



# The Attaché

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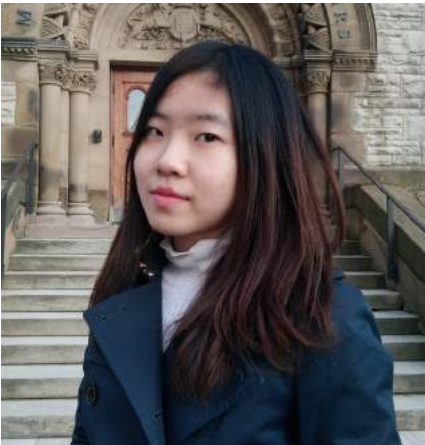
# About the Issue

With this first issue of 2021, the Attaché is debuting a new format better suited to navigating the tumultuous state of international relations and politics today. In keeping with past years, we will still be releasing our major annual volume later in the academic year; however, the 2020-21 Attaché is also breaking from tradition with our series of special issues. These issues will spotlight outstanding student works that we believe examine our world in nuanced and critical ways.

Exploring the theme of global governance through two unique lenses, Arjun Singh's "Civil War and Ethnic Violence" and Zihan Pang's "The Governance of Global Indiscriminate Surveillance" are timely first installments in our spotlight series. In this issue, we are taking the opportunity to showcase the high-quality work of one of our very own Attaché Senior Editors, Arjun Singh. In his paper, Singh uses the case study of the 2011 Libyan Civil War to frame a compelling critique of the United Nations and NATO response. In conversation

with this analysis, Pang's policy paper to the United Nations similarly discusses the limitations of international institutions. She begins by critiquing global governance approaches to the management of indiscriminate surveillance, before pushing the United Nations to adopt an alternative framework better suited for the particularities of the problem. At the heart of her analysis is the fundamental debate between civil liberties and national security, which is especially relevant in the current political context.

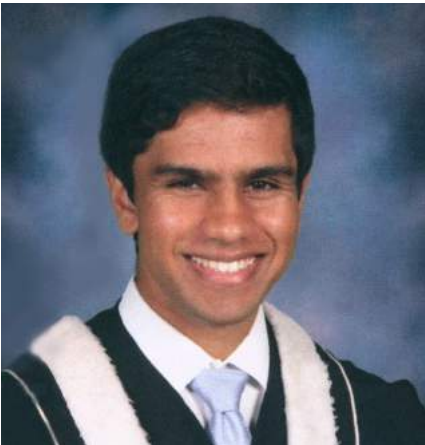
Over the past year, governance approaches to containing the spread of the novel coronavirus have broadly favoured restrictions on freedom of movement alongside sweeping expansions of state surveillance in the name of public health. Pang advocates for striking a careful balance between liberty and security; however, the protraction of the COVID-19 crisis further calls into question the ability of nation-states to do so. In our current moment, will Pang's plea fall on deaf ears?



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Read her work *The Governance of Global Indiscriminate Surveillance: A Policy Paper to the United Nations* on page 4



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Read his work *Love Lost and War Gained* on page 16

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# THE GOVERNANCE OF Global Indiscriminate Surveillance:

## A POLICY PAPER TO THE UNITED NATIONS

Zihan Pang

Global indiscriminate surveillance is a transnational legal and technological network that enables governments to monitor and analyze digital communication comprehensively. The Five Eye Alliance, composed of the United States (US), United Kingdom (UK), Canada, Australia, and New Zealand, lead these projects. Indiscriminate surveillance poses a threat to human rights, disrupts civic discourse space, and negatively alters individual online behavior. The United Nations (UN) passed resolution 73/179, "the rights to privacy in the digital age", expressing concerns about global surveillance based on the Universal Declaration of Human Rights and the International Convention

of Civil and Political Rights. However, the UN needs to expand its current efforts by establishing a surveillance review committee, constructing a knowledge and action network, and supporting artistic activism on global indiscriminate surveillance. These proposals draw inspiration from existing regional and national efforts to balance accountability with confidentiality during intelligence operations. Although these policies face political and organizational constraints, they will nonetheless promote intelligence accountability, facilitate informed legislation and cultivate multifaceted understandings of the issue and raise public awareness.

## Section I: Current Situation and Discourse of Global Indiscriminate Surveillance

Global indiscriminate surveillance refers to the state's interception of civilian digital communication on a massive scale without reasonable and specific grounds. It is a continuously developing technological, legal, and political phenomenon. Overlapping multilateral and bilateral agreements, sub-national contracts, and ad-hoc arrangements constitute the global surveillance framework. The epicentre of the network, the Five Eyes Alliance, includes the US, the UK, Canada, Australia, and New Zealand. It emerged from the UKUSA Agreement, which formalized intelligence collaboration between the UK and the US after the Second World War. Although the agreement explicitly excluded civilians during the war-time, its range of surveillance targets expanded during the Cold War years to include both foreign security and domestic civilian communication.<sup>1</sup>

### a. Legal framework

The Five Eyes Alliance enabled standardized and thorough sharing of collected intelligence and streamlined collection methods between members.<sup>2</sup> In the post-Cold War era, the network gradually incorporated thirty-four countries at all levels of development in Europe and Asia through informal legal instruments or "soft laws", such as memoranda of understanding (MoUs).<sup>3</sup> Soft laws defy the dichotom-

ic notion of law (i.e. legal vs. illegal, lawful vs. lawless). Depending on the interested parties, soft laws, such as MoUs, can have varied levels of political legitimacy and legal significance.<sup>4</sup> For example, MOUs can be adopted more quickly and in a more "hyper-simplified" manner than traditional legislation, which makes them attractive during crises. However, critics argue that MoUs enable the executive branch to circumvent formal procedures and parliamentary ex ante and ex post control. For example, the MoU between Libya and Italy (2017) attracted much criticism for abetting inhumane treatment of migrants.<sup>5</sup> Informal agreements are similarly used to evade public scrutiny and constitutional restrictions in the case of surveillance collaboration. For example, the NSA and the BND, Germany's intelligence branch, expanded their collaboration in 2013 through a top-secret memo. The BND agreed to provide "communications supporting counterterrorism (CT), counter-narcotics (CN), and weapons of mass destruction (WMD) missions"<sup>6</sup> while the NSA offered advanced hardware and software, and expert supports. To facilitate this collaboration, the German government was willing to moderate its interpretation of Article 10 of its constitution, which protects the communication of its citizens, "to afford the BND more flexibility in sharing protected information with foreign part-

Japan, Jordan, Korea, Macedonia, the Netherlands, Norway, Pakistan, Poland, Romania, Saudi Arabia, Singapore, Spain, Sweden, Taiwan, Thailand, Tunisia, Turkey, UAE. Itamar Mann, "The Disaggregated Law of Global Mass Surveillance," in T. Aalberts & T. Gammeltoft-Hansen (Eds.), *The Changing Practices of International Law* (Cambridge: Cambridge University Press): 14.

<sup>4</sup> Itamar Mann, "The Disaggregated Law of Global Mass Surveillance," in T. Aalberts & T. Gammeltoft-Hansen (Eds.), *The Changing Practices of International Law* (Cambridge: Cambridge University Press, 2018): 10.

<sup>5</sup> Martino Reviglio, "Externalizing Migration Management through Soft Law: The Case of the Memorandum of Understanding between Libya and Italy," *Global Jurist* 20, no.1 (2020):1-12.

<sup>6</sup> Mann, 15-16.

ners.”<sup>7</sup>

The legal framework of global surveillance exhibits significant flexibility and informality. According to the Vienna Convention, the multilateral agreements of the Five Eyes Alliance are neither ratified domestically nor registered internationally. Agreements between intelligence partners usually resemble private contracts, and are signed at sub-national and institution-to-institution levels, effectively bypassing constitutional restraints and public scrutiny.<sup>8</sup> Intelligence agencies, instead of the national government, enter agreements on intelligence sharing. For example, the NSA and the UK’s GCHQ signed an agreement on giving the NSA “access to and influence over Britain’s intelligence gathering programmes”.<sup>9</sup> It was concluded between agencies, instead of between the sovereign states of the US and UK.

**“Agreements between intelligence partners usually resemble private contracts, and are signed at sub-national and institution-to-institution levels, effectively bypassing constitutional restraints and public scrutiny.”**

**b. Ethical discourse**

Global level response to the global indis-

Based on different ethics premises, various schools of thought offer diverse normative assessments of the surveillance

<sup>7</sup> Ibid.  
<sup>8</sup> Mann, 15-19.  
<sup>9</sup> Ibid.

system. Liberalism and neo-republicanism both take an individualist approach to privacy rights. Liberal theorists define privacy rights as those that “exclude others (such as the government) from access to certain kinds of information”.<sup>10</sup> Thus, the right to privacy is a negative right which is supposed to shield individual choices from external intervention. Governmental interference of public and private life informed by mass surveillance would count as an abuse of such a right, and is thus unacceptable according to the liberal non-interference principle. Neo-republicanism adopts a similar criticism of surveillance for the non-domination value: mass surveillance is objectionable because it enables the government to arbitrarily breach the privacy of citizens, even if the government has not yet done it.<sup>11</sup> “The very existence of such arbitrary power” is jeopardizing liberty.<sup>12</sup> However, theoretically, the mass surveillance apparatus is not abusive if it is subjected to an “appropriately-structured constitutional order”<sup>13</sup> that enables citizens to control and contest its use. Yet, neo-republican scholars criticize the lack of restraints on individual officers, and claim that the lack of transparent oversight in practice compromises the non-domination structure.<sup>14</sup> Therefore, liberals and neo-republicans consider indiscriminate surveillance to be theoretically justifiable, but practically dubious.

In contrast, other scholars condemn indiscriminate surveillance as inherently harm-

<sup>10</sup> Titus Stahl: “Indiscriminate Mass Surveillance and the Public Sphere,” *Ethics and Information Technology* 18, no.1 (2016): 33-38.  
<sup>11</sup> Stahl, 34.  
<sup>12</sup> Martin Grüner Larsen, “Liberty, Liberalism and Surveillance: a historic overview,” *openDemocracy*, Dec. 24, 2020, <https://www.opendemocracy.net/en/opendemocracyuk/liberty-liberalism-and-surveillance-historic-overview/>  
<sup>13</sup> Patrick Tylor Smith, “A Neo-Republican Theory of Just State Surveillance,” *Moral Philosophy and Politics* 7, 1 (2020): 51.  
<sup>14</sup> Smith, 49-71.

ful. They argue that the individual-centric perspective overlooks the social impact of unchecked surveillance. For example, Habermasian social sphere theory criticizes indiscriminate surveillance as inherently problematic because it is a violation of collective rights to a well-functioning political public sphere, as surveillance subtly alters social circumstances which in turn limits civic discourses. To understand the Habermasian critique, it is important to understand social interaction and power. Environmental factors and the social role of individuals, alongside direct incentives/disincentives, determine the social interactions of the relevant individuals. Thus, power, broadly defined as the ability to influence others’ actions, can be practiced directly (e.g. providing incentives) or indirectly (e.g. changing the “social space”).<sup>15</sup> Mass surveillance changes the communication environment, a type of social sphere, thus rendering certain relationships and choices impossible. Hence, even passive surveillance jeopardizes the ability of groups to collectively control who participates in a particular social context, which further shapes the kinds of relationships possible within that context. As such, indiscriminate surveillance interferes with the public sphere. Since the political public sphere is essential to democracy and state interference would undermine its discursive rationality, indiscriminate surveillance is objectionable even when it is not used to directly interfere with individual lives.

**c. Empirical discourse**

Aside from theoretical critiques, empirical evidence demonstrates that indiscriminate surveillance can have profound social effects at both the societal and individual level. Exposure to news about governmental

<sup>15</sup> Stahl, 35-38.

surveillance led to two types of attitude: active and passive. On the active side, people expressed more concerns over governments’ intrusive policies and more political will to push for changes. However, a prevailing sense of helplessness led to negligence in personal privacy protection, such as the use of weaker passwords.<sup>16</sup> The passive reaction is exemplified in the avoidance of certain online activities. For example, both security-sensitive and health-related web browsing dropped internationally after Snowden’s disclosure in 2013.<sup>17</sup> Avoiding learning about controversial issues such as terrorism due to the chilling effect of surveillance is not conducive to public discussion and informed political participation. Additionally, avoiding searching about mental and physical health due to fear of privacy loss is undoubtedly negative to wellbeing. Thus, it is necessary to address the adverse effects of indiscriminate surveillance because of the potential harm caused by aforementioned behavioural changes.

The tangible harm caused by surveillance is difficult to evaluate in most cases. Even the U.S. Supreme Court failed to provide a consistent interpretation because the harm of mass surveillance is “intangible, risk-oriented, and diffuse”.<sup>18</sup> Plaintiffs against data breach usually cite the future risks, anxiety and fear, and cost of countersurveillance measures. In the *Spokeo v. Robins*, the Su-

<sup>16</sup> Stanislav Mamonova and Marios Koufarisb, “The impact of exposure to news about electronic government surveillance on concerns about government intrusion, privacy self-efficacy, and privacy protective behavior,” *Journal of Information Privacy & Security* 12, no.2: 64.  
<sup>17</sup> Examples of security-sensitive words: nerve agent, pipe bomb, explosion, explosives; examples of personally-sensitive words: white power, cutting, suicide, sexual addiction. Alex Marthews and Catherine Tucker, “Government Surveillance and Internet Search Behavior,” *SSRN Electronic Journal*, 10.2139/ssrn.2412564.  
<sup>18</sup> Solove, Daniel J. and Danielle Keats Citron. “Risk and Anxiety: A Theory of Data-Breach Harms.” *Texas Law Review* 96, no. 4 (2018): 737.



preme Court recognized the risk of injuries as sufficient grounds to establish harm. Yet, similar risk-oriented lawsuits against privacy violations, such as *Clapper v. Amnesty International* and *Reilly v. Ceridian Corp.*, were dismissed because the potential harm had not yet come to fruition, or could not have been proven due to the secrecy surrounding the relevant information.<sup>19</sup> However, surveillance can cause substantial harm by compromising the right to fair trial. Agron Hasbajrami was charged with supporting terrorism based on an email from foreigners obtained without a warrant.<sup>20</sup> The Supreme Court justified the legality of the warrantless search based on *States v. Verdugo-Urquidez*, in which American law enforcement physically searched a Mexican national's estate in Mexico. The American Civil Liberty Union (ACLU) argued that *State v. Verdugo-Urquidez* does not apply to warrantless digital surveillance when "Americans like Mr. Hasbajrami on U.S. soil" are at stake.<sup>21</sup> As such, legal interpretations of indiscriminate surveillance and its harms are varied and still in development. In principle, indiscriminate surveillance violates people's right to privacy as granted in Fourth Amendment of the US Constitution, Article 12 of the UDHR, and Article 17 of the ICCPR. In practice, the harm of such ubiquitous violence of privacy is easily overlooked because it is mostly intangible and diffused, taking the form of self-censorship, psychological stress, and extra spending on digital security. However, indiscriminate surveillance can compromise one's right to fair trial (e.g. *States v. Hasbajrami*), which leaves tangible damage.

<sup>19</sup> Solove and Citron, 737-786.

<sup>20</sup> Jacques Singer-Emery, "The Second Circuit Rules in *United States v. Hasbajrami*," *Lawfare*, Lawfare, Dec. 24th, 2020, <https://www.lawfareblog.com/second-circuit-rules-united-states-v-hasbajrami>.

<sup>21</sup> *United States v. Agron Hasbajrami*, 15-2684(L), 17-2669 (CON), [https://www.aclu.org/sites/default/files/field\\_document/114\\_aclu\\_eff\\_amicus\\_brief\\_10.23.17.pdf](https://www.aclu.org/sites/default/files/field_document/114_aclu_eff_amicus_brief_10.23.17.pdf).

**"In practice, the harm of such ubiquitous violence of privacy is easily overlooked because it is mostly intangible and diffused, taking the form of self-censorship, psychological stress, and extra spending on digital security."**

**Section II: Current Solutions**

Current human rights discourse on privacy rights derives from the Universal Declaration of Human Rights (UDHR) and the International Convention of Civil and Political Rights (ICCPR). UDHR Article 12 and ICCPR Article 17 both state that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".<sup>22 23</sup> However, the response to indiscriminate surveillance has been inchoate and restrained.

**a. Responses: conventions and IGOs**

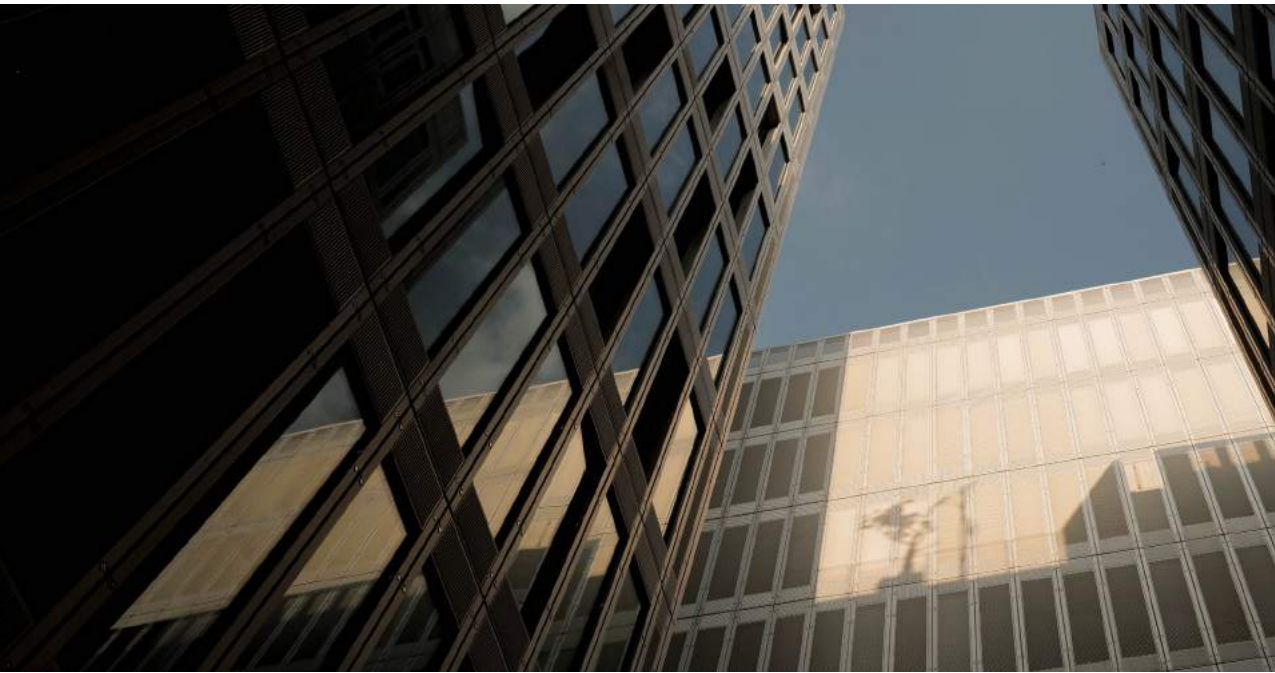
Responding to Snowden's revelations in 2013, the United Nations General Assembly (UNGA) adopted resolution 73/179, "the right to privacy in the digital age", citing the aforementioned human rights documents to express concern "at the negative impact that surveillance...[has] when car-

<sup>22</sup> "Universal Declaration of Human Rights | United Nations," United Nations, United Nations, Accessed 9 Mar. 2020, <https://www.un.org/en/universal-declaration-human-rights/>.

<sup>23</sup> "International Covenant on Civil and Political Rights - OHCHR," United Nations Human Rights Office of the High Commissioner, The Office of the High Commissioner for Human Rights, accessed 9 Mar. 2020, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

ried out on a mass scale".<sup>24</sup> The resolution faced backlash during its drafting because the Five Eyes Alliance member states insisted on amending provocative wordings, such as "metadata, extraterritoriality, and the scope of 'unlawful' or 'arbitrary' interference".<sup>25</sup> Extraterritoriality in particular is controversial because the US justified its surveillance program as legal by stress-

In 2015, the United Nations Human Rights Council also appointed Joseph Cannataci as a Special Rapporteur on the right to privacy in the digital age.<sup>27</sup> A Special Rapporteur is an independent human rights expert who investigates and reports from a thematic or national perspective.<sup>28</sup> The Right to Privacy Rapporteur is supposed to produce reports on governmental interception



ing that it only collects information from foreigners who are not protected by the Fourth Amendment of the Constitution. Although many legal scholars argued that the US should abide by international law even when conducting extraterritorial surveillance, the US did not recognize the privacy rights of foreign nationals.<sup>26</sup>

of communication data, unjustified privacy breaches, and best practices on bring global surveillance under rule of law and human rights norms. The UN contributed mainly to setting the normative standard on privacy rights and surveillance and initiating relevant international actions. However, there

<sup>24</sup> "Rights to Privacy in the Digital Age," United Nations Human Rights Office of the High Commissioner, The Office of the High Commissioner for Human Rights, accessed 9 Mar. 2020, <https://www.ohchr.org/en/issues/digitalage/pages/digitalageindex.aspx>

<sup>25</sup> Carly Nyst and Tomaso Falchetta, "The Right to Privacy in the Digital Age, *Journal of Human Rights Practice*," *Journal of Human Rights Practice* 9, no.1 (2017): 104-118.

<sup>26</sup> Peter Margulies, "The NSA in International Perspective: Surveillance, Human Rights and International Coun-

terterrorism," *Fordham Law Review* 82(2014): 2143.  
<sup>27</sup> "Special Rapporteur on the right to privacy," United Nations Human Rights Office of the High Commissioner, The Office of the High Commissioner for Human Rights, Accessed 10 Mar. 2020, <https://www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx>.  
<sup>28</sup> "Special Procedures of the Human Rights Council," United Nations Human Rights Office of the High Commissioner, The Office of the High Commissioner for Human Rights, Accessed 10 Mar. 2020, <https://www.ohchr.org/>

are significant obstacles involved in translating humanitarian rhetoric to substantial changes in countries of concern.

Some regional organizations, such as the European Union (EU), implemented political and legal measures to mitigate the impact of unchecked global surveillance. The EU has a longstanding tradition of valuing privacy protection over national security, especially after the shock of Snowden's disclosure.<sup>29</sup> It started to improve internal disclosure mechanisms and national security whistle-blower protections, which are intended to prevent the abuse of surveillance.

It is constructive for the UN to adopt the EU approach to establishing a confidential whistle-blowing system. Currently, only four of the EU member states have comprehensive whistle-blower legislation, while most EU member states exclude national security personnel from protection. Instead of solely relying on the European Convention on Human Rights (ECHR), the Council of Europe (EOC) proposed several principles on whistle-blowing and encouraged member states to adopt them in domestic legislation. These principles focus on striking a balance between state secrecy and right to free speech, and on protecting "all bona fide warning against various types of unlawful acts".<sup>30</sup> The EOC recommended defining offences—which is appropriate

<sup>29</sup> Anna Dimitrova and Maja Brkan, "Balancing National Security and Data Protection: The Role of EU and US Policy-Makers and Courts before and after the NSA Affair," *Journal of Common Market Studies* 56, no.4 (2018): 751-753.

<sup>30</sup> Unlawful acts includes 1) violations of international human rights and humanitarian law (such as the prevention of torture, violations of the right to life); 2) decisions to use military force or acquire weapons of mass destruction, mass surveillance; 3) mismanagement or waste of funds; 4) constitutional and statutory violations; 5) abuses of power and issues relating to public health, public safety or the environment.

for public revelation—establishing a confidential report system, protecting qualified whistle-blowers, and assessing the potential damage of disclosure case by case.<sup>31</sup>

To conclude, the UN only responded normatively to the Snowden leak and indiscriminate surveillance. It objected the practice in principle and sought to promote greater protection of privacy right, but there is no legally binding regulation on surveillance globally. In comparison, regional organization like EU took more concrete measures, such as by promoting better whistle-blower protection, to put checks on mass surveillance programs. It is worthy for the UN to learn from the EU initiatives.

**"However, there are significant obstacles involved in translating humanitarian rhetoric to substantial changes in countries of concern."**

**b. Responses: multilateral and domestic**

Governments of the Five Eyes Alliance member states also made some efforts to check indiscriminate surveillance, including the establishment of domestic intelligence oversight and national security whistleblowing procedures. These actions confront the dilemma of holding intelligence communities accountable while ensuring confidentiality. However, there is no universal intelligence oversight among the Five Eye Alliance countries because of their different political and legal systems. For example,

<sup>31</sup> Dimitrios Kagiarios, "Protecting 'National Security' Whistleblowers in the Council of Europe: An Evaluation of Three Approaches on How to Balance National Security with Freedom of Expression," *The International Journal of Human Rights* 19, no. 4 (2015): 409-421.

numerous competitive bureaucracies of the US Congress and Executive Branch share the responsibility of oversight.<sup>32</sup> In contrast, Canada<sup>33</sup> and Australia's<sup>34</sup> intelligence oversight systems are more unified and legislative in nature. Regardless of the difference in details, there are common shortcomings in all of these countries' efforts to implement intelligence oversight. Legislators lack adequate knowledge and constituency support for improving oversight mechanisms.<sup>35</sup> Moreover, the US and UK do not hold intelligence agencies accountable for violating the privacy of foreign states, at least not to the same standard as they do domestically.<sup>36</sup> The sovereignties of these individual member states, and their varied characteristics, make a universal oversight mechanism difficult to achieve.

**Section III: Policy Proposal for the United Nations**

The United Nations should take a leading role in the governance of global indiscriminate surveillance both substantially and normatively. Establishing a Surveillance Review Committee, whistle-blower protection, and knowledge and action network will help prevent surveillance-induced human rights abuses, cultivate intelligence communities' accountability and legitima-

<sup>32</sup> Amy B. Zegart, "Domestic Politics of Irrational Intelligence Oversight," *Political Science Quarterly* 126, no.1 (2011): 4~5.

<sup>33</sup> "About SIRC," Security Intelligence Review Committee, Security Intelligence Review Committee, accessed 10 Mar. 2020, <http://www.sirc-csars.gc.ca/abtprp/index-eng.html>.

<sup>34</sup> Peter Hanks, John D. McCamus, National security: Surveillance and Accountability in a Democratic Society (Cowansville: Éditions Yvon Blais): 1~18.

<sup>35</sup> Damien Van Puyvelde, "Intelligence Accountability and the Role of Public Interest Groups in the United States," *Intelligence and National Security* 28, no.2 (2013): 149~157.

<sup>36</sup> Ilina Georgieva, "The Extraterritorial Application of Human Rights Treaties in the Context of Foreign Surveillance," *Utrecht Journal of International and European Law* 31, no.80 (2015): 105.

cy, raise public awareness, and encourage diverse discourses. Moreover, these initiatives will serve as valuable mechanisms for coordinating domestic efforts to check indiscriminate surveillance.

**a. Surveillance Review Committee under UNHRC**

The United Nations Human Rights Council should establish an oversight committee called Surveillance Review Committee (SRC) which investigates claims of inappropriate surveillance. It is an expansion of the Special Rapporteur's current function: the collection and dissemination of relevant information and the communication of such information to states involved in the alleged violation.<sup>37</sup> The international review system will be a crucial supplement to the currently inadequate domestic whistle-blowing systems. First, it reduces the risk of direct public disclosure of national security material by offering an additional platform for confidential whistle-blowing. Second, it addresses the negligence of foreign nationals' rights, which is common in domestic intelligence oversight.

The Committee will review alleged abuses of surveillance which have a transnational impact or constitute human rights violations, as defined in the nine core human rights treaties.<sup>38</sup> Although indiscriminate

<sup>37</sup> "How to Talk About the Right to Privacy at the UN," Privacy International, Privacy International, Mar. 2017, accessed 11 Mar. 2020, [https://privacyinternational.org/sites/default/files/2017-12/UN\\_Guide\\_Final.pdf](https://privacyinternational.org/sites/default/files/2017-12/UN_Guide_Final.pdf).

<sup>38</sup> The nine core human rights treaties are International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC), International Convention on the Protection of the Rights of All



surveillance is in itself a violation of rights to privacy granted by UDHR and ICCPR, it is currently impractical to effectively pressure the Five Eyes Alliance into making drastic concessions in dismantling global surveillance networks.<sup>39</sup> Thus, incremental changes instead of radical policies on global surveillance would yield better outcomes. The committee will focus on the problematic use of intelligence collected through indiscriminate surveillance, such as for discriminating demographic groups,<sup>40</sup> for inappropriately seizing legal evidence, and for harassing political opponents.<sup>41</sup> The Committee will examine cases submitted confidentially by whistle-blowers, civil society groups, or representatives of affected communities. Confidentiality serves to protect both the national security interest of the relevant states and the identities of the complainants. Preliminary examination of the cases will determine if they are within the jurisdiction of the nine core human rights treaties. If they are, independent investigations will then follow to verify the complaints and assess the scope of impact.

The committee will then communicate confidentially with the states in question and

issue a brief public report. There are two phases of communication: evidence examination and policy negotiation. The first phase resembles an adversarial trial, albeit not a formal international law suite, for the state to cross-examine SRC's evidence and challenge the impact assessment. Independent international legal experts will mediate between the state delegation team and the SRC representatives. The appointment of the state delegation team depends on the state's preference, but it commonly consists of diplomatic personnel, technical and legal experts, and intelligence personnel. SRC and the state representatives will discuss policy changes based on the agreement that is established from the first phase. Although the states and the SRC are the chief negotiators, they can invite relevant interest groups to attend.

**“The international review system will be a crucial supplement to the currently inadequate domestic whistle-blowing systems.”**

The Surveillance Review Committee will face various organizational and political challenges. Organizationally, since the international monitoring of intelligence practices is extremely controversial and an invasion of state sovereignty, the committee will need to emphasize rigorous procedure, instead of efficiency, in order to win the confidence of governments. The Committee needs to demonstrate competency in protecting sensitive information and conducting well-grounded and impartial reviews with rigorous procedures. Politically, the Committee will struggle with inclusion. The participation of interest groups in the policy negotiation process is optional. Hence,

the SRC should explore flexible means to represent the interest of various affected groups, advocating for their inclusion when appropriate.

**b. Knowledge and Action Network on Rights to Privacy**

The United Nations should also establish a Knowledge and Action Network on Surveillance and Privacy to support and coordinate the efforts of non-state actors. It is crucial to engage the global civil society, despite the secrecy and power-asymmetry of this field. Global indiscriminate surveillance has profound sociocultural influences on both public and private life, which cannot be addressed by solely promoting reforms in the intelligence or national security sector. Moreover, preservation of privacy rights<sup>42</sup> overlaps with other fields of human rights defence, such as defending political rights, reproductive rights,<sup>43</sup> and equality.

Currently, non-governmental organizations, academic institutions, and intelligence oversight committees in the US, UK, Canada, and Australia monitor their respective governments, advise legislators, research, and disseminate knowledge on surveillance and privacy rights. Most of them recognize the importance of multidisciplinary and multi-stakeholder approaches. For example, the International Civil Liberties Monitoring Group is a coalition of NGOs,

faith groups, professional associations, and unions.<sup>44</sup> However, these organizations' activities are national or regional-focused with little international coordination. In this case, the UN should play the role of coordinator, sponsor, and bridge-builder to facilitate research and activism conducted by civil society groups. The Sustainable Development Networks (SDN), affiliated with the UN and the World Bank, set a meaningful precedent for this undertaking.<sup>45</sup> The Knowledge and Action Network on Rights to Privacy should absorb successful practices of the SDN while avoiding repeating its structural deficiencies, such as narrow disciplinary focus and inability to bridge theory to practice. Like the SDN, it will host academic conferences on surveillance and related issues, and establish online archives to store and share research. Such initiatives can assist legislators in making informed policies. The network can also serve as a partnership-building platform between professional researchers and activist groups (especially media and grass-root NGOs with less investigative resources), which reduces inaccurate and sensational portrayals of global surveillance.<sup>46</sup>

The proposed network needs to overcome major challenges though, such as a narrow disciplinary focus. They are relatively easy to overcome since the existing epistemic community is already diverse and has an interdisciplinary preference. However, the UN still needs to allocate funds judicious-

<sup>42</sup> Knowledge and Action Network would research privacy issues in a broader sense, not only limited to indiscriminate surveillance conducted by the US and its allies. It shall also include privacy breach by other states and non-state actors.

<sup>43</sup> For example, pro-choice institutions used geo-fencing, an intrusive surveillance technology, to locate and send advertisement to women in abortion clinics waiting room. “A documentation of data exploitation in sexual and reproductive rights| PI,” Privacy International, Privacy International, accessed 4 Jan. 2021, <https://privacyinternational.org/long-read/3669/documentation-data-exploitation-sexual-and-reproductive-rights>.

<sup>44</sup> “Members and Partners,” International Civil Liberties Monitoring Group, International Civil Liberties Monitoring Group, accessed 11 Mar. 2020, <https://iclmg.ca/https://iclmg.ca/about-us/members-and-partners/>.

<sup>45</sup> Diane Stone, “The ‘Knowledge Bank’ and the Global Development Network,” *Global Governance* 9 (2003): 43-61.

<sup>46</sup> Damien Van Puyvelde, “Intelligence Accountability and the Role of Public Interest Groups in the United States,” *Intelligence and National Security* 28, no.2 (2013): 145-148.

Migrant Workers and Members of Their Families (ICMW), International Convention for the Protection of All Persons from Enforced Disappearance (CPED), Convention on the Rights of Persons with Disabilities (CRPD).

“The Core International Human Rights Instrument and their Monitoring Bodies,” United Nations Human Rights Office of the High Commissioner, The Office of the High Commissioner for Human Rights, accessed 9 Mar. 2020, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

<sup>39</sup> The difficulty of implementing privacy rights protection is exemplified in the Five Eye Alliance's challenge of the UN report “The Right to Privacy in Digital Age”.

<sup>40</sup> James Renton, “The global order of Muslim surveillance and its thought architecture,” *Ethnic and Racial Studies* 41, no.12 (2018): 2125-2140.

<sup>41</sup> Kristen Hoerl, Erin Ortiz, “Organizational Secrecy and the FBI's COINTELPRO-Black Nationalist Hate Groups Program, 1967-1971,” *Management Communication Quarterly* 29, no. 4 (2015): 594-596.

ly to ensure fair disciplinary and regional representation, instead of deliberately and narrowly supporting a single field or school of thought as the World Bank did.<sup>47</sup>

**“Global indiscriminate surveillance has profound sociocultural influences on both public and private life, which cannot be addressed by solely promoting reforms in the intelligence or national security sector.”**

**c. UN Film and Art Festival**

Surveillance is becoming a cultural phenomenon instead of an institutional establishment. After the 9/11 attack, security and privacy became a pair of incompatible concepts in popular discourse.<sup>48</sup> However, discourse is changeable as seen by Greenpeace, which transformed the public perception of whaling from a courageous sport to a cruel practice by disseminating abhorrent photography of whale-hunting.<sup>49</sup> Thus, the UN should similarly raise public awareness on surveillance through supporting artistic expressions on the topic, presenting surveillance as a procedure that requires regulation rather than outright rejection or irrational fear. The UNHCR and UNESCO should host film festivals and

art exhibitions in collaboration with media companies, existing film festivals, and museums. The UN has successful experience in implementing such creative projects. For example, it collaborated with YouTube and the European Union to host the Stand Up For Human Rights film contest, which received over 700 short films from 81 countries.<sup>50</sup> There are also existing human rights film festivals with UN affiliation, such as the United Nations Association (UNAFF)<sup>51</sup> and the International Film Festival and Forum on Human Rights (FIFDH),<sup>52</sup> which set helpful precedents. The UN should also encourage UNAFF and FIFDH to take on a privacy rights focus while promoting these agencies' publicities.

The UN can also sponsor activist artists and collaborate with museums to host artistic exhibitions. The viability of this second option has increased as increasingly more museums have started to recognize the value of protest or political art in representing contemporary culture. However, the UN should seek adequate legal and communal consultancy when sponsoring provocative artwork. For example, US laws restrict museums registered as NGOs to participate in excessive lobby activities. The UN will have to balance the need to support activism and the long-term operation of museums in regions with tighter governmental control.<sup>53</sup> The Knowledge and Action Network can also contribute to creative activism by

offering partnerships to scholars and artists. This would be especially helpful for non-fictional artists, such as documentary filmmakers, by providing them with access to research sources (especially informants and affected communities), helping them to understand the technicality of surveillance, and encouraging them to find inspiration to retell surveillance-relevant stories.

In summary, since indiscriminate surveillance has profound impact on public discourse and cultural imagination, the UN should also focus on raising awareness and facilitate critical discussions. It can collaborate with media, film production companies, museums, and individual artists to host relevant exhibitions and film festivals.

**Conclusion**

The United Nations is responsible for both setting norms and for pushing for implementation because global indiscriminate surveillance poses a challenge to a range of human rights (not limited to privacy rights) guaranteed by the UN. The UN has asserted that “governments should rein in mass surveillance and respect the privacy of all Internet users, no matter where they are located”.<sup>54</sup> Despite this statement's widespread socio-political impact, its resulting efforts to translate rhetoric into concrete policies have faced various obstacles, including national security interests and confidentiality in the intelligence field. Therefore, it is important to pursue a multi-level solution capable of reaching both the state and non-state actors. The UN needs to establish its legitimacy and credibility in monitoring the abuse of surveillance. This will

enable the UN to engage in states' policy changes through the Surveillance Review Committee. Supporting the non-state sector, including academia and civil society groups, is crucial for fostering informed policy making and raising public awareness. The UN can achieve this through constructing the Knowledge and Action Network and sponsoring artistic activism. In conclusion, the UN should take a more active role and multifaceted approach on surveillance and privacy issues by engaging various stakeholders.

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<sup>49</sup> Paul Wapner, "Politics Beyond the State: Environmental Activism and World Civic Politics," *World Politics* 47 (1995): 320-322.

<sup>50</sup> "Human rights on film: International festival celebrates mobile phone films for a cause," UN News, the United Nations, accessed 11 Mar. 2020, <https://news.un.org/en/story/2018/12/102761>.

<sup>51</sup> "Mission," UNAFF 2020, UNAFF, accessed 11 Mar. 2020, <http://www.unaff.org/2020/mission.html>.

<sup>52</sup> "About the FIFDH," Geneva 6-15th 2020 FIFDH, FIFDH, accessed 11 Mar. 2020, <https://fifdh.org/en/the-festival/about-the-fifdh>.

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# Love Lost & War Gained

Arjun Singh

Valentine's Day of 2011 was, perhaps, the last time Muammar Al-Gaddafi ever felt "loved" by his people; for on February 15th began a series of events that would transform the Libyan state. The day marked the beginning of sustained protests against his regime in the city of Benghazi, whose participants – unlike previous instances of opposition – remained defiant amidst coercive and violent regime responses.<sup>1</sup> Taking their cues from movements in neighbouring Tunisia and Egypt (part of the then-nascent 'Arab Spring'), demonstrators perceived momentum on their side as they resisted the regime – responding to its coercion in equal measure, with violence, to force its removal.

A month later, on March 17th, the United Nations Security Council (UNSC) adopted Resolution 1973. Receiving no negative votes, the resolution was passed in response to "the deteriorating situation [and] escalation of violence" in Libya by government forces "against civilians."<sup>2</sup> From the hostili-

ties between the regime and civilian opponents, many of whom had taken up arms against the former, Security Council member-states portended indiscriminate reprisals against the latter.<sup>3</sup> To that end, they authorized "all necessary measures" (i.e. direct military action) under the provisions of Chapter VII to protect Libyan civilians.<sup>4</sup> This was implemented by the North Atlantic Treaty Organization (NATO), which initiated 'Operation Unified Protector' to enforce a "No-Fly Zone" (i.e. prohibition of Libyan air traffic) and launch airstrikes on Libyan ground forces.<sup>5</sup> Running for seven months, the Operation concluded on October 31, following the regime's removal from power and proclamation of a National Transitional Council (NTC) to facilitate a democratic transition.<sup>6</sup> Both the decision to intervene and the domestic eruption of hostilities represented a marked departure from the status quo. The incumbent regime had remained in power for over four decades, having developed both considerable coercive capabilities and a robust, oil-exporting economy, enabling both the effective repression of opponents and maintenance of performance legitimacy, with these two factors mitigating political transformation.<sup>7</sup> Moreover, over the previous decade, Libya had begun to normalize its international relations – sharing intelligence against Jihadist groups, and

granting foreign oil companies exploration rights to its large petroleum reserves.<sup>8</sup> Two years preceding the intervention, in 2009, Libya had been elected to chair the African Union and preside over the U.N. General Assembly – a marked reversal in its geopolitical standing, which suggested foreign state incentives to maintain the regime.<sup>9</sup> In this context, foreign military intervention in Libya, swiftly following the commencement of protests, was incongruous with structural conditions at the time. Consequently, it merits examination to determine both the motivations of the intervention, as well as its success in achieving its intended objectives.

As a result, this essay will evaluate the major factors prompting NATO's UNSC-authorized military intervention in Libya, as well as the success of such intervention in pursuance of both the alliance's motivations and the objective of "protecting civilians" under Resolution 1973.<sup>10</sup> It will argue that such intervention was impelled by the doctrine and sentiment of the 'Responsibility to Protect' (R2P), advanced in 2005, the geopolitical interests of NATO member-states and the individual actions of Gaddafi – which prevented the operation of traditional structural inhibitions on U.N. humanitarian interventions. Subsequently, it will assert that such intervention has evinced selective successes, fulfilling certain interests of NATO member-states, yet paradoxically prompting the emergence of an ongoing civil war in Libya, and contradicting the stated objectives of the Resolution.

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<sup>3</sup> Alan J. Kuperman, "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign," *International Security* 38, no. 1 (2013): 105-136.

<sup>4</sup> United Nations Security Council, "Resolution 1973," 1.

<sup>5</sup> Kuperman, "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign," 108.

<sup>6</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.

<sup>7</sup> Andrew Fawthrop, "Oil becomes the key battleground in Libya's civil war," February 18, 2020. Accessed December 5, 2020. <https://www.nsenergybusiness.com/features/libya-oil-blockades/>.

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<sup>9</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.

<sup>10</sup> United Nations Security Council, "Resolution 1973," 3.

<sup>1</sup> Karin Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, (Cambridge: Cambridge University Press, 2020).

<sup>2</sup> United Nations Security Council, "Resolution 1973," March 17, 2011. Accessed November 11, 2020. [https://www.nato.int/nato\\_static\\_](https://www.nato.int/nato_static_)



**A “Date with History”:  
Libyan and the R2P**

In the standard mould of the Arab Spring, the Libyan uprising began with the suppression of peaceful protestors. Civilians who had assembled in Benghazi to oppose the detention of an opposition lawyer, Fathi Terbil, were fired upon by Libyan forces on February 17th.<sup>11</sup> As civilian protestors resisted the violence and – upon engaging security forces in municipal combat – began to overrun government installations in Benghazi, similar skirmishes arose in other parts of the country.<sup>12</sup> Given the government’s asymmetric military advantage, as well as the regime’s history of violently suppressing protestors, U.N. member-states came to view the situation as one with an alarming potential for reprisal against civilians.<sup>13</sup> As a result, they were prompted to act under provisions of the ‘Responsibility to Protect’ (R2P) doctrine of 2005 – allowing for international intervention in states that fail in their duties to protect populations from, inter alia, “genocide,” “war

crimes” and “crimes against humanity.”<sup>14</sup> To this end, three classes of these developments were responsible for triggering such R2P sentiments. The first was real-time reports from Libya, which had been rapidly produced following the initial outbreak of hostilities on February 17th and described government violence against protestors. On February 20th, Human Rights Watch released a preliminary report suggesting 233 deaths from state forces’ violence since the commencement of protests.<sup>15</sup> Additionally, the subsequent day, two Libyan Air Force pilots had defected from the regime by flying to Malta – citing their orders to “bomb Benghazi,” where opponents had by then overrun government authority in the city.<sup>16</sup> In conjunction, the news reports of aerial strafes against protestors continued to be broadcast by international media, suggesting systematic armed reprisals against protesting civilians.<sup>17</sup> In relation to other Arab Spring uprisings, these reports were unprecedented; neither Egypt nor Tunisia (Libya’s Saharan parallels) had utilized military force to suppress protests. The release of such reports enhanced the ‘shock’ of international observers – at both the rapid escalation of hostilities and the purported will of the regime to violently retaliate against initially peaceful protests. Consequently, they lay the groundwork for the event’s interpretation as an act of Libyan state-sponsored violence vis-à-vis the R2P – i.e., its

“manifest failure” to protect its citizens... from “crimes against humanity.”<sup>18</sup>

**“Both the decision to  
intervene and the domestic  
eruption of hostilities  
represented a marked  
departure from the status  
quo.”**

The second of such events were speeches delivered by regime officials following the developments – specifically, by Muammar Al-Gaddafi, and his son Saif Al-Islam – which enhanced the aforementioned characterisation. Both addresses struck a violent tone with international observers that affirmed assumptions of government violence against civilians. In the government’s initial response to the protests, Saif Al-Islam on February 20th openly threatened forceful retaliation against protestors, in a speech with brutish allusions. He claimed “rivers of blood” would flow should “sedition” not cease against the regime.<sup>19</sup> The speech also confirmed the government’s deployment of the Libyan Army to restore security, which would “fight to our (sic) very last man, woman and bullet.”<sup>20</sup> Two days later, Gaddafi himself delivered an address that underscored such imagery. He vowed that the military would advance “inch by inch, house by house, home by home, alley by alley and individual by individual” to quell protestors’ “insurrection,” which he announced would be “punishable by death.”<sup>21</sup> While Gaddafi had been known for spuri-

ous rambling at public events, the regime’s record of violence – particularly, the Abu Salim massacre of 1996, in which over 1600 prisoners were executed without trial – corroborated his willingness to act on the stated coercive intentions.<sup>22</sup> Broadcast to the international community, the speeches vindicated notions of regime brutality against civilians being potent – tantamount, again, to ‘crimes against humanity.’ Additionally, the rhetoric of Al-Islam (who until then had been viewed as a reformist figure and moderating influence on Gaddafi) served to indicate the absence of internal restraint within the regime on the use of force.<sup>23</sup> To that end, nations came to view Libya as the scene of an impending “mass atrocity,” necessitating preventative action under the R2P.<sup>24</sup> Thirdly, activity at the United Nations served to crystallize ‘R2P’ as the lens through which U.N. member-states viewed the events in Libya. A commission of inquiry conducted by the U.N. Human Rights Council concluded, after testimony from Libyan military officials, that “shoot-to-kill operations” had been ordered against peacefully protesting civilians.<sup>25</sup> Simultaneously, the U.N. Secretary-General’s Special Advisers on Genocide Prevention and R2P – Francis Deng and Edward Luck, respectively – publicly announced that both “war crimes and crimes against humanity” may have been committed by the government in its responses to the situation.<sup>26</sup> While media

<sup>11</sup> Debora Malito, “The Responsibility to Protect What in Libya.” *Peace Review: A Journal of Social Science* 29, no. 3 (2017): 289-298.  
<sup>12</sup> Ibid.  
<sup>13</sup> Kuperman, “A Model Humanitarian Intervention? Reassessing NATO’s Libya Campaign.”

<sup>14</sup> United Nations General Assembly, “Resolution A/60/1,” September 16, 2005. Accessed December 5, 2020. [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_60\\_1.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf).  
<sup>15</sup> Human Rights Watch, “Libya: Governments Should Demand End to Unlawful Killings,” February 20, 2011. Accessed December 5, 2020. <https://www.hrw.org/news/2011/02/20/libya-governments-should-demand-end-unlawful-killings>.  
<sup>16</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 98.  
<sup>17</sup> Kuperman, “A Model Humanitarian Intervention? Reassessing NATO’s Libya Campaign.”

<sup>18</sup> United Nations General Assembly, “Resolution A/60/1,” 30.  
<sup>19</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 99.  
<sup>20</sup> Ibid.  
<sup>21</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 101.

<sup>22</sup> Ibid.  
<sup>23</sup> Ibid.  
<sup>24</sup> Hardeep Puri, “Libya: Hillary Clinton, Susan Rice and the Ghost of Rwanda,” October 27, 2016. Accessed November 11, 2020. <https://www.theglobalist.com/libya-the-ghost-of-rwanda-west-united-states/>.  
<sup>25</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 102.  
<sup>26</sup> Francis Deng and Edward Luck, “Press Release on the Situation in Libya,” February 22, 2011. Accessed December 5, 2020. <https://www.un.org/en/genocideprevention/documents/media/statements/2011/English/2011-02-22-OSAPG,%20Special%20Advisers%20Statement%20on%20Libya,%2022%20February%202011.pdf>.





reportage of the uprising had suggested as much, statements by U.N. institutional entities – authoritative within the organization on human rights and the R2P – yielded formal evidence of congruity between Libyan Government’s activities and the doctrine’s cognizable offences. Therefore, they gave legitimacy to Libya’s assessment by member-states as a case for ‘R2P’.

**“The release of such reports enhanced the ‘shock’ of international observers – at both the rapid escalation of hostilities and the purported will of the regime to violently retaliate against initially peaceful protests.”**

Most markedly contributing to this view, however, was the en masse defection of Libyan diplomatic personnel from the regime, who subsequently endorsed protestors’ claims of brutality and called for Gaddafi’s removal. Beginning with Libya’s U.N. Delegation on February 21st, the country’s missions in the United States, Australia, Indonesia, Malaysia, Poland, India, Bangladesh and the Arab League joined the defection thereafter.<sup>27</sup> The act was unprecedented in the history of the U.N. and demonstrated to other states that high-ranking regime officials – selected for their loyalty and judgement – themselves viewed Gaddafi’s activity as unconscionable. Moreover, that they had defected after four decades of supporting Libya’s suppressive regime suggested the emergence of a new paradigm in Gaddafi’s coerciveness, which was intolerable even

by authoritarian standards.<sup>28</sup> Member-state representatives were thus compelled by their Libyan colleagues to support intervention. As a result, the combination of these three event-classes reinforced the notion that Libya was engaged in ‘war crimes’ and ‘crimes against humanity,’ directed at its civilians to suppress popular opposition to the regime. Such characterization exercised key influence on Security Council member-states to impose Chapter VII sanctions and, eventually, authorize armed intervention against Libya to protect civilians (which, until that moment, had not been taken for other Arab Spring states). As the authorizing Resolution for the intervention laid out, the “widespread and systemic attacks...may amount (sic) to crimes against humanity,” with the intervention’s principal “determination” being the “protection of civilians and civilian populated areas.”<sup>29</sup> In conjunction with the aforementioned factors, the institutional memory of both the United Nations and NATO significantly impelled such a conclusion vide R2P principles. By 2011, both organizations had continued to grapple with the memory of their inaction to prevent genocides in international conflicts during the previous two-decades – i.e. in Rwanda and Srebrenica.<sup>30</sup> Having faced severe public criticism for such past inaction – being viewed as contrary to the tenets of their establishment and threatening to their continued relevance – both organizations faced expectations to respond oppositely to identical future situations, in whose mould Libya presented itself. Then-U.S. Senator John Kerry captured this sentiment at the time, claiming that “U.N.

<sup>28</sup> Ibid.

<sup>29</sup> United Nations Security Council, “Resolution 1973,” 1.

<sup>30</sup> Nguirane Cheikh, “Stories behind the western-led humanitarian intervention in Libya: A critical analysis,” *African Journal of Political Science and International Relations* 7, no. 3 (2013): 154-163.

leadership was on the line” in Libya.<sup>31</sup> Endogenously, individual potentates within the Security Council voiced equivalent motivations – i.e., to prevent acts of genocide should they be evinced in Libya. Susan Rice, the United States’ permanent representative, claimed that she would “go down in flames” to prevent “a crisis” (i.e. genocide in Libya) if necessary, while French representative Gérard Araud claimed the “Council had to meet this date with history on the side of the Libyan people”.<sup>32</sup> Thus, when Libya’s defecting Permanent Representative, Abdel Rahman Shalgam, publicly described the situation in his own country as equivalent to “atrocities...of the Khmer Rouge in Cambodia or Hitler in Germany,” the U.N. and NATO received permissive conditions for action, with little room to avoid it.<sup>33</sup>

**“The act was unprecedented in the history of the U.N. and demonstrated to other states that high-ranking regime officials – selected for their loyalty and judgement – themselves viewed Gaddafi’s activity as unconscionable.”**

However, the premises for such assessment have come to be questioned by scholars, who suggest that claims of governmental action tantamount to ‘state-sponsored genocide’ were unsupported by evidence

<sup>31</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 113.

<sup>32</sup> Ibid, 127; Puri, “Libya: Hillary Clinton, Susan Rice and the Ghost of Rwanda.”

<sup>33</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 122.

at the time. Alan Kuperman makes the most authoritative argument on this front, pointing out that Libyan protestors had been “armed and violent from the first day of the uprising” – a fact incongruous with their presentation as ‘peaceful’ protestors.<sup>34</sup> Contrary to that notion, opponents of the regime had deployed “firearms, Molotov cocktails, bulldozers and bomb-laden vehicles” against security forces, obtaining them from government armouries overrun by protests.<sup>35</sup> Indeed, as he notes, reports of “live ammunition” being used against protestors were, in reality, rubber bullets and non-lethal rounds designed to disperse protestors.<sup>36</sup> These facts were ignored by Western media organizations in their initial reportage of the incident, who had –amid difficulties due to the regime’s censorship – initially neglected to verify reports conveyed to international audiences. The U.N. High Commissioner for Human Rights, Navi Pillay, admitted as much – claiming that “reports are (sic) still patchy and hard to verify” concerning violence by different parties.<sup>37</sup> As a consequence, the regime was presented as an initial aggressor rather than acting in response to civil strife, thus assuming a ‘genocidal’ character. Such is corroborated by Debora Malito, who further contends the validity of the application of R2P principles to Libya.<sup>38</sup> Citing the doctrine’s sequential processes – first involving pursuit of a non-violent resolution via regional organizations – Malito notes that member-states sought to use force at the “first resort,” and “prematurely dismissed” the African Union’s proposed settlement process.<sup>39</sup> This dismissal, consequently, un-

<sup>34</sup> Kuperman, “A Model Humanitarian Intervention? Reassessing NATO’s Libya Campaign,” 108.

<sup>35</sup> Ibid, 109.

<sup>36</sup> Ibid.

<sup>37</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 120.

<sup>38</sup> Malito, “The Responsibility to Protect What in Libya.”

<sup>39</sup> Ibid, 290-291.

<sup>27</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 106-107,110.



dermined the intervention's congruity with the R2P, given their non-adherence to the doctrine's normative framework.<sup>40</sup>

To date, the exact factual circumstances of February's events remain disputed among scholars. However, the certitude of the uprising's circumstances, and its congruence with the R2P frameworks, matter little vis-à-vis states' decisions to intervene. Rather, the mere 'perception' of potential genocide at the time – putatively validated by U.N. and Libyan officials' testimony – triggered principled objection and critical memories by member-states, impelling them towards swift intervention with relatively little restraint. As evinced from the testimony of Rice and Araud, member-states were inclined to err towards action and preclude civilian atrocities before they were able to occur. To that end, the 'Responsibility to Protect' became the key principle that pushed the U.N. and NATO towards intervention.

**"Unified Protector" of Self-Interest**

A 'critical' analysis of NATO's Libyan interA 'critical' analysis of NATO's Libyan intervention – vide the term's Marxist connotations – would warrant the consideration of 'actor-interests' as influential variables.<sup>41</sup> In conjunction with the realist view of international relations, seeing state action as objected towards preserving or maximizing their power/interests, member-states intervening in Libya would have been impelled by "political and economic motivations," notwithstanding the aforementioned normative factors under the R2P.<sup>42</sup> When examined through this framework, principal-

ly articulated by Nguirane Cheikh, several strategic considerations are evinced, – corroborated by state officials' testimony, to have compelled the intervention.

Institutionally, NATO's decision to intervene was undergirded by its key systemic logic – the defence and security of the European continent.<sup>43</sup> Established for this purpose in 1949, then primarily as a strategic deterrence against the Soviet Union, NATO has since the Cold War sought to continue this mission through action in other proximate theatres deemed threatening to Europe. As a consequence, the alliance intervened in Bosnia and Herzegovina (without U.N. authorization) as well as began 'Operation Sea Guardian' to intercept migrant vessels that may reach European shores, thus satisfying European interests. In this context, its engagement in Libya was no different – seeking to preserve three key security and economic interests of Europe, both linked to Libya's proximity to member-states.

The first of these was the prevention of migrant inflows. Before the Arab Spring, Europe had (albeit, to a lesser degree) long been the recipient of asylum seekers from Middle Eastern and North African states seeking physical safety and financial promise.<sup>44</sup> Given the latter region's instability, European leaders were acutely conscious of increased migration's potential to cause and compound socio-economic problems – of resource and residential scarcity – in domestic settings, particularly as the Eurozone faced a fiscal crisis following the Great Recession.<sup>45</sup> To that end, amidst Western rap-

prochement with Libya post-2003, the European Union and Libyan regime had taken joint measures (e.g. maritime operations) to prevent "illegal immigration" to Europe.<sup>46</sup> Libya – with its robust, oil-fuelled economy and Gaddafi's welcoming migratory policy – was an alternative to Europe as a key absorbent of Sub-Saharan migrants.<sup>47</sup> Upon Libya's descent into conflict, however, Europe's strategic calculus to deter migration was upset and the possibility of a large-scale refugee influx from the former became latent. With 90% of Libya's population located on its Northern Coast, the prospect of thousands of refugee-laden boats crossing the Mediterranean Sea to the French Riviera or the Italian Peninsula – without a buffer jurisdiction to inhibit passage – deeply concerned European leaders.<sup>48</sup> Consequently, they came to view the restoration of Libyan stability a key strategic objective to deter migration – paradoxically, via the removal of the Libyan regime with whom they had previously cooperated. Gaddafi's replacement with a democratic state, European states reasoned, would complement Libya's economic strength with political stability – ensuring its continued ability to absorb African migration and enabling the new state to fulfil agreements previously made to curtail migrant outflows.<sup>49</sup> Consequently, in intervening, NATO's European member-states were "motivated by the need to defend national interests."<sup>50</sup>

Secondly, and more potently, NATO member-states were concerned about the po-

tential for a Libyan Civil War (between the regime and opponents) to foster the emergence of a Jihadist concentration in proximity to Europe, which would threaten European national security through the emergence of Islamist rebel.<sup>51</sup> While Jihadism in Libyan territory did not ipso facto affect European interests, the potential for its externalization to Europe caused significant concern among NATO member-states. In this context, the recollection of Afghanistan (where NATO combat operations were then-ongoing) as an effective 'safe harbour' for Al-Qaeda and anti-Western terrorism was latent in NATO's strategic calculus at the time. Consequently, they assumed that a Jihadist-laden Libya would serve as a base for anti-Western terrorism against Europe – whereby extremist fighters, controlling territory and funded by Libyan natural resource extraction (largely to oppose Gaddafi), would also cross the Mediterranean Sea to plot attacks across Europe.<sup>52</sup> "Do we want a failed pariah state on Europe's borders?" asked British Prime Minister David Cameron at the time, conscious of the effects a Jihadist-laden Libya would have on continental security.<sup>53</sup> To that end, NATO was likewise impelled to intervene, seeking to replace the crises' principal instigator (i.e. Gaddafi) to avoid further instability and, thus, Jihadist radicalism in the country. While the necessity of intervention in Libya to European security (NATO's principal objective) held patent currency with the alliance's European membership, the impact of these specific objectives on NATO's principal member-state was less acute. If the

tect in North Africa.

<sup>46</sup> Ibid.

<sup>47</sup> Cheikh, "Stories behind the western-led humanitarian intervention in Libya: A critical analysis."

<sup>48</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.

<sup>49</sup> Malito, "The Responsibility to Protect What in Libya."

<sup>50</sup> Ibid, 292.

<sup>51</sup> Kristina Trauthig, "IS in Libya: From Force to Farce?" March 1, 2020. Accessed December 5, 2020. <https://icsr.info/wp-content/uploads/2020/03/ICSR-Report-Islamic-State-in-Libya-From-Force-to-Farce.pdf>.

<sup>52</sup> Aaron Zelin, *The Others: Foreign Fighters in Libya*, (Washington D.C.: The Washington Institute for Near East Policy, 2018).

<sup>53</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 146.





aforementioned realist framework – emphasising individual actor interests – is to be followed, the United States of America would see little reason to participate in a foreign engagement bearing few consequences for itself, given its relative isolation from region-centric externalities.<sup>54</sup> Moreover, the then-incumbent Obama Administration had been elected on a platform of avoiding military engagement (after Iraq), and would seemingly contradict its posture if it entered another without a perceptible domestic threat.<sup>55</sup> In this context, it is necessary to examine American support for

NATO's intervention from an endogenous perspective – whereby the same would satisfy U.S. strategic interests to merit participation.

Such an examination yields a three-pronged case for the United States' intervention to seek "regime change" in Libya, albeit for different reasons than its European NATO allies.<sup>56</sup> Whereas the latter viewed Gaddafi's removal as transitive to the aim of Libyan stability, thereby entailing its material interests, the United States' realistic end lay with the removal of Gaddafi himself. This end stemmed from the United States longstanding animosity with the Libyan regime, which prompted American support for NATO intervention when the uprising

offered an opportunity for his removal.<sup>57</sup> The first of these was Libya's opposition to U.S. foreign policy. Throughout the Cold War and into the 21st Century, Gaddafi was a Pan-Africanist and fervent supporter of the Non-Aligned Movement, opposing the influence of Western states on the African continent and in Third World Nations.<sup>58</sup> Viewing the United States as a 'neo-imperialistic' power threatening these objectives, he consequently took steps to oppose U.S. interests in both realms during the Cold War.<sup>59</sup> These included, inter alia, the funding of armed insurrections against U.S.-allied states e.g., the Palestinian Liberation Organization, Irish Republican Army, African National Congress, the Sandinistas in Nicaragua and the New People's Army of the Philippines. Additionally, Gaddafi's regime supported established socialist regimes– e.g., the Derg in Ethiopia and Fidel Castro in Cuba, in opposition to U.S. containment interests.<sup>60</sup> Deriving fiscal ballast from its petroleum industry, Libyan support for these entities was sustained and considerable – often proving essential to their victory and, consequently, the erosion of U.S. interests in those regions.<sup>61</sup> For these reasons, the United States came to rank Libya as its "fourth potential enemy" during the Cold War – after the Soviet Union, China and North Korea.<sup>62</sup> Although the Communist Bloc's dissolution ended Libyan support for its regimes, the longstanding antagonism it developed with the United States persist-

ed. Hence, when the presented with the opportunity to remove Gaddafi (previously attempted by the United States, in Operation El Dorado Canyon), the United States "reverted to the patterns" of strategic containment – and supported intervention to this end.<sup>63</sup>

In conjunction, Libya's significant steps towards producing Weapons of Mass Destruction served to enhance U.S. opposition to the regime's existence. Continuing throughout the Cold War and into the new millennium, Libya's nuclear weapons programme threatened the longstanding U.S. objective of global non-proliferation – particularly by Arab states opposed to Israel.<sup>64</sup> While the regime never constructed a nuclear weapon and voluntarily agreed to end its effort in 2003 (in exchange for the rescinding of economic sanctions), its prior aggressive momentum towards the same, along with its large chemical weapons stockpiles, stood counter to U.S. disarmament interests.<sup>65</sup> These, too, fomented permanent suspicion between both nations – leading to Libya's designation as a "rogue state" by the United States that, in 2011, impelled the latter towards intervention.<sup>66</sup> Secondly, the Libyan regime's long-standing support for international terrorism placed it in additional opposition to U.S. interests. While Gaddafi had supported left-wing terrorist movements in Europe during the Cold War – e.g. the 'Rote Armee Fraktion' in Germany and Red Brigades in Italy, with "sanctuary, support and training" – his regime's intelligence services were suspected of direct involvement in several terrorist

<sup>54</sup> Puri, "Libya: Hillary Clinton, Susan Rice and the Ghost of Rwanda."  
<sup>55</sup> The White House, "Remarks by the President in Address to the Nation on Libya," March 28, 2011. Accessed November 11, 2020. <https://obamawhitehouse.archives.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>.

<sup>56</sup> Kuperman, "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign," 134.

<sup>57</sup> Cheikh, "Stories behind the western-led humanitarian intervention in Libya: A critical analysis."  
<sup>58</sup> Ibid.  
<sup>59</sup> Yehudit Ronen, "Vestiges of the Cold War in Libya's 'Arab Spring': Revisiting Libya's Relations with the Soviet Union," *Journal of Middle Eastern and Islamic Studies in Asia* 8, no. 2 (2018): 66-95.  
<sup>60</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.  
<sup>61</sup> Cheikh, "Stories behind the western-led humanitarian intervention in Libya: A critical analysis."  
<sup>62</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 69.

<sup>63</sup> Ronen, "Vestiges of the Cold War in Libya's Arab Spring," 67.  
<sup>64</sup> Ibid.  
<sup>65</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.  
<sup>66</sup> Cheikh, "Stories behind the western-led humanitarian intervention in Libya: A critical analysis," 161.



acts targeting American citizens.<sup>67</sup> Chief among these was the bombing of Pan Am Flight 103 (i.e. the 'Lockerbie Bombing'), which killed 190 American passengers, and the bombing of West Berlin's "La Belle" nightclub in 1986 – both acts being undertaken by Libyan intelligence agents.<sup>68</sup> As a consequence, the United States remained affixed in a hostile position towards Libya, leading to Libya's designation as a "state sponsor of terrorism," and motivating efforts to remove the regime in the context of "the War on Terror".<sup>69</sup>

Thirdly, the United States viewed access to Libyan oil and natural gas reserves as a key strategic objective. At the outset of the 21st Century, Libya had been ranked as "the top exploration spot in the world" by American prospectors.<sup>70</sup> While such access had been granted to Western companies following Libyan liberalization in 2003, the commencement of hostilities in 2011 led the United States to view the regime's presence (being the instigator of oppositional violence) as a threat to their installations' operational security.<sup>71</sup> To this end, it assessed that a different regime would be largely conducive to foreign petroleum licensing and extraction on Libyan territory – with oil access, therefore, being a "driving force" towards American support for intervention.<sup>72</sup>

Thus, the United States was motivated

<sup>67</sup> Sara Obeidat, "Muammar Qaddafi and Libya's Legacy of Terrorism," October 13, 2015. Accessed December 5, 2020. <https://www.pbs.org/wgbh/frontline/article/muammar-qaddafi-and-libyas-legacy-of-terrorism/>.

<sup>68</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 70, 72.

<sup>69</sup> Cheikh, "Stories behind the western-led humanitarian intervention in Libya: A critical analysis," 161.

<sup>70</sup> Ibid, 86.

<sup>71</sup> Cheikh, "Stories behind the western-led humanitarian intervention in Libya: A critical analysis."

<sup>72</sup> Ibid, 161.

to intervene in Libya in cooperation with its equally, yet differentially, self-interested European partners under the aegis of NATO. In his address explaining the decision to participate in the intervention, U.S. President Barack Obama admitted as much: claiming "our interests...are at stake," and making reference to "Americans killed by Libyan agents" – alluding to both the United States' strategic imperatives as well as its retribution-fuelled opposition towards the regime.<sup>73</sup> Subsequently, the manner of such intervention (a No-Fly Zone, with the targeting of Libyan assets via air) served to undermine Gaddafi's capacity for resistance while conforming to Euro-American strategic preferences for military conflict i.e. the absence of ground troops (in contrast with R2P recommendations of "peacekeeping forces") whose casualties would yield domestic political opposition.<sup>74</sup> The intervention's actual achievement of such realistic objectives for NATO member-states via intervention was less evident and will be discussed subsequently.

**'The Great Dictator'**

In assessing the reasons for NATO's intervention into Libya, no evaluation is complete without analysing the principal political figure around whom both the uprising and military response revolved. Colonel Muammar Al-Gaddafi, upon assuming leadership of Libya via coup d'état in 1969, established an unconventional persona for a Head of Government in the international community. Given the highly personalized nature of the Libyan regime, a cult of personality around his leadership, Gaddafi's character traits considerably influenced how foreign

<sup>73</sup> The White House, "Remarks by the President in Address to the Nation on Libya."

<sup>74</sup> Chorin, "NATO's Libya Intervention and the Continued Case for a Responsibility to Rebuild," 368, 379.

powers viewed the State of Libya.<sup>75</sup> Consequently, the effect of these traits served to characterize Libya in a manner conducive to foreign intervention (i.e., as intrinsically obnoxious and unpredictable), and mitigated other structural factors that, traditionally, have prevented such interventions from occurring.

**"Colonel Muammar Al-Gaddafi, upon assuming leadership of Libya via coup d'état in 1969, established an unconventional persona for a Head of Government in the international community."**

At the outset, Gaddafi's unique reputation was shaped by his idiosyncratic personal behaviour in matters of state and foreign relations, which may be classified into three categories. First among these was his domestic reform according to the 'Third Universal Theory' – a political theory developed by Gaddafi himself and 'Green Book,' which he presented as a fundamental alternative to capitalism and Marxism.<sup>76</sup> The theory proposed an odd amalgamation of tribal Islam and socialism, whereby Sharia law would form the legal system of a 'people's state' or "Jamahiriya" that redistributed wealth via nationalization.<sup>77</sup> While this was markedly different from the secular Ba'athist socialism of Gaddafi's initial con-

<sup>75</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.

<sup>76</sup> Mohammad Bazzi, "What Did Qaddafi's Green Book Really Say?" May 27, 2011. Accessed December 5, 2020. <https://www.nytimes.com/2011/05/29/books/review/what-did-qaddafis-green-book-really-say.html>.

<sup>77</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 64.

temporaries (e.g. Gamal Nasser and Hafez Al-Assad), what distinguished him further was his theory's mandating of the abolition of state institutions – which he considered "tyrannical" and "fraudulent" to democracy.<sup>78</sup> To that end, Gaddafi did not hold any position within the pro forma state but styled himself as the "Brotherly Leader and Guide of the Revolution" – ruling informally via corporatist "People's Congresses" acting under his aegis and which were effectively authoritarian in nature.<sup>79</sup> In addition to implementing these principles domestically, Gaddafi would often raise them in conversation with foreign leaders – seeking to influence them towards the theory's adoption.<sup>80</sup> To these leaders and international observers, Gaddafi's ideological framework was perennially viewed as a vague and quixotic attempt to present himself as a pseudo-'Philosopher King' – being unreflective of a modern, Westphalian nation-state with stable institutions. For U.N. and NATO members, following a Weberian legal-rational structure, this fact prevented them from conceiving of Gaddafi's regime beyond the mould of an authoritarian state with an unpleasant ruler – making him "unpredictable" in action.<sup>81</sup> When coupled with accusations of 'genocide' and hesitance concerning the fulfilment of obligations such unpredictability bolstered the case for Gaddafi's removal via intervention.

Secondly, Gaddafi's character and conduct at international summits – where, as Libya's de facto sole authority, he represented

<sup>78</sup> Bazzi, "What Did Qaddafi's Green Book Really Say?"  
<sup>79</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 65.

<sup>80</sup> John Hudson, "Inside the Strange World of Muammar Qaddafi," February 23, 2011. Accessed December 5, 2020. <https://www.theatlantic.com/international/archive/2011/02/inside-the-strange-world-of-muammar-qaddafi/342146/>.

<sup>81</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 179.

the entirety of his regime – enhanced his aforementioned reputation as reckless, obnoxious and even insane. On foreign trips, he would engage in conspicuous ethnic rituals and traditional practices that departed from the sober and Westernized conduct of other leaders. Rather than residing at hotels, Gaddafi would pitch Bedouin tents in outdoor public locations while attending international summits, which also were the venue of his bilateral meetings.<sup>82</sup> Erected at the Kremlin, Champs-Élysées, Villa Pamphili in Rome and across the New York Metropolitan Area (while attending the U.N. General Assembly) – Gaddafi's tents became a symbol of his eccentricity, viewed as distasteful by observers.<sup>83</sup> This practice was complemented by his attire at such summits, which was equally peculiar. Dressing in traditional Bedouin garments while others leaders wore Western business attire, Gaddafi would adorn himself with ornaments – e.g. rows of military ribbons, breast-stars and even pendants of the African continent – that appeared inflationary vis-à-vis his achievements, conforming to the caricature of a 'Third World Dictator' in the mould of Idi Amin or Ferdinand Marcos, i.e. oddly extravagant and aggrandizing.<sup>84</sup> Gaddafi undoubtedly served as the global archetype of this image throughout his leadership of Libya. Most markedly reflective of his character, however, were his speeches at such summits – most notably, his 2009 Address to the U.N. General Assembly during Libya's presidency of the body.<sup>85</sup> Speaking for one-and-a-half hours (exceeding his allotted fifteen minutes),

Gaddafi spoke in a rambling manner on a bizarre collection of topics – inter alia, referring to Barack Obama as his "son," calling for nations to enable an Iraqi Civil War, tearing a copy of the U.N. Charter, suggesting Israel's involvement in the assassination of John F. Kennedy and accusing the U.N. of "bringing about the Holocaust."<sup>86</sup> Presented before assembled world leaders, the speech cemented Gaddafi's reputation as an inexplicable figure –insensible, incoherent and incapable of governance. Two years later, the characterization served to buttress U.N. representatives' support for intervention – having personally witnessed Gaddafi and thus believing "new leadership" was necessary.<sup>87</sup>

**"As a consequence, upon the Libyan uprising's commencement, U.N. member-states were primed to expect further unorthodox behaviour by Gaddafi – more conducive to a crisis' conflagration of the crisis and further violence, rather than diffusion in a peaceful manner."**

Thirdly, in congruence with his diplomatic activity, Gaddafi's international reputation for bizarre behaviour was enhanced by his domestic conduct. As noted by U.S. authorities in diplomatic correspondence (released by Wikileaks before the uprising), Gaddafi was known to use state funds for personal expenditures aberrant from the conduct of most authoritarian rulers. These included establishing personal militias for each of

his sons (engaging in intra-state conflict for Gaddafi's favour) and hiring Western pop artists to perform at island parties.<sup>88</sup> Gaddafi himself was known to possess gold-plated personal weaponry and maintained an all-female personal security team and medical staff of Ukrainian nurses.<sup>89</sup> Taken together, these patterns of behaviour led international observers to question Gaddafi's cognitive health and whether he was mentally fit to govern, enhancing the characterization of Libya's leadership instability.<sup>90</sup> As a consequence, upon the Libyan uprising's commencement, U.N. member-states were primed to expect further unorthodox behaviour by Gaddafi – more conducive to a crisis' conflagration of the crisis and further violence, rather than diffusion in a peaceful manner. The United Nations and NATO were thus impelled toward intervention seeking the removal of Gaddafi's regime. In aiding the NTC assumption of dominion, they envisioned a de-personalized and predictable political order that could be trusted to prevent mass atrocity and support international interests.<sup>91</sup>

However, more potent than the repugnance of his idiosyncrasies to NATO member-states, Gaddafi's behaviour served to prevent the operation of structural factors that previously limited humanitarian intervention in Third World States by Western nations. The factor in question – the use of a Security Council veto by permanent members to protect states with coterminous in-

terests – was unexercised owing to Gaddafi's poor disposition with all such nations.

The voting logic of the United States, United Kingdom and France – in favour of the intervention – has been previously examined. In addition to them, however, NATO's intervention was tacitly supported by permanent members Russia and China, which abstained.<sup>92</sup> Traditionally, both states have voted against armed interventions in foreign conflicts by international coalitions comprised, largely, of Western states. Russia's use of the veto, in this regard, has been exercised to prevent the enlargement of NATO interests in Europe and its surrounding theatres – being pathologically suspicious of the alliance vis-à-vis its counter-Soviet origins.<sup>93</sup> China, historically affected by European imperialism (via forced trade liberalization), has exercised its veto to uphold the principle of state sovereignty against Western intervention – particularly, in resistance to the concept of 'R2P'.<sup>94</sup> To this end, it had joined Russia in preventing Security Council resolutions against Myanmar, Zimbabwe and Syria from being passed – the frustration of Western interests serving their strategic objectives. In this context, it appears irregular for both states to have abstained from voting on Resolution 1973. An examination of Gaddafi's relationship with these states, however, reveals tensions advanced by his behaviour – which precluded their support.

Paradoxically, while the regime's ties with Russia had remained stable throughout 2011, the instability fomented by Gadda-

<sup>88</sup> John Hudson, "Inside the Strange World of Muammar Qaddafi," February 23, 2011. Accessed December 5, 2020. <https://www.theatlantic.com/international/archive/2011/02/inside-the-strange-world-of-muammar-qaddafi/342146/>.

<sup>89</sup> Hudson, "Inside the Strange World of Muammar Qaddafi."

<sup>90</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.

<sup>91</sup> Chorin, "NATO's Libya Intervention and the Continued Case for a Responsibility to Rebuild."

<sup>92</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.

<sup>93</sup> Ronen, "Vestiges of the Cold War in Libya's Arab Spring."

<sup>94</sup> Christopher Holland, "Chinese Attitudes to International Law: China, the Security Council, Sovereignty, and Intervention," *New York University Journal of International Law and Politics* (2012): 3-43.

<sup>82</sup> Ibid.

<sup>83</sup> Phil Reeves and Caroline Hawley, "In a Bedouin tent, Gaddafi lectures world leaders," April 5, 2000. Accessed December 5, 2020. <https://www.independent.co.uk/news/world/africa/in-a-bedouin-tent-gaddafi-lectures-world-leaders-282139.html>.

<sup>84</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.

<sup>85</sup> Ibid.

<sup>86</sup> NY Post, "Khadafi's UN Ramble," September 23, 2009, <https://youtube.com/watch?v=VXKBpycMvd0>.

<sup>87</sup> Malito, "The Responsibility to Protect What in Libya," 293.



fi's personality led the latter to withdraw its support for the regime amid its impact on Russian strategic interests. The latter – comprising greater commercial relations, as well as the placement of a naval facility in the Mediterranean Sea – were not served by the regime's instability and civil unrest, mirroring concerns of the United States vis-à-vis petroleum industries.<sup>95</sup> To this end, its abstention stemmed from Gaddafi's behaviour, which had led to the uprising – believing that a successor regime would maintain Libya's strategic ties to Russia with greater stability.<sup>96</sup> In contrast, the regime's relationship with the People's Republic of China had been considerably strained, with Gaddafi having criticized the former as a 'traitor' to socialism that engaged in "colonial" activity in Africa.<sup>97</sup> To this end, while China (akin to Russia) maintained economic ties with Libya, its abstention – thus, facilitating NATO's intervention – served to impel Gaddafi's removal from power in response to his antagonism towards Chinese interests.

Thus, as a consequence of Gaddafi's demeanour, traditional inhibitions on Security Council-authorized humanitarian intervention – i.e., Sino-Russian opposition – were mitigated, thus enabling the resolution's passage and NATO's intervention in Libya. Both countries' relationship with the Gaddafi regime had been principally motivated by material interest – which, upon perceiv-



ing his regime's instability as threatening them, contributed to their abstention. In the words of Security Council observer Bruno Ugarte, Gaddafi's personality had succeeded in uniting uncommon allies against him – being a leader "who had lost all friends, who had demolished too many bridges, who had become too unpredictable."<sup>98</sup> Consid-

<sup>98</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 179.

ering such history, and the prospect of replacement with a more amenable regime, the general sentiment towards intervention was a simple, exasperated "Go ahead."

**Post-Haste: A Bitter Success**

To assess the 'success' of NATO's intervention in Libya, the relative balance of effects on each key stakeholder needs to be analyzed. Doing so enables an intricate assessment of its consequences, as well as the comprehensive revelation of impacts for a gestalt evaluation.

For the principal actor – the NATO alliance, as well as its constituent member-states – the intervention evinces slight success vis-à-vis the stated objectives, both realistic and principled. In implementing a No-Fly Zone over Libya and targeting land assets of the regime, Operation Unified Protector precluded the regime from utilizing its key military assets for coercion.<sup>99</sup> To this end, they aided insurrectionist militias in overrunning the Libyan Government – thus, preventing it from undertaking armed reprisals against civilian opponents and meeting their 'responsibility to protect'.<sup>100</sup> The operation was later labelled by NATO Secretary-General Anders Fogh Rasmussen as among "the most successful in NATO history," and contrasted favourably with NATO's inability to prevent the genocide in Srebrenica – thus remedying the damage to the organization's reputation.<sup>101</sup> Additionally, Gaddafi's removal from power – with Gaddafi himself being killed – fulfilled a key strategic objective of the United States: the removal of a longstanding rival to their for-

<sup>99</sup> Kuperman, "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign."

<sup>100</sup> Chorin, "NATO's Libya Intervention and the Continued Case for a Responsibility to Rebuild."

<sup>101</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*, 217, 223.

eign policy interests.<sup>102</sup>

However, for the United Nations, Libyan population and NATO's European member-states, the alliance's intervention to support Gaddafi regime's removal has been a "manifest failure."<sup>103</sup> Stemming from the emergence of a Civil War within the country, Libya has – post-intervention – descended into state failure, with a stalemated conflict between belligerent parties. The conflict has since prevented the consolidation of order in Libya to substantively fulfil either the strategic interests of parties or the objectives of the United Nations Security Council in Resolution 1973. While this conflict does not stem from the act of intervention itself, the swift withdrawal of NATO forces following Gaddafi's removal facilitated its emergence via two key consequences enabling the persistence of "underlying problems that produced the original intervening action."<sup>104</sup>

Foremost among the consequences of the intervention was the collapse of state institutions in Libya, which facilitated national fragmentation and the emergence of "warlordism" within the country, particularly along ethnic lines. As Paul Collier notes, ethnically-diverse authoritarian states often maintain "cohesion" through a "hierarchical, dictatorial decision structure, with most power vested in a charismatic leader."<sup>105</sup> In the absence of such state authority – especially amidst moments of national transition – actors with differential interests can, per Kimberley Marten, both assert and

<sup>102</sup> Cheikh, "Stories behind the western-led humanitarian intervention in Libya: A critical analysis."

<sup>103</sup> Chorin, "NATO's Libya Intervention and the Continued Case for a Responsibility to Rebuild," 373.

<sup>104</sup> Ibid, 378.

<sup>105</sup> Paul Collier et al, *Breaking the Conflict Trap: Civil War and Development Policy* (Washington D.C.: Oxford University Press, 2003), 69.



challenge “genuine sovereign control”.<sup>106</sup> Should these entities have the agency to use force, competition to resolve such disputes – irreconcilable by other means – will eventually turn violent, leading to conflict between the parties.<sup>107</sup>

**“Stemming from the emergence of a Civil War within the country, Libya has – post-intervention – descended into state failure, with a stalemated conflict between belligerent parties.”**

Such has been the case with Libya since 2011. Upon the facilitation of Libyan insurgents’ defeat of regime forces, neither the United Nations nor NATO took concrete steps to support the National Transitional Council’s consolidation of political order – specifically, providing it with resources (i.e. financial and military) to consolidate its authority. Hence, the NTC was unable to commence the delivery of public goods equitably to tribal ethnicities (i.e. the Toubou, Tuareg and Arab-Berber) across Libya’s three distinct provinces – Fezzan, Cyrenaica and Tripolitania, respectively – thus failing to develop performance legitimacy.<sup>108</sup> This was compounded by the exodus of regime personnel (e.g. civil servants and state officers) during the intervention, which led

to the absence of professional expertise to run such distributive institutions. Previously, while neither of these regions had developed a unified national identity, the coercive capability and redistributive mechanisms of the regime – inclusive of universal healthcare and education – had facilitated their fusion.<sup>109</sup>

Thus, following NATO’s disengagement, Libyans from across the aforementioned tribes came to view the NTC with deep apathy – amid its inability to provide such support, particularly after the economic damage sustained during the uprising. To that end, per Marten’s thesis, tribal factions emerged to establish parallel authority structures with the NTC – seeking to support their populations through both security (via militias) and economic activity, largely through criminal enterprise.<sup>110</sup> As pre-Gaddafi tribal distinctions emerged, efforts by the NTC and its successor, the Government of National Accord (GNA), to assert national authority over tribal authorities was rejected – resulting in a military conflict between them and inviting other potential actors to contest GNA legitimacy.<sup>111</sup> To this end, several factions – most significantly, the Khalifa Haftar-led Libyan National Army (LNA) – continue to oppose the internationally-recognized GNA’s authority, with the latter being forced to defend its control of the capital city (Tripoli), rather than construct institutions to negate the aforementioned alienation.<sup>112</sup> Simultaneously, Libya continues to experience

social and economic hardship concurrent with ongoing conflict. The country’s poverty rate (33%) – coupled with the absence of drinking water and the constant threat of violence – presents little opportunities for employment and economic development.<sup>113</sup> The previous engine of the national economy – petroleum extraction – has been severely disrupted as a consequence of such hostilities, thus being unable to provide financial resources for economic assistance.<sup>114</sup> To this end, NATO’s intervention has released the effects of Libya’s ‘resource curse’ – whereby, upon the deprivation of oil revenues (owing to regime absence), Libya’s population has been rendered economically destitute.

**“To this end, NATO’s intervention has released the effects of Libya’s ‘resource curse’ – whereby, upon the deprivation of oil revenues (owing to regime absence), Libya’s population has been rendered economically destitute.”**

Secondly, concerning petroleum, NATO’s intervention to facilitate the regime’s removal led to their loss of effective dominion over Libya’s oil reserves – serving to facilitate conflict between the parties for their control. Per Michael Ross’ hypothesis, armed groups have sought control over Libyan oil installations to “raise money” to fund operations, as well as preclude ri-

vals from obtaining gains.<sup>115</sup> Such has been the principal objective of the LNA – whose military strategy against the GNA has involved attacking oil facilities to destabilize the latter’s power grid, thereby seeking capitulation.<sup>116</sup> Simultaneously, the ability to capture oil installations has further satiated private financial interests of “warlord” factions, who have been utilizing revenues from their controlled facilities for kleptocratic accumulation and patron-clientelist disbursement to fighters, rather than to economically support populations under their control.<sup>117</sup> In the context of economic hardship, Libyans have thus viewed membership of military factions as a mechanism to access conflict rents for basic sustenance – creating a vicious cycle for the conflict’s prolongation.<sup>118</sup> Separately, NATO member-states seeking accessibility to Libyan oil reserves have been equally hindered by the conflict – being unable to achieve a key objective that had impelled their intervention.<sup>119</sup>

For Europe, the ensuing conflict in Libya as a result of NATO’s intervention has yielded detriments – ironically, vis-à-vis both their initial motivations for engagement. The ongoing Civil War has ensured the migratory crisis that the former sought to prevent – compelling many Libyans to cross the Mediterranean Sea and seek refuge.<sup>120</sup> The ensuing surge has not only constituted Lib-

<sup>106</sup> Kimberley Marten, *Warlords: Strong-arm Brokers in Weak States* (Ithaca: Cornell University Press, 2015), 25.

<sup>107</sup> Ibid.

<sup>108</sup> Katie Kuschminder, “Once a Destination for Migrants, Post-Gaddafi Libya Has Gone from Transit Route to Containment,” August 6, 2020. Accessed December 5, 2020. <https://www.migrationpolicy.org/article/once-destination-migrants-post-gaddafi-libya-has-gone-transit-route-containment/>.

<sup>109</sup> Puri, “Libya: Hillary Clinton, Susan Rice and the Ghost of Rwanda;” Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.

<sup>110</sup> Kuschminder, “Once a Destination for Migrants, Post-Gaddafi Libya Has Gone from Transit Route to Containment.”

<sup>111</sup> Wester, *Intervention in Libya: The Responsibility to Protect in North Africa*.

<sup>112</sup> Fawthrop, “Oil becomes the key battleground in Libya’s civil war.”

<sup>113</sup> Jennifer Faulkner, “Causes of Poverty in Libya,” August 15, 2017. Accessed December 5, 2020. <https://borgen-project.org/causes-of-poverty-in-libya/>.

<sup>114</sup> Kuperman, “A Model Humanitarian Intervention? Reassessing NATO’s Libya Campaign.”

<sup>115</sup> Michael L. Ross, “How Do Natural Resources Influence Civil War? Evidence from Thirteen Cases,” *International Organization* 58, no. 1 (2004): 40.

<sup>116</sup> Fawthrop, “Oil becomes the key battleground in Libya’s civil war.”

<sup>117</sup> Marten, *Warlords: Strong-arm Brokers in Weak States*.

<sup>118</sup> Emily Estelle, *Vicious Cycles: How Disruptive States and Extremist Movements Fill Power Vacuums and Fuel Each Other* (Washington D.C.: American Enterprise Institute, 2020).

<sup>119</sup> Malito, “The Responsibility to Protect What in Libya.”

<sup>120</sup> Kuschminder, “Once a Destination for Migrants, Post-Gaddafi Libya Has Gone from Transit Route to Containment.”



yan nationals but also migrants from third countries transiting the country – owing to the absence of border control – for passage to Europe via sea.<sup>121</sup> To this end, the European Union has been forced to fund the GNA-controlled Libyan Coast Guard, which frequently turns back migrant vessels before they enter European waters – incurring greater expenditure than its pre-intervention migratory arrangements with the regime.<sup>122</sup>

Additionally, while Islamic extremism has not been externalized to Europe, it has certainly taken root in Libya – where competing militias have often adopted Jihadism to recruit more followers, as well as access support via the former ideology’s international network of adherents.<sup>123</sup> While these groups had previously been “suppressed under Gaddafi,” the absence of state structure and coercive capability (due to the intervention) facilitated their re-emergence.<sup>124</sup> To that end, Jihadism has proliferated in Libya – with groups recruiting foreign fighters and accessing the former regime’s armouries to gain weaponry to wage territorial conflict.<sup>125</sup> Although no post-regime terrorist attacks in Europe have been explicitly linked to Libyan Jihadist groups (barring the Libyan presence of the Islamic State) the potential for such an attack remains latent given their proximity and access to Europe via the Mediterranean sea.<sup>126</sup> NATO members experienced such a possibility with

the Al-Qaeda aligned Ansar al-Sharia’s attack on the U.S. Diplomatic Compound in Benghazi in 2012 (leading to the death of the United States Ambassador to Libya) – confirming the potential for new Libyan Jihadism to target Western interests.<sup>127</sup> In a gestalt sense, therefore, the Libyan Civil War’s emergence post-intervention demonstrates a failure of the latter’s principal objectives, as envisioned by the United Nations in Resolution 1973. Instead of ‘protecting civilians’ under the aegis of the R2P, the Libyan population has been subject to prolonged violence, instability and hardship.<sup>128</sup> Within this framework, both NATO and the United Nations neglected the ‘responsibility to rebuild’ as an entailed consequence of intervention under R2P.<sup>129</sup> The result – escalating violence and leaving Libyans in a more precarious state than under the regime – has led to widespread criticism of both organizations, as well as newfound opposition from states to the concept of humanitarian intervention.<sup>130</sup>

**“Instead of ‘protecting civilians’ under the aegis of the R2P, the Libyan population has been subject to prolonged violence, instability and hardship.”**

**Conclusion**

From the aforementioned evaluation, both the causes and effects of NATO’s 2011 in-

<sup>121</sup> Puri, “Libya: Hillary Clinton, Susan Rice and the Ghost of Rwanda.”  
<sup>122</sup> Howden, Fotiadis and Campbell, “Revealed: the great European refugee scandal.”  
<sup>123</sup> Claudiu Bolcu, “NATO’s Intervention in Libya: The Pathway Towards a Legitimate Humanitarian Intervention,” *Studia Ubb Europaea* 58, no. 1 (2013): 107-124.  
<sup>124</sup> Kuperman, “A Model Humanitarian Intervention? Reassessing NATO’s Libya Campaign,” 127.  
<sup>125</sup> Zelin, *The Others: Foreign Fighters in Libya*.  
<sup>126</sup> Puri, “Libya: Hillary Clinton, Susan Rice and the Ghost of Rwanda.”

<sup>127</sup> Kuperman, “A Model Humanitarian Intervention? Reassessing NATO’s Libya Campaign.”  
<sup>128</sup> Puri, “Libya: Hillary Clinton, Susan Rice and the Ghost of Rwanda.”  
<sup>129</sup> Chorin, “NATO’s Libya Intervention and the Continued Case for a Responsibility to Rebuild.”  
<sup>130</sup> Kuperman, “A Model Humanitarian Intervention? Reassessing NATO’s Libya Campaign.”



tervention into Libya are revealed as multiplex – with several variables impacting each.

Concerning the former, the United Nations Security Council was impelled to act based on the Responsibility to Protect doctrine – seeking, based on putative assessments of the Libyan uprising, to prevent potential crimes against humanity by the Gaddafi-led regime. Moreover, the legacy of previous genocidal acts (Rwanda, Srebrenica, Cambodia and even, as evoked by Libyan defectors, in Germany) hung over the organization and its member-states, who believed that swift action in Libya (despite conflicting evidence) was a necessary step towards absolution. Principled concerns were supplemented by pragmatic interests of member-states – who viewed the removal of Gaddafi as a chance to fulfil longstanding strategic policy goals and facilitate the realization of others. Although opposition toward Security Council action was latent – i.e., from non-NATO permanent members resistant to intervention – the longstanding effect of Gaddafi’s disposition towards them uniquely mitigated traditional structural inhibitions on action, enhancing the resolve of member-states

to act.  
The consequences of NATO’s intervention, however, have been largely detrimental for all stakeholders – including members of the alliance. Apart from the removal of the Gaddafi-led regime, Libya’s devolution into Civil War has adversely affected both U.N. and NATO interests. Neither have civilians been protected (amidst ongoing hostilities) nor have migration or Jihadist radicalism been precluded. In an ironic departure from the regime years, the Libyan population suffers from more violence, economic precarity and frequent shifts of political order – as warring factions gain and lose territory in the struggle for national authority. Nearly a decade after the intervention, Libya remains a failed state in the archetype of modern conflicts: efforts to broker peace continue but have yet to yield progress towards a lasting resolution.

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A close-up photograph of a textured, light brown rock surface. The rock has a rough, crystalline appearance with various shades of tan and beige. A dark, irregular hole or crevice is visible in the upper left quadrant, leading into a shadowed interior. The lighting is warm and directional, highlighting the textures and creating deep shadows within the hole.

Attaché