ASSESSING THE RESPONSIBILITY TO REBUILD COMPONENT IN POST-GADDAFI LIBYA

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ABSTRACT

The 2011 military intervention in Libya is the first intervention backed by the United Nations (UN) referencing the Responsibility to Protect (R2P) with UN Security Council (UNSC) Resolution 1970 and 1973 as legal basis. R2P consists of three components: responsibility to prevent, responsibility to react, and responsibility to rebuild. The intervention was regarded as a success by NATO, the mandate holder. However, the mandate only covers the component of preventing and reacting of R2P, leaving the rebuilding (post-intervention strategy) unchecked. This research attempts to identify the extent of Responsibility to Rebuild implementation by international community after 2011 intervention. Case study and descriptive approach used found out that the rebuilding process, particularly in security, justice, and economy aspect has yet to be restored in Libya, and not fulfilling the demands set by responsibility to rebuild.

Keywords: *cooperation*, *cyber crime*, *Indonesian National Police,
Australian Federal Police, capacity building*

1. Introduction

Libya was the "first true test" for Responsibility to Protect (R2P). International communities were challenged to solve humanitarian crisis within a sovereign territory that is in the middle of a civil war involving pro and anti-forces of Gaddafi, its longstanding dictator. According to three pillars of R2P,[1] Libya has failed to protect its populations from harm—in this case, crimes against humanity—and therefore the responsibility to intervene

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[1] Pillar One stresses that States have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity; Pillar Two addresses the commitment of the international community to provide assistance to States in building capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out; Pillar Three focuses on the responsibility of international

through coercive measures falls under international community. United Nations unanimously passed resolution 1970 and 1973 that serves as legal basis for NATO, commander of Operation Unified Protector, to enforce no-fly zone in Libya and to use all means necessary, short of foreign occupation, to protect Libyan civilians and civilian populated areas. The operation gives Libyan rebel an upper hand in the conflict, and after the death of Muammar Gaddafi, the rebel forces formalised itself in the form of National Transitional Council that acts as Libya's transitional government, subsequently ended NATO's operation in 31 October 2011.

The intervener side claimed that NATO succeeded in Libya. Ivo H. Daalder, U.S. Permanent Representative to NATO and his co-writer measured that NATO had "saved tens of thousands of lives from almost certain destruction", "conducted an air campaign of unparalleled precision", and has "enabled the Libyan opposition to overthrow one of the world's longest-ruling dictators". Daalder and Stavridis made assessment that the deciding factor of this intervention's success is NATO's ability to rapidly response, and willingness of each NATO member to put aside its differences in order to create an effective command system on the location. Because UNSC Resolutions that justifies intervention in Libya directly citing R2P as their source of norm, it subsequently leads to a conclusion that Libya was the first success example of the norm's implementation because of its ability to prevent mass atrocities like Rwanda or Srebrenica to be happen again, as situation could've been much worse in Libyan soil had the intervention not been undergone. Libya also marked the first time the Council had authorized the use of force for human protection purposes against the wishes of a functioning state, (Bellamy & Williams, 2011) moreover, the precision of airstrikes kept most of the infrastructure intact, a significant improvement compared to destruction of civilian buildings in Iraq and Afghanistan from 2003 military intervention.

However, there are two main reasons why such conclusion may be proven as not only incomprehensive, but also premature. First, NATO's scope of intervention only covers two stages of R2P: responsibility to prevent and responsibility to react. The third component, responsibility to rebuild, has not been included as a factor in determining such conclusion. Indeed, responsibility to rebuild and reconstructing hasn't been traditionally included in humanitarian intervention, but it will also be called on because the willingness, nature and duration of outside help will help to shape the judgement of history on whether Western motivations were primarily self-interested geopolitical and commercial, or the disinterested desire to protect civilians from a murderous rampage. (Institute for Security Studies, 2012)

Responsibility to rebuild does not only demands physical/infrastructure rebuilding, Vanderseypen argues that the post-intervention challenge in Libya is ensuring stable political transition within a power vacuum country that is heavily defined by a tribal system on top of weak bureaucratic structures. (Vanderseypen, 2014) Compared to the other two components, responsibility to rebuild demands sustainability and longer timespan, yet with the most flexible measurement available. One of the aim of rebuilding is preventing similar crimes, such as reverse-ethnic cleansing to happen again, thus in circular sense rebuilding is also a part of responsibility to prevent future hostility. Therefore, it is the hardest stage to achieve success on, and arguably the majority of deciding factors on whether R2P has been implemented successfully lies on this stage.

Second, is because of the condition of post-Gaddafi Libya itself, even after nearly four years of Operation Unified Protector, does not show indications of a smooth political transition. By acting in favour of Libyan rebels, NATO arguably does not only performed humanitarian intervention, but it has transitioned into a regime change. In this transitional period, 2007 World Bank research suggested that there are 40 percent of chance for a country reaching the end of its civil war, to return to conflict within a decade, (Research at the World Bank, 2007) and this is the case for Libya. Within less than 3 years since its liberation, Libya fell into the second civil war with four belligerents fighting over control of the government: The Tobruk Government, Libya Dawn coalition, Benghazi Revolutionarist, and ISIS. The civil war started when General officer Haftar loyalist launched "Operation Dignity" in 16 May 2014 to strike opponents in Benghazi and Tripoli from air and ground, and remains an ongoing conflict.

Other situation includes the security of weapon stockpiles. Libya once described as "largest arms purchasing countries in the world", imported nearly US$22 billion worth of weapons in the 1970s, the weapon that was held by Gaddafi forces now surfaced in the possession of *katibas* (local militias or irregular forces formed during the 2011 armed conflct), local authorities, the national government, and ordinary Libyans. (IHRC, 2014) UN Security Council then led to adopt Resolution 2174 (2014), which calls for immediate ceasefire in Libya, inclusive political dialogue, and prior notice for weapons transfers. (UNSC, 2014) The Resolution also extended the sanctions regime established in Resolution 1970 to target those responsible for the current violence. This situation alone is suffice to address the question of long-term political consequences of humanitarian intervention that has been avoided in determining genocide standard. Saving even many lives in the short run might not be worth it if the result is open-ended, ungovernable chaos. (Pape, 2012) With post-intervention Libya situation in mind, this paper is written in an attempt to further assess the implementation of Responsibility to Rebuild in post-Gaddafi Libya.

2. Discussion
Responsibility to Rebuild

There are at least three possible reasons on why rebuilding component were left behind in Libya. First, responsibility to rebuild principle hasn't been acknowledged by UN. R2P originated from 2001 International Commission on Intervention and State Sovereignty (ICISS) report and gained legal acknowledgement by the General Assembly in the 2005 World Summit Outcome Document (A/RES/60/1). However, paragraph 138 and 139 of the document only recognize preventing and reacting component of R2P, omitting responsibility to rebuild aspect from its legal existence. (UNGA, 2005) J.J. Major even argues that the responsibility to rebuild was not included in any of the formal language, or even in the spirit, of the new three pillar construct. The failure to include an emphasis upon the necessity to rebuild potentially hampers R2P's ability to preclude recurring violence (Major, 2013).

Second, there is an overlap on deciding which party in charge for rebuilding. In 30 January 2009, UN Secretary General Ban Ki-moon published a report entitled "Implementing the Responsibility to Protect". The report indeed mentioned responsibility to rebuild along with two other components, even quoted Gareth Evans' "continuum of graduated policy instrument", however, there is no post-intervention obligations for

intervener party in the report. One speculation for the omission of Responsibility to Rebuild's is because of the creation of Peacebuilding Commission (PBC), established on December 2005. That being said, not every component of rebuilding been represented in PBC's mandate, such as the lack of promotion to economic growth and sustainable development. In 2012, UN Peacebuilding Fund approved a Joint civic education and dialogue project amounting to USD 1.9 Million, but it was meant to address liquidity shortage Libya faced in the brink of its first post-intervention election (UN Peacebuilding Fund, n.d.).

And the last, unlike responsibility to prevent react, that is mentioned in three pillars of R2P, even allowed "all necessary measure" to ensure the safety of civilians, there is no clear post-intervention strategy for responsibility to rebuild, not to mention a surprising lack of literature exists regarding the omission of the responsibility to rebuild. This present an irony to ICISS report, stating if military intervention is to be contemplated, the need for a post-intervention strategy is also of paramount importance. Post-conflict measurement will support *jus post bellum* proposal in policy perspective, as *jus post bellum* has already support rebuilding case in legal/normative level.

In measuring what kind of post-intervention obligations for international community, one can refer to 1998 UN Secretary General report on *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*[2], stressing that "each priority is linked to every other, and success will require a concerted and coordinated effort on all fronts" and also documentation of responsibility to rebuild from ICISS. At minimum, intervening parties should focusing its rebuilding processes on three fronts: security and protection; justice and reconciliation; economic growth and sustainable development.

Provision of Basic Security and Protection

In a war-torn condition, the basic needs of security and protection should be available for civilians as early as possible, for their lives and property. Security and protection should be provided across the boundaries of race and ethnicity, or an ethnic's relation to the cause of conflict. This also applied to religious and political affiliation. The purpose is to prevent revenge killings, or worse, "reverse ethnic cleansing" that became a common practice as groups who were victimized attack groups associated with their former oppressors. Years after intervention, Libya remains unpredictable, with sporadic episodes of civil unrest have occurred throughout the country. After the fall of Gaddafi, National Transitional Council issued order No. 20 in October 2011 to create Supreme Security Committee (SSC) an auxiliary police consisted of former rebel/revolutionary forces, now a subordinate to Interior Ministry, (Cousins, 2012) and Libyan Shield Forces, auxiliary army nominally attached to the Ministry of Defense. However, it soon became a threat to people's safety, given that the recruitment of personnel was done on a random basis and military training has been poorly undertaken (Stoian, 2013). Also, the strategy of

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[2] [...] encouraging reconciliation and demonstrating respect for human rights; fostering political inclusiveness and promoting national unity; ensuring the safe, smooth and early repatriation and resettlement of refugees and displaced persons; reintegrating ex-combatants and others into productive society; curtailing the availability of small arms; and mobilizing the domestic and international resources for reconstruction and economic recovery.

trying to dismantle the regional militias while simultaneously making use of them as hired guns might be sowing the seeds for the country's descent into warlordism. (Wehrey, 2012) The problem above also connected with other security aspect, the rebuilding of new national armed forces and police, a vital process to national reconciliation and protection. The challenge in Libya is on elements integrations of the formerly competing armed factions, which instead of getting reconciled, the factions clashed into series of conflict, with notable events such as Attacks on foreign diplomatic missions in Benghazi and Tripoli by Islamist militias, (BBC, 2014) killing US ambassador to Libya. The same faction wars had finally led Libya into its second civil war. UN had holds several rounds of peace talks in an attempt to unite major warring factions in a new Libyan government. On 12 July 2015, some factions had agreed framework for peace following UN-brokered talks in Morocco. The deal will provide the rival groups with a framework to live together and begin a transitional period of one year in which they can decide issues including disarmament, control of the country's airports and writing a constitution. However, more works still needs to be done as the deal missed out a key player—the General National Congress (GNC), the legally installed government in Tripoli—and its allied Libya Dawn militia, although U.N. envoy to Libya Bernardino Leon said that "door is open to all not present" when the draft accord was announced (Aljazeera. 2015).

Another component of security is disarmament, particularly on local security forces. This often regarded as the most difficult issue to achieve as it also includes demobilization and reintegration process after disarmament. This is the case for Libya as the country is heavily depends on militias to provide security. (The Washington Institute for Near East Policy, 2014) After NATO intervention, Osama Juwaili, interim defence minister, asked Tripoli rebels to keep their weapons instead of disbanding. (Mahmood, 2012) Immediate postwar estimates showed some 120,000 rebels in need of disarmament, demobilization, and rehabilitation (DDR), (Islamic Republic of Iran News, 2011) but within months that number had ballooned to more than 200,000, (Murray, 2012) nearly 11 percent of the country's estimated workforce of 2.3 million. Bernardino Leon has asked foreign countries to respect UN call for an arms embargo on the North African country, specifically the call of Security Council resolution 2174 mentioning the total arms embargo for Libya. (Al Arabiya, 2014) In mid-2014, in the brink of second Libya civil war, Egypt sponsored initiative to disarm Libyan militias. The plan also includes a commitment from outside sources not to supply or sell weapons to the militias (Ahram Online, 2014).

These situations provided a circular dilemma of security and development. Chivvis and Martini stated how difficult it is to imagine how security can be provided after a war in a country that lacks basic political and security institutions, while it is also difficult to see how a peaceful process of institutional development on the scale that was required in Libya could take place in the absence of basic security. (Chivvis & Martini, 2014) At this point, only the involvement of international actors that could make a difference on both ends.

Achieving Justice and Reconciliation between Parties

In 2001 ICISS report, the necessity of functioning judicial system in post-conflict situation is irreplaceable, stating:

> If an intervening force has a mandate to guard against further human rights violations, but
> there is no functioning system to bring violators to justice, then not only is the force's

mandate to that extent unachievable, but its whole operation is likely to have diminished credibility both locally and internationally.

The case with Libya, is it doesn't only need a functional system, but also a judicial system without flaw. The attempt to rebuild Libya's justice system has shown indication of failure during its early stage. NTC law 38/2012 passed by the National Transitional Council grants widespread immunity from prosecution for acts aimed at "promoting or protecting the 2011 revolution." This selective justice resulted in no member of a militia, and no one-time anti-Gaddafi fighter, is on trial or has been convicted and sentenced for crimes (HRW, 2014).

Currently, Libya's justice system suffered serious setbacks. The government had failed to uphold its legal obligation to surrender Saif al-Islam Gaddafi to the International Criminal Court (ICC), where he is wanted on charges of crimes against humanity for his alleged role in trying to suppress the country's 2011 uprising. The war prisoners had been deprived of a most basic right. They had no lawyers during the entire pre-trial phase, which has already extended for years. The Libyan authorities, having failed to surrender Saif al-Islam and several other pro-Gaddafi leaders to ICC—to prove they could administer justice nationally—continued their strings of violation by tried and sentenced Saif al-Islam to death in absentia, and continues to be held in isolation in a secret location without access to a lawyer (Amnesty International, 2015).

Public distrust of the judicial system remains at high stake. 2014 Human Right Watch reported militias attacked judges, prosecutors, lawyers, and witnesses, causing the closure of courts and prosecutors' offices in Benghazi, Derna, Sirte, and Sebha, and a near breakdown of the justice system. The Justice Ministry in Tripoli shut down in July 2014 due to the fighting there. (Human Rights Watch, 2015) The classical justice issue of forced displacement also occurs. Miltias, mostly from Misrata continued to prevent about 40,000 residents of Tawergha, Tomina, and Karareem from returning to their homes as a form of collective punishment for crimes allegedly committed by some Tawergha residents during the 2011 revolution (Foreign & Commonwealth Office, 2015).

Encouraging Economic Growth and Sustainable Development

ICISS documentation of R2P also stressed the importance of economic growth, recreation of markets, and sustainable development for a country after conflict, as economic growth not only has law and order implications but is vital to the overall recovery of the country concerned. Paul Collier even underlines economic growth as the true exit strategy for an intervention, (Collier, 2009) preventing even the positive aspects of the intervention itself to be discredited. As for Libya, the development of economy, measured by GDP growth, is shown in graph below:

Libya GDP per Capita (US$)
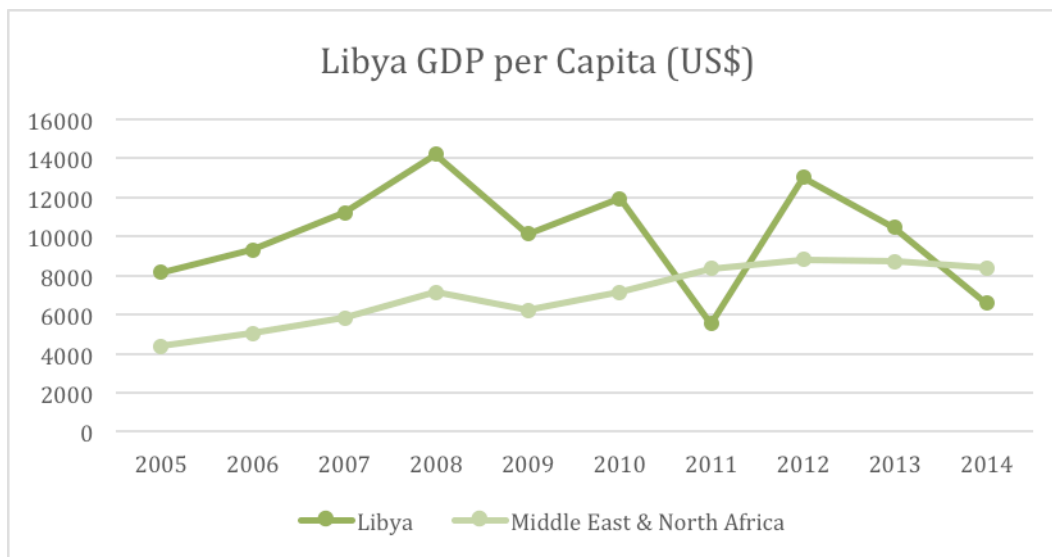
Graph 1: Libya GDP growth (annual %)
Source: World Bank

After the end of the first civil war (2011), Libya shows a promising recovery by projecting 76.3% gross domestic product growth in 2012, however it is worth noting that Libya's GDP growth on that year is attributed to the same war that sunk previous year's growth, damaging the oil and gas sector, which accounts for 65 percent of the country's GDP, 96 percent of exports, and 98 percent of government revenues. (World Bank, 2015) This is correlated with IMF's list of fastest growing economies were recently conflict zones. Sierra Leone, the site of a brutal civil war, has a 35.8% projected growth rate in 2012. Iraq (11.1%) and Afghanistan (7.2%) are not far behind. (Riley, 2012) The temporary recovery of Libya also credited to the quick return of major Western companies, like Total, Eni, Repsol, Wintershall, and Occidental, while Political and economic governance have collapsed, with the presence of two rival parliaments and continued control of oil resources by warring militias (African Economic Outlook, 2015).

In the following year Libya oil production falls from about 1.5 million barrels a day, or roughly 2 percent of global market needs, into less than 300,000 barrels a day. Warring faction attempted to seize oil production to level its political bargain, and even made their own oil company to sell crude from oil fields and port terminals they currently occupy, challenging Libya's shaky central government occupation of oil production. With such political disarray, International Monetary Fund (IMF) and the World Bank estimated that real GDP fell by 5-6 percent during 2013. However, the economic condition might been worse than 2011's fall because the main reason that it did not fall more was that, unlike in 2011, the government maintained its expenditures using international reserves held in the Central Bank of Libya (CBL)—which at the end of 2012 stood at $120 billion—and the foreign assets of the Libyan Investment Authority (LIA). (Khan and Milbert, 2014) On 2011, this mechanism was not possible because the UN froze Libya's foreign assets. The oil sector further declines in 2014 when Tripoli falls into Libya Dawn militia, and protests and blockades across the oil belt drove production as low as 215,000 barrels/day (The Economist, 2014).

The vast oil sector in Libya, added with vacuum of power and economic authority, consequently invites unwanted guest that attempt to seize the production: Islamic State of Iraq and Syria (ISIS). ISIS are targeting Libya's oil production for two reasons: First, to support its own expansion operation in Libya, as ISIS' economy is also heavily depends on selling crude oil to black market. Second, to financially weaken any government—even a united one—in Libya, so that they will be deprived of much of the funds they need to buy the weapons they need to face ISIS. (Malsin, 2015) Economic growth in Libya heavily depends on political stability, and until the political turmoil has been recovered, it is unlikely for Libya's economy to bounce back to its pre-liberation stage.

3. Conclusion

The rebuilding process, at any given aspect, hasn't fulfilled the measurement of responsibility to rebuild from R2P. Despite its early success in implementing responsibility to prevent and react, the international community fails to maintain its required presence during post-conflict time, a stage that potentially can be a "second prevention" towards future cases. International society through United Nations also remains under-present in Libyan conditions that persist as circular dilemma, where international involvement is the only way on breaking the loop. UN also remains to stick into its traditional and usual ways in resolving post-conflict situation, where no clear strategies was formulated and the actions taken is mostly responsive without preventive steps. Finally, taking Libya as an example, international community has yet to integrate the responsibility to rebuild in their intervention, leaving the last step in their policy continuum and creating a vulnerability for intervened country to fall in conflict yet again.

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