fire to protest the seizing of his produce laden wheelbarrow and the physical mistreatment he received at the hands of public officials.³¹ Bouazizi's death caused protests in his hometown, which rapidly spread to surrounding areas and, eventually, the capital city of Tunis.³² The Tunisian government responded with force by arresting demonstrators, having its security forces faceoff with protestors, and cutting the nation's Internet access.³³ A mere twenty-eight days following Bouazizi's self-immolation the Tunisian government fell and President Zine al-Abidine Ben Ali fled to Saudi Arabia in exile.³⁴ Gaddafi stated that the events in Tunisia "pained him" and commented on Libyan TV that "Tunisia now lives in fear. Families could be raided and slaughtered in their bedrooms and the citizens in the street killed as if it was the Bolshevik or the American [R]evolution."³⁵

The spirit of this so-called Jasmine Revolution rapidly spread to other nations in the Arab world, being fueled by widespread discontent about unemployment, increasing costs of living, corruption, and autocratic leaders.³⁶ Egypt fell in only eighteen days, with Hosni Mubarak being forced to step down and leave the country.³⁷ Similar to his feelings regarding Tunisia, Gaddafi was not silent on the events ongoing in Egypt, stating, "Hosni Mubarak should be honoured – it would have even been better if he had remained president of Egypt."³⁸ Gaddafi, in response to the movements spreading throughout the region, stated, "Tunisia and Egypt, what did you accomplish with these revolutions? Substitution of one government regime for another?"³⁹

³⁰ Naseema Noor, *Tunisia: The Revolution that Started it All*, INTERNATIONAL AFFAIRS REVIEW (Jan. 31, 2011), <http://www.ia-rgwu.org/node/257>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Libya Crisis: Rebellion or Civil War?*, BBC NEWS (Mar. 10, 2011), <http://www.bbc.co.uk/news/world-africa-12690713>.

³⁵ *Muammar Gaddafi Condemns Tunisia Uprising*, THE GUARDIAN (Jan. 16, 2011), <http://www.guardian.co.uk/world/2011/jan/16/muammar-gaddafi-condemns-tunisia-uprising>.

³⁶ *Libya Protests: Second City Benghazi Hit by Violence*, BBC NEWS (Feb. 16, 2011), <http://www.bbc.co.uk/news/world-africa-12477275>.

³⁷ *Libya Crisis: Rebellion or Civil War?*, BBC NEWS (Mar. 10, 2011), <http://www.bbc.co.uk/news/world-africa-12690713>.

³⁸ *Gaddafi Criticises Egyptian, Tunisian Revolutions*, THE TIMES OF INDIA (July 24, 2011), <http://timesofindia.indiatimes.com/world/middle-east/Gaddafi-criticises-Egyptian-Tunisian-revolutions/articleshow/9341803.cms>.

³⁹ *Id.*

C. ARMED UPRISING IN LIBYA

Libya itself soon became the next nation in the Arab world to feel the effects of populist uprisings.⁴⁰ Libya began experiencing protests in mid-February of 2011.⁴¹ On February 15, riots broke out in the city of Benghazi following the arrest of a human rights activist, which then turned into a conflict against the government with the protestors ultimately calling for Gaddafi's resignation.⁴² This unrest preceded a planned demonstration against Libya's regime by one day; the planned demonstration was entitled a "Day of Anger" and organized through social networking sites on the Internet.⁴³ The February 15 protests continued through the night with nearly 2,000 participants throwing Petrol bombs and stones and setting cars on fire.⁴⁴ Government forces responded with water cannons and rubber bullets in an attempt to disburse the crowd.⁴⁵ As the events were unfolding in Benghazi, police stations were set on fire in the cities of Zentan and Beyida.⁴⁶

What began as protests in Benghazi, Zentan, and Beyida soon developed into a battle between rebels and government forces for control of the country.⁴⁷ The opposition forces organized from their base in Benghazi and soon began to capture western towns.⁴⁸ Government security forces then began a retaliatory campaign, which involved the bombing of rebel strongholds and ground assaults.⁴⁹ By March 6, 2011, a struggle for control was raging in the cities of Brega, Ras Lanuf, Bin Jawad, Zawiya, and Misrata, while the rebels had successfully taken hold of Ras Lanuf.⁵⁰ The ongoing clashes caused Gaddafi to pledge, "We will fight until the last man and woman. We will defend Libya from the north to the south."⁵¹

⁴⁰ See *Libya Crisis: Rebellion or Civil War?*, BBC NEWS (Mar. 10, 2011), <http://www.bbc.co.uk/news/world-africa-12690713> (discussing how Libya was feeling the effects similar to that of Egypt and Tunisia).

⁴¹ *Libya: Timeline of Key Events Since February 2011*, UN INTEGRATED REGIONAL INFORMATION NETWORKS: HUMANITARIAN NEWS AND ANALYSIS (Apr. 8, 2011), <http://www.irinnews.org/report.aspx?reportid=92410>.

⁴² *Id.*

⁴³ *Libya Protests: Second City Benghazi Hit by Violence*, BBC NEWS (Feb. 16, 2011), <http://www.bbc.co.uk/news/world-africa-12477275>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See generally *Libya: The fall of Gaddafi*, BBC NEWS (Aug. 16, 2011), <http://www.bbc.co.uk/news/world-africa-13860458> (describing the spread of the rebel influence throughout Libya leading to more destabilizing violence between the rebel fighters and Gaddafi's forces).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Qaddafi Vows to Fight to 'Last Man and Woman' as Loyal Forces Battle Rebels*, FOXNEWS.COM (Mar. 2, 2011),

The battle between the anti-government forces and the government intensified rapidly with the rebels quickly seizing control of Eastern Libya.⁵² The battle escalated with Gaddafi's forces executing air strikes against the anti-government forces to allegedly destroy facilities that stored the anti-government force's weapon caches.⁵³ However, some Libyan Air Force pilots defected during these missions, flying to Malta stating that they were ordered to bomb the civilian protesters (which they were unwilling to do).⁵⁴ As of March 2, 2011, the exact death toll was unknown, with U.N. Secretary General Ban Ki-moon citing reports that around 1,000 people had died in the conflicts in Libya since February 15, 2011, and one Libyan human rights organization claiming that possibly 6,000 people had been killed.⁵⁵

D. THE UNITED NATION'S RESPONSE TO INTERNATIONAL CONFLICT

The Charter of the United Nations ("UN Charter") provides, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."⁵⁶ The UN Charter provides for the use of force under Article 42.⁵⁷ For the use of force to be legitimately authorized, the Security Council must determine that other means, which would not involve the use of force, have been exhausted with no success of stemming the disturbance to international peace and security.⁵⁸

On February 26, 2011, the United Nations Security Council adopted Resolution 1970 (2011) ("Resolution 1970").⁵⁹ The United States Mission to the United Nations stated, "The UN Security Council has adopted a comprehensive resolution to respond to the outrageous violence perpetrated by Muammar Qaddafi [Gaddafi] on the Libyan people. This resolution imposes immediate measures to stop the violence, ensure accountability and facilitate humanitarian

<http://www.foxnews.com/world/2011/03/02/diplomats-nato-eu-mulling-libyan-fly-zone/>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Two Libyan Pilots Defect, Say Ordered to Bomb Protesters*, REUTERS.COM (Feb. 21, 2011), <http://www.reuters.com/article/2011/02/21/us-libya-protests-pilots-idUSTRE71K4S320110221>.

⁵⁵ *Qaddafi Vows to Fight to 'Last Man and Woman' as Loyal Forces Battle Rebels*, FOXNEWS.COM (Mar. 2, 2011), <http://www.foxnews.com/world/2011/03/02/diplomats-nato-eu-mulling-libyan-fly-zone/>.

⁵⁶ U.N. Charter art. 2, para. 4.

⁵⁷ U.N. Charter art. 42, para. 1.

⁵⁸ *See id.* (referring to the methods described in Article 41 of the U.N. Charter).

⁵⁹ S.C. Res. 1970, U.N. Doc. S/RES/1970 (Feb. 26, 2011).

aid.”⁶⁰ One of the most notable provisions of Resolution 1970 was the prohibition of arms being sent to Libya.⁶¹

On March 17, 2011, the United Nations Security Council adopted Resolution 1973 (2011) (“Resolution 1973”).⁶² Resolution 1973 begins by demanding an, “Immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians.”⁶³ It also called upon Member States to perform all necessary means to protect civilians and areas populated by civilians, notwithstanding what was provided in paragraph nine of Resolution 1970.⁶⁴ Resolution 1973 also established a no-fly zone over Libya and prohibited all Libyan aircraft from taking off, landing, or otherwise occupying Libyan airspace.⁶⁵ This no-fly zone also applied to any aircraft that might be carrying any sort of weapons described in paragraphs nine and ten of Resolution 1970.⁶⁶

E. THE INTERNATIONAL COMMUNITY’S RESPONSE TO THE ARMED UPRISING IN LIBYA

There were a variety of responses in the international community to the events in Libya.⁶⁷ As the conflicts between Gaddafi’s security forces and the civilian, anti-government forces escalated, concerned parties within Libya and throughout the international community debated about the international community’s role in this conflict.⁶⁸ A council of anti-government forces in Libya discussed whether to invite the United Nations and members of the international community to intervene against

⁶⁰ *Fact Sheet: UN Security Council Resolution 1970, Libya Sanctions*, UNITED STATES MISSION TO THE UNITED NATIONS (Feb. 26, 2011), <http://usun.state.gov/briefing/statements/2011/157194.htm>.

⁶¹ See S.C. Res. 1970 (2011), ¶ 9, U.N. Doc. S/RES/1970 (Feb. 26, 2011) (encouraging Member States to take measures necessary to prevent the inflow of arms to Libya); see also *id.* (identifying one of the significant provisions of Resolution 1970(2011) as being the arms embargo).

⁶² S.C. Res. 1973 (2011), U.N. Doc. S/RES/1973 (Mar. 17, 2011).

⁶³ S.C. Res. 1973, ¶ 1, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

⁶⁴ See S.C. Res. 1973, ¶ 4, U.N. Doc. S/RES/1973 (Mar. 17, 2011) (authorizing Member States who have notified the Secretary-General to take all requisite action to protect civilians).

⁶⁵ S.C. Res. 1973, ¶ 17, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

⁶⁶ S.C. Res. 1973, ¶ 18, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

⁶⁷ See Ian Black & Patrick Wintour, *Libya: International Response Gathers Pace after Gaddafi Counterattacks*, THEGUARDIAN.COM (Feb. 24, 2011), <http://www.guardian.co.uk/world/2011/feb/24/libya-international-response-gathers-pace> (noting France considered implementing no-fly zones and Switzerland freezing Gaddafi’s assets).

⁶⁸ See *Qaddafi Vows to Fight to ‘Last Man and Woman’ as Loyal Forces Battle Rebels*, FOXNEWS.COM (Mar. 2, 2011), <http://www.foxnews.com/world/2011/03/02/diplomats-nato-eu-mulling-libyan-fly-zone/> (describing the internal debates of the Libyan rebels and the international community’s create plans to enforce a no-fly zone).

Gaddafi's forces.⁶⁹ The council hesitated in seeking UN assistance because, as United States' Secretary of State Hillary Clinton told the U.S. House of Representatives' Foreign Affairs Committee, the anti-government forces wanted to be viewed as, "Doing this [overthrowing Gaddafi] by themselves on behalf of the Libyan people – that there not be outside intervention by an external force."⁷⁰

III. ARGUMENT

A. IT WAS NOT ACCEPTABLE FOR THE UNITED NATIONS AND INTERNATIONAL COMMUNITY TO USE ARMED FORCE IN ADDRESSING THE CONFLICT IN LIBYA

The Charter of the United Nations ("UN Charter") prohibits the use of force; furthermore, there is a long-standing tradition in the international community against armed intervention in the internal affairs of a state.⁷¹ The situation in Libya was one that put the international community in a precarious position of having to balance the need to protect civilian lives from Gaddafi's forces while adhering to the UN Charter and respecting a nation's sovereignty.⁷² The responsibility to protect civilians is a state's responsibilities as a sovereign nation.⁷³ However, the state charged with protecting the civilian population is often the party putting the civilian lives at risk.⁷⁴ When this occurs, it becomes increasingly recognized that the international community must intervene.⁷⁵ With Libya's conflict, the UN intervened by adopting Security Council Resolutions 1970 and 1973 under Chapter VII of the UN Charter.⁷⁶ Resolution 1970 demanded a stop to the violence and Resolution 1973 demanded the immediate cessation of violence and attacks that were being perpetrated by Libyan authorities against civilians.⁷⁷ Before the international community could use force to protect Libya's civilian

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ U.N. Charter art. 2, ¶ 4; see also Curtis Doebbler, *The Use of Force Against Libya: Another Illegal Use of Force*, JURIST: LEGAL NEWS & RESEARCH (Mar. 20, 2011), <http://jurist.org/forum/2011/03/the-use-of-force-against-libya-another-illegal-use-of-force.php> (stating that one of the most fundamental tenets of international law is that states should refrain from using force against one another).

⁷² *Libya the UN And the AU Should Take Charge*, AFRICA NEWS (June 22, 2011), <http://www.foroyaa.gm/modules/news/article.php?storyid=7155>.

⁷³ PROTECTION OF CIVILIANS IN ARMED CONFLICT: HUMANITARIAN CHALLENGES IN WEST AFRICA (MAY 19-21, 2003), <http://www.iss.co.za/pubs/CReports/Ghana03/Report.html>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Curtis Doebbler, *The Use of Force Against Libya: Another Illegal Use of Force*, JURIST: LEGAL NEWS & RESEARCH (Mar. 20, 2011), <http://jurist.org/forum/2011/03/the-use-of-force-against-libya-another-illegal-use-of-force.php>.

⁷⁷ S.C. Res. 1970, U.N. Doc. S/RES/1970 (Feb. 26, 2011); S.C. Res. 1973, ¶ 4, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

population, it had to establish that peaceful measures, such as these Resolutions, were ineffective.⁷⁸ Yet it was unclear whether Security Council Resolutions 1970 and 1973 were properly determined to be ineffective prior to the international community using force to protect Libya's civilian populations.⁷⁹

B. THERE IS AN INTERNATIONAL CONSENSUS AGAINST
C. INTERVENTION IN THE POLITICAL AFFAIRS OF
OTHER NATIONS AND THE CONSENSUS SHOULD HAVE
BEEN FOLLOWED IN THE LIBYAN CONFLICT

The purpose of a coup d'état is to remove the current governing regime in a brief period of time.⁸⁰ Citizens of a country possess the right to change their system of government.⁸¹ A rule of law cannot deprive citizens of their right to change the government, whether by a ballot or bullet or by a majority or minority of the population.⁸² The international community generally tries to refrain from intervening during a coup d'état.⁸³ The rationale is that intervening in the domestic affairs of a nation violates a state's political sovereignty.⁸⁴

⁷⁸ See U.N. Charter art. 42, ¶ 1 (condemning the use of force unless uses of means without the use of force have been exhausted).

⁷⁹ See Curtis Doebbler, *The Use of Force Against Libya: Another Illegal Use of Force*, JURIST: LEGAL NEWS & RESEARCH (Mar. 20, 2011), <http://jurist.org/forum/2011/03/the-use-of-force-against-libya-another-illegal-use-of-force.php> (stating that neither of the resolutions were determined to be ineffective in order for force to be authorized under Article 42 of Chapter VII of the U.N. Charter).

⁸⁰ Edward Collins, Jr. & Timothy M. Cole, *Regime Legitimation in Instances of Coup-Caused Governments-in-Exile: The Cases of Presidents Makarios and Aristide*, 5 J. INT'L L. & PRACTICE 199, 201 (1996).

⁸¹ *Id.* at 210.

⁸² *Id.* (quoting Gerhard Von Glahn, *Law Among Nations: An Introduction to Public International Law* 75 (7th ed. 1996)).

⁸³ Edward Collins, Jr. & Timothy M. Cole, *Regime Legitimation in Instances of Coup-Caused Governments-in-Exile: The Cases of Presidents Makarios and Aristide*, 5 J. Int'l L. & Prac. 199, 211-12 (1996). "There exists an international core of consensus on the fundamental importance of the principle of non-intervention, in large part because it supports the even more basic principle of state sovereignty." *Id.*

⁸⁴ Compare G.A. Res. 380 (V), at 13, U.N. Doc. (Dec. 1, 1950), available at <http://www.un.org/documents/ga/res/5/ares5.htm> (stating that the UN condemns "the intervention of a State in the internal affairs of another State for the purpose of changing its legally established government by the threat or use of force"), with G.A. Res. 2131 (XX), at 11, U.N. Doc. (Dec. 21, 1965), <http://daccess-dds-sny.un.org/doc/RESOLUTION/GEN/NR0/218/94/IMG/NR021894.pdf?OpenElement> (noting that armed intervention in a country's political affairs is an act of aggression that would violate principles found in the UN Charter).

The UN reiterated its preference against intervention into another country's affairs in Resolution 1970.⁸⁵ Specifically, Resolution 1970 called for an arms embargo of, "arms and related materiel [sic] of all types, including weapons, and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned...."⁸⁶ The Resolution went on to call for the cessation of any training in the use of such equipment, the providing of mercenaries, and the freezing of any assets within a Member State of individuals listed in the Resolution.⁸⁷

The UN adopted Resolution 1970 on February 26, 2011.⁸⁸ The UN then adopted Resolution 1973 on March 17, 2011, a mere twenty days after Resolution 1970.⁸⁹ Twenty days was not nearly enough time to determine if the methods adopted and proposed in Resolution 1970 were having a noticeable effect in hampering the violence that was ongoing in Libya.⁹⁰ Consequently, the international community violated Libya's sovereignty by using armed intervention before alternative methods were exhausted or even determined effective.⁹¹

D. LEGITIMACY OF GOVERNMENT AND THE INTERVENTION BY INVITATION

An available loophole for the international community to take in order to intervene during a coup d'état, like what was being experienced in Libya, is through the doctrine of intervention by invitation.⁹² This intervention would then essentially be a product of

⁸⁵ Compare S.C. Res. 1970, U.N. Doc. S/RES/1970 (Feb. 26, 2011) (providing that Member States take necessary steps to prevent the inflow of arms to Libya) with G.A. Res. 36/103, U.N. Doc. A/Res/36/103 (Dec. 9, 1991) (establishing the United Nation's preference against armed intervention in a nation's affairs unless methods not involving armed intervention have failed). Specifically, the actions called for in Resolution 1970 echo the language of the Declaration on Inadmissibility of Intervention in Domestic Affairs of States and Protection of Their Independence and Sovereignty, specifically Resolution 1970 was preventing Member States from assisting, fomenting, financing, inciting, or tolerating subversive activities directed at overthrowing a sitting legitimate government. G.A. Res. 36/103, U.N. Doc. A/Res/36/103 (Dec. 9, 1991).

⁸⁶ S.C. Res. 1970 (2011), U.N. Doc. S/RES/1970 (Feb. 26, 2011)

⁸⁷ *Id.* at ¶ 9, 17.

⁸⁸ S.C. Res. 1970, U.N. Doc. S/RES/1970 (Feb. 26, 2011).

⁸⁹ S.C. Res. 1973, U.N. Doc. S/RES/1973 (March 17, 2011).

⁹⁰ See Curtis Doebbler, *The Use of Force Against Libya: Another Illegal Use of Force*, JURIST: LEGAL NEWS & RESEARCH (Mar. 20, 2011), <http://jurist.org/forum/2011/03/the-use-of-force-against-libya-another-illegal-use-of-force.php> (stating that neither of the resolutions were determined to be ineffective in order for force to be authorized under Article 42 of Chapter VII of the U.N. Charter).

⁹¹ See *id.* (stating, "Neither, however, meets the requirements of article 42 that a determination has been made that 'measures not involving the use of force' have failed." *Id.*).

⁹² See Christopher J. Le Mon, *Legality of a Request by the Interim Iraqi Government for the Continued Presence of United States Military Forces*, AMERICAN SOCIETY OF INTERNATIONAL LAW (June 2004), <http://www.asil.org/insigh135.cfm> (describing the availability of the Doctrine

the inviting nation's sovereignty and not a violation of its sovereign rights.⁹³ For the doctrine of intervention by invitation to be employed in Libya, a legitimate government needed to invite military assistance of the international community.⁹⁴ The issue was that there were questions as to which party was the legitimate government in Libya: Gaddafi or the rebel government (aka Transitional National Council).⁹⁵

The legitimacy of a government is rarely under scrutiny.⁹⁶ The need to determine the legitimacy of a government only arises when there is a need to see if the authority in question possesses the power to speak and act on behalf of the state.⁹⁷ This need is realized in very specific and limited situations, such as whether:

The authority that can speak and act on behalf of the state in the international legal order must be determined ahead of any recognition of government (a), when accreditation within international organizations is sought by two warring governments (b), and, finally, when a state invites another state to carry out a military operation on its own territory (c).⁹⁸

The question of the authority's legitimacy most commonly arises when there is a change in government that took place outside of the typical procedure provided for by the state's constitution.⁹⁹

There is no objective method for determining the legitimacy of a government.¹⁰⁰ As a result, each state enjoys comfortable leeway in deciding to recognize the legitimacy of a foreign power according to factors that it subjectively determines.¹⁰¹ This discretion led to differing levels of recognition of the Transitional National Council,

of Invitation as being an acceptable justification for the international community to intervene during a "revolutionary situation." *Id.*)

⁹³ See *Id.* (stating that the controlling government that has demonstrated that it is wielding the nation's sovereign rights, may it legally invite military aid from other nations)

⁹⁴ Christopher J. Le Mon, *Legality of a Request by the Interim Iraqi Government for the Continued Presence of United States Military Forces*, AMERICAN SOCIETY OF INTERNATIONAL LAW (June 2004), <http://www.asil.org/insigh135.cfm>.

⁹⁵ See generally Ariel Zirulnick, *Libya's Rebels Come to Washington*, THE CHRISTIAN SCIENCE MONITOR (May 24, 2011) (describing the varied responses by members of the international community as to the legitimacy of the government).

⁹⁶ Jean d'Aspermont, *Legitimacy of Governments in the Age of Democracy*, 38 N.Y.U. J. INT'L L. & POL. 877, 899 (2006).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Colin Warbrick, *The New British Policy on Recognition of Governments*, 30 INT'L & COMP. L.Q. 568, 571 (1981).

¹⁰⁰ Jean d'Aspermont, *Legitimacy of Governments in the Age of Democracy*, 38 N.Y.U. J. INT'L L. & POL. 877, 878 (2006).

¹⁰¹ *Id.*

Libya's rebel government, by the international community.¹⁰² In May 2011, the United States recognized the Transitional National Council as one of Libya's representatives, yet not the sole representative; however, the Transitional National Council was the "de facto sole representative" since the United States asked the Libyan embassy to cease its operations in Washington, D.C.¹⁰³ Similarly, the only representatives from the United States in Libya at that time were located in the rebel capital of Benghazi, not in Tripoli.¹⁰⁴

More receptive of the rebel cause in Libya, France was the first nation to recognize the Transitional National Council as the sole representative of the Libyan people.¹⁰⁵ Likewise, Italy recognized the Transitional National Council in April 2011, which caused major economic repercussions in Italy since it was a major trade partner with Libya and received a quarter of its oil supply from Libya.¹⁰⁶ Qatar was the second nation, and the first Arab nation, to recognize Libya's Transitional National Council.¹⁰⁷ Finally, the United Nations Security Council awarded Libya's seat in the General Assembly to the Transitional National Council in a 114 to 17 vote.¹⁰⁸

After the Transitional National Council was recognized as Libya's legitimate governing regime it could ask for the international community to intervene within Libya's borders against Gaddafi's forces.¹⁰⁹ The Transitional National Council would, in effect, be consenting to the international community committing an [a]ction that would, absent such consent, violate the U.N. Charter's prohibition on the use of force. Only where the inviting government is recognized as embodying the sovereign rights of the state will an invitation therefrom provide a legal basis, in and of itself, for military action according to the terms of the invitation.¹¹⁰

¹⁰² See generally Ariel Zirulnick, *Libya's Rebels Come to Washington*, THE CHRISTIAN SCIENCE MONITOR, [HTTP://WWW.CSMONITOR.COM/WORLD/MIDDLE-EAST/2011/0524/LIBYA-S-REBELS-COME-TO-WASHINGTON-WHO-ELSE-HAS-OFFERED-SUPPORT/THE-UNITED-STATES](http://www.csmonitor.com/WORLD/MIDDLE-EAST/2011/0524/LIBYA-S-REBELS-COME-TO-WASHINGTON-WHO-ELSE-HAS-OFFERED-SUPPORT/THE-UNITED-STATES) (May 24, 2011) (listing countries and their differing responses).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* France also served as the main driving force behind the UN's and NATO's response to the Transitional Council's requests for international assistance. *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* (noting that Qatar also pledged assistance to NATO in its operations in Libya, despite Qatar not being a NATO member).

¹⁰⁸ Howard LaFranchi, *A UN Success Story: Libya's Seat Turned Over to Interim Government*, THE CHRISTIAN SCIENCE MONITOR (Sept. 16, 2011).

¹⁰⁹ See Christopher J. Le Mon, *Legality of a Request by the Interim Iraqi Government for the Continued Presence of United States Military Forces*, AMERICAN SOCIETY OF INTERNATIONAL LAW (June 2004), <http://www.asil.org/insigh135.cfm> (stating that "Since the adoption of the [UN] Charter, however, in situations involving civil wars where governmental legitimacy is most challenged the government representing the state at the United Nations has been deemed to possess sufficient external legitimacy to legally invite foreign military intervention." *Id.*).

¹¹⁰ *Id.*

Since the adoption of the UN Charter, the government that represents a state at the United Nations has been determined to be the government with the legitimacy to invite foreign governments and the international community to intervene within its borders.¹¹¹

Initially, the Libyan rebels wanted to remove the Gaddafi regime without international support in order to be viewed as doing this for the Libyan people themselves.¹¹² However, this plan quickly changed in March of 2011 when rebel leaders realized that mere man power would not be sufficient to overthrow the Gaddafi regime and the superior firepower, equipment, and training that the Gaddafi-loyalists possessed.¹¹³ As a senior member of Misrata's governing council stated:

We [previously] did not accept any foreign soldiers in our country, but now, as we face these crimes of Kadhafi [Gaddafi], we are asking on the basis of humanitarian and Islamic principles for someone to come and stop the killing. Before we were asking for no foreign interference, but that was before Kadhafi [Gaddafi] used Grad rockets and planes. Now it's a life or death situation.¹¹⁴

The rebel fighters requested arms such as anti-tank weapons and portable air defenses to fend off Gaddafi's air attacks.¹¹⁵ The recognition of the Transitional National Council as the legitimate government of Libya allowed the UN and international community to take invited, armed action on behalf of the Transitional National

¹¹¹ See *id.* (discussing Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, at ¶ 246 (Jun. 27)) "It is difficult see what would remain of the principle of non-intervention if in international law if intervention, which is already allowable at the request of the government of a State, were also to be allowed at the request of the opposition." *Id.* at n.7 (citing Military and Paramilitary Activities in and Against Nicaragua).

¹¹² *Qaddafi Vows to Fight to 'Last Man and Woman' as Loyal Forces Battle Rebels*, FOXNEWS.COM (Mar. 2, 2011), <http://www.foxnews.com/world/2011/03/02/diplomats-nato-eu-mulling-libyan-fly-zone/>.

¹¹³ See Leila Fadel and Liz Sly, *Libya Rebels Want Military Help to Topple Khadafy*, WASHINGTON POST (Mar. 2, 2011), http://articles.sfgate.com/2011-03-02/news/28645100_1_misurata-rebel-leaders-moammar-khadafy (describing that the Libyan rebels realized that they needed more than people power alone to successfully overthrow the Qaddafi government).

¹¹⁴ Agence France-Presse, *Libya Rebels Plead for Foreign Forces or 'We will die'*, THE RAW STORY (Apr. 19, 2011), <http://www.rawstory.com/rs/2011/04/19/libya-rebels-plead-for-foreign-forces-or-we-will-die/>.

¹¹⁵ Nick Ottens, *America Asks Saudi Arabia to Arm Libya's Rebels*, THE ATLANTIC SENTINEL (Mar. 7, 2011), <http://atlanticsentinel.com/2011/03/america-asks-saudi-arabia-to-arm-libyas-rebels/>.

Council within the Libyan borders without violating Libya's sovereignty.¹¹⁶

IV. CONCLUSION

This Article provided a brief history of Libya and the Gaddafi reign.¹¹⁷ It then introduced the armed uprising in the Arab world, such as the conflicts in Egypt, Tunisia, and Libya.¹¹⁸ The Article then discussed the UN and international community's perspective in responding to conflicts within countries.¹¹⁹ The Article then argued that the UN and members of the international community did not follow this consensus of intervention when dealing with the conflict in Libya.¹²⁰ The Article acknowledged the added complexity in the Libya conflict since there was no clearly recognized legitimate government at the time intervention was contemplated.¹²¹ Without a recognized legitimate government, it became questionable as to when or whether the UN or members of the international community could legally intervene.¹²²

The situation in Libya presented the international community with a situation in which it had to attempt to navigate a tightrope of established precedent of non-intervention in the internal domestic matters of another nation, while trying to mitigate the potential loss of civilian lives. The situation in Libya unfolded rapidly and the need for action was interpreted as being urgent. However, the international community struggled to find justification for intervention that would not violate the UN Charter. Intervention by invitation would have been an available avenue for the international community if the Transitional National Council would have been recognized as Libya's legitimate government prior to intervention occurring. When the Transitional National Council was awarded Libya's UN seat, it was a recognition of the Transitional National Council's legitimacy as Libya's governing regime and allowed for the UN to respond to the Council's call for intervention in Libya. However, this recognition came after the United Nations had called for action in Resolutions 1970 and 1973. This response was too late for the doctrine of intervention by invitation to be used as justification for the international community's intervention in Libya.

¹¹⁶ See Christopher J. Le Mon, *Legality of a Request by the Interim Iraqi Government for the Continued Presence of United States Military Forces*, AMERICAN SOCIETY OF INTERNATIONAL LAW (June 2004), <http://www.asil.org/insigh135.cfm> (asserting that, since the UN Charter's adoption, the government that controls the UN seat for that nation was exerting enough national sovereignty to legitimately invite other nations to intervene).

¹¹⁷ See *supra* notes 13-29 and accompanying text.

¹¹⁸ See *supra* notes 30-55 and accompanying text.

¹¹⁹ See *supra* notes 56-70 and accompanying text.

¹²⁰ See *supra* notes 71-91 and accompanying text.

¹²¹ See *supra* notes 92-116 and accompanying text.

¹²² See *supra* notes 92-116 and accompanying text.