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**Libya Before and After Gaddafi:
An International Law Analysis.**

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“RINGRAZIAMENTI”

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ABSTRACT

Lo scopo di questa tesi di laurea è quello di analizzare il conflitto libico dal punto di vista giuridico, cercando di individuarne i punti più importanti. Innanzitutto, è fondamentale comprendere gli anni che hanno preceduto la crisi, in particolare i quarantadue di dittatura del Colonnello Muammar Gheddafi e la sua ideologia. Infatti, la rivoluzione libica può essere considerata il risultato del regime che il paese ha sopportato così a lungo. Muammar Gheddafi, proveniente da una tribù berbera del deserto, è riuscito a farsi strada nell'esercito libico fino a formare una squadra di "seguaci", con i quali ha orchestrato e messo in atto il colpo di stato che ha detronizzato re Idris I nel 1969. Da lì in poi, si può affermare che gli anni di Gheddafi siano stati caratterizzati da tratti di incoerenza, sia in politica interna che estera, che è quella su cui maggiormente si concentra la tesi. Per quello che riguarda la prima, da sottolineare è la vicinanza ideologica di Gheddafi con Nasser. Il Libro Verde racchiude, oltre alle idee riconducibili al leader egiziano, anche la grande teoria di Gheddafi, denominata "The Third Way", ovvero una terza strada, lontana sia da socialismo che da capitalismo, e cioè i due grandi poli della guerra fredda. Per quello che riguarda invece la politica estera, tra gli eventi storici che più hanno influito sulla stabilità politica ed economica della Libia, è opportuno ricordare il bombardamento americano su Tripoli e Bengasi del 1986 e l'attacco terroristico di Lockerbie avvenuto nel 1988. Il rapporto tra la Libia e gli Stati Uniti d'America non è mai stato facile: già dagli anni settanta, il governo libico iniziò a intrattenere rapporti con quello sovietico, inimicandosi sempre più la Casa Bianca. La firma del trattato di Camp David nel 1979, che vedeva Egitto e Israele impegnarsi reciprocamente a costruire un rapporto basato sulla pace e le cui trattative erano state condotte dagli Stati Uniti, portò Gheddafi a dire apertamente a Carter, il presidente statunitense dell'epoca, che avrebbe fermato l'emigrazione ebrea verso Israele. Il 1986 rappresenta l'anno in cui la relazione USA-Libia raggiunge il picco di instabilità: il 5 aprile di quell'anno, un gruppo di terroristi bombardò una discoteca di Berlino Ovest conosciuta per essere frequentata soprattutto da ufficiali americani: uno di essi e una donna turca rimasero uccisi, mentre circa duecento persone ferite, tra cui circa cinquanta statunitensi. Inutile dire che questo fu considerato un attacco diretto contro gli Stati Uniti. L'intelligence americana risalì ad alcune registrazioni in cui

sembra che Gheddafi desse l'ordine di attaccare la discoteca, per cui la colpa ricadde sul dittatore libico. Reagan intimò l'Egitto, divenuto un alleato americano, di attaccare la Libia, ma il Paese rifiutò. Così, il presidente americano prese in mano la situazione e diede inizio a un'operazione militare, conosciuta come "El Dorado Canyon", in cui lanciò un attacco aereo su Tripoli e Bengazi. Si dice che la figlia adottiva più piccola di Gheddafi rimase uccisa. In risposta all'attacco, Gheddafi lanciò dei missili contro l'isola italiana di Lampedusa, dove c'erano delle basi americane da cui sembrano essere partite le trasmissioni radio per l'attacco contro la Libia. Gli Stati Uniti dichiararono che l'attacco sferrato era più che legittimo, in virtù dell'articolo 51 della Carta delle Nazioni Unite, che permette chiaramente ai paesi di lanciare attacchi militari come atti di legittima difesa. Ad ogni modo, l'Assemblea Generale delle Nazioni Unite ha apertamente condannato il raid aereo sulla Libia con la risoluzione 41/38 del 20 novembre 1986. L'attacco terroristico sul Pan Am Flight 103 in partenza da Heathrow e diretto a New York del 1988 ha segnato in modo inequivocabile il paese libico: 259 persone morirono nell'esplosione del velivolo su Lockerbie, in Scozia: anche questo attacco venne percepito come diretto agli Stati Uniti, dato che 179 passeggeri erano americani. Nel 1991 la Libia venne formalmente accusata dagli Stati Uniti e dalla Gran Bretagna di essere responsabile per l'attacco: in particolare, due libici vennero ritenuti i diretti fautori dell'attentato. Gheddafi si rifiutò di estradare i due sospettati, sostenendo il non coinvolgimento del paese nella vicenda. Questo portò a una serie di risoluzioni del Consiglio di Sicurezza delle Nazioni Unite contro la Libia: in particolare, queste provocarono l'isolamento libico nel commercio internazionale, nonostante nulla fu previsto per il settore petrolifero, dato che l'Europa dipendeva da quel mercato. Finalmente, nel 1993, Gheddafi decise di consegnare i due sospettati a patto che fossero giudicati da un tribunale di uno stato della Lega Araba o di qualsiasi paese neutrale. Nel 2004 le sanzioni a carico della Libia vennero ritirate grazie a un'apertura della Libia stessa verso politiche più liberali e più democratiche: infatti, per esempio, Gheddafi decise di interrompere il suo programma nucleare e di implementare i diritti umani. Nonostante gli apparenti sforzi svolti dal dittatore per aprirsi a queste politiche, il 15 febbraio 2011 scoppiò la rivoluzione libica che portò alla morte di Gheddafi stesso e alla fine del regime.

Dal punto di vista giuridico, la rivoluzione libica ebbe ripercussioni in vari ambiti: per primo, sul Trattato di Amicizia, Partenariato e Cooperazione tra Italia e Libia. Esso fu concluso nel 2008 e firmato da Gheddafi stesso e dall'allora presidente del Consiglio Silvio Berlusconi. Ai fini di questa tesi, è importante ricordare che il trattato venne sospeso durante la crisi. Lo scopo di questa dissertazione è quello di individuare le cause di tale sospensione. Innanzitutto, è stato opportuno spiegare alcuni concetti base del diritto dei trattati a partire dalla Convenzione di Vienna sul Diritto dei Trattati del 1969, tra cui il principio *pacta sunt servanda* e quello denominato *rebus sic stantibus*. In particolare, l'ultimo si riferisce al mutamento delle circostanze, contenuto nell'articolo 62 della convenzione, che può portare all'estinzione del trattato. Poi, è stato anche importante esplorare la nuova prassi in merito agli effetti dei conflitti armati sui trattati internazionali. Nello specifico, i problemi si sono manifestati in relazione agli articoli 2, 3 e 4 del trattato di Bengasi, che sanciscono il rispetto dell'uguaglianza sovrana reciproca; la non ingerenza nei propri affari interni; e il divieto dell'uso della forza l'uno contro l'altro. In particolare, il parlamento italiano si è pronunciato in merito all'articolo 6, che prevede il rispetto dei diritti umani, asserendo che il governo libico, reprimendo sanguinosamente i ribelli, violava il suddetto articolo del trattato di Bengasi. Quindi, l'Italia si è appellata all'articolo 60 della Convenzione di Vienna che sancisce che un trattato si estingue se una delle parti viola una sua fondamentale disposizione. Il ragionamento sembra essere condivisibile solo in parte, in quanto il rispetto dei diritti umani prescinde dal trattato di Bengasi stesso. Inoltre, il trattato preso in considerazione non è sui diritti umani: come dice il nome, è un trattato di amicizia, partenariato e cooperazione. Il futuro del trattato risulta essere ancora incerto, in quanto anche la Tripoli Declaration, firmata a Bengasi da Mario Monti e da El-Keib, non si esprime in merito. Anzi, essa stessa può essere considerata più una dichiarazione d'intenti che un trattato internazionale.

Un altro problema posto dal nascere della rivoluzione libica è lo status dei ribelli in ambito internazionale: dopo un'attenta analisi della giurisprudenza internazionale in generale, si può arrivare alla conclusione che essi si possano considerare insorti e non movimento di liberazione nazionale in quanto non combattevano per liberarsi da una dominazione coloniale; da un regime razzista; o da un'occupazione straniera. Lo scopo degli insorti libici è stato quello di cambiare il proprio regime per formarne uno

democratico. Inoltre, la loro legittimizzazione come insorti è data anche dal rispetto di alcuni requisiti che il diritto internazionale richiede per essere riconosciuti come tali: avevano un controllo effettivo su una parte del territorio libico ed erano rappresentati da un organismo organizzativo, il Consiglio Nazionale di Transizione. Detto questo, prendendo in considerazione la definizione di diritto all'autodeterminazione dei popoli, si potrebbe dire che la popolazione libica abbia partecipato alla rivoluzione anche in nome di questo principio, nonostante il popolo libico non sia identificabile in un'idea di nazione forte e che i ribelli siano insorti e non movimento di liberazione nazionale.

La rivoluzione libica si può dire rappresenti anche il primo caso ben riuscito di applicazione della responsabilità di proteggere. Essa si riferisce al principio per cui dalla sovranità di ogni stato deriva anche la responsabilità di proteggere i propri cittadini da gravi violazioni dei diritti umani, come crimini di guerra, pulizia etnica, violenza, genocidio, e così via. In caso lo stato non sia in grado, o non voglia, applicare questa responsabilità, è compito della comunità internazionale proteggere i cittadini di quello specifico stato. L'Assemblea Generale delle Nazioni Unite ha ufficialmente promosso il principio della responsabilità di proteggere con la risoluzione 60/1 del 2005. In particolare, essa è stata applicata in Libia con la risoluzione 1973 del 17 marzo 2011, nella quale il Consiglio di Sicurezza ha autorizzato l'uso della forza in Libia da parte di una coalizione NATO con l'espressione "all necessary measures". Uno dei punti più controversi della missione NATO in Libia, conclusasi alla fine di ottobre 2011, in seguito alla morte del dittatore, è stato quello per cui essa possa essere andata oltre il mero scopo di proteggere i cittadini libici. Nello specifico, la tesi supportata in questa dissertazione è che effettivamente la missione sia servita anche a cambiare il regime di Gheddafi. E' stato però ben sottolineato il fatto che la responsabilità di proteggere non possa essere attuata per un cambiamento di regime poichè violerebbe il principio della Carta delle Nazioni Unite della non interferenza negli affari interni di uno stato membro.

In conclusione, questa tesi di laurea ha lo scopo di far luce su alcuni aspetti problematici della crisi libica, soprattutto dal punto di vista della giurisprudenza internazionale, senza però occuparsi di ciò che è successo dopo la rivoluzione stessa, in quanto la situazione è apparsa molto instabile.

INTRODUCTION

*There is a conspiracy to control Libyan oil
and to control Libyan land, to colonise Libya once again.*

This is impossible, impossible.

*We will fight
until the last man and last woman to defend Libya
from East to West, North to South.*

Audio message broadcast on Al-Ouroba TV, a Syria-based satellite station,
On August 25th, when opposition forces began assaults on Tripoli (¹).

*Muammar al Gaddafi is not occupying a position
to resign from the same way other presidents did.*

Gaddafi is not a President.

He is a leader of a revolution.

History! Resistance! Revolution!

February 21st, 2011.

Statement from a twenty-two seconds

Speech, his first TV appearances

Since the protest movement broke out

In Green Square (²).

The forty-two years of Colonel Muammar Gaddafi's dictatorship left a clear mark on Libya. Libya, which has been experiencing freedom for the first time in history, since the 1951 declaration of independence led to a monarchy dominated by the West power. Gaddafi's control over the country had been strong and firm, despite the fact that Libyan people saw their human rights being denied day by day. And yet, this is not entirely true, since Gaddafi's dictatorship had been characterized also by many contradictions, like the consideration of women who could join the Libyan army but, at

⁽¹⁾ <http://www.aljazeera.com/news/africa/2011/09/20119493450743624.html>, access 8.01.2013.

⁽²⁾ <http://www.globalpost.com/dispatch/news/politics/world-leaders/111020/gaddafi-quotes>, access 8.01.2013.

the same time, were considered inferior than men ⁽³⁾. The Libyan revolution broke out due to the oppressions perpetrated by Gaddafi for forty-two years ⁽⁴⁾. Despite having a weak national identity ⁽⁵⁾, Libyan people succeeded in overthrowing the dictator, killing him on October 20th, 2011 in Sirte ⁽⁶⁾. Despite the fact that the Libyan revolution can be positioned in the wake of the so-called Arab Spring, it is possible to assert that it is peculiar in respect of the Tunisian and Egyptian ones. First of all, due to the already mentioned weak national identity of Libyan people: in fact, on the one hand, Libyan population is characterized by the phenomenon of tribalism. On the other hand, Libya has never been completely free, independent. Although, as a State, Libya reached independence in 1951, it was first a monarchy, then a dictatorship. It is possible to say that Libyan people have never exercised the power of democracy, until 2011. When they tried, the government suppressed the attempts bloodily. Second, Libya is an oil-producer country: in this sense, Libya can be considered a rich economy, and therefore economically attractive, despite not being diversified. Third, Gaddafi had administrated the country on an anti colonialist and anti imperialist policy, building Libyan identity on the difference between “they” and the “others”, that is to say Western countries. Fourth, Libyan revolution resulted in a civil war where the international community had to intervene.

From a legal point of view, the Libyan crisis could represent the very first implementation of the R2P, or responsibility to protect, a principle which is based on the assumption that States have to protect their own people from gross violations of human rights. Whenever the State is not capable or willing to do it, the international community is entitled to the responsibility of protecting people instead of the sovereign State⁽⁷⁾. This is exactly what happened in Libya: on February 15th, 2011, protests began in Benghazi and soon spread all over the country. The government bloodily suppressed

⁽³⁾ DEL BOCA A., *Gheddafi: una Sfida dal Deserto*, Bari, Laterza Ed., 2010.

⁽⁴⁾ CARUSO A., *I Paradossi del Terremoto Arabo*, in *La Guerra di Libia* (I Quaderni Speciali di Limes), Roma, Gruppo Ed. L'Espresso SpA, anno 3(2), 2011, p. 196.

⁽⁵⁾ Ivi, p. 197.

⁽⁶⁾ http://www.corriere.it/esteri/11_ottobre_20/libia-cade-sirte_4bef6e14-fb05-11e0-b6b2-0c72eeeb0c77.shtml, access 9.01.2013.

⁽⁷⁾ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Report), International Development Research Centre (published by), Canada, 2001.

the manifestations, committing severe violations of human rights⁽⁸⁾, perpetrating these violations until the end of the revolution. The international community, after calling for Libyan responsibility to protect its people, approved an arms embargo on Libya, along with a travel ban and an asset freeze⁽⁹⁾. Then, on March 17th, 2011, the Security Council adopted Res. 1973, approving the establishment of a no-fly zone and the implementation of “all necessary measures” in order to halt the violations of human rights in Libya⁽¹⁰⁾.

The attempt of this dissertation is that of shedding light on the Libya crisis through an international law analysis, trying to explore its main consequences. The first part is dedicated to the international relations’ history of the country, with special focuses on the 1969 Gaddafi’s Green Revolution in chapter 1; the Nineties period, especially the 1986 American bombing on the cities of Tripoli and Benghazi, the 1988 Lockerbie attack and the consequent international sanctions in chapter 2; and the opening toward the West during the 2000s and the 2011 Libyan revolution in chapter 3. The second part focuses on the law of treaties: chapter 4 centers on the procedures of conclusion of treaties, with particular attention to the causes of suspensions of international agreements, as provided by the 1969 Vienna Convention on the Law of Treaties and the 2011 Draft Articles on the Effects of Armed Conflicts on Treaties. In chapter 5 the provisions explained in chapter 4 are applied to the 2008 Benghazi treaty between Italy and Libya: the agreement, concluded in 2008 and signed by Colonel Gaddafi and Silvio Berlusconi, was suspended during the Libyan conflict. The chapter tries to identify the causes of suspension of the agreement. In addition, the 2012 Tripoli Declaration, signed by Mario Monti and El-Keib, is presented. In other words, the second part of this dissertation focuses on the causes of suspension of international treaties and tries to analyze the suspension of the 2008 Treaty on Friendship, partnership and cooperation between Italy and Libya during the revolution. The third part of this dissertation concentrates on the conflict itself: first of all, chapter 6 identifies the position of Libyan rebels under international law: a comparison between Libyan

⁽⁸⁾ Human Rights Watch (HRW), *Libya: Arrests, Assaults in Advance of Planned Protests*, February 17, 2011, <http://www.hrw.org/news/2011/02/16/libya-arrests-assaults-advance-planned-protests>, access 9.01.2013.

⁽⁹⁾ S/RES/1970, February 26, 2011, United Nations Security Council, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1970\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1970(2011)), access 9.01.2013.

⁽¹⁰⁾ S/RES/1973, March 17, 2011, United Nations Security Council, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973(2011)), access 9.01.2013.

rebels and Palestinians is presented in order to better understand the considerations made. Chapter 7 tries to shed light on the Libyan conflict, from a legal point of view: in this sense, the principle of responsibility to protect is introduced and applied to the conflict, with a special focus on resolutions 1970 and 1973 adopted by the Security Council and the international intervention in Libya.

In conclusion, the intent of this dissertation is that of providing a general overview on the Libyan crisis, exploring its main aspects: the reasons at the base of its breaking out (first part); the suspension of the 2008 Benghazi treaty, signed between Libya and one of the countries which participated in the NATO mission there, Italy (second part); and the international military intervention, with focuses on Libyan rebels' international status and the application of the responsibility to protect (third part). The dissertation does not cover the period following the revolution: in fact, the topic should be analyzed deeply. Therefore, in order to render more understandable the topic faced here, the period of the Libyan elections will not be discussed.

**FIRST PART. LIBYA BETWEEN INTERNATIONAL RELATIONS AND
INTERNATIONAL SANCTIONS.**

CHAPTER ONE. THE BIRTH OF THE INDEPENDENT LIBYA, 1969 GADDAFI'S REVOLUTION AND HIS POLITICAL IDEOLOGY.

CONTENTS: 1.1. An Overlook on the Libyan Situation prior to Gaddafi's Dictatorship. – 1.2. Gaddafi's Education and the 1969 Great Revolution. – 1.3. Gaddafi's Ideology, his Affinities with Nasser and the Green Book. – 1.4. The Constitutional, Institutional and Administrative Changes of the Seventies.

1.1. An Overlook on the Libyan Situation prior to Gaddafi's Dictatorship.

Libya, as a country, is on the African coast and its territory is mostly occupied by the Sahara desert. It borders Chad and Niger to the South, Egypt and Sudan to the East and South-East and Tunisia and Algeria to the West ⁽¹⁾. Since the antiquity, Libya had always been occupied by foreign powers: in fact, for example, it was Greeks, Phoenicians, and Romans who built some of the most important cities there, such as Tripoli, Cyrene and Sabratha. In 1551 the Ottomans took the power and the situation remained stable until 1912, when Italy established its colony there. In 1943 Libya passed under the British control but finally obtained independence in 1951 thanks to the United Nations ⁽²⁾. In order to understand the political, economic and social choices that leader Gaddafi had taken since 1969, year of his great revolution, it is useful to make a short survey about the years of king Idris's monarchy. As a matter of fact, those are the years when Gaddafi grew up and developed his ideology and plan to take control of the country.

In 1951 Libya became independent. It was difficult for the United Nations finding a compromise in order to set up the situation of the country. Even if in 1943 British took control of the Libyan territory, it was losing power day by day. By 1947 it had already lost the Indian colony and did not have enough power to maintain another one in Africa. At the same time, the position of Libya seemed to be quite interesting from a political point of view because of its position: as a matter of fact, it overlooks directly the Mediterranean. Controlling Libyan territory means having an open window on the entire South Mediterranean region. Eventually, the United Nations found a compromise: Libya would have become a federal, constitutional, hereditary monarchy with a bicameral parliament. This would have been composed by the House of Representatives, to be elected by Libyan people, and the Senate, partially elected and

⁽¹⁾ <http://www.maps-store.it/africa/immagine-mappa-africa-264.html>, access 15.02.2012.

⁽²⁾ OAKES J., *The History of Gaddafi's Pariah State*, Gloucestershire, The History Press, 2011, pp. 10-11.

partially appointed by the king. The Parliament would have found and appointed the ministers responsible for foreign affairs and defense. Tripoli and Benghazi became the two capital cities, while the Libyan territory was divided in three provinces, Tripolitania, Cyrenaica and Fezzan. Each of them had to be governed by a *wali*, a governor, chosen and appointed by the king himself. The *wali* had to answer directly to an elective legislative council in the capital cities of the regions, Tripoli, Benghazi and Sebha ⁽³⁾.

When Libya became independent people were facing many social and economic problems, such as illiteracy and lack of welfare. The country needed an economic boost, but people did not have the appropriate skills to accomplish it. Furthermore, they were experiencing a lack of basic amenities, such as electricity, tap water, books, and communication tools. For example, the three-province system could not work properly because there were no telephone services in the major cities of Fezzan. In order to make the new political system work, King Idris I wanted to maintain a foreign presence in the country: this way, Libya ended to depend on foreign help (for example USA re-opened its military bases used in World War II). Taxes were not sufficient to pay the expenses of the country; additionally, the monetary system was quite chaotic due to the presence of at least three different currencies, one for each region. Eventually, a common Libyan currency had been introduced ⁽⁴⁾.

Everything changed in 1955, when the oil was discovered below Libyan Desert by a survey commissioned by the United Nations. After that, loads of oil companies were given the permission to explore Libyan soil further ⁽⁵⁾. There were some advantages exploring Libyan soil: the pipelines to transport the oil did not have to cross any countries or be shipped through the Suez Canal or around the Cape of Good Hope. In 1955, some foreign experts chosen by the United Nations drew up the Libyan Petroleum Act: the aim was that of rendering Libya independent from the power of the Seven Sisters. They are the leading oil-market companies; at that time they were the Royal Dutch Shell, Standard Oil of New Jersey, Anglo-Persian Oil, Standard Oil of California, Standard Oil of New York, Texas Company and Gulf Oil. Instead of fighting against each other, the Seven Sisters sustain themselves mutually, sharing pipelines,

⁽³⁾ Ivi, pp. 89/92.

⁽⁴⁾ Ibidem.

⁽⁵⁾ Ivi, p. 99.

tankers, refineries and market facilities. All together, they form a cartel ⁽⁶⁾. On the one hand, Libya needed the Seven Sisters' support in order to develop the oil sector. On the other hand, it did not want to see its oil sector controlled by them. The oil-bearing regions were divided into eighty-four concessions. The companies could make an offer separately for each concession, restricting the number allowed to do it at one company ⁽⁷⁾.

In 1956 the Suez Canal was nationalized by Nasser: from this moment, Great Britain and USA became “enemies” of Egypt. Libya suffered from the Britain presence too much allowing them to maintain a military presence in the country. For this reason, many anti-British riots took place in the country, mainly in Tripoli and Benghazi. The crisis passed, but left a wound that Colonel Qaddafi would have tried to heal ⁽⁸⁾. The federal system could not work any longer: since the majority of the oil was discovered in Cyrenaica, there was a huge economic unbalance between the Libyan regions, especially with Fezzan, which was the poorer one. In 1963 the king abolished the federal system, replacing it with a unique and unified apparatus. The national government's power grew while provincial assemblies, bureaucracies and judicial systems were dismissed. The United Kingdom of Libya became the Kingdom of Libya. In the same year, King Idris created the Libyan National Oil Company too ⁽⁹⁾.

When Gaddafi took the power, he tried to arrange a situation which was very unstable: on the one hand, the oil discover brought wellness and money, but, on the other hand, problems such as illiteracy, unbalance between riches and paupers and among the Libyan regions remained.

⁽⁶⁾ A cartel is an *ensemble* of different organizations that decide to reunite themselves in order to regulate production, marketing, pricing of a good or service which they share. An example of cartel is the OPEC (Organization of Petroleum Exporting Countries). <http://www.thefreedictionary.com/cartel>, access 15.02.2012.

⁽⁷⁾ OAKES J., *The History of Gaddafi's Pariah State*, Gloucestershire, The History Press, 2011, pp. 100/101.

⁽⁸⁾ Ivi, p. 102.

The Suez Canal is one of the most important waterway in the world which connects the Mediterranean Sea and the Red one. It remained under English and Egyptian control until 1956, when Nasser nationalized it. Because it was also under foreign jurisdiction, all the vessels could pass through it, without discrimination. In 1936 a treaty was signed between Egypt and Great Britain: it stated that Britain was allowed to maintain a defensive army along the canal, so that it could preserve its control there. Eventually, Nasser freed this important passage from the foreign presence, also by virtue of his belief in a country ruled by representatives of the people and not by strangers. <http://geography.about.com/od/specificplacesofinterest/a/suezcanal.htm>, access 15.02.2012.

⁽⁹⁾ OAKES J., *The History of Gaddafi's Pariah State*, Gloucestershire, The History Press, 2011, p. 103.

1.2. Gaddafi's Education and the 1969 Great Revolution.

Gaddafi took the power on 1st September 1969, when he was twenty-seven years old. This places his year of birth in 1942, in the middle of World War II. He claimed that he could “remember the vicious World War II battles between the Germans and Italians and the allied British and American troops across the desert of North Africa (¹⁰)”. These campaigns took place in 1943, so toddler Qaddafi would have been too young to actually remember them. True or not, the stress on a memory that he actually could not have underlines how much was important to him appearing omnipotent in front of people. Lying about his true date of birth in order to assert to remember war episodes which actually happened but that he could not physically have witnessed because of his age, probably meant showing a sense of supreme power to impress Libyan population and made Libyans believe that he was truly invincible. Mu'ammār Gaddafi was born in a tent of a Berber nomadic tribe whose members used to live in improvised goat skins tents. Berbers are the descendants of the native inhabitants of the Mediterranean coasts before the Arab invasion in the seventh century. Gaddafi's tribe, named Qaddadfa, found its origins in those who inhabited Libya throughout the centuries, including Jews and Turks (¹¹). Life in tent is quite different from life in cities: for example, it is constantly marked by the division of men and women; the tent itself is physically divided to separate females and males. The father is the head of the tent: he decides where and when the tent is going to move and where and whom his children will marry. We can assume that also in Gaddafi's tribe life was spent like that (¹²). Gaddafi family's religion was fundamentalist Islamic, which means they adhered strictly to the Prophet Mohammed's teachings. Both Gaddafi's parents were illiterate and passed their son the history of their family and tribe's past orally. This is a very important passage in Gaddafi's life, since these stories influenced deeply his ideology. He learned that their nation had always been controlled by foreigners. When Gaddafi was born, Libya was an Italian colony: it was the longest and most recent occupation by a foreign country. He grew up listening to his parents telling him about the tortures and massacres which had been perpetrated by those external powers. He acknowledged that

(¹⁰) LANGE B., *Major World Leaders: Muammar Gheddafi*, Philadelphia, Chelsea, House Publishers, 2005, p. 32.

(¹¹) Ivi, pp. 33/34.

(¹²) OAKES J., *The History of Gaddafi's Pariah State*, Gloucestershire, The History Press, 2011, pp. 112/113.

in 1911 his grandfather was murdered by an Italian officer and that his father and uncle had been captives in an Italian prison for years (¹³). Eventually, in 1951 Libya became an independent monarchy. However, as stated above, the newborn Libyan kingdom needed Western support in order to accomplish the changes that were necessary in order to render Libya a more stable country. Theoretically, Libya was independent. Actually, it literally depended on British and American powers. In 1951 Gaddafi did not witness the craved independence he had dreamt of.

Meanwhile, Gaddafi was sent first to Sirte and then to Sebha, in the region of Fezzan, in order to be educated. During the school's years, he began to show his leadership talent recruiting his "crew". He formed many cells, whose members did not know just few affiliates' identity. The system was quite simple: each cell was formed by four people; each of them had to recruit three others, forming a second group, and so on. This way, every member knew only the identity of two cells' affiliates and not that of all the "organization". Meanwhile, Gaddafi began to make speeches against Israel and pro-Egypt, drawing the attention of the police and his school's administration. Due to his heated *discourses*, he was expelled from school in 1961. At this point he continued to study at the University of Libya in Tripoli, where he attended a military training course and he got a law degree. Since he had already obtained many grades, he decided to go to the Benghazi Military Academy in order to pursue the military career. There, he despised many students because of their provenance and life style. Most of the cadets came from rich families, linked directly to the King, or were sons of men who were in business with foreign companies. They enjoyed their richness spending money for all the vices which were against the Islamic rules, such as smoking, drinking alcohol, having sex before the marriage. Gaddafi became friend with those who shared his same family's conditions. Once graduated, Gaddafi became a lieutenant of the Libyan Army: in order to attend an advanced signal corps training course, he was sent to England for six months. There, he got despised by Western life, which he defined godless and decadent. In 1966 he returned to Libya, where he began recruiting people for his mission: overthrowing King Idris I to restore the social, political and economic order of his country; eliminating Western influences; and introducing a new healthy life style, in conformity with the Islamic tradition (¹⁴).

(¹³) LANGE B., *Major World Leaders: Muammar Gheddafi*, Philadelphia, Chelsea, House Publishers, 2005, pp. 34-35.

(¹⁴) Ivi, pp. 38/39.

On September 1st, 1969, Gaddafi took the power in Libya: in what was supposed to be a training exercise, the Free Officers, whose leader was Gaddafi, enacted the military coup that overthrew King Idris I while he was in Turkey ⁽¹⁵⁾. The coup was totally military conceived, both in planning and execution ⁽¹⁶⁾: in fact Gaddafi and the Revolutionary Command Council (RCC) did not want to involve any civilian group. The RCC was a twelve-man ruling authority established by Gaddafi, whose chairman was Gaddafi himself. The council was conceived to be at the head of the new formed Socialist Libyan Arab Republic, while the Free Officers became the new Libyan military force ⁽¹⁷⁾, replacing the Cyrenaican Defence Force. The latter was the Libyan armed force which was supposed to defend the country from any *coup d'état*; nevertheless, it did not intervene. Besides, also foreign countries had no difficulties in recognizing the new formed Libyan Republic: on September 7, 1969, the United States of America recognized Gaddafi as the new Libyan leader ⁽¹⁸⁾. It is possible that USA initially supported the political change also because of Gaddafi's aversion for Communism: these are the central years of the Cold War, the period of confrontation and challenge between the USSR and USA. Great Britain accepted the change without difficulties too: despite the fact that between the Libyan monarchy and Britain there was an agreement according to which the Western country would have intervened in case the monarchy was being threatened, it did not. Furthermore, Prince Hassan Rida, King Idris' nephew and heir, refused to lay claim to the throne; he even supported the revolution ⁽¹⁹⁾.

Gaddafi became Prime Minister of the Socialist Libyan Arab Republic, head of the armed forces and chairman of the Revolutionary Command Council. Basically, Gaddafi had control over every government body of the country.

As soon as the coup resulted to be successful, Gaddafi made his very first speech via Libyan radio:

“[...] From now on, Libya is deemed a free, sovereign republic under the name of the Libyan Arab Republic, ascending with God's help to exalted heights. [...] Libyans, stay together

⁽¹⁵⁾ Ivi, p. 41.

⁽¹⁶⁾ ST. JOHN R. B., *Libya: Continuity and Change*, University of Durham, Institute for Middle Eastern and Islamic Studies, 2010, p. 49.

⁽¹⁷⁾ LANGE B., *Major World Leaders: Muammar Gheddafi*, Philadelphia, Chelsea, House Publishers, 2005, pp. 40.

⁽¹⁸⁾ OAKES J., *The History of Gaddafi's Pariah State*, Gloucestershire, The History Press, 2011, p. 126.

⁽¹⁹⁾ LANGE B., *Major World Leaders: Muammar Gheddafi*, Philadelphia, Chelsea, House Publishers, 2005, pp. 40/42.

against the enemy of the Arab nation, the enemy of Islam, the enemy of humanity who destroyed our holy places and shattered our honour [...] ⁽²⁰⁾”.

1.3. Gaddafi's Ideology, his Affinities with Nasser and the Green Book.

As for Gaddafi's ideology, he felt very close to Nasser, the Egyptian leader. Gaddafi grew up listening to the Egyptian radio and its program the *Voice of the Arabs*, which encouraged Arab nationalism. His life was quite similar to Nasser's: the latter attended the Egyptian Military Academy in 1937 where met and knew those who became the members of the military group called the Free Officers (it is no coincidence that Gaddafi chose the same name for his army). Nasser was deeply convinced that the Egyptian King Farouk had to leave the throne; furthermore, he thought that the English military occupation had to be removed and lands had to be redistributed because were owned only by landowners. The parallel is quite obvious: Gaddafi wanted to remove the Libyan King, free the country from foreign occupation and from the grip of the oil companies. When Nasser took the power in 1952, the Egyptian Free Officers set up a Revolutionary Command Council: again, Gaddafi picked up the same name for his governmental body. In 1954 Nasser published *The Philosophy of Revolution*, while Gaddafi his work in 1975, the *Green Book*, where his political and economic ideas were gathered. Nasser's project of the Aswan Dam had many resemblances with the Gaddafi's Great Man Made River's one, a long term venture to supply the water country's need ⁽²¹⁾. Both Gaddafi and Nasser shared the belief of Arab unity; they practiced a strict adherence to the Islamic teachings; and were enemies of the Israeli State. The Palestinian question was crushing the Arab region since the Israeli State was created in 1948. Jews were perceived as the “strangers” of the region. As for the Libyans, they did not really understand and know Jewish history due to the geographical distance and the high level of illiteracy ⁽²²⁾.

In 1955 representatives of twenty-nine Third World countries met in Bandung, Indonesia, in order to discuss the role that they would have had in the Cold War. The main issues were self-determination; non-aggression; mutual respect; equality; and non-interference in internal affairs; these questions were very important because many of the participant countries were former colonies of the Western countries. They tried to figure

⁽²⁰⁾ Ivi, p. 42.

⁽²¹⁾ OAKES J., *The History of Gaddafi's Pariah State*, Gloucestershire, The History Press, 2011, pp. 116/117.

⁽²²⁾ Ivi, p. 117.

out a way to reduce the Western influences. The result was the birth of the non-aligned movement: basically, these countries did not align either with USA or with USSR ⁽²³⁾. The leaders of this organization were Tito, Nehru and Nasser. Gaddafi shared the same believes of this movement.

Like Nasser did for the Suez Canal, also Gaddafi wanted to ensure Libya to have control of its most important sector, the oil one, cutting off the Seven Sisters' cartel. Eventually, Libya was the only country non-monopolized by the cartel ⁽²⁴⁾: the result was that it had one of the best oil apparatus of the region ⁽²⁵⁾.

The 1st September revolution has not to be considered a static moment which “ended when it began”: it was a much broader event. It marked the beginning of the battle against imperialism and Zionism. Arab nationalism and glorification were at the core of Gaddafi's ideology: according to him, Arab-speaking nations were superior compared to the others. Since Gaddafi appointed himself as the defender of Arab nationalism, Libya would have been the country-leader in the struggle against foreign intrusions ⁽²⁶⁾: for example, in the Seventies he kept closing all the American and British military bases in the country. The problem was that he did not consider the consequences of his actions: Libya still needed military assistance and, without the presence of Western army, Gaddafi looked at Egypt and France for it. When Gaddafi took the power, the Egyptian military forces were deployed throughout the Libyan territory in order to prevent a counter-coup. When the power of Gaddafi was ensured, about two thousands Egyptian soldiers were sent to Libya as instructors for the Libyan troops. Eventually, they withdrew in 1973, after the Six-day war ⁽²⁷⁾. Arab past had been characterised by stagnation under the Ottoman period, exploitation by foreign powers and corruption by the monarchy. The Libyan revolution would have represented the symbolic opportunity to redeem from those periods. In order to underline the Arab people superiority, Gaddafi used some symbolic acts. For example, the government ordered that all the documents had to be written in Arabic language. The documents included tickets, cards, passports, road-signs. All these actions served to legitimize the

⁽²³⁾ <http://history.state.gov/milestones/1953-1960/BandungConf>, access 16.02.2012.

⁽²⁴⁾ OAKES J., *The History of Gaddafi's Pariah State*, Gloucestershire, The History Press, 2011, pp. 131/132.

⁽²⁵⁾ VANDERWALLE D., *A History of Modern Libya*, Cambridge, Cambridge University Press, 2006, p. 89.

⁽²⁶⁾ ST. JOHN R. B., *Libya: Continuity and Change*, University of Durham, Institute for Middle Eastern and Islamic Studies, 2010, p. 50.

⁽²⁷⁾ OAKES J., *The History of Gaddafi's Pariah State*, Gloucestershire, The History Press, 2011, pp. 143/144.

new Libyan government at the eyes of the population. Consuming alcohol and cigarettes was forbidden because nonstandard to the Islamic law; public entertainments considered vulgar and obscene were prohibited too. In order to promote Arab renaissance, new culture centres were established to make research on Libyan history (one of them was called the Libyan Studies Centre).

If Arab nationalism and Islamic religion were the theoretical elements of Gaddafi's ideology, *jihad* was the action one ⁽²⁸⁾. The term *jihad* is one of the most misinterpreted of the Islamic religion: it does not refer strictly to the holy war, but more to an interior “effort”, “struggle”. Basically, the term refers to the personal and social effort to remove the evil from the society. Muslims believe that in order to improve the society the effort must be economic, political and social. *Jihad* can also refer to the use of force, but only to defend Islamic society ⁽²⁹⁾. This does not mean that this term cannot be used to justify military attacks. Gaddafi was convinced that through *jihad* he could free the oppressed and slaved Arab people, first of all Palestinians. In order to support the importance of *jihad*, the Jihad Fund was created in 1970: it was an organization which supported the armed struggle for the liberation of the Arab territories occupied by Zionists ⁽³⁰⁾.

Gaddafi strongly criticised both Communism and Capitalism, arguing they were two faces of the same medal. Communism was conceived as the monopoly of State ownership, while capitalism as the monopoly of companies and peoples. Gaddafi claimed to bring a new Socialism to Libya: it was different from the Western one, because it was conceived in term of social justice. Despite not agreeing with both USSR and USA ideologies (and not aligning with none of the two), Gaddafi was interested in maintaining commercial ties with them to purchase military and technological equipment. Gaddafi sold oil to Europe and used their money to purchase technologies. ⁽³¹⁾. Authorities have come to think that between 1973 and 1983, Libya spent about twenty-eight billion dollars on new armaments. Gaddafi gave absolute priority to the purchase of armaments and military furniture, which spending was even more over the domestic one ⁽³²⁾. From 1972, he began to use a more theoretical approach to his

⁽²⁸⁾ ST. JOHN R. B., *Libya: Continuity and Change*, University of Durham, Institute for Middle Eastern and Islamic Studies, 2010, pp. 50/51.

⁽²⁹⁾ <http://www.arabcomint.com/jihad.htm>, access 16.02.2012.

⁽³⁰⁾ ST. JOHN R. B., *Libya: Continuity and Change*, University of Durham, Institute for Middle Eastern and Islamic Studies, 2010, p. 51.

⁽³¹⁾ Ivi, pp. 56/57.

⁽³²⁾ OAKES J., *The History of Gaddafi's Pariah State*, Gloucestershire, The History Press, 2011, pp.,

ideology, coining what became the Third Universal Theory, an alternative way to Communism and Capitalism. The two forces which were at the base of Gaddafi's theory were nationalism and religion, because they were thought as the two forces moving humankind and history. As for religion, Gaddafi's belief was centred on the prime importance of Islam and Koran. Islam was conceived to be the final word of God on earth: for this reason, there could be nothing in life which could not be found in it. The essence of religion rested in the unity of God, so that the followers of Jesus, Moses and Muhammad were all followers of the same God. In this optic, there was only one true religion, Islam: therefore, all monotheists had to be considered Muslims. Gaddafi pushed for a revival of Islam, arguing that Muslims had moved far away from God and the Koran. For this reason, believers had to return to the real core of the religion. Gaddafi's aim was to eliminate or correct Islamic practices that, according to him, were against the strict teaching of the Koran. In order to accomplish this task, he took position towards the role of the *ulema*, the educated men who interpret the religion; the role of the *sunna*, that is to say the acts and sayings of the Prophet Muhammad; the nature and scope of *shari'a* and its relationship with the State. For example, he criticized the *hadith*, or statements which are thought to belong to the Prophet and that amplify the teachings of the Koran. Moreover, underlying the uniqueness of the Koran as the source of religion, Gaddafi criticized also the various schools of Islamic jurisprudence, accusing them to be the product of political struggle, not connected to Islam and the Koran. Initially, Gaddafi's approach to religion was very conservative, nearly fundamentalist. Then, his approach became reformist, almost secular. For example, from the Eighties he began to recognize the importance of the *hadith* ⁽³³⁾. As for nationalism, Gaddafi believed it was the natural product of the cultural and racial diversity of the world: for this reason, nationalism was conceived as a necessary and productive force of the humankind. He argued that Arab nationalism was rooted in a glorious past and that Arab people were the result of that glorious past ⁽³⁴⁾.

The Third Universal Theory began to show the first signs of contradiction from the very beginning: as a matter of fact, at first, his approach to this theory was more embedded with Islamic religion. He argued that the theory itself was born in Islamic religion. Since the Eighties, however, he suggested that the Third Universal Theory was

144/145.

⁽³³⁾ ST. JOHN R. B., *Libya: Continuity and Change*, University of Durham, Institute for Middle Eastern and Islamic Studies, 2010, pp. 56/57.

⁽³⁴⁾ Ivi, p. 56.

not related to Islam and, therefore, had not an Islamic character. He argued that the Third Universal Theory was the core of the creation of an universal Arab society, centred on Arab nationalism; since the most practised religion in Middle East was Islam, it remained tied to Gaddafi's speeches on nationalism, but just in a broad way ⁽³⁵⁾.

On March 2, 1977, the Libyan Arab Republic was substituted with the Socialist People's Libyan Arab Jamahiriya; this last term was coined by Gaddafi himself and literally means that people, and only them, were allowed to govern directly the country, through the intermediary of the General People's Congresses, which secretary was Gaddafi himself. In 1979 Gaddafi resigned by his official positions and finished gathering the third universal theory in his *Green Book*, which he started to write in 1974. In 1989 Gaddafi proclaimed himself Guide of the Revolution and self-appointed Head of the State, without official responsibilities ⁽³⁶⁾. By 1975, Green Book's populist slogans, such as "Committees Everywhere!", began to appear everywhere in Libya ⁽³⁷⁾. The first volume of the *Green Book* is called *The Solution of the Problem of Democracy: "The Authority of the People"*. Here he described which he believed to be the most effective instruments of governing. According to him, political parties, plebiscites and parliaments had to be rejected; only a form of direct democracy, based on a system of congresses and committees, could represent the best way to govern the world ⁽³⁸⁾. Speaking of which, he wrote that

"[...] the democratic system is a cohesive structure whose foundation stones are firmly laid one above the other, the Basic People's Conferences, the People's Conferences, and the People's Committees, which finally come together when the General People's Conference convenes. There is absolutely no conception of democratic society other than this[...] ⁽³⁹⁾".

The second volume of the Green Book is called *The Solution of the Economic Problem: "Socialism"*. Here, he critiqued the modern ideologies, Capitalism and Communism, arguing that Socialism could be the only valuable alternative to them. He

⁽³⁵⁾ Ivi, p. 57.

⁽³⁶⁾ MARTINEZ L., *The Libyan Paradox*, New York, Columbia University Press, 2007, p. 86.

⁽³⁷⁾ VANDERWALLE D., *Libya Since Independence*, London, I. B. Tauris Publishers, 1998, p. 96.

⁽³⁸⁾ ST. JOHN R. B., *Libya: Continuity and Change*, University of Durham, Institute for Middle Eastern and Islamic Studies, 2010, p. 60.

⁽³⁹⁾ <http://www.thedailybeast.com/articles/2011/03/02/gaddafis-green-book-the-top-10-quotes.html>, access 16.02.2012.

stated that true human freedom, an important economic problem, remained unsolved. According to Gaddafi, a human being has got certain needs, which are: a house, an income and a vehicle; both Capitalism and Communism could not provide human beings of these needs because they are not based on the right principles. Furthermore, Gaddafi argued that private property represented the property of the society and not of individuals, therefore it was to be eliminated. In this volume, Gaddafi outlined the theory of natural socialism: he described it as the three key-economic factors which move production, that is to say the producer, the means of production and the equality of raw materials. These socialism is natural because keeps in consideration in an equal way all the three factors, while other forms of socialism concentrate on some or one of the factors. The key problem is the production. According to Gaddafi, wage and profit systems had to be dismantled: employees had to become partners in the process of production. In the third volume of the Green Book, named *The Social Basis of the Third Universal Theory*, he deepened some aspects of his social theory. When he took the power, Gaddafi made clear how much he was committed to the Islam cause, arguing that Islam was the real and unique religion. Despite these statements, in this volume Gaddafi stated that everyone had to be entitled to his own religion. Here, he developed also some social topics, such as women, minorities, and black people. He based all of his propaganda on the concept of an egalitarian society, leaving no space for any form of discrimination, in particular the sexual one ⁽⁴⁰⁾. Especially about women, Gaddafi wrote “[...] Motherhood is the female's function [...]. While man is strong and tough because he is created in that way, woman is gentle not because she wanted to be, but because she is created so. There is no absolute equality between men and women [...] ⁽⁴¹⁾”. This is an illuminating sentence, since he despised every kind of discrimination. Gaddafi believed that as long as women kept being good mothers and wives, they could continue to participate in Libya's economy. However, Gaddafi allowed women to attend schools: this changed the role of women in Libya forever. To attend universities, women had to move in big cities, where they experienced freedom at levels never tested before. Education was a tool for women to become literate: many of them started to avoid wearing the veil and to aspire to be independent ⁽⁴²⁾. This is an example of how

⁽⁴⁰⁾ ST. JOHN R. B., *Libya: Continuity and Change*, University of Durham, Institute for Middle Eastern and Islamic Studies, 2010, p. 61.

⁽⁴¹⁾ LANGE B., *Major World Leaders: Muammar Gheddafi*, Philadelphia, Chelsea, House Publishers, 2005, p. 47.

⁽⁴²⁾ Ibidem.

Gaddafi's ideology and what he concretely did went in contradiction often.

1.4. The Constitutional, Institutional and Administrative Changes of the late Seventies.

On December 11th, 1969, the Revolutionary Command Council declared void the 1951 Constitution, proclaiming a new one. In the preamble were stated the goals of the revolution: freedom, socialism and unity, underling that the intent of the new regime was that of defeating colonialism and eliminating the obstacles which impeded Arab unity. In the first article the new-born Libyan Republic was described as a free republic intended to pursue a policy of unity. Article 2 stated that the official language of the country was the Arabic one and that the State religion was Islam. The council did not give this statement the right stress: as a matter of fact, it also proclaimed that other forms of religion were to be protected. This partly thwarted the real intent of the revolution, which is that of promoting Islamic religion as the unique in the world. Eight of the fifteen articles in the first chapter dealt with aspects of the socialism. Articles 7 and 8 stated that Libyan economy would had be freed from foreign influence and that public ownership would had been the first step in the path of foreign occupation freedom. Article 12 stated that homes were inviolable. Articles 14 and 15 declared health and education rights of the citizens. In the second part of the 1969 constitution, article 15 outlined the structure of the government. The Revolutionary Command Council would have represented both the executive and legislative powers: this way, it would had been the most important and powerful institution in the country. The third chapter nullified the 1951 constitution ⁽⁴³⁾.

The 1969 revolution posed the Revolutionary Command Council in an extreme superior position, if compared to other institutions; in order to solidify its power, the council decided to reduce notably regional and tribal identification, implementing new leaderships which could replace the tribal ones. These new leaderships were important also for another reason: old families, still belonging to the old regime, had a certain level of influence and were more unwilling to accept the new change. Ancient tribal areas were replaced with new zones of control, based on population and geography. The division did not take into account the tribal and regional differences, so that several tribes came to live together. This was the way the new regime decided to defeat regional

⁽⁴³⁾ ST. JOHN R. B., *Libya: Continuity and Change*, University of Durham, Institute for Middle Eastern and Islamic Studies, 2010, pp. 53/54.

and tribal differences. On June 11, 1971, the council decided to give birth to another body which would have served as a “bridge” between people and the government; this had to replace the void left with the abolition of the tribal system. The new organization was named the Arab Socialist Union (ASU). Unfortunately, this governmental body turned out to be unable to fulfil its task: as a matter of fact, it had to be sensitive to people's problems and, at the same time, pursue the regime's policy. This is not the way a union works ⁽⁴⁴⁾.

Since the regime was not satisfied with the goals accomplished by the ASU, on April, 15th 1973 Gaddafi proclaimed another popular revolution: he called people to take the power through the election of popular committees in schools, companies, towns. People who were elected soon replaced those in the local administrations who had been appointed by the Revolutionary Council. In order to prevent this popular revolution to become anarchic, it was forbidden to take over the revolutionary administration. The reasons why Gaddafi decided to begin the 1973 popular revolution are several: first, the ASU failed in substituting traditional leaderships; giving more power to people, allowing them to elect their own representatives, was a clever move. In fact, the council hoped to gain support from elected people. Second, the system of committees gave the chance to the council to isolate those who were against the Gaddafi's regime and make them come out into the open. In fact, many people belonging to Marxist or Baathist groups were arrested. A part from the real reasons why the popular committees were created, this new system represented a huge revolution in Libya's politics. As a matter of fact, there had never been a system in which people could represent themselves and their needs. The committees assumed local administrative control, and their chairmen became the chief administrative officials for their bodies. The impact of the committees' system on the population was quite positive. This can be considered one of the few goals of the revolution that had been achieved concretely ⁽⁴⁵⁾.

The GPC, or General People's Congress, substituted the ASU in 1976 ⁽⁴⁶⁾: Gaddafi was its general secretary and the members of the RCC composed its general secretariat. The GPC met annually: it was very important because it was the place where policies and ideas of the RCC, along with those developed by the lower levels of

⁽⁴⁴⁾ Ivi, pp. 54/55.

⁽⁴⁵⁾ Ivi, pp. 57/59.

⁽⁴⁶⁾ VANDERWALLE D., *Libya Since Independence*, London, I. B. Tauris Publishers, 1998, p. 96.

government, were discussed and ratified ⁽⁴⁷⁾.

In 1976 the Revolutionary Command Council decided to expand the authority of the General People's Congress: it could dismiss and appoint ministers and determine foreign policy. In 1977 the council released the *Declaration of the Establishment of the People's Authority*, a document in which the structure and authority of the GPC were clarified. Additionally, the GPC itself announced the creation of the General People's Committee, a cabinet in which the secretaries of agriculture, health, housing, industry, were established. Since it was the base of the new political system, direct political authority was in force in Libya; however, people, in order to enjoy this right, had to exercise it through approved official organizations ⁽⁴⁸⁾. It was as if the council gave the “carrot” to the Libyan people, hiding the hand immediately. People were more involved into Libyan political life: that was an absolute positive aspect of the reform; the problem was that actually this is what Gaddafi wanted his people to think. In order to be free to express their political opinions, giving ideas about policies and political issues, Libyans had to have the chance to use the channels they considered the most appropriate for them, and not only the official organizations because it meant that actually the population was not free at all to give its own contribute to the so called popular revolution.

The changes which were introduced in the Seventies increased popular mobilization and participation, but also Gaddafi and his Revolutionary Command Council's grip over the country ⁽⁴⁹⁾.

In 1977 representatives of the revolutionary committees were introduced everywhere in the country: they had infiltrated all Libyan institutions, like universities and professional organizations. In 1987 their power was reduced, but their members were still employed in some key-ministries of the country, so that they could control people ⁽⁵⁰⁾.

Along with these refinements applied to the political system, the regime introduced a series of brand-new reforms, which bases could be found in the Green Book. As a matter of fact, Libyan people's problems, such as education, healthcare, housing, illiteracy, were still present when Gaddafi took the power. Something had to be

⁽⁴⁷⁾ ST. JOHN R. B., *Libya: Continuity and Change*, University of Durham, Institute for Middle Eastern and Islamic Studies, 2010, pp. 58/59.

⁽⁴⁸⁾ Ivi, p. 62.

⁽⁴⁹⁾ Ivi, p. 62.

⁽⁵⁰⁾ VANDERWALLE D., *Libya Since Independence*, London, I. B. Tauris Publishers, 1998, p. 102.

done. What Libyan people pleased the most were the social reforms that the Revolutionary Command Council approved during the first years of the Libyan Socialist Republic (⁵¹). As for the educational field, the regime decided to abolish all the prior-revolution reforms. First, in 1970 it established that the Ministry of Education and National Guidance would have had a more active role, restructured the Higher Council of Education and Teaching and reorganized the school curriculum. In 1975 the period of compulsory school was extended from six to nine years. This change had a positive impact on the society, especially on women: as a matter of fact, prior the reform, girls used to drop school after the six compulsory years. The new reform allowed girls to attend the school for a longer period, so that some decided to continue and go also to the university. In order to cover all the aspects of the educational reform, the regime decided to build more schools and hire new teachers. It wanted the educational field to be modern. With the growing importance of public schools, the religious ones started to decline. Second, the role of women became more active day by day. Of course, the fact that girls could attend school for a longer period was decisive: there were more literate women who were willing to work and be independent. They were employed in skilled fields, especially the nursing one. In order to improve the status of women, the regime decided also to restrict polygamy and to fix their minimum age for marriage like men's. Libyan women were the first in the Arab world to attend a military academy in facilities built for them outside Tripoli. Moreover, the regime decided to establish the Department of Women's Affairs as part of the secretariat of the GPC and a centre for women studies. The creation of these new facilities for women and their increasing educational level created a huge gap between women under thirty-five years old, participating in the public sphere, and the older ones, who preferred staying at home and enjoying lower levels of education (⁵²). Despite the fact that many reforms were launched, the quality of the education remained quite low: according to the 2009/2010 Global Competitiveness Report, in the Middle East Libya is at the eighty-eighth place (⁵³).

As for the healthcare, the regime declared that it was a right of everybody to be cured and treated for free (or, at least, at little cost). For this reason, it decided that this was a sector that had to be improved, by expanding the network of the healthcare and hiring more workforces. In the first two decades of the revolution, the regime

(⁵¹) OAKES J., *The History of Gaddafi's Pariah State*, Gloucestershire, The History Press, 2011, p. 134.

(⁵²) Ivi, pp. 65/67.

(⁵³) <https://members.weforum.org/pdf/GCR09/GCR20092010fullreport.pdf>, access 17.02.2012.

implemented 103 hospitals, 40 polyclinics and 248 healthcare centres. Furthermore, the number of basic healthcare units increased from 414 to 1038 in 1988. Life expectancy is one of the highest in the region, however remains well below the average in the OECD countries ⁽⁵⁴⁾.

The regime had a plan for housing too: in fact it planned the construction of 80,000 new houses. In addition, in 1978 it approved a law concerning new guidelines for home ownership: all the families had the right to possess one home but no more. There were some exceptions, such as the widows, who could not maintain themselves if not with a rent. The result was that people who were renting a house became immediately owner of the place, without having bought it ⁽⁵⁵⁾.

Along with the social reforms, the regime also implemented new economic changes in Libya. In 1979 there was a redistribution of agricultural land on Libya's coastal strip; in part, this was done in order to adjust the unfair acquisition of holdings by politically powerful people during the monarchy. Furthermore, according to Gaddafi only farms of a sized which could sustain a family and that did not need to employ workers to maintain it could be acceptable. In 1980, the regime declared that all paper bills which valued more than one dinar were void and null and people had one week to change their money. The regime's radical socialist program had a negative impact country's development: first, the elimination of the private sector invested the public one of an importance which it could not afford. As a matter of fact, the public sector lacked in staffing and training. The situation was aggravated by the fact that in 1979 conscription became compulsory: in fact, many young people who could be employed had to make to military service. Second, the housing reform gave houses to who did not have one, but had severe consequences on the real estate development, which experienced a sharp halt. Third, the currency reform led to a liquidity crisis. The radical reforms that the regime was applying had, as a consequence, an increment of the opposition, also triggering dormant opposition in the region. As a paradox, the middle class, which had benefited the most from Gaddafi's reforms, was the most active in this sense. On the other hand, Gaddafi continued to have a considerable support from Libyan youth. In fact, during the Eighties many young Libyans enjoyed a higher level of education and of healthcare and they could own a house. Since, at that time, the

⁽⁵⁴⁾ ST. JOHN R. B., *Libya: Continuity and Change*, University of Durham, Institute for Middle Eastern and Islamic Studies, 2010, p. 67.

⁽⁵⁵⁾ Ivi, p. 68.

majority of Libyan population was fifteen years old, it had never experienced another form of government (⁵⁶).

Another important aspect which should be considered is Gaddafi's approach to Islam. During the Seventies became pretty obvious that his approach was becoming more secular than religious. For example, in 1975 Qaddafi told the *imam* to concentrate their Friday's sermons on religious questions and not on mundane and daily affairs. During the next three years, Gaddafi's conception of Islam's origins, Islamic jurisprudence and the role of Islamic jurists changed radically: he began thinking that God was transcendental and, therefore, did not required the presence of intermediaries. In 1978 Gaddafi publicly argued that the Koran was written in Arabic language so that everybody could understand it without the help of the *ulema*. Of course, the religious community responded to these attacks challenging Qaddafi: the consequence was a purge of all those who dared participating in the challenge. The religious authorities declared the Green Book incompatible with the Islamic principles; in response, Gaddafi stated that the essential element of the Islamic religion was the Koran and that the others, such as *shari'a* or *hadit*, were not. According to him, every person had the right to interpret the Koran in an independent way. Doing so, Gaddafi eliminated and destroyed the power of religious elites who had always considered the interpretation of Islam as a priority. In 1990 Qaddafi created a new organization named the People's Guard: it was a sort of military institution. Its main task was that of facing the numerous militant Islamists and to control the mosques in order to prevent Islamist agitation (⁵⁷).

During the years, Gaddafi continued creating new committees and institutions in order to keep control over the nation: for example, in 1994 he established the cleansing committees, that is to say organizations which had to discover all those who created opposition towards the revolution and eliminate them. In the same years, Gaddafi gave birth to another nationwide body, the People's Social Leadership Committees (PSLCs). The intent was that of incorporating the tribal leadership into national decision-making. The members of this new organization were heads of tribes, families' leaders and important people of the country. The aim of the PSLCs was that of establishing social stability, preventing the tribes and the important families to oppose the regime and maintaining control. Furthermore, it also had to distribute State's subsidies and issue legal documents. In 1996 Gaddafi created the PSLC, putting together all the parts of the

⁽⁵⁶⁾ Ivi, pp. 68/70.

⁽⁵⁷⁾ Ivi, pp. 70/74.

PSLCs, transforming the latter in a national organization ⁽⁵⁸⁾.

During his regime, Gaddafi kept creating committees which carried the name of “people”, probably in order to underline that what he was doing was intended to make Libyan people's life better. The ideology that he brought in the country appeared to be innovative. However, what he did was mixing already existing ideologies (socialism, panarabism, nasserism), manipulating them.

⁽⁵⁸⁾ Ivi, pp. 70/72.

CHAPTER 2. THE 1986 US BENGHAZI BOMBING, THE 1989 LOCKERBIE ATTACK AND THE CONSEQUENT INTERNATIONAL SANCTIONS.

CONTENTS: 2.1. An Overview on the Second Period of Gaddafi's Dictatorship. – 2.2. USA and Libya: the 1986 US Benghazi and Tripoli Bombing. – 2.3. The International Sanctions: the Lockerbie attack and the Consequent United Nations Security Council Resolutions. – 2.4. Conclusions.

2.1. Introduction: an Overview on the Second Period of Gaddafi's Dictatorship.

It is not easy to sum up forty-two years of dictatorship, characterized by choices of allies and enemies, economic policies and contradictions. Since the division of Gaddafi's period used by Angelo Del Boca in his book *Gheddafi, Una Sfida dal Deserto* seems to be one of the most clear, it is used to summarize the period from the Seventies until the Nineties of the dictatorship ⁽¹⁾.

In the previous chapter, Gaddafi's revolution has been described. It has been underlined his sense of despise toward the Western mentality and his support to those populations who suffered from abuses, especially if they were perpetrated by the Western countries. In particular, approximately at least during the first twenty years of his dictatorship, Gaddafi openly supported national liberation movements ⁽²⁾. By the end of 1971, two years after the revolution, Libya had already been in contact with more than twenty national liberation movements ⁽³⁾. Of course, as already mentioned in the previous chapter, Libya was deeply committed into the Palestinian cause. As a matter of fact, one of the main goals of the international politics of Gaddafi was to free Palestine from the Israeli occupation. Rather, he wanted to eliminate the entire state of Israel, along with the Western colonialist presence all over Africa. In regard to the liberation of Palestine, Gaddafi helped Yasser Arafat's PLO (Palestine Liberation Organization) both military and economically: in 1971 he sent Libyan soldiers to Lebanon in order to support the government against the Israeli incursion in the country. Furthermore, the Libyan presence in Lebanon was reinforced in 1978, when Gaddafi equipped the Libyan army with missiles apt to discourage areal Israeli raids ⁽⁴⁾. In Africa, he supported the Eritrean Liberation Front; the Zimbabwe's African National Union in Rhodesia; sent

⁽¹⁾ DEL BOCA A., *Gheddafi, Una Sfida dal Deserto*, Editori Laterza, Bari, 2010.

⁽²⁾ Ivi, p. 95.

⁽³⁾ Ivi, p. 95.

⁽⁴⁾ Ivi, p. 95.

armaments to Guinea, threatened by the neighbor's countries. Since Gaddafi felt to be legitimized to support the national liberation movements due to the colonization that Libya had suffered for many years, he thought to provide support to those movements which fought for the right reasons all over the world. This way, he supported groups such as the Irish Republican Army, sending its members a huge amount of armaments in 1971 ⁽⁵⁾. In this occasion, Gaddafi stated that his support to the Irish people was not to be intended as an act against Great Britain. On the contrary, Libya was supporting the right to self-determination of Irish people ⁽⁶⁾. In general, it can be said that Gaddafi had built, with the aid of the oil revenues (which made Libya one of the richest country in Africa), an embedded network of contacts with the major national liberation movements all over the world, providing them logistic, military and economic aid. On May 28, 1981, the General People's Congress approved a norm which stated that Libya condemned all forms of terrorism but, at the same time, was willing to support all the peoples struggling for the principle of self-determination ⁽⁷⁾.

Despite the fact that the dictator made many speeches in order to distance himself from any terroristic involvement, Libya results to have been one of the main supporters of terrorism. The first document about the presumed terroristic activities of Gaddafi was written in Bruxelles and published by the newspaper "The Times" on January 4, 1974. The Revolutionary Command Council was found guilty of having created an organization, the Arab Nationalist Youth for the Liberation of Palestine, which members were not worried to commit severe violations of crimes in order to fulfill their goals. This group has been found guilty of the attack to the Athens' international airport on the 5th August, 1973, when four people died and fifty-five were injured ⁽⁸⁾, and of that to Fiumicino airport on the 17th December 1973 ⁽⁹⁾, when thirty-two people lost their lives. According to the document, the proof that Gaddafi supported these two attacks was given by the fact that in 1973, during a speech, Gaddafi himself

⁽⁵⁾ Ivi, p. 95/97.

⁽⁶⁾ Ivi, p. 97 ("The Times, 6th June 1973).

⁽⁷⁾ Ivi, p. 97.

⁽⁸⁾ Two armed men opened fire in a lounge of the Athens airport where they believed there were passengers waiting to be boarded on a flight to Tel Aviv. They did not know that those passengers had already boarded and that they ended up opening fire on passengers headed to New York. The two men were found guilty of manslaughter and sentenced to death (http://news.bbc.co.uk/onthisday/hi/dates/stories/august/5/newsid_4533000/4533763.stm access 05.11.2012).

⁽⁹⁾ In this occasion, three bombs exploded into the aircraft Pan Am killing thirty-two people (http://www.archiviola stampa.it/component/option,com_lastampa/task,search/action,viewer/Itemid,3/page_e,0002/articleid,1509_02_1973_0293_0002_21243634/, access 05.11.2012).

had plugged a terrorist Japanese group, responsible for the massacre of the Lod airport, in Israel and exhorted all the Palestinian dissidents to go to Libya to find full support to their cause ⁽¹⁰⁾. In the 1981 annual report on international terrorism, the CIA stated that, only in 1980, seven hundred and sixty terrorist attacks occurred and that this increase was due to the role of the government of Libya into Middle East terrorist organizations ⁽¹¹⁾. The report specified that Libya had launched new tendencies in the terrorist field, killing the political opponents migrated to Europe and diplomats in Middle East ⁽¹²⁾. The idea of a Libya even more implicated into terrorist attacks had been supported also by Helmut Sonnenfeldt, former counselor of Kissinger: during an interview released to the Italian newspaper “Il Giornale” on June 3, 1981, he stated that Libya was one of the major responsible for international break-ups and legality ⁽¹³⁾. On January 8, 1985, the US Department of State published a White Paper on the terrorism acts perpetrated by Gaddafi. More precisely, the paper stated that the dictator had used terrorism as one of the main tool of foreign policy and that he supported groups and organizations using terroristic attacks. Additionally, Tripoli was supposed to handle training camps where dissident groups learnt how to fight. Furthermore, Libya allegedly used the diplomatic privileges to collect weapons and explosives in its embassies. According to the paper, Gaddafi wanted to eliminate all the moderate Arab governments, guilty of bearing the presence of Israel in the Middle East, to go so far as to try to kill the Egyptian president Mubarak. Then, the paper stated that Gaddafi had protected terrorists as Abu Nidal and Carlos ⁽¹⁴⁾. In order to render Libya one of the most important countries in the Middle East, Gaddafi decided to transform it the most armed country ⁽¹⁵⁾. The most intense period of rearmament was reached during the eighties, when the oil revenues increased. During the seventies, the first armies supplier was Italy, while from 1974 it became the Soviet Union, which provided also advisors, technicians and training personnel. Despite being one of the most armed countries in the Middle East, Libya’s soldiers were not able to use all the armies that Gaddafi had bought for them ⁽¹⁶⁾. Gaddafi was well aware

⁽¹⁰⁾ DEL BOCA A., *Gheddafi, Una Sfida dal Deserto*, Editori Laterza, Bari, 2010, p. 101.

⁽¹¹⁾ Ivi, pp. 101-102.

⁽¹²⁾ ANSA, New York, 18th June 1981 (cited in DEL BOCA A., *Gheddafi: Una Sfida dal Deserto*, Editori Laterza, Bari, 2010).

⁽¹³⁾ “Il Giornale”, 3rd June 1981 (cited in DEL BOCA A., *Gheddafi: Una Sfida dal Deserto*, Editori Laterza, Bari, 2010).

⁽¹⁴⁾ “New York Times”, 10th Januray 1986 (cited in DEL BOCA A., *Gheddafi: Una Sfida dal Deserto*, Editori Laterza, Bari, 2010).

⁽¹⁵⁾ DEL BOCA A., *Gheddafi, Una Sfida dal Deserto*, Editori Laterza, Bari, 2010, p. 113.

⁽¹⁶⁾ Ivi, pp. 113/115.

of that: the 1986 Benghazi and Tripoli bombing demonstrated the dictator how weak Libya was. With regard to the conflicts where Libya had participated, it is interesting to remember: the 1977 four-day conflict with Egypt. In that occasion, Sadat wanted to “teach a lesson” the Gaddafi and not conquering territories. In 1979 Libya became an ally of Uganda, which was invaded by Tanzania: it lasted few weeks and saw Uganda loosing the conflict. The longest conflict where Gaddafi participated was in Chad: he took advantage of the civil conflict that had been lasting since 1965 and interfered in the various factions feuds. The conflict lasted from 1973 to 1994 ⁽¹⁷⁾.

As for the national identity of Libyan people, it seems possible to say that they do not identify themselves as a nation. Libya is a huge country, mostly occupied by the desert, and its population is scattered all over the territory. A “Libyan nationalistic feeling” had never been nourished before the arrival of Gaddafi. And yet, despite all the efforts made by the dictator to transform Libya in a great nation, he did not succeed completely ⁽¹⁸⁾. Gaddafi’s Green Book tries to frame Libyan population as a nation though the use of Islamic symbols and traditions shared all over the country. He attempted to literally build a history of Libya, a common history, so that the Libya people could have felt the belonging to a nation, the Libyan nation. In doing so, the dictator focusing on the colonization that Libya had to suffer by the West powers; he stirred up the population to remember the oppression and humiliation inflicted by the West ⁽¹⁹⁾. It is possible to say that he tried to build the feeling of Libyan nation using a comparison between “them” and “the others”.

It can be said that the first period of the Jamahiriya ended in 1986, with the US Benghazi bombing ⁽²⁰⁾. It was characterized by a strong policy against the West and of a clear support for the terrorist groups, especially the Palestinian one ⁽²¹⁾. The second period of the Jamahiriya was the period of the realignment of the international relations. The cornerstones which characterized the first period of the dictatorship began to fall apart: Libyan people began to understand that Gaddafi was perpetrating a policy that did not help improving the country and tried to rebel. However, Gaddafi was smart enough to halt the spreading of the dissent through a strong military repression. Moreover,

It has to be remembered that Libyan women had been able to join the Libyan army since the first years of the dictatorship.

⁽¹⁷⁾ DEL BOCA A., *Gheddafi, Una Sfida dal Deserto*, Editori Laterza, Bari, 2010, pp. 115/126.

⁽¹⁸⁾ VANDEWALLE D., *Storia della Libia Contemporanea*, Roma, Salerno Ed., 2006, p. 144.

⁽¹⁹⁾ Ivi, pp. 144/145.

⁽²⁰⁾ Ivi, p. 157.

⁽²¹⁾ Ibidem.

Gaddafi's actions contributed to discredit the country on the international level, so that no state was willing to entertain relations with it, beside the oil ones ⁽²²⁾.

In 1987 the Libyan government launched a new economic policy based on liberalism. However, the influence peddling and the political acquiescence limited the effects of this policy. Libya, having the oil power on its side, managed to "survive" during the crisis. Nevertheless, the forced international isolation that Libya had to suffer due to the Security Council resolutions, made the country to precipitate in a crisis that began to dissipate only after their suspension ⁽²³⁾.

The two events which most influenced Libya and Gaddafi's foreign policy had been the 1986 American raid on Benghazi and Tripoli and the 1989 Lockerbie attack with the consequent international sanctions imposed by the Security Council. The next two paragraphs are dedicated to the description of these events.

2.2. USA and Libya: the US Benghazi and Tripoli Bombing.

The relationship between United States and Libya has never been easy. In the first chapter has been stated that when Gaddafi took the power in 1969 the United States showed to be neutral toward the regime that was originating from the *coup d'état* ⁽²⁴⁾. The relationship began to deteriorate seriously under the Presidency of Gerald Ford, who ruled USA from 1974 to 1977. In fact, those were the years when Gaddafi began to establish contact with USSR: for example, in 1974 Libya signed the first important treaty for the acquisition of arms from the Soviet Union ⁽²⁵⁾. After the ratification of the Camp David accords in 1979, Gaddafi sent a clear message to the USA President Carter: since Jews did not have the right to have their own state, he promised to halt their migration to Israel and to create a Palestinian state for Palestinians. On December 2, 1979, two thousands demonstrators attacked the American embassy in Tripoli. Gaddafi dissociated himself from the attack, blaming the revolutionary committees. In order not to ruin definitely Libya's relationship with USA, he even condemned the Islamic integralists who abducted fifty-two Americans in Iran. However, on December 29, 1979, Carter included Libya in the list of the countries which have been providing support to the terroristic organizations ⁽²⁶⁾. In 1981 Reagan became the new President

⁽²²⁾ Ivi, p. 162

⁽²³⁾ Ivi, pp. 162/163.

⁽²⁴⁾ See chapter 1, paragraph 1.2.

⁽²⁵⁾ DEL BOCA A., *Gheddafi, una Sfida dal Deserto*, Bari, Laterza Ed., 2010, pp. 165/166.

⁽²⁶⁾ Ivi, pp. 166/167.

of the United States of America: Gaddafi, hoping to restore a positive relation with USA, sent a message to the new president, claiming again Carter's work led to the alienation of Palestinian people and hoping that Reagan would have carried out a better administration ⁽²⁷⁾. In addition, Gaddafi underlined that his relationship with USSR did not mean that he would have allowed the host of Soviet military bases in Libya. Nevertheless, the American government did not intend to open a dialogue with the dictator: in May 1981, the diplomatic Libyan representatives in America were expelled from the country. Haig, the American secretary of state, accused Gaddafi again of providing help to international terroristic groups, in particular the Palestinian ones; of training Palestinian terrorists in Lebanon; using Libyan embassies abroad to spy and kill his regime's opponents. Furthermore, Haig accused the dictator of using the oil revenues to acquire military armaments and to train international terrorists. During the same year, some military actions involved Libya and USA: for example, over the Sirte gulf, two American fighter-bombers tore down two Libyan fighter aircraft ⁽²⁸⁾. In 1982 the United States suspended travel to Libya; implemented the controls on the goods and products to be exported to Libya; and prohibited Libyan oil imports ⁽²⁹⁾. 1985 ended with two terrorist attacks which hit the Rome and Vienna airports: five American citizens died. Reagan blamed Gaddafi for the attacks. In addition, on March 24, 1986, both Libyan and American military forces clashed in the Sidra gulf, where four Libyan attacks boats were sunk ⁽³⁰⁾. Pursuant to this clash, on April 5, 1986, a group of terrorists bombed a West Berlin discotheque which was known to be frequented by American servicemen. In this occasion, one American servicemen and a Turkish woman were killed; more than two hundred people were injured, including fifty Americans. The American intelligence intercepted some radio messages in which Gaddafi ordered to his diplomats in West Berlin to attack the dance hall on April 5 ⁽³¹⁾. Reagan's crusade against Libya led to the solidarity of the Arab countries to Gaddafi. Despite being an American ally, Egypt was not willing to attack Libya with US military forces, as Reagan wanted ⁽³²⁾. Libya and USA confrontation gave rise to the American Benghazi and Tripoli bombing in 1986 ⁽³³⁾. On April 14, 1986, USA launched air strikes against

⁽²⁷⁾ Ivi, p. 170.

⁽²⁸⁾ Ivi, pp. 170/172.

⁽²⁹⁾ ST. JOHN, *Libya from Colony to Revolution*, p. 195.

⁽³⁰⁾ <http://www.history.com/this-day-in-history/us-bombs-libya>, access 24.12.2012.

⁽³¹⁾ Ibidem.

⁽³²⁾ DEL BOCA A., *Gheddafi, una Sfida dal Deserto*, Bari, Laterza Ed., 2010, pp. 184/185.

⁽³³⁾ ST. JOHN, *Libya from Colony to Revolution*, p. 195.

Libya as a response to the continuous Libyan aid to terrorist groups. The raid began about at 7 am: it involved about one hundred Air Force and Navy aircraft and ended within an hour ⁽³⁴⁾. The targets were military and “terrorism” centres: in total, five of them were hit, along with Gaddafi’s headquarter ⁽³⁵⁾. All the targets had been chosen due to their link to terrorism, except one: the Benina military airfield. It was hit to preempt a Libyan attack. The military operation went under the name of “El Dorado Canyon”. Gaddafi’s fifteen-month-old adopted daughter was killed and two of his sons were injured during the attack to his headquarter. Several residential Libyan buildings were hit and fifteen Libyan civilians died. In addition, the French embassy in Tripoli was hit too. The day after the American attack, Libyan patrol boats fired missiles at the US communication stations in Lampedusa, Italy ⁽³⁶⁾. It seems that Bettino Craxi, the then Italian Prime Minister, was aware of the attack that the Americans launched against Libya. On October 31, 2008, Giulio Andreotti and the then Libyan Foreign Minister Abdulrahman Shalgam confirmed what was just a rumor: Craxi informed Gaddafi about the 1986 Benghazi bombing, allowing him to save himself and his family ⁽³⁷⁾. Gaddafi ordered the attack against Lampedusa not to hit Italy, but the American bases there: it is important because the relationship between Italy and Libya has always been peculiar, but never negative as the one between Libya and United States of America. The attack has been define as the largest American one since Vietnam ⁽³⁸⁾.

Two hours after the attack, Reagan made a TV address to the American citizens, arguing that “when our citizens are attacked or abuse anywhere in the world on the direct orders of hostile regimes, we will respond so long as I’m in this office ⁽³⁹⁾”. He also argued that the attack was not unlawful, since America acted under art. 51 of the United Nations Charter ⁽⁴⁰⁾. Art. 51 states that

“nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

⁽³⁴⁾ <http://www.history.com/this-day-in-history/us-bombs-libya>, access 24.12.2012.

⁽³⁵⁾ Ibidem.

⁽³⁶⁾ Ibidem.

⁽³⁷⁾ NIGRO V., 1986, *Quando Craxi Pensò di Attaccare la Libia*, in *La Repubblica.it* (Archivio), <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2008/10/31/1986-quando-craxi-penso-di-attaccare-la.html>, access 25.12.2012.

⁽³⁸⁾ http://100years.upi.com/sta_1986-04-15b.html, access 25.12.2012.

⁽³⁹⁾ http://news.bbc.co.uk/onthisday/hi/dates/stories/april/15/newsid_3975000/3975455.stm, access 25.12.2012.

⁽⁴⁰⁾ Ibidem.

Measures taken by members in the exercise of this right to self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take any time such action as it deems necessary in order to maintain or restore international peace and security ⁽⁴¹⁾”.

The use of the military attack by a state against another invoking self-defence in order to strike or capture alleged international terrorists has been firmly condemned by the international community before the end of the Cold War ⁽⁴²⁾. In particular, the 1986 American raid on Benghazi and Tripoli was condemned by the United Nations General Assembly in res. 41/38 ⁽⁴³⁾. It states that the General Assembly,

“[...]gravely concerned at the aerial and naval military attack perpetrated against the cities of Tripoli and Benghazi on 15 April 1986, which constitutes a serious threat to peace and security in the Mediterranean region, [...] condemns the military attack perpetrated against the Socialist People’s Libyan Arab Jamahiriya [...], which constitutes a violation of the Charter of the United Nations and of international law, [...] [and] affirms the right [of Libya] to receive appropriate compensation for the material and human losses inflicted upon it⁽⁴⁴⁾”.

From a political point of view, the Arab states demonstrated themselves to be supportive with Libya; even Egypt was ⁽⁴⁵⁾. After about one month from the Benghazi bombing, it was clear that Libya was not the county behind all the terroristic attacks, as Reagan believed. For example, the only terrorist survived after the Fiumicino attack resulted to have been trained by the Syrian agents. Syria seemed to be also behind the attack of the dance hall in West Berlin, the episode which was use the most by Reagan to justify the raid on Libya ⁽⁴⁶⁾. Nevertheless, Reagan was determined to defeat Gaddafi: on August 14, 1986, he called a reunion to define a plan that would have served to end Gaddafi’s regime. His intention was making Gaddafi doubting his most loyal collaborators (like his right-hand man Jallud) and keeping him under the menace

⁽⁴¹⁾ Art. 51, Chapter VII, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter7.shtml>, access 25.12.2012.

⁽⁴²⁾ FOCARELLI C., *Schemi delle Lezioni di Diritto Internazionale*, Perugia, Morlacchi Ed., 2003, p. 99.

⁽⁴³⁾ A/RES/41/38, November 20, 1986, United Nations General Assembly, <http://www.un.org/documents/ga/res/41/a41r038.htm>, access 25.12.2012.

⁽⁴⁴⁾ Ibidem, access 25.12.2012.

⁽⁴⁵⁾ DEL BOCA A., *Gheddafi, una Sfida dal Deserto*, Bari, Laterza Ed., 2010, pp. 185/190.

⁽⁴⁶⁾ Ivi, p. 194.

of a possible military intervention. However, the plan was discovered by the media, which used it to discredit Reagan (⁴⁷).

The 1986 Benghazi bombing left a deep mark in Libya: in fact, despite the fact on the media plan Gaddafi had won the battle, the raid had highlighted that Libya was not a strong country. In fact, although Gaddafi had invested almost all the oil revenues in the acquisition of military weapons, Libya could not defend itself from the American military force. At this point Gaddafi decided to leave Tripoli in order to spend some time in the desert: this was probably the longest period of absence of the dictator. Indeed, the West began to think that a Quadrumvirate, presided by Jallud, was ruling the country. In addition, the aid provided by Libya to insurrectional movements decreased rapidly and Abu Nidal, hidden in the country, was invited to leave the state. A part from an apparition through a pre-recorded message, Gaddafi began to reappear in public only in August. In August, he participated also in the Harare conference of the Non-Aligned movement: in that occasion, Gaddafi remarked the importance of fighting against the imperialism and of the African unity. Furthermore, he restarted to concede interviews, relying on the discovered non-guilt of Libya for the terroristic attacks in West Berlin and Fiumicino (⁴⁸).

2.3. The International Sanctions: the Lockerbie Attack and the Consequent United Nations Security Council's Resolutions.

On December 21st, 1988, 259 people on board of the Pan Am Flight 103 died as a consequence of its explosion over Lockerbie (Scotland) (⁴⁹). Pan Am Flight 103 departed from Heathrow Airport (London) to New York. 179 passengers were American, while the others came from various parts of the world. In this sense, the Lockerbie disaster was perceived as a direct attack against the United States of America (⁵⁰). On the 14th November, 1991, the United States and Britain formerly accused Libya of being responsible for the Lockerbie attack. In particular, they picked out two Libyan men as direct responsible for the disaster: 'Abd al-Basit al-Maqrabi and al-Amin Khalifa Fahimah. In addition, France accused Libya of the breaking up of the French UTA DC-10 over the Sahara desert in 1989 (⁵¹). Both USA and Britain asked Gaddafi

(⁴⁷) Ivi, p. 195.

(⁴⁸) Ivi, pp. 195/206.

(⁴⁹) <http://history1900s.about.com/od/1980s/a/flight103.htm>, access 10.12.2012.

(⁵⁰) Ibidem, access 10.12.2012.

(⁵¹) RONEN Y., *Qaddafi's Libya in World Politics*, London, Lynne Rienner Publishers, 2008, p. 43.

to hand over the two men responsible for Lockerbie, but the dictator answered negatively: he replied that the Libyan law is pretty clear with regards to the extradition of Libyan people. In fact, according to the law, Libyan people could not be extradited and, since there was not an extradition treaty in force between Libya and USA or Britain⁽⁵²⁾. Gaddafi claimed his right to conduct an internal trial, according to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation⁽⁵³⁾. According to art. 6 and 7 of the convention

“6.1.[...]any contracting state in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that state [...]. 7. The contracting state [...], if it does not extradite [the offender, or the alleged offender], shall be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that state⁽⁵⁴⁾”.

Furthermore, Gaddafi claimed the innocence of Libya, sustaining, therefore, that the State had no responsibility for what happened both to the Pan Am Flight 103 over Lockerbie and the French UTA DC-10 over the Sahara⁽⁵⁵⁾. In addition, Gaddafi kept denying the extradition of the two Libyan men responsible for the Lockerbie disaster. His position was easy to keep because of the oil revenues: in fact, during the nineties Libyan economy knew a very favourable period because of the Gulf War⁽⁵⁶⁾.

In order to constrain Gaddafi to hand over the two alleged responsible men for the Lockerbie attack, the United Nations Security Council approved a series of

⁽⁵²⁾ Ibidem.

⁽⁵³⁾ 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, <http://www.un.org/chinese/terrorism/1971E.pdf>, access 10.12.2012.

The Libyan Arab Republic had access to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation on the 19th February, 1973 (with effect from the 21st March, 1974. <http://www.un.org/chinese/terrorism/1971E.pdf>, access 10.12.2012.

⁽⁵⁴⁾ Art. 6.1, 7, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, <http://www.un.org/chinese/terrorism/1971E.pdf>, access 10.12.2012.

⁽⁵⁵⁾ RONEN Y., *Qaddafi's Libya in World Politics*, London, Lynne Rienner Publishers, 2008, p. 44.

Gaddafi gave his own version of what happened to the Pan Am Flight 103, explaining that the night of the explosion there was bad weather; therefore, the airplane probably ran into a storm which forced it to land nearby Lockerbie, where it went on fire. Ibidem.

⁽⁵⁶⁾ Ivi, pp. 44/45.

The increasing oil revenues allowed Gaddafi to finance a very ambitious process: the Great Man River Project. It aimed at bringing water to all the desert parts of Libya. Ibidem.

resolutions aimed at bending the dictator to the American and British demands⁽⁵⁷⁾. The first one was res. 731, approved on the 21st January, 1992. The Security Council, “determined to eliminate international terrorism⁽⁵⁸⁾”, condemned the attack to the Pan Am Flight 103; strongly disapproved the fact that Gaddafi had not handed over yet the two guilty men, not taking, therefore, responsibility for the Lockerbie attack; urged all states to seek cooperation with the Libyan government to accomplish the task; and drove Libya to respond to their requests in order to defeat international terrorism⁽⁵⁹⁾. As a response, on the 3rd March, 1992, Libya questioned the International Court of Justice against the American and British extradition request⁽⁶⁰⁾.

Meanwhile, on the 31st March, 1992 the Security Council adopted res. 748. The council, acting in accordance with chapter VII of the United Nations Charter, decided to ban air travel and arms sales to Libya and to reduce the Libyan diplomatic representation if Gaddafi did not hand over the two Libyan suspects by the 15th April, 1992⁽⁶¹⁾. In order to ensure the extradition of the two Libyans, the Security Council also called upon all the states and intergovernmental organizations to act according to the provisions of the resolution⁽⁶²⁾. The reaction was pretty harsh: Gaddafi accused the West to have undertaken a crusade against Libya; the state-appointed Tripoli’s imam even called for a jihad to defeat the West⁽⁶³⁾. On the 14th April, 1992 the International Court of Justice sentenced that United States and Britain had the right to force Gaddafi to extradite the two Libyan suspects. In addition, the day after, the sanctions provided by the provisions of res. 748 went into force⁽⁶⁴⁾. Actually, because of the West need of the Libyan oil, no provisions were taken regarding an oil ban. This way, Libya was isolated, but could still provide the oil for Europe⁽⁶⁵⁾.

The situation began to change at the beginning of 1993, when Gaddafi declared to be willing to hand over the two Libyan suspects if they would stand for a trial in an Arab League member state or any other neutral country. This way, he kept denying the possibility to Britain and United States to take to trial the two Libyans; but, at the same

⁽⁵⁷⁾ Ivi, p. 45.

⁽⁵⁸⁾ Res. 731, United Nations Security Council, 21st January, 1992, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/010/90/IMG/NR001090.pdf?OpenElement>, access 10.12.2012.

⁽⁵⁹⁾ Ibidem, access 10.12.2012.

⁽⁶⁰⁾ RONEN Y., *Qaddafi’s Libya in World Politics*, London, Lynne Rienner Publishers, 2008, p. 45.

⁽⁶¹⁾ Res. 748, United Nations Security Council, 31st March, 1992, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/011/07/IMG/NR001107.pdf?OpenElement>, access 12.12.2012.

⁽⁶²⁾ Ibidem, access 12.12.2012.

⁽⁶³⁾ RONEN Y., *Qaddafi’s Libya in World Politics*, London, Lynne Rienner Publishers, 2008, p. 45.

⁽⁶⁴⁾ Ivi, p. 46.

⁽⁶⁵⁾ Ivi, p. 45.

time, he showed openness toward the West ⁽⁶⁶⁾. In the second half of this year, Gaddafi demonstrated the willingness to hand over the two Libyans to stand for a trial in Scotland: he explained he felt close to Scottish people since they had been colonized by the English, as Libyans were by Italians ⁽⁶⁷⁾. Few months later, Libya even offered to hand over the suspects to Switzerland, but the United States, at this point, were determined to defeat international terrorism, which head, according to them, was Gaddafi. This is the reason why Security Council's res. 883, adopted on the 11th November, 1993, was so supported by United States ⁽⁶⁸⁾. The provisions of this resolution were pretty hard: first, all the Libyan assets overseas were frozen, along with all the financial resources derived from "the sale or supply of any petroleum or petroleum products, including natural gas and natural gas products, or agricultural products or commodities ⁽⁶⁹⁾". In other words, the provisions of the resolution included also the ban sales of oil equipment, leaving Libya completely isolated ⁽⁷⁰⁾.

The economic sanctions had terrible consequences on Libyan economy. On the one hand, the decrease of the oil prices (they knew a little increment only during the Gulf War) began to aggravate the Libyan economy from the eighties. In this sense, the sanctions provided by res. 883 worsened the situation even more. On the other hand, the Libyan government was not willing to decrease the military expenses, which had the highest weight in the state's public debt ⁽⁷¹⁾. In 1995, after a year of sufferance, when the economic situation began to become unbearable, Gaddafi adopted a new policy, aimed to defy the West sanctions against Libya. He claimed the right of pilgrims to perform the *hajj* to Mecca, being it a sacred pillar of Islam, by direct flight from Libya to Saudi Arabia, in violation to the Security Council resolutions' ban air travel ⁽⁷²⁾. On the 19th April, 1995 a Libyan boeing carried Libyan pilgrims from Tripoli to Saudi Arabia ⁽⁷³⁾. In response to the violation, the UN Sanctions Committee establishes that Libyan pilgrims were allowed to perform the *hajj* going to Saudi Arabia by plane only aboard of an Egyptian aircraft ⁽⁷⁴⁾. This can be considered a little victory in the fight

⁽⁶⁶⁾ Ivi, p. 46.

⁽⁶⁷⁾ Ivi, p. 47.

⁽⁶⁸⁾ Ibidem.

⁽⁶⁹⁾ Res. 883, United States Security Council, 11th November, 1993, http://www.sipri.org/databases/embargoes/eu_arms_embargoes/libya/libya-1986/un-security-council-resolution-883-1993, access 12.12.2012.

⁽⁷⁰⁾ Ibidem, access 12.12.2012..

⁽⁷¹⁾ VANDEWALLE D., *Storia della Libia Contemporanea*, Roma, Salerno Ed., 2006, p. 176.

⁽⁷²⁾ RONEN Y., *Qaddafi's Libya in World Politics*, London, Lynne Rienner Publishers, 2008, p. 49.

⁽⁷³⁾ Ivi, p. 50.

⁽⁷⁴⁾ Ibidem.

against the United States and the West ⁽⁷⁵⁾. On the 16th April, 1996, Libya violated again the sanctions provided by the Security Council allowing a Libyan aircraft to carry Libyan pilgrims to Saudi Arabia instead of an Egyptian one. In order to prove his superiority, Gaddafi himself flew from Tripoli to Cairo aboard of a Libyan plane to attend an Arab conference ⁽⁷⁶⁾. In 1997, Gaddafi began insisting again to settle the trial for the two Lockerbie responsible men in a neutral country. In 1998, the International Court of Justice deliberated in Libya favour, ruling that Libya had the right to require to hold the trial in a third country, different from Britain and United States ⁽⁷⁷⁾.

Finally, on the 5th April, 1999 the two Libyan suspects were handed to The Netherlands in order to hold the trial against them. The consequence was that the sanctions imposed by the Security Council were suspended ⁽⁷⁸⁾. On the 3rd May, 2000 the process formerly began; one month later the United States changed the status of Libya from “rogue state” to “state of concern” ⁽⁷⁹⁾. On the 31st January, 2001 the The Netherlands court sentenced ‘Abd al-Basit al-Maqrahi to life imprisonment, while the other defendant was found innocent and released. Gaddafi never took responsibility for the Lockerbie disaster ⁽⁸⁰⁾.

2.4. Conclusions.

The years after the 1986 US Benghazi and Tripoli bombing represented a turning point in the history of Gaddafi’s Libya: he initiated a period of distension with all the Western countries with which he had troubled relationships. Since they were many, it seems important here to concentrate on one of them: Italy.

In 1988 Libya sent to Rome the vice-Secretary of the People’s General Congress who proposed the signature of a non-aggression treaty. The then Italian Foreign Minister Andreotti embraced the proposal and announced the detente with Libya ⁽⁸¹⁾. In fact, the Libyan representative did not hint at the period of Italian colonization in Libya, so that Andreotti believed that the question was to be considered solved once for all. However, on October 26, 1988, Gaddafi made a long speech, restating the indignation of Libyan people behind the Italian colonization in the area and underlying it was not

⁽⁷⁵⁾ Ibidem.

⁽⁷⁶⁾ Ivi, p. 51.

⁽⁷⁷⁾ Ivi, p. 52.

⁽⁷⁸⁾ Ivi, p. 54.

⁽⁷⁹⁾ Ivi, p. 56.

⁽⁸⁰⁾ Ivi, pp. 56/57.

⁽⁸¹⁾ DEL BOCA A., *Gheddafi, una Sfida dal Deserto*, Bari, Laterza Ed., 2010, pp. 215/216.

possible to cancel that period from Libyans' minds. He also added that the economic relation with Italy prescinded from that discourse. At this point one thing was clear: it was not possible for the Colonel to pursue a detente policy with Italy unless Italy itself had not paid the debt it owed Libya due to the colonization ⁽⁸²⁾. Italy was not willing to pay Libya a compensation that had already been paid ⁽⁸³⁾. The real detente with Italy happened during the 2000s, when Italy was the promoter of the end of the international sanctions in 2004. In 2008, as already stated in chapter 5, Italy and Libya signed (and ratified in 2009) a new bilateral treaty, called the Treaty on Friendship, Partnership and Cooperation between Italy and Libya. The new agreement provides some provisions about the Italian compensation to Libya for the colonial domination. It seems possible to assert that Gaddafi remained still on this point. Gaddafi had manipulated many people in order to pursue his goals, sometimes in good faith, sometimes not. Gaddafi has been a dictator: no one could ever assert the contrary. However, it seems possible to say that, in his "twisted" vision of the county, he had always been fond with it.

The end of the international sanctions and the path that led to the 2011 Libyan crisis are the topics of the next chapter.

⁽⁸²⁾ Ivi, pp. 216/217.

⁽⁸³⁾ <http://ricerca.repubblica.it/repubblica/archivio/repubblica/1988/11/26/de-mita-ribadisce-jallud-gia-pagati-danni.html>, access 26.12.2012.

CHAPTER 3. THE END OF THE INTERNATIONAL SANCTIONS, THE OPENING TOWARD THE WEST AND THE 2011 LIBYAN REVOLUTION.

CONTENTS: 3.1. The Network of Relations between Libya and the World' States. – 3.2. An Overview on Libyan Economic Reforms and Social Conditions during the 2000s. – 3.3. The Libyan Crisis.

3.1. The Network of Relations between Libya and the World's States.

In 1999, when Gaddafi decided to hand over the two Libyan suspects for the Lockerbie attack, the United Nations Security Council suspended the 1992 multilateral sanctions. On the other hand, the United States of America ease the unilateral sanctions on Libya, without suspending them. Beside, Libya underwent a deep transformation after the handing over of the two suspects. After the isolation, Gaddafi tried to reestablish a network of relationships with all the key-countries in Africa, USA and European Union ⁽¹⁾.

As for Africa, various African heads of State traveled to Libya in order to pay their respect to Gaddafi because of the end of the Libyan isolation. In July 1999 the Organization for the African Unity (OAU) honored Gaddafi nominating him as a long-lost brother ⁽²⁾. As a result, Gaddafi made a long speech calling for the creation of a Pan African Congress and an Integration Bank to promote the Arab unity and the implementation of an agreement for the Economic Community of Africa. The African Union called for the immediate complete withdrawal of all the economic sanctions on Libya ⁽³⁾. Gaddafi's will was that of promoting a system of States modeled on the American example, creating a United States of Africa ⁽⁴⁾. Furthermore, Gaddafi concluded some cooperation treaties covering various areas, such as education, science and culture, with Niger in 1997, Eritrea in 1998 and Senegal and South Africa in 1999 ⁽⁵⁾.

⁽¹⁾ ST. JOHN R. B., *Libya: from Colony to Revolution*, Philadelphia, University of Pennsylvania Press, 2012, pp.226/227.

⁽²⁾ Ivi, p. 227.

⁽³⁾ Ibidem.

⁽⁴⁾ Despite all the efforts made by Gaddafi to implement the African unity, Libya was the theatre of some episodes of xenophobia against the African workers migrated there. Ivi, p. 228.

⁽⁵⁾ Ivi, p. 229.

In July 2002, the Organization of the African Unity was replaced by the African Union (AU), a regional organization similar to the European Union. In July 2004 Gaddafi authorized the World Food Program to transport food from Libya to the Darfur region of Sudan and to the Sudanese refugee camps in Sudan. In 2005, the African Union third anniversary's birth was celebrated in Libya. Furthermore, in the same year, Libya joined the Common Market for eastern and Southern Africa, a regional economic community, established in 2004 and aimed at promoting regional economic cooperation and integration ⁽⁶⁾.

As for the Palestinian question, which had always represented a key-point in his foreign policy, Gaddafi, at the opening session of the OAU summit in 2001, did not mention the Arab-Israeli question at all. Moreover, in 2004, many Libyan Jews who fled to Israel in 1948 and 1967 were entitled to the compensation for their confiscated properties, as long as they did not occupy Palestinian territories. He, who had always been convinced that Israel had to be cancelled as a State from the Middle East, in 2007, during an interview to Al-Jazeera, Gaddafi stated "I am convinced that the [Israel-Palestine] solution is to establish a democratic State for the Jews and the Palestinians, a State that will be called Palestine, Isratine, or whatever they want ⁽⁷⁾".

Despite being well accepted by the African heads of State, Gaddafi was not content with the Arab world, since African States were not pursuing the Pan Arab unity as he was. In order to underline his frustration, he did not attend the 2007 session of the Arab summit in Saudi Arabia, defining the union as a "not serious" one ⁽⁸⁾. In North Africa, Gaddafi tried to renew the Arab Maghrib Union, founded in 1989 by Morocco, Tunisia, Mauritania, Libya and Algeria. Moreover, he wanted to establish new relationships with the People's Republic of China: in 2001 Gaddafi and the Chinese foreign minister concluded a cultural and information cooperation treaty ⁽⁹⁾. In addition, the dictator established a network of relations even with the Philippine head of State, Arroyo ⁽¹⁰⁾.

With regard to the European Union, the relation has always been complicated. During the nineties, Libya exported to Europe eighty-five percent of its goods (mainly

⁽⁶⁾ Ivi, pp. 229/231.

⁽⁷⁾ <http://www.aljazeera.com/news/africa/2011/09/20119493450743624.html>, access 8.01.2013.

⁽⁸⁾ Ivi, pp. 233/234.

⁽⁹⁾ Ivi, pp. 234/235.

⁽¹⁰⁾ Ivi, p. 235.

energy products, such as oil and hydrocarbons), while Europe exported to Libya seventy-five percent of its products. Germany, Italy and Spain had been the major importers of Libyan ones. On the other hand, Libyan imports derived almost from Italy and Germany. In addition, in 1999 Libya was allowed to enter the Euro-Mediterranean Partnership, or Barcelona process, a regional body born in 1995 with the Barcelona Declaration. In 2004, Gaddafi visited the European Headquarter in Brussels: the visit marked the definitive rehabilitation of Libya before the European countries, insomuch as the arms embargo and the remaining sanctions were completely withdrew. In June 2005, Libya was entitled to stop illegal immigration along with the European Union: in this sense, Libya had to halt illegal migrants transiting through the country, impeding them to cross and arrive in Europe. After one month, the European Commission decided to release one million euros in order to give an aid to Libya in its fight against HIV ⁽¹¹⁾.

Despite Gaddafi's will to join the Euro-Mediterranean Partnership, he did not want to get too involved because he wanted to preserve his role as an independent intermediary between Europe and Africa. In addition, Israel was one of the members of the Partnership. Gaddafi's position was quite clear about that: since the partnership was born in order to establish a zone of peace, security and stability in the Mediterranean, it was incoherent by the members allowing Israel to participate: in fact, Israel had expropriated many Palestinians from their territories ⁽¹²⁾.

The European State which has always entertained the closest relationship with Libya is Italy. The day after the two Lockerbie suspects had been handed over, the then Italian foreign minister went to visit Gaddafi; by the end of the year, the Italian prime minister visited Libya for two days. Italy-Libya diplomatic and economic relation grew day by day. Libya's energy exports represented the twenty-five percent of Italian imports. In addition, with the activation of the Green Steam pipeline in 2004 the imports grew to the thirty percent. Libya kept being convinced that Italy had to hand a compensation for the Italian colonization of the country. In particular, Libya convinced Italy to build a coastal road as a piece of reparation for the colonization. The October 7, 2005, became the day of revenge: that day, in 1911, Italy invaded Libya. In 2006 some rioters attacked the Italian embassy in Benghazi: Libyan government adverted Italy that it could not guarantee the protection Italian properties in the future as long as the Italian

⁽¹¹⁾ Ivi, p. 237.

⁽¹²⁾ Ivi, p. 238.

government refused to pay its debt with Libya (¹³). As for the illegal immigration, in 2005 Italy and Libya completed the first joint naval exercise in the Mediterranean. Despite the fact that Gaddafi accepted to help with the prevention of illegal immigration, he clarified he did not want to transform Libya in the “policeman” of the Mediterranean: the task had to be shared among all the Mediterranean States (¹⁴).

3.2. An Overview on Libyan Economic Reforms and Social Conditions during the 2000s.

Six years of isolation left a scar in Libya. Both the terrestrial and maritime borders remained open, so that Libyan people could not starve. Nevertheless, Libyan people’s salaries covered only twenty percent of their needs. Libyan government had to intervene in order to sell primary products with subsidize prices. The markets could provide every type of product, even the Israeli ones. However, only a small part of the Libyan population could afford them (¹⁵). Gaddafi is well aware of what his people is going through. Nevertheless, instead of implementing a policy which would have had raised the salaries, kept insisting on the establishment of new political bodies which did not provide any help to Libyan people. Detecting a certain discontent increasing in the country, Gaddafi promised to distribute half of the oil revenues to the population (¹⁶). In this sense, the international sanctions contributed to the increase of the discontent in Libya, which led to a *coup d’état* in 1993 (¹⁷). The garrisons of BeniUlid, Misurata, Garian, Zuara, Brak and Tarhunah made a four-day insurrection: there were two hundred victims. Of course, the insurrection was repressed with violence and the responsible people arrested (¹⁸).

As for Gaddafi’s involvement in terroristic attacks, after the isolation, the dictator was willing to redeem himself: after the 9/11 terrorist attack on the Twin Towers in New York, Gaddafi volunteered himself to fight in the war of terror, condemning the attack and expressing sympathy for the victims. During the next years, Libyan intelligence worked along with the American and English ones in order to detect

(¹³) Ivi, pp. 238/239.

(¹⁴) Ivi, p. 240.

(¹⁵) DEL BOCA A., *Gheddafi: una Sfida dal Deserto*, Bari, Laterza Ed., 2010, p. 266.

(¹⁶) Ivi, p. 267.

(¹⁷) Ibidem.

(¹⁸) Ibidem.

the Al-Qaeda network. The main reason why Libya participated so actively in the war on terror was that many Islamist organizations which targeted the White House singled out Libya too. For example, Gaddafi indicated the Libyan Islamic Fighting Group as a fundamentalist organization which could have had a connection with Al-Qaeda. This way, the Libyan group was added to the Bush list of alleged terrorist organization of the world. In addition, in 2003 Gaddafi accepted responsibility for the 1988 bombing of Pan Am flight 103 and paid 2.7 billion dollars as a compensation for the two hundred seventy families involved in the attack. Despite the efforts made the Libyan government to fight against the terrorism, the United States of America were reluctant to withdrawal the sanctions on Libya, also due to the alleged Libyan involvement in the construction of mass destruction weapons ⁽¹⁹⁾.

On December 19, 2003, Libya officially renounced its nuclear and chemical weapons program ⁽²⁰⁾. The period of Gaddafi's implementation can be divided into three sections: the first, from 1969 to 1981, characterized by the uranium exploration and the reprocessing of plutonium. In this period there was no proliferation of nuclear weapons because the countries were not willing to sell the technology and provide assistance both necessary to produce it. During the second period, from 1981 to mid-nineties, Libya figured out how to acquire the materials to be used in the fission process which is essential to make the nuclear weapons based on plutonium and uranium function. The third period covered the years from the mid-nineties to December 2003 and saw a reinvigoration of Libya's nuclear program ⁽²¹⁾.

Libya's decision to abandon its nuclear program came after long negotiations between Libya, United States of America and Great Britain ⁽²²⁾. Libyan government's decision to interrupt the nuclear program was justified by the fact that, according to Libya, "the arms race is conducive neither to its own security nor to that of the region and runs counter to its strong desire for a world blessed with security and peace ⁽²³⁾".

As for the economic sector, Libyan economy has always been dependent from the energy sector, which is controlled by the State. In July 2006 the World Bank defined

⁽¹⁹⁾ ST. JOHN R. B., *Libya: from Colony to Revolution*, Philadelphia, University of Pennsylvania Press, 2012, pp. 243/244.

⁽²⁰⁾ BOWEN W. Q., *Libya and Nuclear Proliferation*, United Kingdom, Rutledge, 2006, p. 7.

⁽²¹⁾ Ivi, pp. 25/26.

⁽²²⁾ Ivi, p. 47.

⁽²³⁾ Libya's communiqué to the United Nations Security Council, made public on December 23, 2003, cited in Ivi, p. 48.

Libya as the least oil-producing country in the world: Libyan GDP was mainly composed by the hydrocarbons sector (seventy-two percent); government revenues (ninety-three percent); and export earnings (ninety-five percent). One of the consequences has been the low rate job creation, which led to the unemployment. In 2001 the government launched a program against corruption and the non-appropriate use of oil resources along with a policy of economic liberalization, diversification, structural modernization and privatization. In a speech made in 2003 to the General People's Congress, Gaddafi denounced the public sector as a failure and called for the privatization of the oil sector⁽²⁴⁾. Furthermore, he pledged to make Libya a member of the World Trade Organization⁽²⁵⁾. Despite Libya's commitment in its liberalization policy, the works for the realization of the Great Manmade River project continued: begun in 1983, it was an ambitious public project which aimed at bringing water to all the territories of Libya and to the agricultural lands⁽²⁶⁾.

With regard to the social conditions of Libya, during the nineties Gaddafi had suppressed all the dissident groups within military and tribal fields using force. Thereafter, the internal opposition was mainly represented by the Islamist fundamentalist groups. Therefore, Gaddafi elaborated a three-stages strategy which served to eliminate every internal opposition: first of all, undermining the religious authority of the *ulema*; second, rejecting and contesting Islamist ideas; and third, repressing Islamist opposition with violence⁽²⁷⁾. To increase his political authority, Gaddafi decided to implement the Islamic law stricter. Despite increasing the effects of the Islamic law, the figure of *ulema* was pretty dangerous because it could undermine Gaddafi authority. An *ulema* is a Muslim scholar who is expert in the Islamic Sharia and may have studied philosophy. As a concept, *ulema* could refer to an organized political body that exercises its power in the name of the Islamic religion⁽²⁸⁾. According to Gaddafi, the most frightful enemy of the country was the Islamic fundamentalism⁽²⁹⁾. Outside Libya, many anti-Gaddafi groups continued to operate, but they lacked of

⁽²⁴⁾ It has to be reminded that Libya was one of the first countries among the oil-producing ones to have had privatized the oil sector, as stated in chapter 1.

⁽²⁵⁾ ST. JOHN R. B., *Libya: from Colony to Revolution*, Philadelphia, University of Pennsylvania Press, p. 247.

⁽²⁶⁾ Ivi, p. 249.

⁽²⁷⁾ Ivi, p. 254.

⁽²⁸⁾ <http://www.mideastweb.org/Middle-East-Encyclopedia/ulema.htm>, access 29.12.2012.

⁽²⁹⁾ DEL BOCA A., *Gheddafi: una Sfida dal Deserto*, Bari, Laterza Ed., 2010, p. 268.

unity. Some of them met in 2000 in order to establish a joint strategy. They were: the Libyan Islamic Group; The Libyan Constitutional Grouping; the Libyan National Organization; the Libyan National Democratic Rally; the National Front for the Salvation of Libya; and the Libyan Movement for Change and Reform. Despite the meeting, the differences among the groups were too deep and they did not reach any accord ⁽³⁰⁾. In 2003, after the American occupation of Iraq, five Gaddafi opposition groups signed the Declaration on the Principles, Fundamentals, and Objectives of the Libyan struggle ⁽³¹⁾. It was signed by the Libyan National Alliance; the Republican Assembly for Democracy and Social Justice; the Libyan Movement for Change and Reform; the Libyan Tmazight Congress; and the National Front for the Salvation of Libya. On June 25-26, 2005, the National Libyan Opposition Conference was held for the first time in London. The participants called for the establishment of a transitional government aimed at replacing Gaddafi's dictatorship and implementing democracy ⁽³²⁾.

During the years, many organizations, such as Amnesty International, Human Rights Watch and the US Department of State, have asserted and prove the human rights violations perpetrated by Gaddafi. They include: torture, rape, disappearances, unfair trials, and so on. Human Rights Watch in 2005 declared that Libya was improving the lack of respect of human rights, but there were still problems, such as the freedom to speak ⁽³³⁾. The report addressed to the then State of human rights in Libya: civil and political rights have been severely violated during the regime ⁽³⁴⁾. People have not been free to form a political party which was against Gaddafi's political system. Despite the fact that Libyan law established severe punishment for those guilty of torturing people, torture itself has been widely used by Libyan government in prisons and interrogations ⁽³⁵⁾. However, Libya began to improve the respect of human rights. For example, in 2003 the government promised to the Libyans who had left the country for political persecution to return without any retaliation against them ⁽³⁶⁾. In 2004 the

⁽³⁰⁾ DEL BOCA A., *Gheddafi: una Sfida dal Deserto*, Bari, Laterza Ed., 2010, pp. 254/255.

⁽³¹⁾ Ivi, p. 255.

⁽³²⁾ Ibidem.

⁽³³⁾ Ivi, p. 256.

⁽³⁴⁾ HUMAN RIGHTS WATCH, *Libya. Words to Deeds. The Urgent Need for Human Rights Reform*, vol. 18(1E), January 2006, p. 1.

⁽³⁵⁾ Ivi, p. 3.

⁽³⁶⁾ Ibidem.

General People's Committee for Public Security and Justice was divided into two separate bodies entitled to implement justice in a fairer way⁽³⁷⁾. Other implementations were made: in 2004 Amnesty International was allowed to execute an international scrutiny in Libya; in 2005 the People's Court and its prosecution office were abolished; in the same year five long-term political prisoners were released⁽³⁸⁾.

Despite all the improvements that have been made by the Libyan government, the vicious revolution which broke out in February 2011 led to the death of Colonel Gaddafi in October 2011.

3.3. The Libyan Revolution: the Beginning of a New Era.

The Libyan crisis broke out on February 15, 2011, after the Tunisian and Egyptian revolutions. The Libyan mobilization has been fomented and fostered by Gaddafi's opposition groups abroad, mainly in Great Britain and United States of America⁽³⁹⁾. The genesis of the Libyan revolution has to be found in the massacre of the Abu Salim prison in 1996⁽⁴⁰⁾. What happened was that one day, with apparent no reason, about one thousand and two hundreds inmates (the number is not precise because it was never documented) were killed by the guards of the prison⁽⁴¹⁾. One day to another the families who wanted to visit their relatives in the Abu Salim prison, were said that they were not allowed to do it due to security reasons⁽⁴²⁾. Only in 2000, 2001, the truth bobs up: the prisoners are dead. The mothers and relatives of the inmates began to gather in Benghazi every Saturday in order to protest against the lack of information regarding the death of the prisoners and crying for their losses. Of course, they were subjected to the threats of the State's officaries and the Libyan media did not deal with it. The families asked for the restitution of their relatives' bodies, since also the Libyan law provides that, in these cases, the corpses have to be returned to the

⁽³⁷⁾ Ivi, pp. 3/4.

⁽³⁸⁾ Ivi, p. 4.

⁽³⁹⁾ ADLY F., *La Rivoluzione Libica. Dall'Insurrezione di Bengasi alla Morte di Gheddafi*, Milano, Il Saggiatore Ed, 2012, p. 75.

⁽⁴⁰⁾ Ivi, p. 15.

⁽⁴¹⁾ Human Rights Watch (HRW), *Libya: June 1996 Killings at Abu Salim Prison*, <http://www.hrw.org/en/news/2006/06/27/libya-june-1996-killings-abu-salim-prison>, access 4.01.2013. Full text available at page 160.

⁽⁴²⁾ <http://www.lastampa.it/2010/07/23/blogs/voci-globali/libia-quale-verita-sul-massacro-nel-carcere-di-abu-salim-nel-bQ51PvnhMxTG2zlnEB9HBJ/pagina.html>, access 4.01.2013.

families to be buried ⁽⁴³⁾. In 2004, Saif al Islam, one of Gaddafi's sons, officially informed the families of the victims of the death of their relatives in the prison, without giving any detail of their death ⁽⁴⁴⁾. In the same year, in one of his speech, Gaddafi informed the public of the massacre, sustaining that the guards had to shoot to keep order in the prison ⁽⁴⁵⁾. On September 25, 2011, the National Transitional Council announced the discovery of the mass grave of the Abu Salim prison, where more than one thousand and two hundreds corpses were found. The council has asked assistance to the West in order to process the DNA of the bodies so that they can be returned to their families to be buried ⁽⁴⁶⁾. The Libyan revolution broke out as a consequence of the imprisonment of Fathi Terbil on February 14, 2011, the attorney who legally represented the families of the victims of the Abu Salim prison ⁽⁴⁷⁾. His arrest came after the Libyan government request to halt the manifestations which have been occurring every year by the families of the victims. The attorney responded that he was not the promoter of those manifestations, therefore he could not ask the families not to gather and manifest ⁽⁴⁸⁾. On February 17, 2011, many demonstrations went on in the country. Gaddafi's revolutionary committees organized counter-manifestations: students were forced to carry an image of the dictator and to march along with servicemen of the committees dressed with green uniforms ⁽⁴⁹⁾ (green was the color of the Libyan flag).

The insurrection began also thanks to the Gaddafi's opposition groups abroad. On January 2, 2011, a group of Libyan intellectuals in exile in Great Britain gathered in Manchester in order to give birth to a program of defense of the Abu Salim families who kept manifesting in Libya. On January 10, 2011, the National Conference for the Libyan Opposition was contacted by this group, with an appeal for a mobilization of all Libyans living abroad ⁽⁵⁰⁾. Both in Libya and abroad sit-in in front of Libyan embassies and manifestations against the incarceration of the attorney occurred. The Libyan government began to take precautionary measures in order to avoid a revolution as it

⁽⁴³⁾ Ibidem, access 4.01.2013.

⁽⁴⁴⁾ http://www.rai.it/dl/grr/notizie/ContentItem-12da3aa5-6c5c-4ad1-9bf6-29b295fe6aca.html?refresh_ce, access 4.0.2013.

⁽⁴⁵⁾ ADLY F., *La Rivoluzione Libica. Dall'Insurrezione di Bengasi alla Morte di Gheddafi*, Milano, Il Saggiatore Ed, 2012, p. 16.

⁽⁴⁶⁾ <http://www.amnesty.it/libia-cnt-deve-proteggere-le-prove-della-fossa-di-abu-salim>, access 4.01.2013.

⁽⁴⁷⁾ ADLY F., *La Rivoluzione Libica. Dall'Insurrezione di Bengasi alla Morte di Gheddafi*, Milano, Il Saggiatore Ed, 2012, p. 25.

⁽⁴⁸⁾ Ibidem.

⁽⁴⁹⁾ Ibidem.

⁽⁵⁰⁾ Ivi, p. 75.

was happening in Tunisia and Egypt. First, on February 1, 2011, Jamal al-Hajji, a human rights activist, was arrested for an infraction of the Highway Code. During the past days, the activist had fomented a mobilization to ask more freedom for Libyan people through internet ⁽⁵¹⁾. Hajj was detained during all the Libyan revolution and released only the day of Tripoli's liberation. Second, on February 10, 2011, during the meeting of the National Conference for Libyan Tribes, Gaddafi himself intervened, promising a new Constitution, the formation of a new government, and a plan of investments for the development of the country ⁽⁵²⁾.

The significant turning point was the arrest of the attorney Fathi Terbil on February 14, 2011. The news was spread on the web. The day after, a sit-in was organized in front of the Benghazi Tribunal ⁽⁵³⁾. Along with the families of the victims of Abu Salim, many other citizens gathered in front of the tribunal, fighting for freedom. Other manifestations occurred in Libya, but this was different: tens of thousands took part in the demonstration for the victims of the Abu Salim prison ⁽⁵⁴⁾. They demanded the immediate release of the attorney and justice and freedom for all Libyan people. That same night the images of Gaddafi carried by the students forced by the government to manifest in favor of the regime, laid broken on the streets, while the offices of the revolutionary committees had being destroyed. Some slogans began to be sung by the protesters; one of them was "Ya Gaddafi barra barra, Libya hurra hurra", that is to say "away Gaddafi, Free Libya" ⁽⁵⁵⁾. Despite being a pacific manifestation, the security services attacked the citizens with truncheons and guns. During the night, the police made patrols in order to arrest intellectuals known for their human rights activism. One of them was Idriss Mismari, arrested for having released some statements to an Arab broadcasting station via telephone ⁽⁵⁶⁾. The State television reported that pro-Gaddafi manifestations were going on, showing images of protesters carrying green flags. Gaddafi made his very first speech after the fall of Mubarak: he asserted that all the regimes sustained by West countries, like Egypt, were destined to fall because they have entertained peaceful relations with Israel. He added that the West could not destroy

⁽⁵¹⁾ Ivi, p. 82.

⁽⁵²⁾ Ivi, pp. 82/83.

⁽⁵³⁾ Ivi, p. 87.

⁽⁵⁴⁾ Ivi, pp. 87/88.

⁽⁵⁵⁾ Ivi, p. 88.

⁽⁵⁶⁾ Ibidem.

the Libyan State and that all the Muslims had to fight against it. He also claimed that the masses were demonstrating against the Western colonialism ⁽⁵⁷⁾. It seems obvious that Gaddafi did not know what he was talking about: the demonstrators were protesting his regime!

The mobile telephony company kept sending messages to its subscribers, where it was written not to overtake the four red lines delineated by Seif: the Islam religion; Libyan security and stability; the unity of the country; and Muammar Gaddafi ⁽⁵⁸⁾. On February 16, 2011, the manifestations spread all over the country, both in known dissident cities, like Al Bayda and Tobruk, and loyalist ones, like Beni Ulid. Meanwhile, the State press continued to describe the demonstrations as manifestations pro-Gaddafi's regime. More students were forced to march yelling at the West. The attorney Terbil was released in an attempt to halt the manifestations but, at the same time, Gaddafi began to send his forces, along with his brother in law Sanussi, known for having being the chief of the Libyan intelligence and married to Gaddafi' sister ⁽⁵⁹⁾. Despite the release of the attorney, the protests did not halt. By February, 17, 2011, the Libyan security forces were not able to control the situation anymore. On Thursday, February 17, all the population of Benghazi is gathered in front of its tribunal. The funerals of the day-before-victims became a carnage: the security forces began to shoot the people, killing twenty-four people in Benghazi, forty-five in the country. Beside the bloody repression of the protests, the regime decided also the cut every channel of information, such as internet and the telephonic lines, and to interrupt the refurbishment of electricity and fuel ⁽⁶⁰⁾. This was the beginning of the Libyan insurrection.

The pretests spread all over the country: first, in the Oriental region of Libya, Cyrenaica. In Tobruk, the most Oriental cities of the country, the monument of the Green Book was even demolished. According to some of the protesters, the chief of the military station of Tobruk promised the population he would have not attacked them. In addition, he occupied the airport, so that the government could not send any military aid ⁽⁶¹⁾. After three days of bloody repression, all the coastal Oriental area was liberated. The majority of the military forces passed on the side of the rebels. In all the cities

⁽⁵⁷⁾ Ivi, pp. 88/89.

⁽⁵⁸⁾ Ivi, p. 89.

⁽⁵⁹⁾ Ibidem.

⁽⁶⁰⁾ Ivi, pp. 90/91.

⁽⁶¹⁾ Ivi, p. 93.

transitional congresses were established by the citizens. Meanwhile, the regime tempted to bomb Benghazi, but the pilots refused to do it. Therefore, Gaddafi hired mercenaries who could follow his orders ⁽⁶²⁾.

The people who protested found their lead in the National Transitional Council, an organizational body which represented at first all the Libyan rebels and then all the Libyan people. It was necessary to revive the cities, since the government had cut the electricity, the water supplies, fuel. Therefore, it was necessary to give birth to an organization which could reorganize the everyday life of Libyans. The strong point which facilitated the birth of the council was the defection of Mustafa Jalil and Abdelfattah Younis, who were respectively the former ministers of justice and home office ⁽⁶³⁾.

Benghazi became the linchpin of the revolution: on the one hand, the square in front of the tribunal was constantly occupied, day and night. On the other hand, the officials of the Libyan army made themselves available for the National Transitional Council and organize the defense of the city ⁽⁶⁴⁾. On February 26, 2011, the United Nations Security Council adopted res. 1970, condemning the behavior of the Libyan government and engaging an arms embargo, a travel ban and the asset freeze over the county ⁽⁶⁵⁾. According to Human Rights Watch, by February 19, 2011, Libyan forces had already killed eighty-four protesters ⁽⁶⁶⁾.

The turning point of the revolution was the intervention of the international community in the country: res. 1973 authorized the use of force in order to halt the massacres in Libya in the name of the responsibility to protect and established a no-fly zone over the country. The resolution was adopted on March, 17, 2011 ⁽⁶⁷⁾. On March 19, 2011, NATO began to bomb Libya: the targets were military bases. However, there have been complaints about the NATO mission: it seems that sometimes the air strikes

⁽⁶²⁾ Ivi, p. 94/95.

⁽⁶³⁾ Ivi, pp. 96/97.

⁽⁶⁴⁾ Ivi, pp. 98/99.

⁽⁶⁵⁾ Res. 1970, United Nations Security Council, February 26, 2011, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1970\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1970(2011)), access 4.01.2013. Res. 1970, along with 1973, is well explained in chapter 7.

⁽⁶⁶⁾ Human Rights Watch (HRW), *Libya: Security Forces Kill 84 Over Three Days*, February 19, 2011, <http://www.hrw.org/news/2011/02/18/libya-security-forces-kill-84-over-three-days>, access 4.01.2013.

⁽⁶⁷⁾ Res. 1973, United Nations Security Council, March 17, 2011, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973(2011)), access 4.01.2013.

missed the targets and killed civilians or Libyan insurgents instead ⁽⁶⁸⁾. On May 15 Misrata, a seaside city controlled by Gaddafi's forces, was liberated. On late April NATO planes began bombing the city targeting loyalists' tanks and artillery⁽⁶⁹⁾. By the end of July the rebels had gained control over the main streets which linked Tripoli with Tunisia, surrounding Gaddafi. Tripoli was definitely isolated on August 16, 2011 ⁽⁷⁰⁾. Four days later rebels' cells in Tripoli launched "Operation Mermaid Dawn", supported by NATO. On August 21, 2011, Tripoli was occupied by the insurgents encountering little resistance ⁽⁷¹⁾.

After months of massacres, fights, battles, on October 20, 2011, Colonel Gaddafi was shot to death by a rebel outside the city of Sirte. A dictatorship, lasted for forty-two years, had finally come to an end. During his 22nd February speech he had said that he would have had never capitulate, as Ben Ali and Mubarak did. In fact, he did not. It would seem that, since the dictator died, the revolution ended. However, it is not like that. Libya is doing the revolution, everyday, coping with a democracy its population had never known.

It is possible to assert Libyan revolution has been very peculiar: unlike its "sisters", the Tunisian and Egyptian one, in Libya a real civil war broke out in the county. It needed also the intervention of the international community. Libya is now facing a new period of its history: on July 7, 2012, Libyan people voted for the first time: they decided that the coalition that will lead them is the National Forces Alliance of Jibril ⁽⁷²⁾.

The next section will analyze the 2008 Benghazi treaty between Italy and Libya and its future now that the country is not led by Gaddafi anymore.

⁽⁶⁸⁾ <http://www.aljazeera.com/indepth/spotlight/libya/2011/08/20118219127303432.html>, access 4.01.2013.

⁽⁶⁹⁾ Ibidem, access 4.01.2013.

⁽⁷⁰⁾ Ibidem, access 4.01.2013.

⁽⁷¹⁾ Ibidem, access 4.01.2013.

⁽⁷²⁾ <http://temi.repubblica.it/limes/elezioni-in-libia-un-successo-a-meta/37544?h=1>, access 4.01.2013.

**SECOND PART. THE LAW OF TREATIES: CONCLUSION AND
SUSPENSION OF INTERNATIONAL AGREEMENTS AND THE 2008
BENGAZI TREATY BETWEEN ITALY AND LIBYA.**

CHAPTER 4. MAKING AND SUSPENDING INTERNATIONAL AGREEMENTS IN ACCORDANCE WITH THE 1969 VIENNA CONVENTION AND THE 2011 DRAFT ARTICLES ON THE EFFECTS OF ARMED CONFLICTS ON INTERNATIONAL TREATIES.

CONTENTS: 4.1. A General Overview on the Matter of Treaties: the *Pacta Sunt Servanda* Principle and the 1969 Vienna Convention on the Law of Treaties. – 4.2. Making Treaties: the Procedures of Conclusion of International Agreements. – 4.3. The Causes of Suspension and Extinction of International Treaties. – 4.4. The *Rebus Sic Stantibus* clause. – 4.5. The Effects of Armed Conflicts on International Treaties. – 4.6. Conclusions.

4.1. A General Overview on International Treaties: the *pacta sunt servanda* Principle and the 1969 Vienna Convention on the Law of Treaties.

An international treaty can be defined as the encounter of the wills of two or more States or international subjects that produces binding juridical effects for the contracting parties ⁽¹⁾. They are considered as sources of international law, like the customary law. In fact, art. 38 of the International Court of Justice Statute, listing the sources that the court would use to solve international disputes when called to do it, states that they are

“1. [...] a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting States; b. international custom, as evidence of a general practice accepted by the law; c. the general principles of law recognized by civil nations; d. [...] judicial decisions and the teachings of the most qualified publicists of the various nations, as subsidiary means for the determination of rules of law. 2. The provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto ⁽²⁾”.

Treaties allow States to regulate their relationships and interests: in fact, agreements have acquired certain relevance on the international level. States conclude a large number of treaties in order to regulate every question they want, from the humanitarian to the geographical field ⁽³⁾. It is possible to refer to a treaty as an

⁽¹⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 111.

⁽²⁾ Art. 38, Statute of the International Court of Justice, <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>, access 29.11.2012.

⁽³⁾ Ivi, p. 111.

agreement, a pact, a protocol, an accord, a convention, and so on. Furthermore, treaties can be defined as bilateral, if the signing parties are two, or multilateral, if there are multiple parties involved. International treaties must be distinguished from the agreements that do not have juridical effects and from those that, despite having juridical nature, are not international. In this sense, declarations, gentlemen's agreements, political *communiqués*, accords concluded among privates or between States and privates and pacts concluded between States of a federal State, have not to be considered as international treaties ⁽⁴⁾.

International agreements are binding only for those parties who have ratified them: in fact, parties who do not have ratified a treaty are not bound to its provisions ⁽⁵⁾. All the entities entitled to international personality are able to conclude treaties ⁽⁶⁾: in fact, international persons possess rights and duties enforceable at law and one of these rights is that of being able to conclude international agreements ⁽⁷⁾. International subjects as the Order of Malta, the Holy See, insurrectional movements or national liberation movements can stipulate international treaties because of the international community's recognition of their international personality ⁽⁸⁾.

It would be useful to introduce here the concept of *pacta sunt servanda*: according to art. 26 of the 1969 Vienna Convention, it means that "every treaty in force is binding upon the parties to it and must be performed by them in good faith ⁽⁹⁾". In other words, *pacta sunt servanda* expresses the idea that treaties are binding for the contracting parties and that they should be interpreted and applied in good faith ⁽¹⁰⁾. Many writers believe that the principle of *pacta sunt servanda* has to be considered part of the customary law: in this sense, it is possible to consider it a fundamental principle of international law ⁽¹¹⁾. Art. 1 of the 1969 Vienna Convention clearly states that it

⁽⁴⁾ Ivi, pp. 111/112.

⁽⁵⁾ <http://www.britannica.com/EBchecked/topic/291011/international-law/233499/Treaties#ref794916>, access 29.11.2012.

⁽⁶⁾ STROZZI G., *Il Diritto dei Trattati*, Torino, G. Giappichelli Ed., 1999, p. 7.

⁽⁷⁾ SHAW M. N., *International Law*, Sixth Edition, Cambridge, Cambridge University Press, 2008, p. 195.

⁽⁸⁾ STROZZI G., *Il Diritto dei Trattati*, Torino, G. Giappichelli Ed., 1999, p. 7.

⁽⁹⁾ Art. 26, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽¹⁰⁾ <http://legal-dictionary.thefreedictionary.com/Pacta+Sunt+Servanda>, access 1.12.2012.

⁽¹¹⁾ DORR O., SCHMALENBACH K. (edited by), *Vienna Convention and the Law of Treaties. A Commentary*, Osnabruck (Germany), Springer, 2012, p. 436/437.

applies only to the treaties concluded between States ⁽¹²⁾. However, international agreements can be concluded also between other entities, entitled to international personality: for example, insurgents, as international subjects, can stipulate pacts between them and other States ⁽¹³⁾. It would be possible to believe that the principle of *pacta sunt servanda*, since stated in the 1969 Vienna Convention, which applies only to international treaties concluded between States, would not apply also to the international agreements concluded between States and other international entities ⁽¹⁴⁾. Nevertheless, it is not like that: in fact, as it was stated by the Swiss government to the Permanent Court of International Justice in the 1936 *Losinger&Co Case* “the principle *pacta sunt servanda* [...] must be applied not only to agreements directly concluded by States, but also to agreements between States and an alien [...] ⁽¹⁵⁾”.

Customary international norms that regulate the conclusion, stipulation, validity and effectiveness of international agreements are enshrined in the 1969 Vienna Convention on the Law of Treaties, in force for 108 States, included Italy ⁽¹⁶⁾.

In general, during its first session, the International Law Commission inserted the law of treaties among the fourteen topics ⁽¹⁷⁾ that had to be codified. Three of these had to have priority: the law of treaties, the arbitral procedure and the regime of the high seas⁽¹⁸⁾. The General Assembly of the United Nations decided to call for a conference with the resolution 2166-XXI (5th December 1966) ⁽¹⁹⁾. The first session began on the

⁽¹²⁾ Art. 1, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽¹³⁾ STROZZI G., *Il Diritto dei Trattati*, Torino, G. Giappichelli Ed., 1999, p. 7.

⁽¹⁴⁾ DORR O., SCHMALENBACH K. (edited by), *Vienna Convention and the Law of Treaties. A Commentary*, Osnabruck (Germany), Springer, 2012, p. 438.

⁽¹⁵⁾ PCIJ *Losinger&Co Case* PCIJ Pleadings, Oral Statements and Documents Ser C N. 78, 32 (1936), English Translation in *Garcia-Amador* (n. 91), para 116, cited in DORR O., SCHMALENBACH K. (edited by), *Vienna Convention and the Law of Treaties. A Commentary*, Osnabruck (Germany), Springer, 2012, p. 438.

⁽¹⁶⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 113.

⁽¹⁷⁾ The fourteen topics selected for codification were: recognition of states and governments; succession of states and governments; jurisdictional immunities of states and their property; jurisdiction with regard to crimes committed outside national territory; regime of the high seas; regime of territorial waters; nationality, including statelessness; treatment of aliens; right of asylum; law of treaties; diplomatic intercourses and immunities; consular intercourses and immunities; state responsibility; and arbitral procedure. <http://untreaty.un.org/ilc/ilcintro.htm>, access 2.12.2012.

⁽¹⁸⁾ CAPOTORTI F., *Il Diritto dei Trattati Secondo la Convenzione di Vienna*, in SOCIETA' ITALIANA PER L'ORGANIZZAZIONE INTERNAZIONALE (published by), *Convenzione di Vienna sul Diritto dei Trattati*, Padova, CEDAM, 1969, p. 13.

⁽¹⁹⁾ Ivi, p. 15.

26th March, 1968 and ended on the 24th May, 1968, while the second one began on the 9th April, 1969 and ended on the 22nd May, 1969 ⁽²⁰⁾.

The convention consists of a preamble and 85 articles and is divided into eight parts ⁽²¹⁾. In the preamble some important concepts are asserted: the urgency of codifying the procedures of conclusion of international treaties; the increasing importance of treaties as an international law tool; the universal recognition of the principles of free consent, good faith and *pacta sunt servanda*; the determination of the States to determine the necessary conditions due to the maintenance of the agreements' dispositions; the idea that the convention would serve to maintain international peace and security; and the core principles of self-determination, non-interference in the internal affairs of a State, territorial sovereignty, prohibition of use or threat of force ⁽²²⁾. The first part serves as introduction of some basic norms: first of all, the fact that the convention applies only to States, as art. 1 establishes ⁽²³⁾. Second of all, art. 2 explains some terms that are useful in order to fully understand the convention, such as:

“[...]a. “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation; [...]e. “negotiating State” means a State which took part in the drawing up and adoption of the text of the treaty; f. “contracting State” means a state which has consented to be bound by the treaty, whether or not the treaty has entered into force; g. “party” means a state which has consented to be bound by the treaty and not for which the treaty is in force; h. “third State” means a state not a party to the treaty [...] ⁽²⁴⁾”.

Third, on the temporal plan, the convention applies to the treaties concluded after the entry into force of the convention itself. In other words, the convention does not have retroactivity nature ⁽²⁵⁾.

⁽²⁰⁾ Ivi, pp. 15/16.

⁽²¹⁾ 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽²²⁾ Ivi, Preamble.

⁽²³⁾ Ivi, art. 1.

⁽²⁴⁾ Ivi, art. 2.

⁽²⁵⁾ Ivi, art. 4.

The second part deals with the conclusion and entrance into force of international treaties, which will be discussed in the next paragraph.

The third part is on the observance, application and interpretation of treaties. In particular, it is important to remember the already cited art. 26 on the principle of *pacta sunt servanda* ⁽²⁶⁾. Art. 28 establishes also the non-retroactivity of treaties: in fact, it states that

“unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party ⁽²⁷⁾”.

The fourth section of this part is about international treaties and third States: in particular, art. 34, 35 and 36 are worth to be cited: art. 34 establishes that “a treaty does not create either obligations or rights for a third State without its consent ⁽²⁸⁾”; art. 35 affirms that an obligation of a treaty is binding for a third State only whether the parties intend to create obligations for it and if it is willing to be bound to them ⁽²⁹⁾. Art. 36 deals with treaties which provide rights for third States ⁽³⁰⁾.

The fourth and fifth parts of the convention are respectively on amendments and modification of treaties and invalidity, termination, suspension of the operation of treaties (in particular, this last topic will be discussed in the next paragraphs) ⁽³¹⁾.

The sixth and seventh parts are on the miscellaneous provisions and depositaries, notifications, corrections and registration ⁽³²⁾. In particular, art. 73 specifies that “the provisions of the present convention shall not prejudice any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States ⁽³³⁾”.

The eighth part establishes some final dispositions ⁽³⁴⁾.

⁽²⁶⁾ Ivi, Third Part, art. 26.

⁽²⁷⁾ Ivi, art. 28.

⁽²⁸⁾ Ivi, art. 34.

⁽²⁹⁾ Ivi, art. 35.

⁽³⁰⁾ Ivi, art. 36.

⁽³¹⁾ Ivi, Fourth and Fifth Parts.

⁽³²⁾ Ivi, Sixth and Seventh Parts.

⁽³³⁾ Ivi, art. 73.

⁽³⁴⁾ Ivi, Eighth Part.

As for Italy and Libya, the 1969 Vienna Convention on the Law of Treaties was ratified respectively on the 25th July, 1974 ⁽³⁵⁾ and on the 22nd December, 2008 ⁽³⁶⁾.

In conclusion, it would be possible to say that treaties are considered as the primary tools for the codification of the existing customary law. Both international treaties and customary law can be regarded as if they were on the same plan of importance: in fact, an agreement's norm could succeed to a customary one or vice versa ⁽³⁷⁾.

4.2. Making Treaties: the Procedures of Conclusion of International Agreements.

First of all, it must be underlined that every State has the legal capacity to conclude treaties, as art. 6 of the convention States ⁽³⁸⁾.

The procedures that lead to the formation of an international treaty are manifold. Additionally, the 1969 Vienna Convention clearly codifies some of them, while does not expressly establish others. For example, the authentication and manifestation of the consent to be bound to the treaty are clearly described. On the other hand, other procedures are presupposed, as the phase of the negotiation ⁽³⁹⁾.

Art. 3 of the convention clearly states that the convention itself applies only to international treaties concluded in written form ⁽⁴⁰⁾. Two distinct procedures to conclude treaties can be detected: the stipulation in solemn and simplified form ⁽⁴¹⁾. The former consists of four phases ⁽⁴²⁾. The first one is the phase of negotiation: the expected outcome of the negotiation is the adoption of the text. One author states that another outcome is the authentication of the adopted text ⁽⁴³⁾, while the four-phase procedure places the adoption of the text in the second phase of the process ⁽⁴⁴⁾.

⁽³⁵⁾ http://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en, access 2.12.2012.

⁽³⁶⁾ Ibidem, access 2.12.2012.

⁽³⁷⁾ DANILENKO G. M., *Law-Making in the International Community*, The Netherlands, Martinus Nijhoff Publishers, 1993, pp. 47/48.

⁽³⁸⁾ Ivi, art. 6.

⁽³⁹⁾ MARESCA A., *Il Diritto dei Trattati*, Milano, Dott. A. Giuffrè Ed., 1971, pp. 127/128.

⁽⁴⁰⁾ Art. 3, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁴¹⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 114.

⁽⁴²⁾ Ibidem.

⁽⁴³⁾ BROWNLIE I., *Principles of Public International Law*, Sixth Ed., Oxford (NY), Oxford University Press, 2003, p. 582.

⁽⁴⁴⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 115.

Anyway, negotiation is led by the plenipotentiaries, or those who have the full power to do it, as art. 7 of the convention states. In fact, it establishes that

“a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if a. he produces appropriate full powers; or b. it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers ⁽⁴⁵⁾”.

As for the phase of negotiation, the plenipotentiaries that represent a State can be heads of States, heads of governments, ministers of foreign affairs, heads of diplomatic missions and representatives accredited at organizations or international conferences (if the treaties have to be concluded within the organization or the international conference) ⁽⁴⁶⁾. Heads of States, heads of governments and ministers of foreign affairs can perform all the acts relating the conclusion of an international agreement ⁽⁴⁷⁾. The plenipotentiaries' signature marks the second phase of the solemn procedure: it authenticates the text of the treaty. Apart from authentication, the signature does not have legal effects. Nevertheless, it allows the signatory State to proceed to the ratification of the text and expresses the acceptance of the text ⁽⁴⁸⁾.

The next step is the ratification: it is the expression of States' will to be bound to the dispositions of the treaty on the international plan, as art. 14 of the convention states ⁽⁴⁹⁾, while it does not have effects on the internal one ⁽⁵⁰⁾.

The final phase of this process is the exchange or deposit of instruments of ratification, as codified in art. 16 of the 1969 Vienna Convention. The deposit can be

⁽⁴⁵⁾ Art. 7.1, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁴⁶⁾ Art. 7.2, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁴⁷⁾ Ibidem.

⁽⁴⁸⁾ BROWNLIE I., *Principles of Public International Law*, Sixth Ed., Oxford (NY), Oxford University Press, 2003, p. 583.

According to one author, the signature expresses also an obligation “of good faith” that refrains the signatory states from acts that would undermine the object of the treaty. Ibidem

⁽⁴⁹⁾ Art. 14, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁵⁰⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 115.

done through the “exchange between the contracting States ⁽⁵¹⁾”, or a “deposit with the depositary ⁽⁵²⁾”, or a “notification to the contracting States or to the depositary, if so agreed ⁽⁵³⁾”.

Once the proceeding has been concluded, the registration of the treaty within the United Nations can be done, as provided by art. 80 of the 1969 Vienna Convention ⁽⁵⁴⁾ or art. 102 of the United Nations Charter. The registration is not compulsory. However, if it is not done, “no party to any such treaty or international agreement [...] may invoke the treaty or agreement before any organ of the United Nations ⁽⁵⁵⁾”.

As for the proceeding in the simplified form, the signature determines the entry into force of the treaty, without any ratification ⁽⁵⁶⁾.

4.3. The Causes of Suspension and Extinction of International Treaties.

Articles 54 to 64 of the 1969 Vienna Convention on the Law of Treaties regulate the causes of extinction and suspension of international treaties ⁽⁵⁷⁾. In general, they are: denunciation or withdrawal (from treaties that do not contain any provision regarding denunciation or withdrawal); suspension by consent of the parties; suspension by consent of certain parties only; termination or suspension due to the conclusion of another later treaty; termination or suspension following a breach of the treaty; impossibility of performance; fundamental change of circumstances; and emergency of a new *jus cogens* norm that is in contrast with the treaty ⁽⁵⁸⁾.

First of all, art. 54 states that the termination of a treaty or the withdrawal of a party from a treaty can be done both in conformity with the provisions of a treaty or by

⁽⁵¹⁾ Art. 16, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁵²⁾ Ibidem.

⁽⁵³⁾ Ibidem.

⁽⁵⁴⁾ Art. 80.1 of the 1969 Vienna Convention on the Law of Treaties states that “treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for application”. Art. 80.1, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁵⁵⁾ Art. 102.2, Chapter XVI, United Nations Charter, <http://www.un.org/en/documents/charter/chapter16.shtml>, access 3.12.2012.

⁽⁵⁶⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 117.

⁽⁵⁷⁾ Art. 54ss, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁵⁸⁾ 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

consent of the parties ⁽⁵⁹⁾. Art. 55 determines that a multilateral treaty cannot be terminated whether the number of the parties necessary to its entrance into force is below the requested one ⁽⁶⁰⁾. Art. 56 is about the “denunciation or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal ⁽⁶¹⁾”. The denunciation or withdrawal can occur in relation to both bilateral and multilateral treaties. If the treaty contains a withdrawal clause, the party has to follow the procedure described by it ⁽⁶²⁾. If the treaty does not contain such a clause, denunciation or withdrawal can occur only if they can be opined by the nature of the treaty or whether the parties seem to be willing to concede the denunciation or withdrawal ⁽⁶³⁾. The United Nations Charter does not contain any provision regarding this question ⁽⁶⁴⁾. Art. 57 establishes that a treaty can be suspended according to the provisions of the treaty or by consent of all parties after consultation ⁽⁶⁵⁾. Art. 58 regards the suspension of a multilateral treaty only for certain parties: in this case, the suspension is allowed if it is provided by the treaty or if it does not affect the enjoyment of the treaty by the other parties or if does not affect its object and the purpose ⁽⁶⁶⁾. Art. 59 establishes that a treaty can be terminated or suspended if another later treaty on the same matter is concluded by the parties. It occurs whenever the provisions of the new treaty are incompatible with those of the previous one, so that the two treaties cannot be applied at the same time ⁽⁶⁷⁾. Art. 60 is quite important: in fact, it codifies the termination or suspension of a treaty as a consequence of its breach ⁽⁶⁸⁾. This cause can be invoked only if the violation breaches a material and substantial part of the treaty. This is defined by the third paragraph of art. 60: a repudiation of the treaty or a violation to one of its essential provisions so that the realization of its object and purpose are impossible, can

⁽⁵⁹⁾ Ivi, art. 54.

⁽⁶⁰⁾ Ivi, art. 55.

⁽⁶¹⁾ Ivi, art. 56.

⁽⁶²⁾ RONZITTI N., *Introduzione al Diritto Internazionale*, Third Edition, Torino, G. Giappichelli Ed., 2009, p. 207.

⁽⁶³⁾ Art. 56, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁶⁴⁾ RONZITTI N., *Introduzione al Diritto Internazionale*, Third Edition, Torino, G. Giappichelli Ed., 2009, p. 208.

⁽⁶⁵⁾ Art. 57, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁶⁶⁾ Ivi, art. 58.

⁽⁶⁷⁾ Ivi, art. 59.

⁽⁶⁸⁾ Ivi, art. 60.

be considered as material and essential violation of the treaty ⁽⁶⁹⁾. The simple non-fulfillment of the treaty by a party does not represent a cause of extinction or suspension of the treaty itself ⁽⁷⁰⁾.

4.4. The *Rebus Sic Stantibus* clause.

Art. 62 of the 1969 Vienna Convention on the Law of Treaties, entitled “Fundamental Change of Circumstances” ⁽⁷¹⁾, establishes what is known as the *rebus sic stantibus* clause. In particular, the article states that

“1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of the treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless: a. the existence of those circumstances constituted an essential basis of the consent of the parties to be bound to the treaty; and b. the effect of the change is radically to transform the extent of obligations still to be performed under the treaty. 2. A fundamental change of circumstances, as not be invoked as a ground of terminating or withdrawing from a treaty: a. if the treaty establishes a boundary; or b. if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty. 3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty ⁽⁷²⁾”.

First of all, it must be noticed that the norm is expressed in the negative form in order to underline the exceptionality of this circumstance ⁽⁷³⁾. In fact, the norm establishes that an international agreement remains valid until the circumstances at the basis of the parties’ will to be bound to it change ⁽⁷⁴⁾. Second, at a first glance, it is possible to say that the article clearly states that the change of circumstances must have some characteristics: it must be fundamental; it has to stand to the circumstances

⁽⁶⁹⁾ Ivi, art. 60.3.

⁽⁷⁰⁾ RONZITTI N., *Introduzione al Diritto Internazionale*, Third Edition, Torino, G. Giappichelli Ed., 2009, p. 208.

⁽⁷¹⁾ Art. 62, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁷²⁾ Ibidem.

⁽⁷³⁾ IMPALLOMENI E. B., *Il Principio Rebus Sic Stantibus nella Convenzione di Vienna sul Diritto dei Trattati*, Milano, Dott. A. Giffrè Ed., 1974, pp. 9/10.

⁽⁷⁴⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 173.

existing at the moment of the conclusion of the treaty; the change could not have been foreseen; the circumstances had to have constituted an essential basis of the parties' consent; the change would constitute a radical transformation of the obligations' treaty not yet performed; the change does not affect boundary treaties; and the change has not to be the result of a breach of the treaty by the party who invokes it ⁽⁷⁵⁾.

Despite the fact that the *rebus sic stantibus* clause is based on legal objective grounds, once applied it acquires a subjective character: as a matter of fact, since every situation is different, a deep investigation must be done in order to determine the will of the parties involved and the circumstances that have led the parties to express that will to be bound to a treaty ⁽⁷⁶⁾.

The fundamental change of circumstances can be invoked both to extinguish and suspend an international agreement ⁽⁷⁷⁾. The principle of *rebus sic stantibus* has customary character, as the International Court of Justice judged in its 1973 sentence on fisheries jurisdiction (United Kingdom vs. Iceland) ⁽⁷⁸⁾. In this specific case, Iceland sustained that there had been a change in the circumstances that existed when in 1961 took place the exchange of notifications between Iceland itself and United Kingdom and that, therefore, that exchange had to be extinguished. The Court sentenced that the principle of *rebus sic stantibus* "may, in many aspects, be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances ⁽⁷⁹⁾". Finally, art. 64 establishes that, in case of emergency of a new international *jus cogens* norm that results to be in conflict with a treaty, the agreement becomes void and terminates ⁽⁸⁰⁾.

⁽⁷⁵⁾IMPALLOMENE E. B., *Il Principio Rebus Sic Stantibus nella Convenzione di Vienna sul Diritto dei Trattati*, Milano, Dott. A. Giffrè Ed., 1974, p. 10.

⁽⁷⁶⁾ Ivi, pp. 22/23.

⁽⁷⁷⁾ RONZITTI N., *Introduzione al Diritto Internazionale*, Third Ed., Torino, G. Giappichelli Ed., 2009, p. 209.

⁽⁷⁸⁾ Fisheries Jurisdiction Case (United Kingdom vs Iceland), Jurisdiction of the Court, Judgment of 2nd February 1973, <http://www.icj-cij.org/docket/files/55/5749.pdf>, access 5.12.2012.

⁽⁷⁹⁾ Ibidem, <http://www.icj-cij.org/docket/files/55/5749.pdf>, access 5.12.2012.

⁽⁸⁰⁾ Art. 64, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

The causes of invalidity of treaties are not object of this chapter since they do not seem to be pertinent with the case of the 2008 Benghazi Treaty between Italy and Libya.

4.5. The Effects of Armed Conflicts on International Treaties.

In 2000, during its fifty-second session, the International Law Commission identified the topic of “Effects of Armed Conflicts on Treaties” as a possible one to include its long-term program of work ⁽⁸¹⁾. In 2004, during its fifty-sixth session, the commission decided to include definitely the topic in its long-term program work and appointed Mr. Ian Brownlie as a Special Rapporteur for it ⁽⁸²⁾. The first report came in 2005, the second in 2006 and the third in 2007. In 2008 the commission studied the fourth report which mainly focused on the effects of armed conflicts on international agreements in relation to the procedures of their suspension and termination. In this occasion, the commission adopted an 18 draft articles regarding the effects of armed conflicts on international treaties ⁽⁸³⁾. Finally, in 2011 during its sixty-third session, the commission completed the second reading of the draft articles ⁽⁸⁴⁾.

The topic of the effects of armed conflicts on international treaties is still in debate. The difficulties regarding the topic are several: first of all, defining “armed conflict” with a distinct and clear definition. Every armed conflict is different: for this reason, there is no consolidated praxis on it ⁽⁸⁵⁾. In addition, the use of force is prohibited by art. 2 of the United Nations Charter. However, new types of war have been born, different from the traditional ones, so that it is even more difficult to determine which could be their effects ⁽⁸⁶⁾.

In general, two schools of thought have tried to give a coherent approach to the matter: according to the first one, the effects of the armed conflicts should be determined by the intents of the treaty’ States parties: in other words, the States parties should determine the effects of armed conflicts on treaties. According to the second school of thought, an objective test must be done: if the execution of a treaty is objectively incompatible with the conflict, it should be suspended or terminated ⁽⁸⁷⁾. It is possible to say that the analysis of the effects of armed treaties on international treaties has been gone through three phases: during the first one, the prevalent praxis

⁽⁸¹⁾ http://untreaty.un.org/ilc/summaries/1_10.htm, access 18.12.2012.

⁽⁸²⁾ Ibidem, access 18.12.2012.

⁽⁸³⁾ Ibidem, access 18.12.2012.

⁽⁸⁴⁾ Ibidem, access 18.12.2012.

⁽⁸⁵⁾ ILC (International Law Commission), *The Effect of Armed Conflict on Treaties: an Examination of Practice and Doctrine*, A/CN.4/550, United Nations General Assembly, Fifty-seventh session, Geneva 2005, p. 5.

⁽⁸⁶⁾ Ibidem.

⁽⁸⁷⁾ Ivi, pp. 9/10.

was that of terminating treaties during an armed conflict. During the twentieth century, the more common view was that wars did not affect treaties at all. The modern view is quite more balanced: in fact, armed conflicts do not terminate or suspend *ipso facto* international treaties, but, at the same time, could have effects on them ⁽⁸⁸⁾.

One of the primary goals of the 2011 draft articles is that of indicating when and whether international agreements should automatically terminate or be suspended due to an armed conflict. Then, to distinguish between the automatic termination or suspension due to armed conflict from the non-automatic doctrines, such as the *rebus sic stantibus* one which cannot be invoked unilaterally. In addition, the topic of occupation is introduced: in fact, it is not easy to determine whether, in case of occupation, the occupying power should administrate the occupied territory ⁽⁸⁹⁾.

The 2011 draft articles on the effects of armed conflicts opens with art. 1 which enounces that it applies to the effects of armed conflicts on international treaties concluded between States ⁽⁹⁰⁾. It is useful to remind that the 1969 Vienna Convention on the Law of Treaties do not contain any provision regarding this topic ⁽⁹¹⁾. Art. 2 provides the definition of “treaty” and of “armed conflict”. In particular, the draft establishes that

“an “armed conflict” means a situation in which there is resort to armed force between States or protracted resort to armed force between governmental authorities and organized armed groups ⁽⁹²⁾”.

Also the Institute of International Law ⁽⁹³⁾ provided a definition of armed conflict in its 1985 resolution “The Effects of Armed Conflicts on Treaties” adopted on August 28, 1985 (session of Helsinki). The institute defines an armed conflict as

⁽⁸⁸⁾ Ivi, pp. 12/14.

⁽⁸⁹⁾ BURKE N., *A Change in Perspective: Looking at Occupation through the Lens of the Law of Treaties*, in *Int. Law and Pol.*, vol. 42(103), 2008, pp. 106/107.

⁽⁹⁰⁾ Art. 1, ILC (International Law Commission), *Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries*, in *Year. Of in Int. Law Comm.*, vol. 2, Part 2, 2011.

⁽⁹¹⁾ 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁹²⁾ Art. 2, ILC (International Law Commission), *Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries*, in *Year. Of in Int. Law Comm.*, vol. 2, Part 2, 2011.

⁽⁹³⁾ The Institute of International Law is a non-political, independent and non-profit educational institute that provides training and technical assistance in international law. <http://www.ili.org/>, access 18.12.2012.

“a State of war or an international conflict which involve armed operations which by their nature or extent are likely to affect the operation of treaties between States parties to the armed conflict or between States parties to the armed conflicts and third States, regardless of a formal declaration of war or other declaration by any or all of the parties to the armed conflict⁽⁹⁴⁾”.

Art. 3 is very important: it determines that the mere existence of an armed conflict do not *ipso facto* terminate or suspend the operation of the treaty⁽⁹⁵⁾. In this sense, it establishes the legal continuity of the operation of international agreements⁽⁹⁶⁾. Art. 4 provides that whether a treaty already contains provisions about its termination or suspension during an armed conflict, those provisions shall be applied⁽⁹⁷⁾. The article clearly states that treaties could be concluded with explicit provisions that establish their continuity also in case of armed conflicts. On the contrary, the treaty could provide its suspension or termination in case of armed conflicts⁽⁹⁸⁾. Art. 6 derives from art. 3⁽⁹⁹⁾: it establishes that, in order to determine whether a treaty could be terminated or suspended, there are many factors to consider, such as the nature of the treaty; its subjects; its purposes and objectives; the characteristics of the armed conflict; its escalation; its duration; whether it occurs between two States or between a non-international armed group and a State; and the consequences outside the environment⁽¹⁰⁰⁾. Art. 8 states that the existence of an armed conflict does not affect the legal capacity of a State to conclude or suspend international treaties⁽¹⁰¹⁾. Art. 9 determines the procedure to follow in case a party expresses the will to terminate or suspend the treaty: in particular, it has to notify its decision to the other parties. If the parties object a

⁽⁹⁴⁾ Art. 1, IIL (Institute of International Law), *The Effects of Armed Conflicts on Treaties*, August 28, 1985, Session of Helsinki.

⁽⁹⁵⁾ Art. 3, ILC (International Law Commission), *Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries*, in *Year. Of in Int. Law Comm.*, vol. 2, Part 2, 2011.

⁽⁹⁶⁾ Ivi, art. 3 (commentary).

Also art. 2 1985 resolution “The Effects of Armed Conflicts on Treaties” adopted on August 28, 1985 (session of Helsinki) establishes that “the outbreak of an armed conflict does not *ipso facto* terminate or suspend the operation of treaties in force between the parties to the armed conflict”. Art. 2, IIL (Institute of International Law), *The Effects of Armed Conflicts on Treaties*, August 28, 1985, Session of Helsinki.

⁽⁹⁷⁾ Art. 4, ILC (International Law Commission), *Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries*, in *Year. Of in Int. Law Comm.*, vol. 2, Part 2, 2011.

⁽⁹⁸⁾ Ivi, art. 4 (commentary).

⁽⁹⁹⁾ Ivi, art. 6 (commentary).

⁽¹⁰⁰⁾ Ivi, art. 6.

⁽¹⁰¹⁾ Ivi, art. 8.

notification, States can seek a solution through the means indicated in art. 33 ⁽¹⁰²⁾ of the United Nations Charter ⁽¹⁰³⁾. Art. 10 is very important: it states that whether a treaty is suspended or terminated due to an armed conflict, the parties are still bound by the obligations deriving from international law ⁽¹⁰⁴⁾. In this sense, the article underlines the primary importance of international law: in fact, treaties' obligations under international law cannot be suspended. States are still bound by the norms deriving from international law, no matter if they are contained in a treaty suspended or terminated due to an armed conflict ⁽¹⁰⁵⁾. Art. 13 is also worth to be cited: it establishes that

“1. Subsequent to an armed conflict, the States parties may regulate, on the basis of agreement, the revival of treaties terminated or suspended as a consequence of the armed conflict. 2. The resumption of the operation of a treaty suspended as a consequence of an armed conflict shall be determined in accordance with the indicia referred to in article 6 ⁽¹⁰⁶⁾”.

Paragraph 1 provides that whether a treaty has been suspended or terminated, the States parties may conclude another agreement in order to revive or render operative the suspended or terminated treaty or parts of it. Paragraph 2 is connected to art.6 mentioned above. In this case, since the treaty has been suspended by one party on the basis of the factors listed in art. 6 that when the armed conflict is over ceases to exist, the treaty can be operative immediately after the end of the conflict, unless there are other causes of suspension, termination or withdrawal ⁽¹⁰⁷⁾. Art. 14 deals with the effects of the exercise of self-defence on treaties: a State which exercise its right to self-defence under the United Nations Charter, is entitled to suspend or terminate a treaty if its operation is not compatible with the fight ⁽¹⁰⁸⁾. Art. 16 establishes that the Security Council's relevant decisions taken in accordance with the United Nations Charter

⁽¹⁰²⁾ Art. 33 of the United Nations Charter establishes that, in case of international disputes, the parties shall seek a peaceful solution by “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice”. Art. 33, Chapter Six, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter6.shtml>, access 18.12.2012.

⁽¹⁰³⁾ Art. 9, ILC (International Law Commission), *Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries*, in *Year. Of in Int. Law Comm.*, vol. 2, Part 2, 2011.

⁽¹⁰⁴⁾ Ivi, art. 10.

⁽¹⁰⁵⁾ Ivi, art. 10 (commentary).

⁽¹⁰⁶⁾ Ivi, art. 13.

⁽¹⁰⁷⁾ Ivi, art. 13 (commentary).

⁽¹⁰⁸⁾ Ivi, art. 14.

prevail on the provisions of the draft articles ⁽¹⁰⁹⁾. This article is related to art. 103 of the United Nations Charter: it states that

“in the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any international agreement, their obligations under the present Charter shall prevail ⁽¹¹⁰⁾”.

In other words, the provisions under the Charter of the United Nations prevail on those of international treaties.

Finally, art. 17 and 18 respectively state that the draft is without any prejudice to States’ rights and duties under the laws of neutrality and to any other cause of termination, suspension or withdrawal of treaties as a consequence of a material breach; supervening impossibility to performance; or *rebus sic stantibus* ⁽¹¹¹⁾.

There are some international treaties that cannot be suspended, even if there is an armed conflict going on between the parties: they are the treaties “exhibiting a very high likelihood of applicability ⁽¹¹²⁾”. All humanitarian law treaties belong to this category: since they have been concluded in order to regulate the use of particular weapons or to deal with the aspects of armed conflicts, they cannot be suspended or terminated during an armed conflict because they have been specially written to deal with it ⁽¹¹³⁾. Treaties containing specifically addressed provisions that confirm their applicability during an armed conflict, are not to be suspended or terminated ⁽¹¹⁴⁾. It is common praxis not to suspend or terminate treaties which declare, create or regulate a permanent regime or status of the parties. They are agreements providing sovereignty, administering or ceding a territory, establishing boundaries or establishing international organizations ⁽¹¹⁵⁾. In fact, whenever an armed conflict occurs the existence of the United Nations, as an international organization, is not threatened. Also treaties which

⁽¹⁰⁹⁾ Ivi, art. 16.

⁽¹¹⁰⁾ Art. 103, Chapter Sixteen, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter16.shtml>, access 18.12.2012.

⁽¹¹¹⁾ Art. 17/18, ILC (International Law Commission), *Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries*, in *Year. Of in Int. Law Comm.*, vol. 2, Part 2, 2011.

⁽¹¹²⁾ ILC (International Law Commission), *The Effect of Armed Conflict on Treaties: an Examination of Practice and Doctrine*, A/CN.4/550, United Nations General Assembly, Fifty-seventh session, Geneva 2005, p. 14.

⁽¹¹³⁾ Ivi, p. 15.

⁽¹¹⁴⁾ Ivi, p. 19.

⁽¹¹⁵⁾ Ivi, p. 20.

codify *jus cogens* norms are not to be suspended or terminated during an armed conflict, given the nature of the norms ⁽¹¹⁶⁾. Human rights agreements containing non-derogable provisions of human rights apply during an armed conflict, since non-derogable human rights can be considered as *jus cogens* norms ⁽¹¹⁷⁾. Both treaties governing governmental debt and on diplomatic conventions are believed not to be suspended during an armed conflict. As for the latter, it is obvious that the diplomatic relations and privileges, such as immunity, cannot cease to be during an armed conflict, otherwise the public order would not be maintained ⁽¹¹⁸⁾.

On the contrary, there are treaties denominated “treaties exhibiting a low likelihood of applicability” which clearly have to be suspended or terminated during an armed conflict ⁽¹¹⁹⁾. They are: treaties that contain specific provisions that specify that armed conflicts lead to their suspension or termination ⁽¹²⁰⁾ and treaties which application is incompatible with the armed conflict ⁽¹²¹⁾, as provided by the 2011 draft articles. In particular, the Italian praxis regarding the effects of armed conflicts on international treaties has showed that it is orientated toward the idea that armed conflicts do not necessarily suspend or terminate international agreements unless they become impossible to carry out. In addition, the armed conflict would not bring to the extinction of the treaty, but may contribute to the changing of circumstances, because of which the treaty is impossible to carry out ⁽¹²²⁾.

The matter of the effects of armed conflicts on international treaties could be related to the *rebus sic stantibus* clause. In fact, it would seem that the suspension or termination of a treaty during an armed conflict was consistent with the change of circumstances. It seems to be partly true. According to Conforti, the effects of armed conflicts on international agreements are not to be considered independent, but an application of the *rebus sic stantibus* ⁽¹²³⁾. Conforti’s theory seems to be plausible: as a matter of fact, in general a war leads to a change of circumstances. It has to be seen whether the change is fundamental, so that the *rebus sic stantibus* clause shall be

⁽¹¹⁶⁾ Ivi, p. 21.

⁽¹¹⁷⁾ Ivi, pp. 22/24.

⁽¹¹⁸⁾ Ivi, p. 25.

⁽¹¹⁹⁾ Ivi, p. 47.

⁽¹²⁰⁾ Ibidem.

⁽¹²¹⁾ Ibidem.

⁽¹²²⁾ Ivi, pp. 53/54.

⁽¹²³⁾ CONFORTI B., LABELLA A., *Invalidity and Termination of Treaties: the Role of National Courts*, in *Eur. Journ. Of Int. Law*, vol. 44, 1990, p. 58.

applied, or not, so that in case of suspension or termination of the treaty other factors intervene.

4.6. Conclusions.

It is possible to establish that the law of treaties, despite being well codified in the 1969 Vienna Convention on the Law of Treaties, is still in evolution. This is due to some important factors: first of all, because the convention applies to the conclusion of international agreement among States, while it is well known there are other international entities entitled to the legal capacity of stipulating treaties. Second of all, the law of treaties seems to be in constant evolution because of the different asset of the international community: in fact, as for the armed conflicts, they can involve different international subjects. In this sense, the matter regarding the effects of armed conflicts on treaties is very controversial: first, because they do not involve only States. In fact, the Libyan civil war has been fought between the Libyan government and the Libyan insurgents. Second, to determine the effects of armed conflicts on treaties is not easy due to the novelty of the topic. In this sense, the 2011 Draft Articles on the Effects of Armed Conflicts on Treaties is a useful tool.

In the next chapter, the 2008 Benghazi Treaty between Italy and Libya is analyzed: there will be the attempt to use the means described so far in order to determine the causes of suspension of the treaty during the Libyan crisis and the its application in the future.

CHAPTER 5. THE 2008 BENGHAZI TREATY BETWEEN ITALY AND LIBYA, ITS RELATION TO THE LIBYAN CRISIS AND THE TRIPOLI DECLARATION.

CONTENTS: 5.1. The Reasons behind the Conclusion of the 2008 Benghazi Treaty. – 5.2. The Body of the Treaty. – 5.3. The Consequences of the Libyan Crisis on the Benghazi Treaty and the Relationship between Italy and Libya: the Part I of the treaty. – 5.4. The Tripoli Declaration: which Future for the Benghazi Treaty? – 5.5. Conclusions.

5.1. The Reasons behind the Conclusion of the 2008 Benghazi Treaty.

On October 30th, 2008, the then Prime Minister Silvio Berlusconi signed the Treaty on Friendship, Partnership and Cooperation between Italy and Libya, also known as the Benghazi treaty. The authorization of the treaty's ratification came with law n. 7 (February 6th, 2009) ⁽¹⁾. The agreement puts an end to the contentious regarding the colonial past and regulates the “new” relationship of cooperation and organization of the two countries. In particular, the provisions of the treaty had already been asserted by the July 4th, 1998 joint communiqué ⁽²⁾ signed by the then Italian Foreign Minister Lamberto Dini. In fact, the process which led to the ratification of the 2008 treaty has been long and difficult and many Italian governments have worked and contributed to the conclusion of this final treaty ⁽³⁾.

The relationship between the two countries has never been easy: from an economic point of view, it seems possible to say that the relation has been profitable, since ENI has been the largest oil-extraction company in the country. In 2010 Italy was the biggest Libyan oil importer and its third biggest natural gas consumer ⁽⁴⁾. On the other hand, from a political point of view, the relation has been very harsh, due to the

⁽¹⁾ LEGGE 6 Febbraio 2009, n°7, <http://www.sidi-isil.org/wp-content/uploads/2010/02/LEGGE-6-2009-trattato-italia-libia.pdf>, access 17.12.2012.

In particular, art. 1 of the law states that “il Presidente della Repubblica è autorizzato a ratificare il Trattato di amicizia, partenariato e cooperazione tra la Repubblica italiana e la Grande Giamahiria araba libica popolare socialista, fatto a Bengasi il 30 ottobre 2008”. Art. 6 establishes that “la presente legge entra in vigore il giorno successivo a quello della sua pubblicazione nella Gazzetta Ufficiale”. Art. 1, art. 6, LEGGE 6 Febbraio 2009, n°7, <http://www.sidi-isil.org/wp-content/uploads/2010/02/LEGGE-6-2009-trattato-italia-libia.pdf>, access 17.12.2012.

⁽²⁾ As stated in the previous chapter, it is useful to remind that the joint communiqués are not international agreements, but political statement with no legal value.

⁽³⁾ RONZITTI N., *The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: new Prospects for Cooperation in the Mediterranean?*, in *Documenti IAI*, available at <http://www.iai.it/pdf/DocIAI/iai0909.pdf>, first access 15.11.2012, 2009, pp.1/3.

⁽⁴⁾ VARVELLI A., *Italy and Libya between Continuity and Change*, in *ISPI*, n°219, June 2012, p. 1.

Italian colonialism ⁽⁵⁾ in the area and the international sanctions which led Libya to a progressive isolation until 2004 ⁽⁶⁾. The relation between Italy and Libya reached the lowest level point in 1986. In fact, Libya launched its missiles toward the Italian Lampedusa as a counter-attack after the US Benghazi bombing ⁽⁷⁾, when the Gaddafi's adoptive daughter died ⁽⁸⁾. Libya experienced a period of isolation as a consequence of the international sanctions that the Security Council adopted in 1992 (and revoked in 2003). It seems that Italy had insisted hardly in order to convince the international community that Libya was worth to be trusted and, therefore, that the embargo had to be revoked. In the preamble of the 2008 Benghazi treaty it is mentioned the fact that Italy had had an important role in bringing the embargo to an end ⁽⁹⁾.

The Benghazi treaty is a partnership bilateral agreement, therefore it reflects various dimensions: political-security; social-cultural; and economic-financial ⁽¹⁰⁾. In this sense, it is possible to assert that the agreement's main objectives are: the end of the contentious regarding the colonial and international sanctions periods; the establishment of an economical and cultural partnership aimed at improving the countries; and of a serious policy about illegal immigration ⁽¹¹⁾. Beside the mere relationship between the two countries, it is possible to assert that also the change of the international asset has permitted the conclusion of such an important treaty, especially the relevance of the

⁽⁵⁾ Gaddafi has always claimed that some of his relatives had been kept prisoners by the Italian colonialists. It seems that this was one of the reasons behind the hatred toward the Italians after he took the power in 1969 and, more extensively, toward the West. In fact, Gaddafi condemned all the Western countries, accusing it to be the colonizer of the Middle East area and fueling the other Arab states to fight against them. To examine in depth Gaddafi's politics toward the West, read the first part of this dissertation, in particular chapter 1.

⁽⁶⁾ RONZITTI N., *The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: new Prospects for Cooperation in the Mediterranean?*, in *Documenti IAI*, available at <http://www.iai.it/pdf/DocIAI/iai0909.pdf>, first access 15.11.2012, 2009, pp.1/3.

⁽⁷⁾ In particular, Gaddafi accused Italy of having allowed the US aircraft to use a transmission station on the island. Actually, it seems that then Italian Prime Minister Bettino Craxi informed Gaddafi about the attack. In this sense, Gaddafi launched the missile toward Lampedusa not to hit the transmission station but the American military base there. This "rumor" has been more or less confirmed by Gaddafi's Foreign Minister Abdulrahman Shalgam. <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2008/10/31/1986-quando-craxi-penso-di-attaccare-la.html>, access 17.12.2012.

⁽⁸⁾ RONZITTI N., *The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: new Prospects for Cooperation in the Mediterranean?*, in *Documenti IAI*, available at <http://www.iai.it/pdf/DocIAI/iai0909.pdf>, first access 15.11.2012, 2009, p. 3.

⁽⁹⁾ Ivi, p. 3.

⁽¹⁰⁾ KASHIEM M. A. A., *The Treaty of Friendship and Cooperation between Libya and Italy: from an Awkward Past to a Promising Equal Partnership*, in *Californian Italian Studies*, available at <http://escholarship.org/uc/item/4f28h7wg>, first access 15.11.2012, 2010, p. 1.

⁽¹¹⁾ 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya, Benghazi October 30th, 2008 (place and date of signature), February 6th, 2009 (date of ratification by Italy).

Mediterranean area, where Libya is situated. First of all, the end of the Cold War and of its bipolar system, which did not encourage the interconnection among States. The latter led to the ongoing process of globalization: States cannot longer ignore what happens outside their boundaries. In this sense, the right of territorial sovereignty and non-intervention opened to new broader interpretations (see chapter 6). Finally, the decision of the Security Council to end the embargo on Libya: this has allowed Italy and Libya to entertain closer relations, given their cultural, economic and geographical history ⁽¹²⁾.

Therefore, it is possible to assert that the bilateral agreement between Italy and Libya is the product of a cultural, historical, economic and political process which has seen the two countries being in contrast with each other for many years and partners for many others.

5.2. The Body of the Treaty.

The 2008 Benghazi Treaty is divided into three parts and composed by a preamble and twenty-three articles.

The preamble is pretty interesting: the parties reiterate their will to cooperate both together in order to strengthen peace and security in the Mediterranean region and with the European and African Union in order to contribute to the economic growth and the safeguard of the environment. In addition, Libya recognizes the role that Italy had in the end of the international sanctions ⁽¹³⁾. Finally, they both express their intent to “chiudere definitivamente il doloroso “capitolo del passato”, per il quale l’Italia ha già espresso [...] il proprio rammarico per le sofferenze arrecate al popolo libico ⁽¹⁴⁾”. This is very important because is one of the linchpins of the agreement: the treaty aimed at ending the contentious regarding the colonial period, when Libya was under Italian power (from 1911 to 1943) ⁽¹⁵⁾. From art. 8 to art. a series of projects that would repay Libya for the years of the colonization are listed. In particular: art. 8 establishes that Italy has to finance some basic infrastructural projects for an amount of five milliards of

⁽¹²⁾ KASHIEM M. A. A., *The Treaty of Friendship and Cooperation between Libya and Italy: from an Awkward Past to a Promising Equal Partnership*, in *Californian Italian Studies*, available at <http://escholarship.org/uc/item/4f28h7wg>, first access 15.11.2012, 2010, pp. 3/4.

⁽¹³⁾ Preamble, 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya, Benghazi October 30th, 2008 (place and date of signature), February 6th, 2009 (date of ratification by Italy), p. 1.

Full text available at page 165.

⁽¹⁴⁾ Ibidem.

⁽¹⁵⁾ Ivi, Capo II.

dollars (250 million per year in twenty years). In exchange Libya assures to find all the materials necessary to the realization of these projects *in loco* and the tax exemption of consumes of energy, water, gas and telephone ⁽¹⁶⁾. Art. 9 establishes a mixed commission entitled to the monitoring and evaluation of these infrastructural projects ⁽¹⁷⁾. Art. 10 deals with some special requests moved for by Libya: among these, the construction of 200 houses; the awarding of scholarships to one hundred Libyan students; a program of welfare; and the restitution of Libyan archaeological evidences and manuscripts ⁽¹⁸⁾. Art. 11, 12 and 13 are respectively about: the restitution of entry visas to the Italians who were sent off from Libya; the establishment of a social fund to be used in order to realize some special projects; and credits ⁽¹⁹⁾.

The third part of the agreement is entitled “Nuovo Partenariato Bilaterale” (art. 14/23) ⁽²⁰⁾. This part is dedicated to the cooperation that the two parties are willing to entertain in various fields: scientific, cultural, economic, industrial, energetic, non-proliferation and disarm ⁽²¹⁾. Worth to be cited is art. 19, about the mutual collaboration in the fight against terrorism, organized criminality, drug traffic and illegal migration ⁽²²⁾.

Doubtless, the most onerous part of the treaty is the second one: in fact, Italy has committed itself in the payment of a huge amount of money as a reparation for the colonial past ⁽²³⁾. A possible Libyan payment as a reparation for all the Italians who were expelled from Libya under the Gaddafi regime is not conceived ⁽²⁴⁾.

Given the main topic of this dissertation, the first part of the agreement is the most important. Since the Libyan crisis has affected the validity of the treaty, its first part is well explained in the next paragraph.

⁽¹⁶⁾ Ivi, art. 8.

⁽¹⁷⁾ Ivi, art. 9.

⁽¹⁸⁾ Ivi, art. 10.

⁽¹⁹⁾ Ivi, art. 11, 12, 13.

⁽²⁰⁾ Ivi, Capo III.

⁽²¹⁾ Ivi, art. 15, 16, 17, 18, 21,

⁽²²⁾ Ivi, art. 19.

⁽²³⁾ RONZITTI N., *Luci e Ombre del Trattato tra Italia e Libia*, in *Affari Internazionali*, available at <http://www.affarinternazionali.it/articolo.asp?ID=1066>, first access 13.11.2012, 2009.

⁽²⁴⁾ Ibidem.

5.3. The Consequences of the Libyan Crisis on the Benghazi Treaty and the Relationship between Italy and Libya: the Part I of the treaty.

The first part of the 2008 Benghazi treaty includes some general principles of international law. Art. 1 establishes that the two parties commit themselves to the respect of the provisions of the United Nations Charter and the international law. In addition, they recognize the central role of the United Nations in the system of the international relations ⁽²⁵⁾.

Art. 2 seems to reflect art. 2.1 of the United Nations Charter ⁽²⁶⁾; as a matter of fact, it states that

“le parti rispettano reciprocamente la loro uguaglianza sovrana, nonché tutti i diritti ad essa inerenti compreso, in particolare, il diritto di libertà ed all’indipendenza politica. Esse rispettano altresì il diritto di ciascuna delle parti di scegliere e sviluppare liberamente il proprio sistema politico, sociale, economico, culturale ⁽²⁷⁾”.

It is possible to say that this article clearly establishes the principle of non-interference in the internal affairs of a State, as provisioned by art. 2.7 of the United Nations Charter ⁽²⁸⁾. In particular, the principle of non-interference in the internal affairs is better announced in art. 4:

“1. Le parti si astengono da qualunque forma di ingerenza diretta o indiretta negli affari interni o esterni che rientrino nella giurisdizione dell’altra parte, attenendosi allo spirito di buon vicinato. 2. Nel rispetto dei principi della legalità internazionale, l’Italia non userà, né

⁽²⁵⁾ Art. 1, 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya, Benghazi October 30th, 2008 (place and date of signature), February 6th, 2009 (date of ratification by Italy).

⁽²⁶⁾ Art. 2.1 of the United Nations Charter states that “the organization is based on the principle of the sovereign equality of all its members”. Art. 2.1, Chapter One, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter1.shtml>, access 17.12.2012.

⁽²⁷⁾ Art. 2, 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya, Benghazi October 30th, 2008 (place and date of signature), February 6th, 2009 (date of ratification by Italy).

⁽²⁸⁾ Art. 2.7 of the United Nations Charter states that “nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter [...]”. Art. 2.7, Chapter One, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter1.shtml>, access 17.12.2012.

permetterà l'uso dei proprio territori in qualsiasi atto ostile contro la Libia e la Libia non userà, né permetterà, l'uso dei propri territori in qualsiasi atto ostile contro l'Italia ⁽²⁹⁾”.

Specifically, this article introduces the prohibition of use or threat of force provisioned by art. 2.4 of the United Nations Charter ⁽³⁰⁾. In particular, this principle is announced in art. 3 of the Benghazi treaty:

“le parti si impegnano a non ricorrere alla minaccia o all'impiego della forza contro l'integrità territoriale o l'indipendenza politica dell'altra parte o a qualunque altra forma incompatibile con la Carta delle Nazioni Unite ⁽³¹⁾”.

Art. 6 of the Benghazi treaty is about the respect of human rights and fundamental freedoms: accordingly to the provisions of their internal law, the parties commit themselves to the respect of the principles of the United Nations Charter and the Universal Declaration of Human Rights ⁽³²⁾.

Finally, art. 5 of the Benghazi treaty states that

“[...] le parti definiscono in modo pacifico le controversie che potrebbero insorgere tra di loro, favorendo l'adozione di soluzioni giuste ed eque, in modo da non pregiudicare la pace e la sicurezza regionale ed internazionale ⁽³³⁾”.

This article clearly reflects the provision contained in art. 2.3 of the United Nations Charter, that is to say the fact that States have to settle their international

⁽²⁹⁾ Art. 4, 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya, Benghazi October 30th, 2008 (place and date of signature), February 6th, 2009 (date of ratification by Italy).

⁽³⁰⁾ Art. 4, Chapter One, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter1.shtml>, access 17.12.2012.

⁽³¹⁾ Art. 3, 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya, Benghazi October 30th, 2008 (place and date of signature), February 6th, 2009 (date of ratification by Italy). In particular, art. 2.4 of the United Nations Charter states that “all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state [...]”. Art. 2.4, Chapter One, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter1.shtml>, access 17.12.2012.

⁽³²⁾ Art. 6, 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya, Benghazi October 30th, 2008 (place and date of signature), February 6th, 2009 (date of ratification by Italy).

⁽³³⁾ Ivi, art. 7.

disputes by peaceful means in order to maintain and not threaten international peace and balance ⁽³⁴⁾.

In the light of the events occurred in 2011 in Libya, it seems possible to say that the study of the Benghazi treaty should be faced from two different points of view: first, the suspension of the treaty during the conflict; and second, the alleged non-respect of the part one's provisions by Italy.

As for the suspension of the Benghazi treaty ⁽³⁵⁾, it has to be reminded that, in general, all international agreements must be respected by virtue of the principle of *pacta sunt servanda*, set forth art. 26 of the 1969 Vienna Convention ⁽³⁶⁾. The principle is valid also whether a treaty is suspended: in fact, according to art. 72.2 of the convention, “during the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty ⁽³⁷⁾”. In general, suspension means that the agreement is not in force for a limited period: since it is a temporary measure, it also expresses the will of the parties to revive it when the situation is favorable ⁽³⁸⁾. In March 2011 the Italian Radical party has presented a resolution regarding the suspension of the treaty invoking art. 60 of the 1969 Vienna Convention ⁽³⁹⁾ which states that

“1. a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. [...] 3. A material breach of a treaty, for the purpose of this article, consists in: a. a

⁽³⁴⁾ Art. 2.3, Chapter One, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter1.shtml>, access 17.12.2012.

⁽³⁵⁾ The first Italian representative who referred to the suspension of the Benghazi treaty was the then Secretary of the Interior Ignazio La Russa, who declared that “di fatto, il trattato tra Italia e Libia non c'è più, è inoperante, è già sospeso” (http://www.ilsecoloxix.it/p/mondo/2011/02/26/AOqwx1-trattato_italia_sospeso.shtml, access 20.12.2012.).

⁽³⁶⁾ Art. 26, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽³⁷⁾ Ivi, art. 72.2.

⁽³⁸⁾ CIAMPI A., *Problemi Relativo all'Attuale Regime Giuridico del Trattato di Amicizia Italia-Libia*, in *Osservatorio sulle Fonti*, fasc. 2/2011, p. 2.

⁽³⁹⁾ It has to be noted that both Libya and Italy are bound by the norms of the 1969 Vienna Convention on the Law of Treaties since they have both adhered to it (Italy in 1974 and Libya in 2008 before the entrance into force of the Benghazi treaty, which is, therefore, subordinated to it). Camera dei Deputati, XVI Legislatura, Dossier di Documentazione, SERVIZIO STUDI (Dipartimento Affari Esteri), *L'Operatività del Trattato di Amicizia, Partenariato e Cooperazione tra Italia e Libia alla Luce dei Recenti Eventi Libici*, in *Documenti e Ricerche n°213*, 23 Marzo 2011.

repudiation of the treaty not sanctioned by the present convention; or b. the violation of a provision essential to the accomplishment of the object or purpose of the treaty (40)”.

In particular, the Italian Radical party claimed that the Libya government made a material breach of art. 6 of the Benghazi treaty, which establishes that “le parti, di commune accord, agiscono conformemente alle rispettive legislazioni, agli obiettivi e ai principi della Carta delle Nazioni Unite e alla Dichiarazione dei Diritti dell’Uomo (41)”. This seems to be confirmed by res. 1973, which condemns “the gross and systematic violation of human rights (42)”. However, art. 60 of the 1969 Vienna Convention clearly underlines that the violation of the treaty’s provision has to be essential to the application of the purpose or object of the treaty itself. Art. 6 is contained in the first part of the Benghazi treaty which restates some important international rights reiterated in the United Nations Charter too. In this sense, it seems that art. 60 cannot be applied: the respect of human rights is not a duty of the sole Italy and Libya because they have signed a treaty which contains a provision about that. Human rights have to be respected and there are many conventions about the topic. Neither is the Benghazi treaty a human rights agreement which, due to its nature, cannot be suspended or terminated (43). The Italian government claimed that the Benghazi treaty was suspended also due to the absence of the other party, that is to say Libya (44). This could be connected to art. 61 of the Vienna Convention:

(40) Art. 60, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

(41) Art. 6, 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya, Benghazi October 30th, 2008 (place and date of signature), February 6th, 2009 (date of ratification by Italy).

(42) S/RES/1973, 17th March 2011, Security Council (full text available at page ?, annex number ?). , pp. 2/3.

(43) ILC (International Law Commission), *The Effect of Armed Conflict on Treaties: an Examination of Practice and Doctrine*, A/CN.4/550, United Nations General Assembly, Fifty-seventh session, Geneva 2005, pp. 22/24. It is probable that the reasons behind the request of the Italian Radical Party are more political: they did not supported the government decision to conclude a treaty with Colonel Gaddafi, given his precedents in the human rights field. <http://www.radicali.it/primopiano/come-mettere-litalia-nelle-mani-di-un-ricattatore>, access 20.12.2012. Anyway, the first Italian political party which presented a formal request to suspend the Benghazi Treaty was UDC with Casini. <http://paneacquaonline.it/notizia.php?id=17136>, access 20.12.2012.

(44) Ignazio La Russa declared that the treaty was suspended “per mancanza della controparte [...]. [...] Speriamo che un domani ci sia uno stato libico in grado di rispettare l’intesa” (http://www.ilsecoloxix.it/p/mondo/2011/02/26/AOqwx1-trattato_italia_sospeso.shtml, access 20.12.2012). It has to be underlined that La Russa referred to a *de facto* suspension and not to a *de iure* one: anyway, the absence of the other party as a reason to suspend the treaty was used by the Italian government to justify the suspension of the treaty.

“1. a party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. [...] ⁽⁴⁵⁾”.

In a broader way, the disappearance of an indispensable object could be the absence of the other party: it seems to be plausible, since the position of Gaddafi as head of the Libyan State was in discussion. However, States are bound by the norms of the international treaties, and not the single persons who have ratified them in the name of the State ⁽⁴⁶⁾. For example: the Benghazi treaty was ratified by the then Prime Minister Silvio Berlusconi, but it does not mean that the treaty is valid only for him or was valid only when he was in charge. The same as for Libya. Even in case of government succession, which seems to be applicable to Libya, international treaties remain valid by virtue of the principle of continuity ⁽⁴⁷⁾. It has to be reminded that the Benghazi treaty does not contain provisions about a possible suspension or extinction. In this sense, art. 56 of the 1969 Vienna Convention has to be applied ⁽⁴⁸⁾. It is possible to say that the twelve-months procedure provided by the article could not be attended because the conflict was going on and a decision had to be made. The *rebus sic stantibus* clause is another cause of suspension or extinction of a treaty. However, if applied to the Benghazi treaty, it seems quite weak. It is true that a change was occurring in Libya, with the civil war and the insurgents claiming their will to substitute Gaddafi. In this sense, there was a change of circumstances with regard to those existing when the treaty was concluded. It is also true that the change was not foreseen by the parties. Nevertheless, art. 62.1 defines the change of circumstances as fundamental ⁽⁴⁹⁾. It seems possible to say that State succession would represent such a case. However, as

<http://www.camera.it/561?appro=267&L'operativit%C3%A0+del+Trattato+di+amicizia%2C+partenariat+o+e+cooperazione+tra+Italia+e+Libia+alla+luce+dei+recenti+eventi+libici>, access 20.12.2012.

⁽⁴⁵⁾ Art. 61, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁴⁶⁾ Camera dei Deputati, XVI Legislatura, Dossier di Documentazione, SERVIZIO STUDI (Dipartimento Affari Esteri), *L'Operatività del Trattato di Amicizia, Partenariato e Cooperazione tra Italia e Libia alla Luce dei Recenti Eventi Libici*, in *Documenti e Ricerche n°213*, 23 Marzo 2011.

⁽⁴⁷⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008.

⁽⁴⁸⁾ Art. 56, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁴⁹⁾ Ivi, art. 62.1.

stated above, the Libya case could be seen as a case of succession of government which does not imply that a treaty concluded by the previous government should not remain valid. Besides, the government succession happened when the Gaddafi forces were definitely defeated: the Benghazi treaty was suspended before that time, in March. Therefore, given what has been said so far, the change of government cannot represent a cause of suspension. Art. 62.1(a) establishes that the circumstances existing when the treaty was concluded had to constitute “an essential basis of the consent of the parties to be bound by the treaty”⁽⁵⁰⁾. First, the Benghazi treaty does not create nor regulate a permanent regime or status⁽⁵¹⁾. It does not provide sovereignty, even if, in accordance with art. 2, the parties recognize their reciprocal sovereignty and commit themselves to respect it⁽⁵²⁾. Second, it is possible to assert that the dictatorial regime which was in force under Gaddafi did not constitute an essential basis for the conclusion of the treaty. According to art. 62.1(b) “the effect of the change [has to be] radically to transform the extent of obligations still to be performed under the treaty”⁽⁵³⁾. Given the provisions of the Benghazi treaty, it seems possible to assert that the change of government did not transform the obligations of the treaty. The *rebus sic stantibus* clause could be used as a reason of suspension because of the conflict: in fact, the change of circumstances could be seen as a change in the “status” of Libya: the treaty was concluded during the peace time, while the treaty was suspended during the conflict. This leads to the topic of the effects of armed conflicts on international treaties. In this sense, the Benghazi treaty can be seen as a treaty exhibiting a varied or emerging likelihood of applicability⁽⁵⁴⁾. Often, such treaties are unaffected by armed conflicts⁽⁵⁵⁾. The 2011 Draft articles on the Effects of Armed Conflicts could be useful. Art. 3 states that an armed conflict does not *ipso facto* suspend or terminate a treaty⁽⁵⁶⁾. However, in this case, during the Libyan

⁽⁵⁰⁾ Ivi, art. 62.1.a.

⁽⁵¹⁾ ILC (International Law Commission), *The Effect of Armed Conflict on Treaties: an Examination of Practice and Doctrine*, A/CN.4/550, United Nations General Assembly, Fifty-seventh session, Geneva 2005, p. 20.

⁽⁵²⁾ Art. 2, 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya, Benghazi October 30th, 2008 (place and date of signature), February 6th, 2009 (date of ratification by Italy).

⁽⁵³⁾ Art. 62.1.b, 1969 Vienna Convention on the Law of Treaties, done at Vienna on 23rd May 1969, entered into force on 27th January 1980, United Nations, *Treaty Series*, vol. 1155.

⁽⁵⁴⁾ ILC (International Law Commission), *The Effect of Armed Conflict on Treaties: an Examination of Practice and Doctrine*, A/CN.4/550, United Nations General Assembly, Fifty-seventh session, Geneva 2005, p. 32.

⁽⁵⁵⁾ Ivi, p. 43.

⁽⁵⁶⁾ Art. 3, ILC (International Law Commission), *Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries*, in *Year. Of in Int. Law Comm.*, vol. 2, Part 2, 2011.

conflict the Benghazi treaty was suspended. The action reflects art. 3: in fact, it states that an armed conflict does automatically suspend a treaty, but does not establish that a conflict cannot have consequences on international agreements. Since it has already been stated that the Benghazi treaty does not contain any provision regarding its possible suspension or termination, factors indicating whether a treaty could be terminated or suspended should be analyzed. Art. 6 of the Draft Articles is useful in this regard: it states that the relevant factors that shall be regarded in order to determine whether a treaty should be suspended or not are: the nature of the treaty, with its object and purpose and the characteristics of the armed conflict ⁽⁵⁷⁾. As for its nature, the Benghazi treaty is a friendship and cooperation treaty. As stated above, friendship agreements are not usually suspended during an armed conflict. As for the characteristics of the armed conflict, it saw Libyan insurgents fighting against Gaddafi's forces. It involved all the international community, since the Security Council adopted two important resolutions (1970 and 1973) in the name of the responsibility to protect. Italy, being a NATO member, was involved in the military operations which led to the death of the dictator; therefore this could be seen as a reason why the treaty was suspended.

It can be said that the reasons which led to the suspension of the Benghazi treaty were several: on the one hand, the growing weak of the legitimate Libyan government. On the other hand, the fact that Italy carried out military operation against the Gaddafi regime through the NATO mission. The matter could be seen also from another point of view, that is to say the alleged non-respect of some provisions of the treaty by Italy. Articles 3 and 4 of the Benghazi treaty state that the parties commit themselves not to use force against each other and not to allow the use of their own territories aimed at threatening or using force against each other ⁽⁵⁸⁾. It would seem that Italy has breached these provisions of the treaty, since it was one of the participating countries to the military action against Libya. Res. 1973 authorized the member States to use "all necessary means ⁽⁵⁹⁾" in order to halt the systematic violation of human rights in Libya,

⁽⁵⁷⁾ Ivi, art. 6.

⁽⁵⁸⁾ Art. 3 and 4, 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya, Benghazi October 30th, 2008 (place and date of signature), February 6th, 2009 (date of ratification by Italy).

⁽⁵⁹⁾ S/RES/1973, 17th March 2011, Security Council.
Full text available at page 177.

in the name of the responsibility to protect ⁽⁶⁰⁾. The Security Council acted in accordance with the provisions of Chapter VII of the United Nations Charter, therefore in conformity with the international law norms. Since Italy allowed the use of some military bases and participated in the military action against Libya, Gaddafi accused Italy of betrayal ⁽⁶¹⁾. The military action, authorized by the Security Council, represents one of the exceptions to art. 2.4 of the United Nations Charter which asserts the prohibition of threat or use of force. Therefore, it was not unlawful. Then, art. 103 of the United Nations Charter must be reminded:

“in the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail ⁽⁶²⁾”.

Therefore, the obligations under the United Nations Charter prevail on those of the provisions of international agreements. In addition, art. 3 of the Benghazi treaty clearly underlines that the parties commit themselves not to undertake any action incompatible with the United Nations Charter. Therefore, it seems that Italy did not breach any of the provisions of the Benghazi treaty since it acted under an authorization given by the Security Council, a body of the United Nations. There is another consideration to make: as stated above, art. 72.2 of the 1969 Vienna Convention on the Law of Treaties states that during the period of suspension of a treaty the parties must commit themselves not to breach any of the provisions of the treaty. Italy, after the suspension of the Benghazi treaty, continued to carry on the military operations against Libya. However, by virtue of what has been said so far and since Italy did not breach any provision of the Benghazi treaty, its military cooperation in the NATO mission was not unlawful.

In conclusion, it is possible to say that, from a mere juridical point of view, Italy did not breach any of the provisions of the Benghazi treaty. Besides, Italy acted against Libya in the name of the responsibility to protect since Gaddafi's forces were systematically violating Libyan people's human rights.

⁽⁶⁰⁾ Ibidem.

⁽⁶¹⁾ <http://www.rainews24.rai.it/it/news.php?newsid=151132>, access 21.12.2012.

⁽⁶²⁾ Art. 103, Chapter Sixteen, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter16.shtml>, access 21.12.2012.

5.4. The Tripoli Declaration: which Future for the Benghazi Treaty?

The Libyan Prime Minister El-Keib and the Italian one Mario Monti met on January 21, 2012, in Tripoli in order to celebrate the victory of Libyan insurrection against the dictator Gaddafi and to promote and express their will to open toward the stipulation of new partnership agreements which could benefit both the countries and help realizing the new constitution of the Libyan country ⁽⁶³⁾. In other words, the declaration served to redefine the relation between Italy and the new Libya ⁽⁶⁴⁾. During the visit, Monti had also returned to Libya the head of Flavia Domitilla Minor (1st Century), the daughter of the Roman Emperor Vespasian. The head was robbed during the Sixties in Sabratha ⁽⁶⁵⁾. The visit was intended to revive once for all the 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya. However, the Libyan Prime Minister declared that the treaty was important but, for the moment, it was to be left aside ⁽⁶⁶⁾. He asserted that “Libya has changed. Only one person signed that treaty ⁽⁶⁷⁾”. Monti’s decision to visit Libya came after the news of the Libyan central bank’s refrain from the participation in the recapitalization of the Italian one Unicredit. In fact, the Libyan bank held the 4.9 percent of Unicredit’s capital ⁽⁶⁸⁾. It has to be kept in mind that the Libyan assets and funds in Italy has been unfrozen by Rome: the Libyan bank was expected to take part in the Unicredit’s capital increase for a total of 7.5 billion euros ⁽⁶⁹⁾. During the visit Monti has agreed to cure the one thousand and five hundreds at that time wounded Libyans and to train them in order to reinsert them in the civil life ⁽⁷⁰⁾.

As for the Italian colonialism, El-Keib asserted that, as Gaddafi, they have forgiven Italy too. However, the discussion between the two ministers did not focus on

⁽⁶³⁾ Tripoli Declaration, signed on January 21, 2012, by Libyan Prime Minister El-Keib and Italian Prime Minister Mario Monti, Tripoli.

Full text available at page 176.

⁽⁶⁴⁾ <http://www.middle-east-online.com/english/?id=50162>, access 2.01.2013.

⁽⁶⁵⁾ Ibidem, access 2.01.2013.

⁽⁶⁶⁾ Ibidem, access 2.01.2013.

⁽⁶⁷⁾ Ibidem, access 2.01.2013.

⁽⁶⁸⁾ Ibidem, access 2.01.2013.

⁽⁶⁹⁾ Ibidem, access 2.01.2013.

⁽⁷⁰⁾ PELOSI G., *Monti Firma il Patto di Tripoli*, in *Il Sole24Ore*, <http://www.ilsole24ore.com/art/notizie/2012-01-22/monti-firma-patto-tripoli-081156.shtml?uuiid=AaApB6gE>, access 2.01.2013.

the huge amount of money that the 2008 Benghazi Treaty provides as reconciliation for the colonization ⁽⁷¹⁾.

Both the Italian and the Libyan government have expressed their will to reactivate the 2008 Benghazi treaty. Nevertheless, it is not cited in the Tripoli Declaration ⁽⁷²⁾. Also the *Meeting Summary* signed by the two ministers the same day of the declaration did not mention the will of reviving the 2008 Benghazi treaty, while it expresses some points already contained in the provisions' treaty ⁽⁷³⁾.

As for the Tripoli Declaration, it is inspired by the victory of the “glorious ⁽⁷⁴⁾” revolution of February 17, 2011, and those who have scarified their lives in the name of “freedom and dignity ⁽⁷⁵⁾” of Libyan people. It expresses the will of Libyans to build a State based on the respect of human rights and democracy and the will of Italy and Libya to promote peace, security and cooperation, both internationally and regionally ⁽⁷⁶⁾. The declaration underlines also that the humanitarian aid provided by Italy to Libya is acknowledged ⁽⁷⁷⁾. Furthermore, the declaration expresses the will of both Libya and Italy, in full respect of their mutual sovereignty, to “strengthen their friendship and cooperation in the context of the new vision regarding bilateral and multilateral relations to achieve the goals and principles of the glorious 17 February Revolution ⁽⁷⁸⁾”. In addition, it the intention to “open new horizons for mutual cooperation for the benefit of the two friendly peoples ⁽⁷⁹⁾” is reiterated. If the Tripoli Declaration does not shed light on the future of the 2008 Benghazi Treaty, the *Meeting Summary* does not either. The *Meeting Summary* expresses the will of the two countries to build a new partnership in response to the Libyan revolution which brought to a new governmental institution. In addition, it is said that the declaration strengthens the will of the countries for a future cooperation ⁽⁸⁰⁾. The *Meeting Summary* sums up the issues that Monti and El-Keib have discussed during their meeting. In that occasion, the parties agreed to settle the claims

⁽⁷¹⁾ Ibidem, access 2.01.2013.

⁽⁷²⁾ RONZITTI N., *Il Futuro dei Trattati tra Italia e Libia*, in *Affari Internazionali*, <http://www.affarinternazionali.it/articolo.asp?ID=1961>, access 2.01.2013.

⁽⁷³⁾ Ibidem, access 2.01.2013.

⁽⁷⁴⁾ Tripoli Declaration, signed on January 21, 2012, by Libyan Prime Minister El-Keib and Italian Prime Minister Mario Monti, Tripoli.

⁽⁷⁵⁾ Ibidem.

⁽⁷⁶⁾ Ibidem.

⁽⁷⁷⁾ Ibidem.

⁽⁷⁸⁾ Ibidem.

⁽⁷⁹⁾ Ibidem.

⁽⁸⁰⁾ Meeting Summary, January 21, 2012, signed by the Libyan Prime Minister El-Keib and the Italian Prime Minister Mario Monti, Tripoli.

by Libyan entities toward Italy and vice versa after verification. Then, as already stated, Monti agreed to cure the one thousand and five hundreds wounded people in Italian hospitals ⁽⁸¹⁾. In addition, the parties established a border control management system in order to protect oil facilities in Libya, as written in the letter of intent signed by the two ministers of defense ⁽⁸²⁾. Moreover, the ministers agreed to develop cooperation in many fields, such as: the banking sector and investment; academic partnership; cultural cooperation; education; renewable energy; and so on ⁽⁸³⁾. There are some points similar to some 2008 Benghazi Treaty's provisions: it is not clear at this point whether the bilateral cooperation between Italy and Libya will be based on the already existing treaties or whether they are not valid anymore so that it will be necessary to sign and ratify other treaties ⁽⁸⁴⁾. The ambiguity must be solved quickly: in fact, for example, Sicily has already signed a cooperation agreement with the Libyan General Authority for Marine Wealth based on art. 17 of the 2008 Benghazi treaty on January 21, 2012 ⁽⁸⁵⁾. By virtue of the article, the cooperation agreement regards an economic, technical and scientific cooperation in the fish sectors ⁽⁸⁶⁾.

In addition, it seems that the Tripoli Declaration is not an international agreement, legally binding for the parties: it seems more a declaration of intents, based on the 2008 Benghazi Treaty, which remains still suspended.

5.5. Conclusions.

The intention of the chapter is that of shedding light on the real reasons which led to the suspension of the Benghazi treaty during the Libyan crisis. On the one hand, the legitimate government was losing power. It is possible to assert that by the end of August most of the States had already recognized the National Transitional Council as the legitimate representative of Libyan people. On the other hand, the conflict could have rendered the application of the treaty impossible. As for the alleged breaches to the treaty by Italy, it seems possible to advocate they did not occur, by virtue of art. 103 of

⁽⁸¹⁾ Ibidem.

⁽⁸²⁾ Ibidem.

⁽⁸³⁾ Ibidem.

⁽⁸⁴⁾ RONZITTI N., *Il Futuro dei Trattati tra Italia e Libia*, in *Affari Internazionali*, <http://www.affarinternazionali.it/articolo.asp?ID=1961>, access 2.01.2013.

⁽⁸⁵⁾ <http://archivio.siciliainformazioni.com/politica/accordo-tecnico-scientifico-e-produttivo-sulla-pesca-fra-libia-e-italia-comunicato-ufficiale-e-testo-integrale-del-documento/>, access 2.01.2013.

⁽⁸⁶⁾ Ibidem, access 2.01.2013.

the United Nations Charter. Furthermore, Italy participated in the NATO mission in the name of the responsibility to protect, which goes beyond the mere international law rights of territorial sovereignty or non-interference in the States' domestic jurisdictions, since it is a principle which aims at protecting people from gross violations of human rights ⁽⁸⁷⁾.

The next section of the dissertation attempts to clarify the status of Libyan rebels under international law and the international military intervention in the country during the crisis.

⁽⁸⁷⁾ See Chapter 7 to read what is the responsibility to protect and the ideas at the base of it.

**THIRD PART. THE LIBYAN CRISIS: THE STATUS OF LIBYAN REBELS
UNDER INTERNATIONAL LAW AND THE INTERNATIONAL MILITARY
INTERVENTION.**

CHAPTER 6. THE POSITION OF REBELS UNDER INTERNATIONAL LAW AND THEIR RESPONSIBILITY FOR INTERNATIONALLY WRONGFUL ACT.

CONTENTS: 6.1. The International Status of Insurgents and National Liberation Movements (with Reference to the Right to Self-Determination). - 6.2. The International Recognition: Libyan Rebels between the Status of Insurgents and National Liberation Movements. – 6.3. The Responsibility of Insurrectional Movements (or others) for Internationally Wrongful Acts. – 6.4. Two Distinct Cases: the Libyan Insurgents vs Palestinians as National Liberation Movements. – 6.5. Conclusions.

6.1. The International Status of Insurgents and National Liberation Movements (with Reference to the Right to Self-Determination).

The international community had always had a homogeneous asset, at least until the first decades of the twentieth century. National liberation movements and insurgents, being the both of them rebels, create “disorder” in the international community; therefore, despite the fact that they are parties of internal conflicts, the question regarding their international status has great relevance for the members of the international community ⁽¹⁾. In fact, their activities have transnational effects ⁽²⁾. With regard to the international subjects in general, Ronzitti’s division could be useful in order to understand the position of rebels. According to him, international entities can be divided into four groups, depending on their characteristics. The first one comprehends the entities having full control over a part of a territory and its population: they are States and insurgents. The second category groups those entities which aim at governing a territory: they are governments in exile and national liberation movements ⁽³⁾. The Holy See ⁽⁴⁾, the Sovereign Military Order of Malta and the International Committee of the Red Cross belong to the third group: they are non-territorial entities

⁽¹⁾ BARSOTTI R., entry *Insorti*, in *Enc. Dir.*, vol. XXI, Milano, Dott. A. Giuffrè Ed., 1971, p. 796.

⁽²⁾ SABEL R., *Weapons to Non-State Armed Group-Back to Westphalia?*, speech at the conference *Preventing the Spread of Weapons to Non-State Armed Groups*, United Nations Institute for Disarmament Research, 3rd September 2007, p. 5.

⁽³⁾ RONZITTI N., *Introduzione al Diritto Internazionale*, Third Edition, Torino, G. Giappichelli Ed., 2009, p. 13.

⁽⁴⁾ The Holy See as an international entity must not be confused with the Vatican City: indeed, the latter is considered an independent mini-state and the Holy See is the body entitled with the capacity to rule it. However, on the international plan, the Holy See does not act as a sovereign state, being the Holy See’s empire dismantled since 1870. On the subject see RUIZ A., *On the Nature of the International Personality of the Holy See*, in *Rev. Bel. De Der. Int.*, 1996.

which do not aim at governing a territory. The fourth category comprehends international organizations: they are non-territorial subjects that exist on the will of the States ⁽⁵⁾. States, the Holy See, the Sovereign Military Order of Malta, the International Committee of the Red Cross and international organizations are permanent international subjects: it means that their existence as international entities is not temporary. On the other hand, insurgents, governments in exile, and national liberation movements' international personality depends on their mere existence ⁽⁶⁾.

As Ian Brownlie clearly states in his *Principles of International Law* ⁽⁷⁾, an international subject is “an entity capable of possessing international rights and duties and having the capacity to maintain its rights and duties bringing international claims ⁽⁸⁾”. In other words, an international subject possesses rights and duties under international law ⁽⁹⁾. The international subjects are able to enjoy certain “abilities”, such as the right to conclude international treaties, because the law acknowledges them as legal persons, so that they have the capacity to maintain certain rights and, at the same time, are subjected to certain duties ⁽¹⁰⁾. This is important because both insurgents and national liberation movements, as international entities, enjoy certain rights and duties under international law.

According to one author ⁽¹¹⁾, both insurgents and national liberation movements belong to the category of non-State armed groups ⁽¹²⁾. In particular, the author stresses out that a non-State armed group has: a hierarchical organization; the ability to use force in order to fulfill its goals; and a certain degree of independence from the State control

⁽⁵⁾ RONZITTI N., *Introduzione al Diritto Internazionale*, Third Edition, Torino, G. Giappichelli Ed., 2009, pp. 13/14.

⁽⁶⁾ GIOIA A., *Manuale Breve di Diritto Internazionale*, Milano, Dott. A. Giuffrè Ed., 2010, pp. 265/266.

⁽⁷⁾ BROWNLIE I., *Principles of Public International Law*, Seventh Edition, Oxford (New York), Oxford University Press, 2008.

⁽⁸⁾ Ivi, p. 57.

⁽⁹⁾ SHAW M. N., *International Law*, Sixth Edition, Cambridge, Cambridge University Press, 2008, p. 195.

⁽¹⁰⁾ Ibidem.

⁽¹¹⁾ SABEL R., *Weapons to Non-State Armed Group-Back to Westphalia?*, speech at the conference *Preventing the Spread of Weapons to Non-State Armed Groups*, United Nations Institute for Disarmament Research, 3rd September 2007, pp. 5/16.

⁽¹²⁾ Ibidem.

Along with the insurgents and national liberation movements, the author lists as non-state armed groups also the armed intergovernmental organizations; the commercial security bodies; the groups “operating in a state in collusion or with the acquiescence of the state”; and the terrorist groups. Ibidem.

(¹³). Non-State armed groups are relevant because their actions have consequences on the international peace and security (¹⁴).

With regard to the insurgents, or insurrectional movements, they are a group of organized people who, through an armed collective action, strove for the purpose of overthrowing the legitimate government of the State where the insurrection occurs. The conflict does not necessarily undermine the legal continuity of the State (¹⁵). Insurgents are entitled to international legal personality as long as the insurrection takes place. Outside the revolutionary context, insurgents have to be considered as individual persons, not entitled to international personality. In general, their international capacity is bound by the principle of effectiveness: they are considered international entities as long as they maintain effective control over a part of a territory. Because insurgents are entitled to international personality as long as they keep effective control over a part of a territory, the outcome of the conflict is not relevant to determine whether they are international subjects or not. On the contrary, the outcome of the conflict is very important to define the future of the country: if the insurrection succeeds, the insurrectional movement will presumably form a new government or create a new State by secession. In this case, the international personality of the insurgents ceases to be because the new government or State will be acknowledged as such. On the other hand, if the insurrection fails, the insurgents lose their international capacity: the legitimate government will, therefore, be able to punish them according to the State law (¹⁶). Being coordinated by an organizational apparatus is another characteristic that insurgents must have in order to be recognized as such: in fact, it is the organizational apparatus, similar to a government, which entertains relations with the other international entities and the legitimate government. More likely, the apparatus which coordinates the insurgents becomes the new government of the State, if the insurrection succeeds (¹⁷).

The insurrectional movements' international personality is limited: in fact, they are bound by some of the norms that are applicable to States, but not all of them. Some of them are customary norms: for example, insurgents can conclude treaties with the

(¹³) Ivi, p. 6.

(¹⁴) MOIR L., *The Law of Internal Armed Conflict*, Cambridge, Cambridge University Press, 2002, p.2.

(¹⁵) SINAGRA A., entry *Insorti*, in *Enc. Giur.*, vol. XVII, Roma, 1989, p.1.

(¹⁶) *Ibidem*.

(¹⁷) CASSESE A., *Diritto Internazionale*, Bologna, Mulino Manuali Ed., 2006, pp. 127/128.

legitimate government of the State where they are fighting or others⁽¹⁸⁾. Withal, insurrectional movements can conclude international agreements with other international non-State actors, such as the International Committee of the Red Cross or United Nations humanitarian agencies⁽¹⁹⁾. Art. 3.2 of the 1949 Geneva Conventions seems to support it: “[...] the parties to the conflict should further endeavor to bring into force, by means or special agreements, all or part of the other provisions of the present convention [...]”⁽²⁰⁾. In other words, the article clearly States that all the parties to the conflict, included the insurgents, are able to enjoy the provisions of the Geneva Conventions through the stipulation of special agreements. In this sense, the article expresses the idea that insurgents can stipulate international treaties.

Insurrectional movements are bound by some specific norms of the humanitarian and war law⁽²¹⁾, such as those related to the status and treatment of legitimate combatants⁽²²⁾. More precisely, combatants are those who are legitimated to participate in a conflict. As a consequence, if captured, they acquire the status of *war prisoner*. In particular, the 8th June 1977 Additional Protocol to the Geneva Conventions of 12th August 1949 and Relating to the protection of Victims of International Armed Conflicts specifies that “members of the armed forces to a conflict [...] are combatants, that is to say they have the right to participate directly in hostilities (art. 43.2). [...] Any combatant [...] who falls into the power of an adverse party shall be a prisoner of war (art. 44.1)”⁽²³⁾.

It has been said that insurgents are those people who, through an insurrectional action, aim at replacing the government of a country or forming a new State. Taking ground on this definition, the conflict where the insurgents participate would be defined as a civil one. In fact, the conflict does not involve any international entity, a part from

⁽¹⁸⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, pp. 44/45.

⁽¹⁹⁾ SABEL R., *Weapons to Non-State Armed Group-Back to Westphalia?*, speech at the conference *Preventing the Spread of Weapons to Non-State Armed Groups*, United Nations Institute for Disarmament Research, 3rd September 2007, p. 6.

⁽²⁰⁾ 1949 Sec. Gen. Conv. (for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea), 12th August 1949, <http://www.icrc.org/ihl.nsf/FULL/370?OpenDocument> access 09.11.2012.

⁽²¹⁾ In particular, humanitarian law is an *ensemble* of norms apt to limit the consequences of the armed conflicts. It is also known as the war law and applies to all armed conflicts. <http://www.icrc.org/eng/war-and-law/index.jsp>, access 10.11.2012.

⁽²²⁾ SINAGRA A., entry *Insorti*, in *Enc. Giur.*, vol. XVII, Roma, 1989, p. 2.

⁽²³⁾ Protocol additional to the Geneva conventions of 12th August, 1949, and relating to the protection of victims of international armed conflicts, 8th June 1977, <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>, access 10.11.2012.

the state against which the insurgents fight against. According to art. 1 of the Declaration on the Inadmissibility of Intervention and Interference in Internal Affairs of the States establishes that “no State or group of States has the right to intervene in any form or for any reason whatsoever in the internal or external affairs of other States ⁽²⁴⁾”. However, since the international legal personality of insurgents makes them able to establish relationships with other States and international subjects, the conflict acquires the international status. In other words, limited though it may be, the power that the insurgents’ organizational apparatus acquires in a territory makes the insurrectional movement a non-permanent international entity, so that the legitimate government cannot claim the right of non-intervention in its internal affairs by the international community ⁽²⁵⁾. If rebels are recognized as insurgents, third States cannot provide them with military assistance; on the contrary, third States can help military the legitimate government ⁽²⁶⁾. To conclude, it is possible to say that, according to one author ⁽²⁷⁾, the main difference between States and insurrectional movements is the permanence of their power exercised over a territory ⁽²⁸⁾.

National liberation movements are rebels who fight in order to pursue the right to self-determination of the people who they represent. In particular, a national liberation movements’ war can be defined as an armed struggle waged against the legitimate government in order to exercise national liberation movements’ right to self-determination ⁽²⁹⁾. Art. 1.4 of the First Additional Protocol to the Geneva Conventions defines national liberation movements’ conflicts as wars “in which peoples are fighting against colonial domination and alien occupation and against racist regime in the exercise of their right to self-determination ⁽³⁰⁾”. Although both insurgents and national

⁽²⁴⁾ Art. 1 of the Declaration on the Inadmissibility of Intervention and Interference in Internal Affairs of the States, <http://www.un.org/documents/ga/res/36/a36r103.htm>, access 10.11.2012.

⁽²⁵⁾ SINAGRA A., entry *Insorti*, in *Enc. Giur.*, vol. XVII, Roma, 1989, p. 2

⁽²⁶⁾ CASSESE A., *International Law*, Second Edition, Oxford (New York), Oxford University Press, 2005, pp. 125/130.

⁽²⁷⁾ PEDRAZZI M., *The Status of Organized Armed Groups in Contemporary Armed Conflicts*, in BERUTO G. L., ODELLO M., *Non-State Actors and International Humanitarian Law*, Milano, Franco Angeli Ed., 2010.

⁽²⁸⁾ Ivi, p. 69.

⁽²⁹⁾ HIGGINS N., *The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements*, available at <http://www.wcl.american.edu/hrbrief/17/1higgins.pdf>, access 22.12.2012, p. 12.

⁽³⁰⁾ Art. 1.4, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, available at <http://www.icrc.org/ihl.nsf/INTRO/470>, access 22.12.2012.

liberation movements can be considered as rebels, the scope of their risings is different: in fact, insurgents do not fight to pursue the right to self-determination, while national liberation movements do. Additionally, while insurgents are not welcomed by the international community, since they create disorder and undermine the international balance, national liberation movements, fighting for a principle which is at the base of the United Nations Charter, are generally supported by the other international entities⁽³¹⁾. Art. 1.2 of the United Nations Charter clearly states that one of the core principles of the organization is

“to develop friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace⁽³²⁾”.

The right to self-determination expresses the freedom of peoples to choose their own political, social and economic regime and to decide to found an independent State or to join an already existing one, where they feel to belong⁽³³⁾. From a legal point of view, the principle found its origins in the 1775/1783 American and 1787/1789 French revolutions. More precisely, its first written formulations appeared in the 1776 United States Declaration of Independence and the 1795 French Declaration of the Rights of Men and Citizens⁽³⁴⁾, where rights such as equality, freedom, property and expression were expressed⁽³⁵⁾. In contemporary international law, the principle of nations to self-determination is stated in various juridical instruments, for example in the already cited art. 1.2 of the United Nations Charter. Another is the 1975 Helsinki Final Act; the eighth principle at the base of the relationships between States is that of self-determination:

“by virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and

⁽³¹⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, pp. 46/48.

⁽³²⁾ United Nations Charter, Chapter 1, Art. 1.2, <http://www.un.org/en/documents/charter/chapter1.shtml>, access 10.11.2012.

⁽³³⁾ RUIZ G. A. , entry *Autodeterminazione (diritto dei popoli alla)*, in *Enc. Giur.*, vol. IV, Roma, 1988, p.1.

⁽³⁴⁾ *Ibidem*.

⁽³⁵⁾ 1795 French Declaration of the Rights of Men and Citizens. http://france2008.jrc.it/documents/Dichiarazione_diritti_uomo.pdf, access 10.11.2012.

external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development ⁽³⁶⁾”.

In other words, the right to self-determination is peoples’ right to form and choose the type of government and economic and civil regime they consider the most suitable for them and to be free from any colonial domination ⁽³⁷⁾. This principle has to be considered both inalienable and permanent. This way, peoples have the right to modify their government *any moment* they believe it is necessary. The right to self-determination does not use up once the chosen type of government has established: it remains valid ⁽³⁸⁾.

Going back to the definition of the principle given by the 1975 Helsinki Final Act, it is possible to notice that it can be seen by two different points of view, the internal and the external one. From the internal point of view, every government must ensure its people the effective possibility of having a constitution or changing it along with the economic, political and economic regime. Generally speaking, it means that self-determination implies that the State must recognize the human and civil rights and the fundamental freedoms of its people. They are freedom of speech, of conscience, of thought, of press, of communications, of manifestation, and so on. Furthermore, peoples have the right to choose the type of government which they believe is the most appropriate for them: a monarchy, a republic, a parliamentary monarchy, and so on. From the external point of view, self-determination implies that a nation has the right to declare an independent State or to associate to another country without any external interference ⁽³⁹⁾. More specifically, the external self-determination implies that peoples subdued to colonial domination, racial segregation (or apartheid) and foreign occupation, have the right to obtain independence or join another State without external

⁽³⁶⁾ Eighth principle of the 1975 Helsinki Final Act, <http://www.hri.org/docs/Helsinki75.html#H4.8>, access 10.11.2012.

According to the 1975 Helsinki Final Act, the principles that guide the relations between states are: sovereignty equality and respect for the rights inherent in sovereignty; refraining from the threat or use of force; inviolability in frontiers; territorial integrity of the states; peaceful settlement of disputes; non-intervention in internal affairs; respect for human rights and fundamental freedoms; equal rights and self-determination; co-operation among states; fulfillment in good faith of obligations under international law. Ibidem, access 10.11.2012.

⁽³⁷⁾ <http://www.treccani.it/enciclopedia/tag/autodeterminazione>, access 10.11.2012.

⁽³⁸⁾ RUIZ G. A., entry *Autodeterminazione (dei popoli alla)*, in *Enc. Giur.*, vol. IV, Roma, 1988, p. 5.

⁽³⁹⁾ Ivi, p. 6.

reference ⁽⁴⁰⁾. To conclude the explanation about self-determination, it must be reminded that peoples, in general, are not international entities, therefore are not subjected to the international rights and duties. For example, they are not subdued to the prohibition of using or threatening force against the territorial integrity or political independence of any country, while States are ⁽⁴¹⁾.

Then, it is important to outline that those who enjoy the principle of self-determination are all the peoples of the world because of its universal character ⁽⁴²⁾. Furthermore, it is considered an *erga omnes* norm, as it was judged in 1995 by the International Court of Justice in the East Timor judgment:

“in the Court’s view, [...] the right of peoples to self-determination, as it evolved from the Charter and from the United Nations practice, has an *erga omnes* character, is irreproachable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court; it is one of the essential principles of contemporary international law ⁽⁴³⁾”.

In order to acquire legal capacity, national liberation movements do not have to get effective control over a part of a territory, like the insurgents. However, they must have a political and organized apparatus that is able to manage the international relations, as stated in art. 96.3 of the 1977 First Additional Protocol to the Geneva Conventions ⁽⁴⁴⁾: listing the categories of populations that can declare their will to respect the protocol, the norm states that such declaration must be done by “the authority representing a people engaged against a High Contracting Party in an armed conflict ⁽⁴⁵⁾”.

⁽⁴⁰⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, pp. 46/47. This principle is fully clarified in the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples and the 1970 Declaration of Principles of International Law Concerning Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations. FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, pp. 46/47.

⁽⁴¹⁾ RUIZ G. A., entry *Autodeterminazione (dei popoli alla)*, in *Enc. Giur.*, vol. IV, Roma, 1988, p. 6.

⁽⁴²⁾ RUIZ G. A., entry *Autodeterminazione (dei popoli alla)*, in *Enc. Giur.*, vol. IV, Roma, 1988, p. 6.

⁽⁴³⁾ Case concerning East Timor (Portugal vs. Australia), Judgment of 30th June, 1995, <http://www.icj-cij.org/docket/index.php?sum=430&code=pa&p1=3&p2=3&case=84&k=66&p3=5>, access 10.11.2012.

⁽⁴⁴⁾ CASSESE A., *Diritto Internazionale*, Bologna, Il Mulino Manuali Ed., 2006, pp. 138/139.

⁽⁴⁵⁾ Protocol Additional to the Geneva Conventions of 12th August, 1949, and relating to the Protection of Victims of International Armed Conflicts, 8th June 1977, <http://www.icrc.org/ihl.nsf/full/470?opendocument>, access 10.11.2012.

Since national liberation movements fight to pursue their right to self-determination, third States must not assist those governments which deny their peoples self-determination. On the contrary, third States can provide humanitarian, economic and limited military assistance to national liberation movements ⁽⁴⁶⁾. Since the tendency is that of considering national liberation movements as the real representatives of peoples, they are admitted to international organizations. For example, at the United Nations they are often present as permanent observers. However, they do not have the political legitimacy to represent a government, since they are not such. This right is up to the State ⁽⁴⁷⁾. As the insurgents, national liberation movements are bound by some international law norms too. As for the customary law, the right to self-determination, for all the reasons explained above: all the peoples have the right to determine themselves. Then, they are subjected to the humanitarian law and the law of treaties. According to one author, people representing them enjoy the immunity protection. On the other hand, they do not have the right to dispose of the territory where they are fighting, if they are, or of its natural resources ⁽⁴⁸⁾.

6.2. The International Recognition: Libyan Rebels between the Status of Insurgents and National Liberation Movements.

In general, the term “recognition” refers to an unilateral act made by a single subject or a group of subjects with which a certain situation is being legitimized ⁽⁴⁹⁾. As stated above, both insurgents and national liberation movements must fulfill some requirements in order to be recognized as international entities. The former are subjected to the principle of effectiveness, which implies that they must have effective control over a part of the territory where the rebellion is taking place. Then, insurgents must have an organizational body that legally represents them, entertaining relations with the international community. Despite the fact that national liberation movements are not bound by the principle of effectiveness, they have to be represented by a coordinating body too. In general, the act of recognition can take different forms: it can be an agreement, a declaration of intent to establish relations or a congratulatory letter

⁽⁴⁶⁾ CASSESE A., *Diritto Internazionale*, Bologna, Mulino Manuali Ed., 2006, pp. 138/139.

⁽⁴⁷⁾ WILSON H. A., *International Law and the Use of Force by National Liberation Movements*, Clarendon, Oxford University Press, 1988, pp. 104/135.

⁽⁴⁸⁾ CASSESE A., *Diritto Internazionale*, Bologna, Mulino Manuali Ed., 2006, pp. 139/140.

⁽⁴⁹⁾ <http://www.treccani.it/enciclopedia/riconoscimento/>, access 11.11.2012.

in cases of independence. There are two theories that can be applied to recognition: the declarative and constitutive one⁽⁵⁰⁾. According to the first one, recognition is a mere political act, through which an entity or multiple entities show their will of establishing diplomatic, bilateral, or multilateral relations and of concluding treaties⁽⁵¹⁾. In other words, recognition is the tool through which a State recognizes a new entity and shows its will to entertain relations with it⁽⁵²⁾. Since it reflects the will of States of entertaining relations with a certain entity, non-recognition, in this sense, can be defined as a political act too: in fact, it can stand for a policy of disapproval towards a new-born State or entity. Recognition alone, seen as a declarative act, obviously cannot reflect a legal practice: if State A recognizes State B, it does not give it also statehood⁽⁵³⁾. In other words, entities which are being recognized possess some characteristics *a priori* that prescind from the mere act of recognition, being it, again, a political act⁽⁵⁴⁾. To cite the words that Ian Brownlie used to describe the declarative recognition,

“recognition, as a public act of a State, is an optional and political act and there is no legal duty in this regard. [...] [However] even recognition is not determinant of diplomatic relations, and absence of diplomatic relations is not in itself non-recognition of the State⁽⁵⁵⁾”.

According to the constitutive theory recognition attributes international personality to an entity⁽⁵⁶⁾.

In case of civil wars, States acknowledge also insurgency and belligerency⁽⁵⁷⁾.

Prior to the nineteenth century internal conflicts were believed to belong only to the domestic jurisdiction of the State where they occurred. The legitimate authority used to treat rebels as “criminals” who did not deserve any international legal protection. However, by the nineteenth century internal conflicts began to acquire importance on

⁽⁵⁰⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 40.

⁽⁵¹⁾ BROWNLIE I., *Principles of Public International Law*, Sixth Ed., Oxford (New York), Oxford University Press, 2003, pp. 88/89.

⁽⁵²⁾ WILSON H. A., *International Law and the Use of Force by National Liberation Movements*, Clarendon, Oxford University Press, p. 104.

⁽⁵³⁾ For example, the Organization for the Liberation of Palestine is being recognized by the international community but this mere recognition does not attribute it a state to govern.

⁽⁵⁴⁾ BROWNLIE I., *Principles of Public International Law*, Sixth Ed., Oxford (New York), Oxford University Press, 2003, pp. 89.

⁽⁵⁵⁾ Ivi, pp. 88/89.

⁽⁵⁶⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 40.

⁽⁵⁷⁾ WILSON H. A., *International Law and the Use of Force by National Liberation Movements*, Clarendon, Oxford University Press, p. 104.

the international level. As a consequence, the status of the internal conflicts could be changed to the international one invoking the recognition of belligerency ⁽⁵⁸⁾. According to the classical international law, an armed conflict which aimed at changing the government of a State was characterized by three different stages: rebellion, insurgency and belligerency. The former was believed to be a sporadic challenge toward the legitimate government by a relatively small group of the population who aimed at gaining control of the country. International law was not entitled to provide them any protection: they could be punished according to the law of the county. The term insurgency referred to a wider attack against the government, with organized factions that constituted a real threat for it. The final stage occurred when the insurgents were recognized as a belligerent party: the recognizing States believed that, at this point, both insurgents and the legitimate government could be treated in the same way, that is to say as belligerents in an international armed conflict ⁽⁵⁹⁾. Nevertheless, both recognition of insurgency and belligerency were believed to be a mere recognition of a war conflict and not of the insurgents' organization as the legitimate government of a State ⁽⁶⁰⁾. In other words, it seems possible to say that classical international law deemed recognition of insurgency and belligerency as declarations of *de facto* recognition and not *de iure* one ⁽⁶¹⁾.

Recognition of belligerency can be conceded by third States, included the one where the insurrection occurs. It can be given when the insurgency has already spread and has been going on for a certain amount of time, even if there is not a precise norm about that. The recognition of belligerency implies that the norms of the international conflicts are applied to the insurrection; they are mainly codified in the 1989 and 1907 The Hague Conventions, 1949 Geneva Conventions and 1977 First Additional Protocol to the conventions. At this point, insurgents are being treated as international subjects subdued to the rights and duties of the *jus in bello* ⁽⁶²⁾. In particular, the *jus in bello* groups the norms that regulate an armed conflict, while the *jus ad bellum* establishes

⁽⁵⁸⁾ MOIR L., *The Law of Internal Armed Conflict*, Cambridge, Cambridge University Press, 2002, p. 4.

⁽⁵⁹⁾ Ivi, pp. 4/5.

⁽⁶⁰⁾ Ivi, p. 5.

⁽⁶¹⁾ Ivi, p. 6.

The expression *de jure* literally means "by right". <http://legal-dictionary.thefreedictionary.com/de+jure>, access 22.12.2012.

⁽⁶²⁾ CASSESE A., *Diritto Internazionale*, Bologna, Mulino Manuali Ed., 2006, p. 128.

whenever is allowable to use force ⁽⁶³⁾. In order to start the process of recognition of belligerency, the insurgents should have respected the *jus in bello* during the insurrection, and have a *de facto* political organization able to fulfill the functions of a government and to be responsible for the internationally wrongful acts committed by the insurgents ⁽⁶⁴⁾. If the belligerency is recognized, the insurgents acquire the status of combatants, so that if captured are subdued to the treatment reserved to war prisoners ⁽⁶⁵⁾. If belligerency is not recognized, the conflict is not transposed to the international lever; therefore, international law is not applied to the conflict, which remains classified as a civil one, and the insurgents do not acquire the status of combatants. Not being recognized as combatants, the legitimate government can evaluate the actions of the insurgents and fight against them according to its law ⁽⁶⁶⁾. The recognition of insurgency is a political act that determines if rebels are entitled to the international personality or not. Recognition of insurgency is a political act that determines the will of third States to entertain relations with insurgents. Of course, this is the theory: in practice, States tend to recognize rebels because of diplomatic, economic and strategic reasons or to protect foreign citizens living in the territory controlled by the insurgents. However, recognition of insurgency is very important: in fact, States tend to recognize the insurgency more likely in some cases than others as an expression of their will to acknowledge the new governments formed by insurgents in case of the insurrection succeeds ⁽⁶⁷⁾.

Standing on the reflections made so far, it seems that Libyan rebels go under the status of insurgents. They cannot be considered as a national liberation movements because they did not fight against a colonial domination, an alien occupation, or a racist regime. They rebelled against the legitimate government, Gaddafi's one, in order to form a new ruling, democratic body for the country. Racist though it may have been,

⁽⁶³⁾ GIOIA A., *Manuale Breve di Diritto Internazionale*, Milano, Giuffrè Ed., 2010, p. 416.

⁽⁶⁴⁾ CASSESE A., *Diritto Internazionale*, Bologna, Mulino Manuali Ed., 2006, p. 128/129.

⁽⁶⁵⁾ According to art. 4 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War, a war prisoner is a member "of the armed forces of a Party to the conflicts as well as members of militias or volunteer corps forming part of such armed force" or a member "of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements [...]". Art. 4, 1949 Geneva Convention relative to the Treatment of Prisoners of War, <http://www.icrc.org/ihl.nsf/FULL/375?OpenDocument>, access 11.11.2012.

⁽⁶⁶⁾ SINAGRA A., entry *Insorti*, in *Enc. Giur.*, vol. XVII, Roma, 1989, p. 6.

⁽⁶⁷⁾ CASSESE A., *Diritto Internazionale*, Bologna, Mulino Manuali Ed., 2006, pp. 129/130.

Libyan insurgents did not fight against Gaddafi's regime for this reason. It is possible to assert that Libyan insurrection has not been a separatist one. Separatist insurrections are those which goal is forming a new independent State by secession. On the other hand, political insurrections are those where insurgents do not aim at changing or undermining the legal continuity of the State, but forming a new government⁽⁶⁸⁾. Given the definition of the right to self-determination, it could be said Libyan rebels could have been classified as a national liberation movements.

Truly enough, Libyan people aimed at changing Gaddafi's regime in order to establish a democratic government⁽⁶⁹⁾. From a legal point of view, despite the fact that Libyan rebels fought in order to establish a democratic regime, they did not struggle against a racist one, an alien occupation or a colonial domination. From a political and humanitarian perspective, it is possible to say that Libyan people do not fit in the concept of "nation". When Gaddafi took the power in 1969 the idea of a Libyan nation did not exist at all. Gaddafi had worked hardly in order to create the sense of nation proper of the contemporary State-nations⁽⁷⁰⁾ without success. In fact, as professor Ira Lapidus⁽⁷¹⁾ states in his "A History of Islamic Societies", when the Free Officers took the power in 1969 they did not inherited a strong country, nor an integrated society. Libya did not have the historical basis, or the historical unity, to build a national identity. Gaddafi tried to do it through his universalistic, pan-Arab, Islamic and revolutionary orientation without success⁽⁷²⁾: first of all because a pan-Arab ideology reflects the idea of a big Arab nation, not a Libyan one. Second of all, because Libya has always been inhabited by independent tribes, who have single identities that Gaddafi has always tried to suffocate. The reason why Libyan rebels fought their revolution was not that of building a Libyan nation: they revolted against Gaddafi because of the terroristic and defaulting regime he was perpetrating since 1969⁽⁷³⁾.

⁽⁶⁸⁾ D'ASPREMONT J., *La Legitimité des Rebelles en Droit International*, 10th September 2010, Available at SSRN: <http://ssrn.com/abstract=1266047> or <http://dx.doi.org/10.2139/ssrn.1266047>, pp. 3/4.

⁽⁶⁹⁾ <http://www.modernghana.com/news/321104/1/democracy-for-libyaa-hard-road-to-travel.html>, access 22.12.2012.

⁽⁷⁰⁾ The principle of state-nations was born with the 1648 Westphalia Peace and reflects the idea of a state, provided with a proper political and organizational apparatus that represents the nation, in the sense explained in the previous paragraph. <http://www.treccani.it/enciclopedia/nazione>, access 12.11.2012.

⁽⁷¹⁾ Ira Lapidus is a professor of History and Islamic Social History at Berkley University. Among the others, he is the author of the multi-work "A History of Islamic Societies".

⁽⁷²⁾ LAPIDUS I., *Storia delle Società Islamiche* (volume III), Torino, Einaudi, 1995, pp. 179/180.

⁽⁷³⁾ DEL BOCA A., *Gheddafi, una Sfida dal Deserto*, Bari, Laterza Ed., 2010.

Despite the fact that the analysis is not legal but political, it is possible to affirm that Libyan rebels go under the international status of insurgents also because of this.

The National Transitional Council was the representative body of Libyan insurgents under the revolution. In Libya, it found its legitimacy in the decision taken by the will of insurgents to be represented by an organizational body that could express the voice of all the parts of Libya. The Council is formed by thirty-one members representing the most important Libyan cities, such as Tripoli and Misurata ⁽⁷⁴⁾. In the Libya case, both recognition of insurgency and belligerency occurred. As for the recognition of insurgency, a wide range of States acknowledged the National Transitional Council as the sole representing body of insurgents, expressing their will to entertain relations with it. On the other hand, taken the international response to the Libyan crisis by the UN Security Council and the provisions adopted by third States, it seems possible to affirm that recognition of belligerency occurred too. The Libyan civil war had been transposed to the international level and triggered the international responsibility to protect.

The first State that recognized the National Transitional Council as the sole country's legitimate government was France in March, few weeks later the break-out of the conflict. Other European States dissociated from this decision, affirming that it was taken in a rush ⁽⁷⁵⁾. William Hague, foreign secretary of United Kingdom, officially confirmed the recognition of the National Transitional Council in July, five months after the uprising. In that occasion, Hague stated that

“we no longer recognize them [the eight Libyan Gaddafi's diplomats in UK] as the representatives of the Libyan government and we are inviting the National Transitional Council to appoint a new Libyan diplomatic envoy to take over the Libyan embassy in London ⁽⁷⁶⁾”.

Italy recognized the NTC on April 4, 2011: the then Foreign Minister Frattini affirmed that

⁽⁷⁴⁾ <http://www.ntclibya.org/english/about/>, access 12.11.2012.

⁽⁷⁵⁾ <http://www.bbc.co.uk/news/world-africa-12699183>, access 12.11.2012.

⁽⁷⁶⁾ <http://www.bbc.co.uk/news/uk-politics-14306544>, access, 12.11.2012.

“abbiamo deciso di riconoscere il Consiglio Nazionale di Transizione libico come unico interlocutore legittimo della Libia per le relazioni bilaterali. [...] Non si può escludere, seppure come *extrema ratio*, la possibilità di armare i ribelli libici [...] ⁽⁷⁷⁾”.

The military aid given to the Libyan insurgents will be discussed in chapter 7, but it is important to underline here that according to the international norms regarding the recognition of insurgents and their international status, no third States could provide military assistance to the insurgents. On the contrary, third States could give military assistance to the legitimate government, which, in this case, would have been Gaddafi's one ⁽⁷⁸⁾.

The General Assembly of the United Nations decided to seat the National Transitional Council as the sole representative of Libya during its sixty-sixth session. On September 16, 2011 the members of the General Assembly voted to allow representatives of the National Transitional Council to stand for the Libyan country. With 114 in favor, 17 against and 15 abstentions the result happened to be positive ⁽⁷⁹⁾.

Connecting Libyan rebels' recognition with the declarative and constitutive theories explained above, it seems that there have been two moments of recognition: the first one when Libyan rebels have been acknowledged as insurgents and, therefore, have been entitled to the international personality deriving from that status. In a second moment the National Transitional Council has been recognized as the sole representative of Libyan people: before that moment, States continued to maintain diplomatic relations with Gaddafi's representatives.

6.3. The Responsibility of Insurgents and National Liberation Movements (or others) for Internationally Wrongful Acts.

The topic of the international responsibility for acts which are internationally wrong has been codified by the international law commission, established in 1948 by the United Nations in order to codify and develop the norms of international law. State

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http://www.ilmessaggero.it/home_nelmondo/libia_italia_riconosce_governo_dei_ribelli_frattini_potremmo_anche_fornire_armi/notizie/144290.shtml, access 12.11.2012.

⁽⁷⁸⁾ CASSESE A., *International Law*, Second Edition, Oxford (New York), Oxford University Press, 2005, pp. 125/130.

⁽⁷⁹⁾ GA/11137, United Nations General Assembly, 16th September 2011, <http://www.un.org/News/Press/docs/2011/ga11137.doc.htm>, access 12.11.2012.

responsibility was one of the fourteen points of the work's program commission ⁽⁸⁰⁾. Its work led to the realization of the project of the articles on States' responsibility for internationally wrongful acts in 2001.

Dealing with international responsibility in general, it has to be understood when there is international responsibility. In other words, the various situations must be analyzed in order to understand if there are the conditions that trigger international responsibility. Logically, it triggers when an international entity commits an illicit act. An international wrong is composed by two elements: the objective one, which is the mere committing an illicit by an entity. The subjective element is the fact that an international person is indictable of an international wrong ⁽⁸¹⁾.

The draft of articles on responsibility of States for internationally wrongful acts deals with all the cases and questions that regard it. As far as concerns insurgents and national liberation movements, it deals also with internationally wrongful acts committed by them.

Art. 10 of the draft concerns the behavior of an insurrectional or other movement:

“1. the conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law. 2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law ⁽⁸²⁾”.

This article deals with cases when a movement, insurrectional or other, 's behavior or conduct is attributed to the new-born government or State. An insurrectional movement can adopt diverse forms: it can be a limited internal unrest, an anti-colonial struggle, a civil war situation, an action of a national liberation movement, an act of

⁽⁸⁰⁾ CRAWFORD J., *The International Law Commission's Articles on State Responsibility*, Cambridge, Cambridge University Press, 2002, pp. 1/2.

⁽⁸¹⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, pp. 541/546.

⁽⁸²⁾ Art. 10, Draft Articles on Responsibility of States for internationally Wrongful Acts, 2001, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, access 12.11.2012.

revolutionary movements, and so on. The article clearly refers to all the forms an rebel group could assume ⁽⁸³⁾.

Superficially, it could be said that the mere behavior of the members of an insurrectional movement should be attributed to the individual persons, not to the State, since it is not the direct responsible. However, the draft clearly states that if the movement succeeds in forming a new government of a new State, it is the one responsible for the wrongful acts ⁽⁸⁴⁾. If we reflect on this, the reasoning is coherent: the new government would be formed by the organizational body entitled to represent the insurgents during the rebellion; therefore it is the responsible for the acts happened during the conflict. On the other hand, if the insurrection fails, the pre-existing government does not have the responsibility for the actions of the insurgents ⁽⁸⁵⁾. The conduct could be attributed to the government only if some organs of the State are connected to the acts of the insurgents and, of course, if those acts breach some of the international obligations of the State itself ⁽⁸⁶⁾. The idea that the acts of an unsuccessful insurrectional movement or other cannot be attributed to a State is based on the assumption that its organs and structures are not related to those of the State ⁽⁸⁷⁾. On the other hand, if the movement succeeds it would be anomalous not taking responsibility for acts which it has committed. The reason why the government is responsible for its conduct during an insurrection lies on the principle of continuity: in fact, there is continuity between the new government and the insurrectional body ⁽⁸⁸⁾. The term “conduct” used in art. 10 refers to the behavior of the movement as an entire entity, not as single persons, members of the insurrectional group ⁽⁸⁹⁾.

Whenever an insurrectional movement succeeds in replacing the former government, its ruling organization becomes that of the new government or State ⁽⁹⁰⁾.

⁽⁸³⁾ CRAWFORD J., *The International Law Commission's Articles on State Responsibility*, Cambridge, Cambridge University Press, 2002, P. 118.

⁽⁸⁴⁾ Ibidem.

⁽⁸⁵⁾ Ivi, p. 116.

⁽⁸⁶⁾ Ivi, p. 117.

⁽⁸⁷⁾ Ibidem.

⁽⁸⁸⁾ Ibidem.

⁽⁸⁹⁾ Ibidem.

Art. 58 of the draft deals with individual responsibility; it clearly states that the articles of the project do not address “any question of the individual responsibility under international law of any person acting on behalf of the state”, art. 58, *Articles on Responsibility of States for internationally Wrongful Acts, 2001*, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, access 12.11.2012.

⁽⁹⁰⁾ CRAWFORD J., *The International Law Commission's Articles on State Responsibility*, Cambridge, Cambridge University Press, 2002, p. 117.

Therefore, the continuity does not exist only between the movement and the government arose from it, but also between the organization of the movement and the State itself. Despite all the changes that may occur in its organization, the State does not cease to exist as an international subject ⁽⁹¹⁾. This is due to the reasons why insurgents may decide to rebel against their government: above it is stated that insurgents' goal is replacing the former government with a new one, without undermining the State as an international entity (or to form a new State, but also in this case the international capacity of the other one remains). Since the State's identity as an international subject does not change, it is called to respond not only for the acts committed by the insurgents, but also by the bodies of the State itself. During the insurrection there are two opposite actors: the insurgents and the still-legitimate government. Whether the insurgents establish a new government, this would be part of the State. At this point, it is easy to understand that, once the conflict is over and the new government is established, the State takes responsibility both for the acts committed both by the insurgents and the organs of the State. It is responsible for the rebels, since its formation represents their will, and for the organs of the State because the State, as an international entity, has never ceased to exist ⁽⁹²⁾.

Art. 10 deals with situations where the insurrectional movement succeeds in taking control of the State. However, it can happen that the government the State decides to reconcile with the insurgents, reaching a national reconciliation. In this case, since there is no replacement of government or the birth of a new State, the legitimate government is not responsible for the acts of the insurgents, even if the reconciliation would bring some members of the insurrectional movements into the ruling organization of the State. There must be real continuity between the actions of the movement and the government, otherwise there cannot be responsibility to take ⁽⁹³⁾.

⁽⁹¹⁾ Ibidem.

⁽⁹²⁾ Lauterpacht Centre for International Law, *Commentary on the art. 15 "Attribution to the state of the Act of an Insurrectional Movement which Becomes the New Government of a State or which Results in the Formation of a New State"*, <http://www.lcil.cam.ac.uk/Media/ILCSR/rft/Sr15.rtf>, access 12.11.2012.

⁽⁹³⁾ CRAWFORD J., *The International Law Commission's Articles on State Responsibility*, Cambridge, Cambridge University Press, 2002, p. 118.

6.4. Two Distinct Cases: the Libyan Insurgents vs Palestinians as National Liberation Movements.

Libyan rebels have been acknowledged as insurgents by the international community: as a matter of fact, as stated above, they did not fight against a colonial domination, an alien occupation or racist regime. In order to understand the reasons why Libyan rebels cannot be considered as a national liberation movement, it could be useful to introduce one of the most representative national liberation movements: the Palestine Liberation Organization (PLO) as the national liberation movement representative of Palestinian people who struggle to pursue the right to self-determination. The Palestine Liberation Organization was established in 1964 at a summit of the Arab League⁽⁹⁴⁾. United Nations General Assembly's res. 3236 (XXIX) is important: beside recognizing Palestinians' right to self-determination, it requested the Secretary-General to take contacts with the Palestine Liberation Organization on the matter concerning the Palestinian question, acknowledging it as the representative body of Palestinian people⁽⁹⁵⁾. United Nations General Assembly's res. 3237 (XXIX) appointed Palestine Liberation Organization as permanent observer within the United Nations⁽⁹⁶⁾. As stated in the Permanent Observer Mission of Palestine to the United Nations website, PLO "has been the embodiment of the Palestinian national movement⁽⁹⁷⁾". Palestinians have been suffering from an alien occupation, the Israeli one, of their territories. Furthermore, it seems possible to assert that the Israeli regime is being racist: despite the fact that the Israeli government has conceded Palestinians to obtain the citizenship, there is a clear distinction between it and nationality. In this sense, therefore, Palestinians suffer from racist and violent episodes by the Israeli people, who consider them as "second-class citizens"⁽⁹⁸⁾.

⁽⁹⁴⁾ <http://israelipalestinian.procon.org/view.answers.php?questionID=000386>, access 24.12.2012.

⁽⁹⁵⁾ Res. 3236 (XXIX), United Nations General Assembly, November 22, 1974, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/738/38/IMG/NR073838.pdf?OpenElement>, access 24.12.2012.

⁽⁹⁶⁾ Res. 3237 (XXIX), United Nations General Assembly, November 22, 1974, Ibidem, access 24.12.2012.

⁽⁹⁷⁾ Permanent Observer Mission of Palestine to the United Nations website, <http://www.un.int/wcm/content/site/palestine/pid/12003>, access 24.12.2012.

⁽⁹⁸⁾ WHITE B., *Palestinians in Israel. Segregation, Discrimination and Democracy*, Pluto Press, 2012, Book Review by WADI R., <http://rabble.ca/books/reviews/2012/03/palestinians-israel-life-under-apartheid>, access 24.12.2012.

Libyan people experienced forty-two years of dictatorship by Colonel Gaddafi. However, this situation cannot be connected with those described by art. 1.4 of the 1977 Protocol Additional to the Geneva Conventions of 12th August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) ⁽⁹⁹⁾: Gaddafi's regime was not racist against Libyan people (it is possible to assert it was toward other populations, such as the Italian one). He was not the leader of a colonial domination either: on the contrary, he had always condemned Western countries of being colonialist. Finally, he did not occupy Libyan territory. Looking at the 1975 Helsinki Final Act definition of right to self-determination ⁽¹⁰⁰⁾, it would be possible to assert that Libyan rebels, despite being recognized as insurgents, fought also to pursue their right to self-determination. Actually, from a mere legal point of view, it is not like that. The only possible way to consider this possibility would be taking into account the right to internal self-determination. Despite the fact that this principle can be associate to peoples' respect of human rights ⁽¹⁰¹⁾, so that it is peoples' right to decide which form of government they should be governed by, there are no objectives elements which determine that peoples have the right to be governed by a democratic body or to create a new state by secession in case they are not ⁽¹⁰²⁾. Oppressive and repressive though Gaddafi's regime may have been, Libyan people did not fight to pursue the right to self-determination, even the internal one.

6.5. Conclusions.

This chapter has attempted to determine the status of Libyan rebels under international law. They went under the status of insurgents and were not recognize as a national liberation movement. As a matter of fact, Libyan rebels did not fight against a

Jewish law derives from ethnicity and theocracy: according to it, in fact, Palestinians are not eligible to the appointment of the citizenship. The Law of Return grants Jews both citizenship and residence, while Palestinians are not, since they simply are not Jews. Ibidem ,access 24.12.2012.

⁽⁹⁹⁾ Art. 1.4, Protocol Additional to the Geneva Conventions of 12th August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8th June 1977, <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>, access 24.12.2012.

⁽¹⁰⁰⁾ The definition is: "by virtue of the principle of equal rights and self-determination of peoples, all peoples have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development. Eight principle of the 1975 Helsinki Final Act, <http://www.osce.org/mc/39501?download=true>, access 24.12.2012.

⁽¹⁰¹⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), CEDAM, Padova, 2008, p. 49.

⁽¹⁰²⁾ Ivi, p. 50.

colonial domination, a racist regime or an alien occupation. Furthermore, after a comparison between Palestinians and Libyans, it seems possible to assert that Libyan people, from a mere legal point of view, did not even struggle to pursue their right to internal self-determination, despite the oppression they were subdued under Gaddafi's regime (¹⁰³). In the next chapter the Libyan crisis will be analyzed, along with the international resolutions adopted by the United Nations Security Council and some political aspects related to the Libyan question.

⁽¹⁰³⁾ For example, during the Gaddafi's regime it was forbidden to found political parties. DEL BOCA A., *Gheddafi, una Sfida dal Deserto*, Bari, Laterza Ed., 2010.

CHAPTER 7: THE PRINCIPLE OF THE RESPONSIBILITY TO PROTECT (R2P) AND ITS APPLICATION TO THE LIBYAN CRISIS.

CONTENTS: 7.1. Some General Notions about Human Rights: the Concept of Gross Violations. - 7.2. The Principle of the Responsibility to Protect and the Ideas that Stand at the Base of it. – 7.3. The Role of the United Nations Security Council and NATO in the Implementation of R2P. – 7.4. The Regulation of the Use of Force in International Law and the Principle of Sovereignty Applied to R2P: When is the Military Intervention Legitimated?. – 7.5. The Military Intervention in Libya: an Application of the R2P. – 7.6. The Stages of the Transformation of the Libyan Conflict Status. - 7.7. Some Considerations about the International Intervention in Libya. – 7.8. R2P and the Contemporary Scenarios: Libya vs Syria. – 7.9. Conclusions.

7.1. Some General Notions about Human Rights: the Concept of Gross Violations.

The Charter of the United Nations contains few dispositions about the protection of human rights ⁽¹⁾: it is possible to find them in articles 1.3, 55.c and 56. They respectively state:

“[One of the purposes of the United Nations is] to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion ⁽²⁾ (art. 1.7). With a view to the creations of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote [...] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (art. 55.c). All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in article 55 ⁽³⁾”.

⁽¹⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 345.

⁽²⁾ Art. 1.7, Chapter One, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter1.shtml>, access 17.11.2012.

⁽³⁾ Art. 55.c/56, Chapter Nine, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter9.shtml>, access 17.11.2012.

The dispositions of the Charter on human rights reflect the idea that prevailed when the Charter was written, in 1945: in fact, at that time, it was common believe that the protection of human rights was instrumental to keep peace and security in the international community. In addition, the principle of non-interference in States' domestic jurisdiction (art. 2.7 of the United Nations Charter) has gradually faded in the praxis, so that the United Nations is freer to intervene in situations where violations of human rights occur ⁽⁴⁾.

In 1948 the Universal Declaration of Human Rights was adopted by the General Assembly. Despite not being legally binding for the States who have signed it, it is common believe that it has to be considered as part of the customary law, at least for some of its essential rights. The principles of the 1948 Declaration have been reasserted in the 1993 Vienna Declaration and Programme of Action ⁽⁵⁾ adopted after the World Conference on Human Rights. The 1993 Vienna Declaration is not legally binding too ⁽⁶⁾.

As for the legally binding pacts, the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights are worth to be mentioned: they both contain substantial and procedural norms. The former refer to the people's rights that States have to respect, such as the right to self-determination and to life, prohibition of torture, slavery, and so on. Procedural norms regulate the mechanisms of control of the respect of human rights ⁽⁷⁾.

There are certain violations of human rights classified as "gross and large-scale violations": they are genocide; war crimes; ethnic cleansing; and crimes against

⁽⁴⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 346.

⁽⁵⁾ During the 1993 World Conference on Human Rights in Vienna, the participants reaffirmed the universality of human rights, refusing the idea of those who sustained that human rights were historical and not universal. On the 25th June 1993 171 states adopted the Vienna Declaration and Programme of Action, that states the universal and fundamental nature of human rights and their inter-relation. http://www.bbc.co.uk/worldservice/people/features/ihavearightto/four_b/treaties_vienna.shtml, access 17.11.2012.

⁽⁶⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008, p. 346.

⁽⁷⁾ Ivi, pp. 346/347.

Other important conventions are: 1948 Convention on Genocide; 1973 International Convention on the Suppression and Punishment of the Apartheid; 1979 C. on the Elimination of all forms of discriminations against women; 1984 Convention against Torture and other cruel, inhuman or degrading Treatment or Punishment; 1989 C. on the rights of the child; 2007 C. on the Rights of persons with disabilities. The 1950 European Convention on Human Rights is particularly important: it implemented two control bodies, the European Commission and the European Court of the Human Rights (even if from 1998 the commission was abolished). The rights provided by the convention are: right to life; prohibition of torture and inhuman treatments; prohibition of slavery; right to freedom and security; right to respect for life, and so on. Ivi, pp. 348/355.

humanity. They have been described as “the most dangerous threat to the international community” by the General Assembly of the United Nations ⁽⁸⁾. In fact, there are situations where individual human rights violations occur, while others where such violations are perpetrated on a daily basis. Furthermore, the State can be the perpetrator of these gross violations. On the one hand, it is easy to distinguish between cases of individual human rights violations and gross large-scale violations. On the other hand, it is not possible to identify all the cases that are part of the gross violations: in this regard, during the Maastricht Seminar on the Rights to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, which took place between the 11th and 15th March 1992, a general definition has been given. In fact, gross and large-scale violations of human rights and fundamental freedoms can be considered

“at least the following practices: genocide, slavery and slavery-like practices, summary or arbitrary executions, torture, disappearances, arbitrary and prolonged detention, and systematic discrimination. [...] Violations of other human rights, including violations of economic, social and cultural rights, may also be gross and systematic in scope and nature, and must consequently be given all due attention in connection with the right to reparation ⁽⁹⁾”.

More specifically, art. 1 of a Draft Declaration defining Gross and Large-Scale Violations of Human Rights an International Crimes specifies that

“gross and large-scale human rights violations on the orders of a Government or with its sanctions are a grave violation of the principle or respect of human rights and constitute an international crime. Such violations shall be deemed to include principally the following: (a). murder, including arbitrary execution; (b). torture; (c.) genocide; (d.) apartheid; (e). discrimination on racial, national, ethnic, linguistic or religious grounds; (f). establishing or maintaining ever persons the status of slavery, servitude or fore labor; (g). enforced or

⁽⁸⁾ E7CN.4/Sub.2/1993/10, 8th June, 1998, Commission on Human Rights, *Review of Further Developments in Fields with which the Sub-Commission has been Concerned, Definition of Gross and Large-Scale Violations of Human Rights as an International Crime*, <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/0fbfa353eea4c65d802567620054f3d0>, access 05.02.2013.

⁽⁹⁾ Ibidem, access 05.02.2013.

involuntary disappearances; (h). arbitrary and prolonged detention; (i). deportation or forcible transfer of population ⁽¹⁰⁾”.

Whether these violations are perpetrated by individuals or groups of individuals, they must be identified in order to halt the violations. The problem is whenever the State is the responsible for their perpetrations. The State is responsible in those cases when State bodies or officials act within their lawful authority or *ultra vires*. In addition, when the word “government” is used to describe the body responsible for the violations of human rights, it refers not only to the State’s executive body, such as the Parliament, but also to all its the higher organs, in particular the legislative and executive ones ⁽¹¹⁾.

Gross and large-scale violations of human rights can be defined also as international crimes: the General Assembly describes them as “the most serious violations of international law, causing loss and constituting a threat to the entire international community ⁽¹²⁾”. They are considered as breaches to the *erga omnes* obligations ⁽¹³⁾.

With Res. 60/147, the United Nations General Assembly adopts the Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ⁽¹⁴⁾. With it, the States commit themselves in the implementation of the respect of human rights and to investigate the cases of their gross violations ⁽¹⁵⁾. In addition, the victims who suffer from such violations must be ensured to have access to justice; to receive reparation for the harm suffered; and to have access to all the relevant information concerning violations and reparation mechanisms ⁽¹⁶⁾.

⁽¹⁰⁾ Ibidem, access 05.02.2013.

⁽¹¹⁾ Ibidem, access 05.02.2013.

⁽¹²⁾ Ibidem, access 05.02.2013.

⁽¹³⁾ Ibidem, access 05.02.2013.

It has to be borne in mind that not every *erga omnes* obligation’s breach can be considered as an international crime. Ibidem, access 05.02.2013.

⁽¹⁴⁾ A/RES/60/147, 21st March, 2006, United Nations General Assembly, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/60/147, access 05.02.2013.

⁽¹⁵⁾ Ibidem, access 05.02.2013.

⁽¹⁶⁾ Ibidem, access 05.02.2013.

The concept of gross and large-scale violations of human rights is quite important: in fact, the responsibility to protect is triggered whenever these violations occur.

7.2. The Principle of the Responsibility to Protect.

The problem within the sovereignty of a State in relation to the R2P doctrine has been analyzed by a special commission, called to clarify the matter: the International Commission on Intervention and State Sovereignty. In particular, the commission was established to better understand the problem of reconciling intervention and sovereignty⁽¹⁷⁾. The commission came up with a report, called *Responsibility to Protect*. The report was conceived to re-conceptualize the humanitarian intervention in Kosovo¹⁸ and the challenge between the protection of human rights and sovereignty⁽¹⁹⁾.

The principle of the responsibility to protect expresses the idea that sovereign States have the duty to protect their own citizens “from avoidable catastrophes”⁽²⁰⁾ – such as starvation, rape, mass murder, ethnic cleansing, genocide, war crimes, and crimes against humanity⁽²¹⁾. In other words, the responsibility to protect is the response to the problem of humanitarian intervention in case of gross and large-scale violations of human rights⁽²²⁾. In case States cannot fulfill this task or when they are not willing to do it, their responsibility to protect must be borne by the other members of the international community⁽²³⁾. The core ideas of the responsibility to protect are: first, the fact that State sovereignty implies also responsibility towards its population. Second, if

⁽¹⁷⁾ <http://web.gc.cuny.edu/dept/rbins/ICISS/index.htm> , access 17.11.2012.

⁽¹⁸⁾ After the 1999 NATO military intervention in Kosovo was declared unlawful by virtue of art. 2.4 of the United Nations Charter and not being ascribable to any of the exception of the prohibition of use force, the Security Council adopted Res. 1244 on June 10th, 1999 (PINESCHI L., DUCE A., *La Questione del Kosovo nella sua Dimensione Internazionale*, MUP, Parma, 2010, pp. 37/38). The resolution is important because, on the one hand, marks the end of the hostilities in the country and, on the other hand, represents the return of the Security Council as leader organization of the question. Despite the resolution involves the United Nations in an experiment of international administration of the territory, it does not provide any concrete political solution to definitely end the Kosovo question (Ivi, pp. 3/41).

⁽¹⁹⁾ <http://web.gc.cuny.edu/dept/rbins/ICISS/index.htm>, access 17.11.2012.

⁽²⁰⁾ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Report), International Development Research Centre (published by), Canada, 2001, p. VIII.

⁽²¹⁾ Ibidem.

⁽²²⁾ <http://www.elac.ox.ac.uk/R2P/index.html>, access 09.10.2012.

⁽²³⁾ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Report), International Development Research Centre (published by), Canada, 2001, p. VIII.

citizens suffer from a serious harm deriving from an insurgency, a civil war, a repression or State failure and the State is not able or willing to protect them, the international community is called to protect the population in the name of the international responsibility to protect ⁽²⁴⁾. The whole international community, along with international and regional organizations, civil society and even the private sector should cooperate in order to prevent people to suffer and, if it happens, to protect them ⁽²⁵⁾. There are some considerations to make: first, the already mentioned fact that sovereignty implies that States have to protect their own citizens ⁽²⁶⁾. Second that, as stated in art. 24.1 of the United Nations Charter,

“in order to ensure prompt and effective action by the United Nations, its members confer to the Security Council primary responsibility for the maintenance of international peace and security, and agree that carrying out its duties under this responsibility the Security Council acts on their behalf ⁽²⁷⁾”.

In other words, the Security Council is the body entitled to the responsibility for the maintenance of peace and security in the world. Third, there are specific rights that should be respected deriving from the human rights declarations (such as the 1948 Universal Declaration on Human Rights), covenants, treaties, and humanitarian law. Fourth, the praxis suggests that, in general, the attitude of States is that of respecting the responsibility to protect ⁽²⁸⁾.

In particular, the Secretary-General in the Report “Implementing the Responsibility to Protect”, states that

“each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. [...] The International community should assist States in exercising that responsibility and in building their protection capacities.

⁽²⁴⁾ Ivi, p. XI.

⁽²⁵⁾ A/63/677, 12th January, Report of the Secretary-General on “Implementing the Responsibility to Protect”.

⁽²⁶⁾ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Report), International Development Research Centre (published by), Canada, 2001, p. XI.

⁽²⁷⁾ Chapter V, Art. 24.1, United Nations Charter, <http://www.un.org/en/documents/charter/chapter5.shtml>, access 08.10.2012).

⁽²⁸⁾ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Report), International Development Research Centre (published by), Canada, 2001, p. XI.

When a State nevertheless was “manifestly failing” to protect its population from the four specified crimes and violations, they confirmed that the international community was prepared to take collective action in a “timely and decisive manner” through the Security Council and in accordance with the Charter of the United Nations[...] ⁽²⁹⁾”.

The Secretary-General report specifies also the three pillars at the base of the responsibility to protect, and that sum up what has been said so far: the protection responsibilities of the States; international assistance and capacity-building; and timely and decisive response ⁽³⁰⁾. In particular,

“pillar one is the enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes ethnic cleansing and crimes against humanity, and from their incitement. [...] The responsibility derives both from the nature of State sovereignty and from the pre-existing and continuing legal obligations of States [...]. [...] Pillar two is the commitment of the international community to assist the States in meeting those obligations. It seeks to draw on the cooperation of Member States, regional and sub-regional arrangements, civil society and private sector, as well as on the institutional strengths and comparative advantages of the United Nations system. [...] Pillar three is the responsibility of Member States to respond collectively in a timely and decisive manner when a State manifestly failing to provide such protection. [...] A reasoned, calibrated and timely response could involve any of the broad range of tools available to the United Nations and its partners. These would include pacific measures under Chapter VI of the Charter, coercive ones under Chapter VII and/or collaboration with regional and sub-regional arrangements under Chapter VIII. [...] ⁽³¹⁾”.

At this point, it is possible to infer that the responsibility to protect refers to three specific types of responsibilities: to prevent, to react, and to rebuild. The first one is the responsibility to prevent the reasons that would cause harm to peoples *a priori*: if citizens do not suffer any harm, States do not even take into consideration the idea of an intervention in the name of the responsibility to protect. The responsibility to react expresses the idea that, in case a population is in a harmful situation, the response has to be quick and appropriate. The responsibility to rebuild is the responsibility to provide

⁽²⁹⁾ A/63/677, 12th January, Report of the Secretary-General on “Implementing the Responsibility to Protect”.

⁽³⁰⁾ Ibidem.

⁽³¹⁾ Ibidem.

assistance after a military intervention in order to help the population to recovery, reconstruct and reconcile from a situation they have suffered from⁽³²⁾. This reflects the believe of two authors⁽³³⁾, who advocate that responsibility to protect can be conceived as an “umbrella concept” which embraces not only the responsibility to react, but also to prevent and rebuild⁽³⁴⁾.

The responsibility to protect was officially endorsed by the United Nations General Assembly with resolution 60/1 in 2005⁽³⁵⁾.

The starting point of the R2P is that the primary responsibility for protecting peoples lies with the host governments. Wherever a State is not able to assist its population in this sense, it should call for international assistance, working along with international or regional actors in order to accomplish their sovereign responsibility⁽³⁶⁾.

7.3. The Role of the United Nations Security Council and NATO in the Implementation of R2P.

As introduced above, the Security Council is the body entitled to the task of maintaining international peace and security. The ruling task, organization and functions of the Security Council are well explained in the fifth chapter of the Charter of the United Nations, being it one its most important bodies⁽³⁷⁾.

Since the responsibility to protect could trigger the military intervention in order to protect civilians, as it happened in Libya, it is important to understand that it is the Security Council that, after an attentive evaluation of the situation gave the authorization to use the force. The matter will be fully discussed in the next paragraph. What is important to outline here is that, at the most, the Security Council is the body entitled with the task of solving international crisis that undermine world’s balance and security and that, also in the case of the responsibility to protect, it is entitled to it⁽³⁸⁾.

⁽³²⁾ BLAISE N., *La Responsabilité de Protéger: les Ecueils d’Une Consécration Juridique tant Attendue*, in *Rev. de Dr. Int. et de Dr. Com.*, vol. 4, 2011, pp. 586/587.

⁽³³⁾ GARETH E., SAHNOUN M., *The Responsibility to Protect*, in *For. Aff.*, vol. 81(6), 2002, pp. 99/110.

⁽³⁴⁾ Ivi, p. 101.

⁽³⁵⁾ Res. 60/1, United Nations General Assembly, 24th October, 2005, <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan021752.pdf>, access 17.11.2012.

⁽³⁶⁾ BELLAMY A. J., *The Responsibility to Protect and the Problem of Military Intervention*, in *Int. Aff.*, vol. 84(4), p. 619.

⁽³⁷⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008.

⁽³⁸⁾ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Report), International Development Research Centre (published by), Canada, 2001.

In cases when the Security Council fails to act, the UN General Assembly could take its place ⁽³⁹⁾.

With regard to NATO, or North Atlantic Treaty Organization, it was constituted with the North Atlantic Treaty on April 4, 1949 with the intent of safeguarding peace and security in the world, in accordance with the principles of the United Nations Charter ⁽⁴⁰⁾. The evolution of the geopolitics of the system of the States, especially after the dissolution of the Russian Federation, led to the availability of the alliance to implement the Security Council's resolutions ⁽⁴¹⁾. Art. 7 of the Washington Treaty ⁽⁴²⁾, reasserted in the 2010 Lisbon document "Core Tasks and Principles" ⁽⁴³⁾, states that

"This Treaty does not affect, and shall not be interpreted as affecting in any way the rights and obligations under the Charter of the Parties which are members of the United Nations, or the primary responsibility of the Security Council for the maintenance of international peace and security (44)".

The new strategic concept ⁽⁴⁵⁾ adopted by NATO implies that, during an international crisis that threatens the balance and security of the international system, the alliance is entitled to the competence of intervening in order to restore the peace ⁽⁴⁶⁾. The essential core tasks of the current strategic concept adopted by the alliance are: collective defense, intended as the assistance that the members are willing to provide in case of international crisis in order to fight against any threat or aggression or situation that could undermine the security of the allies. Then, the crisis management, that is to say the employment of all the necessary political, economic and military tools in order to ensure the security of the members of the alliance. Finally, cooperative security, or the cooperation beyond the borders of the alliance itself, in order to ensure the duration

⁽³⁹⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008.

⁽⁴⁰⁾ http://www.camera.it/62?europa_estero=70, access 14.11.2012.

⁽⁴¹⁾ CANNIZZARO E., *La Nuova Dottrina Strategica della NATO e il Ruolo dell'Alleanza Atlantica nelle Crisi Internazionali*, in *Riv. Dir. Int.*, vol. XCIV (1), 2011, p. 170.

⁽⁴²⁾ http://www.nato.int/cps/en/natolive/official_texts_17120.htm, access 14.11.2012.

⁽⁴³⁾ http://www.nato.int/cps/en/natolive/topics_56626.htm, access 14.11.2012.

⁽⁴⁴⁾ Art. 7, 1949 Washington Treaty, http://www.nato.int/cps/en/natolive/official_texts_17120.htm, access 14.11.2012.

⁽⁴⁵⁾ The NATO's strategic concept is a document that outlines the alliance's purposes and tasks. It establishes the strategies that the alliance has to adopt in order to restore international security. http://www.nato.int/cps/en/natolive/topics_56626.htm, access 14.11.2012.

⁽⁴⁶⁾ CANNIZZARO E., *La Nuova Dottrina Strategica della NATO e il Ruolo dell'Alleanza Atlantica nelle Crisi Internazionali*, in *Riv. Dir. Int.*, vol. XCIV (1), 2011, p. 171.

of international security ⁽⁴⁷⁾. In particular, the strategic concept lists a series of risking factors that would justify a NATO intervention: terrorism, proliferation of mass destruction armies, development of techs which would undermine security, environmental changes, limitation of communications, and so on. What is important to highlight here, is that the alliance has the competence to intervene also in case of insurgency, if it threatens to undermine international security ⁽⁴⁸⁾. As a matter of fact, as it will be determined in the dedicated paragraph, NATO played an important role in the Libyan crisis. In this sense, the alliance has got an important role in order to implement the responsibility to protect, where it is necessary. Again, it is important to underline that the new strategic concept seems to give NATO a more global intent, in the sense that the alliance can be seen as a body entitled to the competence of ensuring international security, in coordination with the United Nations Security Council ⁽⁴⁹⁾. However, it has to be kept in mind that NATO is to be considered a regional organization that, on the international level, acts in accordance with art. 52 of the United Nations Charter:

“nothing of the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and activities are consistent with the purposes and principles of the United Nations ⁽⁵⁰⁾”.

As for the Libyan crisis, NATO’s mission comprehended three specific tasks: first, monitoring the arms embargo provisioned by Security Council’s resolutions; second, patrolling the no-fly zone (provisioned by res. 1973); and third, protecting civilians ⁽⁵¹⁾.

⁽⁴⁷⁾ http://www.nato.int/cps/en/natolive/topics_56626.htm, access 14.11.2012.

⁽⁴⁸⁾ CANNIZZARO E., *La Nuova Dottrina Strategica della NATO e il Ruolo dell’Alleanza Atlantica nelle Crisi Internazionali*, in *Riv. Dir. Int.*, vol. XCIV (1), 2011, p. 171.

⁽⁴⁹⁾ Ivi, p. 172.

⁽⁵⁰⁾ Art. 52, Chapter Eight, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter8.shtml>, access 14.11.2012.

⁽⁵¹⁾ DAALDER I. H., STRAVIDIS J. G., *NATO’s Victory in Libya. The Right Way to Run an Intervention*, in *For. Aff.*, vol. 96(2), 2012, p. 3.

7.4. The Regulation of the Use of Force in International Law and the Principle of Sovereignty Applied to R2P: When is the Military Intervention Legitimated?

Responsibility to protect seems to be a very controversial principle, if related to the principles of prohibition of use or threaten the use of force and State sovereignty.

As for the latter, according to one author, it is difficult to conceal the respect of human rights with States' sovereignty ⁽⁵²⁾: “a world that demands respect for human rights cannot coexist with a world that demands absolute respect for State sovereignty ⁽⁵³⁾”. In other words, the concept of State sovereignty seems to be changing with the settle of the contemporary political scenario.

International law and international relations have long considered the States as the more important actors on the international scene. One of their most important rights is territorial sovereignty ⁽⁵⁴⁾: the norm that regards it has got customary character, since was consolidated with the 1948 Westphalia Peace, which marked the end of the thirty-years war, the loss of power of the Holy Roman Empire and the independence of the single tate entities from the Emperor and the Pope. At that time territory was conceived as a property of the State (or of the sovereign) ⁽⁵⁵⁾. No States have the right to intervene in the internal or external affairs of another one. Consequently, a State would not intervene with an army action in the territory of another one because it would be a threat towards its sovereignty. Non-interference is the mirror of the principle of State sovereignty ⁽⁵⁶⁾.

The most important manifestation of this principle is the prohibition of threat or use of force ⁽⁵⁷⁾. Art. 2.4 expresses both of the principles: the use of force is not allowed in international relations and the territorial integrity of a State must not be threatened or violated.

The principle of sovereignty and non-intervention in the internal affairs of a State has been reasserted numerous times in different occasions. An example is the

⁽⁵²⁾ MAGNUSSON W., *The Responsibility to Protect and the Decline of State Sovereignty*, in *Vand. Journ. Trans. Law*, vol. 43(2), 2010.

⁽⁵³⁾ Ivi, p. 259.

⁽⁵⁴⁾ Ivi, p. 257.

⁽⁵⁵⁾ CONFORTI B., *Diritto Internazionale*, Sesta Ed., Napoli, Ed. Scientifica, 2002, p. 199.

⁽⁵⁶⁾ CHATHAM HOUSE, *The Principle of Non-Intervention in Contemporary International Law: Non-Interference in a State's Internal Affairs used to be a Rule of International Law: is it still?*, <http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/i1280207.pdf>, access 15.11.2012.

⁽⁵⁷⁾ Ibidem, access 15.11.2012.

Security Council' resolution 138 (June 23, 1960), issued as a consequence of the capture of the Nazi Eichmann by the agents of the Israeli government in Argentine in 1960. Moral though the action might have been, according to international law the capture resulted to be illicit because it occurred in the Argentine territory, or where the Israeli government has no power. In other words, the action undermined the sovereignty of Argentine. In particular, the council said that such acts could “affect the sovereignty of a member State and, therefore cause international friction [that] may [have], if repeated, endanger international peace and security (⁵⁸)”. Additionally, the principle of non-interference in the internal affairs of a State is asserted in art. 2.7 of the United Nations Charter.

The International Commission on Intervention and State Sovereignty specifies that the military intervention, despite adopted only if responds to some specific criteria (analyzed in the second part of the paragraph), represents a very extreme action since it is not only an intrusion into a sovereign State, but an intrusion which involves the use of deadly force on a potentially mass scale (⁵⁹). Articles 2.4 and 2.7 have already been cited: they clearly state that the principle of non-interference in the internal affairs of a State. However, this right can be breached if the situation requires it. Art. 24 of the Charter confers the Security Council “the primary responsibility for the maintenance of international peace and security” (⁶⁰). Chapter VI gives important dispositions relating to the peaceful settlement of international disputes, but is Chapter VII that describes the responsibility of the Security Council, in particular article 39, 40, 41 (already cited). Art. 51 clearly refers to the use of cross-borders military force as self-defense.

The right of non-intervention in the internal affairs of a State, deriving from State territorial sovereignty, still is an inviolable principle of international law, but, with the political and economic changes of the last years, we can say it is subjected to more limitations. Responsibility to protect is one of them: given its definition, we can see that non-interference is not taken into account. If a State fails in protecting its people from genocide or mass killing, the other States have the right to intervene, despite the non-interference principle.

(⁵⁸) RES. 138, 23rd June, 1960, Security Council, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0157/27/IMG/NR015727.pdf?OpenElement>, access 15.11.2012.

(⁵⁹) Ivi, p. 47.

(⁶⁰) Art. 24, Chapter Five, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter5.shtml>, access 19.11.2012.

As for the use of military force, it has been stated that the responsibility to protect conceives it in case all peaceful means fail in halting the atrocities people suffer in a State. In general, the prohibition of threat and use of force is forbidden according to international law. However, there are legal justifications because of which the military force is allowed in determined situations. One of them is the “self-defense”, expressed in art. 51 of the United Nations Charter. In addition, an armed attack is justified if authorized by the Security Council ⁽⁶¹⁾.

When is an intervention legitimated in order to ensure the responsibility to protect? The International Commission on Intervention and State Sovereignty affirms that, whenever the peaceful measures failed in solving or containing a situation which jeopardizes peoples, coercive interventions would be required ⁽⁶²⁾. These coercive measures can be political, economic and juridical and, in extreme cases, also military. Before considering military intervention, the other measures must be applied. Rather, military action is not necessary required. In fact, “sanctions inhibit the capacity of States to interact with the outside world, while not physically preventing the State from carrying out actions within its borders ⁽⁶³⁾”. Such measures aim at persuading a State not to accomplish or to take particular actions. On the other hand, military intervention is a direct interference within the domestic jurisdiction of a State; therefore it must be used in very particular situations. The coercive measures have to be used carefully: in fact, they should not aggravate the situation for the population who is already suffering. In this sense, efforts have been made in order to make the sanctions less invasive for peoples, in order to decrease the impact on them. The sanctions have been grouped in three areas: military, economic and political/diplomatic. Arms embargoes and ending of military cooperation and training programs are considered military measures. As for the economic area, there are: financial sanctions that may target the foreign asset of a country or of a rebels’ movement. Where single individuals are targeted, the members of the families can be included. There may be restrictions on the revenues coming from oil, diamonds and drugs or on access to petroleum products. Aviation bans can be used too, in order to prohibit international air traffic. Belong to the political/diplomatic area restrictions on diplomatic representations, expulsion of diplomatic staff, restrictions on

⁽⁶¹⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (Volume 1), CEDAM, Padova, 2008.

⁽⁶²⁾ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Report), International Development Research Centre (published by), Canada, 2001, p. 29.

⁽⁶³⁾ *Ibidem*.

travel, suspension or expulsion from an international organization ⁽⁶⁴⁾. Then, in extreme cases, there can be the decision to intervene military in order to restore the security, but it must happen only in extreme cases. The difficulty here is to determine whether there is an extreme situation which requires military intervention. Again, the starting point must be the principle of non-intervention, already explained above. In general, intervening in the internal affairs of a State implies that the order is being destabilized. The commission expressed that the exceptional circumstances that require military intervention must “shock the conscience of mankind [or present] such a clear danger to international security, that they require coercive military intervention ⁽⁶⁵⁾”. The commission identified six criteria for military intervention: right authority; just cause; right intention; last resort; proportional means and reasonable prospects ⁽⁶⁶⁾. First of all, it must be said that, according to the commission, military intervention has to be considered as “an exceptional and extraordinary measure” that must be used only when peoples are suffering from serious and irreparable harm ⁽⁶⁷⁾. As for the just cause, military intervention is justified in two situations: whenever there is

“large scale of loss life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate State action, or State neglect or inability to act, or a failed State situation; or large scale “ethnic cleansing”, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape ⁽⁶⁸⁾”.

In both the situations described above, the “large scale” is needed, otherwise military intervention does not result to be justified. However, the commission does not explain what “large scale” means: in this sense, the commission states that the every situation is to be subjected to the opinion of the international community because every situation is different. The commission has also identified the cases that do not require a military intervention. They are: cases of systematic racial discrimination or imprisonment or repression of political opponents; cases where a population, having expressed its willing to establish a democratic regime, “is denied its democratic rights

⁽⁶⁴⁾ Ivi, pp. 30/31.

⁽⁶⁵⁾ Ivi, p. 31.

⁽⁶⁶⁾ Ivi, p. 32.

⁽⁶⁷⁾ Ibidem.

⁽⁶⁸⁾ Ibidem.

by a military take-over ⁽⁶⁹⁾”; cases where a State would intervene military to rescue its nationals in another State’s territory. In the vision of the commission, in these specific cases economic, political and diplomatic measures would be useful, but not military ones ⁽⁷⁰⁾.

The question of evidence is crucial too: in fact, whenever the situations described above do actually occur, they must be actually determined. In this sense, a report would be presented by a universal and impartial non-government source, such as the International Committee of the Red Cross. However, even the commission defines the drawing of a report as “ideal” ⁽⁷¹⁾. In fact, it is difficult to define exactly the evidence of a situation.

As for the right intention, “the primary purpose of the intervention must be to halt or avert human suffering ⁽⁷²⁾”. Any use of the military intervention different from the one above, is not to be tolerated: alterations of borders; overthrowing of the regime; occupation of a territory, as an objective of the mission; advancement of a national liberation movement. In order to satisfy the criterion of the right intention, some precautionary actions could be taken, such as preferring a multilateral or collective military action instead of a single one; or looking at the opinion of the people that should benefit from the invasion ⁽⁷³⁾.

The military intervention must be used only in cases when every non-military and diplomatic measure has been explored. In other words, “the responsibility to react, with military coercion, can only be justified when the responsibility to prevent has been fully discharged”: in practice, military intervention must be the last resort to be used to protect people from suffering ⁽⁷⁴⁾. The commission specifies that it is not strictly necessary that every non-military measures have to be tried and failed in order to use military intervention: if it is believable that the military intervention is necessary, it would be used even without having tried the others. If the crisis involves a State and an insurrectional movement, the international community should convince them to

⁽⁶⁹⁾ Ivi, p. 34.

⁽⁷⁰⁾ Ibidem.

⁽⁷¹⁾ Ivi, pp. 34/35.

⁽⁷²⁾ Ivi, p. 35.

⁽⁷³⁾ Ivi, p. 36.

⁽⁷⁴⁾ Ibidem.

negotiate. If this is not possible, it would be better to try to order a “ceasefire” followed by the deployment of observers and peacekeepers instead of a direct military action ⁽⁷⁵⁾.

As for the proportional means, it is obvious that the length, intensity and scale of the military action should be the necessary to ensure the security of people. Both casualties and political consequences should be limited ⁽⁷⁶⁾.

Finally, a military intervention should be used only when there are reasonable prospects: in fact, it would take place only if there are real and actual possibilities of succeeding in halting or averting atrocities in a country. Military intervention is not justified if there are no possibilities of success or if its consequences would be worse for the population than non-military intervention. In fact, it would not be acceptable that the military intervention had triggered a larger conflict. In the commission view, there are cases when human beings simply cannot be saved: in such situations, military intervention would not be justified. Additionally, the commission specifies that military actions should be precluded against both the five permanent members of the Security Council and the major non-permanents ones ⁽⁷⁷⁾.

7.5. The Military Intervention in Libya: an Application of the R2P.

On February 15, 2011, several people gathered in Benghazi to protest against the arrest of a human rights’ activist attorney who legally represented the victims’ families of the massacres occurred in 1996 at the Abu Salim prison ⁽⁷⁸⁾. Clashes between the

⁽⁷⁵⁾ Ibidem.

⁽⁷⁶⁾ Ivi, p. 37.

⁽⁷⁷⁾ Ibidem.

Of course, since the military action must be authorized by the Security Council, it would be improbable that the five permanent members did not put their veto in cases when the military action had to be taken against one of them. It seems however important to remind art. 2.1 of the United Nations Charter, which states that “the Organization is based on the principle of sovereign equality of all its members”. Art. 2.1, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter1.shtml>, access 19.11.2012.

⁽⁷⁸⁾ In 1996 about one thousand and two hundred prisoners were killed in Tripoli’s Abu Salim prison without apparent motif. Overnight, when the families of the captives went to visit them, were told that the visit would have been forbidden because the prisoners’ charges were too much severe. Rumors about a possible massacre began to spread few months later, so that the captives’ families claimed the right to know the truth. Only in 2001 and 2002 the Libyan government confirmed the death of the prisoners, without specifying the circumstances and the reasons why it occurred either. The government denied its involvement in the massacre too and claimed to have already opened an inquest to dig deeper in the question. Still, nowadays the families have not received yet the bodies of their dears or an explanation of what happened that night. Testimonies tell that that night those captives started a rebellion and that the massacre was the punishment for that. Others say that the guards kept shooting and bombing the prisoners for more than four hours before being sure everyone was definitely dead. <http://www.hrw.org/legacy/english/docs/2006/06/28/libya13636.txt.htm>, access 16.10.2012.

opponents and the supporters of Gaddafi's regime began since the beginning: as a matter of fact, people began to die since the first day of the revolution ⁽⁷⁹⁾. On February 22, 2011, Gaddafi released his one-hour speech: he claimed he had no intention to leave his country and that he would have died there as a martyr if necessary. Additionally, he called upon his supporters in order to flush out the enemies. About the rebels, he said they were drug users and threatened them with death penalty. He claimed he had not used the violence he could have to, threatening again the population ⁽⁸⁰⁾.

In particular, two phases of the crisis can be distinguished: the protest and the conflict phase. The former began on February 15, 2011: during this phase, Gaddafi's forces attacked repeatedly demonstrators with heavy lethal weapons, injuring and killing hundreds of people ⁽⁸¹⁾. Around the 24th of February the situation changed and the crisis escalated to the level of a non-international conflict ⁽⁸²⁾, triggering art. 3 of the 1977 Additional Protocol II to the Geneva Conventions:

“non-intervention: 1.nothing in this protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the state. 2. Nothing in this protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs ⁽⁸³⁾”.

A parallel international armed conflict broke out on the 19th March, 2011 after resolution 1973 was adopted by the international community ⁽⁸⁴⁾.

⁽⁷⁹⁾ <http://www.globalsecurity.org/military/world/war/libya-civil-war.htm>, access 16.10.2012.

⁽⁸⁰⁾ <http://www.guardian.co.uk/world/blog/2011/feb/22/libya-gaddafi-speech-reaction-live-updates>, access 16.10.2012.

If interested in watching a very short piece of 22nd February Gaddafi's speech, here is the link on the Youtube Website: <http://www.youtube.com/watch?v=69wBG6ULNzQ>.

⁽⁸¹⁾ MANCINI M., *The Day After: Prosecuting International Crimes Committed in Libya*, in *It. Year. Int. Law*, vol. XXI, 2011, p. 86.

⁽⁸²⁾ Ivi, p. 87.

⁽⁸³⁾ Art. 3, 1977 Additional Protocol II to the Geneva Conventions, <http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument>, access 19.11.2012.

⁽⁸⁴⁾ MANCINI M., *The Day After: Prosecuting International Crimes Committed in Libya*, in *It. Year. Int. Law*, vol. XXI, 2011, p. 87.

The answer of the international community came pretty soon: the responsibility to protect had been put into action in about a month since the break out of the revolution. Before analyzing the two resolutions that have changed the future of Libya, it has to keep in mind that many other organizations have condemned the massacres in Libya. On February 23, 2011, the United Nations Human Rights Council adopted a resolution where it

“Strongly condemns the recent extremely grave human rights violations committed in Libya [...]; calls upon the Libyan authorities to immediately put an end to all human rights violations, to stop any violations against civilians, and to fully respect all human rights and fundamental freedoms, including freedom of expression and freedom of assembly [...]; and Urges Libyan authorities to ensure the safety of all civilians, including citizens of third countries [...]”⁽⁸⁵⁾.

After a week from the beginning of the revolution, the African Union ⁽⁸⁶⁾ Peace and Security Council called upon the Libyan authority to protect its civilians and acknowledged the situation as a one where human rights were not being respected. Additionally, it condemned the use of force on the demonstrators and recognized the aspirations of Libyan people as legitimate ⁽⁸⁷⁾. Since the African Union was not willing to let the Western countries settle the situation, it established an Ad Hoc High Level Committee in charge of seeking a diplomatic solution. Despite the fact that the African Union rejected any military intervention in the area, the African members of the United Nations Security Council voted in favor to the resolution that authorized the no-fly zone over Libya. The bombing campaign thwarted the action of the Ad Hoc Commission established by the African Union because its members could not enter the country: the Union lost the chance to get a prominent role in settle the Libyan question ⁽⁸⁸⁾.

⁽⁸⁵⁾ A/HRC/S-15/L.1, 23rd February 2011, UN Human Rights Council.

⁽⁸⁶⁾ The African Union is a regional organization born with the intention of dealing with problems concerning human rights in Africa. One of the core idea of this organization is that African “problems” should be solved in Africa, without the intervention of Western countries, (Dembinski M., Reinold T., “Libya and the Future of the Responsibility to Protect-African and European Perspectives” (Report), Peace Research Institute Frankfurt, PRIF-Report n. 107, 2011, pp. 8-9).

⁽⁸⁷⁾ PSC/PR/COMM(CCLXI), 23rd February 2011, African Union.

⁽⁸⁸⁾ Dembinski M., Reinold T., “Libya and the Future of the Responsibility to Protect-African and European Perspectives” (Report), Peace Research Institute Frankfurt, PRIF-Report n. 107, 2011, p. 11.

With no doubt, the prominent role in settling the Libyan crisis was covered by the Security Council and NATO. It is possible to argue that the Security Council response to the Libyan crisis with the consequent application of the responsibility to protect has been quite fast, timing and quick.

As reported above, on February 22, 2011, Gaddafi released his speech, where he basically asserted that he would have killed all the opponents to his regime and called them *cockroaches*. There was no absolute will of respecting human rights and cease the hostility, since he was convinced the opponents had to be halted, not him. At this point, the international community decided to act concretely in order to stop the mass killings. On February 26, 2011, the Security Council adopted res. 1970: with it, the international community demanded the end of the massacres reminding the Libyan government its responsibility to protect its citizens and respecting the human rights. Additionally, the Council decided to apply an arms embargo on Libya, so that no State could assist the Libyan government in any way. All the funds of people responsible for the crimes in Libya have been frozen, along with their permission to travel. Moreover, a Committee of the Security Council was established in order to monitor the situation and the implementation of the measures adopted with the resolution. Also, the Council stated that a humanitarian help had to be given to the Libyan population to protect it from the massacres perpetrated by Gaddafi ⁽⁸⁹⁾. As stated in the resolution, it was adopted taking into account the condemnation of the Libyan situation by the Arab League, the African Union, the Organization of the Islamic Conference and the resolution A/HRC/S-15/L.1 of the United Nations Human Rights Council ⁽⁹⁰⁾. The Security Council acted under the Chapter VII of the United Nations Charter and took peaceful measures under the article 41 ⁽⁹¹⁾ that authorizes the Security Council to adopt peaceful measures in order to restore the peace ⁽⁹²⁾. It seems possible to say that resolution 1970 refers to the responsibility to prevent. Since the peaceful measures did not deter Gaddafi from violating his population's human rights, on the 17th March 2011 the Security Council adopted resolution 1973 ⁽⁹³⁾. The Council, being aware that the peaceful measures failed

⁽⁸⁹⁾ S/RES/1970, 26th February 2011, Security Council (full text available at page ?, annex number ?).

⁽⁹⁰⁾ Ibidem.

⁽⁹¹⁾ Ibidem.

⁽⁹²⁾ <http://www.un.org/en/documents/charter/chapter7.shtml>, access 22.10.2012.

⁽⁹³⁾ S/RES/1973, 17th March 2011, Security Council.

Full text available at page 177.

in halting the mass killings and crimes in Libya, adopted the resolution 1973, probably the most significant and decisive in the “history” of the responsibility to protect. Taking into account the call for the imposition of a no-fly zone ⁽⁹⁴⁾ on Libyan military aviation by the Council of Arab States and the worsening of the situation in Libya from the humanitarian point of view, with resolution 1973 the Security Council: demanded the immediate cease-fire and halt of all the violence against Libyan population; recalled the Libyan government its responsibility to protect their civilians; and stressed the need to intensify the cooperation with the Secretary-General’s Envoy to Libya and the Peace and Security Council of the African Union’s High Level Committee to Libya in order to find a peaceful solution to the internal conflict ⁽⁹⁵⁾. In regard to the protection of civilians, the Council authorized the member States to act nationally or through regional organizations in order to guarantee the protection and care of Libyans in the areas under the attack of the Gaddafi’s forces. However, the military occupation of any part of Libyan territory was forbidden. In addition, the Security Council acknowledged the important role of the League of Arab States in maintaining the relations with the Libyan authorities in order to restore the peace ⁽⁹⁶⁾. As for the no-fly zone, the Council implemented it over Libya in order to protect the civilians. The ban was not imposed on flights with humanitarian purposes, meaning that all the flights carrying supplies, medicines, food and humanitarian workers had the permission to fly. Paragraph 8 is pretty interesting: it states that all

“member States that have notified the Secretary-General and the Secretary-General of the League of Arab States, acting nationally or through regional organizations or arrangements, to take all necessary measures to enforce compliance with the ban on flights imposed by paragraph 6 above [...] ⁽⁹⁷⁾”.

⁽⁹⁴⁾ A no-fly zone is a part of the airspace over a country’s territory or sea where aircrafts cannot fly. Its use aims at restricting the military operations in the country; protecting civilians; and preventing military activities. A no-fly zone can be established only if provided by the provisions of a Security Council resolution, otherwise it has to be considered unlawful. SCHMITT M. N., *Wings Over Libya: the No-Fly Zone in Legal Perspective*, in *The Y. Journ. Of Int. Law Online*, vol. 36, 2011, <http://www.yjil.org/docs/pub/o-36-schmitt-wings-over-libya.pdf>, pp. 46/47, access 13.12.2012.

⁽⁹⁵⁾ S/RES/1973, 17th March 2011, Security Council, pp. 2/3.

⁽⁹⁶⁾ *Ivi*, p. 3.

⁽⁹⁷⁾ *Ibidem*.

The stress should be put on the expression *all necessary measures*: it can be said that with it the Security Council authorized the use of force in Libya ⁽⁹⁸⁾. In general, *all necessary measures* is the standard phrase with which the Security Council authorizes the use of force in a country ⁽⁹⁹⁾. The arms embargo, settled in resolution 1970, was re-enforced, along with the ban on flights registered to the Libyan Arab Jamahiriya. Moreover, the asset freeze, already imposed in the previous resolution, was extended to include all the funds and economic resources in other countries ⁽¹⁰⁰⁾. In addition, the Council asked the Secretary-General to form an eight-people Panel of Experts, under the direction of the Committee, which would have to assist the Committee itself; make recommendations on behalf of the Council; and examine the solutions ideas proposed by States and regional organizations that would have served to implement the measures to restore the peace ⁽¹⁰¹⁾.

NATO ⁽¹⁰²⁾ responded to the Security Council's call to the international community to protect Libyan people from the atrocities perpetrated by Gaddafi's regime. In fact, after the adoption of resolution 1973, a coalition of NATO States maintained the no-fly zone and enforced the arms embargo under an operation called Operation Unified Protector (OUP) ⁽¹⁰³⁾. NATO began to monitor the situation in Libya even before the resolution 1973: after the adoption of resolution 1970, on the 8th March, 2011 NATO started implementing and increasing the surveillance in the Mediterranean area. In order to provide a continuous observation on the Libyan area, the Alliance deployed the Airborne Warning and Control Systems ⁽¹⁰⁴⁾ aircraft. This way, it got enough information regarding the movements in Libyan airspace. On the 22nd March, 2011 the Alliance responded to the Security Council's call to halt any form of arms support to Libya, launching an operation that enforced the ban. On the 24th March, 2011

⁽⁹⁸⁾ Ibidem.

⁽⁹⁹⁾ SCHMITT M. N., *Wings Over Libya: the No-Fly Zone in Legal Perspective*, in *The Y. Journ. Of Int. Law Online*, vol. 36, 2011, <http://www.yjil.org/docs/pub/o-36-schmitt-wings-over-libya.pdf>, access 13.12.2012.

⁽¹⁰⁰⁾ S/RES/1973, 17th March 2011, Security Council, pp. 4/5.

⁽¹⁰¹⁾ Ivi, p. 6.

⁽¹⁰²⁾ It is useful to remind that NATO, or North Atlantic Treaty Organization, is a military body whose fundamental purpose is that of preserving the safeguard and freedom of its members, which are twenty-eight. They are all equal in taking decisions and the North Atlantic Council is the principal body of the alliance (http://www.nato.int/welcome/brochure_WhatIsNATO_en.pdf, access 23.10.2012).

⁽¹⁰³⁾ http://www.nato.int/cps/en/natolive/topics_71652.htm, access 23.10.2012.

⁽¹⁰⁴⁾ This is a system built by Boeing Defense&Space Group; it is based on a radar which purpose is that of monitoring from the air space. <http://www.airforce-technology.com/projects/e3awacs/>, access 17.11.2012.

NATO decided to help maintaining the no-fly zone over Libya to protect civilians. Finally, on the 31st March, 2011 NATO took definitive control over any international military initiative and effort in Libya, taking military actions in order to protect the civilians. On the 14th April, 2011, in Berlin, the Foreign Ministers of the members of NATO and non-NATO partners decided to let the OUP to continue until all the attacks and atrocities towards the Libyan population by Gaddafi's forces would have stopped. On the 21st October, 2011, a day after the death of Gaddafi, NATO decided that by the end of the month the OUP would have ended because it had served its scope: protecting Libyan people from the sufferings caused by Gaddafi and his forces ⁽¹⁰⁵⁾. With resolution 2009, adopted on 16th September 2011, the Security Council acknowledged the efforts made in Libya to restore the peace and reminded the National Transitional Council its responsibility to protect Libyan people, emphasizing the need to settle their power with democracy and equal rights between men and women. In addition, the Council decided to settle a United Nations Support Mission in Libya (UNSMIL), under the leadership of a Special Representative of the Secretary-General (initially for three months), in order to assist Libyan national efforts to restore security and settle democracy⁽¹⁰⁶⁾. Besides, the Council reasserted the implementation of the no-fly zone over Libya as long as it is necessary to maintain it ⁽¹⁰⁷⁾.

Before NATO took the leadership of the military operation in Libya the UN coalition launched the Operation Odyssey Dawn in order to enforce resolution 1973. The coalition's purpose was that of implementing the measures adopted with resolution 1973: implementing the no-fly zone, protecting Libyan population and monitoring the situation ⁽¹⁰⁸⁾.

On the 20th October, 2011 Gaddafi was captured by rebel's forces and shot to death. The International Commission of Inquiry on Libya, established by the United Nations Human Rights Council in order to monitor the actions of NATO and UN coalition, released a report. More precisely, the UN Human Rights Council established the Commission in order to

⁽¹⁰⁵⁾ Ibidem.

⁽¹⁰⁶⁾ S/RES/2009, 16th September 2011, Security Council, p. 3.

⁽¹⁰⁷⁾ Ibidem.

⁽¹⁰⁸⁾ <http://www.defense.gov/news/newsarticle.aspx?id=63225>, access 23.10.2012.

“investigate all alleged violations of international human rights law in Libya, to establish the facts and circumstances of such violations and of the crimes perpetrated and, where possible, to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable ⁽¹⁰⁹⁾”.

The report focuses on the violations conducted by all the parties that took part in the conflict ⁽¹¹⁰⁾. Although it was recognized that the Gaddafi’s forces committed severe violations of human rights and that during the Gaddafi’s regime these violations occurred repeatedly, the Commission found that also the rebel forces violated systematically human rights. Noble though the goal had been, human rights violations are condemned seriously by the international community, whoever commits them. For example: The execution of Gaddafi would not be considered done according to the law: this hypothesis seems to be confirmed by the fact that the Commission was not allowed to access Gaddafi’s body in order to determine the circumstances of his death. They are still unknown ⁽¹¹¹⁾. The Commission concluded that: rebel forces have tortured and executed Gaddafi’s loyalists, exactly as the latter did with the former. However, while Gaddafi’s loyalists have been largely condemned for what the violations they committed, the Commission expressed its concern about the fact that probably an investigation on the rebels’ forces actions would not have happened ⁽¹¹²⁾. Then, rebels have been involved in episodes of Gaddafi’s loyalists’ disappearances and arbitrary arrests ⁽¹¹³⁾. Both Gaddafi’s forces and rebels have committed tortures: this is a severe violation of international human rights that, during a conflict, are called war crimes ⁽¹¹⁴⁾. As for the NATO mission and the deaths that it provoked, the Commission concluded that they were to be considered inevitable casualties and that the Alliance did everything it could in order to protect the civilians ⁽¹¹⁵⁾.

⁽¹⁰⁹⁾ International Commission of Inquiry in Libya, *Report of the International Commission of Inquiry on Libya*, Human Rights Council, Nineteenth Session, 2nd March 2012, p. 2.

⁽¹¹⁰⁾ Ivi, p. 6.

⁽¹¹¹⁾ Ivi, p. 9.

⁽¹¹²⁾ Ivi, p. 10.

⁽¹¹³⁾ Ivi, p. 11.

⁽¹¹⁴⁾ Ivi, p. 12.

⁽¹¹⁵⁾ Ivi, p. 16.

On the 23rd October, 2011, three days after the death of Gaddafi, the National Transitional Council declared Libya a free country. NATO ended its air operations following UN Security Council resolution 2016.

7.6. The Stages of the Transformation of the Libyan Conflict Status.

There can be two types of armed conflicts and they are both described in common art. 2 and common art. 3 of the 1949 Geneva Conventions: they are respectively international and non-international ones. The former are described as “conflicts which may arise between two or more of the High Contracting Parties [...]”⁽¹¹⁶⁾. The latter describes non-international wars as “conflicts not of an international character occurring in the territory of one of the High Contracting Parties [...]”⁽¹¹⁷⁾. The norms applicable to the international conflicts are those of the four 1949 Geneva Conventions and those contained in the First Additional Protocol (for the States who are parties of it)⁽¹¹⁸⁾. On the other hand, art. 3 of the 1949 Geneva Conventions provides only a minimum of basic humanitarian protection, but nothing more. The fighters are not defined as combatants, therefore if captured do not have the right to be treated as war prisoners. Only Protocol II is applicable to the internal conflicts⁽¹¹⁹⁾, but only when a conflict takes

“place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory”⁽¹²⁰⁾. [Furthermore] this Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts⁽¹²¹⁾”.

⁽¹¹⁶⁾ Art. 2, Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>, access 2.01.2013.

⁽¹¹⁷⁾ Ivi, art. 3, access 2.0.2013.

⁽¹¹⁸⁾ RONZITTI N., *Introduzione al Diritto Internazionale*, Third Edition, Torino, G. Giappichelli Ed., 2009, pp. 455/458.

⁽¹¹⁹⁾ Ivi, pp. 458/459.

⁽¹²⁰⁾ Art. 1.1, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, <http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument>, access 2.01.2013.

⁽¹²¹⁾ Ivi, art. 1.2, access 2.01.2013.

In other words, mere riots or disorders do not constitute a situation of armed conflict.

As for the Libyan crisis, the intent of this paragraph is that of determine whether it could be classified as an internal or international one. First of all, it must be determined whether a conflict is going on somewhere at all ⁽¹²²⁾. However, the problem is how to distinguish a mere internal disturbance from a real conflict. It could be said that an internal disturbance becomes a conflict whenever the government is not able anymore to control it ⁽¹²³⁾. The commentary of the International Committee of the Red Cross to art. 3 of the Geneva conventions is helpful in detecting whether a disturbance could be considered as an insurgency or simple riot:

“1.[...]the Party in revolt against the *de jure* government possesses an organized military force, an authority responsible for its acts, acting within a determinate territory and having the means of respecting and ensuring respect for the convention. 2. [...]the legal government is obliged to have recourse to the regular military forces against the insurgents organized as military and in possession of a part of the national territory. 3.a. [...]the *de jure* government [has to have] recognized the insurgents as belligerents; or b. [...]it has claimed for itself the rights of a belligerent; or c. [...]it has accorded the insurgents recognition as belligerents [...]. 4.a. [...]the insurgents have an organization purporting to have the characteristics of a State; b. [...]the insurgent civil authority exercises *de facto* authority over persons within a determinate territory; c. [...]the armed forces act under the direction of the organized civil authority and are prepared to observe the ordinary laws of war [...] ⁽¹²⁴⁾”.

Standing on what happened in Libya and on what has been said in the previous chapter, it is possible to assert that Libyan rebels could be classified as insurgents.

In Libya, the protests began on February 15, 2011, and took place mainly in Benghazi, one of the most important Libyan cities ⁽¹²⁵⁾. The protests continued: on February 17, 2011, they became crueller also due to the harsh repression perpetrated by Gaddafi's forces. “On the evening of February 15, [Gaddafi's] authorities used teargas

⁽¹²²⁾ JOHNSTON K. A., *Transformation of Conflict Status in Libya*, in *Journ. Of Confl. & Sec. Law*, vol. 17(1), 2012, p. 84.

⁽¹²³⁾ Ivi, p. 85.

⁽¹²⁴⁾ International Committee of the Red Cross (ICRC), *Commentary*, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, <http://www.icrc.org/ihl.nsf/COM/365-570006?OpenDocument>, access 2.01.2013.

⁽¹²⁵⁾ <http://www.bbc.co.uk/news/world-africa-12477275>, access 2.01.2013.

and batons, as well as attackers in street clothes, to disperse protesters in Benghazi [...], injuring fourteen people (¹²⁶)". By February 17, 2011, twenty-four protesters were already being killed; eighty-four by February 18, 2011 (¹²⁷). At this point, it seems to be pretty obvious that these events could not be classified as an armed conflict, but as internal disturbances. Therefore, the law of armed conflict was not applied, while domestic, international human rights and criminal laws were (¹²⁸). On February 20, 2011, the rebels took control over Benghazi (¹²⁹). This event led to a change in the organization of the rebels and the intensity of the conflict itself (¹³⁰). As for the intensity of the conflict, Gaddafi deployed his own irregular paramilitary forces to attack the rebels: this choice meant that the deployment of the regular State forces was not sufficient enough to fight against them (¹³¹). In addition, Gaddafi's forces used heavy machine gun fire (¹³²). Rebels were better armed, carrying homemade bombs and rocket-propelled grenade launchers (¹³³). As for the organization, the criterion has not been easy to apply since the situation was very chaotic (¹³⁴). However, as explained in the previous chapter, the National Transitional Council could be considered as the organizational body entitled to represent the rebels, that by this time already became insurgents (¹³⁵). In this sense, it is possible to assert that by February 28, 2011, the Libyan rebellion could be considered as an armed non-international armed conflict, which triggered the automatic application of art. 3 of the Geneva Conventions (¹³⁶). Libya is a party of both the First and Second Additional Protocols to the Geneva

(¹²⁶) Human Rights Watch (HRW), *Libya: Arrests, Assaults in Advance of Planned Protests*, February 17, 2011, <http://www.hrw.org/news/2011/02/16/libya-arrests-assaults-advance-planned-protests>, access 2.01.2013.

(¹²⁷) Human Rights Watch (HRW), *Libya: Security Forces Kill 84 Over Three Days*, February 19, 2011, <http://www.hrw.org/news/2011/02/18/libya-security-forces-kill-84-over-three-days>, access 2.01.2013.

(¹²⁸) JOHNSTON K. A., *Transformation of Conflict Status in Libya*, in *Journ. Of Confl. & Sec. Law*, vol. 17(1), 2012, p. 90.

(¹²⁹) <http://www.aljazeera.com/indepth/spotlight/libya/2011/08/20118219127303432.html>, access 2.01.2013.

(¹³⁰) JOHNSTON K. A., *Transformation of Conflict Status in Libya*, in *Journ. Of Confl. & Sec. Law*, vol. 17(1), 2012, p. 90.

(¹³¹) Ivi, pp. 90/91.

(¹³²) Human Rights Watch (HRW), *Libya: Commanders Should Face Justice for Killings*, February 22, 2011, <http://www.hrw.org/news/2011/02/22/libya-commanders-should-face-justice-killings>, access 2.01.2013.

(¹³³) <http://www.aljazeera.com/indepth/spotlight/libya/2011/03/20113175840189620.html>, access 2.01.2013.

(¹³⁴) JOHNSTON K. A., *Transformation of Conflict Status in Libya*, in *Journ. Of Confl. & Sec. Law*, vol. 17(1), 2012, p. 91.

(¹³⁵) See previous chapter.

(¹³⁶) JOHNSTON K. A., *Transformation of Conflict Status in Libya*, in *Journ. Of Confl. & Sec. Law*, vol. 17(1), 2012, p. 92.

Conventions. In particular, Protocol II regards the protection of Victims of Non-International Armed Conflicts ⁽¹³⁷⁾. It applies to conflicts which

“1.1. [...]take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. 1.2. This protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts ⁽¹³⁸⁾”.

It has already been stated that Libyan rebels fit the provisions of the Additional Protocol II.

When, on March 17, 2011, the United Nations Security Council approved res. 1973 authorizing the use of force, a new phase of the Libyan conflict began ⁽¹³⁹⁾. In particular, on March 19, 2011, American and European forces attacked Libya with their first air strike. The “internationalization” of a conflict occurs when a non-international one is transformed into an international war as a consequence of the intervention of another State on the side of a non-State party to the conflict: the aid could be given either by making the non-State party an agent of the foreign State or by supporting it militarily ⁽¹⁴⁰⁾. Therefore, it is possible to say that art. 2 of the 1949 Geneva Conventions could be applied to the Libya case after the adoption of res. 1973 ⁽¹⁴¹⁾.

As the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 stated in the Tadic judgment, a conflict shall become international whether another State intervenes military with its troops or if some parties of the conflict act on behalf of an external State ⁽¹⁴²⁾. It is pretty clear that the former

⁽¹³⁷⁾ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, <http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument>, access 2.01.2013.

⁽¹³⁸⁾ Ivi, art. 1.1, art. 1.2, access 2.01.2013.

⁽¹³⁹⁾ JOHNSTON K. A., *Transformation of Conflict Status in Libya*, in *Journ. Of Confl. & Sec. Law*, vol. 17(1), 2012, p. 95.

⁽¹⁴⁰⁾ Ibidem.

⁽¹⁴¹⁾ Ibidem.

⁽¹⁴²⁾ International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Tadic*

concerns the Libya case: in fact, the international community established a no-fly zone over the country and launched air strike attacks in order to hit the most important military targets of Gaddafi's forces. It is obvious that the international community sided with the Libyan rebels (¹⁴³).

The conflict did not transform only from an internal to an international one: it became a non-international armed conflict (¹⁴⁴). A conflict may undergo this process whenever the foreign involvement is being withdrawn (¹⁴⁵). In fact, intervention in support of rebels tends to internationalize the conflict. On the other hand, if the intervention supports the legitimate government, the conflict remains internal. Therefore, it is possible to assert that a conflict which had become international could be "transformed" in an internal one if the government would change (¹⁴⁶). It seems possible to assert that this is what happened to Libya: in fact, at a certain point, Libyan insurgents had gained control over a lot of territory. In addition, almost the entire international community had acknowledged the National Transitional Council as the legitimate representative of Libyan people (¹⁴⁷).

7.7. Some Considerations about the International Intervention in Libya.

According to some authors (¹⁴⁸) NATO's intervention in Libya went beyond the mere protection of civilians: in fact, it seems that the aid provided by the Alliance to the insurgents aimed at overthrowing Gaddafi and, therefore, at changing country's regime (¹⁴⁹). On the other hand, other authors (¹⁵⁰) argue quite the opposite. Doubtless, in general, the international response to the crisis has been swift, prompt and timing. Gaddafi's position toward the rebels was quite clear: he had no intention to capitulate,

Judgement, Case n° IT-94-1-A, 15 July 1999, <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>, access 3.01.2013.

(¹⁴³) JOHNSTON K. A., *Transformation of Conflict Status in Libya*, in *Journ. Of Confl. & Sec. Law*, vol. 17(1), 2012, p. 97.

(¹⁴⁴) JOHNSTON K. A., *Transformation of Conflict Status in Libya*, in *Journ. Of Confl. & Sec. Law*, vol. 17(1), 2012, p. 106.

(¹⁴⁵) *Ibidem*.

(¹⁴⁶) Ivi, p. 107.

(¹⁴⁷) See the previous chapter to read about the recognition of Libyan rebels as insurgents and of the National Transitional Council as the legitimate representative of Libyan people.

(¹⁴⁸) PAYANDEH M., *The United Nations, Military Intervention, and Regime Change in Libya*, in *Vir. Journ. Of Int. Law*, vol. 52(2), 2012, pp. 355/403.

(¹⁴⁹) *Ibidem*.

(¹⁵⁰) DAALDER I. H., STAVRIDIS J. G., *NATO's Victory in Libya. The Right Way to Run an Intervention*, in *For. Aff.*, vol. 91(2), 2012, pp. 2/7.

as Mubarak and Ben Ali did in Egypt and Tunisia. Withal, in his 22nd February speech, he stirred “you men and women who love Gaddafi [to] get out of your homes and fill the streets. [...] Leave your homes and attack [the revolutionaries] [...] (¹⁵¹)”. In order to highlight his intention to not leave the leadership of the country, he also added the he was “a fighter, a revolutionary from the tents (¹⁵²)”. Gaddafi’s repression of the protests was harsh and strong: he used his military force to put down the rebels and re-establish order in the country (¹⁵³). At this point it was quite obvious that Gaddafi had no intention to surrender and that he would have repressed any form of protest against his regime. He made it clear in his speech. The international community had to cope with a very unstable situation. On the one hand there was Libya, a sovereign State, which leader was not willing to forfeit his political position. On the other hand, there was Libyan population, willing to fight in order to set a new democratic regime in the country. The Security Council intervened promptly in the country, first with res. 1970 (February 26th, 2011) and, less than a month later, with res. 1973 (March 17th, 2011). NATO soon took the lead of the intervention with a mission that aimed at protecting civilians, policing the arms embargo and patrolling the no-fly zone (¹⁵⁴). Doubtless, the mission led to the insurgents’ victory of the conflict, the overthrowing of the dictatorship and the death of Gaddafi. As introduced above, some authors have a very positive perspective on the NATO’s mission in Libya (¹⁵⁵). They advocate that, despite the difficulties encountered, the mission served his scope. At the beginning the mission slowed down because of Gaddafi’s militias’ proximity to the areas inhabited by civilians, so that their protection resulted to be difficult, since there was the high risk of causing casualties. In addition, the rebel forces did not have the skills to conduct an effective resistance. However, at the end of the revolution, the mission seemed to have

(¹⁵¹) <http://www.globalpost.com/dispatch/africa/110222/gaddafi-speech-genocide-libya>, access 14.12.2012.

(¹⁵²) Ibidem, access 14.12.2012.

(¹⁵³) STAHN C., *Libya, the International Criminal Court, and Complementarity*, in *Journ. Of Int. Crim. Just.*, Downloaded from <http://jicj.oxfordjournals.org/> at Università di Venezia on the 13th December, 2012, 2012, pp. 1/25.

(¹⁵⁴) DAALDER I. H., STAVRIDIS J. G., *NATO’s Victory in Libya. The Right Way to Run an Intervention*, in *For. Aff.*, vol. 91(2), 2012, p. 3.

(¹⁵⁵) Ibidem. The article taken into account is written by the United States ambassador to the NATO, Ivo Daaler (<http://www.state.gov/r/pa/ei/biog/123509.htm>, access 14.12.2012) and the Commander of European Command and Supreme Allied Commander James Stavridis (<http://www.aco.nato.int/page181313621.aspx>, access 14.12.2012). It would seem quite obvious that their opinion regarding the NATO mission in Libya is positive.

been implanted with positive results ⁽¹⁵⁶⁾. What is interesting here is that the authors clearly confirmed that one of the NATO mission's primary purposes was, apart from the protection of civilians, providing military help to the Libyan insurgents in order to defeat Gaddafi's forces and overthrow the dictator ⁽¹⁵⁷⁾. The responsibility to protect cannot be used as a tool to change the regime in a country, no matter how repressive and dictatorial the regime itself may be. Could the analysis provided by the authors interpreted as an "admission" of the fact that the purposes of the NATO mission in Libya were widely interpreted? Would be possible to say that even NATO realized that its intervention went beyond the provisions of res. 1973? It has already been stated ⁽¹⁵⁸⁾ that, according to international law, third States cannot provide military assistance to the insurgents ⁽¹⁵⁹⁾. Actually, it is quite the opposite. It would be possible to leave this problem apart, since, on the one hand, Libyan rebels were considered as insurgents according to the law but, on the other, seen also as rebels aiming at being represented by a chosen political party and not by a dictator. In this sense, the military intervention could be justified. And yet, it seems to be unlawful because, even with the best intentions, the responsibility to protect has to be implemented to protect peoples and not helping them changing their regime because they strive for it. Res. 1973 authorized the use of military force to implement the responsibility to protect with the wide-range interpretation expression "all necessary means". Maybe this has been the problem: the expression used by the Security Council was open to a wide-range interpretation. At this point, the legitimate question would be: was the military intervention in Libya legitimated? The international community coped with this problem since the beginning the outbreak of the crisis. In fact, while the Tunisian and Egyptian crisis resolved practically without the international entanglement, in Libya it was clear, since the beginning that the rebels did not have the political and military forces to fight against Gaddafi's policy and forces ⁽¹⁶⁰⁾. According to one author ⁽¹⁶¹⁾, the intervention in Libya can be considered the only case when the Security Council had the more or less

⁽¹⁵⁶⁾ DAALDER I. H., STAVRIDIS J. G., *NATO's Victory in Libya. The Right Way to Run an Intervention*, in *For. Aff.*, vol. 91(2), 2012, pp. 2/7.

⁽¹⁵⁷⁾ *Ibidem*.

⁽¹⁵⁸⁾ See Chapter 4 of this dissertation.

⁽¹⁵⁹⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008.

⁽¹⁶⁰⁾ DAALDER I. H., STAVRIDIS J. G., *NATO's Victory in Libya. The Right Way to Run an Intervention*, in *For. Aff.*, vol. 91(2), 2012, pp. 2/7.

⁽¹⁶¹⁾ PAYANDEH M., *The United Nations, Military Intervention, and Regime Change in Libya*, in *Vir. Journ. Of Int. Law*, vol. 52(2), 2012, pp. 355/403.

open intent to change the regime ⁽¹⁶²⁾. After Gaddafi's forces kept repressing the revolutionaries with military attacks and Gaddafi himself showed his unwillingness to implement the provision of res. 1970, res. 1973 was adopted. From March to October 2011 the NATO coalition carried out numerous attacks against the Gaddafi forces with positive results ⁽¹⁶³⁾. States that had acknowledged the National Transitional Council as the legitimate representative of Libyan people, came to admit that the final goal of the military intervention was the overthrowing of Gaddafi' regime ⁽¹⁶⁴⁾. In this sense, it would be useful to analyze the so-cited expression used in res. 1973 "all necessary measures". The stress should be put on the word "necessary": standing of what has been said about responsibility to protect, "necessary" could refer to the fact that the measures were necessary to be taken in order to protect civilians. And yet, as clearly stated above, the whole expression "all necessary measures" is the *formula* used by the Security Council to simply authorize the use of force. In this sense, the word "necessary" could refer to the fact that, after the non-implementation of res. 1970 provisions, the military measure was the ultimate solution to halt the massacres. According to one author ⁽¹⁶⁵⁾ "necessary" was used to determine that the use of force would have been used only in necessary situations and always within the provisions of the resolution ⁽¹⁶⁶⁾. Which type of force the Security Council implemented? The resolution excluded "a foreign occupation force of any form on any part of Libya territory ⁽¹⁶⁷⁾". According to this sentence, the deployment of ground forces in order to occupy the territory was forbidden. Under international law, occupation can be defined as the exercise of effective control over a part of a territory ⁽¹⁶⁸⁾. Taking ground on this definition, it can be said that the mere deployment of ground forces does not lead to the occupation of a territory. Ground forces were allowed only to gather information about possible Gaddafi forces' targets to hit via air strikes. The choice of using such composition of words probably wanted to remark that it was not Security Council intention to occupy Libya,

⁽¹⁶²⁾ Ivi, p. 358.

⁽¹⁶³⁾ Ivi, p. 381.

⁽¹⁶⁴⁾ Ivi, p. 382.

⁽¹⁶⁵⁾ Ivi.

⁽¹⁶⁶⁾ Ivi, p. 385.

⁽¹⁶⁷⁾ Res. 1973, 17th March, 2011, United Nations Security Council, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973(2011)), access 14.12.2012.

⁽¹⁶⁸⁾ FOCARELLI C., *Lezioni di Diritto Internazionale* (volume 1), Padova, CEDAM, 2008.

as it happened in Iraq (¹⁶⁹). Also, the stress on the fact that the provisions of res. 1973 aimed at protecting civilians must be done: none of the resolution's provisions mentioned the protection of the Libyan insurgents. However, it is not even explicitly forbidden and the reason is quite understandable: Libyan insurgents were Libyan people, living among civilians. Therefore, in certain situations, it would have been quite difficult to distinguish civilians from insurgents. Again, it must be reminded that, under international law, insurgents cannot be helped or, in this case, protected by third States (¹⁷⁰). Finally, it has to be said that res. 1973 does not mention the change regime as a possible purpose of the military mission. In particular, from a political point of view, Obama, Cameron and Sarkozy asserted that military intervention in the country served to protect civilians from the constant Gaddafi forces' attacks. They recalled that the international community found itself obliged to intervene to help restoring the peace in Libya because of the behavior of the Colonel. Withal, they advocated that

“[...] our duty and our mandate under UN Security Council Res. 1973 is to protect civilians, and we are doing that. It is not to remove Gaddafi by force. But it is impossible to imagine a future for Libya with Gaddafi in power. [...] It is unthinkable that someone who has tried to massacre his own people can play a part in their future government. The brave citizens of those towns that have held out against forces that have been mercilessly targeting them would face a fearful vengeance if the world accepted such an arrangement. It would be an unconscionable betrayal. Furthermore, it would condemn Libya to being not only a pariah State, but a failed State too. [...] There is a pathway to peace that promises new hope for the people of Libya — a future without Qaddafi that preserves Libya's integrity and sovereignty, and restores her economy and the prosperity and security of her people. [...] Today, NATO and our partners are acting in the name of the United Nations with an unprecedented international legal mandate. But it will be the people of Libya, not the U.N., who choose their new constitution, elect their new leaders, and write the next chapter in their history. [...] (¹⁷¹)”.

It is evident how they stressed out the fact that the intent of the mission had not been that of removing Gaddafi but to help protecting civilians. However, at the same

(¹⁶⁹) Ivi, pp. 385/386.

(¹⁷⁰) Ivi, p. 386.

(¹⁷¹) BARACK OBAMA, DAVID CAMERON, NICOLAS SARKOZY, *Libya's Pathway to Peace*, New York Times, 14th April, 2011, http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html?_r=0, access 14.12.2012.

time, they underlined that it would have been unthinkable to conceive a Libyan State with the same leader. This is a political speech and not an official document. Nevertheless, could it be considered a sort of affirmation of the fact that one of the purposes of the military mission was the overthrow of the dictator? Looking closer at res. 1973 could be useful: in particular, paragraph 2 seems to be interesting. It is said that the Security Council “stresses the need to intensify the efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people ⁽¹⁷²⁾”. Of course, it is obvious that Libyan people demanded not to be governed by Gaddafi anymore. This sentence does not provide a solid proof of the intention of the council to overthrow Gaddafi, but, at the same time, seems to give a quite clear impression about the intent of the military intervention: helping Libyan people reaching their goal which was the end of the dictatorship and, therefore, a regime change.

7.8. R2P and the Contemporary Scenarios: Libya vs Syria.

As already stated, military measures as an application of the principle of responsibility to protect can be considered an exception to the prohibition of the use of force. Genocide, ethnic cleansing, war crimes, crimes against humanity are considered gross violations of human rights and, for this reason, the international community has the responsibility to prevent people from suffer for them ⁽¹⁷³⁾. However, it seems that the behavior of States in these situations has not been clarified yet. On the one hand, military intervention is one of the most invasive interference in the domestic and territorial jurisdiction of a State; therefore, the international community does not seem to be keen on unbalancing toward this practice. However, in the Libya case, the military intervention has been approved by the Security Council in the name of the responsibility to protect ⁽¹⁷⁴⁾. In Syria, it did not happen yet ⁽¹⁷⁵⁾. Is it possible to say that responsibility to protect could be also a manifestation of economic and political interests, beside an effective tool to protect people? The answer seems to be positive. The case of Syria could be useful to provide a response in this sense. Beside the

⁽¹⁷²⁾ Res. 1973, 17th March, 2011, United Nations Security Council, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973(2011)), access 14.12.2012.

⁽¹⁷³⁾ CARBONE S. M., LUZZATTO R., SANTA MARIA A., *Istituzioni di Diritto Internazionale*, Torino, G. Giappichelli Ed., 2003, p. 393.

⁽¹⁷⁴⁾ Res. 1973, 17th March, 2011, United Nations Security Council.

⁽¹⁷⁵⁾ This paragraph refers to the status of the Syrian situation as it is at the beginning of October 2012.

measures adopted by the Security Council against the Assad's regime, a military intervention seems to remain a distant mirage. It seems that the Security Council is failing preventing the massacres of civilians due to the veto imposed by Russia and China on three of the resolutions that the council proposed to adopt⁽¹⁷⁶⁾. The last was in July, when the two countries posed their veto on a resolution that had to renew the mission of observation that was supposed to lead to the "cease the fire"⁽¹⁷⁷⁾. The Syrian situation could be ascribable to the Chapter VII of the United Nations Charter and its articles 40, 41 and 42. An author⁽¹⁷⁸⁾, asked whether an authorization of the Security Council would be strictly necessary in order to halt the massacres. The answer seems to be positive, since the Security Council is the body entitled with the authority to authorize military measures. However, the author recalls that the Western countries tend to intervene even without the authorization of the council, as it happened in Kosovo⁽¹⁷⁹⁾. Which are the real reasons behind the decision of Russia and China to pose the veto on the possibility of an armed intervention in the country? This is not the topic of this dissertation, but it would be interesting to reflect on that. The responsibility to protect seems to be well defended by the international community, but, at the same time, the States do not seem to maintain a coherent line of behavior in the application of the military measures. It seems that they are claiming that an authorization to the use of force would lead to a regime change as it happened in Libya.

Another author has asked the same question⁽¹⁸⁰⁾. Promoted by Saudi Arabia and Qatar, resolution 66/253 was adopted by the UN General Assembly, which condemned the violence perpetrated by Assad's regime. Bashar al-Assad came to power in 2000 and, since that moment, he had violently repressed every opponent to his regime, killing and torturing civilians⁽¹⁸¹⁾. On February 2, 2012, the Security Council proposed a resolution that would have contrasted the atrocities in Syria. However, China and Russia posed their veto asserting that such a resolution would have constituted an interference in the internal affairs of the Syrian State. Additionally, Syria itself voted against resolution 66/653 claiming that internationalizing its situation would have

⁽¹⁷⁶⁾ Ibidem.

⁽¹⁷⁷⁾ Ibidem.

⁽¹⁷⁸⁾ <http://www.affariinternazionali.it/articolo.asp?ID=2059>, access 15.10.2012.

⁽¹⁷⁹⁾ Ibidem.

⁽¹⁸⁰⁾ PAVONE I. R., *La Situazione in Siria e la Risoluzione dell'Assemblea Generale del 16 febbraio*, in *Dir. Um. Dir. Int.*, vol. 6(2), 2012.

⁽¹⁸¹⁾ Ivi, p. 425.

constituted an illegitimate interference in its domestic affairs and, therefore, a violation of art. 2.7 of the United Nations Charter ⁽¹⁸²⁾. The author underlines that the General Assembly, despite recognizing the atrocities committed by the regime, did not acknowledge them as crimes against humanity. This “non-recognition” did not trigger the responsibility to protect. On the other hand in the Libya case the recognition of crimes against humanity has been acknowledged pretty soon and not by the General Assembly, but by the Security Council. Comparing resolutions 1973 and 66/653, it is possible to notice that, in the former, the council recalled the Libyan government’s responsibility to protect its citizens, while in the latter, the *formula* “responsibility to protect” has never been used ⁽¹⁸³⁾. Furthermore, the assembly clearly expressed its intention not to undertake a military action authorized by the Council or recommend military measures: in fact, it did not use the expression used in resolution 1973, where the council clearly stated that the systematic violations of human rights represented crimes against humanity. The problem here is that a humanitarian intervention would be transformed in an action to overthrow Assad’s regime, as it seems to have happened in Libya with Gaddafi ⁽¹⁸⁴⁾. As stated above, the change of regime does not justify a military intervention, not even in the name of the responsibility to protect.

What is important to notice here is the fact that the Libyan case seemed to have opened a new era of cooperation within the Security Council, but the Syrian crisis has been demonstrating quite the opposite. Could economic and political interests be more important than humanitarian necessities? Of course, the answer is not easy to give.

7.7. Conclusions.

In the first part of this chapter the concept of the responsibility to protect has been explained: it seems that there are still open questions about when it is important to intervene military without undermining international interests.

In the second part, the intervention in Libya has been discussed and compared to the Syrian situation. It is possible to infer that, despite the norms and regulations that the international community has tried to give, also through dedicated organs and

⁽¹⁸²⁾ Ivi, p. 426.

⁽¹⁸³⁾ A/66/PV.97, 16th February, 2012, UN General Assembly, http://www.un.org/ga/search/view_doc.asp?symbol=A/66/PV.97, access 19.11.2012.

⁽¹⁸⁴⁾ PAVONE I. R., *La Situazione in Siria e la Risoluzione dell’Assemblea Generale del 16 febbraio*, in *Dir. Um. Dir. Int.*, vol. 6(2), 2012, pp. 426/428.

commissions, every situation is subjected to different responds and is treated in a different way. It seems that there is not a unanimous praxis to follow yet. However, this is understandable, given the fact that the concept of the responsibility to protect is still quite controversial.

CONCLUSIONS

The purpose of this dissertation is that of analyzing the Libyan conflict from a legal point of view, trying to identify its consequences in some international law fields. In order to better examine them, it is important to understand the years which have preceded the revolution, that is to say the forty-two year period of Gaddafi's regime. For this reason, the first part of the dissertation has been focused on it. In particular, Gaddafi, who came from a Berber tribe of the desert, succeeded in taking the power in 1969, through a *coup d'état* that dethroned King Idris I. It is possible to assert that the years of Gaddafi's dictatorship have been characterized by incoherence, both in the internal and foreign policy. As for the former, the affinity with Nasser's ideology has been underlined, along with Gaddafi's "Third Way": in fact, he claimed to propose the world a new ideology, halfway between Capitalism and Communism. As for Libyan foreign policy, the dissertation focused mainly on two important events: the 1986 American Benghazi and Tripoli bombing and the 1988 Lockerbie terroristic attack. With regard to the former, it represented the peak of the detriment of the US-Libya relation. The relationship between Libya and the United States began to deteriorate already during the Seventies, due to the Libyan approach to the Soviet Union and the conclusion of the 1979 Camp David accords. On April 5th, 1986, a group of terrorists bombed a nightclub in West Berlin, mostly known for being frequented by American officers. About two hundred people were injured during the attack. The American intelligence detected some registration where Gaddafi seemed to be the responsible for ordering the attack. For this reason, Reagan launched an air attack over Tripoli and Benghazi, an operation known with the name of "El Dorado Canyon", when Gaddafi's younger daughter deceased. The United States declared that their operation was legitimate because conducted by virtue of art. 51 of the United Nations Charter. However, the General Assembly condemned the air attack with Res. 41/38 of November 20th, 1986. The terroristic attack on the Pan Am Flight 103 over Lockerbie (Scotland), departing from Heathrow and directed to New York, was the event which affected the most Libyan future. Two Libyan men were identified as the material responsible ones for the attack, while Libya was retained to be the one which ordered it: since Gaddafi refused to extradite them, the Security Council adopted a series of

Resolutions against the African country, along with the United States. Eventually, in 1993 Gaddafi agreed to hand over the two suspects, on condition that the trial was conducted in an Arab League State or in a neutral country. In 2004 the Council withdrew the sanctions over Libya due to Gaddafi's opening toward more liberal and democratic policies: for example, he interrupted the Libyan nuclear program and commit himself in the implementation of the human rights. Despite all the efforts made by the dictator, on February 15th, 2011, the revolution broke out in the country: it led to the end of his dictatorial regime and to his death.

From the legal point of view, the Libyan crisis has had consequences in various fields and the second and third part of this dissertation focus on that: first of all, on the application of the Treaty on Friendship, Partnership and Cooperation between Italy and Libya. It was concluded in 2008 and signed by the then Italian Prime Minister Silvio Berlusconi and Muammar Gaddafi. During the crisis the treaty was suspended during the crisis. The dissertation tried to identify the causes of such suspension. First of all, some basic concepts have been introduced, in particular the procedures of conclusion of international agreements and the possible causes behind their suspension. Specifically, the problems with the 2008 Benghazi treaty arose in relation with art. 2, 3 and 4 of the treaty, which respectively establish the principles of non-interference in a State's internal affairs and the prohibition of use force. In particular, the Italian parliament affirmed that the Libyan government breached art. 6, which is about the respect of human rights. Therefore, Italy appealed to art. 60 of the 1969 Vienna Convention on the Law of Treaties, which establishes that a treaty can be extinguished or suspended if one of the parties breaches one of its fundamental dispositions. The reasoning seems to be supportable only in part: in fact, the respect of human rights prescinds from the 2008 Benghazi Treaty. Besides, it is not a human rights treaty: as its title says, it is a friendship, partnership and cooperation agreement. The future of the treaty results to be indefinite: as a matter of fact, the Tripoli Declaration, signed by Mario Monti and El-Keib in Tripoli, does not express any provision about its future application. Indeed, the declaration can be considered more declaration of intent than an international treaty. Furthermore, at the time of the writing (¹) in Italy the politicians are politically active

(¹) The conclusions of the dissertation have been written in January/February 2013.

with their election campaign: any of the programs presented comprehends a point about the future partnership with Libya.

Another problem deriving from the break-out of the Libyan revolution is the status of Libyan rebels under international law. After having explored the jurisprudence on the topic in general, the reasoning led to the following conclusion: Libyan rebels can be considered as insurgents and not a notional liberation movement because they did not fight against a colonial domination; a racist regime; or an alien occupation. Their goal was that of changing their regime in order to replace it with a more democratic government. Moreover, their legitimacy as insurgents derives also from the fact that they had some characteristics that international law requires in order to be considered as such: they had effective control over a part of a territory and were represented by an organization body, the National Transitional Council. However, taking ground on the definition of the right to internal self-determination, it would be possible to assert that Libyan people fought also in the name of this principle. However, after a comparison between Palestinians as a national liberation movement and Libyans, it seems plausible to say quite the contrary: in fact, from a mere legal point of view, it is possible to assert that the right to internal self-determination does not attribute peoples the right to any form of democratic government or to create a new State by secession. This reasoning does not deny the fact that Libyan population lived under an oppressive regime for forty-two years.

The Libyan revolution represents also the very first case of the application of the responsibility to protect. It refers to the fact that from sovereignty derives also States' responsibility to protect their own citizens from suffering gross violations of human rights, such as war crimes, ethnic cleansing, genocide, torture, rape, and so on. Whenever the States are not able, or not willing, to do it, the international community must endorse this responsibility and intervene. In particular, the responsibility to protect was applied to Libya with Res. 1973, on March 17, 2011. With it, the Security Council authorized the use of the military force in the country with the expression "all necessary measures". One of the most controversial points of the mission, carried out mainly by NATO, was that of being gone beyond its mere purpose, which was that of protecting Libyan people. In particular, this dissertation supports the idea that one of the mission's intents was that of overthrowing Gaddafi. However, it has been clearly underlined that

the responsibility to protect must not be applied to change a country's regime: such an action would violate the United Nations Charter's principle of non-interference in a State's internal affairs and would be unlawful.

In conclusion, this dissertation has attempted to shed light on some problematic aspects of the Libyan crisis, mainly from a legal point of view. As for the future of the Benghazi Treaty, as soon as the Italian and Libyan government will be ready to discuss about its future application, it will probably be modified and operative again. As for the responsibility to protect, if the Libyan case represented a victory for the international community because its application effectively protected many civilians, it seems it has to remain an isolated case. In fact, the Syrian case demonstrates how weak the application of this principle could be. The Libyan case is a starting point: the future international crisis requiring an international community's intervention in the name of this principle will form a new practice.

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APPENDIXES

A. Human Rights Watch (HRW), *Libya: June 1996 Killings at Abu Salim Prison*, June 27, 2006, <http://www.hrw.org/en/news/2006/06/27/libya-june-1996-killings-abu-salim-prison>, first access 10.11.2012.

Libya: June 1996 Killings at Abu Salim Prison

June 27, 2006

In the summer of 1996, stories began to filter out of Libya about a mass killing in Tripoli's Abu Salim prison. The details remained scarce, and the government initially denied that an incident had taken place. Libyan groups outside the country said up to 1,200 prisoners had died.

In 2001 and 2002, Libyan authorities began to inform some families with a relative in Abu Salim that their family-member had died, although they did not provide the body or details on the cause of death. In April 2004 Libyan leader Mu`ammar al-Qadhafi publicly acknowledged that killings had taken place in Abu Salim, and said that prisoners' families have the right to know what took place.

In May 2005 Human Rights Watch visited Abu Salim prison, run by the Internal Security Agency. Head of the agency Col. Tohamy Khaled said the government had opened an investigation into the 1996 incident, but did not provide information on the manner or timing of the investigation. Human Rights Watch subsequently asked the Libyan government for details on the investigation, but the government failed to reply.

Prisoners in Abu Salim prison interviewed by Human Rights Watch in May were unwilling to speak about the incident, apparently out of fear. The interviews focused on their individual cases, and all of them said that conditions in the prison had recently improved.

In June 2004 and again in June 2006, however, Human Rights Watch interviewed a former Abu Salim prisoner who claims to have witnessed the killings. Now living in the United States, where he has applied for asylum, Hussein al-Shafa'i said he spent 1988-2000 in Abu Salim on political charges, but was never brought to trial, and he worked in the prison kitchen in June 1996. Human Rights Watch could not verify his claims, but many details are consistent with a report from an émigré Libyan group, based on another witness account.

According to al-Shafa'i, the incident began around 4:40 p.m. on June 28, when prisoners in Block 4 seized a guard named Omar who was bringing their food. Hundreds of prisoners from blocks 3, 5 and 6 escaped their cells. They were angry over restricted family visits and poor living conditions, which had deteriorated after some prisoners escaped the previous year. Al-Shafa'i told Human Rights Watch:

Five or seven minutes after it started, the guards on the roofs shot at the prisoners-shot at the prisoners who were in the open areas. There were 16 or 17 injured by bullets. The first to die was Mahmoud al-Mesiri. The prisoners took two guards hostage.

Half an hour later, al-Shafa'i said, two top security officials, Abdullah Sanussi, who is married to the sister of al-Qadhafi's wife, and Nasr al-Mabrouk arrived in a dark green Audi with a contingent of security personnel. Sanussi ordered the shooting to stop and told the prisoners to appoint four representatives for negotiations. The prisoners chose Muhammad al-Juweili, Muhammad Ghlayou, Miftah al-Dawadi, and Muhammad Bosadra.

According to al-Shafa'i, who said he observed and overheard the negotiations from the kitchen, the prisoners asked Sanussi for clean clothes, outside recreation, better medical care, family visits, and the right to have their cases heard before a court, because many of the prisoners were in prison without trial. Sanussi said he would address the physical conditions, but the prisoners had to return to their cells and release the two hostages. The prisoners agreed and released one guard named Atiya, but the guard Omar had died.

Security personnel took the bodies of those killed and sent the wounded for medical care. About 120 other sick prisoners boarded three buses, ostensibly to go to the hospital. According to al-Shafa'i, he saw the buses take the prisoners to the back of the prison.

Around 5:00 a.m. on June 29, security forces moved some of the prisoners between the civilian and military sections of the prison. By 9:00 a.m. they had forced hundreds of prisoners from blocks 1, 3, 4, 5 and 6 into different courtyards. They moved the low security prisoners in block 2 to the military section and kept the prisoners in blocks 7 and 8, with individual cells, inside. Al-Shafa'i, who was behind the

administration building with other kitchen workers at the time, told Human Rights Watch what happened next:

At 11:00 a grenade was thrown into one of the courtyards. I did not see who threw it but I am sure it was a grenade. I heard an explosion and right after a constant shooting started from heavy weapons and kalashnikovs from the top of the roofs. The shooting continued from 11:00 until 1:35.

He continued:

I could not see the dead prisoners who were shot, but I could see those who were shooting. They were a special unit and wearing khaki military hats. Six were using Kalashnikovs...

I saw them-at least six men-on the roofs of the cellblocks. They were wearing beige khaki uniforms with green bandanas, a turban-like thing.

Around 2:00 p.m. the forces used pistols to "finish off those who were not dead," he said.

Abu Salim prison held between 1,600 and 1,700 prisoners at the time, and the security forces killed "around 1,200 people," al-Shafa'i said. He calculated this figure by counting the number of meals he prepared prior to and after the incident.

Cleanup began around 11:00 a.m. the next day, June 30, when security forces removed the bodies with wheelbarrows. They threw the bodies into trenches-2 to 3 meters deep, one meter wide and about 100 meters long-that had been dug for a new wall. "I was asked by the prison guards to wash the watches that were taken from the bodies of the dead prisoners and were covered in blood," al-Shafai'i said. In 1999 security officials poured cement over the trench, he claimed, although he believed that they later had the bodies removed.

The only other description of the incident comes from a report by the National Front for the Salvation of Libya, an opposition political group based outside Libya. Drawing on the account of an anonymous former prisoner who witnessed the incident (not al-Shafa'i), the report largely corroborates al-Shafa'i's account.

The National Front report says that 120 sick and wounded prisoners boarded buses on June 28 to receive medical care but that many of them were executed, although it provides no details. The next day around 11:00, the report says, "hand grenades were thrown into the crowds of prisoners followed by continuous firing from different

weapons like AK-47s, general purpose machine guns, crowd control machine guns. The raining of bullets continued for an entire hour."

The report does not mention trenches but says that refrigerator trucks from the Meat Transportation Company and the Marine Fisheries Company took bodies away. On June 30, a forklift loaded the last bodies into a container for trains. In total, 1,170 prisoners died, the report says, but it provides no names.

The Libyan government has denied that any crimes took place. In May 2005, Internal Security Agency head Khaled told Human Rights Watch that prisoners had captured some guards during a meal and taken weapons from the prison cache. Prisoners and guards died as security personnel tried to restore order, he said, and the government had opened an investigation on order of the Secretary of Justice.

"When the committee concludes its work, because it has already started, we'll give a detailed report answering all questions," Khaled said.

According to Khaled, more than 400 prisoners escaped Abu Salim in four separate break-outs prior to and after the incident: in July 1995, December 1995, June 1996 and July 2001. Among the escapees were men who then fought with Islamist militant groups in Afghanistan, Iran, and Iraq, he said.

A Libyan group based in Switzerland, Libyan Human Rights Solidarity, says that since 2001 the authorities have notified 112 families that a relative held in Abu Salim is dead, without providing the body or details on the cause of death. In addition, 238 families claim they have lost contact with a relative who was a prisoner in Abu Salim.

The organization expressed concern about one of the four prisoner negotiators from June 28, Muhammad Bosadra. According to the group, the authorities transferred Bosadra from Abu Salim to an unknown facility in summer 2005, and no one has heard from him since.

Human Rights Watch spoke with the brother of one former Abu Salim prisoner whom the authorities had informed of his brother's death. According to Farag al-Awani, now living in Switzerland, security agents arrested his brother Ibrahim al-Awani, 25 at the time, from the family home in al-Bayda in July 1995. The family never heard from Ibrahim again.

In 2002, members of Libya's Internal Security Agency told the family that Ibrahim had died in a Tripoli hospital due to sickness. A death certificate they provided, viewed by Human Rights Watch, said Ibrahim had died on July 3, 2001, but it gave no cause of death. Despite repeated requests, the authorities never returned the body, as required under Libyan law. It is unclear if Ibrahim al-Awani died in the June 1996 incident or at another time.

"We just want to know what happened and to have the body back," Farag al-Awani said.

B. 2008 Treaty on Friendship, Partnership and Cooperation between Italy and Libya.

**TRATTATO DI AMICIZIA, PARTENARIATO E COOPERAZIONE
TRA LA REPUBBLICA ITALIANA
E LA GRANDE GIAMAHIRIA ARABA LIBICA POPOLARE SOCIALISTA**

PREAMBOLO

La Repubblica Italiana e la Grande Giamahiria Araba Libica Popolare Socialista, qui di seguito denominati "le Parti", consapevoli dei profondi legami di amicizia tra i rispettivi popoli e del comune patrimonio storico e culturale;

decise ad operare per il rafforzamento della pace, della sicurezza e della stabilità, in particolare nella regione del Mediterraneo;

impegnate, rispettivamente, nell'ambito dell'Unione Europea e dell'Unione Africana nella costruzione di forme di cooperazione ed integrazione, in grado di favorire l'affermazione della pace, la crescita economica e sociale e la tutela dell'ambiente; ricordando l'importante contributo dell'Italia al fine del superamento del periodo dell'embargo nei confronti della Grande Giamahiria;

tenendo conto delle importanti iniziative già realizzate dall'Italia in attuazione delle precedenti intese bilaterali;

esprimendo la reciproca volontà di continuare a collaborare nella ricerca, con modalità che saranno concordate tra le Parti, riguardante i cittadini libici allontanati coercitivamente dalla Libia in epoca coloniale;

ritenendo di chiudere definitivamente il doloroso "capitolo del passato", per il quale l'Italia ha già espresso, nel Comunicato Congiunto del 1998, il proprio rammarico per le sofferenze arrecate al popolo libico a seguito della colonizzazione italiana, con la soluzione di tutti i contenziosi bilaterali e sottolineando la ferma volontà di costruire una nuova fase delle relazioni bilaterali, basata sul rispetto reciproco, la pari dignità, la piena collaborazione e su un rapporto pienamente paritario e bilanciato;

esprimendo, pertanto, l'intenzione di fare del presente Trattato il quadro giuridico di riferimento per sviluppare un rapporto bilaterale "speciale e privilegiata", caratterizzato da un forte ed ampio partenariato politico, economico e in tutti i restanti settori della collaborazione;
hanno convenuto quanto segue:

Capo I

PRINCIPI GENERALI

Articolo 1

Rispetto della legalità internazionale

Le Parti, nel sottolineare la comune visione della centralità delle Nazioni Unite nel sistema di relazioni internazionali, si impegnano ad adempiere in buona fede agli obblighi da esse sottoscritti, sia quelli derivanti dai principi e dalle norme del diritto Internazionale universalmente riconosciuti, sia quelli inerenti al rispetto dell'Ordinamento Internazionale.

Articolo 2

Uguaglianza sovrana

Le Parti rispettano reciprocamente la loro uguaglianza sovrana, nonché tutti i diritti ad essa inerenti compreso, in particolare, il diritto alla libertà ed all'indipendenza politica.

Esse rispettano altresì il diritto di ciascuna delle Parti di scegliere e sviluppare liberamente il proprio sistema politico, sociale, economico e culturale.

Articolo 3

Non ricorso alla minaccia o all'impiego della forza

Le Parti si impegnano a non ricorrere alla minaccia o all'impiego della forza contro l'integrità territoriale o l'indipendenza politica dell'altra Parte o a qualunque altra forma incompatibile con la Carta delle Nazioni Unite,

Articolo 4

Non ingerenza negli affari interni

1. Le Parti si astengono da qualunque forma di ingerenza diretta o indiretta negli affari interni o esterni che rientrino nella giurisdizione dell'altra Parte, attenendosi allo spirito di buon vicinato.

2. Nel rispetto dei principi della legalità internazionale, l'Italia non userà, ne permetterà

l'uso dei propri territori in qualsiasi atto ostile contro la Libia e la Libia non userà, né permetterà, l'uso dei propri territori in qualsiasi atto ostile contro l'Italia.

Articolo 5

Soluzione pacifica delle controversie

In uno spirito conforme alle motivazioni che hanno portato alla stipula del presente Trattato di Amicizia, Partenariato e Cooperazione, le Parti definiscono in modo pacifico le controversie che potrebbero insorgere tra di loro, favorendo l'adozione di soluzioni giuste ed eque, in modo da non pregiudicare la pace e la sicurezza regionale ed, internazionale.

Articolo 6

Rispetto dei diritti umani e delle libertà fondamentali

Le Parti, di comune accordo, agiscono conformemente alle rispettive legislazioni, agli obiettivi e ai principi della Carta delle Nazioni Unite e della Dichiarazione Universale dei Diritti dell'Uomo.

Articolo 7

Dialogo e comprensione tra culture e civiltà

Le Parti adottano tutte le iniziative che consentano di disporre di uno spazio culturale comune, ispirandosi ai loro legami storici ed umani. Le iniziative suddette si ispirano ai principi della tolleranza, della coesistenza e del rispetto reciproco, della valorizzazione e dell'arricchimento del patrimonio comune materiale e immateriale nel contesto bilaterale e regionale.

Capo II

CHIUSURA DEL CAPITOLO DEL PASSATO E DEI CONTENZIOSI

Articolo 8

Progetti infrastrutturali di base

1. L'Italia, sulla base delle proposte avanzate dalla Grande Giamahiria e delle successive discussioni intervenute, si impegna a reperire i fondi finanziari necessari per la realizzazione di progetti infrastrutturali di base che vengono concordati tra i due Paesi nei limiti della somma di 5 miliardi di dollari americani, per un importo annuale di 250 milioni di dollari americani per 20 anni.
2. Le aziende italiane provvederanno alla realizzazione di questi progetti previo un

comune accordo sul valore di ciascuno.

3. La realizzazione di questi progetti avverrà nell'arco di 20 anni secondo un calendario temporale che verrà concordato tra le due Parti, libica ed italiana.
4. I fondi finanziari assegnati vengono gestiti direttamente, dalla Parte italiana.
5. La Grande Giamahiria rende disponibili tutti i terreni necessari per l'esecuzione delle opere senza oneri per la Parte italiana e le aziende esecutrici.
6. La Grande Giamahiria agevola la Parte italiana e le aziende esecutrici, nel reperimento dei materiali accessibili in loco e nell'espletamento di procedure doganali e di importazione esentandole dal pagamento di eventuali tasse. I consumi di energia elettrica, gas, acqua e linee telefoniche saranno pagati con l'esenzione delle tasse.

Articolo 9

Commissione Mista

1. E' istituita una Commissione Mista paritetica, costituita da componenti designati dai rispettivi Stati. La Commissione Mista individua le caratteristiche tecniche dei progetti di cui al precedente Articolo e stabilisce l'arco temporale complessivo e le scadenze di realizzazione dei progetti, nel quadro degli importi di ordine finanziario contenuti nello stesso articolo.
2. La Gran Giamahiria si impegna a garantire, sulla base di specifiche intese a trattativa diretta con società italiane, la realizzazione in Libia, da parte delle stesse, di importanti opere infrastrutturali, progetti industriali ed investimenti. I progetti vengono realizzati ai prezzi da concordare fra le Parti. Queste imprese, secondo le consuetudini esistenti, contribuiscono in maniera volontaria alle opere sociali ed alla bonifica ambientale nelle zone ove realizzano i loro progetti.
La Gran Giamahiria si impegna, inoltre, ad abrogare tutti i provvedimenti e le norme regolamentari che imponevano vincoli o limiti alle sole imprese italiane.
3. La Commissione Mista individua, su proposta della Parte libica, le opere, i progetti e gli investimenti di cui al paragrafo 2, indicando per ciascuno tempi e modalità di affidamento e di esecuzione.
4. La conclusione ed il buon andamento di tali intese rappresentano le premesse per la creazione di un forte partenariato italo-libico nel settore economico, commerciale, industriale e negli altri settori ai fini della realizzazione degli obiettivi indicati in uno spirito di leale collaborazione.

5. La Commissione Mista ha il compito di verificare l'andamento degli impegni di cui all'Articolo 8 e al presente Articolo e redige un processo verbale periodico che faccia stato degli obiettivi raggiunti o da raggiungere in relazione agli obblighi assunti dalle Parti contraenti.

6. La Commissione Mista segnala ai competenti Uffici degli Affari Esteri delle due Parti eventuali inadempienze, proponendo ipotesi tecniche di soluzione.

Articolo 10

Iniziative Speciali

L'Italia, su specifica richiesta della Grande Giamahiria, si impegna a realizzare le Iniziative Speciali sotto riportate a beneficio del popolo libico. Le Parti concordano l'ammontare di spesa complessivo per la realizzazione di tali iniziative ed affidano ad appositi Comitati Misti la definizione delle modalità di esecuzione delle stesse ed il limite di spesa annuale da impegnare per ognuna di esse ad eccezione delle borse di studio di cui al punto b).

- a) La costruzione in Libia di duecento unità abitative, con siti e caratteristiche da determinare di comune accordo.
- b) L'assegnazione di borse di studio universitarie e post-universitarie per l'intero corso di studi a un contingente di cento studenti libici, da rinnovare al termine del corso di studi a beneficio di altri studenti. Con uno scambio di lettere si precisa il significato di rinnovare, per assicurare la continuità.
- c) Un programma di cure, presso Istituti specializzati italiani, a favore di alcune vittime in Libia dello scoppio di mine, che non possano essere adeguatamente assistite presso il Centro di Riabilitazione Ortopedica di Bengasi realizzato con i fondi della Cooperazione italiana,
- d) Il ripristino del pagamento delle pensioni ai titolari libici e ai loro eredi che, sulla base della vigente nominativa italiana, ne abbiano diritto,
- e) La restituzione alla Libia di manoscritti e reperti archeologici trasferiti in Italia da quei territori in, epoca coloniale: il Comitato Misto di cui all'articolo 16 del presente Trattato individua i reperti e i manoscritti che saranno, successivamente, oggetto di un atto normativo ad hoc finalizzato alla loro restituzione.

Articolo 11

Visti ai cittadini italiani espulsi dalla Libia

La Grande Giamahiria si impegna dalla firma del presente Trattato a concedere senza limitazioni o restrizioni di sorta ai cittadini italiani espulsi nel passato dalla Libia i visti di ingresso che gli interessati dovessero richiedere per motivi di turismo, di visita o lavoro o per altre finalità.

Articolo 12

Fondo sociale

1. La Grande Giamahiria si impegna a sciogliere l'Azienda Libico-Italiana (ALI) e a costituire contestualmente il Fondo Sociale, utilizzando i contributi già versati dalle aziende italiane alla stessa.
2. L'ammontare del Fondo Sociale sarà utilizzato per le finalità che sono state previste al punto 4 del Comunicato Congiunto italo-libico del 4 luglio 1998 per avviare la realizzazione delle Iniziative Speciali, di cui all'articolo 10 lettere b) e c) del presente Trattato, fino a concorrenza di tale ammontare. In particolare, potranno essere finanziati progetti di bonifica dalle mine e valorizzazione delle aree interessate, programmi di cura in favore di cittadini libici danneggiati dallo scoppio delle mine, nonché altre iniziative a favore dei giovani libici nel settore della formazione universitaria e post-universitaria, sino ad esaurimento del credito del Fondo Sociale. Quindi continuerà il finanziamento dalla Parte italiana, in attuazione del Trattato.
3. A tal fine, è istituito un Comitato Misto paritetico per la gestione del Fondo Sociale secondo le modalità previste dal Comunicato Congiunto.
4. Definite le modalità di gestione dell'ammontare già costituito del Fondo Sociale e le iniziative da finanziare, le due Parti considerano definitivamente esaurito il Fondo Sociale.

Articolo 13

Crediti

1. Per quanto riguarda i crediti vantati dalle aziende italiane nei confronti di Amministrazioni ed Enti libici, le Parti si impegnano a raggiungere con uno scambio di lettere una soluzione sulla base del negoziato nell'ambito del Comitato Crediti.
2. Con il medesimo scambio di lettere, le Parti si impegnano a raggiungere una soluzione anche per quanto riguarda gli eventuali debiti di natura fiscale e/o amministrativa di aziende italiane nei confronti di Enti libici.

CAPO III
NUOVO PARTENARIATO BILATERALE

Articolo 14

Comitato di Partenariato e consultazioni politiche

1. Le due Parti imprimono nuovo impulso alle relazioni bilaterali politiche, economiche, sociali, culturali e scientifiche ed in tutti gli altri settori, con la valorizzazione dei legami storici e la condivisione dei comuni obiettivi di solidarietà tra i popoli e di progresso dell'Umanità.
2. Nel desiderio condiviso di rinsaldare i legami che le uniscono, le due Parti decidono la costituzione di un Partenariato all'altezza del livello di collaborazione e coordinamento cui ambiscono sui temi bilaterali e regionali e sulle questioni internazionali di reciproco interesse. A tale scopo, le due Parti decidono quanto segue:
 - a) una riunione annuale del Comitato di Partenariato, a livello del Presidente del Consiglio dei Ministri e del Segretario del Comitato Popolare Generale, da tenersi alternativamente in Italia e in Libia;
 - b) una riunione annuale del Comitato dei Seguiti, a livello del Ministro degli Affari Esteri e del Segretario del Comitato Popolare Generale per il Collegamento Estero e la Cooperazione Internazionale, da tenersi alternativamente in Italia e in Libia, con il compito di seguire l'attuazione del Trattato e degli altri Accordi di collaborazione, che presenterà le proprie relazioni al Comitato di Partenariato. Qualora una delle Parti ritenga che l'altra Parte abbia contravvenuto ad uno qualsiasi degli impegni previsti dal presente Trattato, richiederà una riunione straordinaria del Comitato dei Seguiti, per un esame approfondito e al fine di trovare una Soluzione soddisfacente.
 - c) il Comitato di Partenariato adotta tutti i provvedimenti necessari all'attuazione degli impegni previsti dal presente Trattato e le due Parti si adoperano per la realizzazione dei suoi scopi;
 - d) lo svolgimento di regolari consultazioni tra altri rappresentanti delle due Parti.
3. Il Ministro degli Affari Esteri e il Segretario del Comitato Popolare Generale per il Collegamento Estero e la Cooperazione Internazionale, ricevuta la segnalazione di cui all'Articolo 9 comma 6, si adoperano per definire una soluzione adeguata.

Articolo 15

Cooperazione negli ambiti scientifici

Le due Parti intensificano la collaborazione nel campo della scienza e della tecnologia e realizzano programmi di formazione e di specializzazione a livello post-universitario. Favoriscono a tal fine lo sviluppo di rapporti tra le università e tra gli Istituti di ricerca e di Formazione dei due Paesi. Sviluppano ulteriormente la collaborazione nel campo sanitario e in quello della ricerca medica, promuovendo i rapporti tra enti ed organismi dei due Paesi.

Articolo 16

Cooperazione culturale

1. Le due Parti approfondiscono i tradizionali vincoli culturali e di amicizia che legano i due popoli ed incoraggiano i contatti diretti tra enti ed organismi culturali dei due Paesi. Sono altresì facilitati gli scambi giovanili e i gemellaggi tra città ed altri enti territoriali dei due Paesi.

2. Le due Parti danno ulteriore impulso alla collaborazione nel settore archeologico. In tale ambito è altresì esaminata, da un apposito Comitato Misto, la problematica concernente la restituzione alla Libia di reperti archeologici e manoscritti.

Le due Parti collaborano anche ai fini della eventuale restituzione alla Libia, da parte di altri Stati, di reperti archeologici sottratti in epoca coloniale.

3. Le due Parti agevolano, sulla base della reciprocità, l'attività rispettivamente dell'Istituto Italiano di Cultura a Tripoli e dell'Accademia Libica in Italia.

4. Le due Parti concordano sulla opportunità di rendere le nuove generazioni sempre più consapevoli delle conseguenze negative generate dalle aggressioni e dalla violenza e si adoperano per la diffusione di una cultura ispirata ai principi della tolleranza e della collaborazione tra i Popoli.

Articolo 17

Collaborazione economica e industriale

1. Le due Parti promuovono progetti di trasferimento di tecnologie e di collaborazione industriale, con riferimento anche a iniziative comuni in Paesi terzi.

2. Sviluppano la collaborazione nei settori delle opere infrastrutturali, dell'aviazione civile, delle costruzioni navali, del turismo, dell'ambiente, dell'agricoltura e della zootecnia, delle biotecnologie, della pesca e dell'acquacoltura, nonché in altri settori di

reciproco interesse, favorendo in particolare lo sviluppo degli investimenti diretti.

3. Esse sostengono le PMI e la costituzione di società miste.
4. Le due Parti si adoperano per concordare entro breve una Intesa tecnica in materia di cooperazione economica, scientifica e tecnologica nel settore della pesca e dell'acquacoltura e favoriscono Intese analoghe tra altri Enti competenti dei due Paesi.

Articolo 18

Collaborazione energetica

1. Le due Parti sottolineano l'importanza strategica per entrambi i Paesi della collaborazione nel settore energetico e si impegnano a favorire il rafforzamento del partenariato in tale settore.
2. Attribuiscono particolare rilievo alle energie rinnovabili ed incoraggiano la cooperazione tra enti ed organismi dei due Paesi, sia sul piano industriale che su quello della ricerca e della formazione.

Articolo 19

Collaborazione nella lotta al terrorismo, alla criminalità organizzata, al traffico di stupefacenti, all'immigrazione clandestina

1. Le due Parti intensificano la collaborazione in atto nella lotta al terrorismo, alla criminalità organizzata, al traffico di stupefacenti e all'immigrazione clandestina, in conformità a quanto previsto dall'Accordo firmato a Roma il 13/12/2000 e dalle successive intese tecniche, tra cui, in particolare, per quanto concerne la lotta all'immigrazione clandestina, i Protocolli di cooperazione firmati a Tripoli il 29 dicembre 2007.
2. Sempre in tema di lotta all'immigrazione clandestina, le due Parti promuovono la realizzazione di un sistema di controllo delle frontiere terrestri libiche, da affidare a società italiane in possesso delle necessarie competenze tecnologiche. Il Governo italiano sosterrà il 50% dei costi, mentre per il restante 50% le due Parti chiederanno all'Unione Europea di farsene carico, tenuto conto delle Intese a suo tempo intervenute tra la Grande Giamahiria e la 'Commissione Europea.
3. Le due Parti collaborano alla definizione di iniziative, sia bilaterali, sia in ambito regionale, per prevenire il fenomeno dell'immigrazione clandestina nei Paesi di origine dei flussi migratori.

Articolo 20

Collaborazione nel settore della Difesa

1 Le due Parti si impegnano a sviluppare la collaborazione nel settore della Difesa tra le rispettive Forze Armate, anche mediante la finalizzazione di specifici Accordi che disciplinino lo scambio di missioni di esperti, istruttori e tecnici e quello di informazioni militari nonché l'espletamento, di manovre congiunte.

2. Si impegnano altresì ad agevolare la realizzazione di un forte ed ampio partenariato industriale nel settore della Difesa e delle industrie militari.

3. In tale ambito, l'Italia sosterrà nelle sedi internazionali la richiesta della Libia di indennizzi per i danni subiti da propri cittadini vittime dello scoppio delle mine e per la riabilitazione dei territori danneggiati, con tutti gli Stati interessati.

Articolo 21

Collaborazione nel settore della non proliferazione e del disarmo

Le due Parti si impegnano a proseguire e rinsaldare la collaborazione nel settore del disarmo e della non proliferazione delle armi di distruzione di massa e dei relativi vettori e ad adoperarsi per fare della Regione del Mediterraneo una zona libera da tali armi, nel pieno rispetto degli obblighi derivanti dagli Accordi e Trattati internazionali in materia.

Articolo 22

Collaborazione parlamentare e tra Enti locali

Le due Parti favoriscono lo sviluppo di rapporti tra il Parlamento italiano ed il Congresso Generale del Popolo della Grande Giamahiria, nonché tra gli Enti locali, nella consapevolezza della loro importanza per una più intensa ed approfondita conoscenza reciproca.

Articolo 23

Disposizioni finali

1. Il presente Trattato, nel rispetto della legalità internazionale, costituisce il principale strumento di riferimento per lo sviluppo delle relazioni bilaterali. Esso è sottoposto a ratifica secondo le procedure costituzionali previste dall'ordinamento di ciascuna delle Parti ed entra in vigore al momento dello scambio degli strumenti di ratifica.

2. Il presente Trattato sostituisce il Comunicato Congiunto del 4 luglio 1998 e il Processo verbale delle conclusioni operative del 28 ottobre 2002, che pertanto cessano

di produrre effetti.)

3. A partire dal corrente anno, il giorno del 30 Agosto viene considerato, in Italia e nella Grande Giamahiria, Giornata dell'Amicizia italo-libica.

4. Il presente Trattato può essere modificato previo accordo delle Parti. Le eventuali modifiche entreranno in vigore alla data di ricezione della seconda delle due notifiche con le quali le Parti si comunicano ufficialmente l'avvenuto espletamento delle rispettive procedure interne.



TRIPOLI DECLARATION

Inspired by the victories of the glorious 17 February Revolution, and being faithful to the martyrs, who sacrificed their lives to achieve freedom and dignity for the Libyan people;

Affirming the will of the Libyan people to build a new State based on democracy and universally agreed principles on human rights;

Acknowledging the shared will to promote peace, security and development at the regional and international levels;

Acknowledging also the prompt humanitarian assistance given by Italy to Libya since the 17 of February 2011;

Libya and Italy emphasize the desire to strengthen their friendship and cooperation in the context of the new vision regarding bilateral and multilateral relations to achieve the goals and principles of the glorious 17 February Revolution and in respect of national sovereignty of both Libya and Italy; as a result the two parties agreed on assessing and building upon the agreements between them and moving forward with the implementation of various activities, through specialized technical committees from the various sectors in the two countries;

H.E. Prime Minister El-Keib and **H.E. Prime Minister Monti** met in Tripoli on 21 January 2012, to celebrate the victories of 17 February Revolution, in order to open new horizons for mutual cooperation for the benefit of the two friendly peoples, and to realize the new vision of Libya in response to the goals of the glorious 17 February Revolution.

A large, stylized handwritten signature in black ink, likely belonging to H.E. Prime Minister El-Keib.

A smaller, handwritten signature in blue ink, likely belonging to H.E. Prime Minister Monti.

D. S/RES/1973, March 17, 2011, United Nations Security Council, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973(2011)), first access 5.08.2012.

The Security Council,

Recalling its resolution 1970 (2011) of 26 February 2011,

Deploring the failure of the Libyan authorities to comply with resolution 1970 (2011),

Expressing grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties,

Reiterating the responsibility of the Libyan authorities to protect the Libyan population and reaffirming that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians,

Condemning the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions,

Further condemning acts of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel and urging these authorities to comply with their obligations under international humanitarian law as outlined in resolution 1738 (2006),

Considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,

Recalling paragraph 26 of resolution 1970 (2011) in which the Council expressed its readiness to consider taking additional appropriate measures, as necessary, to facilitate and support the return of humanitarian agencies and make available humanitarian and related assistance in the Libyan Arab Jamahiriya,

Expressing its determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel,

Recalling the condemnation by the League of Arab States, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that have been and are being committed in the Libyan Arab Jamahiriya,

Taking note of the final communiqué of the Organisation of the Islamic Conference of 8 March 2011, and the communiqué of the Peace and Security Council of the African Union of 10 March 2011 which established an ad hoc High Level Committee on [Libya](#),

Taking note also of the decision of the Council of the League of Arab States of 12 March 2011 to call for the imposition of a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in the Libyan Arab Jamahiriya,

Taking note further of the Secretary-General's call on 16 March 2011 for an immediate cease-fire,

Recalling its decision to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court, and stressing that those responsible for or complicit in attacks targeting the civilian population, including aerial and naval attacks, must be held to account,

Reiterating its concern at the plight of refugees and foreign workers forced to flee the violence in the Libyan Arab Jamahiriya, welcoming the response of neighbouring States, in particular Tunisia and Egypt, to address the needs of those refugees and foreign workers, and calling on the international community to support those efforts,

Deploring the continuing use of mercenaries by the Libyan authorities,

Considering that the establishment of a ban on all flights in the airspace of the Libyan Arab Jamahiriya constitutes an important element for the protection of civilians as well as the safety of the delivery of humanitarian assistance and a decisive step for the cessation of hostilities in Libya,

Expressing concern also for the safety of foreign nationals and their rights in the Libyan Arab Jamahiriya,

Welcoming the appointment by the Secretary General of his Special Envoy to Libya, Mr Abdel-Elah Mohamed Al-Khatib and supporting his efforts to find a sustainable and peaceful solution to the crisis in the Libyan Arab Jamahiriya,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya,

Determining that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the [United Nations](#),

1. Demands the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians;

2. Stresses the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people and notes the decisions of the Secretary-General to send his Special Envoy to Libya and of the Peace and Security Council of the African Union to send its ad hoc High Level Committee to Libya with the aim of facilitating dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution;

3. Demands that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance;

Protection of civilians

4. Authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council;

5. Recognizes the important role of the League of Arab States in matters relating to the maintenance of international peace and security in the region, and bearing in mind Chapter VIII of the Charter of the United Nations, requests the Member States of the League of Arab States to cooperate with other Member States in the implementation of paragraph 4;

No fly zone

6. Decides to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians;

7. Decides further that the ban imposed by paragraph 6 shall not apply to flights whose sole purpose is humanitarian, such as delivering or facilitating the delivery of assistance, including medical supplies, food, humanitarian workers and related assistance, or evacuating foreign nationals from the Libyan Arab Jamahiriya, nor shall it apply to flights authorised by paragraphs 4 or 8, nor other flights which are deemed necessary by States acting under the authorisation conferred in paragraph 8 to be for the benefit of the Libyan people, and that these flights shall be coordinated with any mechanism established under paragraph 8;

8. Authorizes Member States that have notified the Secretary-General and the Secretary-General of the League of Arab States, acting nationally or through regional organizations or arrangements, to take all necessary measures to enforce compliance with the ban on flights imposed by paragraph 6 above, as necessary, and requests the States concerned in cooperation with the League of Arab States to coordinate closely with the Secretary General on the measures they are taking to implement this ban, including by establishing an appropriate mechanism for implementing the provisions of paragraphs 6 and 7 above,

9. Calls upon all Member States, acting nationally or through regional organizations or arrangements, to provide assistance, including any necessary over-flight approvals, for the purposes of implementing paragraphs 4, 6, 7 and 8 above;

10. Requests the Member States concerned to coordinate closely with each other and the Secretary-General on the measures they are taking to implement paragraphs 4, 6, 7 and 8 above, including practical measures for the monitoring and approval of authorised humanitarian or evacuation flights;

11. Decides that the Member States concerned shall inform the Secretary-General and the Secretary-General of the League of Arab States immediately of measures taken in exercise of the authority conferred by paragraph 8 above, including to supply a concept of operations;

12. Requests the Secretary-General to inform the Council immediately of any actions taken by the Member States concerned in exercise of the authority conferred by

paragraph 8 above and to report to the Council within 7 days and every month thereafter on the implementation of this resolution, including information on any violations of the flight ban imposed by paragraph 6 above;

Enforcement of the arms embargo

13. Decides that paragraph 11 of resolution 1970 (2011) shall be replaced by the following paragraph : "Calls upon all Member States, in particular States of the region, acting nationally or through regional organisations or arrangements, in order to ensure strict implementation of the arms embargo established by paragraphs 9 and 10 of resolution 1970 (2011), to inspect in their territory, including seaports and airports, and on the high seas, vessels and aircraft bound to or from the Libyan Arab Jamahiriya, if the State concerned has information that provides reasonable grounds to believe that the cargo contains items the supply, sale, transfer or export of which is prohibited by paragraphs 9 or 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, calls upon all flag States of such vessels and aircraft to cooperate with such inspections and authorises Member States to use all measures commensurate to the specific circumstances to carry out such inspections";

14. Requests Member States which are taking action under paragraph 13 above on the high seas to coordinate closely with each other and the Secretary-General and further requests the States concerned to inform the Secretary-General and the Committee established pursuant to paragraph 24 of resolution 1970 (2011) ("the Committee") immediately of measures taken in the exercise of the authority conferred by paragraph 13 above;

15. Requires any Member State whether acting nationally or through regional organisations or arrangements, when it undertakes an inspection pursuant to paragraph 13 above, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspection, the results of such inspection, and whether or not cooperation was provided, and, if prohibited items for transfer are found, further requires such Member States to submit to the Committee, at a later stage, a subsequent written report containing relevant details on the inspection, seizure, and disposal, and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report;

16. Deplores the continuing flows of mercenaries into the Libyan Arab Jamahiriya and calls upon all Member States to comply strictly with their obligations under paragraph 9 of resolution 1970 (2011) to prevent the provision of armed mercenary personnel to the Libyan Arab Jamahiriya;

Ban on flights

17. Decides that all States shall deny permission to any aircraft registered in the Libyan Arab Jamahiriya or owned or operated by Libyan nationals or companies to take off from, land in or overfly their territory unless the particular flight has been approved in advance by the Committee, or in the case of an emergency landing;

18. Decides that all States shall deny permission to any aircraft to take off from, land in or overfly their territory, if they have information that provides reasonable grounds to believe that the aircraft contains items the supply, sale, transfer, or export of which is prohibited by paragraphs 9 and 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, except in the case of an emergency landing;

Asset freeze

19. Decides that the asset freeze imposed by paragraph 17, 19, 20 and 21 of resolution 1970 (2011) shall apply to all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the Libyan authorities, as designated by the Committee, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by the Committee, and decides further that all States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the Libyan authorities, as designated by the Committee, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, as designated by the Committee, and directs the Committee to designate such Libyan authorities, individuals or entities within 30 days of the date of the adoption of this resolution and as appropriate thereafter;

20. Affirms its determination to ensure that assets frozen pursuant to paragraph 17 of resolution 1970 (2011) shall, at a later stage, as soon as possible be made available to and for the benefit of the people of the Libyan Arab Jamahiriya;

21. Decides that all States shall require their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in the Libyan Arab Jamahiriya or subject to its jurisdiction, and any individuals or entities acting on their behalf or at their direction, and entities owned or controlled by them, if the States have information that provides reasonable grounds to believe that such business could contribute to violence and use of force against civilians;

Designations

22. Decides that the individuals listed in Annex I shall be subject to the travel restrictions imposed in paragraphs 15 and 16 of resolution 1970 (2011), and decides further that the individuals and entities listed in Annex II shall be subject to the asset freeze imposed in paragraphs 17, 19, 20 and 21 of resolution 1970 (2011);

23. Decides that the measures specified in paragraphs 15, 16, 17, 19, 20 and 21 of resolution 1970 (2011) shall apply also to individuals and entities determined by the Council or the Committee to have violated the provisions of resolution 1970 (2011), particularly paragraphs 9 and 10 thereof, or to have assisted others in doing so;

Panel of experts

24. Requests the Secretary-General to create for an initial period of one year, in consultation with the Committee, a group of up to eight experts ("Panel of Experts"), under the direction of the Committee to carry out the following tasks:

(a) Assist the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011) and this resolution;

(b) Gather, examine and analyse information from States, relevant United Nations bodies, regional organisations and other interested parties regarding the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;

(c) Make recommendations on actions the Council, or the Committee or State, may consider to improve implementation of the relevant measures;

(d) Provide to the Council an interim report on its work no later than 90 days after the Panel's appointment, and a final report to the Council no later than 30 days prior to the termination of its mandate with its findings and recommendations;

25. Urges all States, relevant United Nations bodies and other interested parties, to cooperate fully with the Committee and the Panel of Experts, in particular by supplying any information at their disposal on the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;

26. Decides that the mandate of the Committee as set out in paragraph 24 of resolution 1970 (2011) shall also apply to the measures decided in this resolution;

27. Decides that all States, including the Libyan Arab Jamahiriya, shall take the necessary measures to ensure that no claim shall lie at the instance of the Libyan authorities, or of any person or body in the Libyan Arab Jamahiriya, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolution 1970 (2011), this resolution and related resolutions;

28. Reaffirms its intention to keep the actions of the Libyan authorities under continuous review and underlines its readiness to review at any time the measures imposed by this resolution and resolution 1970 (2011), including by strengthening, suspending or lifting those measures, as appropriate, based on compliance by the Libyan authorities with this resolution and resolution 1970 (2011).

29. Decides to remain actively seized of the matter.