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THE LEGALITY OF HUMANITARIAN INTERVENTION: THE CASES OF KOSOVO AND LIBYA

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ABSTRACT

Humanitarian intervention is the one of the most critical concepts with respect to legality and legitimacy. Although, there is no common definitions, theorists or international community defines it as violations of human rights. The main aim of this study is to argue that the international community has the responsibility to intervene to prevent a humanitarian crisis. This research also attempts to clarify the legality and legitimacy of humanitarian interventions which are limited to cases of threats to international peace, security and where there exists prior authorization by the UNSC. The article argues that humanitarian interventions should only be established under the authorization of the UNSC; and that when violation of human rights is interpreted as a threat to international peace and security, if an intervention has been authorized by the SC, it is legal.

Key word: Humanitarian intervention, United Nations, NATO, Kosovo, Libya, the use of force, legal positivism.

INTRODUCTION

Throughout the modern geopolitical era, the concept of 'humanitarian intervention' has always been problematic. Although there is no commonly accepted definition about its exact meaning, it can be defined for the purposes of this study in terms of protecting people from the threat of attack; and addressing a humanitarian crisis in a foreign state. Indeed, it always constitutes intervention in the internal affairs of a sovereign state.

The most important pre-condition justifying such intervention is that of humanitarian crisis; and/or human rights violations occurring at such a level as to pose to a threat international peace and security. If such a crisis has the potential to expand to other countries or the entire region, the international community, in particular the Security Council (SC) under the United Nations Charter has the legal right to protect fundamental human rights within a sovereign state: because of the threat posed to peace and security. Above all, if the human rights violations constitute crimes against humanity (Resolution, 1970; Magnan, 2000) the international community has the right to intervene: but this must be based upon the SC resolutions and authorization.

The purpose of this article is to argue that the international community has the responsibility to intervene to prevent a humanitarian crisis. This article also attempts to clarify the legality and legitimacy of humanitarian interventions. Such interventions are limited to cases of threats to international peace, security and where there exists prior authorization by the UNSC, based on the UN Charter. This article also analyses the North Atlantic Treaty Organization (NATO) intervention into Kosovo within the framework of the Charter. It is argued that the humanitarian intervention of NATO into Kosovo clearly violates the UN Charter. Moreover, this article also analyses the intervention in Libya within the framework of

the consideration of human rights violations, and what the UN Charter legally allows.

Humanitarian intervention in general: Humanitarian intervention has been allotted many different definitions: indeed, there is no common description in either international agreements, or the UN Charter. Consequently, all authors or organizations use their own definitions in order to justify humanitarian intervention. These generally include: military intervention (Roberts, 1993) protecting human rights in a state (Ramsbotham and Woodhouse, 1996) widespread suffering or protecting human life in a foreign territory (Finnemore, 1996). NATO's definition, adopted in Scheveningen on November 1999, stated that: "A humanitarian intervention is an armed intervention in another state, without the agreement of that state, to address (the threat of) a humanitarian disaster, in particular caused by grave and large-scale violations of fundamental human rights." According to this definition, the main aim of humanitarian intervention is to protect and address humanitarian problems; yet no specific definition of the level of fundamental human rights violations which would justify intervention is provided.

Humanitarian intervention is also defined as: "The threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights" (Murphy, 1996).

This definition places a firm emphasis on the maintenance of fundamental human rights. If these come under threat within a sovereign state, the UNSC adopts resolutions and implements necessary steps, in order to address this. If the problem still continues, international organizations may use force, as long as it is authorized by the SC. It is clear, therefore, that the SC has all roles which are paramount in the

addressing of humanitarian crises, and the protection of peace, security and human rights.

A further critical question concerns the extent of human rights violations. There is no common consensus regarding the concept of what gross human rights violations actually *means*. According to Magnan (2000) there are some tools to establish intervention in a state without SC authorization: "It must be a case of gross human rights violations amounting to crimes against humanity (murder, torture, rape, etc.) (Article 7 of the Rome Statute), all available peaceful settlement procedures must have been exhausted, and the government of the state where the atrocities take place must be unable or unwilling to rectify the situation" (Magnan, 2000).

Moreover, if human rights violations are of such an extent that they either involve or seem likely to result in genocide (Article 6 of The Rome Statute), the international community does have the right to intervene, in order to protect fundamental human rights. Therefore, in cases of humanitarian crisis, which seem likely to or are already affecting international peace and security, the international community can use force to stop this, as long as it has been authorized by the SC.

View of international community and the SC resolutions to case of Kosovo: Until late 1997, the international community was not able to cope with the brutal and rapidly escalating war in Kosovo. After the first major violent clashes, it finally allotted it a high position on the political agenda (Calic, 2000) After late 1997, the International Contact Group (ICG) became very concerned about the case of Kosovo, and the international community opened dialogue with Pristine (Calic, 2000); but Belgrade rejected all proposals, because of their continued stance that Kosovo was an internal Serbian affair.

Given the increasing violence in the region, and continued intransigence of the Serbian authorities, the ICG stated: "Their view that the FRY needs to address this question urgently, and that making progress to resolve the serious political and human rights issues in Kosovo is critical for Belgrade to improve its international position and relations with the international community. The Contact Group expressed its readiness to facilitate the dialogue." (Contact Group Meeting) Until 1998, the SC did not take any responsibility of stopping human rights violations in Kosovo. But following continued outbreaks of violence, and mass civilian deaths, UNSCR 1160 were finally agreed (Revolution, 1160). This was adopted pursuant to Chapter VII of the UN Charter: imposing a comprehensive arms embargo on the FRY and Kosovo, as well as economic and diplomatic sanctions against the FRY (Simma, 1999).

The resolution called upon the FRY to take all necessary steps to achieve a political solution, and open a meaningful dialogue with Kosovar Albanians; but all members nonetheless agreed to affirm the territorial integrity and sovereignty of the FRY. Finally, the International Criminal Tribunal for the former Yugoslavia (ICTY) was supported by the SC in gathering

evidence of possible crimes in Kosovo (Revolution, 1160). On 23 September 1998, the SC adopted (Resolution, 1199). This affirmed that the deterioration of the situation in Kosovo constituted a threat to peace and security in the region; and acting under Chapter VII of the Charter, demanded an immediate cease of hostilities, and maintenance of a ceasefire in Kosovo. Authorities on both sides were required to take immediate steps to improve the humanitarian situation in the region; and an open, meaningful dialogue was again called for (Resolution, 1199; Simma, 1999).

The SC specifically demanded some measures which were contained within the Contact Group statement of 12 July 1998: "a) cease all action by the security forces affecting the civilian population and order the withdrawal of security units used for civilian repression; b) enable effective and continuous international monitoring in Kosovo by the European Community Monitoring Mission; c) the safe return of refugees and displaced persons to their homes and allow free and unimpeded access for humanitarian organizations and supplies to Kosovo; d) make rapid progress to a clear timetable for political solution." (Resolution, 1199; Moorman, 2002).

Although there was no explicit threat of the use of 'all necessary (i.e. military) measures', this resolution was interpreted as legitimizing the use of force against violators of human rights, i.e. the FRY (Calic, 2000). But it was clear that Russia would veto any SC resolution, which authorized the use of force against the FRY.

The Security Council adopted UNSCR 1203 on Kosovo before the NATO intervention (Resolution, 1203). According to this resolution, the SC re-stated its prior decisions about the FRY and Kosovo, particularly specified the impending humanitarian catastrophe, and re-emphasized the need to prevent it because of the threat to continuing peace and security in the region. The SC also endorsed and supported the agreements signed between the FRY and NATO on 15 October 1998; and between the FRY and OSCE on 16 October 1998. If the SC accepted and supported these agreements, Yugoslavia had pledged it would implement prior demands.

These three resolutions did not mention any use of force against the FRY, but it is also clear that UNSCR 1199 called upon the international community to help the Kosovars in terms of humanitarian aid; and that UNSCR 1203 asserted humanitarian assistance was required immediately.

After this massacre, on 29 January 1999, the ICG met again in London. After the meeting, the SC made a statement, which read: "The Security Council welcomes and supports the decisions of the Contact Group, following their meeting in London on 29 January 1999 (S/1999/96), which aim at reaching a political settlement between the parties and establish a framework and timetable for that purpose. The Council demands that the parties should accept their responsibilities and comply fully with these decisions and requirements, as with its relevant resolutions. The Security Council reiterates its full support for international efforts,

including those of the Contact Group and the Organization for Security and Cooperation in Europe Kosovo Verification Mission, to reduce tensions in Kosovo and facilitate a political settlement on the basis of substantial autonomy and equality for all citizens and ethnic communities in Kosovo and the recognition of the legitimate rights of the Kosovo Albanians and other communities in Kosovo. It reaffirms its commitment to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia.” (Security Council)

The SC, then, supported all international efforts to reduce tensions in Kosovo: tension and solve this problem through a political settlement, without the use of force. NATO gave its full support to the Contact Group; but significantly, began to threaten air strikes against the FRY (Simma, 1999).

Until March 1999, a number of further meetings attempted to solve the crisis through diplomacy. In Rambouillet, France, negotiations, which began on 6 February, under the Chairmanship of US Secretary of State, Madeleine Albright, (The Rambouillet Agreement), proposed that Kosovo would have its own institutions; be an autonomous region in the FRY; and this region, including above all the KLA, would be demilitarized: A NATO military force, known as the NATO Kosovo Enforcement Force (KFOR), would implemented this settlement, and be authorised to use all necessary force were it reneged upon. But whereas the KLA, under pressure from the US, accepted the agreement, Serbia rejected it (Craig, 1999; Weller, 1999; Buckley, 2000; Waller and Drezov, 2001; Pavlowitch, 2002).

The NATO intervention in Kosovo: On March 24, 1999, despite having no SC authorization to do so, NATO began an air campaign over the FRY. These air strikes were code named, Operation Allied Force (OAF) (Meulenbeek, 2013). After the intervention, many doubts were expressed as to its legitimacy; and the international community encountered a dilemma between international legality and moral duty, with respect to both ending serious human rights violations, and the unlawful use of force.

NATO’s intervention was, as has been shown, the result of a humanitarian crisis in the FRY. On 12 April, NATO stated: “The Federal Republic of Yugoslavia (FRY) has repeatedly violated United Nations Security Council resolutions. The unrestrained assault by Yugoslav military, police and paramilitary forces, under the direction of President Milosevic, on Kosovar civilians has created a massive humanitarian catastrophe which also threatens to destabilize the surrounding region...We condemn these appalling violations of human rights and the indiscriminate use of force by the Yugoslav government. These extreme and criminally irresponsible policies, which cannot be defended on any grounds, have made necessary and justify the military action by NATO” (The Situation in and around Kosovo).

NATO also set a number of targets for the intervention: “1) stop to all military action and ending immediately violence; 2) withdrawal from Kosovo all security forces; 3) international military force will be deployed by the international

community; 4) safe return of all refugees and displaced persons; 5) the establishment of an agreement in the basis of Rambouillet Accords in accordance with international law and the UN Charter” (NATO’s Role in Relation to the Conflict in Kosovo).

The air campaign continued until Slobodan Milosevic capitulated to the NATO demands. After its conclusion, the Security Council adopted UNSCR 1244 (Resolution, 1244).

NATO believed that the international community would largely support its decision to intervene; and that a successful operation could legitimize a new role for it as a world policeman. Moreover, according to Cassese (1999), the FRY authorities clearly did not flinch from massacring its people and other gross breaches of human rights: a state of affairs which would destabilize its neighbours and undermine peace and stability in the region (Cassese, 1999). According to its members, NATO therefore used force against the FRY in order to stop violence.

As a result of UNSCR 1244, international security forces were deployed in Kosovo. Their responsibilities included: a) deterring renewed hostilities; b) maintaining and enforcing a ceasefire; c) ensuring the withdrawal and preventing the return of FRY paramilitary and police forces from Kosovo; d) demilitarizing the KLA and other Kosovo Albanian armed groups; e) establishing a secure environment in which refugees and displaced persons could return home in safety; f) ensuring public safety and order; g) supervising demining; h) Ensuring the protection and freedom of movement of itself; i) Conducting border monitoring duties (Resolution, 1244). The United Nations Interim Administration Mission in Kosovo (UNMIK) was established by the SC to undertake these duties (Neuhouser *et al.*, 2008).

When the Resolution 144 was published, NATO halted its air campaign and attacks over the FRY: clearly, the UN had deliberately delayed its own decision, casting further doubt over the operation’s international legality and morality.

The legality of intervention: Some scholars believe that the NATO intervention violated international law, and can be termed as an “aggression” against the FRY; whereas others consider it to have constituted a humanitarian intervention and, indeed, a legal one.

One of the established goals of NATO is self-defence. According to Article 5 of its Treaty, if an armed attack occurs against any member, NATO can adopt individual or collective self-defence, recognized by Article 51 of the Charter, by the SC takes measures to restore international peace and security. (The North Atlantic Treaty) But neither the UN Charter nor SC allows for a military response in the *absence* of an armed attack against a member of a regional organization such as NATO; nor is one allowed in the absence of express SC authorization (Simma, 1999). Moreover, as there was clearly no armed attack against the FRY or Kosovo from outside, the doctrine of self-defence cannot be employed.

The SC does not possess any security forces. Therefore, when the SC adopts such a resolution, it gives the authority to a

regional organization for use of force under its authorization. Many SC resolutions were passed in this case, but they neither authorized the use of force nor gave any authority to regional organizations or states (Resolution, 1244). Also, Chapter VIII of the Charter, which lays out regional arrangements, does not include any authority to use any kind of force without SC authorization. Any intervention has to be based on SC authorisation; and NATO's execution of the humanitarian intervention did not include these provisions. NATO used a force in Kosovo without SC authorization because Russia and China, permanent members of the SC, had vetoed any resolution which authorized military force against a sovereign state because of what both regarded as an internal matter (Roberts, 1999; Greenwood, 2002; Teson, 2009; Khalid, 2011). Both nations were strongly opposed to NATO intervention in Kosovo because they believed that it would only further expand US hegemony within the international community. On the basis of the traditional approaches to the interpretation of customary rules, treaties and secondary rules, and in accordance with the Legal Positivist approach, the intervention was unlawful: in other words, illegal (Gray, 2003; Teson, 2009).

The historical background of the problem and SC resolutions of the case of Libya: The starting point of the Libya protests surely owed to the rebellions in Tunisia and Egypt, which succeeded in toppling the leaders of both during the protests, many people were injured in a clash with security forces, and 3 people were killed on 16 February, in the eastern Libyan city of Benghazi. (Libyan protesters clash with police in Benghazi; Time is running out for cornered Gaddafi) Human rights violations, then, began on that day. The activists also tried to organize large scale protests through social networking websites (Black, 2011; Cha, 2012). resulting in many cities holding co-ordinated protests. Mass human rights violations also began to increase: according to Human Rights Watch (HRW), more than 84 people were killed by government security forces in three days (Libya: Security Forces Kills 84 over Three Days). By this stage, demonstrators had almost taken control of Libya's second largest city, Benghazi. In response, government security forces began to use snipers, helicopter gunships and other heavy military weapons. The government seemed intent on massacring its own people; the international community, indeed, began referring to these killings as a 'massacre' (Meo, 2011). Given the SC has the primary responsibility to protect civilian populations from human rights violations, it was therefore now for it to seek to guarantee international peace and security. (Libya Strategy of Scorched Earth, Desire for Widespread and Systematic Elimination) Accordingly, the SC adopted Resolution (1970) on 26 February 2011. This resolution was based on measures under Chapter VII of the Charter, and more specifically, Article 41. First, government security forces were required to immediately end violence in the state; after that, the Libyan government was required to respect human rights and

international humanitarian law, and allow access for international human rights monitors. The Prosecutor of the ICC would decide to refer the situation in Libya under this resolution. A military embargo was adopted by the SC; and a travel ban placed upon senior government managers. Moreover, the SC also froze the assets of Gaddafi and some government managers (Higgins, 1970). The National Transitional Council (NTC) was established on 27 February in Benghazi, but officially formed on 5 March: providing a 'political face' to the revolution. (Anti-Gaddafi Figures Say from National Council; National Transitional Council; Introducing the Council) On 5 March 2011, the NTC issued its first announcement, and declared that it had obtained its legitimacy from liberated cities and revolution cities (Founding Statement of the Interim Transitional National Council). At this point, the UK Prime Minister, David Cameron, proposed a military no-fly zone (Nepstad, 2011) which US Secretary of State, Hillary Clinton, appeared to identify as a means of protecting Libyan civilians from Gaddafi's mercenaries as well. (Cristina: US and Allies Considering No-Fly Zone and Other Measures against Gadhafi Regime; Live Blog) The US Senate passed a resolution which did not incorporate any binding decision; and the SC pledged it would take such necessary further actions to protect Libyan civilians from attacks; as well as impose a no-fly zone (Vaughn and Dunne, 2015). By this stage, the international community and their internal legislatures had already begun to implement and suggest sanctions for use against Gaddafi to the SC.

A no-fly zone would be effective in protecting civilians against gross human rights violations; and Gaddafi's actions would be limited by the Alliance or the international community. The ICC now began to investigate war crimes and claims that protesters have been attacked by Gaddafi. This investigation included Gaddafi, his inner circle and his sons. (ICC to Probe Gaddafi Over Violence; ICC Prosecutor to Open an Investigation in Libya) France and the UK sought to prepare the wording on the no-fly zone within the proposed SC resolution (Lederer, 2011). Further, the Arab League (AL), Gulf Co-operation Council (GCC), and the NTC supported the no-fly zone idea; but Russia and China in particular opposed military sanctions against Libya. This had also been experienced in the case of Kosovo: Russia and China traditionally oppose all military sanctions against the sovereign governments. The NTC was now recognized by many states: France, Italy, Kuwait, Qatar and Portugal all recognized it as Libya's legitimate governing authority in March. (Clinton to Meet Libyan Rebels; Libya Outreach Group, Situation Report: Libya) And at length, the SC passed Resolution (1973): which to take all necessary measures to protect civilians from threat and attack in Libya, while excluding a foreign occupation force (Resolution, 1973). This resolution approved a no-fly zone over Libya, and demanded an immediate cease-fire, and a complete end of violence against the civilian people (Resolution, 1973).

This resolution was not vetoed by any SC member. After it had been agreed, members of the UN and NATO began authorizing military action against Gaddafi's forces and the mercenaries.

Humanitarian intervention in Libya and current situation: A multi-state coalition began military intervention in Libya, under the auspices of SC Resolution (1973), to implement rules protecting civilian people from a threat and attack; a no-fly zone; and to maintain peace and security, on 19 March, but there was doubt between France and other NATO members about the no-fly zone, embargo and air strikes over Libya. Turkey blocked further NATO planning, but on 25 March, the US, Britain, France and Turkey agreed to put these three main measures together under a NATO umbrella (Traynor and Nicholas, 2011).

NATO took control of the arms embargo: its official name being the Operation Unified Protector (OUP). (UAE Sends Warplanes to Libya as NATO Takes Command) Following this, NATO Allies decided to take all military action in Libya under SC Resolution (1973).

According to NATO, the "OUP is to protect civilians and civilian-populated areas under threat of attack. NATO is implementing all military aspects of the UN Resolution." (NATO and Libya-Operation Unified Protector). The protestors and multi-state coalition captured many cities in Libya. On 31 March, NATO took control of the international air operations over Libya. (Operation UNIFIED PROTECTOR Protection of Civilians and Civilian Populated Areas) According to Resolution (1973), all necessary measures to protect civilian person's threat of attack were mandated. Therefore, "NATO conducts reconnaissance, surveillance and information-gathering operations identify those forces which present a threat to civilians and civilian-populated areas." (Operation UNIFIED PROTECTOR Protection of Civilians and Civilian Populated Areas) According to Crook (2011), "The creation and enforcement of a no-fly zone, if it is to be effective, envisages the destruction of Libyan based anti-aircraft weaponry and other ordinance, including *Libyan military aircraft*." NATO has implemented this necessary measure very effectively in Libya.

Moreover, other states have also frozen Libyan assets. Britain and France offered a new plan to use attack helicopters in Libya, and this plan was also accepted as part of NATO operations (AAB *et al.*, 2012). The ICC Prosecutor issued a statement on 16 May 2011. According to it, Gaddafi had ordered systematic and widespread attacks on unarmed citizens: these constituted crimes against humanity. According to Rome Statute (RS), crimes against humanity include: murder; extermination; enslavement; rape; torture; political, national, racial, ethnic or cultural persecution; and other inhumane acts.

On 27 May, Russia joined Western leaders in calling Gaddafi to step down, and cease human rights violations in Libya (Bunker *et al.*, 2015). Russia wished to resolve the crisis through peaceful means. NATO, however, extended its mission for an additional 90 days on 1 June. (Statement by the

NATO Secretary General on the Extension of the Mission in Libya) Gaddafi's forces had killed many innocent people in Libya, and if NATO or multi-state coalitions wished to finish Gaddafi regime and end its systematic violations of human rights, the mission required to be extended. Many states have still continued to recognize the NTC; but in June, Denmark, Spain, Australia, Canada, Croatia, Bulgaria, Czech Republic and the Netherlands all did so. Gaddafi is steadily losing his prestige and *de facto* international legitimacy.

According to Luis Moreno Ocampo, the ICC Prosecutor, there was a clear policy to rape those women opposed to the Libyan government; and that the Libyan government had bought containers of Viagra-type drugs in order to carry this out. "*It is difficult to know how widespread the use of rape in Libya is*". (French NATO Airstrikes Rock Tripoli).

The ICG now met for the third time in Abu Dhabi. Representatives of over forty countries and organizations, including the UN, AL, NATO, European Union (EU), Organization of the Islamic Conference (OIC), and GCC determined some established areas of agreement. These were that Gaddafi had to go, because he has lost his legitimacy in Libya; and that he had to immediately cease the use of force against civilians. (Co-Chairs' Statement Third Meeting of the International Contact Group on Libya) The conference also agreed that the Libyan people should determine the future of Libya; and that therefore, the NTC represented a "Road Map for Libya" and was welcomed by the ICG. (Co-Chairs' Statement Third Meeting of the International Contact Group on Libya) The NTC has improved its organizational ability and accountability in Libya over the last few months; and taken some important steps to improve its legitimacy in the international arena.

On 27 June, the ICC issued arrest warrants for Gaddafi, his son and intelligence chief for crimes against humanity since mid-February. Ocampo has gathered direct evidence in terms of attacks against the protesters. (ICC Issues Arrest Warrants for Libyan Officials for Alleged Crimes Against Humanity; Cases & Situations: Libya) Although Libya is not a party to the RS, the ICC has investigated such crimes under the SC Resolutions, which call upon member states to take all necessary measures to protect civilian people in Libya.

According to Sergey Lavrov, Russian Foreign Minister, NATO cannot achieve a quick solution in Libya: which will result in huge losses on both sides. He noted that NATO bombing raids had lasted more than three months, and were still continuing. (No Quick Solution to Libyan Conflict-Lavrov) Lavrov's views were representative of Russia's traditional policy in this regard: especially when the US is apparently lurking in the background, seeking to benefit in some way.

The ICG met in Istanbul on 15 July, and stressed the need for a genuine ceasefire in Libya, to protect civilians and create a safer humanitarian environment. The Group noted that Gaddafi regime no longer enjoys any legitimate authority, and that therefore, he and his family must leave Libya. (Fourth Meeting of the Libya Contact Group Chair's Statement; Fourth

Meeting of the Libya Contact Group). As mentioned above, Russia has emphasized that it is against the use of force, and supports all peaceful enterprises. Nonetheless, the Russian government has signed a decree which includes sanctions against Gaddafi regime, five months after Resolution 1973 was imposed. (Russia Signs Libya Sanctions as Rebels Advance) Russia, then, also wishes to support the international consensus on Libya, albeit in more cautious fashion: which is why it froze assets and implemented economic sanctions under SC (Resolution, 1973).

On 16 August, a Russian diplomat stated that Russia is deeply disturbed by NATO actions, because of destruction of infrastructure and other power supplies of territorial controlled areas. (Libya) Hugo Chavez, President of Venezuela, and Ahmadinejad, President of Iran, have condemned the NATO action: both have described it as an "imperialist aggression" in Libya. (Syria). On 24 August, Nicolas Sarkozy, is President of France, invited countries which see themselves as "friends of Libya" to talks in Paris about a future without Gaddafi. (France to Host 'Friends of Libya' Talks Next Week) Moreover, the ICG meeting began on the same day in Doha, and they decided to take some resolutions about Libya and the NTC. Also at this meeting, the international community began discussions on paying employees' salaries in the country. It seems clear that its community has begun to discuss and implement new finance programmes in Libya. (Contact Group on Libya Begins Meeting in Doha)

In accordance with its conclusions at the Istanbul meeting, NATO has a crucial role to protect civilians in Libya, and Operation Unified Protector will continue its operations until the SC Resolution is clearly implemented. Those involved in the meeting also stated that they respect the sovereignty, independence and territorial integrity of Libya; and resolved to take new measures to provide continuous humanitarian assistance for all cities there. The final point of the ICG meeting concluded that the UN should help the Libyan people to implement post-conflict measures. (Conclusions of the Libya Contact Group Meeting).

The Contact Group meets in Paris on 1 September (September 2011 Libya), and this meeting issue was about the unfreezing billions of Libya, also at the same time, the protesters captured the capital city Tripoli. It seems to clear that the international community will continue these meetings in the future to determine future status of the Libya.

The legality of the intervention in Libya: Legal Positivists accept only two legal exceptions about humanitarian intervention. According to these exceptions, NATO intervention in Libya will now be analysed, with respect to Legal Positivism.

There was no use of force or attack from outside of Libya; and therefore, the self-defence rule does not apply in this case. But there is a threat to international peace and security, and authorization from the UNSC. This is the main justification for this case being legal.

Resolution (1973), passed on 19 March by the SC, has some differences from other resolutions with respect to its breadth: for example, the UN has defined authorized the use of all necessary

measures, including a no-fly zone, to protect people from the threat of attack by Gaddafi forces (Crook, 2011).

Moreover, permanent members of the SC and other members did not reject the resolution: which also has legal aspects, purely in terms of the vote itself. This time, the resolution had only 5 abstentions cast, including Russia: but abstentions do not prevent a resolution being passed. If one of the permanent members of the SC vetoes the resolution, it does not pass, and the SC does not take any decision. Therefore, the resolution is legal with respect to the consensus of the SC.

To sum up, there have been many human rights violations in Libya, and the SC took a resolution to protect civilians from the threat of attacks: which passed with no veto. As mentioned above, that all necessary measures are to be taken under this resolution. The general aim is to protect civilians and maintain international peace and security. From a legal perspective, the intervention is based on entirely legal aspects with respect to the interpretation of the customary international law, treaties, and secondary rules, as well as legal positivists: the intervention in Libya is, indeed, legal.

The comparison of Kosovo and Libya: Over the past two decades, the international arena has witnessed many different approaches with respect to international law: and especially, humanitarian intervention. Kosovo was the scene of an illegal intervention by NATO; Libya, a legal one by the same organization.

In terms of the SC Resolutions: there were three main resolutions about Kosovo, before the NATO intervention. Resolution (1160), passed in 1998, emphasized only an arms embargo, as well as economic and diplomatic sanctions against the FRY. Also, the resolution called upon the FRY to take all necessary steps to achieve a political solution, and open a meaningful dialogue with Kosovar Albanians (Resolution, 1160). In this, the SC took some important measures to protect civilians from the threat of attacks, and maintain international peace and security through peaceful means.

The second resolution was passed on 23 September 1998 by the SC. Resolution (1199) affirmed that the deterioration of the situation in Kosovo, FRY, constituted a threat to peace and security in the region, and acting under Chapter VII of the Charter; demanded an immediate cease to hostilities and maintenance of a ceasefire in Kosovo. In particular, the authorities of both sides had to take immediate steps to improve the humanitarian situation in the region; and open a meaningful dialogue (Simma, 1999). The SC specifically demanded some measures or steps to implement within the Contact Group statement (Resolution, 1199) and if these measures were not adopted by the FRY, the SC would implement additional measures to maintain peace and stability in the region. Military measures - including, above all, the use of all necessary measures - were not clear in this resolution, but NATO interpreted it as legitimizing the use of force against the FRY. It seems to clear that the SC did not provide any clear statement regarding the use of force against those violating human rights at this point. These resolutions would be completed by SCR 1203, which was

passed before the NATO intervention in Kosovo (Resolution, 1203). According to this, the SC restated its prior decisions about the FRY and Kosovo, particularly specified the impending humanitarian catastrophe, and re-emphasized the need to prevent it because of the threat to continuing peace and security in the region. The SC encouraged both sides to accept and support some agreement signed between the FRY-OSCE, and FRY-NATO. These resolutions included no clear statements about any kind of use of force against the FRY. The SC merely employed harsh language against the FRY.

After the air campaign, the Security Council adopted (Resolution, 1244). This agreed to the deployment of international security forces in Kosovo, with the responsibility to protect civilians and maintain peace and security in the region (Resolution, 1244). The UNMIK was established by the SC to undertake these duties (Neuhausser *et al.*, 2008). In effect, the SC neither took responsibility for nor avoided taking responsibility for the protection of civilians in the region. Following this intervention, international law had been clouded: both in terms of the legalization of the intervention, or the use of force. When we look at the case of Libya, two main resolutions apply. The SC adopted Resolution (1970) on 26 February 2011. Through this, the UNSC took some measures under the Chapter VII of the Charter, and Article 41. First, government security forces were required to immediately end violence in the state; and after that, the Libyan government had to respect human rights and international humanitarian law, and allow access for international human rights monitors. The Prosecutor of the ICC would refer the situation in Libya under this resolution. A military embargo was agreed by the SC; and a travel ban imposed on senior government managers. Moreover, the SC froze the assets of Gaddafi, some government managers and Libyan Banks (Resolution, 1970). The SC began to take clear responsibility for the Libyan case, and this time, was clearly not prepared for the diplomatic or legalistic waters to be at all muddled.

The SC then passed, which authorized all necessary measures to protect civilians from threat and attack in Libya, while excluding a foreign occupation force (Resolution, 1973). A no-fly zone over Libya was approved, and an immediate cease-fire demanded, as well as the complete end of violence against the civilian people (Resolution, 1973). This time, the SC had taken explicit responsibility for an on-going humanitarian crisis; and within just 1 month, had decided to use all necessary measures against the mercenaries.

When we compare these two cases, it seems clear that the SC has expanded its own capabilities during the period between Kosovo and Libya. The SC's decision making processes over Kosovo was slow; over Libya, they were anything but. The first resolution about Kosovo passed in 1998, even though the problem actually started in 1990: leaving it far too late to decide something to protect civilians, and maintain peace and stability in the region. It has to be mentioned here that vetoes impacted considerably upon SC decisions with regard to Kosovo; but in Libya, Russia did not prevent any SC resolution, and merely abstained instead.

The SC did not issue a clear, unequivocal resolution over Kosovo; but after the intervention, it creates a new resolution to maintain peace and stability in the region and international arena. Meanwhile, Gaddafi's regime repeatedly breached the first SC obligations, and at the same time openly challenged the international community. His forces have continued to massacre, rape and commit gross violations of human rights in Libya. The SC established and used all necessary measures against Libya – Gaddafi and his mercenaries.

Secondly, these cases should be compared in terms of their legality, and opinions on them within the international community. The SC did not take any resolution to use all necessary force for the case of Kosovo; indeed, both it and the international community only began discussing the humanitarian crisis in the FRY in the mid-1990s. The OSCE and the ICG had taken some decisions to stop violations in the FRY, but the FRY government implemented neither these rules, nor the SC resolutions, and continued its actions against the Kosovars. Until 1998, there was no clear action against the FRY massacre; but afterwards, NATO took responsibility and used all necessary measures, including intervention, against the FRY. At the same time, China and Russia vetoed the SC resolutions, because of the historical background of the states' relationships in Cold War terms; instead, they encouraged the international community to solve the problem peacefully. But NATO used force against the FRY because of its continuing actions against civilians. The intervention was illegal because of lack of SC authorization.

The situation would not be the same in Libya. The SC has taken all necessary measures against the Gaddafi mercenaries, and the government of Libya did not implement its obligations; indeed, Gaddafi has revolted against the UN and the international community. The international community has paid very close attention to the Libya case; and began discussions about actions to resolve it very quickly. In a very short time, the SC took all responsibility and used all necessary measures, including a no-fly zone over Libya, against Gaddafi; the intervention in Libya is clearly legal because of the authorization of the SC.

There is a significant difference here in the case of Russian policy. In this case, the Russian government did not reject the SC resolutions. The Russian government supports the international community's desire to protect fundamental human rights in a state; and therefore, it could not reject the resolutions.

CONCLUSION

Since 1945, together with the development of the consensus of common international law in the international arena under the UN umbrella, states have left the responsibility to the UNSC to decide on use of force or other crucial points to do with international law. The use of force is prohibited under the UN Charter; and there are only two exceptions: self-defence and force authorised by the SC.

Yet, as awareness of human rights violations has increased, the concept of humanitarian intervention has become increasingly important in the area: but regarding this, there is

no clear information in the Charter. Intervention has to be established by the SC, and under its authorization.

According to Legal Positivists, if intervention lacks SC authorization, it is illegal. Moreover, it is surely clear that if states or regional organizations intervene without the SC authorization, it is illegal.

Since the end of the Cold War, the SC has become more and more powerful, and authorized a number of interventions because of the as a result of troubles to do with failed or weak states, and violation of fundamental human rights in these states. The first aim of the UN is to protect human rights; and even without the Universal Declaration of the Human Rights (UDHR), two covenants – the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the International Covenant on Civil and Political Rights (ICCPR) - also indicate the universality of fundamental human rights.

It is clear that the international community has cared considerably more about human rights issues since the end of the Cold War. During the Cold War, state sovereignty was clearly the most important concept in international relations; and the SC used the principle of non-intervention. But Post-Cold War, the SC took responsibility for an established intervention when human rights violations were occurring in a sovereign state; authorizing many interventions to protect and restore international peace and security.

In the case of Kosovo, the debate over the legality and legitimacy of the humanitarian intervention has continued among international law scholars and practitioners. The SC did not authorize the intervention in Kosovo, but NATO interpreted its resolutions as allowing the use all necessary force and included in this, force against violators of human rights violators. It also believed that the SC would not adopt any resolution, because of the threat of vetoes by the permanent members. The intervention in Kosovo was illegal because of the interpretation of the UN Charter.

But in the Libya case, the SC intervened quickly to solve the matter, and restore international peace and security. Resolution 1973 authorizes the use of all necessary measures against human rights violators in Libya. All in all, the intervention is legitimized by the SC under international law and the UN Charter.

To sum up, the SC is charged with protecting and maintaining international peace and security, but also respecting human rights, and protecting civilians from the threat of attack. From Kosovo to Libya, the international community may have different approaches over intervention, but this has to be equal in cases of all countries. If there is a risk to human rights in the international community, the SC has to implement clear resolutions: as it has done in the case of Libya. Finally, according to the UN Charter, the SC has the primary responsibility of maintaining international peace and security, and the Charter gives responsibility to use all necessary measures and determine the threat of attack against peace and security. Regional organizations do not have any authority to use all necessary measures without the SC

authorization. Therefore, all actions have to be based upon SC authorization.

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