The No-fly Zone in Current International Law

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Luisa Vierucci

University of Florence

luisa.vierucci@unifi.it
Main questions

What?
Definition of NFZ

Who?
Legal basis for the establishment of a NFZ

How?
Legal regime for the enforcement of a NFZ
Definition of NFZ

‘A no-fly zone ... is a three dimensional airspace by which the Belligerent Party restricts or prohibits aviation in its own or in enemy national territory’.

Legal regime of a NFZ

- ‘No-fly zones may be enforced by any lawful method or means of warfare’.
- ‘By establishing a no-fly zone, Belligerent Parties are not absolved from their obligations under the law of international armed conflict, nor do they acquire additional rights’.

*Commentary to the Harvard Manual, pp. 236-237*
Para. 6:
‘The Security Council decides to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians’
Objective of the NFZ according to res. 1973:
‘to help protect civilians’

In order to achieve that objective, res. 1973, para. 8:

‘Authorizes Member States that have notified the Secretary-General and the Secretary-General of the League of Arab States, acting nationally or through regional organizations or arrangements, to take all necessary measures to enforce compliance with the ban on flights imposed by paragraph 6’
According to *The Harvard Manual*

‘Refusing to comply with the orders of military authorities, including instructions for landing, inspection and possible capture, or clearly resisting interception may render an enemy aircraft a military objective’.
Use of force within a NFZ

‘unauthorized presence in a no-fly zone may be considered an indicator of hostile intent, but in no way implies that mere presence within the zone is sufficient to warrant attack’

Commentary to Harvard Manual, p. 237

→ a NFZ is not a free-fire zone, not even in presence of a SC authorization to use force
US Pentagon, 19 March 2011 (Libya)

“Coalition members fired 110 Tomahawk cruise missiles at Libya’s integrated air and missile defense system [...] as a precursor to setting up a no-fly zone over the country”. 
Attacks on the ground

Under general IL, it is not clear whether the establishment of a NFZ may allow the destruction or neutralization of ground assets, such as radars.

In Libya attacks on the ground were consonant with the objective ‘to help protect civilians’ only if there was a functional link between the specific ground object and a threat to civilians.
Conclusions

The issue of the NFZ in current IL, that we have dealt with only in connection with an armed conflict, is a very delicate one as there are no treaty rules regulating it and the existence of customary rules is difficult to assess given scant practice. However, general principles of *jus ad bellum* and *jus in bello* are applicable.
This means that the objective pursued by the political body that has established the NFZ may work as a legal limitation (namely: a *jus ad bellum* limitation) to what would be otherwise allowed under *jus in bello* alone.