Secondary Responsibility to Protect: 
Enforcement Action by the UN Security 
Council in the 2011 Libyan Crisis

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I. Introduction

The attempts by authoritarian Arab regimes to crush mass demonstrations calling for political and economic reforms by using brutal force in early 2011 led to calls, not only in the West, for international action against those responsible for these atrocities. Among international lawyers these demands reopened the debate on the responsibility to protect the population of a state against human rights abuses by the organs of their own state under international law; more specifically, the discussion focused on the question of whether the failure of states to exercise their primary responsibility conferred a secondary responsibility on the international community, and if so, upon whom. This essay will first deal with this issue in general terms and then turn to the far-reaching international enforcement measures taken by the Security Council of the UN (NATO, EU) against the regime of President Muammar Gaddafi in the Libyan Arab Jamahiriya (henceforth called Libya). An assessment of the effects of these military and non-military measures after the eventual victory of the anti-Gaddafi forces in October 2011 will be attempted at the end.

II. The Evolution of the Concept of the Responsibility to Protect

The principles underlying the concept of the responsibility to protect\textsuperscript{1} which was developed in the wake of the genocide in Rwanda, the atrocities com-

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mitted in the armed conflicts on the territory of the former Socialist Federal Republic of Yugoslavia (SFRY), culminating in the 1995 Srebrenica massacre, and the controversial ‘Operation Allied Force’ conducted by NATO member states against the Federal Republic of Yugoslavia (FRY – Serbia and Montenegro) in 1999 were not new. Respect for human rights was one of the most important legal innovations enshrined in the UN Charter after the end of World War II. One obvious consequence was the prohibition of large-scale violations of the most basic of these rights, above all against a state’s own population. If a state was either unable or unwilling to protect its citizens against major human rights abuses the international community represented, first and foremost by the UN Security Council, was to take appropriate action. The Council could and should activate the mechanisms of the UN system of collective security after determining that atrocities committed within a state constituted a threat to the peace in accordance with Article 39 of the UN Charter.

Quite significantly, while the Security Council was paralyzed by disagreements among its permanent members throughout the Cold War, it managed to impose non-military sanctions twice during that period. In both cases, it decided enforcement measures against egregious breaches of basic human rights: against apartheid practiced by the regimes of Southern Rhodesia and South Africa.\(^2\) It first imposed limited and later comprehensive economic sanctions against the racist regime of Ian Smith, after the latter had, in 1965,