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Revolution and Intervention in the Middle East

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REVOLUTION AND INTERVENTION IN THE MIDDLE EAST

This panel was convened at 9:00 a.m., Saturday, March 26, by its moderator, Monica Hakimi of the University of Michigan School of Law, who introduced the panelists: Ali Aujali, former Ambassador of Libya to the United States; Harold Koh, Legal Adviser of the U.S. Department of State; Hussein Hassouna, Ambassador of the League of Arab States to the United States; Mary Ellen O'Connell of Notre Dame Law School; and Catherine Powell of the Secretary of State's Policy Planning Office, U.S. Department of State.

INTRODUCTORY REMARKS BY MONICA HAKIMI*

Welcome to this morning's panel entitled "Revolution and Intervention in the Middle East." Over the past couple of months, we have seen a wave of protests throughout the Middle East and North Africa. Most of these protests have been largely peaceful and seem to be motivated by a mix of economic and political concerns that people have with the way in which their governments function. The governments have responded in a variety of different ways. So on one end of the spectrum, we've seen governments implement modest economic or political reforms to appease the protesters' demands.

To give you some examples, in Jordan, the king fired his government, including his prime minister. In Algeria, the government lifted the state of emergency. In Morocco, the president promised significant constitutional reforms. In Oman, the sultan decided to give lawmaking authority to officials outside the royal family, and in Saudi Arabia, the government increased the amount of government handouts.

In the middle of the spectrum, we've seen some actual or anticipated regime change, most obviously in Tunisia and Egypt, but more recently the presidents of Yemen and Sudan have indicated that they are willing to hand over power in the near to medium term.

At the other end of the spectrum, we've seen several governments use violence against the protestors or against their people. Of course, the violence has varied in degree and severity; in some cases, it's been quite serious. The information is imperfect, but from what I've been able to gather, the following countries have used violence against their people: Sudan, Syria, Iran, Bahrain, Libya, Algeria, Iraq, Morocco, Yemen, and Mauritania.

Of course, some governments have used a combination of these measures. As I mentioned, Yemeni President Saleh indicated that he is ready to hand over leadership and responsibility for the government. He also has used violence against his people, likewise in Sudan.

So that's the big picture, and I'm sure the speakers here will refer in the course of their remarks to what's been happening in the Middle East and North Africa generally, but the focus of our discussion today will really be on Libya.

From what I understand, governmental violence against the Libyan people even before the conflict broke out was more excessive than in most other countries, and the protestors relatively quickly took up arms against the government.

The international community responded through several different measures. On February 25th, 2011, the Human Rights Council established a Commission of Inquiry on Libya. On February 26th, the UN Security Council passed Resolution 1970 in which, among other things, it referred the situation in Libya to the prosecutor of the International Criminal Court and established an arms embargo and asset freeze. On March 12th, the Arab League asked the UN Security Council to implement a no-fly zone over Libya. On March 17th, the UN

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Security Council adopted Resolution 1973 in which, among other things, it demanded a cease-fire in Libya; it established a no-fly zone over Libya with some important exceptions; and, perhaps most importantly, it authorized member states to take all necessary measures to protect civilians and civilian-populated areas under threat of attack in Libya, while at the same time excluding a foreign occupation force on Libyan territory. Shortly thereafter, the United States and other countries engaged in a military air operation in Libya.

So, with that introduction, let's begin the roundtable. We decided to structure the roundtable more as a conversation than a series of formal presentations, and so we will anchor the conversation by some questions that we have developed collectively over the course of the past couple of days.

Let me introduce each panelist briefly. Immediately to my left, Ambassador Ali Aujali, who is the former Ambassador of Libya to the United States; one over, Ambassador Hussein Hassouna, the Ambassador of the Arab League to the United States; one over, Harold Hongju Koh, the Legal Adviser at the U.S. Department of State, on leave from his position as the Martin R. Flug '55 Professor of International Law at the Yale Law School; next, Mary Ellen O'Connell, the Robert and Marian Short Chair in Law and Research Professor of International Dispute Resolution, Kroc Institute at the Notre Dame Law School; and last but certainly not least, Catherine Powell from the Secretary of State's Office of Policy Planning, U.S. Department of State, on leave from her position as Associate Professor of Law at Fordham Law School.

So, Harold, maybe we could start with you if you don't mind just relaying to us the legal justification for the use of force, both under international and U.S. domestic law.

REMARKS BY HAROLD KOH^{*}

Thank you, Monica. It is always a pleasure and an honor to speak here at the American Society of International Law's Annual Meeting.

As your President, David Caron, noted last night, I am the 22nd American to serve as Legal Adviser of the U.S. Department of State, and I am honored to serve during this, the eightieth year after Congress first created our office by statute. At a conference on the history of the Legal Adviser's Office held at Georgetown Law School earlier this month, I gave a keynote address that took note of the Legal Adviser's historical role as spokesperson for the United States government regarding international law, and of what I called the Legal Adviser's "Duty to Explain": the historical practice of the Legal Adviser publicly explaining the legal basis for United States military actions that might occur in the international realm. It is in that spirit that I appear here this morning to give the following statement.

On March 19, 2011, at President Obama's direction, U.S. military forces began a series of strikes in the national security and foreign policy interests of the United States to enforce UN Security Council Resolution 1973. These strikes will be limited in their nature, duration, and scope.

Their explicit purpose is to support an international coalition as it takes all necessary measures to enforce the terms of Resolution 1973 (adopted on March 17, 2011) as part of an international effort authorized by the United Nations Security Council and undertaken with the support of European allies and Arab partners, in order to prevent a humanitarian

^{*} Legal Adviser, U.S. Department of State.

catastrophe and address the threat posed to international peace and security by the crisis in Libya.

U.S. forces are conducting a limited and well-defined mission in support of international efforts to protect civilians, to prevent a humanitarian disaster, and to set the stage for further action by other coalition partners. U.S. military efforts are discrete and focused on employing unique U.S. military capabilities to set the conditions for our European allies and Arab partners to continue to carry out the measures authorized by Resolution 1973. The United States has not deployed ground forces into Libya and will not do so. U.S. forces have targeted the Qaddafi regime's air defense systems, command and control structures, and other capabilities of Qaddafi's armed forces used to attack civilians and civilian-populated areas. We are working with our allies to transition to NATO and other partners the principal command and control of this effort and to ensure the continuation of activities necessary to realize the objectives of UN Security Council Resolutions 1970 (adopted on February 26, 2011) and 1973.

As Secretary of State Clinton emphasized on March 24:

From the start, President Obama has stressed that the role of the U.S. military would be limited in time and scope. Our mission has been to use America's unique capabilities to create the conditions for the no-fly zone and to assist in meeting urgent humanitarian needs. And as expected, we're already seeing a significant reduction in the number of U.S. planes involved in operations as the number of planes from other countries increase in numbers. [As of Thursday, March 24th, we took] the next step. We have agreed, along with our NATO allies, to transition command and control for the no-fly zone over Libya to NATO. All 28 allies have also now authorized military authorities to develop an operations plan for NATO to take on the broader civilian protection mission under Resolution 1973.

As our press spokesman specified yesterday, "[T]his decision to go forward with the planning reflects an agreement in principle by allies that this mission should be integrated into NATO's command and control role, but it will not be formally agreed until allies approve the plan, which will take place likely [either tomorrow] or Monday—Sunday, March 27th or Monday, March 28th."

These U.S. military actions rest on ample international legal authority. Chapter VII of the United Nations Charter grants authority to the Security Council to decide what measures shall be taken to maintain or restore international peace and security where it determines the existence of any threat to the peace, breach of the peace, or act of aggression (Article 39). Articles 41 and 42 further specify that the Security Council may take such action by air, sea, and land forces as may be necessary to maintain or restore international peace and security. Acting under Chapter VII, in Resolution 1973 the Security Council determined that the situation in the Libyan Arab Jamahiriya constitutes a threat to international peace and security (PP21), and that the following steps were necessary:

(1) Operative Paragraphs 6 to 8 of the resolution imposed a no-fly zone in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians, and authorized states to take "all necessary measures" to enforce that no-fly zone in accordance with the resolution;

(2) Operative Paragraph 4 of the resolution authorized member states to take all necessary measures 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

(3) Operative Paragraph 13 authorized member states to use all measures commensurate with the specific circumstances to carry out inspections aimed at the enforcement of the

arms embargo. Under the Security Council authorizations, member states may also work through regional organizations or arrangements, and with local partners who share the goal of preventing attacks on civilians or civilian-populated areas.

Resolution 1973 sent Qaddafi a very clear message that a ceasefire must be implemented immediately. In addition, President Obama made clear that Qaddafi was to stop his forces from advancing on Benghazi, to pull them back from Ajdabiya, Misrata, and Zawiyah, and to establish water, electricity, and gas supplies to all areas. The resolutions also made clear that humanitarian assistance had to be allowed to reach the people of Libya. Although Qaddafi's Foreign Minister announced a ceasefire, Qaddafi and his forces instead continued attacks on Misrata, and advanced on Benghazi.

Qaddafi also threatened civilians living in areas that refused to acquiesce to his threats, declaring, "We will come house by house, room by room. . . . We will find you in your closets. We will have no mercy and no pity." As President Obama said in his weekly address "I firmly believe that when innocent people are being brutalized; when someone like Qaddafi threatens a bloodbath that could destabilize an entire region; and when the international community is prepared to come together to save thousands of lives—then it's in our national interest to act. And, it's our responsibility. This is one of those times."

Qaddafi's defiance of the Arab League as well as the broader international community represents a lawless challenge to the authority of the Security Council and its efforts to preserve stability in the region. The United States supports the Security Council's conclusion that Qaddafi's continued attacks and threats against civilians and civilian-populated areas are of grave concern to neighboring Arab nations and constitute a threat to the region and to international peace and security. His illegitimate use of force not only is causing the deaths of substantial numbers of civilians among his own people, but also is forcing many others to flee to neighboring countries, thereby destabilizing the peace and security of the region. Qaddafi has forfeited his responsibility to protect his own citizens and created a serious need for immediate humanitarian assistance and protection, with any further delay only putting more civilians at risk. Left unaddressed, the growing instability in Libya could ignite wider instability in the Middle East with dangerous consequences to the national security interests of the United States, which made these actions necessary.

The President directed these actions, which are in the national security and foreign policy interests of the United States, pursuant to his constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive. The President has well-recognized authority to authorize a mission of this kind, which as he explained, will be time-limited, well-defined, discrete, and aimed at preventing an imminent humanitarian catastrophe that directly implicates the national security and foreign policy interests of the United States. The administration has been closely consulting Congress regarding the situation in Libya, including in a session with the bipartisan leadership that the President conducted before his announcement. Before Resolution 1973 was adopted, the Senate adopted its own resolution by unanimous consent on March 1, 2011 (S. Res. 85), calling for a no-fly zone. The President has acted consistently with the reporting requirements in the War Powers Resolution, and has furthermore indicated that he is committed to ongoing, close consultations with Congress as the situation develops.

In sum, the United States' military actions in Libya are lawful. Thank you very much.

[Applause]

MONICA HAKIMI

Thank you, Harold.

Ambassador Hassouna, the Arab League was critical in getting UN Security Council Resolution 1973 adopted. Given that that is the international legal foundation for the use of force, perhaps we should turn to you and ask why it is that the Arab League thought it was so critical to establish a no-fly zone over Libya and not elsewhere in the Arab world, and whether the Arab League is in fact satisfied with the way in which the military operation in Libya has been conducted.

REMARKS BY HUSSEIN HASSOUNA*

Thank you very much. First of all, I'd like to express my appreciation to the American Society of International Law for organizing this panel. I think it's an extremely important topic, and I'm very glad to have been invited to take part in it with my friend, the Legal Adviser, Mr. Koh, but unlike the Legal Adviser, I am only former Legal Adviser of Egypt, so I will not use the podium and will speak from where I'm sitting. I will not make a formal presentation. I will just make some comments about the topic.

Looking at the broader picture in the Middle East, there have been some historic developments since the beginning of this year, and in my view, they are all positive. There is a new political order, and whereas the root causes of these developments are common root causes—political, economic, social reasons—each country has its own specificity, and I think this is very important. There is a tendency sometimes to generalize.

How this will develop, in my view, will depend on the way the leadership of each country is going to respond to the legitimate aspirations of the people. If the leadership does not respond, or uses force to crush this movement, then we will see bloodshed, we will see violence, we will see use of force. But if the leadership does respond peacefully, as has happened in Egypt, then we can see a peaceful development, a peaceful transition to a better system.

In Egypt, where I come from, I must say things have been peaceful. There were calls for universal human rights. It was not a call for any local aspiration or demand. It was a call for respect for universal human rights, the right of freedom, the right of human dignity, and, of course, the right of freedom of speech and democracy. The revolution succeeded because the response of the leadership was also peaceful.

We have seen since then a positive new climate, a movement for the respect of the rule of law, a movement for strengthening civil society, a movement calling for a fight against corruption, a movement calling for accountability for crimes committed in the past, and, most importantly in my view, a movement to create a judicial system that is independent and that has already played an important role in the internal development in Egypt. For instance, there was a referendum lately on nine articles amending the constitution, and it was supervised by the judiciary. The judiciary will play a more important role in the coming days where we'll see parliamentary elections and then presidential elections. So I think this is a good development, and it needs encouragement and support from the international community. But what is more important is not only to help the people with political and economic support, but also with legal support, because I think strong legal institutions are the basis of each society, and sometimes this is overlooked.

* Ambassador of the Arab League to the United States.

So we come to a situation that is completely different, and that is Libya. In Libya, we've seen the people asking for the same rights. They have been met by the leadership with brutal force. There was a crackdown. The situation has now developed. They are on the brink of a civil war, and this led to a lot of bloodshed, victims on all sides, the civilian population under attack, and, of course, this has created great concern in the region.

This has led the Arab League to meet on different occasions. First, it met and condemned the use of force against civilians and the commission of crimes and violation of human rights. It decided that the Libyan authorities would no longer be allowed to take part in the meetings of the Arab League, so this was a first step—to suspend the active participation of the Libyan government in the deliberations of the League.

The second step was adopted on March 12th, when the Arab League met and called for a cease-fire, a withdrawal of the forces of the Libyan regime from the lines on which they were deployed and from which they were trying to attack civilians. The League requested the Security Council to authorize the imposition of a no-fly zone.

The main objective of this resolution was the protection of civilians. It also called for respect for international humanitarian law. It called for the creation of safety zones, which is a concept that was adopted in other conflict situations, such as the former Yugoslavia, and it emphasized the importance of maintaining the unity of Libya and preserving the territorial integrity of Libya. So it was clear that it did not allow for occupation forces. It did not allow for dividing the country, and, most importantly, it did not call for regime change, which was also later the case with Security Council Resolution 1973. It was left to the people of Libya to determine their own future.

What significance did the resolution of the Arab League have? I think in all objectivity that the resolution was crucial, because without the position adopted by the Arab states, there would not have been a United Nations resolution, there would not have been a coalition action intervening in Libya. Even the U.S. position was that it was essential that the regional organization concerned, that was recognized by the Security Council resolution as playing an important role in international peace and security, should take the first step.

Again, if you look through a broader lens, you will find that Chapter 8 of the United Nations Charter gives to regional organizations a role in the maintenance of regional peace. They have a certain priority in settling regional disputes, and they can even take enforcement action under full supervision of the Security Council. So the Charter accepts the role of regional organizations in this field.

I want to recall that what has happened in the Libyan situation reminds us of what happened when Iraq invaded Kuwait in 1990. The Security Council adopted resolutions on this occasion, and an international coalition was formed that included countries of the region, like Egypt, Syria, and Saudi Arabia. They took part in this coalition with a view to liberating Kuwait, not invading Iraq. And it was only when the Arab League met in Cairo and adopted a resolution calling for the intervention of the international community to liberate Kuwait, that this action acquired legitimacy in the eyes of the members of the regional organizations.

So the Arab League is the organization that confers Arab legitimacy on any action, just as the United Nations is the organization that confers UN legitimacy on other actions.

So why is the Libyan situation unique? It is unique because of the scale of the violence. We have seen revolutions. We have seen uprisings, and I like to use the word "uprisings" because I have seen that sometimes people call what is happening in the Middle East "revolutions," "awakening," "revolts." I think "uprising" is probably the most appropriate word to use.

What happens is that in a lot of countries, for example, in Yemen, in Bahrain, and in others, there were uprisings. There was violence. There were civilian casualties. But the regime never used such brutal force to crush the will of the people. There have been no battles like in Libya. There was no declared policy of the regime to go on crushing and resorting to mass killing, as has happened in Libya. So there is a huge difference, and that is why I have started to say that each case differs according to how the regime responds to the aspiration of its people.

You mentioned that the Arab League has expressed some concern lately. Well, it has. It has concern because in the view of the League, the main purpose of this intervention should be the protection of civilians through the imposition of a no-fly zone. But it has gone beyond that. There have been air strikes, and in any conflict situation where air strikes are involved, there are civilian casualties. If you look at Afghanistan or other conflict areas, casualties are caused by human error and often become part of the collateral damage.

So the same has happened in Libya, and it will continue to happen. There has been concern on the part of the Arab League to avoid that, but does this mean that the Arab League has changed its position? Certainly not. On the contrary, the League is supporting the no-fly zone. Two Arab countries, Qatar and United Arab Emirates, have sent airplanes to take part in the imposition of the no-fly zone, and some other Arab countries have helped in humanitarian assistance and providing logistical support, even in overflight rights. So I think it is really a collective response to what's going on, and it is being done in full cooperation with the United Nations and the coalition.

But what is important in my view now is to keep this unity, this unity of purpose and unity of action between the United Nations, the coalition, and the regional organizations concerned. The larger question of humanitarian intervention and the duty to protect is another issue, which I hope we can have time to discuss later on. Thank you very much.

[Applause]

MONICA HAKIMI

Thank you, Ambassador.

Catherine, maybe this is a good time for you to step in and let us know what the U.S. government's interests are with respect to the military operation in Libya. Harold described to us the international and U.S. domestic legal justification for the use of force. Ambassador Hassouna described to us why it is that the Arab League supported and continues to support a limited operation in Libya. So now the questions become: Given that we have authority, why is it that the U.S. government decided to exercise that authority? When and why did the U.S. government decide that force was necessary in Libya? What are the goals of our military operation in Libya? Are we accomplishing those goals? And how do we square the asserted targeted goals of the operation and the interests of the Arab League specifically not to call for a regime change with President Obama's assertion that he would like to see Qaddafi removed from power?

REMARKS BY CATHERINE POWELL*

Thank you, Monica. To answer that set of very rich questions, let me be clear about what Secretary Clinton has said about where we stand and how we have gotten here.

* Of the Secretary of State's Office of Policy Planning, U.S. Department of State.

When the Libyan people sought to realize their democratic aspirations, they were met with extreme violence from their government. We know that Qaddafi has said that he would “cleanse the city of Benghazi.”

The Libyan people appealed to the world to help stop the brutal attacks on them, and the world listened. The Arab League called for urgent action, as we just heard. In response, the UN Security Council mandated all necessary measures to protect civilians, including a no-fly zone. Despite this, Qaddafi’s forces continued their assaults, and last weekend, they reached Benghazi itself.

We faced the prospect of an imminent humanitarian disaster that could destabilize the region, so the international coalition was compelled to act through the military operations that Harold described. Many other nations joined the effort, as Ambassador Hassouna mentioned. We welcome these important steps because they underscore the breadth of the international coalition and the depth of concern for the plight of the Libyan people.

We have always said that Arab leadership and participation is crucial, and the Arab League showed that leadership with its pivotal statement on Libya. In less than a week, we have made significant progress. A massacre in Benghazi was prevented. Qaddafi’s air forces and air defenses have been rendered largely ineffective, and the coalition is in control of the skies above Libya. Humanitarian relief is beginning to reach the city of Benghazi, with nurses and doctors arriving over the last couple of days. President Obama has said that the role of the United States must be limited in time and scope, and so we are now taking the next steps to transition to NATO.

Of course, the coalition includes countries beyond NATO, including Arab partners, and we expect them to continue to play an important political role in guiding the effort through a contact group, which will meet in London this upcoming Tuesday, in which Secretary Clinton will participate, along with other foreign ministers, and which will include the AU along with the Arab League and the United Nations to coordinate the larger political campaign of economic sanctions and other efforts to pressure Qaddafi.

This operation has already saved many lives, but the danger is far from over as long as the Qaddafi regime threatens his people and defies the United Nations. So, to answer the other part of your question—how can we square the limited goals of the military operation with the broader goals of forcing Qaddafi to step down—we are focused on the mission at hand and the military action taken pursuant to 1973 as a response to a very specific threat—the threat of a potential humanitarian disaster. Removing Qaddafi from power is not the purpose or aim of this military action, but President Obama has said that Qaddafi has forfeited the trust of his people and the ability to lead his people.

So we are working on two tracks. Harold described Track One: the military track. Track Two involves a wide range of tools that the U.S. and other countries are using to put pressure on the Qaddafi regime: travel bans, economic sanctions, the historic U.S. support for the ICC referral made by the Security Council. We are using a variety of tools to isolate Qaddafi in order to assist the transition the Libyan people are calling for—to a more democratic system that respects the rights that Ambassador Hassouna talked about, the rule of law, respect for civil society, and the rights of civil society to speak and to associate freely.

This is a good example of how we can combine the use of force—to protect civilians—with diplomatic, economic, and political tools to pressure Qaddafi. It’s an example of 21st-century statecraft—how we can combine civilian power with military power.

Working on these two tracks, so far we’ve stopped Qaddafi in his tracks. We’ve stopped a massacre. We’re hearing that ordinary Libyans don’t support his continued rule. Even

members of his inner circle are reaching out to find a way out. So far, our strategy is working. By combining these tools, we can help continue to protect civilians and to peel away Qaddafi's support. Thank you.

[Applause]

MONICA HAKIMI

Thank you, Catherine.

Mary Ellen, we've heard three arguments for the use of force in Libya: the legal argument, the Arab League's policy argument, and the U.S. government's policy argument. I understand that you are quite critical of the use of force in Libya, so I will give you an opportunity to respond and express your legal and policy concerns with the operation.

REMARKS BY MARY ELLEN O'CONNELL*

I am really only competent to talk about the international law and the use of force, so I will restrict my comments to that. I have two points about the international law relevant to the Libyan intervention to date.

The first I can state quite succinctly. UN Security Council Resolution 1973 should finally put an end to claims that there is a right to use military force for humanitarian intervention or responsibility to protect purposes without Security Council authorization.

Second, the Security Council authorization in this case, Resolution 1973, should, I very much hope, raise our awareness of the importance of the principle of necessity in the resort to force in any case. Necessity requires that before a resort to force, an assessment must be made that the use of force is a last resort, and that it stands a good chance, a more likely than not chance, of succeeding and accomplishing the military objective.

Did the Security Council in adopting Resolution 1973 or the states deciding to use force today under it consider the principle of necessity in deciding on military force in Libya? We know that necessity is a general principle of international law that attaches to every forceful action undertaken by states, whether for enforcement purposes such as countermeasures, or the use of military force.

The International Court of Justice has explained in several important cases, including *Nuclear Weapons*, the *Nicaragua* case, and the *Oil Platforms* case that necessity attaches to every use of military force. If success cannot be predicted at the outset of a resort to force, then nonmilitary means must be used, the types of means that Catherine just explained the United States is also using.

In assessing the use of force in Libya, first we must be clear about what the objective for the force was in order to determine whether force would succeed in accomplishing it. Many critics have said that they are not sure what the goal of 1973 was, what the purpose was of the coalition in using force. I don't think that is entirely fair. I think 1973 is quite clear about what the objective is, and we heard about it again this morning from Ambassador Hassouna. It is to protect civilians through either a no-fly zone or all necessary means, but excluding any type of occupation force.

However, we have a problem under necessity. The establishment of a no-fly zone has itself resulted in the loss of civilian lives. We have not heard any estimate from any of the

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speakers so far about how many people have likely been killed by coalition military action in Libya.

Moreover, and even more worrying, we can predict that the intervention will perhaps lead—and this could have been predicted a week ago before the resolution was taken—to the partition of Libya, and yet the resolution itself says that there should be unity in Libya.

Third, President Obama has spoken of Qaddafi going, but has not said how that will protect civilians. We need only look at the violence and instability in Libya's neighbor, Chad, the scene of so many French interventions, to know and recall that political instability created by military intervention does not lead to the protection of civilians.

I agree with Richard Falk's assessment that the recent record of intervention during the last several decades is one of almost unbroken failure, if either the human cost or political outcomes are taken into account. Such interventionary experiences in the Islamic world during the last fifty years make it impossible to sustain the burden of persuasion that would be needed to justify an anti-regime intervention in Libya in some ethically and legally persuasive way.

Moreover, a possible unintended consequence is the further deaths of civilians in other countries such as Syria. Did the Syrians rise up because they believed NATO would intervene for them? Did they fail to plan more carefully to organize and to resist their government in a way that would be successful and protective of human lives because of what they saw happening in their neighbor? Is 1973 a moral hazard? I wonder indeed if the Libyans themselves didn't rise up because of the talk about a no-fly zone in connection with the Egyptian uprising. The regional instability that Harold Koh has spoken of actually seems to be more related to intervention and to interventionism than to the uprisings and to the way that Qaddafi was dealing with his people.

Thus, while 1973 is essential, it is not sufficient. The principle of necessity indicates that this was not a case for major military intervention under international law, as Germany so well predicted when it abstained from voting in favor of the resolution.

Thank you.

[Applause]

MONICA HAKIMI

Ambassador Aujali, Mary Ellen asks whether the use of force is actually necessary, given the conditions on the ground in Libya, and says that a partition of Libya is likely now, given the intervention. So our questions to you are: How do Libyans and others in the region assess the intervention? What does the future hold for Libya? And how do you envision the country ending this conflict and recovering from this it?

REMARKS BY ALI AUJALI*

Good morning and thank you, Monica, very much.

I never expected that I would find myself in this kind of situation. Just before the incident took place on the 15th in Benghazi, I was shopping around to buy some furniture, and I am thinking to go back to Libya.

The situation in Libya, as has been mentioned, is a unique situation. When people started to protest the regime on the 15th of last month, because of what happened in Tunisia and Egypt, the regime thought there was only one option: that they will never let this protest go

* Former Ambassador of Libya to the United States.

more than a few meters from where the protesters stood. The regime started to arrest people and arrest activists, and the thing snowballed from there.

Regarding the assessment of an intervention, just two days before Saturday the 19th, I received telephone calls from Mustafa Abd-al-Jalil. He is the chairman of the Interim Council, and from Dr. Ali Al-Esawi, who is in charge of foreign relations. They told me that I have to do something. Well, it is a big question for me, what I am going to do. They said Benghazi is now surrounded by Qaddafi forces, that they are only about 40 miles from Benghazi, and if no action is taken, we will have another massacre in Africa that will be like the one in Rwanda.

I started to make some calls and talked to some friends, but the picture is more clear for them than for me or for the people in Libya.

Saturday, the first attack on the Qaddafi forces was made by French jets. They were able to hit Qaddafi's forces at 40 miles, which is about 66 kilometers from Benghazi. Of course, even when the French started to hit earlier, Qaddafi managed to hit certain small cities surrounding Benghazi. But it was the right action at the right time to prevent Qaddafi from carrying on his killing.

The problem with this regime is not that they are killing to prevent people from stopping Qaddafi, but that Qaddafi just kills anybody in front of him. What happened in Ajdabiya, for example, the strategic city between Benghazi and Ras Lanuf, is a tragedy.

The intervention of international force is important and necessary. Why? Because Qaddafi's regime is the one using tanks and air strikes against the Libyan people. Instead of marching against the regime, the Libyans found that they have to defend themselves, they have to defend their families, and they have to do whatever they can to capture arms from the camps surrounding Benghazi.

Benghazi is a unique city. From every part of Libya, you find some tribes living in Benghazi. When this action started in Benghazi, then all Libya started to protest. Unfortunately, Qaddafi forces managed to keep some cities like Tripoli, Misrata, and others under very severe control. The response to the call of the Libyans in Benghazi came late from the other cities, but if what is happening in Benghazi happened in other cities, where one tribe, for example, includes a majority of the inhabitants, then perhaps their response would be difficult.

The international community is aware of what's going on, and without the intervention, God knows what would happen in Libya. Three or four days ago, there was a big march staged by the regime, with media invited and marchers carrying about 30 coffins. The marchers were shouting that these were the bodies of the victims of the alliance's air strikes. However, a CNN reporter found that more than half of those 30 coffins were empty. Of the bodies in the coffins, some were exposed. This is what Qaddafi does. He takes everything and reverses it so that everything bad is due to the air strikes. This is something we expected, and it came as no surprise to anybody.

I believe that without the intervention, there will be no way for the Libyan people to regain their freedom, to have a democratic country. The Security Council resolution created a no-fly zone. This is important, but the resolution also listed other necessary actions, which are even more important. I believe that to protect the Libyan people, you have to protect them from Qaddafi. As long as this man is around, we will never have a future, we will never be safe. And not only will Libya never be safe, but the world won't either, especially the countries who took an action against the regime.

Qaddafi has been in power for 42 years. The people are fighting to get rid of him. Who is fighting for Qaddafi? Maybe 70 percent of them are mercenaries. Qaddafi has money and

strong relations with African countries. Where is the Libyan army? The Libyan army is not there. Qaddafi has brigades under the control of his relatives or his sons.

This is completely different from the situation in Tunisia and Egypt. In both Tunisia and Egypt, the army was the one that decided the situation. In Libya, there is no army, just a name. Somebody called me yesterday. I asked him, "What you are doing? You have the cover of the coalition, but you are not making progress on land." He told me, "Well, we are not making progress because, unfortunately, we don't have enough weapons." The range of Qaddafi's weapons is more than the range of the protesters' weapons because the protesters are not soldiers. They are students, they are teachers, they are professors, they are businessmen. They are not a regular army to fight Qaddafi. They find themselves facing the weapons.

I believe the mission of the coalition is twofold: first, to protect the people from Qaddafi's machine; second, to protect them from Qaddafi himself. The Libyans decided from the beginning that they don't want troops on Libyan soil, and I think this is a good decision both for us and for the coalition. Qaddafi would claim that he is a victim of an international conspiracy, but the point is that these fighters and protesters need help. They need help with ammunition. They need help with weapons.

Today the news is very good. The protesters now control Ajdabiya, a strategic point, and then they will move to the west. Then nobody can blame the Libyans for asking for international protection. This is one of the very rare decisions taken by the Arab League to stand by the people in these circumstances because the world witnessed how Qaddafi killed his people. He is using missiles and tanks against human beings. There is no way for Libyans to march for their freedom, to transition to a democratic country, to have normal relations, to be proud to be a Libyan, without the help of the international community.

What is next? How is this going to end? I believe that, without the completion of the coalition's mission, Libya is in danger. Thus we need the coalition to be united, to be strong, to help the Libyans until they march to where Qaddafi is and either capture or kill him. We will never be safe if Qaddafi is still around.

After the 17th, the leadership of the Libyan people decided to create an Interim Council to coordinate on the ground and coordinate with the international community. I have been asked so many questions about the Council and who its members are. Of course, Qaddafi left no leadership in the country. There is no minister in the Libyan government who can be called by his name in the media. It is a difficult situation, but there are some people from the regime who served for a few years. Qaddafi brought them into the government to help reform Libya. For example, Mustafa Abd-al-Jalil, the chair of the Council, was the former minister of justice. He was the first Libyan to resign in the People's Congress on the air, protesting about the regime killing prisoners, political prisoners without any charges made against them. Mustafa Abd-al-Jalil made it very clear that this was unacceptable. I was waiting for his resignation to be accepted, but Qaddafi never lets anybody go with dignity. He didn't accept the resignation and just left it until finally he decided that he would let him go.

What we need from the international community besides the air strikes and the no-fly zone, is international recognition of the Interim Council. France was the first country to recognize it. If France can do this, I think everybody can do it. I am not a lawyer, but I think the French studied all the legal questions before recognizing the Council. That's what we really want from the international community. Recognition is very important.

The second request we have is for authority to be given to the Council to use Qaddafi's frozen assets to buy medicine and food, and to purchase arms in order to stop Qaddafi and to remove him from power.

What is the future of Libya? I was born in 1944. When Qaddafi changed the regime, I had been serving the monarch for nine months. For the last 42 years, I have been a diplomat. People ask me how I could have served Qaddafi for so long, but I spent 35 of those years outside of Libya. And there are so many decent Libyans. Thousands of them were part of this regime, and no change ever happens that does not include some members of the old regime.

The third thing is that we believe we cannot leave the country for Qaddafi and his followers. We cannot run away and leave him do what he wants to do in Libya.

There are so many questions being asked about the Council, and I am happy that here at least in the United States, people realize that those in charge of the Council represent all of Libya. They have nothing to do with Al Qaeda, as Qaddafi has accused. According to Qaddafi, half of the Libyan people suddenly are members of Al Qaeda. Well, is this is true, then, Qaddafi, who brought them to Libya?

I am 100 percent sure that we will have a free government, a democratic government. Libyans will achieve their dreams. There is no way back. There is no compromise. The only thing to compromise on will be how Qaddafi leaves Libya. Thank you very much.

[Applause]

MONICA HAKIMI

Thank you very much, Ambassador. Now that we've heard from each of our panelists, I want to give you, Harold, in particular an opportunity to respond to some of the legal arguments that have been made against the use of force in Libya.

HAROLD KOH

Thank you. I wish I lived in a world in which intervention was unnecessary. I don't. I do live in a world where intervention can be lawful, and this is one of those times, as the President has said. I'd like to respond to the two points made by my friend, Mary Ellen O'Connell.

The first point is that she says that Resolution 1973 incorporates a principle of necessity. She said that necessity has not been met in the Libyan conflict. Twenty days after the Security Council passed Resolution 1970, Qaddafi's forces were poised to go into Benghazi, a city of 700,000 people. When Qaddafi said, "We will come house by house, room by room. We will find you in your closets and show you no mercy and no pity," I would posit that that is a point at which necessity has been reached. If under the terms of the UN Security Council resolution, all necessary measures are authorized for protecting civilian populations, providing humanitarian assistance, and establishing a no-fly zone, then force is authorized as a matter of international law to accomplish those tasks.

Mary Ellen said furthermore that the result of this would be a partition. I don't know what the outcome of this will be. That is certainly beyond my predictive capacity. She said that going to protect civilians will be undermined by stopping Qaddafi, who is attacking civilians. Now, it may well be that action against Qaddafi will not eliminate all harm against civilians. In a situation like this, there is no way to give total protection to civilians, but it does seem that a minimum necessary step is stopping the person who intends to show no mercy and no pity to civilians. That has to be an essential part of this mission.

Both Ambassador Hassouna, whose remarks I agree with almost entirely, and Mary Ellen said that the establishment of a no-fly zone involves air strikes, and that those might have consequences in terms of casualties. As all of you know from watching the news, before this was all contemplated, Secretary of Defense Gates said quite clearly, “Air strikes are necessary to establish the conditions for a no-fly zone.” Those strikes have occurred. Those conditions are now established. As a result of those conditions being established, we have created space to proceed with a transition to NATO forces who are carrying on all four of the missions I have described: arms embargo, no-fly zone, humanitarian assistance, and protection of civilians.

It is our hope that military attack, which we think at this point will be declining, can be phased out and other tools used, the other tools which Catherine Powell mentioned, which include sanctions, accountability mechanisms, humanitarian assistance, and the like.

Mary Ellen said that intervention has been an unbroken history of failure. I was Assistant Secretary of State for Human Rights during the Balkans and Kosovo, and sometimes non-intervention is failure. In Srebrenica, non-intervention was failure. In Rwanda, non-intervention was failure. And it does seem to me that if you have a government that has forfeited its responsibility to protect, it is not the job of the international community to stand by when the Libyan people are themselves asking for protection, as you heard quite eloquently from Ambassador Aujali.

Now, is 1973 a moral hazard? In my view, it was a moral necessity. I also believe it was clearly lawful. My colleagues here who are Legal Advisers—Daniel Bethlehem of the United Kingdom, Alan Kessel of Canada, Thomas Winkler of Denmark—we were in communications during this period. When we thought Benghazi was about to fall, none of us, I believe, were excited about authorizing or voting to authorize military action, but all of us were convinced that the moment of necessity had arrived.

And finally, Ambassador Aujali has said that there is no way—without intervention, without stopping the actions of Qaddafi—for the Libyan people to protect their human rights, to regain freedom, and to establish democracy. It is their view that this is a moment where nothing but intervention could succeed. The intervention that was applied and that is being applied is proportional to the task. After only a week, the United States is making a transition of that military authority and using every available method to limit the outcome.

The second point that Mary Ellen made I can deal with more quickly. She said that Resolution 1973 has put an end to the concept of responsibility to protect if there is no Security Council resolution. The fact that there is a Security Council resolution only makes this more lawful. It does not say anything about whether a situation such as Kosovo or another extreme case might invoke responsibility to protect as that doctrine has been developed, but that is not before us at the moment.

I notice that there is no comment or challenge to the lawfulness of this under domestic law, and as I have asserted, I think it is clearly lawful under domestic law because the nature, duration, and scope does not rise to the level requiring at this point congressional approval beyond what has been given.

And finally, for those who cheered when President Obama received the Nobel Peace Prize, in December of 2009 he said the following, and I read it to you because this should come as a clear statement of what the Nobel Peace Prize winner intended. He said:

America cannot insist that others follow the rules of the road if we refuse to follow them ourselves, for when we don't, our action can appear arbitrary and undercut the legitimacy of future intervention, no matter how justified. This becomes particularly

important when the purpose of military action extends beyond self-defense or the defense of one nation against an aggressor. More and more, we all confront difficult questions about how to prevent the slaughter of civilians by their own government, or to stop a civil war whose violence and suffering can engulf an entire region. I believe that force can be justified on humanitarian grounds, as it was in the Balkans, or in other places that have been scarred by war. Inaction tears at our conscience and can lead to more costly intervention later. That is why all responsible nations must embrace the role that militaries with a clear mandate can play to keep the peace.

Thank you.

[Applause]

MONICA HAKIMI

Thank you, Harold. Mary Ellen, I know you want a few minutes to reply, which I will grant you in a moment. While you are doing so, I encourage the members of the audience to proceed to the two microphones we have set up, one on either side of the room, and to formulate your own questions to present to the panel. So, Mary Ellen, go ahead, and then Ambassador Hassouna, I'll give you an opportunity to weigh in, and then we'll open it up to questions.

MARY ELLEN O'CONNELL

I would really invite Harold to join me on another occasion to go point by point on these important questions. I think they are very important, and they deserve full airing and debate. It's not an appropriate thing for me now to take another 15 minutes to respond to Harold point by point.

The only last word I'll say before we get to the important questions from the floor is that the lesson of Egypt and Tunisia is that peaceful revolution can work, and the wrong lesson was drawn by the opposition in Libya when they took up weapons and began fighting. The tanks and the air strikes that the Ambassador spoke of occurred when Libya was trying to keep rebels from taking over the country. That is the context in which it happened. At that point, what was the right response from the international community concerned about this violence? Why wasn't it to discourage the rebels from continuing their fight? As we heard from the Ambassador, they did not have an organization until after March 17th, but to leave Libya and get the support of the international community and build the kind of organization that could create a peaceful transition away from Qaddafi—that was an alternative that we could have supported that would have saved lives.

MONICA HAKIMI

Ambassador?

HUSSEIN HASSOUNA

Thank you. I have some very quick comments to make. First of all, on the question of intervention and the legality of intervention under Resolution 1973, I think that in this case it was much less controversial than in the case of Iraq or Kosovo. Here we have a clear mandate from the international community to impose a no-fly zone and to intervene.

The second question was not dealt with here but in my view is extremely important. It is the humanitarian dimension of this crisis. Let us not forget that there are many, many refugees, many displaced persons who were affected. I wish to recall that this year, the UN

High Commission for Refugees is celebrating the 60th anniversary of the 1951 Convention on Refugees. There is some concern that these and other related international conventions are inadequate—that they have not been dealing with the necessities of today.

So I think we have to consider establishing an effective legal framework for the protection of those victims. There were thousands of people leaving Libya. There are still about a million Egyptians stranded inside Libya, and there will be hundreds of illegal boat people going to Italy. So I believe this is a dimension which needs some attention.

The other question of recognition of the Transitional Council, which my friend the Ambassador of Libya raised, is an important issue. The Arab League's position was that it should start cooperating with the Council, but no other country, apart from France, has taken the formal decision to recognize the Council. So this will depend, in my view, on when the opposition will assert its authority, when it will be able to control more territory. Then it will acquire in the eyes of the international community more legitimacy, which will in turn lead to its wider recognition.

The last issue is the question of the duty to protect. In my view, in spite of the Security Council relying on this concept, it is still very controversial. It is argued by many that one needs evidence about the commitment of war crimes, crimes against humanity, or genocide, which we haven't seen yet in this case. There is a division in the United Nations. Five countries have abstained on resolution 1973, and even in the United Nations International Law Commission, of which I am a member, there are different views on this issue.

So it is not a concept that has universal acceptance, but in spite of that, there is obviously a duty to help the victims of the human crisis that we face in Libya and in different parts of the world.

MONICA HAKIMI

Thank you. We have a little under 15 minutes left, so I ask that your questions be brief. Please go ahead.

AUDIENCE MEMBER

Hello, my name is Jing Guan. I'm a second-year Ph.D. student at McGill University in Canada. I come from China, and my doctoral topic is on the responsibility to protect, so I am very grateful there is a special panel on this.

The Libyan crisis is a tragedy; however, for the purpose of my thesis, it enriches the debate. So my first question goes to Professor Harold Koh. You mentioned that non-intervention in places like Rwanda is a failure in itself, and I would be interested in your response to Darfur. Why did the U.S. and the rest of the world not intervene in Darfur, but decide to intervene in Libya?

My second question goes to Ambassador Aujali. You mentioned that, regarding the future of Libya, there will be democracy after Qaddafi leaves the country. My comment would be that the position of the Chinese government toward the responsibility to protect, which was stated in its 2005 report for UN reform, is that internal conflicts are complex, and that it is up to the people themselves inside the country to solve internal conflicts. So I was wondering: Is military intervention really necessary to help, and will that create a stable society later on?

And my last question goes to Professor O'Connell. You said that nonmilitary measures would be enough. My question is: What kind of situation would you envision that would qualify for a forceful military intervention?

HAROLD KOH

Let me make clear that this situation is one in which the United States and its allies and its partners are operating under a Security Council resolution that authorizes all necessary means for four tasks: an arms embargo, a no-fly zone, a provision for humanitarian assistance, and protection of civilian populations and civilian-populated areas.

The two resolutions, 1970 and 1973, both recall the Libyan authority's responsibility to protect their populations, and suggest that Qaddafi has forfeited that responsibility. When you say you're going to show no mercy to people who oppose you, that's not consistent with the territorial government's responsibility to protect.

But I do not think that this is a case in which broad questions about the general concept of responsibility to protect are at issue. This is about whether when all necessary means are used under a Security Council resolution for defining tasks and those rules are followed closely is lawful as a matter of international law.

On the question as to why things were not done in other places when I wasn't in the government, I'm not going to answer that question. The fact of the matter is that those regions have suffered grievously, but through other methods are coming to a different place, through referendum, through negotiation, and I think that is the critically important point. No one is claiming that the military tool is going to be addressing this entire issue. The question is whether military intervention lawfully conducted, carried on with intense negotiation, use of sanctions, accountability, and other methods can achieve a better outcome than doing nothing.

And the answer, it seems to me, is clear. We saw in Bosnia that diplomacy backed by force is more effective than diplomacy not backed by force. We have seen in other areas that the use of a combined set of tools to achieve certain outcomes can lead to better policy outcomes, and it seems to me that that's what's going on here.

MONICA HAKIMI

Ambassador, I understand you want a few minutes as well.

ALI AUJALI

I just want to go back a little bit. How do you want the Libyan people to act? When the mercenaries got to Misrata and Zawiyah, they went to every house. They raped women and girls in front of their families. How are the Libyans supposed to defend themselves? There is no way for the Libyans to transition to a democracy and change the system as long as this man is there.

We cannot stop now in the middle of the road. This mission has to be completed, and the international community has to help the Libyan people.

To go back to your question concerning what the purpose is for democracy in Libya, Libya won its independence in 1951. There were 56 Libyans who graduated from the university. In 18 years, they managed to have a modern country. They managed to have a democratic constitution, a senate, a house. They managed to pool their small resources, which they started to get from oil in 1963, and to build more than this regime has achieved in 40 years.

Yes, the democratic process is known in Libya, but we haven't practiced it for 30 years. I am sure that when we get our freedom back, we will be able to set up a modern state because Libya is a small society—5.5 million people—and we have no sectarians. We all in Libya suffered from this regime, and I think that the democratic process will be easy, and we will see Libya in the future as a modern country in the region.

MONICA HAKIMI

Mary Ellen, I know you'd also like to jump in, since one of the questions was addressed to you. Before you do so and in the interests of time, I just want to enter our speed round here and ask each of you lined up at the microphone to ask your question briefly, and then we'll give everyone an opportunity to respond because we only have a few minutes remaining.

AUDIENCE MEMBER

Thank you. My name is Hans Corell. I was the Legal Counsel of the United Nations between 1994 and 2004. I am no expert on Libya. My interaction with Libya was limited to negotiating, organizing, and executing the transfer of the Lockerbie suspects together with my Libyan counterpart. Maybe we'll have more light shed on that tragedy when things are unfolding.

I have no problem whatsoever with your analysis. I think this is a clear case of responsibility to protect. We can only imagine the collective shame we would have had if Benghazi had fallen, and I remember clearly from 1994, Boutros-Ghali's desperate cries out for 3,500 paratroopers that the military said would have stopped the genocide. No state was prepared to demonstrate that force.

So I have a plea. This is a historical moment. I don't know whether Daniel Bethlehem is still around. I see here an opportunity for the permanent five members of the Security Council to sit down and take a thorough view over what has happened here and then send the message to the world that from now on, we are actually going to exercise our authority under the UN Charter.

Dwight D. Eisenhower, reelected in 1957, said the following: "We Americans are aware of our involvement with humans everywhere. We are, therefore, pledged to honor and to strengthen the authority of the United Nations because in that body rests the best hope of our age to assert the laws under which all nations can live in dignity."

My hope is that President Obama echoes that. I have not heard him mention the United Nations in his State of the Union addresses. I would ask Secretary Clinton to sit down with your colleagues, Daniel, for example in Moscow, and see whether you can find a way of negotiating a way to send the message to the world that the P5 from now on are actually going to act hand in hand. That would send a message to the world that perhaps you don't have to intervene anymore because governments would know that if people rise up, they will treat the uprising in a dignified manner. We couldn't do that in Europe. There were revolutions there. I don't know what's going to happen in China. One day, the government must meet its people in an election. Can that be done without a revolution?

You have an historical opportunity now, so I just couldn't leave this opportunity or this discussion without making this plea to you. Thank you.

MONICA HAKIMI

Thank you so much.

AUDIENCE MEMBER

Vera Gowlland from the Graduate Institute of International and Development Studies in Geneva. I think it's great that we have an authorization now from the Security Council. In the past, there have been critiques that these authorizations give a blank check, more or less,

to the states. I wanted to ask you what type of oversight mechanisms are in place as far as the Security Council is concerned.

There has also been confusion as to where command and control lies, who will assume responsibility if there are actions which go beyond the laws of war, laws of armed conflict, and so on. Is it in fact NATO that's going to assume that responsibility?

AUDIENCE MEMBER

My name is Ben Davis from the University of Toledo. My question regards evaluations of necessity. We will be comparing the evaluations of necessity that were made before the 2003 Iraq war with those made afterwards. Will there also be evaluations by accountability for the intervention in the Iraq war in 2003?

AUDIENCE MEMBER

Charles Stevenson, formerly with the U.S. Agency for International Development and a comparative law teacher part time. I invite you to compare four things briefly. Are we more like the Spanish Civil War situation, the Magna Carta situation, the Gettysburg situation, or an act of God like yesterday's earthquake in the Burmese Myanmar Golden Triangle, which effectively interrupted perhaps the opium trade? A disclaimer: I wrote the legal opinion saying that AID could use civilian economic assistance funds to buy M-16 rifles for the border police to break up the opium trade.

AUDIENCE MEMBER

Hi. Bart Szweczyk at Wilmer Hale. My question is for Ambassador Hassouna. Do you agree with President Obama's statement that Qaddafi has lost the legitimacy to rule and has thus forfeited the responsibility to protect his people? If so, would you support nonmilitary civilian actions to achieve that objective as the United States is trying to do? If not, what political end game do you envision in Libya in the event that the rebels aren't able to take complete control over the territory?

MONICA HAKIMI

Thank you. We have about two minutes to answer all of those questions. Weigh in as you deem appropriate, but please keep your comments brief.

HAROLD KOH

I think the key point to two of the questions is that the approach here is fundamentally multilateral. This is a multilateral approach, proceeding under a Security Council resolution, though preceded by another Security Council resolution, and the content of the Security Council resolution is actually pointing to other entities—UN humanitarian agencies, a referral to the International Criminal Court, a commission inquiry created by the UN Human Rights Council—and the question is: Given that past interventions were criticized for this lack of multilateralism, which confers both legitimacy and international lawfulness, should this one also be criticized when in fact it meets all of those criteria?

Chuck Stevenson asks, is this more like the Spanish Civil War, Gettysburg, or an act of God. I would simply point out that none of those things occurred after the United Nations was created. We operate in a world in which the United Nations is setting a framework, and these military actions are operating firmly within that UN legal framework, and firmly within our domestic legal framework.

MARY ELLEN O'CONNELL

I agree with Hans Corell that we are at a very important moment with what is occurring, but I don't draw the same positive conclusion that he does.

Yes, we're doing this multilaterally, but what are we doing? We're using military force in a situation that fundamentally calls on people to organize themselves, resist peacefully, and build up their own governance structure without outside interference and without military force. Why is it that the United States and the British so often fall back on militarism?

Tunisia and Egypt show an alternative. We are now, it seems to me, in mission creep, flipping in to fighting for the rebels in Benghazi when they are not organized and they are not in a position to take over and develop good governance. This was a premature military intervention. I understand the emotion behind it, but that's what the principle of necessity is for—the sober consideration of what we're doing with this most awesome power of military force.

This was a moment in which an alternative was available. The United Nations should have been there counseling protection of refugees, development of democracy institutions, respect for human rights, et cetera, as had been working for some time in Egypt and Tunisia. That's where the United Nations needs to go. It was established as a peace regime. It needs to renew itself as a peace regime.

MONICA HAKIMI

Thank you. We are out of time, unfortunately. A couple of you have expressed an interest in having one more comment. I think the organizers would forgive me for going over by one or two minutes, so please keep it brief, but go ahead.

ALI AUJALI

Qaddafi gives the Libyan people one option. He and his sons say to the Libyans: Either I rule you or I kill you. That's the only option we have. But we have to defend ourselves and protect our children and families. Believe me, when we get rid of Qaddafi, you will see how well the Libyans are organized, how much they are determined to have a democratic country, how much they are ready to be proud of their country. Wherever we go, when we go through an airport, and we present our passports to Immigration, the officials look us up and down and say, "Oh, Libyan, this means you are a terrorist." Libyan people deserve to have a better life. They deserve to decide their future.

CATHERINE POWELL

Picking up on Hans Corell's point about this being a historical moment, I think that clearly we can see that this is a multilateral moment. This is a moment when no one country acting alone could address this crisis.

The question is, though: Is it a game-changer moment? Is this a moment in which we can change the game enforcing a responsibility to protect, and ultimately make the multilateral system more effective? I don't think we know the answer to that question yet, but I am interested in what the nesting and intermeshing of international regional regimes means for the future of multilateralism, the UN, the Arab League, the AU, the NATO, creating an echo effect. Will it lead to greater legitimacy, greater efficacy, greater inclusion, and ultimately greater sustainability for multilateralism?

HUSSEIN HASSOUNA

If I may just say one word. First of all, I agree with what you said, Hans. You did a great job at the UN.

The problem, in my view, is that the Security Council is a political body after all, and that's why you have divisions even among the permanent members. I hope it doesn't happen and doesn't continue for everyone's sake.

Regarding the question of Qaddafi's legitimacy, yes, I think he has lost legitimacy in the eyes of his people and the international community. But then again, I would say that it's up to the people of Libya to decide their own future and how they want to deal with him. This is extremely important.

As a last word, I want to emphasize the importance of how the international community is dealing with the question of Libya and the protection of the people of Libya. Because if the international community's support of the Libyan people falters, this will send the wrong message to all those people in the Middle East who are aspiring to freedom, democracy, and human dignity.

MONICA HAKIMI

Harold, the final word.

HAROLD KOH

Two quick points. One question asked was: Is this disorganized; what is the structure of this multilateral effort? When the transition of these four functions is made to NATO and completed, which will happen very soon, the military command will be under the Supreme Allied Commander in Europe and the day-to-day operations run out of the Joint Task Force in Naples, which is under the control of a Canadian lieutenant general. The political activity is directed by the North Atlantic Council which reports to NATO. General political discussion is going on in the United Nations, which remains seized of these issues under the Security Council resolutions, and these discussions include not just the NATO countries, but three Muslim countries—the UAE, Turkey, and Qatar—which are participating actively in these conversations.

On the second point—what is the difference between Tunisia/Egypt and Libya?—I think all of us know that just from watching television. The Egyptian military did not start to attack all civilians who were protesting against the government, and that made it possible for the excitement of Tahrir Square. This is a different situation and calls for a different kind of conclusion.

MONICA HAKIMI

Thank you. An active bench, as we say. So please join me in thanking our panelists.
[Applause]