

Joaquín GARRO DOMENÓ

Degree in Political Science and Sociology. PhD candidate in International Security (IUGM). National University of Distance Education (UNED). International Doctoral School

Email address: jgarro2@alumno.uned.es

Just war and the responsibility to protect on the 10th Anniversary of the Intervention in Libya

Abstract

On the occasion of the 10th anniversary of the Libyan conflict, resulting in the overthrow of Muammar Al Gaddafi, this article analyses the actions carried out by the international coalition and NATO in accordance with United Nations Security Council Resolutions' 1970 (2011) and 1973 (2011). This analysis is conducted from a Just War theory and Responsibility to Protect point of view. The application of the aforementioned resolutions is reviewed. A certain ambiguity is glimpsed that leads to different interpretations, sowing doubt in the actions executed by the international coalition forces. All the above is studied considering the moral and the ethics of Just War, leaving the legal aspects aside for the experts in International Law.

Keywords

Just War, R2P, ius ad bellum, ius in bello, ius post bellum, Libya, military intervention, Gaddafi.

Citing this article:

Garro Domeño, J. (2022). Just War and the Responsibility to Protect on the 10th anniversary of the intervention in Libya. *Journal of the Spanish Institute for Strategic Studies*. N.º 19, pp. 493-519

Introduction

The intervention in Libya 10 years ago has been the subject of debate on just war and the responsibility to protect (R2P), sparking serious controversy. In this article, we will try to analyse the question of whether the intervention in Libya was just or not, considering the just war doctrine and its latest developments in the R2P.

Based on this issue, we believe it is necessary to carry out an investigation into R2P in the Libyan conflict, which in 2011 led to the overthrow of the colonel's government and left Libya in chaos where, as the saying goes, the cure was worse than the disease.

Furthermore, we must ask ourselves whether the intervention respected the *jus in bello* during its course¹.

As far as the situation is concerned, it is now known that the overthrow of Muammar Gaddafi's regime in March 2011 plunged Libya into anarchy and turned it into a hub for human trafficking to Europe, and that by destroying the embryonic Libyan state through war, the conditions were created for the establishment of a North African branch of Daesh².

Furthermore, we know that the United Nations (UN), in Resolution S/RES/1970 (2011) of 25 February decided to freeze financial assets and economic resources on Libyan territory owned or controlled directly or indirectly by the persons or entities listed in Annex II of the Resolution. On this basis, Resolution S/RES/1973 (2011) of 17 March would freeze, among other things, the interests of the National Oil Corporation and the Libyan Central Bank, which did not bear fruit as expected³.

It is also worth remembering that in 1996, the security forces massacred 1,200 rioting prisoners in Abu Salim prison. Similarly, Gaddafi had been a suspected terrorist

1 See, among others:

Gutiérrez Espada, C. and Cervell Hortal, M.^a J. (2014). *Birth, Rise and Decline of the Responsibility to Protect*. Granada, Comares.

Fernández Ruiz-Gálvez, E. (2013). *From Vitoria to Libya. Reflections on the responsibility to protect*. Granada, Comares.

Añaños Meza, M.^a C. (2012). *The Responsibility to Protect and the UN intervention in Libya*. Berlin, Editorial Académica Española.

2 Djaziri, M. (2015). The UN and the conflict transition in Libya. AFKAR IDEAS. N.º 47, p. 16.

3 Security Council Resolution S/RES/1973 of 17 March 2011, Annex II, p. 8. Available at: <https://bit.ly/3j4NChx>

accused of involvement in the downing of the French UTA plane that was shot down over Nigeria's Ténéré desert in 1989, killing 470 people⁴.

Earlier, on 21 December 1988, a Pan Am plane flying between Frankfurt and Detroit with a stopover in London was the victim of a terrorist attack, exploding in mid-air and falling on the town of Lockerbie (UK), killing 259 passengers and 11 others on the ground when the plane crashed.

The US and Britain reportedly accuses Libyan nationals Abdelbasset Al Megrahi and Lamén Khalifa Fhimah of carrying out the attack. The Libyan government denies this and calls for an international investigation. On 21 January 1992, the UN Security Council (SC) asks Libya to hand over the suspects in Resolution 731 of 1992, for trial in the USA and Scotland.

On 31 March 1992, the Security Council adopts Resolution 748, which establishes the air and military embargo against Libya.

It is not until 5 April 1999 that Libya brings the two suspects accused of conspiracy, murder and violation of international aviation safety legislation to the Scottish justice system and into the custody of the Dutch authorities. The UN then suspends sanctions on Libya, pending their definitive lifting⁵.

Furthermore, it was discovered that various quantities of uranium concentrate from Niger were found in Sabha and south of Sirte. The Organisation for the Prohibition of Chemical Weapons (OPCW) acknowledged that Gaddafi still had some 9.5 tons of mustard gas hidden in caves in the Kufra oasis⁶ which, if not grounds for triggering R2P, does reflect the idea that he misled the SC into lifting the arms embargo.

Nor should it be forgotten – and it has been emphasised by critics – that at no time did Resolution 1973 authorise regime change, as would eventually happen; this is something that should be clarified, since the UN's order was to protect the population⁷.

As is well known, the intervention was supported by France, the UK and the US, as well as the North Atlantic Treaty Organisation (NATO). Whilst the 1970 (2011) and

4 Echeverría, C. (2011). Revolts, tribal civil war and foreign military intervention in Libya. *Spanish Annual of International Law*. Vol. 27, pp. 185-201.

5 ABC International. (2009). Chronology of the Lockerbie case [online]. [Viewing date: 7 September 2021]. Available at: <https://bit.ly/3FJADeV>

6 Echeverría, C. Op. cit., pp. 185-201.

7 It is necessary to highlight the need to respect the *jus post bellum* in order to achieve a just peace. The *jus post bellum* must be taken into account in any humanitarian intervention, since the political situation post-intervention must be politically stable. See: Ortiz, L. (2012). Revolution and intervention in Libya. An interpretation from just war theory. *Person and Law Journal*. Vol. 6-7, pp. 387-410.

1973 (2011) SC Resolutions were adopted without a veto from any of the five eligible states, as Russia and China abstained from voting. Germany, Brazil, India and South Africa, to name but a few, also abstained.

It is also known that NATO took over military operations from 31 March, twelve days after they had first begun under US command, and then under international coalition command⁸.

In this regard, it should also be noted that NATO cannot act unilaterally without the express authorisation of the SC⁹, hence Resolution 1973 (2011) is a triumph of International Law (IL) over those wishing for a unilateral decentralisation of armed force in favour of the Alliance or any other State turned global vigilante¹⁰.

The UN, in this case affecting international peace and security, tried to take responsibility by condemning human rights violations and the displacement of people by the Libyan regime.

Thus, from what was initially presented as an operation aimed at supporting Chapter VII of the UN Charter, which called for an end to violence and abuse against civilians¹¹, instead we have seen that the result was the fall of a regime and instability in the country ten years after the beginning of the conflict.

The structure of this article is developed through a theoretical framework of the most useful aspects of the case of just war theory with respect to its identification with R2P. These books have been very useful for this: “Just and Unjust Wars” *and* “Reflections on War” *by* Michael Walzer; “Just War Theory” *by* Josep Baqués Quesada; “Just War” *by* Alex Bellamy and the “Just War Doctrine” *by* José María Garrán Martínez; as well as numerous articles written in scientific journals by various prestigious internationalists.

The second part of this article provides an analysis of the conflict itself, setting out the main details of the situation in Libya in the period under review, as well as the subsequent international intervention in this context.

The outline, in summary, focuses on an analysis of the just war doctrine, with respect to its relationship and impact on R2P and that of both in the Libyan conflict

8 Arteaga, F. (2011). NATO in Libya. Elcano Royal Institute, ARI. No. 54, 110/2011, pp. 1-6. Available at: <https://bit.ly/2YLFsmY>

9 Mangas, A. (2011). The authorisation of the use of armed force in Libya. Elcano Royal Institute. Section 57, pp. 1-7. Available at: <https://bit.ly/3HgkbTg>

10 Ibid.

11 Estébanez, F. J. (2015). The responsibility to protect: the effects of the Libyan intervention on the Syrian civil war. Spanish Institute for Strategic Studies. 47/2015, Available at: <https://bit.ly/3z59SP5>

during the intervention resulting from the implementation of Resolutions 1970 (2011) and 1973 (2011)¹².

Just war theory

Evolution of the theory

Plato

The Greek philosopher already implies that in war a certain ethical conduct must be observed, a prelude to what we will later call *jus in bello*, the right to observe these ethics during war, far from the maxim that in war anything goes. Plato's recommendations are taken up in some form, and perhaps with a different design from that which would be set out in the Geneva Convention, as codes of International Humanitarian Law (IHL). Plato denotes a broad common sense based on natural law, which in today's wars does not apply.

Aristotle

The Stagirite held that justice depended on human relations, but then went on to use the term "just war" as we have seen and pointed out five pretexts for declaring war legitimately: in self-defence, to take revenge on those who had wronged us, to help allies, and to maintain authority over those who were incapable of governing themselves¹³.

Cicero

Around 45 BC, Cicero wrote the famous work "On Duties". In it, he mentioned that there were two ways of resolving a dispute: by discussion and debate, and by physical force. He concluded as follows:

"For there are two means of ending a quarrel: negotiation and force. The former is proper to men and the latter to beasts; the latter must be resorted to when it is not possible to use the former. The reason for waging war is the desire to live in peace, for sure; but once a victory has been won, the lives of enemies who were neither cruel nor savage must be respected"¹⁴.

St. Augustine

¹² In R2P terms, this means rebuilding after military intervention and providing full assistance for recovery, reconstruction and reconciliation, eliminating the causes of harm that the intervention addresses or prevents. See: López Jacoiste, E. (2011). The Libyan crisis from a Responsibility to Protect perspective. Spanish Annual of International Law. Vol. 27, p.148.

¹³ Bellamy, A. J. (2009). Just Wars. From Cicero to Iraq. Madrid, Spanish Economic Culture Fund. P. 54.

¹⁴ Cicero, M. T. (1989). On Duties. Madrid, TECNOS. P. 21.

All wars argued for Augustine, even unjust ones, were initiated by the desire for a just peace, and it was this desire that distinguished the legitimacy of war from the illegitimacy of killing for self-preservation or self-benefit.

The central difference between a just and an unjust war was that the former sought both to restore peace and to redress an injury received¹⁵. A war can be just in the *jus ad bellum* and then be unjust because of the way in which the *jus in bello* develops, and vice versa.

For a war to be just, it had to be either the response to a previous harm or ordered by God, from which it follows that for Augustine a war could only be just for one of the warring parties¹⁶.

Theory Maturity

St. Thomas Aquinas

St. Thomas, as far as just war is concerned, speaks of three conditions: “Competent authority, just cause and right intention”¹⁷. We are told that he links the concept of just war to the idea of imputable fault, as well as to the moral and legal consequences of the fault committed by the transgressor of the law.

Francisco de Vitoria

Just war theory, as the treatises cited so far and the following ones will show, is based on the question of self-defence. It is clear that in the face of any aggression and as a response, it is possible to attack in legitimate self-defence. Francisco de Vitoria frequently points out that force can be rejected by force. And he points out:

“In defence of the homeland and its individual rights, it is lawful to refuse force by force within the limits of legitimate self-defence, even at the risk of the aggressor’s life.”¹⁸

Vitoria, in his “*Relectio de Indis*”, leaves us something written that over the years is reflected in the R2P, pointing out:

“As a matter of principle, all peoples, both Indians and Spaniards, have the right to defend themselves by force of arms against unjust aggression by infidels or Christians against their own country, and have the right to

¹⁵ Bellamy, A. J. Op. cit., p. 58.

¹⁶ Ibid., p. 59.

¹⁷ De La Brière, I. (1944). *Just War law*. Mexico, Jus. P. 44.

¹⁸ Vitoria, F. (1989). *Relectio de Indis*. Magna Carta of the Indians. Madrid, Spanish National Research Council. P. 118.

resort to war to deter aggressors from further endangering their national integrity or security”¹⁹.

Here Vitoria helps us to understand the first pillar of R2P since, as we shall see, he incorporates the possibility that the Spaniards contribute to defending the Indians against oppression by their overlords.

Vitoria again seems to lay the foundations of the idea that, in the face of injustice and in self-defence, it will be just to repel aggression from both Christians and infidels. Self-defence is reflected as the validation of defending oneself for a just cause.

In view of the development of the work that concerns us and, in the face of controversy as to whether a tyrant should be overthrown, Vitoria causes us to reflect when he says:

“Just laws are binding in conscience and are valid, even if they have been dictated by a ruler or political leader who seized the kingdom by violence, as long as the tyrant is tolerated by the community”²⁰.

This raises the question of the international community’s interest in overthrowing dictators under the guise of regime change. The Dominican poses a question that is difficult to answer since, in most cases where political systems are overthrown – and in the face of humanitarian interventions that are themselves highly questioned, and with the excuse of R2P – the population, far from improving its standard of living, is placed in complicated situations and a worse life.

Vitoria also, through “*Relectio de Indis*” and in application of natural law and the Law of Nations, justifies that Spaniards who, acting prudently and not wishing to harm the Indians, also had the right to defend themselves if they were attacked by the Indians. Vitoria, already sensing the *jus in bello*, would comment:

“But recourse to these measures of war and security can never serve as a pretext for killing, plundering and occupying the cities of the Indians (...) and they have more than enough reason to distrust Spanish conquerors from outside, armed and much more powerful than themselves”²¹.

Vitoria was ahead of his time and put forward ideas and advice that would later become the doctrine of the UN and the Geneva Conventions. We highlight one of his comments on this issue: “The state can no longer prolong its intervention under

¹⁹ Ibid., p. 119.

²⁰ Ibid., p. 120.

²¹ Ibid., p. 121.

the pretext of defending innocent people by prolonging the occupation of its territories”²².

We must not end this section on Vitoria without quoting a final consideration of his in which he asks: could a war be just for both sides, or just for only one side? Subjectively, in good faith it is possible for of both disputants to believe that each is right²³.

Hugo Grotius

The Dutch jurist shuns war and constantly describes it as horrendous. Hence, a decision to go to war must be out of necessity or out of true charity²⁴, and only if an offence has been committed beforehand. Grotius already indicates R2P here, both out of true charity and out of a need for legitimate self-defence. It suggests that, in the case of self-defence and charity, the responsibility to protect is implied. Their task here will be to distinguish moral necessity from mere political utility²⁵.

In his work “De jure belli ac pacis” he states that on the one hand, the pursuit of an end is lawful as long as the end pursued is just, and on the other hand, that no act of war is just if it lacks a just cause. Importantly however, it makes clear, that not all acts performed by the combatant are always just because the cause is just, and in recognising this, there is a clear distinction between *jus ad bellum* and *jus in bello*. This distinction was not evident in medieval scholastic thought. Saving the argument of Thomistic right intention²⁶.

We are not satisfied with this distinction made by García Caneiro and Vidarte. In our opinion, Grotius takes note of the just war theory of Vitoria’s work in his “Relectio de Indis”; although he does not make a clear distinction between the two *jus*, he clearly reflects the *jus ad bellum* of just cause. No doubt it also involves the *jus in bello* in its many declarations that it is not lawful to proceed to the general slaughter of enemies, as well as declaring it unlawful for the victor to kill children, religious and innocent people.

The concept of just war today

The just war theory is still relevant today, from the Second World War, up to the wars in Korea, Vietnam, Iraq, Afghanistan, etc... Based on these wars and the application of just and unjust wars, many authors have devoted pages and books to the study of the aforementioned doctrine. Of all of them, we will focus on Michael Walzer as the main

²² Ibid., p. 121.

²³ Vitoria apud De la Brière, I. Op. cit., p. 53.

²⁴ Grotius apud Baqués, J. (2007). Just War theory. A proposal for the systematisation of *jus ad bellum*. Pamplona, Aranzadi. P. 76.

²⁵ Ibid., pp. 76-77.

²⁶ García Caneiro, J. and Vidarte, F. J. (2002). War and philosophy. Valencia, Tirant lo Blanch. P. 49.

reference point for just war theory today, and we will analyse the most relevant points in his two books on the subject, “Just and Unjust Wars” and “Reflections on War”.

Michael Walzer published a book in late 1977 that became a classic reference on just war theory entitled “Just and unjust wars”.

In this work, Walzer confessed that the need to write down his reflections on the war was a gesture of intellectual honesty. In the introduction it states: “I would like to re-integrate the notion of just war into moral and political theory”²⁷.

Opposing realism, the American philosopher recovers from Josef Kunz²⁸ the notions *jus ad bellum* and *jus in bello*, and in his work “Reflections on War” in 2004 he even brings out the concept of *jus post bellum*, i.e. the law after the war: Refusing realism, his thesis is that the world of war is de facto radically separated from ethical categories²⁹.

When he introduces the concept of *jus post bellum* he says that it is clear to him that a just war can be fought, and fought justly, and yet, at the end of the war, a bleak and confused picture can still be left behind³⁰.

The moral reality of war is, for him, composed of two parts, which means that war is always judged twice: the first in relation to the reasons that states have for engaging in combat, and the second in relation to how it is carried out. Walzer, in the first judgement, imposes an adjective character, since it indicates that a war is just or, unjust, while the second judgement is adverbial, as with it, we will determine whether the war has been justly or unjustly carried out³¹.

In other words, in this case he applies the adjective part to the *jus ad bellum* and the adverbial part to the *jus in bello*. Walzer focuses its argument and believes that a war is just, based on the theory of aggression and that it is any violation of the territorial integrity or sovereignty of a state.

It is important to note his development of what he calls the *legalist paradigm* in what he calls the domestic analogy, i.e. in an appreciation of the rights of states derived from the prior assumption of the rights of each individual. We are therefore faced with a translation of logics that is not foreign to just war. Walzer examines the six traditional rules or requirements that should be demanded of a state (legalist paradigm): just

27 Walzer, M. (2001). *Just and unjust wars*. Barcelona, Paidós Ibérica. P. 21.

28 Kunz, J. L. apud Kolben, R. Origin of the twin terms *jus ad bellum/ jus in bello*. *International Review of the Red Cross*. No. 143, pp. 589-598.

29 Migliore, J. (2005). Michael Walzer and the problem of just war. *Collection*.N.º16, pp.13-46.

30 Walzer, M. *Op. cit.*, p. 170.

31 Arbeláez, Á. (2012). The notion of just war. Some current approaches. *Analecta Política*. Vol.1, n.º 2, pp. 273-290.

cause, right intention, public declaration of war by a legitimate authority, last resort, likelihood of success and proportionality³².

We will conclude by saying that, in Walzer's view, it is not enough to wait until the fanatical and intolerant tyrants have finished their repugnant task (...). Whenever it is possible to put an end to these outrages, it must be done, and if we, the supposedly decent people of this world, don't do it, who will?³³

The responsibility to protect

In 1999, in the wake of the Kosovo conflict, the UN began to believe that the primary responsibility for the promotion and protection of human rights rested with states. Accordingly, R2P can be said to be the recognition of states' primary duty to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and the international community's subsidiary duty to prevent or deter their occurrence³⁴.

In his 2000 Millennium Report, then Secretary-General Kofi Annan, recalling that the SC had failed to act decisively in Rwanda and Kosovo, confronted member states with the following choice:

“If humanitarian intervention is indeed an unacceptable attack on sovereignty, how should we respond to situations such as Rwanda or Srebrenica and to gross and systematic violations of human rights that transgress the principles of our common humanity?”³⁵

The concept of R2P has its roots in the concept of humanitarian intervention, giving it, however, a more formal than precise concept.

In 2001, the R2P debate reached its peak with the ICISS (International Commission on Intervention and State Sovereignty) report. The Commission was initiated by the Canadian government and led by Gareth Evans (former Australian Foreign Minister) and Mohamed Sahnoun (former Special Representative of the Secretary-General for Somalia and the Great Lakes).

Kofi Annan endorsed the rule that had just been raised, concerning R2P as an international collective responsibility exercised by the SC, authorising military intervention as a last resort in the event of genocide and other large-scale killing, ethnic

32 Walzer, M. *Op. cit.*, p. 97.

33 Walzer, M. (2004). *Reflections on war*. Barcelona, Paidós Ibérica. P. 97.

34 Añaños, M.^a C. (2019). *The Responsibility to Protect in the United Nations and the Responsibility to Protect Doctrine*. Discussion Papers. No. 21, p. 184.

35 Report by UN Secretary-General Kofi Annan, A/54/2000, 27 March 2000. *We the people, the role of the United Nations in the 21st century*. Available at: <https://bit.ly/3BJ3qho>

cleansing and major violations of humanitarian law, which sovereign governments have proved unable or unwilling to prevent³⁶.

In addition, the group proposed basic criteria that would legitimise the authorisation of the use of force by the SC, including the seriousness of the threat, the fact that it must be a last resort and the proportionality of the response.

The international community reacted to this and was divided between those who believed that national sovereignty was not being respected and those who favoured solidarity, i.e. humanitarian intervention.

In 2005, Kofi Annan strongly agreed with the High Level Panel Report and suggested that a list of proposed criteria for authorising the use of force in general, including the seriousness of the threat, proportionality and the likelihood of success, should be applied when authorising the use of force.

This led to the United Nations World Summit in 2005, where all Member States formally accepted the responsibility of each state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. This would be reflected in Resolution A/RES/60/1³⁷.

R2P encompasses three key dimensions:

1. Prevention: It is the most important and should always be the top priority. It includes many aspects such as tackling the causes of instability: poverty, illiteracy, discrimination, forced displacement. The competent authorities are urged to set up early warning mechanisms at national, regional and international level.
2. Reaction: It arises when prevention fails and is the one that provokes the most debate. This includes diplomatic, political, economic or judicial measures. Only in extreme cases, when all else has failed, would military action be included.
3. Reconstruction: It should also be a R2P objective, since half of all countries emerging from war relapse back into violence within five years.

From here, three pillars were established to address the issue:

1. The state has the primary responsibility to protect its inhabitants from genocide, war crimes, ethnic cleansing and crimes against humanity, including incitement.
2. The international community has a responsibility to encourage and assist states in exercising this responsibility.

³⁶ Bermejo, R. and López-Jacoiste, M.^a E. (2013). From humanitarian intervention to the responsibility to protect. Rationale, similarities and differences. *Strategy Papers*. N.º 160, pp. 18-76.

³⁷ General Assembly Resolution A/RES/60/1 of 24 October 2005. 2005 World Summit Outcome. Available at: <https://bit.ly/3v9n57G>

3. The international community has a responsibility to use humanitarian diplomacy and other appropriate means to protect populations from such crimes. If a state is clearly failing to protect its population, the international community must be prepared to take collective action to do so in accordance with the UN Charter.

Linking R2P to the matter at hand, namely the just war theory – that is, as above, by quoting St. Thomas Aquinas, who as early as the 11th century left us with his thought that three conditions are necessary for a war to be just: the authority of the prince under whose command the war is to be waged, that there is a just cause, and that the intention of the contenders is just.

For his part, Francisco de Vitoria invoked intervention on behalf of the innocent. It was already premised on the duty to intervene to defend innocent victims of tyrannies and inhuman laws that could be adopted.

Subsequently, the concept of just war was addressed and recognised by Francisco Suárez, although it would be Hugo Grotius who would formulate the concept of humanitarian intervention (or humanity) in a more complete way. It should be pointed out that it was indeed Grotius who began to proclaim one of the basic principles of international law, that of non-intervention, linking it explicitly to state sovereignty³⁸.

Hugo Grotius was defending and prioritising natural law, as it can legitimise interference and interventions in many internal affairs.

The application of Just War theory to the conflict in Libya.

On 15 February 2011, the civil uprising in Libya because of the so-called Arab Spring contagion broke out in Benghazi, the fiefdom of the former King Idris, deposed in 1969 by Muammar Gaddafi. Facing Gaddafi is a broad, heterodox and disorganised social front, backed by the majority of the population and with the support of many of the country's tribes³⁹.

Having analysed the evolution of just war theory, it is now time to analyse its practical application in the case of the conflict and subsequent intervention in Libya. To do so, we will begin with an analysis of the principles of just war in the Libyan conflict, in order to subsequently verify whether or not they have been complied with in the light of the development of the conflict and especially when applying SC Resolution 1973 (2011). Finally, we will conclude with some considerations on the *jus post bellum* in the Libyan conflict.

On 26 February 2011, the SC adopts Resolution 1970, which expresses its grave concern over the situation in the Libyan Arab Jamahiriya and condemns the violence

38 Vlut apud Bermejo, R. and López-Jacoiste, M.^a E. Op. cit., pp. 18-76.

39 Rizzi, A. (2011). Main tribe backs fight against Libyan dictator [online]. El País Internacional. [Viewing date: 8 August 2021]. Available at: <https://bit.ly/3FJADeV>

and use of force against civilians and, among other *reminders*, instructs the Libyan authorities to respect the R2P of its population. Likewise, and in point 4, the Gaddafi government is told that in view of the situation prevailing in the Libyan Arab Jamahiriya since 15 February 2011, the matter is referred to the International Criminal Court (ICC)⁴⁰. In addition, an arms embargo, a freeze on assets and a travel ban are imposed on 16 senior Libyan government officials.

In view of the circumstances and the worsening situation in the conflict, on 17 March 2011 the Security Council again adopted Resolution 1973 (2011) reminding Libya of Resolution 1970 and deploring the Libyan authorities' failure to comply with it. *Considering* that the widespread and systematic attacks against the civilian population currently taking place in the Libyan Arab Jamahiriya may constitute crimes against humanity, demands a series of obligations from the Libyan authorities and establishes a no-fly zone⁴¹ over the Libyan Arab Jamahiriya in order to be able to protect civilians. It further decides that the flight ban shall not apply to flights for humanitarian purposes.

Intervention in Libya from the Responsibility to Protect principle

R2P is directly related to just war; hence we will analyse it from the perspective of factors such as just cause, legitimate authority, right intention, last resort, proportionality and likelihood of success.

Following in Walzer's footsteps, is the conflict in Libya and the consequent fall of Muammar Gaddafi's regime a just war? This question is very specific. It is not about whether the war is legitimate under international law or whether it is politically or militarily prudent to wage it now or never. The question is whether it is morally defensible, whether it is just or unjust. Law and strategy are left to the opinion of others outside just war theory⁴².

a) Just cause

Both the International Commission of Inquiry for Libya by the UN Human Rights Council (25 February 2011) and Amnesty International held that Gaddafi's forces had committed crimes against humanity and war crimes including abductions, torture, illegal detentions (...) The Commission also found that Thuwar rebel forces had com-

⁴⁰ Security Council Resolution S/RES/1970 of 26 February 2011. Available at: <https://bit.ly/3j2r1AO>

⁴¹ Security Council Resolution S/RES/1973 of 17 March 2011. Available at: <https://bit.ly/3j4NChx>

⁴² Migliore, J. Op. cit., pp. 13-46.

mitted war crimes and crimes against humanity during the conflict in Libya and that they remained unpunished at the time.⁴³

In view of this, the SC was already beginning to consider adopting a resolution to stop the autocrat from his brutal and disproportionate repression. The following day, 26 February 2011, the SC, as mentioned above, adopted Resolution 1970 (2011).

With high-level intellectuals and diplomats such as Jeremy Kinsman in favour of taking action against the Libyan regime, others such as Noam Chomsky, Michael Walzer and Lawrence Modeme would speak out against intervention in Libya.

Walzer argued that the situation in Libya did not correspond to a crisis that warranted humanitarian intervention, as was justified in Rwanda and Darfur⁴⁴.

Lawrence Modeme, given his interest in just cause, stated that the situation in Libya did not constitute a threat to international peace and security. Likewise, the UN Charter states that at least some States should be involved in the conflict, which is why the SC had exceeded its powers by issuing Resolution 1973⁴⁵.

Walzer argues that it is not clear to him what the purpose of the intervention is, he wonders: Is the aim to rescue a failed rebellion, to turn the tide, to use Western armies to help the rebels, to overthrow Gaddafi?⁴⁶

Nor, if you read the SC meetings carefully, will you see how in S/PV 6505 of 24 March 2011, pg. 3, i.e. the session held seven days later, the secretary general says, verbatim:

“My Special Envoy’s mission was too brief to reach definitive conclusions on the human rights situation, but he found many worrying signs, including threats and incitement against the armed opposition”⁴⁷.

The Special Envoy formally requested the cooperation of the Libyan government with the Commission of Inquiry on Human Rights and the response was positive, although no concrete steps were discussed.

From this, it can be deduced that the situation was not clear, neither before the Resolutions were issued nor once they were implemented, on the causes that had determined the R2P. Ultimately, although the Resolutions claim to protect civilians, it seems that the following three points were not clear: the forcefulness of Gaddafi’s

43 Walzer apud Lobo, J. F. (2012). Humanitarian intervention in the Libyan and Syrian crises. *Journal of the Institute of International Studies*. N.º 973. Universidad de Chile. Pp. 37-76.

44 Ibid.

45 Ibid.

46 Walzer, M. (2011). The case against our attack on Libya [online]. *The New Republic*. [Viewing date: 8 August 2021]. Available at: <https://bit.ly/3AEFBWx>

47 6505th meeting of the Security Council S/PV 6505 of 24 March 2011. Available at: <https://bit.ly/32TnscA>

atrocities against the rebels; the possibility that the rebels did the same; and the possibility of other motivations or intentions.

b) Legitimate authority

The UN Charter distinguishes in this respect between two broad groups of measures: those not involving the use of force, referred to in Article 41, and those involving the use of armed force, referred to in Article 42 of the Charter. This Article 42 states:

“If the Security Council considers that the measures referred to in Article 41 may be inadequate or have proved inadequate, it may take such action by air, naval or land forces as may be necessary to maintain or restore international peace and security”⁴⁸.

Although it was often echoed that the SC is not a competent authority in this respect, it should be noted that nothing could be further from the truth as discussed in the previous paragraph. Operation *Unified Protector* in its pursuit of R2P seemed legitimate, but the question remains, as Lawrence Modeme points out, whether international peace and security was at risk, which is highly doubtful. The Libyan crisis was part of an internal conflict that it is up to the General Assembly to decide, as the Human Rights Council is accountable to the General Assembly and seems to offer more transparency and legitimacy than the SC⁴⁹, although the issue would have been more complicated as it would have required a 2/3 vote of the General Assembly⁵⁰.

Unlike NATO's intervention in Yugoslavia, which was not authorised by the SC, the intervention in Libya was carried out under the umbrella of the UN, with opponents such as Brazil, China, Germany, India, Russia and China, which did not support the Resolutions and denounced the bombings. Nevertheless, based on these circumstances, we can say that the requirement of legitimate authority was satisfied, but we retain certain doubts regarding just cause, which will be taken up in the conclusions of this analysis.

c) Right intention

In both Resolutions 1970 and 1973 (2011), the spirit of righteous intent is made clear, but everything seems to indicate that other intentions than protecting the civilian population were hidden. The international coalition took sides by supporting the Transitional National Council (TNC), supplying them with weapons and overthrowing the Libyan government of Gaddafi. It is becoming increasingly clear that behind the supposed humanitarian intentions there were ulterior motives for the intervention.

d) Last resort

48 Andrés, P. (2018). *Basic legislation on public international law*. Madrid, TECNOS. P. 39.

49 Modeme apud Lobo, J. F. *Op. cit.*, p. 47.

50 In this regard, see S/RES/377 A (V) of 3 November 1950. Available at: <https://bit.ly/3BL8sd7>

While some voices such as Simon Adams, director of the New York-based Global Center for R2P, argue that peaceful measures would not have been effective as the Gaddafi regime was prepared to massacre its people, others such as Lawrence Modeme argue that intervention was not a last resort as not enough time was given for the measures envisaged in Resolution 1970 (2011) to be carried out⁵¹.

We believe that there was a lack of interest not only on the part of the UN, but also on the part of other regional stakeholders in carrying out on-site inspections in order to assess the human rights situation. This gave the Libyan government a chance to position itself to determine the extent of the events. It has been said that the UN used double standards, reflected in Resolution 1973 *when it deplored* the Libyan authorities' "continued use of mercenaries". According to studies by the UN Working Group, between 30,000 and 50,000 mercenaries were allegedly hired by the US and other countries in the Iraq war. The Washington Post in 2007 even doubled the figure to 71,000 mercenary men belonging to the *Halliburton and Blackwater* companies in the Afghan war⁵². This suggests, at the very least, that the standards of fairness or otherwise of a war must go beyond such considerations of the role of mercenaries – and that perhaps this was merely a smokescreen used to hide more fundamental shortcomings concerning whether it was appropriate to intervene at the time, or whether it was more prudent to carry out the inspections mentioned above.

e) Proportionality

In order to protect the civilian population and protect human rights, the "no-fly zone" ordered in Resolution 1973 can be understood as securing airspace and facilitating humanitarian aid to civilians. And when it talks about civilians it is referring to both sides of civilians, but the UN could have foreseen that the mining of ports, the destruction of oil installations and bombing by NATO would produce considerable collateral damage and that the use of force does not seem to be the most appropriate method for protecting human rights.

On 31 March 2011, the Vatican, through its nuncio in Tripoli, denounced the killing of at least 40 civilians and the bombing of a hospital by NATO forces. It was protecting and killing civilians at the same time, which is unheard of⁵³. Conversely, the aforementioned global director for R2P, Simon Adams, argued that NATO's intervention in Libya was the lesser of two evils, as its costs were less than allowing the crisis to unfold, which would have culminated in the use of massive and indiscriminate violence against civilians⁵⁴. Contrary to this, Lawrence Modeme stated that the intervention escalated the conflict and that the violence brought more violence to Libya,

⁵¹ Corcoran and Maher, M., apud Lobo, J. F. Op. cit., pp. 37-66.

⁵² Zamora, A. (2011). Use of Force and Human Rights [online]. *Le Monde Diplomatique*. [Viewing date: 8 August 2021]. Available at: <https://bit.ly/3DJTPqX>

⁵³ Ibid.

⁵⁴ Adams apud Lobo, J. F. Op. cit., p. 47.

and that he believed the crisis could have ended with Gaddafi's seizure of Benghazi⁵⁵. Other voices, such as that of Mehrdad Payandeh, professor of international law at the University of Düsseldorf, did not hesitate to criticise the SC for having delegated responsibilities to NATO and not having set a date for the end of the operation set out in Resolution 1973 (2011)⁵⁶.

f) Reasonable prospects for success

Where has success been? The evidence suggests that human rights are still not being respected and that a civil war is still going on after ten years of hostilities, with no end in sight. The then US Secretary of Defence Robert Gates had already warned that establishing a no-fly zone could lead to a direct, long and costly confrontation with the Libyan armed forces⁵⁷.

If Operation *Odyssey Dawn* averted a potential massacre in Benghazi, NATO operations were also protecting armed civilians and rebel military fighting in an internal conflict, which meant acting with bias, something that undermined R2P by protecting some civilians more than others⁵⁸.

It is true that the interveners were lacking sufficient knowledge of the local situation and therefore could not reasonably expect to be successful⁵⁹. They did not foresee the dangers of humanitarian intervention in Libya.

Such an intervention should be a tool of last resort. And in Libya, not enough time was given for the measures in Resolution 1970 to take effect⁶⁰.

Finally, it should be noted that the best intervention in these cases is not the quickest, but the one that produces the desired effects, and that the military approach takes time. There is no guarantee that a military intervention such as that proposed for Libya would be swift, surgical and controlled⁶¹.

The development of the conflict: Situation analysis for Resolution 1973 (2011)

Resolution 1973, *in a reaffirmation* of the Resolution, cites “the resolute commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan

55 Modeme apud Lobo, J. F. Op. cit., pp. 45-46.

56 Payandeh apud Lobo, J. F. Op. cit., p. 46.

57 Arteaga, F. (2011). Reasons against military intervention in Libya. Elcano Royal Institute. Section 54/2011, pp. 1-7, Available at: <https://bit.ly/3lHxUL3>

58 Arteaga, F. Op. cit., pp. 1-6.

59 Beaumon, apud Lobo, J. F. Op. cit., p. 48.

60 Corcoran, M. and Modeme apud Lobo, J. F. Op. cit., p. 47.

61 Arteaga, F. Op. cit., pp. 1-6.

Arab Jamahiriya”. It is a contradiction that on 10 March, seven days before Resolution 1973 came out, French President Nicolas Sarkozy had already recognised the NTC in Benghazi as the legitimate government. Moreover, on the same day that Resolution 1973 was published, the European Union recognised the NTC as a preferred representative.

It should be borne in mind that insofar as the rebels had an established power, a different reading of the conflict could be made: Is this really a humanitarian intervention at the beginning of a civil war? The question is relevant because the answer given by just war theory is different in each case.

Some press reported that Tony Blair, Prime Minister of the United Kingdom at the time, had provided a transcript of his telephone conversation with Gaddafi on 25 February – barely a month before the intervention – which made it clear that the objective pursued by the devotees of the human rights faith was none other than regime change in Libya, and that the initiative came from Paris⁶².

On 19 March, an international coalition led by the US, France and the UK, with the participation of five Arab countries, launched the first air strikes against Gaddafi. A civil war was being unleashed and a fundamental principle in force, the sovereignty of a UN member state, was being violated.

Resolution 1973 of 17 March 2011 took into account Resolution 1970 of 26 February and was based on the duty to protect the civilian population, with the SC having no qualms about proclaiming its respect for Libya’s sovereignty and independence. Both Resolutions are contradictory in nature, as they refer to sovereignty and non-interference but authorise UN member states to take all necessary measures for the protection of civilians, while excluding the use of foreign occupation forces of any kind in any part of Libyan territory and clarifying that the only flights authorised over the territory are those for humanitarian purposes⁶³.

Although endorsed by Resolution 1973, first Operation *Odyssey Dawn* and then Operation *Unified Protector* are suspected of Western interference in an oil-rich Arab and African country⁶⁴.

It should also be noted that the aforementioned Resolution does not give the international community free rein to support either side, and that in the Libyan case the international coalition had, as we shall see, sided with the rebels. Cites that Resolution 46/182⁶⁵, in the annexed guiding principles, emphasises in particular that humanitarian

62 SWI. (2016). Blair advised Gaddafi to go into hiding because it was all going to end badly [online], [Viewing date: 15 May 2018]. Available at: <https://bit.ly/3mR7qpW>

63 Charvin, R. (2012). The intervention in Libya and the violation of international legality: a return to the false international morality of the 19th century [online]. Rural Press Agency. [Viewing date: 11 August 2021]. Available at: <https://bit.ly/2YTJ6vi>

64 Echeverría, C. Op. cit., pp. 183-199.

65 General Assembly Resolution A/46/182 of 19 December 1991. Available at: <https://bit.ly/3eDfjLQ>

assistance should be provided in accordance with the principles of humanity, neutrality and impartiality. Therefore, the sovereignty, territorial integrity and national unity of states must be fully respected, something that R2P has brought into crisis because R2P understands that responsibility does not lie solely with the state.

In the case of Libya, R2P also falls on the international community and all its members to protect the population from genocide, war crimes, ethnic cleansing and other crimes against humanity.

The interpretation of SC Resolution 1973 has become controversial between those who supported the international coalition's intervention and those who thought that the SC had overstepped its mandate. In this Resolution, in the point *expressing its determination*, it speaks of ensuring the protection of civilians and areas populated by civilians (...)⁶⁶ In the face of the threats of attack, experts in international law such as Philippe Sands and Malcolm Saw agree that the bombing of Syrian troops lacks legal justification and contravenes IHL as a consequence of *collateral damage* that would affect civilians both loyal to Gaddafi and the rebels⁶⁷.

In addition, the *coalition*'s latest attacks have been questioned, as by Nicholas Grief, director of law studies at the University of Kent, who – although he sees it as difficult – believes that the matter could be taken to the ICC.

In Grief's view, the latest *coalition* attacks appear to have clearly sided with the rebels and may have overstepped the mark⁶⁸.

Elcano Royal Institute analyst Félix Arteaga points out that there is interference with Libya's internal affairs. He also believes that the difficulty of adopting a negotiated resolution under pressure has meant that its text may allow for different interpretations since, while some *coalition* members make a humanitarian reading of the operation, France, the UK and the US go further and are clearly supporting the rebels who are moving with air cover and ground attacks from these forces⁶⁹.

Analysing other contradictions in the implementation of Resolution 1973 (2011), US Secretary of State Hillary Clinton asserted that while her country was not now considering arming the rebels, this would not be illegal under Resolution 1973 (2011). Russia, Italy, Norway, Denmark and Belgium have expressed their opposition, while the Spanish Foreign Minister, Trinidad Jiménez, warned that the UN Resolutions

66 Security Council Resolution S/RES/1973 of 17 March 2011. Available at: <https://bit.ly/3j4NChx>

67 RTVE. (2011). Experts question whether UN resolution allows support for Libyan rebels [online] [Viewing date: 8 August 2021]. Available at: <https://bit.ly/3AlfjsP>

68 Ibid.

69 Ibid.

have established “an arms embargo” that applies to both parties⁷⁰. It was becoming clear that the Libyan conflict was already a civil war.

In this regard, the international digital edition of the newspaper *El País* of 30 June 2011 published a report by *Le Figaro* in which the spokesman for the French General Staff, Thierry Burkhard, stated that the Libyan regime rebels were receiving arms from Qatar and other Persian Gulf countries. However, the British Secretary of State for Defence, Gerald Howarth, stated in Brussels that the UK had no plans to supply arms to the Libyan opposition⁷¹, not agreeing with this form of supplying arms to the rebels, although his mission was not to criticise France.

It was made clear that the application of R2P can lead to the taking of sides in conflicts as some countries try to defend their particular interests.

The *jus post bellum* in the Libyan conflict

It seems clear that a just war can be fought, and fought justly, yet still result in a morally confused post-war period. Conversely, is it possible to fight an unjust war but then establish decent political order during the post-war period? All indications are that this possibility is even more difficult to imagine⁷².

The idea that there are certain moral limits during the post-war period are implicit in Vitoria's and Grotius' development of just war. But it was Kant who first motivated this distinction by advocating a tripartite concept of the justice of war. Kant differentiated between *recht zum krieg* (right to war), *rech im krieg* (right in war) and *recht nach dem krieg* (right after war).

However, just war doctrine has not been unanimous about accepting *jus post bellum* as part of just war.

In this respect, it is not superfluous to quote Cicero on the theory of just war and the *jus post bellum* when he says:

“The reason for waging war is the desire to live in secure peace; but once victory has been won, one must respect the lives of enemies who were neither cruel nor savage (...) I think that one must always seek secure peace, in which no kind of insidiousness is prepared”⁷³.

The International Commission on Intervention and State Sovereignty (ICISS) has stated that successful reconciliation and reconstruction must be based on three

⁷⁰ News Daily of Álava. (2011). The possibility of arming Libyan rebels divides the international community [online]. [Viewing date: 8 August 2021]. Available at: <https://bit.ly/3FF159d>

⁷¹ El País. (2011). France arms Libya's rebels as they march towards Tripoli [online]. [Viewing date: 11 August 2021]. Available at: <https://bit.ly/3p3yvIU>

⁷² Migliore, J. Op. cit., pp.13-46.

⁷³ Cicero, M. T. Op. cit., p. 21.

objectives and missions: ensuring security, so that violence is nipped in the bud, establishing conditions conducive to democratisation and good governance, and assisting socio-economic and societal recovery⁷⁴.

In its Resolution S/RES/2009 (2011,) the SC in a *reaffirming* statement says that the UN should lead the international community's effort to support the Libyan-led transition and reconstruction process aimed at establishing a democratic Libya (...). It also decides through the above-mentioned Resolution to establish a support mission in Libya (UNSMIL)⁷⁵.

As events have unfolded, we have seen how the various militias involved in the conflict have been accused of serious human rights violations and of engaging in fratricidal fighting either against army units or against foreign representations while putting pressure on the government in order to influence the political course. The UN Special Envoy to Libya after the fall of Gaddafi, the Spaniard Bernardino León, stated that conditions on the ground were worsening. The economy is in ruins, while the currency is sinking and oil production, the country's economic mainstay, is struggling. Respect for human rights and the rule of law is declining, and terrorists are being strengthened⁷⁶.

In Libya, it has become clear that there has been no *jus post bellum* policy that seeks to impose new authoritarian regimes for economic, political or military gain. Nor have the states involved in the conflict attempted cultural reconstruction in a country where the tribal component is so deeply rooted. The international coalition should have intervened after Gaddafi's overthrow in a reasonable way in the reconstruction of Libya and in accordance with the UN mandate.

Conclusions

The just war doctrine, after many years of compromise, is once again raised when analysing today's wars, questioning whether such a war is just or unjust, analysed from a moral point of view.

It should be noted that Francisco de Vitoria already echoes the defence of the Indians supported by the Spaniards against the oppression of their tyrants, laying the foundations for the future R2P, although just laws "are binding in conscience" even if they "have been dictated by the tyrant" if the tyrant is tolerated by the community.

⁷⁴ Ciise apud David, C. P. (2008). War and peace. Barcelona, Icaria-Antrazyt. P. 105.

⁷⁵ Security Council Resolution S/RES/2009 of 16 September 2011. Available at: <https://bit.ly/3AIJGcq>

⁷⁶ León, B. (2015). Only through agreement and negotiation can Libya be saved. AFKAR IDEAS. N.º47, p. 24.

In any “just war”, the application of *jus ad bellum*, *jus in bello* and *jus post bellum* is evident, a concept that unfortunately is not applied and is not carried out, leaving situations of chaos, confusion and despair, even within a war described as just.

Natural law, through various classical ideas of just war theory, seems to support humanitarian interventions, even if they involve interference in the sovereignty of states.

Referring to the war in Libya (with the subsequent overthrow of Muammar Gaddafi's regime), problems have been detected in the substance and manner of applying the R2P principle, analysed from the point of view of the just war doctrine. Nevertheless, the good intentions of the SC to stop the fighting and civilian deaths in the conflict must be acknowledged.

The ambiguity in the texts of the Resolutions meant that the application of the Resolutions with different interpretations complicated the application of R2P.

While the SC acted swiftly in implementing the pillars of R2P, prestigious intellectuals, such as Noam Chomsky, Michael Walzer and Lawrence Modeme, were opposed to intervening in Libya from the perspective and analysis of the just cause.

There is no evidence, either before or during the conflict, of any regional, EU or Western media presence on the ground to prove human rights violations beyond the contingency situations typical of a conflict very similar to a civil war, which would not necessarily give rise to the implementation of R2P (or not individually). Moreover, the call by Gaddafi's son, Said al-Islam, for a review of the situation was ignored. Likewise, the UN Secretary-General, on 24 March 2011 in S/PU 6505, acknowledged that the mission of its Special Envoy had been too short to draw definitive conclusions on the situation in Libya in terms of respect for human rights.

It is more than doubtful that international peace and security would be endangered in accordance with Article 42 of the UN Charter if the means referred to in Article 41 of the Charter were used. On the contrary, there is no doubt that the SC is the legitimate authority to implement its Resolutions on the use of force.

It has been proven that, under the guise of righteous intentions, the international coalition's dark interests were concealed in supporting the rebels by supplying them with weapons, declaring recognition and support for the NTC with the hidden aim of overthrowing Gaddafi's government.

It is confusing to consider that the implementation of R2P was a last resort, as there was no time to implement the means proposed in Resolution 1970 (2011). The double standard that can be glimpsed through Resolution 1973 (2011) is clear when it deplors the use of mercenaries by the Libyan regime, when the SC is well aware of the use of mercenaries by the United States in various conflicts in which it has participated, such as the wars in Iraq and Afghanistan.

The bombing has been disproportionate and has caused collateral damage among the rebels. It also seems clear that the protection of airspace hindered humanitarian aid to one section of the civilian population and favoured another.

The arms embargo did not affect the rebels, but it did affect the Libyan army. The killing of civilians and the blatant assassination of the Libyan leader has been proven, when he should have been handed over for a fair trial under the Geneva Conventions and their Additional Protocols.

The SC did not weigh up the reasonable prospects of the operation's success, and the results are obvious. A change of regime, a civil conflict that is difficult to resolve and ensuing chaos whereby the UN, despite trying after the 2009 Resolution (2011) to reconstruct and implement a dignified *jus post bellum*, has not succeeded, leaving a country with a political, economic and social problem that is challenging to remedy. And, in fact, much more unstable than before the intervention, which may prove to be a greater danger to international peace in the future.

Once again, it has been proven that by not having a good knowledge of the country's reality in terms of its customs and political form strongly rooted in the tribal component maintained in the old regime, the problem of achieving peace could become entrenched. This will mean that the search for solutions will require a lot of effort, to the extent that the same countries that intervened have on several occasions considered options for re-intervention.

Before NATO began bombing, Gaddafi had warned that Muslim extremism would explode if he was overthrown and that Libya would be fragmented. The Libyan case has once again shown that such interventions always end up turning into wars. It is clear, as we have seen in the first part of this analysis, that just war theory accepts war in defence of human rights. But the whole content of just war theory should be taken on board, and the diagnosis should not be limited to the assumption of the final conclusion. In other words, as has been highlighted in the first part of this analysis, in order to understand whether a war is just, aspects such as right intention, *jus in bello* and the need to scrupulously check that the qualifying conditions are met must be taken into consideration.

To say that the UN's good intentions in implementing R2P cannot be doubted. What happened to states when it came to intervening in accordance with the Resolution is another matter, the outcome of which was not satisfactory and has left Libya in a crisis and in worse political, economic and social conditions than under the previous regime.

Libya was seen to be of interest because of its oil wealth and Gaddafi was in the way of the international coalition, when just a few years ago the same coalition that overthrew him was praising him internationally.

As to whether R2P required regime change, there are doubts that Gaddafi would have chosen to take the path of democracy and would have allowed his exile. In any case, as already mentioned in the first part of this paper, the majority doctrine of just war theory understands that overthrowing the tyrant is not part of just causes, unless it is shown to be a *sine qua non* condition for stopping the massacre. Just war theory, on the other hand, does not argue that it is permissible to wage just wars against authoritarian political systems just because they are authoritarian.

Finally, there are innumerable proofs that the *jus in bello* has not been respected at any time during the conflict, as demonstrated by the assassination of Gaddafi and civilians, as denounced by the Catholic Church and various countries and international organisations.

While the initial purpose of the intervention was to protect civilians, from the outset the intervention was aimed at supporting the rebels and overthrowing Gaddafi, which was not covered by Resolution 1973 (2011). Political and strategic interests, particularly those of France, played a decisive role, and this may explain why Libya was involved and why Syria or Yemen was not.

Bibliography

Primary sources

General Assembly Resolution A/46/182 of 19 December 1991. Available at: <https://bit.ly/3eDfjLQ>

Report by UN Secretary-General Kofi Annan, A/54/2000, 27 March 2000. We the People: the role of the United Nations in the 21st century. Available at: <https://bit.ly/3BJ3qho>

General Assembly Resolution A/RES/60/1 of 24 October 2005. 2005 World Summit Outcome. Available at: <https://bit.ly/3v9n57G>

Security Council Resolution S/RES/1970 of 26 February 2011. Available at: <https://bit.ly/3j2rIAO>

Security Council Resolution S/RES/1973 of 17 March 2011. Available at: <https://bit.ly/3j4NChx>

6505th meeting of the Security Council S/PV 6505 of 24 March 2011. Available at: <https://bit.ly/32TnscA>

Security Council Resolution S/RES/2009 of 16 September 2011. Available at: <https://bit.ly/3AIJGcq>

Secondary sources

Case studies

Andrés, P. (2018). *Basic legislation on public international law*. Madrid, Tecnos.

- Baqués, J. (2007). *Just War theory. A proposal for the systematisation of jus ad bellum*. Pamplona, Aranzadi.
- Bellamy, A. J. (2009). *Just Wars. From Cicero to Iraq*. Madrid, Spanish Economic Culture Fund.
- Cicero, M. T. (1989). *On Duties*. Madrid, Tecnos.
- David, C. P. (2008). *War and peace*. Barcelona, Icaria-Antrazyt.
- De la Brière, I. (1944). *Just War law*. Mexico, Jus.
- García Caneiro, J. and Vidarte, F. J. (2002). *War and philosophy*. Valencia, Tirant lo Blanch.
- Lobo, J. F. (2012). Humanitarian intervention in the Libyan and Syrian crises. *Journal of the Institute of International Studies*. N.º 973. University of Chile.
- Vitoria, F. (1989). *Relectio de Indis. Magna Carta of the Indians*. Madrid, Spanish National Research Council.
- Walzer, M. (2001). *Just and unjust wars*. Barcelona, Paidós Ibérica.
- (2004). *Reflections on war*. Barcelona, Paidós Ibérica.

Articles

- Añaños, M.^a C. (2019). The Responsibility to Protect in the United Nations and the Responsibility to Protect Doctrine. *Discussion Papers*. No. 21.
- Arbeláez, Á. (2012). The notion of just war. Some current approaches. *Analecta Política*. Vol.I, n.º 2.
- Arteaga, F. (2011). NATO in Libya. *Elcano Royal Institute, ARI*. No. 54, 110/2011, pp. 1-6. Available at: <https://bit.ly/2YLFsmY>
- (2011). Reasons against military intervention in Libya. *Elcano Royal Institute, ARI*. No. 54/2011, pp.1-7. Available at: <https://bit.ly/3lHxUL3>
- Bermejo, R. and López-Jacoiste, M.^a E. (2013). From humanitarian intervention to the responsibility to protect. Rationale, similarities and differences. *Strategy Paper*. No. 160.
- Djaziri, M. (2015). The UN and the conflict transition in Libya. *AFKAR IDEAS*. N.º 47.
- Echeverría, C. (2011). Revolts, tribal civil war and foreign military intervention in Libya. *Spanish Annual of International Law*. Vol. 27.

- Estébanez, F. J. (2015). The responsibility to protect: the effects of the Libyan intervention on the Syrian civil war. *Spanish Institute for Strategic Studies*, 47/2015. Available at: <https://bit.ly/3z59SP5>
- Kolben, R. Origin of the twin terms jus ad bellum/ jus in bello. *International Review of the Red Cross*. No. 143.
- León, B. (2015). Only through agreement and negotiation can Libya be saved. *AFKAR IDEAS*. N.º 47.
- Mangas, A. (2011). The authorisation of the use of armed force in Libya. *Elcano Royal Institute*. Section 57, pp. 1-7. Available at: <https://bit.ly/3HgkbTg>
- Migliore, J. (2005). Michael Walzer and the problem of just war. *Collection*. No. 16.

Online resources

- ABC International. (2009). *Chronology of the Lockerbie case* [online]. Available at: <https://bit.ly/3FJADeV>
- Charvin, R. (2012). The intervention in Libya and the violation of international legality: a return to the false international morality of the 19th century [online]. *Rural Press Agency*. Available at: <https://bit.ly/2YTJ6vi>
- News Daily of Álava. (2011). The possibility of arming Libyan rebels divides the international community [online]. Available at: <https://bit.ly/3FF159d>
- El País. (2011). France arms Libya's rebels as they march towards Tripoli [online]. Available at: <https://bit.ly/3p3yvIU>
- Rizzi, A. (2011). Main tribe backs fight against Libyan dictator [online]. *El País Internacional*. Available at: <https://bit.ly/3FJADeV>
- RTVE. (2011). Experts question whether UN resolution allows support for Libyan rebels [online]. Available at: <https://bit.ly/3AIfjsP>
- SWI. (2016). Blair advised Gaddafi to go into hiding because it was all going to end badly [online]. Available at: <https://bit.ly/3mR7qpW>
- Walzer, M. (2011). The case against our attack on Libya [online]. *The New Republic*. Available at: <https://bit.ly/3AEFBWx>
- Zamora, A. (2011). Use of Force and Human Rights [online]. *Le Monde Diplomatique*. Available at: <https://bit.ly/3DJTPqX>

Article received: November 18, 2021.

Article accepted: February 24, 2022.
