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UN-Mandated Maritime Arms Embargo Operations in Operation Unified Protector

Martin D. Fink*

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* During Operation Unified Protector the Author served as an assistant legal advisor to the NATO Allied Joint Force Command Naples, Italy. An earlier version of this article was submitted while the operations were still ongoing in September 2011. The author thanks the editors for being given the opportunity to update the article after the NATO operation ended. The views expressed in this article are those of the author and do not represent those of the Royal Netherlands Navy, the Netherlands Government or NATO.

I. Introduction

Between 23 March and 31 October 2011 NATO conducted military operations to enforce an arms embargo off the coast of Libya, on the basis of UNSC Resolutions 1970 (2011) [1] and 1973 (2011). [2] The maritime embargo operation was part of a larger NATO-led military operation, named Operation *Unified Protector* (OUP). The latter's mandate also included the enforcement of a no fly zone over the territory of Libya and the use of force against Qaddafi's regime to protect civilians and civilian-populated areas. At the end of the operation in October 2011, NATO maritime forces had checked 3110 vessels and boarded 296. Eleven ships were denied transit to or from Libyan ports.[3]

UN-mandated maritime embargo operations have now become a well accepted means to enforce UN-sanctions at sea. Recent history shows that this practice has been authorized several times in the last 50 years, as it happened, for instance, in the course of the Southern Rhodesia[4] conflict (1965-1975), as a result of the Iraq-Kuwait[5] confrontation, and during the crises in the Balkans[6] and Haiti[7]. Remarkably, apart from the embargo in Southern Rhodesia, all the remaining operations occurred in the first half of the nineteen-nineties.[8] In this respect, based on the latter operations, it is now possible to affirm that '[t]he interception is […] a proven enforcement tool and [that it] has established precedent under Chapter VII'.[9] Since the mid-nineties, and before the Libyan crisis, however, the UNSC authorized maritime enforcement of UN-sanctions

1 UNSC Res. 1970, 26 February 2011.

2 UNSC Res. 1973, 17 March 2011.

3 NATO and Libya, Operational Media Update for 21 October 2011, www.nato.int/cps/en/natolive/news_71994.htm. Unless indicated otherwise, all urls cited were last accessed on 28 February 2012.

4 UNSC Res. 217, 20 November 1965; UNSC Res. 221, 90 April 1966; UNSC Res. 232, 16 December 1966.

5 UNSC Res. 665, 25 August 1990.

6 UNSC Res. 787, 16 November 1992; UNSC Res. 820, 17 April 1993.

7 UNSC Res. 875, 16 October 1993; UNSC Res. 917, 6 May 1994.

8 An elaborate account on the operations against Iraq, the Former Yugoslavia and Haiti can be found in L.E. Fielding, *Maritime Interception and U.N. Sanctions*, (San Francisco, London and Bethesda, Austin & Winfield, 1997); G.P. Politakis, 'UN-mandated Naval Operations and the Notion of Pacific Blockade', Vol. 6 *African Journal of International and Comparative Law* 1994, pp. 176-191. See on the Rhodesian conflict, R.A. Mobley, 'The Beira Patrol: Britain's Broken Blockade against Rhodesia', No. 55 *Naval War College Review* 2003, pp. 63-84; M.P. Doxey, *Economic Sanctions and International Enforcement* (London, Oxford, New York, Oxford University Press, 1971), pp. 66-88. See on the maritime interdiction operations against Iraq, H.B. Roberston jr., 'Interdiction of Iraqi Maritime Commerce in the 1990-1991 Persian Gulf Conflict', Vol. 22 *Ocean Development and International Law* 1991, pp. 289-299.

9 Fielding, *supra* note 8, p. 130.

only twice. The first intervention took place off the coast of Lebanon, and was conducted in 2006 by the Maritime Task Force UNIFIL (United Nations Interim Force in Lebanon) against the Hezbollah after the Second Lebanon War. The second was established in relation to the situation in Sierra Leone between 1997 and 2010.[10] Considering the UNIFIL arms embargo as an exception,[11] since the fall of the Berlin wall maritime enforcement operations to a certain extent all followed the same pattern, taking the Iraq experience as a standard model. The Libyan maritime arms embargo adds a new chapter to both the development of UN-mandated maritime embargo operations and NATO's experience with maritime enforcement of UN sanctions. Previous NATO operations were all conducted in the Adriatic Sea between 1992 and 1996: *Maritime Monitor* from 16 July to 22 November 1992, *Maritime Guard* from 22 November 1992 to 15 June 1993, and *Sharp Guard* from 15 June to 2 October 1996.

UN-mandated maritime embargo operations are a subset of maritime interdiction operations (MIO). The latter expression is to be conceived in operational rather than in legal terms. As Heintschel von Heinnegg argues: '[MIO] is not a legal term but an operational term of art.'[12] From a naval operations' perspective, conducting a MIO includes a range of actions at sea, but it is often more closely associated with the practical activity of boarding another vessel, for instance for the purpose of searching for suspected pirates, contraband of war or illegal goods prohibited by a Security Council resolution. For warships, boarding and searching a private vessel flying a different flag, requires sound legal grounds. The latter may range, *inter alia*, from *ad hoc* flag State's consent, to the powers granted by the laws of naval warfare and those

[10] UNSC Res. 1132, 8 October 1997. Although this resolution authorizes maritime enforcement, there seems to be no information on whether or not sanctions were actually enforced with naval assets. The Council lifted all sanctions against Sierra Leone with the adoption of UNSC Res. 1940, 29 September 2010.

[11] The UN Security Council used a different wording in the resolution establishing the embargo in UNIFIL. The aim of resolution was, *inter alia*, to set up a maritime arms embargo in support of the Lebanese authorities, but whether the resolution also authorized the use of force is debatable. Paragraph 14 of UNSC Res. 1701, 11 August 2006 reads:

> 14. [The Security Council] [c]alls upon the Government of Lebanon to secure its borders and other entry points to prevent the entry in Lebanon without its consent of arms or related materiel and requests UNIFIL as authorized in paragraph 11 to assist the Government of Lebanon at its request.

[12] W. Heintschel von Heinegg, 'Maritime Interception/Interdiction Operations', in T.D. Gill, D. Fleck (ed.) *The Handbook of the International Law of Military Operations* (Oxford, Oxford University Press, 2010), p. 375. See on the development of MIO, M.D. Fink, 'Maritieme interceptie operaties. Een korte verkenning van een ontwikkeling', Vol. 177, No. 11 *Militaire Spectator* 2008, pp. 596-602.

provided for in specific treaty norms, such as Article 110 of the United Nations Conventions on the Law of the Sea (UNCLOS[13]).[14] In the case of UN-mandated maritime embargo operations, like the Libyan arms embargo, the legal basis to conduct a MIO is contained in a UN-Security Council resolution. Such a resolution provides the powers and scope of maritime enforcement, which is in turn that of ensuring a State or a non-State entity's[15] compliance with UN-imposed economic sanctions at sea. Specifically, it is exactly the latter element which characterizes an UN-mandated maritime embargo.

When compared to earlier UN-mandated embargo operations, the Libya arms embargo shows some unique characteristics which are worth analyzing. As will be analysed in the subsequent sections, the intervention does not follow the standard model which was introduced by the Council during the Iraq crisis. This article briefly highlights such unique features against the background of previous missions, looking in particular at the scope and powers of UN-mandated maritime embargo operations. Whilst OUP maritime operations were only a part of the overall NATO military campaign in Libya, the embargo operation itself was again just a portion of the overall maritime operations. Naval operations during OUP did not solely consist of enforcing an arms embargo off the coast of Libya, but were of a wider scope, also including maritime activities based upon the complete mandate given by UNSC Res. 1973, i.e. that to protect civilians and civilian-populated areas. For instance, mine-sweeping off the coast of the Libyan city of Misratah[16] was not executed within the maritime embargo's mandate, but as a part of the broader mandate under which NATO was operating. This article, however, only concentrates on the maritime arms embargo, and only offers some limited analysis of other maritime operations, when so requested to illustrate the Libyan embargo's unique traits.

II. The Libya Maritime Arms Embargo

The core legal framework of the maritime arms embargo against Libya was provided in UNSC Res. 1970 and 1973. Towards the end of the conflict, in September 2011, when the Qadaffi-regime was essentially

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13 Signed at Montego Bay, 10 December 1982, 1833 *U.N.T.S.* 3.

14 On the different legal bases for MIO see M.D. Fink, 'Juridische bases voor interceptie operaties', Vol C, No. 5 *Mil. R.T.* 2007, pp. 129-141; Heintschel von Heinegg, *supra* note 12, pp. 380-381.

15 In the case of MTF UNIFIL the embargo was directed against Hezbollah and not against Lebanon.

16 R. Crilly, 'Nato Warships Clear Misurata of Sea Mines as Gaddafi Remains Defiant', *The Telegraph*, 29 April 2011, www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8485650/Nato-warships-clear-Misurata-of-sea-mines-as-Gaddafi-remains-defiant.html.

considered to be defeated, the UNSC adopted UNSC Res. 2009 (2011). The latter, apart from creating the *United Nations Support Mission in Libya* (UNSMIL) as a first bridging step for the post-conflict phase, specified some changes in the way the embargo was to be enforced.[17] Shortly after Qaddafi's death, on 20 October 2011 the UNSC adopted Resolution 2016, in which the Council decided to terminate the military operations' phase in Libya. As a consequence, NATO's military involvement in the Libyan conflict also came to an end. While the latter resolution left the economic sanctions imposed by Resolutions 1970 and 1973 in place, NATO did not continue its maritime arms embargo operations.

Although both Resolutions 1970 and 1973 were adopted within a few weeks one from the other, the arms embargo was set up only gradually by the Security Council. Initially, Resolution 1970 demanded an immediate end to the violence in Libya and imposed – next to some asset freezing and travel bans – an arms embargo with limited enforcement powers. The key operating paragraphs are 9 and 11:

> 9. All member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to the Libyan Arab Jamahiriya, from or through their territories or by their nations, or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical assistance, training, financial or other assistance, related to military activity or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel whether or not originating in their territories, […]
>
> 11. [The Security Council] Calls upon all States, in particular States neighbouring the Libyan Arab Jamahiriya, to inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to and from the Libyan Arab Jamahiriya, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited by paragraphs 9 or 10 of this resolution for the purpose of ensuring strict implementation of those provisions;

Notably, the resolution called upon States to enforce the economic sanctions only on their own territory and in accordance with their national legislation and authorities. The Council also specifically underlined that the resolution had been adopted under Article 41 of the UN-Charter, which would exclude the use of *erga omnes* military enforcement actions.[18]

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[17] See UNSC Res 2009, 16 September 2011, § 13.

[18] UNSC Res. 1970 reads: 'Acting under Chapter VII of the Charter of the United

Perhaps one of the reasons for purposely mentioning Article 41 was to underline that the Council at that stage of the conflict preferred to avoid an escalation in military operations, also knowing that several States had already deployed their warships off the coasts of Libya in case operations for the evacuation of their citizens were needed. At that point, switching to multinational embargo operations would have been a relatively easy and quick measure to be put in place. Such a measure – even though there was no mandate for actual enforcement at sea – could have sent a clear political message to the Gaddafi-regime that the international community was ready to act. In recent history there have been several cases in which member States decided to send warships even when the Council had adopted sanctions without explicit maritime enforcement authority. Examples are the NATO's decision to launch operation *Maritime Monitor* in 1992, or the WEU's decision on Operation *Sharp Vigilance* (1992) during the Former-Yugoslavia crisis.[19] The speeches of the UN-Security Council Members after unanimously adopting UNSC Res. 1970 indicate that the resolution was primarily to be understood as a strong message against the Libyan government.[20] In this context, Russia also expressed the view that any forceful interference in Libya's internal affairs would make the situation worse.[21] Since in the case of Libya no State decided individually or through coalitions to send warships to patrol the Southern-Mediterranean Sea off the coasts of Libya in the spirit of Resolution 1970, no discussion arose on the question whether military enforcement could be legally based on Article 41. The issue is controversial, although in these circumstances scholars generally affirm

Nations, and taking measures under its Article 41'.

19 See D.E. Leurdijk, *The United Nations and NATO in Former Yugoslavia. Partners in International Cooperation* (Zwolle, Netherlands Atlantic Commission, Netherlands Institute of International Relations 'Clingendael', 1994), pp. 24-31. After the establishment of UNSC-authorized maritime enforcement operations in UNSC Res. 787 (1992), NATO changed the name of its mission in Operation *Maritime Guard*. When UNSC Res. 820 (1993) was adopted the WEU and NATO changed and combined both their operations in operation *Sharp Guard* (1993-1996). The so-called 'Beira Patrol' off the coasts of Southern Rhodesia started its operations on the basis of UNSC Res. 217, but the resolution was unclear at best for authorization of maritime enforcement of sanctions and member States only got explicit authority after the adoption of UNSC Res. 221. During the Iraq-Kuwait crisis, before the Council explicitly authorized enforcement operations in UNSC Res. 665, maritime forces were already operating in the Persian Gulf in aid of Kuwait, basing their interdiction measures on self-defense rather than on UNSC Res. 661 (Robertson, *supra* note 8, p. 294). Lastly, according to Fielding (*supra* note 8, p. 331) the US President Clinton's unilateral decision on 15 October 1993 to send warships to stop the flow of goods entering into Haiti was taken (a day) before the authorization to enforce sanctions, included in UNSC Res. 875.

20 UNSC Verbatim Record, UN Doc. S/PV.6491, 26 February 2011.

21 *Id*., p. 5.

that '[m]aritime forces might monitor the effectiveness of measures but they would not be empowered, under that provision [i.e. Article 41 of the UN Charter], to enforce sanctions'.[22] Most-likely, their activities would be focused on information gathering and supporting other actors having jurisdiction over potential embargo-breakers.

With the adoption of Resolution 1973, the Security Council took the decision to put more pressure on the Qaddafi-regime, in order to stop the growing violence against the Libyan population. Resolution 1973 combined the existing sanctions regime with maritime enforcement and use of force to protect civilians and civilian-populated areas. It included a threefold mandate, by which *all necessary measures* could be taken to protect civilians and civilian-populated areas against attacks of loyalist forces, and imposed a no fly zone over the territory of Libya. Regarding the arms embargo, the Council decided

> 13. [...] that paragraph 11 of resolution 1970 (2011) shall be replaced by the following paragraph: 'Calls upon all members States, in particular States of the region, acting nationally or through regional organizations or arrangements, in order to ensure strict implementation of the arms embargo established by paragraph 9 and 10 of resolution 1970 (2011), to inspect in their territory, including seaports and airports, and on the high seas, vessels and aircraft bound to or from the Libyan Arab Jamahiriya, if the State concerned has information that provides reasonable grounds to believe that the cargo contains items the supply, sale, transfer or export of which is prohibited by paragraph 9 or 10 of resolution 1970 (2011), as modified by this resolution, including the provision of armed mercenary personnel, calls upon all flag states of such vessels and aircraft to cooperate with such inspections and authorizes Member States to use all measures commensurate to the specific circumstances to carry out such inspections.

The new wording of paragraph 11 significantly changed Resolution 1970 in two main aspects. Firstly, it provided the authority for any member State or international/regional organization/coalition to enforce the arms embargo on the high seas against any vessel or aircraft, paving the way for NATO's leadership of the military operations. Secondly, the Security Council authorized the use of force to secure compliance with the sanctions regime.

III. Authorization for Maritime Enforcement

The wording used by the UNSC to authorize maritime enforcement operations in previous resolutions is fairly consistent, resulting in

[22] F.J. Hampson, 'Maritime Peacekeeping and the Law', in M. Pugh (ed.), *Maritime Security and Peacekeeping. A Framework for United Nations Operations* (Manchester and New York, Manchester University Press, 1994), pp. 190-213, at 195.

the adoption of two recurring phrases. The first phrase states: '[T]o halt outward and inward maritime shipping as necessary in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping'. It was used for the first time in Resolution 665 (1990)[23] and then repeated in several other occasions.[24] This expression generally refers to the tasks that need to be performed.

Once the Council's authorization is given, it remains to be seen to what extent force can be used to impose sanctions. This is regulated by the second phrase. Again, the phrase concerned is gathered from the wording used in UNSC Res. 665, which has now become a standard text of reference. It states: '[T]o use such measures commensurate to the specific circumstances as may be necessary'. This expression, as Politakis argues,[25] is a formula to codify the authorization for the use of minimum force in implementing the maritime embargo. Apart from the Resolution on the embargo in Rhodesia, in which the UNSC specifically relied on Article 41 of the UN Charter, the legal basis of embargo operations is still questioned, shifting from Article 41 to Article 42 of the Charter.[26] Politakis, after presenting arguments in

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23 UNSC Res. 665, § 1 reads:

> [The Security Council] [c]*alls upon* those Member States cooperating with the Government of Iraq which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of Security Council to halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990).

24 See UNSC Res. 787 (Bosnia and Herzegovina) and UNSC Res. 917 (Haiti). UNSC Res. 1132 on Sierra Leone only mentions 'inward shipping'. Paragraph 8 of the resolution reads:

> 8. [The Security Council] [a]cting also under Chapter VIII of the Charter of the United Nations, authorizes ECOWAS, cooperating with the democratically-elected Government of Sierra Leone, to ensure strict implementation of the provisions of this resolution relating to the supply of petroleum and petroleum products, and arms and related matériel of all types, including, where necessary and in conformity with applicable international standards, by halting inward maritime shipping in order to inspect and verify their cargoes and destinations, and calls upon all States to cooperate with ECOWAS in this regard.

25 Politakis, *supra* note 8, p. 191. See also C. Gray, *International Law and the Use of Force* (Oxford, Oxford University Press, 2008), p. 266.

26 R. McLaughlin, 'United Nations Mandated Naval Interdiction Operations in the Territorial Sea', Vol. 51 *I.C.L.Q.* 2002, pp. 249-278; Politakis, *supra* note 8, pp. 191-198; A.H.A. Soons , 'A "New" Exception to the Freedoms of the High Seas; The Authority of the UN Security Council', in T.D. Gill and W.P. Heere (eds.) *Reflections on the Principle and Practice of International Law* (The Hague,

support of both articles, ultimately concludes that 'embargo-enforcing resolutions were found to venture in unchartered waters half-way between economic sanctions and military enforcement'[27]. Similarly, Klein notes that '[f]or the purpose of using force in maritime interdiction operations conducted as part of a wider peace operation, the relationship between Article 41 and Article 42 is ambiguous, and is arguably best left away'.[28] Conversely, for authors such as Robertson, the above mentioned phrase on the use of force 'obviously proceeded from the authority of [...] article [42]'.[29] With this practice in mind and turning back to the Libyan case, it can be noted that Resolution 1973 does not follow the 'boilerplate' set up by the language of Resolution 665. The wording chosen by the Security Council with regard to the authorization for both the enforcement of sanctions and the use of force deviates from earlier resolutions.

1. The 'Expanded Authority' Approach

The Resolutions establishing the embargoes in Iraq, Former Yugoslavia, Haiti and Sierra Leone[30] authorized the stop and search of all 'inward and outward maritime shipping in order to inspect and verify their cargoes and destinations.' Hence, all vessels could be halted for inspection, without any further requirement.[31] The resolutions on Libya present instead a different approach. Indeed, earlier embargoes were considered geographically limited and principally focused on the sanctioned State and the flow of maritime traffic generated by its ports.

Kluwer Law International, 2000), pp. 205-221.

27 Politakis, *supra* note 8, p. 197.

28 N. Klein, *Maritime Security and the Law of the Sea* (Oxford, Oxford University Press, 2010), p. 280.

29 Robertson, *supra* note 8, p. 296.

30 As mentioned above (*supra* note 24), the case of Sierra Leone differs from other embargo operations to the extent that it only authorized inspection of inward shipping.

31 See UNSC Res. 665 (Iraq); UNSC Res. 787 (Bosnia and Herzegovina); UNSC Res. 1132 (Sierra Leone); UNSC Res. 917 (Haiti). Paragraph 10 of UNSC Res. 917 reads:

> 10. [The Security Council] [a]cting also under Chapter VIII of the Charter of the United Nations, calls upon Member States cooperating with the legitimate Government of Haiti, acting nationally or through regional agencies or arrangements, to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to ensure strict implementation of the provisions of the present resolution and earlier relevant resolutions, and in particular to halt outward as well as inward maritime shipping as necessary in order to inspect and verify their cargoes and destinations and also to ensure that the Committee established pursuant to resolution 841 (1993) is kept regularly informed.

In the Libyan conflict the UNSC did not so much focus on the area of crisis, but authorized measures that could be taken on the territory of each member State. Before revising some paragraphs of Resolution 1970 through the adoption of Resolution 1973, the Council seemed to consider member States' territory as the main geographical starting point for the embargo. Resolution 1973 then extended to the high seas the powers of member States with regard to the arms embargo (which had already been established by Resolution 1970). For naval enforcement operations at sea, this different 'expanded authority' approach brought along three main effects.

First, during the interventions in the Adriatic Sea there were different views as to whether the area of operations could also include the Former Yugoslavia's territorial sea. Some discussions for instance emerged with regard to UNSC Resolution 820 (1993).[32] As the arms embargo over Libya was adopted under an 'expanded authority' approach, it appears not to have authorized the maritime enforcement of arms embargo in the Libyan territorial sea, nor in the territorial seas of any other State, as the mandate only mentions the high seas. Also NATO declared that the arms embargo was not conducted in the territorial sea of Libya.[33] The fact that the Council used the term 'high seas' could furthermore raise the issue of enforcement of sanctions in Libya's exclusive economic zone

[32] Paragraph 29 of UNSC Res. 820 reads:

> [The Security Council] [r]eaffirms the authority of States acting under paragraph 12 of resolution 787 (1992) to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to enforce the present resolution and its other relevant resolutions, including in the territorial sea of the Federal Republic of Yugoslavia (Serbia and Montenegro).

In relation to the maritime embargo operations undertaken off the coasts of the Former Yugoslavia, Soons concludes that because UNSC Res. 820 explicitly authorized operations in the territorial sea (TTW) of the Federal Republic of Yugoslavia (Serbia and Montenegro), TTW is not part of the area of operations of an embargo when this is not explicitly mentioned in the mandate (Soons, *supra* note 26, pp. 219-220). McLaughin argues however that the specific reference to the territorial waters was not to grant extra authority, but to merely reaffirm and clarify that operations could also take place in the territorial sea (McLaughin, *supra* note 26, pp. 264-266). Leurdijk also affirms that the mandate 'was thus understood as permitting NATO to enter the territorial waters of the Federal Republic of Yugoslavia' (Leurdijk, *supra* note. 19, p. 25). Also in the embargo off the coasts of Lebanon, the Lebanese territorial sea is part of the area of maritime operations, but apart from deriving this authority from the mandate conferred by Resolution 1701 (2006), this is also possible thanks to the consent of the Lebanese authorities.

[33] NATO Allied Joint Force Command Naples, 'NATO arms embargo against Libya Operation Unified Protector', www.jfcnaples.nato.int/Unified_Protector/arms_embargo.aspx.

(EEZ), which was declared in 2009.[34] NATO decided not to confine its intervention to outside the Libyan EEZ. It established and declared an official area of maritime operations which also encompassed the Zone in question.[35] Although the EEZ is considered to be a separate zone situated between the high seas and the territorial sea, there are a number of frequently used arguments in favour[36] of permitting military activities in the EEZ[37]. In short, the first is that State's sovereign rights over the EEZ only concern natural resources and some other rights mentioned in UNCLOS. The second is that the EEZ is not a zone over which rights similar to those enjoyed by States in their territorial sea exist.[38] Third, the freedom of the high seas principle is also applicable to the EEZ, having due regard to the coastal States' rights.[39] According to the current State practice, in fact, military activities, both in peacetime, time of crisis and wartime, do take place in the EEZ. This is also confirmed by the San Remo Manual,[40] although the Manual only refers to military activities taking place during armed conflicts.

Arguably, any geographical limitation to the enforcement of a sanctions regime can represent a visible operational gap. In the case of Libya, vessels could have for instance moved prohibited materiel from one city to another through the territorial sea only, or entered the Libyan territorial sea through the territorial seas of the neighbouring States. When, however, one looks at the geographical limitation of the arms embargo in a wider perspective, including the whole mandate of Resolution 1973, one also ends up bringing to light some discrepancy

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34 The Great Socialist People's Libyan Arab Jamahiriya General People's Committee, General People's Committee Decision No. 260 of A.J. 1377 (A.D. 2009) concerning the declaration of the exclusive economic zone of the Great Socialist People's Libyan Arab Jamahiriya, 31 May 2009, www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/LBY.htm.

35 See note 43 below.

36 Notably, there are also arguments against this interpretation. See, e.g., R.R. Churchill, A.V. Lowe, *The Law of the Sea* (Manchester, Manchester University Press, 3rd ed. 1999), p. 427.

37 See e.g. H.B. Robertson, 'Theatre of Operations in Naval Warfare: Different Maritime Areas', in W. Heintschel von Heinegg (ed.), *Regions of Operations of Naval Warfare,* No. 25 *Studien Zum Seekriegrecht* (Bochum, UVB-Universitatsverlag Dr. N. Brockmeyer, 1995), pp. 1-66, at 33-40; B.H. Oxman, 'The Regime of Warships under the United Nations Convention on the Law of the Sea', Vol. 24 *Virginia J.I.L.*1984, pp. 809-863, at 835-841; D.G. Stephens, 'The Impact of the 1982 Law of the Sea Convention on the Conduct of Peacetime Naval/Military operations', in Vol. 29, No. 2 *California Western International Law Journal* 1999, pp. 283-311.

38 Art. 56 UNCLOS.

39 Articles 58 and 87 UNCLOS.

40 See Paragraphs 10(c), 34 and 35 of the San Remo Manual, which allow for naval operations in the EEZ.

with other authorized operations. The mandate to protect civilians under Paragraph 4 of the same resolution,[41] for instance, does not posit that enforcement operations have only to take place outside the Libyan territory. On the contrary, this part of the mandate solely focuses on the territory of Libya, which also includes the territorial sea. Maritime operations carried out under this part of the mandate – as long as they would not turn into occupation operations – were thus allowed to be implemented in the Libyan territorial waters too. Since Paragraph 4 of Resolution 1973 authorized *all necessary means* to protect civilians and civilian-populated areas, arguably, this, as Klein states, 'may be considered as sufficient authority for interdictions at sea to enforce the Security Council's sanctions regime'.[42] However, for the interdiction operations to be legitimately carried out, the latter should be aimed at stopping a threat to civilians and civilian-populated areas, and not at enforcing UN sanctions. Enforcement of sanctions would only result as a positive side-effect of the protecting action. Because the essence of an UN-mandated embargo operation is the enforcement of economic sanctions at sea, these maritime activities taking place within the Libyan territorial waters could not fall within the embargo itself. In fact they were not intended to enforce UN-imposed economic sanctions. Nevertheless, they did certainly fall within the MIO realm.

A second effect of the 'expanded authority' approach is that Resolution 1973 did not provide an explicit area of operations where the maritime embargo should be enforced. Resolution 1973 allowed for enforcement actions on the high seas, but it did not specify where – on the high seas – the arms embargo could be lawfully enforced. Arguably, member States could have enforced the embargo everywhere around the globe, including for example the Atlantic or Indian Oceans. This would have been different, had the resolution mentioned that 'all inward and outward shipping' should be inspected. In this case, in fact, the operation would have been confined to the sanctioned State's neighbourhood. Apart from questioning the effectiveness of an action at sea far away from

[41] UNSC Res. 1973, § 4 reads:

> 4. [The Security Council] [a]uthorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council.

[42] Klein, *supra* note 28, p. 279.

the actual theatre of operations in the Southern Mediterranean Sea, the unforeseen effects of Resolution 1973 should also be balanced with its impact on the freedom of navigation and the economic traffics at sea.

Interestingly, the wording of Resolution 1973 introduced a different scope for maritime enforcement operations at sea in comparison with earlier embargo interventions. Although this could have resulted into a completely different enforcement model, military planners derived from the resolution a military activity that resembled traditional maritime embargo operations off the coasts of the targeted State. That decision-makers had a traditional maritime-arms-embargo-type operation in mind when the resolution was adopted, can perhaps be deduced from the fact that there was no opposition against the implementation of these military activities; not even by the Sanctions Committee. In the end, NATO's maritime operation was conducted only in the central Mediterranean Sea off the coasts of Libya. An established Maritime Surveillance Area (MSA) tied the actual maritime operations area to the Libyan coast.[43] Notifications were sent out to inform the shipping community of the embargo's existence and to establish a reporting system for vessels that were sailing to or from Libya.[44] As opposed to the law of naval warfare, and the law of naval blockade in particular, there is nothing in international law or customary law which may provide guidelines on how to formally establish a maritime embargo area. One could argue however that the three core conditions which are to be met under the law of naval blockade, i.e. notification, effectiveness and impartiality, could also form the basis to lawfully establish an embargo area at sea.[45]

Third, instead of using the sentence 'to hold all inward and outward shipping', in UNSC Res. 1973 the Security Council chose to partly replace the wording of UNSC Res. 1970, adding that *reasonable grounds to believe* that the cargo contains prohibited items, services or persons, are requested to allow intervening forces to board and inspect a vessel. With this formula the Council re-introduced a threshold that had not been used since UNSC Resolution 221 on Southern Rhodesia.[46] Boarding a vessel for inspection would therefore first require to meet the threshold

[43] See the letter of Maritime Component Command Naples, dated 8 April 2011, which sets out the limits of the surveillance area, available at www.shipping.nato.int. The MSA was limited by the following coordinates: Northern Limit: 34 00N, Western limit: 012 00E, Southern limit: Libyan TTW, Eastern limit: 34 00N 02200E / 33 00N 025 00E.

[44] See NAVAREA III 170/11 (081415 UTC Apr 11). Following the adoption of UNSC Res. 2009, NAVAREA III 170/11 was replaced by NAVAREA III 395/11. Finally, with NAVAREA 445/11, the MSA was terminated.

[45] On the conditions for the establishment of wartime naval blockades see M.D. Fink, 'Contemporary Views on the Lawfulness of Naval Blockades', Vol. 1 *Aegean Review on the Law of the Sea* 2011, pp. 191-215.

[46] Paragraph 5 of UNSC Res. 221 (1966) reads as follows:

of reasonable grounds. On the other hand, this 'reasonable grounds' standard in UNSC Resolution 1973 seems to follow the wording of the right of visit as contained in UNCLOS. This level of suspicion is for instance also needed to board a vessel that is suspected of piracy. Article 110(a) UNCLOS states that a vessel cannot be boarded unless there are reasonable grounds to suspect that the ship is engaged in piracy.[47] Also Article 8bis(5) of the 2005 SUA Protocol[48] affirms that a State requesting a visit on a private vessel flying a foreign flag must have reasonable grounds to suspect that the vessel or a person on board the vessel has been, is or is about to be, involved in the commission of an offence. These treaty provisions underline that even when a warship has the authority to visit and search a foreign private vessel, there is still a minimum requirement to be fulfilled before action may take place. The same principle is confirmed by the *San Remo Manual*. The Manual establishes in Rule 118 that in order to exercise the right of visit during a conflict, reasonable grounds for suspicion must exist. The commentary to Rule 118 even mentions that 'the right of visit and search may not be exercised arbitrarily. An unrestricted practice of visit and search has never been considered to be in accordance with international law.'[49] In the case of the Libyan embargo, the enforcement power conferred by the Council is therefore different from the 'blanket authority' to halt every vessel, as established in earlier resolutions. The 'reasonable grounds' standard rule used in the Libyan conflict also proves that the arms embargo was not to be considered as a naval blockade. Vessels were not totally denied from entering or leaving Libyan ports. Under this

> [The Security Council] calls upon the Government of the United Kingdom and Northern Ireland to prevent, by the use of force if necessary, the arrival at Beira of vessels reasonably believed to be carrying oil destined for Rhodesia, and empowers the United Kingdom to arrest and detain the tanker known as the *Joanna V* upon her departure from Beira in the event her oil cargo is discharged there.

47 This wording has also been used in Resolutions establishing anti-piracy operations. For example, UNSC Res. 1846 (adopted on 2 December 2008) states that:

> *9*. [The Security Council] [*c*]*alls upon* States and regional organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and relevant international law, by deploying naval vessels and military aircraft, and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there is reasonable ground for suspecting such use.

48 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, London, 14 October 2005, IMO Doc. LEG/CONF.15/21.

49 L. Doswald-Beck (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (Cambridge, Cambridge University Press, 1995), p. 196.

line of reasoning, the Council did not authorize a blockade as provided in Article 42 of the UN Charter.

2. Use All Measures Commensurate to the Specific Circumstances

The wording chosen to authorize the use of force in Resolution 1973 is slightly different from earlier UN-mandated embargo operations. Whereas Resolution 665 (1991) and Resolution 787 (1992) mention that 'measures commensurate to the specific circumstances as may be necessary'[50] can be used, Resolution 1973 authorizes Member States 'to use all measures commensurate to the specific circumstances'. The difference between the two expressions is minimal and it could be seen as a combination of the standard wording for the establishment of an embargo and the traditional Security Council's authorization to take 'all necessary means/measures'. The latter phrase is commonly accepted to mean that military force can be used.[51] It is also a significant signal that this time the embargo falls within Article 42 of the UN-Charter. Moreover, one should consider the mandate for arms embargo within the general context of the resolutions on Libya. Although it was not specifically mentioned, the overall mandate conferred by Resolution 1973 seems to be based on Article 42 of the UN-Charter, which allows the use of military force to ensure compliance with measures decided by the Security Council. The acceptance by member States and the UN of the mandate's military enforcement by means of a bombing campaign based on Paragraph 4 of Resolution 1973 strengthens that view. Also several Security Council's members viewed Resolution 1973 as authorizing the use of force to implement the mandate.[52] Considering the arms embargo as based on Article 42 can therefore be deemed highly probable, and in line with the wider context of Resolution 1973. As a consequence, enforcing economic sanctions would in this case be regarded as a part of a broader effort aimed at protecting civilians. The enforcement of sanctions would become a key element of a comprehensive package of military enforcement measures, taken to stop

[50] UNSC Res. 665, § 1; UNSC Res. 787, § 12.

[51] See M. Payandeh, 'The United Nations, Military Intervention, and Regime Change in Libya', Vol. 52, No. 2 *Virginia J.I.L* 2011, pp. 1-49, at 14; R. Mclaughlin, 'The Legal Regime Applicable to Use of Lethal Force when Operating under a United Nations Security Council Chapter VII Mandate Authorising 'All Necessary Means', Vol. 12, No. 3 *J.C.S.L.* 2008, pp. 389-417. See also Ducheine and Pouw discussing the authorization for the International Security Assistance Force (ISAF) in Afghanistan, in P.A.L. Ducheine, E.H. Pouw, *ISAF Operaties in Afghanistan. Oorlogsrecht, Doelbestrijding in Counter Insurgency, ROE, Mensenrechten & Ius ad Bellum* (Nijmegen, Wolff legal publishers, 2010), p. 12.

[52] See among them, Germany, India, the United States and Brazil (see the verbatim record of the Security Council's 6498th meeting, UN Doc. S/PV.6498, 17 March 2011).

the threat against civilians and civilian-populated areas. This reading of the Resolution's operating paragraphs would also have effect on the interpretation of the embargo's main scope.

IV. Scope of the Arms Embargo

Previous maritime embargoes have always included an embargo on arms.[53] They were however also subject to scopes other than preventing the influx of arms in the targeted countries. Such scopes depended in the first instance on the development of the conflict, going from a total trade embargo to oil embargo[54]. Resolution 1973 did not expand the range of embargoed goods as already established in Resolution 1970. Considering the complete package of economic measures against Libya which could be enforced on member States' territory – including asset freezing and travel bans – measures which could be enforced at sea were in fact more limited.

On the whole, when analyzing the scope of the Libyan arms embargo, three main points are worth mentioning with regard to the conduct of naval operations: the flexibility of scope, through the use of the expression 'related materiel of all types'; the inclusion of sanctions against individuals and specific groups; and thirdly, the relationship between the arms embargo and Paragraph 4 of Resolution 1973.

The arms embargo against Libya is clearly defined in relevant resolutions but the mandate contains terms which could potentially

[53] UNSC Res. 232 (Southern Rhodesia); UNSC Res. 661 (Iraq); UNSC Res. 713 (Former Yugoslavia); UNSC Res. 1132 (Sierra Leone); UNSC Res. 1701 (Lebanon).

[54] See these two examples: UNSC Res. 757 (Former Yugoslavia) expanded the arms embargo established in UNSC Res. 713 to all forms of international trade, including oil and petroleum. Also the Haiti crisis in the early 1990s showed a gradual expansion of the scope of the embargo. In 1993 the Council decided the adoption of sanctions against Haiti, establishing an oil embargo in UNSC Res. 841, although not yet authorizing maritime enforcement operations. The latter, together with the arms embargo, were authorized with UNSC Res. 875, focusing especially on the inward maritime traffic. Finally, in 1994, UNSC Res. 917 (1994) established a total trade embargo, which covered all commodities and products (see *supra* note 31). UNSC Res. 875 reads:

> 1. [The Security Council] [c]alls upon Member States, acting nationally or through regional agencies or arrangements, cooperating with the legitimate Government of Haiti, to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to ensure strict implementation of the provisions of resolutions 841 (1993) and 873 (1993) relating to the supply of petroleum or petroleum products or arms and related matériel of all types, and in particular to halt inward maritime shipping as necessary in order to inspect and verify their cargoes and destinations.

widen its scope. Apart from specifically-named items, Resolution 1973 authorizes to stop *arms and related materiel of all types.* This 'catch-all' phrase was previously used in Resolution 1701 with regard to UNIFIL, in Resolution 1132 on Sierra Leone and in Resolution 875 concerning the situation in Haiti.[55] The inherent connection of the arms embargo with the conflict and the purpose to end the conflict itself through a combination of economic and military measures, leads to interpret the scope of the embargo in a wider perspective, especially considering that non-traditional military means are commonly used in sustaining the war efforts. Indeed, this reflection potentially allows the ban of dual-use items, namely items which by their use could become military means to be included among those prohibited by Resolution 1970. One example of dual-use goods is represented by certain types of vehicles. The Deputy Commander OUP, Admiral Harding, stated in an interview that: 'We've seen them use private cars, trucks, technicals [flatbed trucks with guns mounted on the back] sometimes hundreds at the time.'[56] The International Herald Tribune also reported that '[t]roops loyal to Col. Qaddaffi [...] have put their armor inside cities surrounded by civilians and are using the same sort of armed pick-up trucks as the opposition to ferry troops and ammunition.'[57]

The specific circumstances of the case are one of the factors which may determine whether or not an item would fall within the 'related materiel of all types' mentioned in Resolution 1970. Obviously also the UN Sanctions Committee – which was initially set up pursuant to UNSC Resolution 1970[58] – had potentially a role to play in determining the embargo's scope.[59] As a part of its activities, for instance, the 1267 Committee concerning Afghanistan could decide on exceptions to the arms embargo and establish guidelines to facilitate the implementation of sanctions. In this respect, since 2007, the Committee has issued several notes on the arms embargo against Afghanistan which contain a number of guidelines and explanatory terms.[60] With regard to term 'arms-related materiel', it specified that this notion comprises items which could be used, for instance, in manufacturing Improvised Explosive Devices (IEDs). Unfortunately, no similar guidance was issued by the Committee on the sanctions against Libya.

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55 UNSC Res. 875, § 1; UNSC Res. 1701, § 14; UNSC Res. 1132, § 13.

56 K. Sengupta, 'NATO Strikes at Libya's Oil in Bid to Oust Gaddafi', *The Independent*, 8 July 2011, www.independent.co.uk/news/world/africa/nato-strikes-at-libyas-oil-in-bid-to-oust-gaddafi-2308962.html.

57 'NATO Says its Hands are Tied in Air War', *International Herald Tribune*, 7 April 2011, p. 6.

58 UNSC Res. 1970, § 24.

59 UNSC Res. 1267, 15 October 1999.

60 Texts available at www.un.org/sc/committees/1267/usefulpapers.shtml.

It is well known that Qaddafi also used mercenaries beside his regular forces. To counter this threat, the arms embargo also included mercenaries. In this respect, the UN Resolutions attempted to prevent mercenaries from being able to take part to the hostilities. Previous UN-mandated embargo operations have always dealt with goods only. People have never been the object of sanctions to be enforced at sea. However, interdiction operations in a wider sense can have, and in the past had, individuals as their object. Examples are the interception at sea of suspect terrorists in operation Enduring Freedom[61] or suspect pirates in current counter-piracy operations. However, although such operations can be well considered MIOs, they have to be clearly distinguished from UN-mandated maritime embargo operations. As such, the arms embargo against Libya appears to be the first time in which an UN-authorized embargo at sea also explicitly includes sanctions against people. Although suspect mercenaries could be apprehended at sea by warships acting under NATO's control, any further legal action against them should only be undertaken with the support of national authorities.

Ultimately, it can be mentioned that, according to a theory, the scope of the arms embargo could also be affected by Paragraph 4 of Resolution 1973. This paragraph authorizes participating forces to 'to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya'. Some view this phrase as entailing the possibility to deviate from the prohibitions related to the arms embargo and consider the protection of civilians as the resolution's ultimate goal. Under this line of reasoning the arms embargo would be only derived from the authorization to protect Libyan civilians from the attack of loyalist forces. France seemed to have followed this approach when it delivered an airdrop of weapons in June 2011 to the opponents of the Gaddafi's regime close to Tripoli.[62] Gerard Araud, the French Ambassador to the UN, reportedly argued that '[i] n exceptional circumstances, we cannot implement paragraph 9 when it's for protecting civilians.'[63] This view creates a loophole in the arms embargo, so that arming opposition forces becomes a lawful means when used to defend civilians. When deciding to participate in OUP,

[61] W. Heintschel von Heinegg, 'The Legality of Maritime Interception/Interdiction Operations within the Framework of Operation Enduring Freedom', Vol. 79 *International Law Studies* (Rhode Island, Naval War College, 2003), pp. 259-274, at 270.

[62] 'La France a parachuté des armes aux rebelles libyens', *Le Figaro*, 26 June 2011, www.lefigaro.fr/international/2011/06/28/01003-20110628ARTFIG00704-la-france-a-parachute-des-armes-aux-rebelles-libyens.php.

[63] L. Charbonneau and H. Hassan, 'France Defends Arms Airlift to Libyan Rebels', *Reuters*, 30 June 2011, http://uk.mobile.reuters.com/article/topNews/idUKTRE75O1ER20110629?i=1.

also the Dutch Government seems to have taken the view that the arms embargo derives from the ultimate goal of protecting civilians. It has however not been argued that in *this way* the arms embargo can be basically ignored under certain conditions.[64]

In September 2011, the terms of the arms embargo were revised with the adoption of UNSC Resolution 2009. Paragraph 13 of this resolution allows in certain circumstances the supply of arms and related materiel for the security of, or disarmament assistance to, the Libyan authorities.[65] At this stage of the conflict, however, the latter were not considered the remaining part of the Qaddafi-regime, but rather its opponents in Benghazi. By then, in fact, Libyan rebels were politically organized in an interim national council. Resolution 2009 therefore took to an end the discussion over the possibility of arming rebels during the arms embargo. Eventually, a bit more than a month later, on 31 October 2011 NATO stopped all its military operations over Libya.

V. Conclusion

This article has tried to demonstrate that, viewed against the background of previous UN-mandated maritime embargo operations, the maritime arms embargo against Libya presented some unique features in scope and authorization for the enforcement of sanctions at sea. This is the consequence of the wording used in relevant UNSC resolutions, which is different from the wording included in similar resolutions adopted in the past. This article has also shown that due to the 'expanded authority' approach undertaken by the Security Council, the naval embargo against the Qaddafi's regime presented different limitations, if compared to previous maritime arms embargoes. On the one hand, operations

[64] Kamerstukken II (Government letter to Parliament), Verlenging van de Nederlandse bijdrage aan Operatie Unified Protector – Libië; 10 June 2011, 2010-2011, 32 623, no. 24.

[65] UNSC Res. 2009, § 13 reads:

> 13. Decides that the measure imposed by paragraph 9 of resolution 1970 (2011) shall also not apply to the supply, sale or transfer to Libya of:
>
> (a) arms and related materiel of all types, including technical assistance, training, financial and other assistance, intended solely for security or disarmament assistance to the Libyan authorities and notified to the Committee in advance and in the absence of a negative decision by the Committee within five working days of such a notification;
>
> (b) small arms, light weapons and related materiel, temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, notified to the Committee in advance and in the absence of a negative decision by the Committee within five working days of such a notification.

had to be conducted outside the territorial sea of Libya and based on reasonable grounds that intercepted vessels were embargo-breakers. On the other hand, the scope of the arms embargo was broadened in a quite unique manner, by adding individual and group sanctions, in particular against mercenaries. This turned out to be another challenge to the maritime dimension of the mission, as it brought about the issue of how to deal with potential detainees in an UN-mandated maritime embargo operation.

Lastly, a question which has not been addressed, and is in fact beyond the scope of this article, is what reasons the Security Council had for deviating from the traditional wording included in similar pre-Libya resolutions. Obviously, the answer must be sought in the political context in which the intervention took place, on the one hand, and in response to the issue of implementing economic sanctions at best, so that the latter could have immediate effects, on the other. As it was noted above, seen from an operational perspective, the use of the traditional expression 'to halt all inward and outward shipping' could probably have resulted in a clearer and more effective mandate for naval forces. However, Libya's politico-economical situation may well have been such that the overall effectiveness of the embargo was not to be achieved at sea, but – together with the complete package of economic sanctions imposed by Resolutions 1970 and 1973 – primarily through direct enforcement by member States within their own borders. Nonetheless, the implementation of sanctions on the high seas improved the embargo's efficacy, although assessing the effectiveness of maritime embargo operations is often difficult. Besides, one should also realize that Libya's land borders were and are subject to the enforcement measures of its six neighbouring States. In these circumstances, it would have been odd assuming that the influx of arms and related materiel would only have passed through the country's the sea borders.

Secondly, if this *had been* the case, probably better means, procedures and jurisdiction would have been available in member States' airports and seaports, rather than at sea. Moreover, by authorizing States to act within their own territory, the Security Council probably achieved an immediate and perhaps much greater effect than if it had obliged member States to stop delivering weapons to Libya and focus on maritime traffic only later. If indeed this time the operation's 'end-state' was achieved – also taking into account the political and economic context – by drafting the paragraph on maritime enforcement as it was done in Resolutions 1970 and 1973, military planners should not be surprised if future UN-mandated embargo operations would follow the Libyan example as a successful model to enforce economic sanctions and repeat the same wording in relevant resolutions.

Summary – Résumé – Samenvatting – Zusammenfassung – Riassunto – Resumen

Summary – UN-Mandated Maritime Arms Embargo Operations in Operation Unified Protector

On the basis of UNSC Resolutions 1970 and 1973 on the situation in Libya, between March and October 2011 NATO conducted the Operation Unified Protector (OUP). An important part of this NATO-led mission was that of enforcing a UN-mandated arms embargo at sea. In this context, this article examines the legal framework for maritime enforcement operations and describes some key legal aspects related to the intervention against potential embargo-breakers at sea. The arms embargo against Libya is unique because of the wording of relevant UN Security Council Resolutions, especially if compared with previous resolutions adopted with regard to Iraq, Haiti and former Yugoslavia. Logically in fact, the text of resolutions has an impact on the development of naval operations. In particular, the 'expanded authority' approach adopted by the Security Council – according to which the main focus of the embargo operations is on the territory of member States, rather than on the soil of the targeted State – had several consequences for the implementation of the arms embargo against Libya at sea.

Résumé – Les Opérations d'Embargos d'Armes Mandatées par les Nations Unies dans l'Opération "Unified Protector"

Sur les bases des Résolutions 1970 et 1973 du Conseil de Sécurité des Nations Unies concernant la situation en Libye, entre mars et octobre 2011, l'OTAN a mené l'Opération "Unified Protector" (OUP). Une part importante de cette mission menée par l'OTAN était l'exécution d'un mandat sur les armes des Nations Unies sur la mer. Dans ce contexte, l'article examine le cadre légal de l'exécution des opérations maritimes et décrit quelques aspects juridiques clefs liés à l'intervention des potentiels "briseurs d'embargo" sur la mer. L'embargo d'armes contre la Libye est unique en raison de la formulation des Résolutions pertinentes du Conseil de Sécurité, en particulier au regard des résolutions précédemment adoptées pour l'Irak, Haiti et l'Ex-Yougoslavie. Logiquement, en fait, le texte des résolutions a un impact sur le développement d'opérations navales. En particulier, l'approche de l'autorité élargie adoptée par le Conseil de Sécurité – selon laquelle le point central des opérations se situe sur le territoire des Etats membres, plutôt que sur le sol des Etats ciblés – a eu plusieurs conséquences pour la mise en place des embargos sur les armes contre la Libye.

Samenvatting – VN–gemandateerde maritieme wapenembargo operaties in Operatie Unifed Protector

Op basis van VN-resolutie 1970 en 1973 inzake de situatie in Libië heeft de NAVO tussen maart en oktober de militaire operatie 2011 Unified Protector (OUP) uitgevoerd. Een belangrijk onderdeel van deze NAVO-operaties was het afdwingen van een wapenembargo op zee. Dit artikel gaat in op het juridisch raamwerk voor de embargo operatie en beschrijft enkele juridische aspecten van het afdwingen van het wapenembargo tegen Libië op zee. Het wapenembargo tegen libië is uniek omdat de VN-veiligheidsraad, vergeleken met eerdere VN-gemandateerde wapenembargo's onder meer ondernomen voor de kusten van Irak, Haïti en voormalig-Joegoslavie, ditmaal voor andere bewoordingen heeft gekozen dan gebruikelijk is voor VN-gemandateerde embargo operaties. De tekst van de resoluties heeft logischerwijs ook effect op de daadwerklijke maritieme uitvoering van de operatie op zee. Met name de "expanded authority approach", waarin de Raad de focus van het embargo in eerste instantie in het territoir van de lidstaten zelf in plaats van de doelstaat plaatst, heeft gevolg voor de uitvoeringsgrenzen van het wapenembargo tegen Libië op zee.

Zusammenfassung – UN-mandatierte Maßnahmen zur See zur Durchsetzung des Waffenembargos im Rahmen der Operation „Unified Protector"

Auf Grundlage der Resolutionen 1970 und 1973 des Sicherheitsrates der Vereinten Nationen zur Situation in Libyen führte die NATO zwischen März und Oktober 2011 die Operation „Unified Protector" (OUP) durch. Ein wichtiger Teil dieses unter NATO-Kommando stehenden Militäreinsatzes war die Durchsetzung des Waffenembargos zur See. Der vorliegende Beitrag untersucht die rechtlichen Rahmenbedingungen für Maßnahmen zur See und stellt einige zentrale Aspekte der Intervention im Falle von Verstößen gegen das Embargo dar. Das Waffenembargo gegen Libyen ist wegen des Wortlauts der maßgeblichen Resolutionen des UN-Sicherheitsrates einzigartig, insbesondere vor dem Hintergrund früherer Resolutionen hinsichtlich des Irak, Haiti und des früheren Jugoslawiens. Der Wortlaut von Resolutionen hat zwangsläufig Einfluss auf die Natur der Maßnahmen zur See. Namentlich der Ansatz des Sicherheitsrates, die Mehrheit der Maßnahmen zur Durchsetzung des Embargos auf dem Gebiet von Mitgliedsstaaten – und nicht auf dem Gebiet Libyens – durchzuführen, hatte zahlreiche Konsequenzen für die Durchsetzung des Waffenembargos zur See.

Riassunto – Le operazioni marittime delle Nazioni Unite aventi come oggetto l'embargo di armi nel contesto dell'operazione "Unified Protector"

In base alle risoluzioni 1970 e 1973 del Consiglio di sicurezza delle Nazioni Unite aventi come oggetto la situazione in Libia, tra marzo ed ottobre 2011, la NATO ha condotto l'operazione "Unified Protector". Una componente importante di tale operazione è stata la messa in atto dell'embargo di armi in mare. In tale contesto, il presente articolo esamina il regime giuridico applicabile a tali operazioni di *enforcement* in mare e descrive alcune questioni giuridiche chiave suscettibili di sorgere in caso di intervento contro potenziali violazioni di tale embargo. Di fatto, il caso libico è unico nel suo genere in quanto il mandato, così come descritto nelle risoluzioni menzionate sopra, diverge sostanzialmente dalle risoluzioni precedentemente adottate dal Consiglio di sicurezza delle Nazioni Unite nel contesto delle situazioni in Iraq, Haiti ed ex Jugoslavia. Senza dubbio, infatti, il testo di tali risoluzioni ha avuto un impatto di tutto rilievo sullo sviluppo delle operazioni navali. In tal senso, l'autore sottolinea come l'approccio seguente una logica di "expanded authority" - ovvero l'oggetto di tali operazioni comprende il territorio di tutti gli Stati parte, piuttosto che il solo territorio dello Stato oggetto di tale embargo - così come adottato dal Consiglio di sicurezza abbia avuto alcune conseguenze rilevanti circa l'attuazione del programma di embargo di armi in mare nel contesto della situazione in Libia.

Resumen – Operaciones marítimas de embargo de armas bajo mandato de la ONU en la Operación "Unified Protector"

Entre los meses de marzo a octubre de 2011, la OTAN lideró la Operación "Unified Protector" (OUP) sobre la base de las Resoluciones 1970 y 1973 dictadas por el Consejo de Seguridad de las Naciones Unidas en relación a la situación en Libia. Una parte importante de esta misión liderada por la OTAN fue la de hacer respetar el embargo marítimo de armas impuesto por la ONU. En este contexto, el presente artículo examina el marco jurídico relativo a las operaciones marítimas orientadas al cumplimiento de los embargos y aborda algunos aspectos jurídicos clave referentes a la intervención dirigida contra sus posibles incumplidores. El embargo de armas impuesto a Libia es único por el lenguaje empleado en las Resoluciones del Consejo de Seguridad de la ONU, especialmente si lo comparamos con resoluciones anteriores como las relativas a Irak, Haití y la antigua Yugoslavia. Lógicamente, de hecho, el texto de las resoluciones tiene impacto en el desarrollo de las operaciones navales. En particular, la aproximación basada en el concepto de "autoridad expansiva" adoptada por el Consejo

de Seguridad – de acuerdo con la cual el enfoque principal de las operaciones de embargo reside en el territorio del Estado miembro, antes que en el suelo de ese Estado – tuvo consecuencias varias en la aplicación del embargo de armas por mar impuesto a Libia.