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NATO's Libya Campaign 2011: Just or Unjust to What Degree?

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Colonel Muammar Qaddafi's violence against the Libyan population in the face of a fledgling rebellion in March 2011 prompted an international intervention. The United Nations Security Council authorised the use of 'all necessary measures' to protect civilians and enforce a no-fly zone. Following a preliminary American-led military intervention, the North Atlantic Treaty Organisation sponsored a seven-month campaign, 'Operation Unified Protector.' Was the operation ethically justified? Through the lens of the Just War tradition, seven moral principles are assessed in both qualitative and quantitative fashion. The analysis applies the novel Just War Index to the 2011 case concluding that it exhibited a moderate degree of justness overall. Still, significant flaws and ethical problems emerged. While high evaluations were made of just cause, legitimate authority, last resort and right conduct, lower assessments were given for right intent, net benefit, and proportionality of means. The outcome of the intervention is still unknown, but the broad outlines of a moral assessment are distinguishable.

> We will come house by house, room by room. . . . We will find you in your closets. We will have no mercy and no pity.
> Qaddafi to the rebels of Benghazi, 17 March 2011[1]

Colonel Muammar Qaddafi's flagrant disregard for the Libyan population in the face of a fledgling and partially armed rebellion in 2011 resulted in an international intervention. As the smoke cleared from Libya later in the year, the post-Qaddafi celebrations gave way to worry about the future. Whilst the fear characterising Qaddafi's nearly 42-year reign disappeared, so, too, did his iron-fisted stability. Instability and insecurity continues to the present with continuous civil strife and wide-scale violence. The rebels, initially celebrated as heroes and martyrs, often seem today as threats to the goals of the rebellion.[2] Despite these realities, the prospect of freedom, domestic security,

and a representative government offer hope. Faced with these complexities, it is only natural that some wonder whether this conflict was worth fighting.[3] Strong critiques contradict the consensus of a successful and worthwhile operation.[4] However, a balanced view is needed using specific criteria for assessment since the criticism suffers from a selective approach whereby the bulk of the analysis focuses on a single criterion: the Just War criterion of *net benefit*. Such a limited perspective does not provide a complete analysis of the decision-making process that led to the intervention and virtually ignores its execution. The Just War tradition offers a broader set of criteria to evaluate ethically the justness of the use of force based on known values and facts known at the time of the appraisal.

Just War assessments have application before, during, and after a conflict, though the knowledge base at each time will be different. Though retrospective, post-conflict judgments usually are based on the most information and can be useful pointers for future conflicts and the development of new international principles.[5] The Just War tradition provides important criteria for intervention now 'deeply and broadly rooted in Western ideals, institutions, and experiences.'[6] Granted, the bias of the assessor will affect any assessment, but the framework permits a sharp focus on essential features long accepted in the ethics of armed conflict. While the tradition has not consolidated into a fully agreed upon list of assessment criteria, there is considerable agreement on the main features.[7] The selection of criteria in this analysis reduces the minimum set required to achieve a reasonable degree of mutual exclusivity.[8] The criteria also answer the most basic questions about war and armed force:

- Why use force? A Just War requires: (1) a *just cause*; (2) the *right intent*; and (3) a *net benefit*.
- Who should authorise force? (4) A *legitimate authority*.
- When can force be used? (5) As a *last resort*.
- What level of force? (6) *Proportional means of force*.
- Where and how to apply force? (7) Using *right conduct*, including the distinction of military targets from civilian ones.

It is common understanding that specific criteria are usually met only to a degree. In the current approach, the criteria are not merely considered as binary—just/unjust—but on a spectrum, a method first used to consider international missions in Afghanistan and later applied to American wars.[9] This approach encourages a nuanced analysis whilst still allowing for overall pronouncements of a conflict as just or unjust to a specified degree. Table 1 shows the levels of the Just War scale from −3 to +3.

This numerical approach also permits an overall ethical judgment through an *averaging* of scores for the seven criteria, dubbed the Just War Index [JWI]. The criteria receive equal weight for simplicity.

TABLE 1 Just War scale

Score	Description
+3	Strongly Just
+2	Moderately Just
+1	Slightly Just
0	Neutral
−1	Slightly Unjust
−2	Moderately Unjust
−3	Strongly Unjust

Moving to the case at hand, in May 2011 Fisher and Biggar provided some of the earliest Just War assessments of the Libyan intervention, whilst van der Linden provided a later treatment.[10] However, most of the recent literature specifically emphasises *net benefit* and the impact on the responsibility to protect [R2P].[11] This emphasis is unsurprising given the on-going strife in Syria and Iraq where a moral imperative for humanitarian intervention arguably exists. However, given the continued fallout in Libya, there remains a requirement for further reflection across the full set of Just War criteria.

The crisis in Libya began on 16 February 2011 in the eastern city of Benghazi with demonstrations inspired by the Arab Spring uprisings. Within days, protests spread across the country to Qaddafi's power base in Tripoli threatening his nearly 42-year rule. He responded swiftly and brutally. Security forces and mercenaries from neighbouring countries fired indiscriminately at unarmed protesters.[12] Despite his attempts to deny the existence of protests, they continued to grow, resulting in an escalation of regime violence including airstrikes and the use of cluster munitions.[13] One United Nations [UN] report noted that the morgues in Tripoli alone received 200 bodies between 20 and 21 February. The nature of the injuries pointed to the use of large calibre weapons and intent to kill.[14] The protests quickly developed into a widespread armed insurrection spurred by the brutal response, defections from the army, and the formation of a formal opposition group, the Transitional National Council [TNC].

Ten days after the initial protests, on 26 February, the UN Security Council expressed disgust at the 'gross and systematic violation of human rights, including the repression of peaceful demonstrators . . . deaths of civilians, and . . . the incitement to hostility and violence . . . from the highest level of the Libyan government.'[15] It took action short of the use of force in Security Council Resolution [UNSCR] 1970 by allowing the International Criminal Court to prosecute individuals committing war crimes, by banning certain leaders from air travel, by freezing their assets, and by imposing an arms embargo.

Initial fatality estimates for the first few weeks of the uprising ranged from 1,000 to 10,000 killed.[16] Although the Libyan Ministry of Martyrs and

Missing Persons provided an update in January 2013 estimating 4,700 rebels and their supporters killed throughout the entire conflict,[17] the salient point was that even low estimates pointed towards large-scale indiscriminate attacks by Qaddafi's forces. A report later released by the UN Human Rights Council concluded that Qaddafi's forces committed a wide range of abuses including 'murder, torture, rape, and attacks on civilians . . . indiscriminate attacks, arbitrary arrest, and recruitment of child soldiers.'[18]

If there remained any doubt regarding the potential for escalation, Qaddafi erased that doubt on 17 March by proclaiming: 'We will come house by house, room by room. . . . We will find you in your closets. We will have no mercy and no pity.'[19] Despite the UN's limited response of 26 February, pressure grew to do more. On 16 March, heavily armed government forces had advanced to the outskirts of Benghazi, the insurrection stronghold, poised to crush it. Fearing an imminent assault, the International Committee of the Red Cross withdrew from Benghazi expressing concern for the fate of civilians whilst the newly formed TNC and Libya's UN ambassador, who had defected, pleaded for a no-fly zone.[20] Whilst some, including Qaddafi, contended that a government has the right to defend itself, this argument rang hollow in the face of the government's disproportionate response to the civil protests. Convinced of the seriousness of the situation, the Security Council acted decisively.

Resolution 1973 (2011) '*Authorizes* Member states . . . acting nationally or through regional organizations . . . to take all necessary measures . . . to protect civilians'[21] The reasons cited in the Council included the escalation of violence against both civilians and journalists through arbitrary detention, torture, summary executions, disappearances, and Libya's failure to live up to UNSCR 1970.[22] Libya was not only unwilling to protect its citizens, it was committing massive human rights violations against them. Critical to *just cause*, this aspect is re-enforced by the moral underpinnings of R2P, as endorsed by the 2005 UN World Summit, that if a state is unable or unwilling to safeguard its people, protection becomes the responsibility of the international community.[23] The measures implemented under UNSCR 1973 also authorised a no-fly zone to protect the civilian population.[24]

In fashioning the resolution, the Security Council drew upon Libya's history. The 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland, the 1989 *Union de Transports Aériens* [UTA] Flight 772 bombing, and the 1996 massacre of 1,000 inmates at the Abu Salim prison were crimes connected directly to the Qaddafi regime.[25] Internally, Qaddafi oppressed Libyans through the banning of foreign language education, restricting travel, eliminating political parties, criminalising minority cultures, and developing a variety of oppressive internal security organisations.[26] Despite a damning past, a recent softening of Libya's international stance complicated the case for action.

Chief amongst the positive reforms were Qaddafi's 2003 decisions to abandon weapons of mass destruction [WMD] and halt support for terrorism.[27] Qaddafi solidified his decisions by joining the Organisation for the Prevention of Chemical Weapons, destroying almost one-half of his chemical weapons, handing over two suspects from the Lockerbie bombing, and paying compensation to the families of both the UTA and Lockerbie bombings.[28] He had also actively supported the United States after the 9/11 attacks.[29] Seemingly moderate voices, including Qaddafi's son, Saif al-Islam, preached internal reform, but the reality was far from the rhetoric,[30] with little attention paid to internal justice or human rights. Further complicating the UN decision was Chinese and Russian hesitation due to state-sovereignty considerations, though those Powers did not veto the resolution.[31] The question then becomes whether or not state-sovereignty justifies inaction in the face of wanton destruction of innocent lives.

In considering *just cause*, the core concern was not Libya's attempts at external reform; it was the systematic, indiscriminate, and unrestrained decimation of Libyan citizens, compounded by the immediate threat posed to the citizenry of Benghazi. In an R2P-influenced world where 'sovereignty represents responsibility, rather than license,'[32] a clear case existed for a rapid and robust response since the government became the major threat. The imperative for civilian protection leads to a very high score for this category: *Just Cause*: +3.

While there was little doubt regarding the moral requirement for intervention, *just cause* is not sufficient to justify the use of violence; an appropriate authority must also sanction it.

In international law, the UN Charter is the premier 'rule book' on both sovereignty and the use of force. State-sovereignty is entrenched in Article 2(4) that states 'All Members shall refrain . . . from the threat or use of force against the territorial integrity or political independence of any state.'[33] However, Article 2(7) states that the principle of sovereignty 'shall not prejudice the application of enforcement measures under Chapter VII.'[34] Under Chapter VII, the Security Council can declare a threat to the peace and authorise measures including armed force. Acting under Chapter VII, UNSCR 1973 both authorised a limited violation of Libya's sovereignty whilst also 'Reaffirming its strong commitment to the sovereignty . . . of the Libyan Arab Jamahiriya' by excluding a foreign occupation force.[35]

Whilst resolutions 1970 and 1973 provided an initial legitimacy, so, too, did the degree of international unity behind them. UNSCR 1973 passed with ten votes in favour, no votes opposed, and five abstentions. Amongst the most ardent supporters were the Arab members. The Arab League's prior request to the Security Council 'to impose immediately a no-fly zone . . . and to establish safe areas' signified a momentous shift.[36] One analyst noted that previously 'the Arab League has served as a shield for dictators and rarely produced anything but windy rhetoric.'[37] However, even with League

backing, the Security Council lacked unity. Germany and the so-called BRIC Powers—Brazil, Russia, India, and China—abstained, with the Germans leery of a protracted military engagement.[38] The Russians and Indians expressed concern that the measure moved too quickly and may have unforeseen consequences.[39] But Russia and China did not veto the resolution. Ultimately, the abstentions served to diffuse slightly and only initially the political legitimacy of UNSCR 1973.

The resolution called for action by 'Member states . . . or through regional organizations . . . [and] requests . . . the League of Arab states to cooperate.'[40] The United States, Britain, and France immediately launched 'Operation Odyssey Dawn,' ostensibly to degrade Libya's integrated air defence system, but also to strike Qaddafi's forces. The rush to action trod upon regional political sensitivities and eroded support from the United Arab Emirates and Saudi Arabia.[41] The Arab League was also critical of the airstrikes believing them beyond the scope of the resolution;[42] and even North Atlantic Treaty Organisation [NATO] allies hesitated. Although overcoming these difficulties, the principals realised that UNSCR 1973 was not a panacea of *legitimate authority* but rather a basis for further diplomacy.

The response was the London Conference of 29 March 2011, whose conclusion optimistically proclaimed 'we are united in our aims,'[43] a conclusion supported by 40 countries, including the former abstainer, Germany, as well as the European Union, NATO, the Arab League, and the Organisation of the Islamic Conference [OIC]. However, notably absent were the African Union [AU] and Saudi Arabia.[44] Their absence was important as they represented African, as well as some Arab and Muslim perspectives, with Libya in both Africa and the Arab world. American pressure over Saudi involvement in the February 2011 Bahraini protests may explain Saudi absence, but the AU's origins and funding remained deeply tied to Qaddafi's work and aid in Africa, making it unlikely the AU would denounce him.[45] With continued support for the mission far from assured, the conference agreed to form the Libya Contact Group.

The first meeting of the Contact Group occurred on 13 April 2011 in Doha, Qatar. The venue re-enforced the importance of Arab involvement whilst the addition of the AU as an observer represented an effort to broaden support. The number of nations represented this time, however, was only 21.[46] The group served an important role in maintaining early *legitimate authority* by providing consensus-based political direction in addition to the legal authority afforded by Resolution 1973. Notable in the closing statements of both the London Conference and the Libya Contact Group is a dearth of references to the United States.

The American invasion of Afghanistan and Iraq left a legacy of divisiveness, particularly in the minds of Muslim and Arab nations. Although far from immune to acting in the national interest, the American approach in 2011 was a marked improvement. Whilst supportive of UNSCR 1973, President Barak

Obama made clear that the United States wanted to avoid being seen as the aggressor, quickly handing responsibility for the operation to NATO.[47] Despite heavy criticism from the American right, Obama achieved a higher level of trust in the Arab world. Correspondingly, the political legitimacy of UNSCR 1973 increased.

In considering *legitimate authority*, Arab League support for passing UNSCR 1973 largely countered the abstentions. The London Conference and the Libya Contact Group helped ensure continued support for action despite significant players, including the AU, remaining at the periphery. The subdued and multilateral role played by the United States facilitated such broad support. The mission had solid legal cover because of the Security Council authorisation provided by Resolution 1973: *Legitimate Authority*: +2.

This evaluation of *legitimate authority* takes note of dissent regarding the resolutions and the execution of the mission. A closer look at these objections will show that they found basis largely in suspicions of ulterior motives.

Right intent does not preclude ulterior motives but the aim should be consistent with the wider interests of peace and international security. The principle objections to coalition actions centred on the belief that regime change was the primary object. The examination of *right intent* must determine if regime change was in fact a motive, and if so, did it still serve the interests of peace and international security?

Days into the war, the Arab League objected to the scope of the airstrikes with its secretary general, Amr Moussa, stating, 'What is happening in Libya differs from the aim of imposing a no-fly zone.'[48] By May 2011, India and China accused the coalition of attempting to effect regime change.[49] The initial military focus on enemy air defences was justifiable under the mandate of enforcing a no-fly zone, whilst the subsequent targeting of regime ground formations attacking or directly threatening non-combatants was also justifiable under the mandate to protect civilians.[50] Some other coalition actions are less defensible.

Evidence shows that several Powers supplied or facilitated the supply of materials, including weapons, to rebel forces.[51] While not supplying weapons, NATO co-ordinated with the rebels. The latter openly stated that NATO helped through co-ordinated bomb-strikes but acknowledged that the means for doing so were convoluted and indirect.[52] Britain also admitted that NATO was providing intelligence and reconnaissance information to the rebels.[53] The evidence indicates that co-ordination occurred at arms-length to avoid the appearance of bias. At NATO headquarters in Naples, individuals 'not on the nominal roll' were communicating with the rebels.[54] If observers found the rebels firing on civilian centres, they would get a warning to stop; the Libyan government received no such benefit.

The historical context also suggested a desire for regime change. The American 'Operation El Dorado Canyon' in 1986 was a response to Libyan

terrorism that aimed but failed to assassinate Qaddafi.[55] Resentment towards Qaddafi continued despite his opening to the West. The British were cognisant of Qaddafi's history of funding the Irish Republican Army and the hero's welcome afforded in Libya in 2009 to the convicted bomber in the 1988 Lockerbie plane attack.[56] French motivations under President Nicolas Sarkozy were alleged to be grounded in sensitivity to criticism over ties to the toppled Tunisian regime and election posturing.[57] All told, there were a variety of Western ulterior motives beyond those stated under *just cause*, but was there sufficient evidence to support regime change as the primary objective?

Resolution 1973 did not mandate regime change but allowed 'all necessary measures,' as well as finding 'a solution . . . which responds to the legitimate demands of the Libyan people . . . to lead to the political reforms necessary to find a peaceful and sustainable solution.'[58] Interpreting the text might occur in either a permissive or restrictive fashion dependent upon one's political and moral perspective. In terms of Western values, the question became was it possible to meet the mandate of civilian protection without regime change?[59]

In reviewing statements made by the coalition following UNSCR 1973, it is clear that regime change quickly became the policy of many coalition members. The United States and Canada openly called for removal of Qaddafi, followed by members of the London Conference, Libya Contact Group, and NATO.[60] This public endorsement by a broad coalition suggests that many states felt that the UNSCR mandate would remain unfulfilled with Qaddafi in power, particularly considering his government's deliberate denial of electricity, water, fuel, and food to ordinary Libyans in rebel areas.[61] The means by which he was eventually removed, however, raises questions.

Given the overt calls for Qaddafi's removal, the assessment of *right intent* warrants a discussion over whether he suffered 'targeted killing.' Early in the war, when British defence secretary, Liam Fox, stated that Qaddafi was a possible target, Prime Minister David Cameron demurred.[62] In June, Admiral Samuel Locklear, commander of NATO's Joint Operations Command, indicated the alliance was 'actively . . . trying to kill the Libyan leader.'[63] Despite strategic level contradictions, the responsible commander at the operational level, Canadian Lieutenant-General Charles Bouchard, insisted in April 2011 that the campaign targeted only command and control nodes, not individuals.[64]

On 20 October 2011, a NATO strike on a convoy resulted in Qaddafi's capture and death at the hands of rebel forces. Whilst NATO Secretary General Anders Fogh Rasmussen dismissed the idea of Qaddafi as a target, British reports indicated that cell phone intercepts showed his presence in the convoy.[65] Considered in aggregate, there are potential grounds to believe regime change through targeted killing was a goal. However, equally arguable, Qaddafi continued to use his cell phone to direct his forces thus

presenting himself within a context that saw him targeted as a command and control node.

In considering *right intent*, the coalition's early shift to regime change confirmed Chinese and Indian suspicions. What began as only Western political support for the rebels soon turned to indirect support by supplying and co-ordinating with them, as well as direct action. Whilst domestic political considerations may also have played into various coalition members' stances, the net result, including regime change, still seemed at the time to serve international security through attainment of the Security Council mandate. Unfortunately, omitting the topic of regime change during UNSCR 1973 deliberations and the conflicting messages regarding Qaddafi's status as a military target reduced the legitimacy of an otherwise positive ethical conclusion: *Right Intent*: +1.

The principles of *just cause, legitimate authority*, and *right intent* represent reflections on historical decisions. A Just War assessment also requires an analysis of the principle of *net benefit*, which necessitates a look at the present and future as well as the past. Assessing *net benefit* requires comparing positive and negative outcomes. To be overall positive, the assessment must demonstrate a net good both nationally and globally in the short- and long-terms, with emphasis on the former where other factors [non-NATO] determine the outcome less. The main factors include: human lives lost and saved; democratic governance potential; human rights and the rule of law; economic prospects; weapons proliferation; and international political impact. This analysis includes events until the end of 2014; and human lives justifiably receive the highest profile.

As mentioned under *just cause*, the Libyan Ministry of Martyrs and Missing Persons estimated the rebel casualties during the revolution at 4,700 killed, with similar figures for pro-Qaddafi forces, bringing the total estimate to about 10,000.[66] Whilst tragic, the reality is that many of these casualties would have occurred without NATO's seven-month intervention and would likely have been higher in a conflict without intervention, including the large-scale retribution had Qaddafi succeeded in repressing the rebellion. Such retribution is likely in light of Qaddafi's rhetoric, brutal history, and actions in the early stages of civilian demonstrations. Even more alarming would be a full-scale civil war, like the one started in Syria around the same time in the Spring of 2011, resulting in over 200,000 deaths. But regardless of counter-factual scenarios, any actual Libyan casualties caused by NATO must be determined—NATO suffered no fatalities of its own forces. Given the Security Council mandate to protect civilians, *net benefit* must focus on the civilian casualties caused as well as those possibly prevented *by the coalition*.

The UN Human Rights Council [UNHRC] released a report indicating that NATO was responsible for the deaths of 60 civilians,[67] which corroborates estimates of 40–70 from the *New York Times* and 50–100 from the British Royal United Services Institute.[68] Whilst not considered ethically acceptable

in an absolutist sense, a relativist interpretation of collateral damage allows for some perspective. In February 2011, before the rebels began to organise themselves as fighting units, Qaddafi's security forces had killed over 500 civilians.[69] To compare with other NATO enforcement actions, estimates of the 78-day NATO bombing campaign in Kosovo and Serbia in 1999 suggest 400 to 500 civilians killed, making the casualties in the seven-month campaign in Libya remarkable. And considering that some 8,000 bombs were dropped in Libya, this casualty rate is amazingly low; it came mainly from progress in reconnaissance and precision delivery systems.

The assessment, however, is more meaningful when compared to the prevention of civilian loss. Poised to strike the rebel heartland of Benghazi, a city of more than 600,000, Qaddafi's forces were almost certain to conduct a massacre. While predicted figures lack accuracy, Qaddafi's rhetoric and initial conduct allow for the conclusion that far more innocent people would have died in Benghazi than suffered from NATO airstrikes. Furthermore, it was the prospect of freedom from that kind of oppression that initially stoked the rebellion.

UNSCR 1973 explicitly stated that the solution to the crisis must respond to the legitimate demands of the people. According to the TNC's interim leader, Mustafa Abdul Jalil, in October 2011, this meant 'free legislative, parliamentary and presidential elections.'[70] This goal aligns with the Western, democratic ideals supported by the UN and the majority of coalition members. Early rebel leaders did not try to cling to power and, in August 2012, Libya's General National Congress [GNC] assumed control in a peaceful transfer of power from the TNC. Since then, every step towards implementing a constitution has been fraught with peril and dramatic reversals. The June 2014 election, with low turnout amidst militia fighting, resulted in a House of Representatives supporting the government of Abdullah al-Thinni that, in turn, remains internationally recognised. But the Islamist GNC cites a Libyan Supreme Court decision to support its claim as the legitimate legislative body. Libya now has two governments, both vying for control.

Even worse than the political conflict is the ongoing violent conflict that surged in 2014 between militia groups in the Libya Dawn alliance and remnants of the Libyan Army. Libya Dawn seized control of Tripoli, causing al-Thinni's government to relocate. In Benghazi, the second largest city, forces loyal to retired General Khalifa Haftar battle against Islamist militias, including Ansar al-Sharia. Whilst the prospects for democracy correlate directly to the central government achieving stability and security, the situation has only worsened. The process of rebuilding security forces to counter the militias, which still vastly outnumber security forces, is critical;[71] many militias are on record as stating that one of the reasons for remaining armed is government weakness. Adding to the difficulties are the competing influences within the militias: criminal, regional, tribal, and Islamist.[72]

The continued influence of militias remains the primary obstacle to Libyan democracy.

In part, the strength of Libyan democracy can be judged by its respect for human rights and the rule of law; unfortunately, there is little to celebrate. Various militias have tortured and killed prisoners and refuse to allow due process.[73] The militias openly fight with each other and with government forces. Early developments were cause for concern as statements made in October 2011 by the head of the TNC, Jalil, indicated that Sharia law would form the basis of the legal system. His statement foreshadowed the continued influence of conservative Islamists largely through Islamist-oriented militias.

Still, there were positive developments in the three-year period after the revolution ended. The election on 25 June 2013 of the first Berber as Libyan president was welcome, showing the capacity for democratic progress. Important human rights and humanitarian players, including the UN Support Mission in Libya [UNSMIL],[74] enjoyed relatively unfettered access across Libya, except in times of intense fighting. The newfound freedom of the press allowed for the exposure of rights violators and the possibility of conviction once central authorities exhibit the necessary strength.[75] Continued progress depends upon the strengthening of security forces and development of the country's financial stability.

The Libyan economy quickly rebounded to pre-war levels after GDP suffered a 60 percent contraction in 2011. Oil production is the main driver of the economy and, by 2013, it was nearly back to pre-war levels although output remains volatile.[76] A significant challenge is to avoid corruption and inefficient spending. The International Monetary Fund and World Bank are consulting on setting up effective financial management frameworks. To date, the economic recovery has been fragile as the fledging government's spending centred largely on wages and subsidies rather than education, stimulating the private sector, and providing a social safety net.[77] Consequently, efforts to persuade former fighters to lay down their arms have not had much success. The international community is also keen to help regain control over weapons arsenals.

Libyan chemical weapons, nuclear material, small arms, and Man-Portable Air Defense Systems [MANPADS] remain primary threats. Libya has destroyed 95 percent of its chemical weapons stockpile, the remainder slated for destruction by 2016.[78] Similarly, Libya had declared its intent to forego all WMD, and the International Atomic Energy Association declared in December 2011 that all relevant nuclear material remains accounted for.[79] The issue of small arms and MANPADS provides less cause for celebration. Out of 20,000 MANPADS, only about 5,000 to date are secured; but the scale of fighting means a new inflow of weapons and fighters.[80] Libya also exported combatants, including the armed Tuareg fighters who went to northern Mali where they joined Islamists to capture territory.[81] The impact of the intervention, however, has spread well beyond Libya's immediate region.

The most dramatic and unfortunate indirect results are in Syria, where the al-Assad family has ruled since 1971. President Bashar al-Assad has brutally repressed popular uprisings since March 2011, when the Libyan uprising also began. As noted, the Syrian civil war has cost over 200,000 lives since 2011—making the Libyan situation look comparatively positive.[82] Despite international outcry over Syria, the UN Security Council remains stymied by China and Russia using their vetoes several times to prevent international intervention. Whilst both Powers have economic and political interests in maintaining the *status quo* in Syria, the stated reasons for opposition stem from regime change in Libya.[83] Thus, the Libya intervention has diminished the willingness of the Security Council to intervene in Syria and potentially other conflicts.[84]

Whilst the human costs of intervention were relatively light, especially compared with the catastrophe of the Syrian civil war, the long-term prospects for democracy remain shaky. Militia fighting and human rights violations continue but, at least, are independently reported, something not possible under Qaddafi. Furthermore, there are glacial efforts to implement a stronger central government that supplants the influence of militias. Negotiations between some of the fighting groups are taking place in Geneva, and UNSMIL is working to implement reforms but has had little ability to alter the effects of small arms proliferation. Ultimately, the *net benefit* is far from resolved and it is currently minimally positive: *Net Benefit*: +0.5.

When considering the use of force, *net benefit* is amongst the most difficult to consider owing to the opaqueness of second and third order effects. The decision-making process for intervention is further complicated when it is hurried.

The principle of *last resort* demands exhausting all other *reasonable* avenues prior to using force. Whilst 'reasonable' is a subjective term, as a minimum the burden of proof lies with the intervener. In Libya, the transition from the start of popular protests to UNSCR 1973 was only 30 days. Whilst accepting UN legitimacy, it must still be determined if the response was measured and timely. The Security Council's first response occurred on 26 February 2011 by passing UNSCR 1970.[85] The resolution also said that the UN would 'keep the Libyan authorities' actions under continuous review and that it shall be prepared to review the appropriateness of the measures,' thus providing Qaddafi the ability to de-escalate.[86]

Several regional organisations influenced the UN's two resolutions. On 8 March, the OIC 'called upon the Libyan authorities to immediately end the military operations targeting civilians' and highlighted the humanitarian crisis by asking the international community to 'move promptly and provide . . . urgent humanitarian assistance.'[87] By 10 March, the AU added its voice by calling for 'an urgent African action' and the formation of an

ad hoc committee to resolve the crisis and enact political reform.[88] Despite these *communiqués*, both organisations rejected military intervention.

On 12 March, the Arab League provided similar conclusions with one dramatic difference: asking for the immediate establishment of a no-fly zone.[89] Faced with disparate opinions, the UN hesitated, hoping that mounting pressure from regional organisations would persuade Qaddafi to desist. However, by 16 March, his forces successfully positioned themselves outside of Benghazi for a major assault. The UN acted on 17 March through UNSCR 1973 to prevent an expected massacre. A Just War theorist, David Fisher, agreed with the decision: having met the principle of *last resort*, the decision came 'just in time to prevent the slaughter.'[90] Not all agreed. The Gabonese chairman of the AU Commission, Jean Ping, suggested that the Security Council's response was flawed owing to what he viewed as an early abandonment of diplomacy. After the Security Council denied AU representatives permission to travel to Libya for negotiations on 18 March 2011, the AU invited Qaddafi and the rebels to Addis Ababa, Ethiopia, on 25 March in a further attempt at a diplomatic solution.[91] Whilst Qaddafi accepted and sent representatives, the rebels did not, thus dooming any hope for a negotiated settlement.

Ultimately, the decision to act found basis on the perception of an imminent massacre. The decision came quickly but also progressively, providing all parties the opportunity to diffuse the situation. Whilst undoubtedly sensitive to AU and OIC objections to military options, the UN also remained wary of the potential for another Bosnia, Rwanda, or Darfur if it did not act:[92] *Last Resort*: +2. To this point, the criteria have focused on the decision-making to determine the necessity for the use of force [*jus ad bellum*]. Now the criteria will focus on the execution of the conflict [*jus in bello*].

The principle of *right conduct* is closely associated with non-combatant casualties. For the use of force to be just, it must be demonstrated that all efforts were made to avoid the targeting of civilians and civilian infrastructure, and that non-combatants were unharmed in the course of striking legitimate military targets. An excellent starting point is examining NATO's rules of engagement, which used two types of targeting: deliberate and dynamic. Deliberate targeting benefitted from advanced planning based on target identification by intelligence analysts, vetting of targets by specialists, matching of targets to weapons, surveillance to determine 'patterns of life,' and dropping leaflets to warn civilians.[93] Dynamic targeting involved targets of opportunity and, thus, not pre-disposed to the same degree of precise preparation. In the end, a UNHRC investigation concluded that NATO forces only struck built-up areas on rare occasions, taking 'extensive precautions to ensure civilians were not killed.'[94]

However, not all of the UNHRC conclusions were positive. Whilst Qaddafi's forces exaggerated civilian casualties, going as far as moving children's bodies from a morgue to a bombing site,[95] NATO caused some

collateral damage. Of the 60 killed and 55 injured attributed to NATO, the worst case was in the town of Majer: 34 killed and 38 injured from a 500-pound GBU-12 bomb.[96] The incident raised legitimate concern about NATO's practice of striking a target more than once, a concern acknowledged by the organisation.[97] In this and other instances, rescuers rushed to the scene to help the wounded, resulting in additional casualties from the second strike. UNSCR 1973 did constrain NATO, however, by excluding an occupation force under the premise of protecting Libyan sovereignty. The unfortunate side effect limited NATO situational awareness on the ground, increasing risk for civilians.

When casualties did occur, NATO suffered justifiable criticism for its reluctance to acknowledge them on the premise that only it could do so through investigation, presumably requiring a ground presence. Given NATO's lack of ground presence, by definition there could not be acknowledged civilian casualties.[98] This situation created a perception that NATO was unwilling to take responsibility, which ran counter to the objectives of its painstaking targeting efforts. When compared to NATO policies in Afghanistan that provided compensation to victims, Libya appears to represent a step back. Near in importance to limiting non-combatant casualties was the avoidance of damaging civilian infrastructure. In the Iraq war, military commanders determined that 'the economic infrastructure of Iraqi society—all of it was a legitimate military target.'[99] In Libya, NATO specifically avoided civilian infrastructure.[100] The positive effect was no clearer than in the relatively quick recovery of the oil sector upon which the Libyan economy depends.

In considering *right conduct* as a whole, the UNHRC report provides a succinct conclusion, 'NATO did not deliberately target civilians in Libya.'[101] In considering that NATO dropped about 8,000 bombs in almost 18,000 sorties, the results were impressive. This favourable result is probably because NATO only used precision-guided munitions and conducted meticulous planning based on solid intelligence whenever possible. The lack of ground presence may have contributed to an unintended loss of civilians, fatalities that NATO should have acknowledged. The avoidance of critical civilian infrastructure contributed to a reduced risk to civilians and a quicker recovery for the Libyan economy: *Right Conduct*: +2.

In considering *right conduct*, the actions analysed occurred from a tactical perspective. In considering the final *jus in bello* criterion of *proportionality of means*, the coalition's actions are scrutinised from a strategic perspective. According to Just War theory, the use of force must not exceed what is required to achieve the objectives. This dependency between objective and means is fundamental since 'what seems disproportionate in respect of one set of aims will seem entirely fitting in respect of another.'[102] The stated aims for the Libyan intervention changed over time, thus complicating the assessment.

The Security Council's resolutions 1970 and 1973 seem proportionate to the serious situation on the ground in February–March 2011. The actual execution of the mandate is more debatable. While not deploying ground forces, the United States and Western Powers applied overwhelming air and sea power. Despite the impartial nature of the UN resolutions, NATO directed all its attacks against government assets, except for the accidental targeting of rebel forces that had acquired government vehicles. Whilst *right intent* viewed regime change from a motives perspective, *proportionality of means* is concerned with the level of force used. Obama faced criticism, primarily from hawkish Republicans, that a more aggressive role centred on additional air power would have shortened the conflict.[103] Whilst it took seven months to subdue Qaddafi's forces, it is difficult to conclude that additional assets would have had a significant effect. The coalition already had 260 air assets of virtually all varieties.[104] Furthermore, rapidity of execution was secondary to principled execution.

In April 2011, the Libya Contact Group highlighted these priorities by emphasising 'the role of the UN in leading the international effort to plan for early recovery and peace building in Libya.'[105] It led to the creation of UNSMIL on 16 September after the tide had turned against Qaddafi forces. UNSMIL responsibilities lay with helping to restore public security, the rule of law, public services, and the political transition towards democracy.[106] Consequently, the NATO mission terminated on 31 October 2011. The transition from NATO to UNSMIL was necessary to avoid conflicting mandates and politicisation of the Libyan recovery, in sharp contrast to Iraq with the heavy-handed imposition of controls by the Coalition Provisional Authority after the 2003 American invasion. UNSMIL, instead, offered the opportunity to separate the national interests of coalition members and re-enforce Libyans' ownership over their affairs. Given the enormous mandate and small size of UNSMIL—200 personnel—it is not surprising that it has made little progress towards its goals.[107] Without a significant improvement in security, the UN should consider taking additional measures to bolster UNSMIL through the addition of a sizeable and well-equipped peacekeeping force with a mandate to help the government establish control and train its forces, as well as disarm the remaining militia forces.[108]

Overall, *proportionality of means* was somewhat weaker than *right conduct*. The American 'lead-from-behind' approach and NATO's focus on collateral damage avoidance played favourably. The importance of ensuring Libyan ownership of its future was an overriding concern that also legitimised the cessation of NATO involvement. UNSMIL represent a positive solution to manage the political transition, but it lacks re-enforcement from a robust peacekeeping force to prevent further deterioration of the security situation': *Proportionality of Means*: +1.

Combining the criteria analysed above and their compiled scores—in Table 2—determines the JWI for the Libyan conflict. The average of the

TABLE 2 Just War Criteria Scores for 'Unified Protector' (2011)

Criteria	Unified Protector
Just Cause	+3
Legitimate Authority	+2
Right Intent	+1
Net Benefit	+0.5
Last Resort	+2
Right Conduct	+2
Proportionality of Means	+1
JWI (average)	+1.6
JWI (as percentage)	77%

scores, the JWI, reflects the notion that no war is likely to be seen as fully just or unjust. The JWI of +1.6 for the 2011 intervention indicates substantial ethical justness.

In attempting to assess the mission overall, the average score may be converted to a percentage value, using a linear translation to a scale from 0 to 6. By using a typical passing score of 50 percent—admittedly arbitrary—the overall justness of the mission may be assessed in terms of pass/fail judgments.[109] By this measure, 'Operation Unified Protector' easily passes the ethical threshold at 77%.

This analysis of the 2011 intervention shows the value of assessing Just War criteria in both a qualitative and a quantitative fashion. The final score allows for the conclusion that the Libyan intervention was, on balance, quite just. The first criterion, *just cause*, considered Qaddafi's brutal repression of popular protests as the prime driver for Security Council condemnation and action. It is balanced against international criticism focusing on sovereignty and the progress in normalising relations with Libya. Nevertheless, given the dire and immediate threat to civilians, the near universal condemnation of Qaddafi's aggression over-ruled sovereignty rights.

Legitimate authority in 2011 was derived from the credibility afforded by UNSCR 1973 and the support of the Arab League and Libya Contact Group. Under *right intent*, criticism focused on concerns regarding regime change, but ultimately the protection of civilians was not possible without it. The likely prevention of a massacre in Benghazi gave a positive foundation for *net benefit* despite post-Qaddafi challenges associated with violence, dysfunctional democracy, human rights violations, uncontrolled militias, impact on Security Council non-action in Syria, and arms proliferation. Accounting for WMD destruction, access to cash reserves, a recovering oil industry, ongoing UNSMIL efforts, and a modicum of previously missing democracy tipped net benefit into positive territory. The final *jus ad bellum* criterion, *last resort*, saw the UN's quick escalation in March 2011 as justified in light of the unfolding situation in Benghazi, particularly given the spectre

of Rwanda-like massacres and Qaddafi's on-going bellicosity in the face of international pressure.

The *jus in bello* principle of *right conduct* was found favourable for NATO owing to its extraordinary caution in executing the mission, though there was some tragic and accidental losses of civilian life and an early reluctance to acknowledge those losses. *Proportionality of means* favoured the American 'lead-from-behind' approach, and the extraordinary effort to avoid human and infrastructure collateral damage, as well as the transfer of some authority to UNSMIL to help manage the political transition.

'Operation Unified Protector' scored highly under the category of *just cause, legitimate authority, last resort*, and *right conduct*. Despite lesser scores under *right intent, net benefit*, and *proportionality of means*, all values were positive with *net benefit* being the lowest. The JWI, as the average of the seven important criteria, remains high at +1.6 or 77 percent. This quantifies the conclusion that the 2011 Libyan intervention was moderately to substantially just. Admittedly, the assessment of *net benefit* remains provisional given the uncertainty regarding Libya's future. But the mission has given the country the promise of a Qaddafi-free future with a freer-market and some chance at democracy with the substantial rewards and dangers that it entails.

Unfortunately, after the 2011 civil war ended, the international community did not show the same effort and commitment to secure the peace as it did during the conflict. A *post-bellum* assessment of international actions would show some major flaws. Substantial investment from outside resources—and possibly a UN peacekeeping force—in the future can help Libya benefit from its newfound freedom in the long term. Yet the 2011 intervention was a justified step, easily passing a Just War threshold.

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