

Abstract

This report intended to examine the events of the Libyan civil war in the light of the legal analysis of the 1970 and 1973 United Nations Security Council Resolutions that permitted the international community intervention in Libya. To do this, the work has been divided into three chapters dealing with three different aspects of the event. First of all, it was necessary to illustrate the specific war events which happened between the beginning of the revolts, on the 17th of February 2011, and the death of Mu' ammar Gaddafi, on the 30th October in the same year. The inquiry carried out regarding this period tried, in particular, to set both national and international context that produced the above-mentioned events. Therefore, it was necessary to introduce briefly the Arab Spring since it strongly and with no doubt influenced the Libyan population in the evolution of the general discontent that led to the beginning of the protests. More precisely, it needed to show how the Libyan situation was, for many reasons, very different from other North African countries. Concerning the latter and by way of explanation, it was important to analyse the features of two countries, Tunisia and Egypt, which were more similar to the examined case for both geographical position and cultural affinity. Tunisia, to start, was the first country that, in December 2010, saw many manifestations and protests on a large scale named "Jasmin Revolution", while the Egyptian case has some similarities with the Libyan one mostly regarding the figure of the leader Mubarak and his relationships with the European powers. In effect, it is not by chance that he was known as a "Western Man". However, what comes to light in the comparison between these two nations and Libya is that the latter didn't suffer from, at least apparently, a heavy economic crisis like the Egyptian or Tunisian ones. The collected data shows, indeed, that until 2010 the Rais government founded its people's support on a massive welfare program that gave him a relative stability and a decent consensus basis. By way of explanation, it might be useful to observe how the average Libyan per capita income was five times superior than the

Egyptian one, reaching the modest threshold of 11.037 which, however, if related to the deep poverty conditions of the most of the Tunisian and Egyptian populations, may be considered remarkable. These are the reasons why the causes of the popular uprising started on the 17th of February must be searched for elsewhere. Effectively, Gaddafi, despite the above-mentioned support from the majority of the population, he never convinced the local tribes, which are still a fundamental part of the Libyan society and proved themselves to be, of the course of time, able to guide in their favour the government policies. When the revolts started, however, that mutual tolerance system was totally demolished and this, by consequence, became crucial in the final defeat of the Rais and clearly in the military United Nations intervention. In other words, the tribes had the power to incite the mass toward a direction or another and they succeeded indeed in making many young people flock in the anti-Gaddafi forces. This factor, however, couldn't have been sufficient if considered singularly, since the Rais could still count on the army loyalty, which, on the contrary of what happened in Tunisia or Egypt, was kept compact at the dictator's side, despite a few desertions. Therefore, the United Nations intervention was fundamental. This was realized on the 19th of March 2011 with the 1973 Resolution, which authorised some State members of the Security Council to adopt all the necessary means in order to protect the Libyan population from presumed indiscriminate attacks that the Gaddafi regime would have put in practice. Therefore, in the course of 6 days, six military operations were launched and sponsored by some of the most influential western Nations (France, United States, Italy, United Kingdom, Canada, Denmark, Norway and Belgium). These initiatives, however, were unified under the NATO command on the 25th of the same month and the Canadian Charles Bouchard was nominated in the vanguard of the operations. The establishment of the *no fly zone*, a mean considered of fundamental importance for the Resolution's aim and, in the same time, of the ship seizure to prevent the arms supply in Libya, was the first measure of the intervention. Beyond the initial impact, the military operations were soon considered a legitimate prevention from Gaddafi attacks and, by consequence, a stalemate was instituted and lasted until August 2011. On the 26th of this month, NATO, after having located Gaddafi in Sirte, started a series of bombings against the Rais hometown and other areas still controlled

by him. With the help of the international community, therefore, the rebels conquered quickly the power and, within a few months, took the helm of the whole Nation, declaring it completely freed on the 18th of October 2011. Few days later, precisely on the 21st, Gaddafi attempted to escape to the desert but he was immediately intercepted by the NATO air force and the rebels who assassinated him in unclear circumstances. The last moments of the rais were immortalised by the electronic devices of the presents and immediately posted online, going viral within a few minutes. In regards to this it's important to underline how the use of social media and internet in general played a fundamental role in the development of not only the Libyan events but also of the Arab Spring generally speaking, although the use of the traditional media had been very relevant.

The analysis of the 1970 and 1973 Resolutions and the legal fundament of ONU and NATO intervention was the study object of the second chapter. While the first resolution envisaged the international community intervention with measures not implying the use of force, the second one contained, as said before, the authorisation to use the force first by some states and afterwards by NATO. In order to explain the legal context in which the Council operated, it was necessary to introduce, in chapters 5 and 7, the Charter of the United Nations. For this, it needed to make a close examination of the relationship between the Resolutions issued by the Council and the States, in other words of the problems regarding the direct effect of these acts on the internal set of rules, by comparing the different positions and points of view assumed by some authors. The matter of the direct applicability of the Resolution has necessarily recalled the old debate between monism and dualism theories and the way it was dealt with in the Italian legal order. In the end, staying always within a theoretical introduction, it might be useful to take on the subject matter of *responsibility to protect*, a recently developed thesis that presents pertinent causes for reflections to this work, since it seems that the 1973 Resolution was issued precisely depending on this theory. After having analysed the problems regarding the theory of the two Resolutions emanation, was necessary to try to legally classify them examining the different possibilities developed in this doctrine. The *responsibility to protect*, among others,

has been a subject of debate. Indeed, envisioning a military intervention of the international community in case of indiscriminate attacks against population, it has been applied in the Libyan case, becoming, at least officially, both the reason and the cause of the military intervention. This perspective has been welcomed by important authors, who considered it as a step forward a more appropriate use, compared with the past, of ONU means in the peace-maintenance field.

This perspective was confirmed by the fact that Russia and China, even if they could veto the operation, refrained from voting since they placed, according to these authors, the protection of the Libyan population before their own beliefs on this subject. Beyond the evaluations on the matter, however, other writers observed thereafter how the reference to the responsibility to protect was just a sign of the obvious vagueness and indefiniteness of the 1973 Resolution mandate. Someone speculated about the fact that it can't be legally considered legitimate since, in this occasion, the essential, autonomous and independent check on the presumed indiscriminate attacks held by Gaddafi wasn't realised by the Security Council which, instead, based its decisions on unilateral declarations of the States and, in small part, on western media influence. Just if the attacks had been verified, the Resolution would have been certainly legitimate. In the same time, it would not have been acceptable an intervention in favour of the insurgents. In some authors' opinions, this is exactly what happened.

A further problem concerned the contrast between *ius ad bellum* and *ius in bello*, since analysing the Resolution it seems there is an abuse of power of the first over the second which, as known, is not admitted in the legal doctrine given the traditional separation of the two branches of law. In particular, the 1973 Resolution represents an authorisation to the use of force in order to protect the population, which means, therefore, that no collateral loss of civilian life is admitted. This, however, would conflict with the traditional interpretation of the *ius in bello* which admits the possibility, in small part, of damage to goods or civilians. In this regard, it's possible to list the different cases where the population could have been used as a human shield to protect armaments: to avoid firing the target in this kind of situations could implicate a major loss of civilians later. Besides, this report needs to take into

consideration also the contraposition between the *ius ad bellum* and the international humanitarian law that, in case of the abuse of power of the first over the second, could cause the establishment of a legal precedent admitting the imposition of contingent Resolution's rules upon the international treaty laws. This hypothesis, however, has been generally refused in the doctrine given the Resolution's lack of clarity on the possibilities that it could modify rules deriving from the international treaties and it has been admitted that, in the specific case, the intervening States and NATO had to submit to the rules of the international humanitarian law. Following this hypothesis, it was necessary to analyse the NATO legal position during this conflict, which conducted, as known, the military operations. Despite this, identifying the legal subject who should have had the effective control of the Operation was a problem with no easy solution.

Indeed the Atlantic organization maintained the procedure of adopting its decisions based on *consensus*, making the individual members positions very important. In the same way, in the specific case of the Libyan war, there was in the command structure a so-called *red card holder* for every State member, in other words an official who had the possibility to decide if the military unit supplied by their Nation would or not participate to the operation in question. Based on these considerations, therefore, it is not totally correct to attribute the effective control to NATO, while it's clear that it have to be attributed to the States and, by consequence, also the possible responsibilities deriving from the single actions taken place. After an accurate analysis of NATO official communications, however, it was possible to note how the operations had mainly respected the principle of distinction, since the targets of the attacks were in prevalence military or, in any case, attributable to a war use like some civil buildings occupied by Gaddafi militia. It's also possible to consider respected the precautionary principle that establishes the adoption of measures necessary to prevent from attacking directly civil targets. This principle was satisfied thanks to modern location technologies such as GPS or laser systems.

After having taken into consideration the war events, and later, the Resolutions that authorized the use of force, it was necessary, in the 3rd chapter, to analyse the

contraposition between the mandate given by the Security Council to the States and their effective running of the military operations. To do this, the report analysed three different typologies of attacks carried out by NATO with the relative examples for each one. The first category represents those operations against military goods near urban centres. To this typology it's mandatory to add also those targets further away from the towns but, since the Resolution mandate envisaged to make sure that the population is not in danger, they have to be considered legitimate like in the bombing case of 14 army tanks approaching Misurata. The second typology concerns those direct attacks against structures away from urban centres like storage centres and military deposits. They were considered legitimate because, despite their geographical position, they had an important support function for the previous indiscriminate attacks. The unilateral kind of these data that, indeed came from only NATO reports, doesn't let us establish if these buildings were actually used for this aim like in the case of the bombings against a residential area in Majer that provoked around 30 civil victims. In the end, it needed to take into consideration the attacks with the aim of degrading of the loyalist military unit. This possibility would have legitimated every attack carried out against Gaddafi forces, even without a real menace for the population: a condition which was, as already said, essential for the planning of all attacks. NATO has almost always affirmed that they verified the presence of this danger, except in some cases like those of the simultaneous attacks against various Libyan ports between the 19th and the 20th of May. This episode was considered by many parts not in compliance with the mandate directives and, therefore, illegitimate.

In conclusion, it's important to underline how the informational deficiency prevents from ascertaining if it was an isolated episode and not a stabilised procedure that was judged by some authors as a military intervention in favour of the rebels against Gaddafi regime, rather than a humanitarian intervention for the protection and safety of the Libyan population.