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**AN ANALYSIS OF THE RESPONSIBILITY TO
PROTECT: THE ARAB PERCEPTION OF THE NATO
INTERVENTION IN LIBYA AS REPRESENTED IN
AL-JAZEERA AND ASHARQ AL-AWSAT**

Özden ORAL

Supervisor

Assist. Prof. Dr. Sevilay Zehra AKSOY

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YÜKSEK LİSANS
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Üniversite : Dokuz Eylül Üniversitesi
Enstitü : Sosyal Bilimler Enstitüsü
Adı ve Soyadı : ÖZDEN ORAL
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Danışmanı : Assist Prof.Dr.Sevilay Zehra AKSOY

JÜRİ ÜYELERİ

Ünvanı, Adı, Soyadı

Üniversitesi

İmza

Assist Prof.Dr.Sevilay Zehra AKSOY DOKUZ EYLUL UNIVERSITY

Assist Prof.Dr.Irem AŞKAR
KARAKIR

DOKUZ EYLUL UNIVERSITY

Assist Prof.Dr.Zerrin Ayşe ÖZTÜRK EGE UNIVERSITY

Oybirliği

☒

Oy Çokluğu ()

ÖZDEN ORAL tarafından hazırlanmış ve sunulmuş "An Analysis of the Responsibility to Protect: The Arab Perception of the NATO Intervention in Libya as Represented in Al-Jazeera and Asharq Al-Awsat" başlıklı Tezi / Projesi () kabul edilmiştir.

Prof.Dr. Mustafa Yaşar TINAR
Enstitü Müdürü

DECLARATION

I hereby declare that this master's thesis titled as "An Analysis of the Responsibility to Protect: The Arab Perception of the NATO Intervention in Libya as Represented in Al-Jazeera and Asharq Al-Awsat" has been written by myself in accordance with the academic rules and ethical conduct. I also declare that all materials benefited in this thesis consist of the mentioned resources in the reference list. I verify all these with my honour.

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ABSTRACT

Master's Thesis

An Analysis of the Responsibility to Protect: The Arab Perception of the NATO Intervention in Libya as Represented in Al-Jazeera and Asharq Al-Awsat

Özden ORAL

Dokuz Eylül University

Graduate School of Social Sciences

Department of International Relations

International Relations Program

This thesis aims to find out the perception of the Responsibility to Protect, which has its origins in just war and humanitarian intervention concepts, in the Arab world, which is known as its one of the prominent regions of its application. To this end, the study examines the Arab media coverage of the concept of Responsibility to Protect.

Responsibility to Protect was first put forward by the International Commission on Intervention and State Sovereignty in 2001, in an effort to change the objective of the debate on humanitarian intervention from states' right to intervene to states' responsibility to protect people from atrocity crimes. The concept was accepted by the heads of states in United Nations World Summit in 2005. The World Summit Outcome Document listed four crimes that call for international responsibility: genocide, war crimes, ethnic cleansing and crimes against humanity. If states fail to protect their people from these crimes, the international community, acting through the United Nations Security Council, would assume the responsibility.

NATO's intervention in Libya in 2011 is the first intervention authorized by the United Nations Security Council with reference to the Responsibility to Protect. In this study, the Arab perception is examined through columns and commentaries published in two prominent newspapers of the region, Al-Jazeera ve Asharq Al-Awsat, about Libya intervention.

The study reveals Arab suspicion towards Responsibility to Protect and international military interventions. Arab commentators do not consider interventions justified under the Responsibility to Protect to be desirable, but may consider them permissible due to the limited military

capacities of states in the region, and with a number of cautionary criteria on issues such as deciding whether to intervene, scope and implementation, and post-intervention responsibilities of the intervener.

Key words: Responsibility to Protect, NATO, Libya, military intervention, Arab media.

ÖZET

Yüksek Lisans Tezi

**Koruma Sorumluluğu Üzerine Bir Analiz: Al-Jazeera ve Asharq Al-Awsat
Yayınlarında Temsil Edildiği Şekli ile NATO'nun Libya'ya Müdahalesine Dair
Arap Algısı
Özden ORAL**

Dokuz Eylül Üniversitesi

Sosyal Bilimler Enstitüsü

Uluslararası İlişkiler Anabilim Dalı

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Bu tez çalışması, kökleri haklı savaş ve insani müdahale kavramlarına dayanan Koruma Sorumluluğunun başlıca uygulanma alanlarından biri olan Arap dünyasında nasıl algılandığını ortaya koymayı amaçlamaktadır. Bu algıyı araştırmak için koruma sorumluluğu kavramının Arap medyasında ele alınış biçimi incelenmektedir.

Koruma sorumluluğu kavramı ilk olarak 2001 yılında Uluslararası Müdahale ve Devlet Egemenliği Komisyonu tarafından ortaya atılmıştır. Komisyon, koruma sorumluluğu kavramını ortaya atarak, insani müdahale tartışmalarının odak noktasını devletlerin Müdahale Hakkından devletlerin insanları vahşet suçlarından Koruma Sorumluluğuna döndürmeyi amaçlamıştır. Kavram, 2005 yılında Birleşmiş Milletler Dünya Zirvesi'nde devlet başkanları tarafından kabul edilmiştir. Dünya Zirvesi Sonuç Bildirgesi koruma sorumluluğu gerektiren suçların kapsamını soykırım, savaş suçları, etnik temizlik ve insanlığa karşı suçlar olarak belirlemiş ve milli otoritelerin vatandaşlarını bu suçlara karşı Koruma Sorumluluğunu yerine getirememesi durumunda uluslararası toplumun sorumluluğu Birleşmiş Milletler Güvenlik Konseyi aracılığıyla üstleneceğini bildirmiştir.

2011 yılında NATO tarafından gerçekleştirilen Libya müdahalesi Birleşmiş Milletler Güvenlik Konseyi tarafından koruma sorumluluğuna referansla alınmış ilk uluslararası askeri müdahale kararı olma özelliği taşımaktadır. Bu nedenle çalışma kapsamında Arap algısı, bölgenin iki önemli ve etkili yayın organı olan Al-Jazeera ve Asharq Al-Awsat gazetelerinde Libya müdahalesi ile ilgili olarak yayınlanmış makaleler üzerinden incelenmektedir.

Çalışma, Arap dünyasında Koruma Sorumluluğuna ve uluslararası askeri müdahalelere şüphe ile yaklaşıldığını göstermiştir. Bu tip müdahalelerin arzulanır olmadığı, ancak Arap ülkelerinin askeri kabiliyetlerinin kısıtlılığı göz önünde bulundurulduğunda izin verilebilir bulunduğu görülmektedir. Bu durumda da müdahale kararının ne şekilde alınacağı, ölçeğinin ne olacağı, ne şekilde uygulanacağı, ve müdahale edenin müdahale sonrası sorumluluklarının neler olacağı gibi konularda, pek çok ölçüt devreye girmektedir.

Anahtar Kelimeler: Koruma Sorumluluğu, NATO, Libya, askeri müdahale, Arap medyası.

**AN ANALYSIS OF THE RESPONSIBILITY TO PROTECT: THE ARAB
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ABBREVIATIONS

R2P	Responsibility to Protect
ICISS	International Commission on Intervention and State Sovereignty
IICK	Independent International Commission on Kosovo
ICC	International Criminal Court
AU	African Union
UNSC	United Nations Security Council
UNPREDEP	United Nations Preventive Deployment Force in Macedonia
UNEF	United Nations Emergency Force
PLO	Palestine Liberation Organization
UNAMI	United Nations Assistance Mission for Iraq
RCC	Revolutionary Command Council
GCC	Gulf Cooperation Council
OIC	Organization of Islamic Cooperation
TNC	Transitional National Council

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INTRODUCTION

Responsibility to Protect (R2P) was put forward by the International Commission on Intervention and State Sovereignty (ICISS) in 2001 in an effort to change the terms of the debate from states' right to intervene to their responsibility to protect people from atrocity crimes. In the simplest terms, R2P can be defined as "the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states."¹ R2P is acknowledged by the heads of states in the World Summit Outcome Document that came out in 2005. The Document limited the crimes that call for responsibility with genocide, war crimes, ethnic cleansing and crimes against humanity.²

This study aims to analyze the R2P in detail, including its origins, scope and purpose, with a special emphasis on the Arab world's perception of the concept, by focusing on the discussions in the media regarding the Western intervention to Libya in 2011.

Having experienced Western interventionism many times in the past, the Arab world can be considered as being one of the prominent regions that provides a ground for analyzing the norm's application. Although R2P's definition can be found in many international documents,³ it is no less important to find out about how it is perceived by the ones who are being subjected to it, for it would contribute to the discussions on, for instance, what the scope of R2P should be or what the post-intervention responsibilities might be.

The Arab perception of R2P is evaluated by examining NATO's intervention to Libya in 2011 as a case study. Libya intervention is significant for being the first case where the R2P is implemented with the UNSC authorization following its acknowledgement by the heads of states in 2005.

¹ International Commission on Intervention and State Sovereignty, **The Responsibility to Protect**, International Development Research Center, Ottawa, 2001, p. VII, <http://responsibilitytoprotect.org/ICISS%20Report.pdf>, (02.12.2015).

² 2005 World Summit Outcome Document, Resolution A/RES/60/1 (New York: United Nations, (2005), para 138 – 139.

³ Report of International Commission on Intervention and State Sovereignty (2001), Secretary General's High-Level Panel Report on Threat, Challenges and Change (2004), World Summit Outcome Document (2005), Report of the Secretary-General: Implementing the Responsibility to Protect (2009).

Evaluation of Arab perception is conducted through media coverage of Libya intervention. The research uses the media as a source of Arab opinion due to its effect on the public opinion. Media, just like other sources such as public statements, has an effect on public opinion. However, the effect that media has on public opinion is a dialectical one: media and public opinion mutually influences one another.

Media coverage of Libya intervention is examined through two prominent and influential English broadcasting news agencies of the region, Al-Jazeera and Asharq Al-Awsat. Al-Jazeera is a global media network reaching more than 270 million households in over 140 countries around the world with its more than 10 channels and divisions.⁴ Along with its permanent team of writers, many guest writers including professors and research fellows from universities and international research centers all around the world find place on Al-Jazeera Network to spread their ideas. In this respect, the network provides a melting pot for ideas from across the globe regarding the regional issues and gives the Arab public a hint of international point of view. Its influence is underlined with the term “Al-Jazeera effect”⁵ in many instances. The term first came into use when the satellite channel brought images of Palestinian-Israeli conflict to Arabs living all around the world in the early 2000s.⁶ With the outbreak of Arab Spring, the influence of Al-Jazeera broadcasting was once again acknowledged. The US Secretary of State of the time Hillary Clinton paid tribute to Al-Jazeera’s successful coverage of the uprising in Egypt during the Arab spring as she stated, “Al-Jazeera has been the leader in that are literally changing people’s minds and attitudes. And like it or hate it, it is really effective.”⁷

Al-Jazeera is not the only media organ that has an effect on public opinion in the Arab world. Al-Awsat is considered as being one of the oldest and most

⁴ Al-Jazeera, “About Us,” <http://www.aljazeera.com/aboutus/>, (26.02.2016).

⁵ Hugh Miles, “The Al-Jazeera Effect”, **Foreign Policy**, <http://foreignpolicy.com/2011/02/09/the-al-jazeera-effect-2/>, 09.02.2011, (25.10.2015).

⁶ Simon Henderson, “The ‘Al-Jazeera Effect’”, **The Washington Institute for Near East Policy**, <http://www.washingtoninstitute.org/policy-analysis/view/the-al-jazeera-effect-arab-satellite-television-and-public-opinion>, (09.12.2015).

⁷ “Sec. of State Hillary Clinton: Al Jazeera is ‘Real News’, U.S. Losing ‘Information War’”, **ABC News**, <http://blogs.abcnews.com/politicalpunch/2011/03/sec-of-state-hillary-clinton-al-jazeera-is-real-news-us-losing-information-war.html>, 02.03.2011, (25.10.2015).

influential pan-Arab newspapers.⁸ The team of writers consists of worldwide known journalists from the region writing columns on a regular basis. Among the offshore pan-Arab newspapers, it has one of the largest circulation rates. Based in London in 1978, it is printed daily on 4 continents in 14 cities around the world.⁹ Given their ability to reflect the views and concerns that are widely accepted in the region and to influence the public opinion about regional issues, these two prominent media organs are found appropriate to analyze Arab perception within the scope of this study. Given the language constraints, news agencies broadcasting in Arabic language could not be included in the study.

Evaluation of Arab perception as represented in these newspapers will be conducted through an examination of columns and commentaries about NATO intervention in Libya in 2011. Using columns and commentaries serves better the objectives of this study compared to regular news reports given their ability to represent different views on the issue and reflect the dialectical relationship between media and public opinion.

Within the scope of this study, more than one hundred articles that discussed events surrounding the Libyan conflict and the subsequent intervention were reviewed. Among those articles, the documentary analysis is conducted through 31 representative ones, which are directly relevant to the questions that are being raised in the study, discussing different sides of the issue, and from as many different perspectives as possible. The articles examined in the study were written between 23 February 2011 and 18 February 2013. Most of the articles were written between February 2011 and November 2011 during the course of protests and the subsequent intervention. One article written about the conflict in Syria in February 2013 was included in the analysis because it was directly related to the question that is raised in the relevant section. This particular article was preferred due to its focus on the controversial issue of intervention criteria.

The media articles are examined in the light of the common questions that are raised in the just war and the related R2P debate. It is observed that many of the questions that are raised in newspaper articles are in parallel with the questions that are raised in the literature. In this regard, the analysis of the media coverage

⁸ Hasan M. Fattah, "Spreading the Word: Who's Who in the Arab Media", **The New York Times**, http://www.nytimes.com/2005/02/06/weekinreview/spreading-the-word-whos-who-in-the-arab-media.html?_r=0, 06.02.2005, (24.08.2013).

⁹ Asharq Al-Awsat, "About Us," <http://english.aawsat.com/about-us>, (26.02.2016).

provides an opportunity to compare and contrast the academic coverage of the issue with the experience in the field. The analysis chapter dwells upon those questions derived from the articles, because they are the main themes the intervention debate revolves around. Each section addresses a particular theme. Among the over one hundred newspaper articles reviewed, the articles for closer examination were selected according to whether they focused on these main themes. Articles that devoted little space to the question or questions raised in a particular section or that examined it as a minor issue were excluded. Within each section, articles which are most relevant to the question of that section and, if there are any, articles representing different perspectives to the issue are examined. Among the articles handling the same issue from the same perspective, the most to the point and clear ones were picked in order to avoid repetition.

The first chapter of this study focuses on the historical background of R2P, which are just war doctrine and humanitarian intervention. The second chapter examines R2P in detail, i.e. how it is related to positive sovereignty, its scope and purpose, and how it is presented in international documents such as ICISS Report and World Summit Outcome Document. Within the scope of these two chapters, the widely debated legality and legitimacy of international interventions are shortly mentioned alongside a brief history of international military/humanitarian interventions.

The third chapter aims to draw the historical context in which the Arab perception of international interventions has been shaped over the years. In this regard, a brief history of the Western interference in the Middle East and Arab world is discussed with a special emphasis on the Western world's diplomatic and military interventions to the region. A certain part of this chapter is dedicated to a brief history of Libya, with the intent to provide a perspective about social, political and economic dynamics of the society, again, with an emphasis on the history of the country's relationship with the West. The chapter covers the events that took place up until the 2011 intervention.

The last chapter, as stated above, is a documentary analysis of the Arab perception of R2P as represented in the articles published on Al-Jazeera and Asharq Al-Awsat newspapers about Libya intervention. The analysis aims to develop a better understanding of how R2P is perceived by the Arab media that shapes and is likely to be shaped by the Arab public opinion.

CHAPTER ONE

ANTECEDENTS OF THE IDEA OF THE RESPONSIBILITY TO PROTECT

1.1. JUST WAR

The significance of just war comes from its place in the history of, and its ongoing effect over, debates on humanitarian intervention and R2P. Despite the low number of direct references to just war doctrine in the contemporary debates,¹⁰ all these ideas, i.e. humanitarian intervention and R2P, have their roots in this ancient doctrine, whose origins goes back to the medieval period, and borrow principles from it (for instance, *jus ad bellum*, *jus in bello*, and *jus post bellum* principles of just war can be found in the R2P norm as well).

Brian Orend defines just war as “an ethically appropriate use of mass violence.”¹¹ Similarly, Walzer argues that it is a way to make war religiously and morally possible: the function of just war theory is to “[make] actions and operations that are morally problematic *possible* by constraining their occasions and regulating their conduct.”¹²

Orend names three founding fathers of the theory: Aristotle, Cicero and Augustine.¹³ With Grotius’ *De Jure Belli ac Pacis* (On the Laws of War and Peace), which was published in 1625, principles of the historical tradition were integrated to international law. James Turner Johnson argues that this helped to maintain the basic concepts of the tradition as legal ideas throughout the centuries.¹⁴

When we look at the modern accounts of just war, Johnson argues that the modern statement of the theory has three pillars. The first pillar is Ramsey, whose understanding of just war is based on the Christian ethic of love for one's neighbor. He argued that love for one's neighbor justifies the use of armed force to protect

¹⁰ Mona Fixdal and Dan Smith, “Humanitarian Intervention and Just War”, **Mershon International Studies Review**, Vol. 42, No.2, 1998, p. 284

¹¹ Brian Orend, “War”, **The Stanford Encyclopedia of Philosophy** (Fall 2008 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/fall2008/entries/war/>, (25.05.2015).

¹² Michael Walzer, “The Triumph of Just War Theory (and the Dangers of Success)”, **Social Research**, Vol. 69, No. 4, 2002, p. 941.

¹³ Orend, War.

¹⁴ James Turner Johnson, “Contemporary Just War Thinking: Which is Worse, to Have Friends or Critics?”, **Ethics & International Affairs**, Vol.27, No.1, 2013, p. 26.

others.¹⁵ The second is Walzer, whose understanding of just war, Johnson argues, is based on what he calls *the legalist paradigm* (in other words codes of international law). The third pillar, U.S. Catholic Bishops, use the just war criteria negatively, to define rare cases in which the use of force might be allowed. They interpret the idea of just war in a pacifist way that abolishes the recourse to war with the exception of cases that require self-defense against aggression.¹⁶

However, Johnson argues, the traditional account of just war is not a passive defensive act against aggression that aims abolishing war, but a framework to put war in the service of order, justice and peace by constraining it with some moral elements.¹⁷ Walzer makes a very similar point against pacifist interpretations of just war. In his account, war is still necessary in some cases. So, pacifying the theory in a way to constitute an obstacle for any war is to suspend its critical role vis-a-vis the practice of war in real life.¹⁸ Just war theory was originally built against pacifism, with the aim of making war something morally possible to fight by defining impermissible things that one should refrain from doing to his enemy.¹⁹

After decades of dominance by realism in international politics, the revival of moral arguments about war, Walzer argues, came with the Vietnam War. The war was opposed by a considerable number of people. The debates on political and economic costs of the war were combined with the moral discussions, which resulted in the resurgence of the language of just war. The Vietnam failure was attributed to the brutality of US forces during the war: the US lost the war because they lost the hearts and minds of Vietnamese people, whose support was vital for victory.²⁰

Just war theory holds that a war could be considered just only if all three phases of it are justified, and it provides us three sets of criteria to evaluate all three phases of a war: *jus ad bellum* principles for recourse of war, *jus in bello* principles for conduct of war and *jus post bellum* principles for end of war. The first set of criteria, *jus ad bellum*, has six principles and no recourse of war can be justified

¹⁵ Johnson, p. 30.

¹⁶ Johnson, p. 31.

¹⁷ Johnson, p. 28.

¹⁸ Walzer, *The Triumph of Just War*, p. 34.

¹⁹ Walzer, *The Triumph of Just War*, p. 35.

²⁰ Walzer, *The Triumph of Just War*, p. 928 – 931.

unless all of the six principles are fulfilled: just cause, right intention, proper authority, last resort, probability of success and proportionality.²¹

The principle of *just cause* holds that a state may go to a war only for the right reason. What constitutes a just cause? Aquinas's definition contains a notion of punishment: "Those who are attacked should be attacked because they deserve it on account of some fault."²² Walzer comes up with a simple explanation: resisting aggression constitutes the just cause to war. In his account, aggression is "the name we give to the crime of war." Peace cannot be defined as mere absence of fight; it is "a condition of liberty and security that can exist only in the absence of aggression," and an act of aggression is what interrupts this state of liberty and security. An act of aggression forces people to choose between their rights and their lives. Although groups of people respond to this challenge in different ways, according to Walzer they are always morally justified in fighting against this.²³

There are several acts that we can name aggression. Every act of a state that interrupts the condition of peace and security of another state is an act of aggression and justifies forceful resistance. For instance at Nuremberg, Nazis were convicted for their invasion of both Poland and Czechoslovakia in 1939, although they were resisted by the locals in the first case but not resisted in the latter. The court did not make distinction between the aggression that was opposed through force and the aggression that was not. Why? The reason, Walzer argues, is that this act of aggression created a situation that made the Nazis liable to be resisted and fought against, no matter in which way people chose to react.²⁴

Just cause must be combined with other precautionary principles. One must be motivated solely by a *right intention* which is to stop injustice. Immoral motivations, whether overt or hidden, such as ethnic hatred or annexation of a land, are ruled out. The decision to go to war must be made by the *proper authority* of a state with a *public declaration*. War must be the *last resort*, after all peaceful means to resolve a conflict proved unsuccessful. There must be a reasonable *probability of success* that going to war would ameliorate the situation. And of course *proportionality* must be protected carefully, that is, the expected *universal* goods that

²¹ Orend, War.

²² Terry Nardin, "The Moral Basis of Humanitarian Intervention", **Ethics & International Affairs**, Vol. 16, No. 1, 2002, p. 58.

²³ Michael Walzer, **Just and Unjust Wars: A Moral Argument with Historical Illustrations**, Basic Books, New York, 2006, p. 51.

²⁴ Walzer, Just and Unjust Wars, p. 52.

would come out of the war must exceed the expected *universal* evils that it would cause: what is being weighted must not be states' individual benefits or losses; rather those of their enemy's and innocent third parties' along with their own.²⁵

Jus in bello refers to right conduct in war. Orend classifies *jus in bello* principles in two groups: internal and external principles. Internal principles refer to the responsibility of a state to respect the human rights of its citizens during the conflict. External *jus in bello* principles are about ethical limits on one's behavior to its enemy and third parties. Orend names six external principles:

States must obey all international laws on weapon prohibition. Soldiers must discriminate between enemy soldiers and civilians and civilians must enjoy *non-combatant immunity*. Means must always be *proportional* with the end. In this regard, for instance, weapons of mass destruction are usually considered beyond proportionality. Prisoners of war must be given *benevolent quarantine*; they must not be subjected to mistreatment. Parties must use *no means mala in se*; they must refrain from engaging into any immoral acts such as genocide, ethnic cleansing, mass rape campaigns, using poison etc. *No reprisals* must be permitted for it escalates the harm being given to the both parties.²⁶

Principles regarding the end of a war are considered to be required for transition from state of war to state of peace; "an ethical exit strategy from war".²⁷ What is an ethical exit strategy? According to Walzer, it is "restoration of the status quo ante," which means "defeat of the aggressor and restoration of the old boundaries." Yet, this is not enough to ensure a just conclusion: the aggressor states should pay for the damage it caused to the victim state, and the peace treaty should be drafted in a way to ensure a more stable future for the parties. However, as Walzer points out, the theory does not extend the scale of post-war responsibilities so as to include a *radical reconstitution of the enemy state*. Moreover, given the importance assigned to state sovereignty, such a move would have been considered as an act of aggression from the perspective of international law. No need to mention the cost the invaders would have to pay for reconstruction of the defeated state.²⁸

²⁵ Orend, War.

²⁶ Orend, War.

²⁷ Orend, War.

²⁸ Walzer, The Triumph of Just War, p. 938 – 940.

However, there are some scholars who argue that a commitment to establish a democratic regime following the intervention is among *just post bellum* principles. According to Mark Evans, establishing a democratic regime is never the just cause to wage a war. However, democracy can be a by-product of a war waged for other reasons.²⁹ Although the Iraq and Afghanistan invasions had created a bad reputation for wars with democratic commitments, democracy as a result of an invasion conducted out of other just causes should not be rejected; especially if we accept that there is a human right to democracy which is secured by the Article 21 of the Universal Declaration of Human Rights which holds that popular sovereignty and representative government are necessary conditions for a government to be legitimate.³⁰

We can broaden the definition of ethical exit strategy and mention a few more components of *jus post bellum*. **Proportionality and Publicity:** The peace settlement should be reasonable for both parties. It should not serve as an instrument of revenge for any of the parties, for such a move would risk the future of peace. **Rights Vindication:** The peace settlement should secure the basic human rights of those who broke the peace and embody a just cause for the war. **Discrimination:** Civilians must be held immune to any post-war punishment including socioeconomic sanctions. **Punishment #1:** The leaders of the aggressor party should be put in international trials for war crimes. **Punishment #2:** Soldiers from all sides should be subjected to investigations of possible war crimes that they may have committed. **Compensation:** A post-war poll tax on civilians for compensation is unfair and the defeated state should be left with enough financial sources for reconstruction after all. **Rehabilitation:** There must be a stage of reconstruction of the system after the war. That would provide an opportunity to reform the institutions so as to fulfill at least minimum requirements of a democratic regime with respect to human life.³¹

The theory of just war has been an important part of the discussions about the ethics of war. We can observe the effect of three major traditions of ethics within the framework of just war theory: deontology, consequentialism and virtue ethics. **Deontology** judges our actions by duties we owe to others. **Consequentialism**

²⁹ Mark Evans, "Just War, Democracy, Democratic Peace", *European Journal of Political Theory*, Vol. 11, No. 2, 2012, p. 196.

³⁰ Evans, Just War, Democracy, Democratic Peace, p. 195, 200, 201.

³¹ Orend, War.

evaluates the effects of our actions with regard to duties we owe to others; their effect on human well-being. **Virtue ethics** gives priority to duties we owe ourselves to fulfill our duties that we owe to others.³² When we evaluate the above mentioned principles of just war from this perspective, it is clear that they are about either the duties we owe to others, or consequences of our actions with regard to duties we owe to others, or duties we owe to ourselves to fulfill the duties we owe to others. With the element of morality that it contains, the theory of just war provides a historical base for today's discussions of humanitarian intervention and R2P.

1.2. HUMANITARIAN INTERVENTION

Before analyzing R2P in more detail, we now examine humanitarian intervention, which has its roots in the theory of just war, and a place in the historical evolution of the idea of R2P. To start with a simple definition, a humanitarian intervention can be defined as “the use of military force by one state on the territory of another, in order to protect people in danger of grave harm when the state within the jurisdiction of which they reside cannot or will not do so,”³³ and “when the intervention is on a big enough scale to create the risk of war.”³⁴ Humanitarian intervention is an act to stop an unlawful treatment taking place in another country. As Terry Nardin puts it: “To get to the idea of humanitarian intervention, we must shift our attention from wrongs done by one community to another to those done by a government to its own subjects, either directly or by permitting mistreatment.”³⁵

The end of the Cold War led many thinkers to reevaluate the legal and ethical grounds of humanitarian intervention. Intervention was not a new concept in international politics. The practice of humanitarian intervention dates back to European powers' interventions in the Greek, Syrian and Bulgarian conflicts within the Ottoman Empire in the 19th century.³⁶ Interventions of this century were mainly characterized by European concerns regarding the state of human rights of Christian communities living in the Ottoman Empire. One commonly cited case is

³² Mona Fixdal and Dan Smith, p. 287.

³³ Norman Geras, **Crimes Against Humanity: Birth of a Concept**, Manchester University Press, Manchester, 2011, p. 99.

³⁴ Geras, p. 105.

³⁵ Nardin, p. 59.

³⁶ Alexis Heraclides, “Humanitarian Intervention in the 19th Century: The Heyday of a Controversial Concept”, **Global Society**, Vol. 26, No. 2, 2012, p. 220.

the great power involvement in the Greek conflict within the Ottoman Empire. The 1827 Treaty of London, which was signed by Russia, France and Britain as a protocol that defines the framework of their involvement in the Greek conflict taking place within the Ottoman territory, defined the motivation of intervention as “sentiments of humanity to end “the sanguinary struggle” and to stop “the effusion of blood”. Geostrategic concerns and balance of power were undoubtedly important in decision making process: the Treaty can be regarded as France and Britain’s effort to prevent the Tsar Nicholas of Russia from acting individually and spreading Russia’s influence over the Christian peoples of the region, given that they decided to get involved after only Nicholas threatened unilateral action in 1826. Before that, under the Congress system in Europe, which aimed to protect sovereigns from insurrections, Britain, Russia and France were against any kind of intervention to the conflict that broke out in 1821. Public opinion at the time indicated humanitarian concerns, but this was not enough to commit governments to action.³⁷ In defense of the argument that it was a humanitarian intervention, one scholar argues that, if there was no humanitarian concern, and strong pressure from the press and public opinion, no great power would have intervened; that states found it difficult to remain insensitive regarding the humanitarian emergencies that their populations were concerned about.³⁸ At the end of the day, expecting great powers to act for purely humanitarian motives without any self-interested concerns is not realistic, but that does not mean that intervention was conducted out of pure self-interest: “given the heavy costs and risks involved, governments have to justify their action to their home publics and can hardly do so on lofty grounds (by claiming to be the world conscience as it were) but only by invoking, in effect fabricating, dire threats to vital national interests.”³⁹

Humanitarian intervention was rejected between 1945 and 1990 as a result of the tightened restrictions on the use of force.⁴⁰ Interventions of this era were consent-based post-conflict deployments mandated only for patrolling and monitoring.⁴¹ Despite the disagreement over whether they were conducted out of humanitarian concerns, India’s intervention in East Pakistan in 1971, Vietnam’s war

³⁷ Heraclides, p. 217 – 222.

³⁸ Heraclides, p. 239.

³⁹ Heraclides, p. 239.

⁴⁰ Heraclides, p. 238.

⁴¹ Andrew Cottey, “Beyond Humanitarian Intervention: The New Politics of Peacekeeping and Intervention”, **Contemporary Politics**, Vol. 14, No. 4, 2008, p. 432 – 434.

against Cambodia in 1978 and Tanzania's overthrow of Idi Amin in Uganda in 1979 are cited by several scholars as Cold War era humanitarian interventions.⁴² According to one scholar, dominant motives behind them set aside, all three were fought to stop or prevent human rights violations. However, all three were considered violation of international law.⁴³

The international climate changed in the 1990s. In that decade, grave human rights violations in Rwanda, Bosnia, Haiti and Kosovo made many question the commitment to principles of sovereignty and non-intervention, which is reflected in Robert O. Keohane's lines: "Sins of omission, exemplified by the absence of intervention to stop the genocide in Rwanda in 1994, are more serious threats than sins of commission. Strong, sustained action is needed to help troubled societies and rebuild failed states."⁴⁴

The debate over Kosovo was drawing attention to the gap between what international law allows and what morality requires.⁴⁵ As Bellamy points out, such cases led to growing support for the legitimacy of humanitarian intervention in the international arena. The following examples are presented to show the gradual international acceptance of humanitarian intervention. The Independent International Commission on Kosovo (IICK), which was established by the government of Sweden following the intervention and composed of experts from NATO member states, concluded that NATO's intervention to Kosovo was illegal but legitimate.⁴⁶ In 2000, African Union's (AU) Constitutive Act gave its members "the right . . . to intervene in a Member State pursuant to a decision by the Assembly [of the Union] in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity".⁴⁷ According to Bellamy, this is a mandate to conduct humanitarian

⁴² Allen Buchanan, "Reforming the International Law of Humanitarian Intervention", **Humanitarian Intervention: Ethical, Legal and Political Dilemmas**, (Eds. J. L. Holzgrefe and Robert O. Keohane), Cambridge University Press, New York, 2003, p. 130.

⁴³ Buchanan, p. 130.

⁴⁴ Robert O. Keohane, Introduction, **Humanitarian Intervention: Ethical, Legal and Political Dilemmas**, (Eds. J. L. Holzgrefe and Robert O. Keohane, Cambridge University Press, New York, 2003, p. 10.

⁴⁵ Buchanan, p.130 – 131.

⁴⁶ Kosovo Report: Conflict, International Response, Lessons Learned, **Independent International Commission on Kosovo (IICK)**, Oxford: Oxford University Press, 2000, <http://reliefweb.int/sites/reliefweb.int/files/resources/6D26FF88119644CFC1256989005CD392-thekosovoreport.pdf>; Alex J. Bellamy, "Motives, Outcomes, Intent and the Legitimacy of Humanitarian Intervention", **Journal of Military Ethics**, Vol. 3, No. 3, 2004, p. 219.

⁴⁷ African Union, "Constitutive Act of the African Union", Art 4(h), 01.07.2000, http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf, (02.12.2015), quoted in Bellamy, Legitimacy of Humanitarian Intervention, p. 220.

intervention without United Nations Security Council (UNSC) authorization. In 2001, the International Commission on Intervention and State Sovereignty introduced the principle of the R2P, which will be discussed broadly later in this study. Bellamy further argues that a lot of interventions, with the exception of US intervention to Iraq in 2003 and including non-humanitarian interventions, conducted without UNSC authorization were widely considered legitimate by the international society: South Africa's intervention in Burundi in 2001, France's intervention in Cote d'Ivoire in 2003, and US's intervention in Afghanistan in 2003.⁴⁸

In this chapter we will briefly evaluate the issue from legal and ethical perspectives, touching upon the debate over whether humanitarian intervention is a right or an obligation and what the proper threshold in making a decision to intervene should be.

1.2.1. Evaluating Humanitarian Interventions

What makes an intervention a humanitarian intervention has been hotly debated. Critics of humanitarian intervention mostly draw attention to the non-humanitarian intentions behind the interventions. This approach holds that what matters in evaluating humanitarian intervention is not how interveners define their actions, but their intent.⁴⁹ Silviya Lechner argues that it is the motivation behind the intervention that helps us distinguish humanitarian intervention from mere intervention, not its goal; because the goal of the intervention could be stopping a massacre, while the motive could be self interest.⁵⁰ In contradiction to this argument, Fernando R. Tesón argues that "a justified intervener must have the right intent, which does not necessarily mean that he has to have right motive". With reference to John Stuart Mill, Tesón says "intention covers the willed act and the willed consequences of that act ... [while] a motive is a further goal that one wishes to accomplish with the intended act." In his account, a humanitarian intervention should be evaluated by the interveners' intention, not by motives.⁵¹

⁴⁸ Bellamy, *Legitimacy of Humanitarian Intervention*, p. 219 – 221.

⁴⁹ Fernando R. Tesón, "Humanitarian Intervention: Loose Ends", *Journal of Military Ethics*, Vol. 10, No.3, 2011, p. 201 – 202.

⁵⁰ Silviya Lechner, "Humanitarian Intervention: Moralism versus Realism?", *International Studies Review*, Vol. 12, 2010, p. 438.

⁵¹ Fernando R. Tesón, "Eight Principles for Humanitarian Intervention", *Journal of Military Ethics*, Vol. 5, No. 2, 2006, p. 98-99.

Critics of humanitarian intervention usually refer to realism hidden behind the humanitarian intervention. They argue that operations are carried out by governments of states, who are seeking to achieve their own interests.⁵² Lechner argues that it is possible to read realism as an ethical theory with an account of good and bad, right and wrong etc, since it suggests certain political actions. As represented in the realist logic that *the end justifies the means*, realism embraces a consequentialist ethical understanding which holds that an action is good as long as it produces desirable consequences. In the context of international politics, the desirable end is preservation of national interest. This consequentialist approach could be the basis for a mere intervention, but a humanitarian intervention must be based on deontological ethics, which requires agents to do the right thing regardless of its cost. In contradiction to consequentialism, this approach is strictly tied to moral absolutes no matter what consequence they would bring.⁵³ So, a humanitarian intervention is the one that is conducted out of humanitarian motives at any cost with regards to national interest.

However, Tesón argues, this is not the proper way to evaluate an intervention. “[States] always have motives other than ending tyranny; and moreover, that is the way it should be” since it is required by the duty they owe to their citizens.⁵⁴ Bellamy underlines the same point when he states, “it is asking too much to expect a state to risk the lives of its own citizens solely to save strangers.”⁵⁵ It is not the right motive but the right intention that is necessary in evaluating the legitimacy of a humanitarian intervention. Bellamy refers to Augustine’s account of morally justified use of violence in defense of others in an effort to define right intention in such a way as to make an intervention legitimate. In Augustine’s account, the use of violence in defense of public order, security and property law is morally justified and required since those are necessary for human maturity and advancement. The intent of the intervener is important: a war is not just if it is waged for what Augustine calls the real evils in war, namely, love of violence; revengeful cruelty; fierce and implacable enmity; wild resistance; and the lust for power. The right intention in a war is wish to maintain peace and justice. Proceeding from that,

⁵² Mona Fixdal and Dan Smith, p. 284.

⁵³ Lechner, p.438-439.

⁵⁴ Tesón, Loose Ends, p. 204.

⁵⁵ Bellamy, Legitimacy of Humanitarian Intervention, p. 222.

the right intention that would legitimize a humanitarian intervention is to prevent or stop an injustice and promote peace.⁵⁶

Tesón argues that critics usually treat motives as if they are intentions. We can use motives in evaluation of the actor, not the act, he says. We can conclude that a particular actor is evil by looking at its motive, but the evil of the actor does not itself affect the moral status of act. Rather, we should be evaluating interventions by the actors' intentions, along with the consequences of actions. A military action undertaken with the intention of liberating people but with a bad or self-interested motive, like gaining power or access to oil, is a humanitarian intervention as long as it achieves the aimed humanitarian end.⁵⁷ As he puts, "Just as we do not acquit someone who did a bad deed just because he had a good motive, so we should not condemn the action of a government that did a good deed just because it had a bad (or merely non-altruistic) motive."⁵⁸ For instance the intention of Tanzania's intervention to Uganda in 1979 was to rescue the victims of tyranny under Idi Amin, but the motivation was achieving hegemony in the region. This does not allow us to argue that intervention was not actually humanitarian. There are two important indicators: the means must be consistent with humanitarian ends, and intervention must help the country to build free democratic institutions. Waging war against a repressive regime to impose its own repressive rule is not considered humanitarian intervention. In that sense, Vietnam's intervention to Cambodia to overthrow Pol Pot in 1978 was not humanitarian, for Vietnam did it to impose its own repressive regime.⁵⁹

Holzgrefe mentions five different approaches to moral evaluation of humanitarian intervention: utilitarianism, natural law, social contractarianism, consequentialism and legal positivism. **Utilitarianism** judges an action by its consequences with regards to its effects on human well-being.⁶⁰ There are two approaches in utilitarianism: **act utilitarianism** and **rule utilitarianism**. The object of moral evaluation differs in each: for the first it is consequence of an action with regard to increasing human well-being, while for the second it is obedience to rules.

⁵⁶ Bellamy, *Legitimacy of Humanitarian Intervention*, p. 226 – 227.

⁵⁷ Tesón, *Loose Ends*, p. 203 – 204.

⁵⁸ Tesón, *Loose Ends*, p. 203.

⁵⁹ Tesón, *Loose Ends*, p. 204 – 205.

⁶⁰ J. L. Holzgrefe, "The Humanitarian Intervention Debate", **Humanitarian Intervention: Ethical, Legal and Political Dilemmas**, (Eds. J. L. Holzgrefe and Robert O. Keohane, Cambridge University Press, New York, 2003, p. 20.

The second type requires as a prerequisite obedience to the rules in achievement of human well-being, for without rules trust would be no more available in the society. Therefore, according to act utilitarianism a humanitarian intervention is just as long as it saves more lives than causing further losses by doing nothing while from the perspective of rule utilitarianism it is just to the extent that it is required or allowed by rules.⁶¹

Heinze's account of humanitarian intervention which is based on maximization of human well-being is an example of the utilitarian approach to humanitarian intervention. To this end, he puts *human security*, which is defined as the absence of both direct and structural causes of violence, rather than human rights in the focus of intervention, because, he thinks, human security is a more proper tool to measure human well-being.⁶² Intervention must aim to avert or stop large scale, deliberate, imminent or ongoing deprivation of basic human goods, which are considered prerequisite for "meaningfully pursu[ing] other social endeavors". All necessary conditions in this definition are based on utilitarian grounds. The scale of deprivation is the point above which use of force would bring more aggregate good than aggregate harm and the distinction of deliberate and unintentional is important because, Heinze argues, it is more likely for war to bring more human security if human suffering was brought about intentionally.⁶³ His justification for the use of military force for humanitarian ends reflects his utilitarian conception:

Because humanitarian intervention is the use of deadly military force that itself undermines human security to some extent, it must therefore only be used as a human security strategy in circumstances under which the use of military force is likely to maximize human security.⁶⁴

[I]f causing a certain amount of disruption in the daily lives of individuals – even causing the deaths of some individuals – serves to rescue countless other individuals from a similar or worse fate, then that action can be seen to *promote* human security, even though it intuitively fails to *honor* it. This aspect of utilitarianism is particularly relevant to humanitarian intervention, because the very nature of such action is that it disrupts human security, often to a large degree.⁶⁵

⁶¹ Holzgrefe, p. 21 – 23.

⁶² Eric A. Heinze, "Maximizing Human Security: A Utilitarian Argument for Humanitarian Intervention", *Journal of Human Rights*, Vol. 5, 2006, p. 285 – 287.

⁶³ Heinze, *Maximizing Human Security*, p. 290 – 295.

⁶⁴ Heinze, *Maximizing Human Security*, p. 287.

⁶⁵ Heinze, *Maximizing Human Security*, p. 288.

Another approach in evaluating humanitarian intervention is the **natural law** approach which holds that moral duties are discovered through reason. Accordingly, common human nature generates common moral duties.⁶⁶ As Terry Nardin points out, moralists of the 16th and 17th centuries believed that there was a right and a duty assigned to rulers to enforce natural law, which contains rules that “can be known by reason and are binding on all rational beings”. Rulers had the right to punish “moral wrongdoings” which are banned under the natural law.⁶⁷ As he explains, common morality has an international identity. It is not merely the moral practice of a particular nation or religious group; it assumes that there is a standard of rights for everybody, no matter what national or religious group they belong to. Nardin argues that human rights “rest on the principles of common morality.” In that sense, humanitarian intervention – which is based on protection of human rights – should be based on common morality, rather than moral principles of particular nations or religious groups, or even the international law.⁶⁸ Holzgrefe makes a distinction between the two types of approaches of natural law approaches: one group believes that it is a right and the other thinks it as a duty. For instance Grotious’ account of natural law holds that if a tyrant is treating his subjects in way that no one is authorized to, other states may choose to exercise their *right* to humanitarian intervention.⁶⁹ The ones who believe that it is a duty, like Walzer, perceive it as an imperfect duty; a duty assigned to no one.⁷⁰

Social contractarianists argue that moral norms are binding so long as they are products of mutual consent. If we assume that citizens are the contracting parties, then maximization of national interest becomes the moral duty. Contractarianists’ approach to humanitarian intervention depends on their definition of national interest. If we define national interest in terms of security and material interests, intervention is almost always unjust. However, if we define national interest in terms of security, material interests and *humanitarian interests*, then humanitarian intervention can be morally obligatory.⁷¹

⁶⁶ Holzgrefe, p. 25.

⁶⁷ Nardin, p. 58.

⁶⁸ Nardin, p. 64 – 65.

⁶⁹ Holzgrefe, p. 26.

⁷⁰ Holzgrefe, p. 27. Holzgrefe refers to the works of Christian Wolff, Emer de Vattel, and Immanuel Kant which argue that states have a duty to refrain from intervening in each other’s affairs.

⁷¹ Holzgrefe, p. 28 – 30.

The fourth moral approach, **communitarianism**, holds that cultural beliefs and practices are products of consent. They reflect the shared understanding of the members of a community. Norms are binding to the extent that they suit these cultural beliefs and practices of specific communities. However, their account of morality is opposed by naturalists. The problem with this approach, accordingly, is that consent cannot generate morally binding norms. Individuals are not capable of constructing their societies in a way that they believe to be proper. Their influence on their society is limited by their position in society measured by wealth, power, and status.⁷²

The **legal positivist** account of morality is strictly loyal to legal texts. Norms are morally justified as long as they are legal. Once a norm is passed into law, there is no need for additional moral reasoning. However, this approach is problematic in the sense that the ones who are passing those norms into law could be anybody and the legal procedure of passing something into law could be adopted by those people as well. Can we still defend morality of a law passed by Nazi party members in accordance with the legal procedures again adopted by Nazi party?⁷³

1.2.2. Legality Debate

There are two sources of international law: conventions and custom. The following part examines different views on what each says about the legality of humanitarian intervention.

1.2.2.1. International Conventions

The Charter of the UN is the international convention most commonly referenced in discussions regarding the legality of humanitarian interventions. However, scholars disagree on whether the UN Charter is prohibitive of humanitarian intervention or not. The first disagreement is on the interpretation of Articles 2(4) and 2(7) of the Charter. Opponents of humanitarian intervention argue

⁷² Holzgrefe, p. 35.

⁷³ Holzgrefe, p. 35 – 36.

that the principle of non-intervention set forth in Articles 2(4) and 2(7) of the Charter constitutes a prohibition to humanitarian intervention.⁷⁴

Article 2(4) of UN Charter states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the UN." Likely, Article 2(7) states "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."⁷⁵

However, there are some counter arguments that reconcile humanitarian intervention with the UN Charter. One argument holds that the Charter forbids the use of force only if it threatens "territorial integrity or political independence of any state." There is no reason to argue that humanitarian intervention is prohibited on the basis of territorial integrity and political independence unless it results in a territorial occupation or political subjugation.⁷⁶ As Francisco de Vitoria argued, a war, waged to protect people from wrongdoings of their governments should be limited with ending those wrongdoings, and once that goal is achieved, the invader must refrain from seizing the property or overthrowing the government.⁷⁷ Moreover, some scholars argue that humanitarian interventions carried out against regimes that are "built and sustained by intense human rights violations" do not violate sovereignty or even territorial integrity. Sovereignty, they argue, exists to protect and promote human rights and to protect populations from harm. Thus, by failing to fulfill their sovereign responsibilities, these regimes lose the right to sovereignty itself and intervention in such cases is not violating sovereignty, but *liberating* it.⁷⁸

Another disagreement is on the interpretation of Article 2(4) in the context of purposes of the UN. A broad interpretation reveals that the ban on the use of force in Article 2(4) is conditional. The article forbids the use of force as long as it is used in a "manner inconsistent with the purposes of the UN". Article 1 of the Charter enumerates the purposes for the UN. It reads in relevant portion as follows: "To maintain international peace and security, and to that end: to take effective collective

⁷⁴ Holzgrefe, p. 37.

⁷⁵ Charter of the United Nations, Article 2(4), <http://www.un.org/en/documents/charter/chapter1.shtml>. (03.08.2014).

⁷⁶ Holzgrefe, p. 37.

⁷⁷ Terry Nardin, p. 60.

⁷⁸ Julie Mertus, "Beyond Borders: The Human Rights Imperative for Intervention in Kosovo", **Human Rights Review**, Vol. 1, Issue. 2, 2000, p. 81.

measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace ... promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁷⁹ Advocates of broad interpretation draw attention to the “promotion of human rights” component in the “purposes of the UN” part of the Charter and argue further that an unauthorized intervention with the aim of protecting human rights is not illegal where the UN fails to realize its purposes.⁸⁰ This idea is countered by those who believe that with that article, the drafters of the Charter only intended to strengthen the ban on the use of force. They reject the broad interpretation that allows interventions and oppose the alleged legality it provides.⁸¹

Another argument reconciles humanitarian intervention with the Charter on the basis of the protection of human rights. Proponents of this view argue that intervention is mandated under the human rights provisions of the Charter, in particular those found in Articles 55 and 56. Article 55 of the Charter states, “United Nations shall promote ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁸² Article 56 authorizes members “to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.”⁸³ Starting with the approval of Universal Declaration of Human Rights in 1948, the UN has adopted many human rights instruments, and the right to life is included in all of the principal human rights instruments. Mertus argues that the right to life includes the right to emergency assistance and to protection from gross and systemic human rights abuses. From this point of view, a humanitarian intervention to stop or avert human rights violations is not violation of the Charter. The UN’s failure to act in cases of human rights violations is interpreted as permission to act without UN authorization (unilaterally) by this camp.⁸⁴ Based on the preceding four arguments in favor of reconciliation of humanitarian intervention with the UN

⁷⁹ Charter of the United Nations, Article 1, <http://www.un.org/en/documents/charter/chapter1.shtml>, (06.06.2015).

⁸⁰ Holzgrefe, p.39; Mertus, p. 82.

⁸¹ Holzgrefe, p. 40

⁸² Charter of the United Nations, Article 55, <http://www.un.org/en/documents/charter/chapter9.shtml>, (06.06.2015).

⁸³ Charter of the United Nations, Article 56, <http://www.un.org/en/documents/charter/chapter9.shtml>, (06.06.2015).

⁸⁴ Mertus, p. 82 – 83.

Charter, Mertus argues that the NATO intervention in Kosovo “can be firmly grounded in international law.” First of all, in Kosovo case the Milošević regime in Belgrade lost its right to sovereignty and territorial integrity because of the grave human rights violations it committed. Secondly, the intervention was in line with the purposes of the UN, which include protection of human rights. Thirdly, the intervention was mandated under the above mentioned human rights provisions of the UN Charter since it aimed to promote and protect human rights. Lastly, the UN failed to act in the face of those crimes.⁸⁵

There is also disagreement on the interpretation of Article 39 of the Charter. The article states:

The Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with the provisions of article 41 and 42, to maintain or restore international peace and security...⁸⁶

Some claim that using the phrase “threat to peace” instead of “international peace” in the text empowers the UNSC with a jurisdiction over not only international humanitarian crises, but also human rights violations without such *transboundary effects*. Needless to say, this argument is opposed by those who argue that the article does not provide a clear authority to use transboundary force against threats that lack any transboundary effects.⁸⁷

There are also arguments in favor of the legality of humanitarian intervention based on state practice. The first argument is that Article 2(4) has been violated so many times that it is no longer relevant. However, Hurd points out the danger with this argument: if we assume that the use of force is not regulated by the Charter, it is impossible to argue that states are violating the rules. Then no intervention, including humanitarian intervention, is illegal. So, we may conclude that aggression itself becomes legal.⁸⁸

The second argument holds that international law has changed as a result of the change in the normative environment and state practice. According to this

⁸⁵ Mertus, p. 81 – 83.

⁸⁶ Charter of the United Nations, Article 39, <http://www.un.org/en/documents/charter/chapter7.shtml>. (05.06.2015).

⁸⁷ Holzgrefe, p. 40 – 41.

⁸⁸ Ian Hurd, “Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World”, **Ethics & International Affairs**, Vol. 25, No. 3, 2011, p. 303.

norms-into-law approach, humanitarian interventions are not violations of the Charter; but adaptation of the Charter to the normative and political environment of the day. For instance the UNSC adopted the R2P as a norm and applied it to varying degrees in its resolutions about Darfur (Resolution 1706), Somalia (Resolution 1814) and Libya (Resolution 1973). The official practice has modified the legal regime and turned what once was *violation* (humanitarian intervention) into *constructive noncompliance*. However, this argument is challenged on two grounds: the failure of R2P to introduce a new legal framework (it mostly rests on the existing Charter clauses); and the existence of cases where states choose not to invade.⁸⁹

From a different legalist perspective, Eric A. Heinze argues that there is a hierarchy among human rights. For Heinze, violation of certain rights is intolerable and subject to universal jurisdiction, while violation of other lesser rights does not reach such a threshold. But how to distinguish the fundamental rights, whose violation is subject to universal jurisdiction, from the others? With reference to Shue, Heinze says that fundamental rights are those rights which are essential to enjoy others. For instance, the right to life is essential because we require it to enjoy all the other rights. Violation of the right to life through murder, starvation; or violation of one's physical person (i.e. rape or torture) which would prevent them to enjoy other rights constitutes gross violation.⁹⁰ In order to be subject to universal jurisdiction, this violation must be the result of an intentional plan, occurring consistently through a certain amount of time.⁹¹

Moral prioritization of certain rights can be observed in international law under the name of *jus cogens*. The 1968 Vienna Convention defines and constitutes its legal basis: *Jus cogens* are those norms of international law "accepted and recognized by the international community of states as a whole from which no derogation is permitted," like prohibition of slavery and genocide. So, peremptory norms are subject to universal jurisdiction. There are three types of crimes whose prevention or halting has the status of *jus cogens* and thus universal jurisdiction: genocide, crimes against humanity and war crimes. Heinze argues that gross human rights violations are subject to humanitarian intervention because they are similar to those crimes which are subject to universal jurisdiction. He says, "[t]he

⁸⁹ Hurd, p. 304 – 305.

⁹⁰ Eric A. Heinze, "Humanitarian Intervention: Morality and International Law on Intolerable Violations of Human Rights", **International Journal of Human Rights**, Vol. 8, No. 4, 2004, p. 472 – 476.

⁹¹ Heinze, Humanitarian Intervention, p. 476 – 477.

legal intolerability of such abuses allow for the exercise of universal jurisdiction, while their moral intolerability allows for the use of extreme means (military force) to stop or prevent such violations.”⁹²

Here, we need to explain the legal basis for the prevention or halting of genocide, crimes against humanity and war crimes to be recognized as peremptory norms. The legal basis of the term genocide is Article VI (c) of the Charter of the Nuremberg Tribunal. This article defined a number of acts which today constitute the crime of genocide.⁹³ The Genocide Convention of 1948 states in its Article 1: “The Contracting Parties confirm that genocide, whether committed in time of peace and or in time of war, is a crime under international law which they undertake to prevent and punish.”⁹⁴ The term “crimes against humanity,” on the other hand, lacks an authoritative definition. The Rome Statute of the International Criminal Court (ICC) considers a number of activities as crimes against humanity: murder, extermination, enslavement, forced deportation of a population, unlawful imprisonment, torture, rape and other sexual violence, racial or ethnic persecution, enforced disappearance, apartheid, and other inhumane acts causing great human suffering. Lastly, “war crimes” primarily refer to grave breaches of the Geneva Conventions of 1949 and supplementary protocols of 1977.⁹⁵

To summarize Heinze's account, intervention in cases where certain human rights have been violated is legal because those rights are given special status and protected under the banner of *jus cogens* in several international conventions. However, one can come across counter arguments to this *jus cogens* approach. For instance, Hurd hesitates about whether the statement “prevent and punish” in the Genocide Convention actually constitutes grounds for the use of force across boundaries.⁹⁶ He further argues that the international conventions that allow humanitarian intervention in cases where one or several of such crimes have

⁹² Heinze, Humanitarian Intervention, p. 478 – 480.

⁹³ Heinze, Humanitarian Intervention, p. 479 – 482.

⁹⁴ Hurd, p. 299.

⁹⁵ Heinze, Humanitarian Intervention, p. 479 – 482. Heinze refers specifically to Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949. Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, 12 August 1949. Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 August 1949. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949. Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protections of Victims of International Armed Conflicts, 12 December 1977. Protocol (II) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 12 December 1977.

⁹⁶ Hurd, p. 299.

occurred provide, in reality, only a limited mandate for action. Take the example of AU. The AU's Constitutive Act names a number of grave circumstances that gives the Union, but not its members, the right to intervene: war crimes, genocide, and crimes against humanity. However, as Hurd points out, members of these organizations are still bound by their obligations under the UN Charter according to Article 103 of the Charter, which states that in case of a conflict between obligations of a UN member under the UN Charter and other organizational charters, the UN Charter prevails.⁹⁷

1.2.2.2. Customary Law

Another discussion regarding the legality of humanitarian intervention revolves around customary international law. Scholars like Geras claim that there had been some agreement on its legality under customary law, at least before the UN Charter.⁹⁸ Some others, going even earlier, argue that state practices during the 18th and 19th centuries established the customary right of unauthorized intervention, and that this right is valid even today with the presence of the UN. However, some argue that even if such a customary right ever existed, it must have ceased to exist following the establishment of the UN. Moreover, the practice of intervention during those centuries lacked the necessary elements to establish *jus cogens*, namely *general observance* and *widespread acceptance*. They argue that the fact that the “right to intervene” had been practiced on a selective basis, which left many humanitarian crises that took place before the establishment of the UN (like the starvation of Ukrainians by the Soviets in the 1930s and the extermination of Jews by the Nazis between 1939-1945) untouched, proves that customary right to intervention lacks the elements of general observance and widespread acceptance.⁹⁹

In order to be recognized as part of customary international law, humanitarian intervention needs to meet two requirements, which are state practice and *opinio juris*. The primary requirement is general and consistent state practice. It should be followed by states' belief that they are bound by this law, which is called *opinio juris*. *Opinio juris* is a complementary factor whose existence alone is not

⁹⁷ Hurd, p. 300.

⁹⁸ Geras, p. 100.

⁹⁹ Holzgrefe, p. 44 – 47.

sufficient for a custom to become law. It should follow a consistent state practice, and its presence helps us to distinguish customs from mere usages.¹⁰⁰

When we evaluate the historical data, we see that states intervened in other states' domestic issues on several occasions, e.g. the intervention of the UK, France and Russia in Greece between 1827 and 1830; France in the Lebanese region of Syria between 1860 and 1861; India in Pakistan in 1971, the Soviet Union in Hungary in 1956 and so on. However, can we conclude that they established a consistent state practice? First of all, as Enabulele points out, the general practice principle does not require the participation of all states; practice of more than half of the states is sufficient. However, given that only *an insignificant* number of these interventions seem to be conducted on humanitarian bases, we cannot talk about a consistent state practice of humanitarian intervention. Even if we assume that there is consistent state practice, Enabulele argues, we cannot say that it is followed by *opinio juris*; given the selective application of humanitarian intervention throughout history¹⁰¹: “Can it be said that states see intervention as a legally obliged conduct? If they do, why do states pick and choose the humanitarian violations that they would intervene in? Why should there be intervention in Bosnia and not in Darfur or in Rwanda, where 800,000 civilians were slaughtered?”¹⁰²

Some may dispute the constant state practice requirement. One scholar argues that were these truly requirements, many existing rules would have to be abolished. Accordingly, disuse or less frequent use of a customary rule does not necessarily mean abolition of the rule:

It does not seem that international law requires constant, faultless utilization to avoid automatic abolition of a customary rule; many rarely used institutions of customary international law would otherwise have to be considered invalidated for lack of sufficiently frequent application.¹⁰³

State practice is not the only source of customary international law. As it is stated in Article 38 (1) (d) of the Statute of the International Court of Justice, “the teachings of the most highly qualified publicists of the various nations” are

¹⁰⁰ A.O. Enabulele, “Humanitarian Intervention and the Territorial Sovereignty: the Dilemma of two Strange Bedfellows”, **The International Journal of Human Rights**, Vol. 14, No. 3, 2010, p. 413 – 414.

¹⁰¹ Enabulele, p. 414 – 416

¹⁰² Enabulele, p. 416.

¹⁰³ Jean-Pierre L. Fonteyne, “The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter”, **California Western International Law Journal**, Vol. 4, 1973 – 1974, p. 234.

recognized by the Court among “subsidiary means for the determination of rules of law.”¹⁰⁴ From this point of view, reference to humanitarian intervention by the important scholars throughout the second part of the 19th and 20th centuries constitutes a secondary source for customary international law. This even dates back to the 17th century thinkers like Grotius who was writing against the blind obedience to sovereignty and territorial integrity: “[i]f a tyrant ... practices atrocities towards his subjects, which no just man can approve, the right of human social connexion is not cut off in such case.” E. de Vattel stated that any foreign power was entitled to help an oppressed people upon the request by those people, if tyranny of the government becomes so unbearable. M. Bernard, one of the scholars according to whom humanitarian motivation cannot be a legal justification for intervention, argued that a breach to law was possible under certain circumstances: “The law ... prohibits intervention ... Nay, there may even be cases in which it becomes a positive duty to transgress it.”¹⁰⁵ According to this point of view, all these opinions alongside many others, although partially, provide basis for humanitarian intervention to be accepted as a part of customary international law.

1.2.3. Is Humanitarian Intervention a Right or an Obligation?

Another question is whether humanitarian intervention is a right or an obligation. Nardin thinks it is conditional. He thinks that it is a duty rather than a right, as long as the cost of intervention is not too high for that nation.¹⁰⁶ From a different perspective, some scholars argue that unauthorized intervention is a *right* rather than an *obligation*, which makes it *permissive* rather than *mandatory*. States possess the right to intervene no matter whether they choose to use it or not. However, Holzgrefe argues that the UN General Assembly resolutions have been continuously rejecting the existence of such a right. For instance, following NATO intervention in Kosovo, the UN General Assembly passed a resolution which expressed deep concerns regarding the unauthorized coercive measures and

¹⁰⁴ Fonteyne, p. 233; Statute of the International Court of Justice, Article 38, http://www.icj-cij.org/documents/?p1=4&p2=2#CHAPTER_II, (06.06.2015).

¹⁰⁵ Fonteyne, p. 215 – 218.

¹⁰⁶ Nardin, p. 66.

condemned their deployment despite the recommendations of the General Assembly to the contrary.¹⁰⁷

Geras, in his part, believes that there *is* a right for humanitarian intervention, since standing idly in the face of crimes against humanity (on a mass scale) cannot be a 'norm of civilized law' where other means fail to stop them. Geras reminds us that crimes against humanity are crimes under international law (what we called *jus cogens* above) and that a humanitarian intervention can be discussed only when such a crime is committed.¹⁰⁸

1.2.4. What Should be the Threshold for Humanitarian Intervention?

For a humanitarian intervention to be legitimate, it is necessary that one or several of the above mentioned crimes are committed; but is that sufficient? This raises the question of the "scale threshold." For many, the crime being committed must be on a mass scale in order to require an intervention. However, is it always the case? Tesón states "a justifiable intervention must be aimed at ending severe tyranny or anarchy. This standard does not necessarily require that genocide or a similar massive crime should be afoot."¹⁰⁹ Similarly, Geras argues that there are certain cases where the scale threshold is irrelevant, such as a small force being sent to another country to accomplish a minor humanitarian task like saving a group of people from torture: exceptional cases that do not require an all-out war.¹¹⁰

So, in that case, what should the threshold be? As Nardin argues, it is generally believed that military intervention can only be considered as a response to the gravest violations like genocide or ethnic cleansing, and it must be on a mass scale.¹¹¹ However, according to Tesón the bar should not be set so high. Rather, he argues that human right violations must be severe but do not need to be on a genocidal scale. He defines the condition that qualifies humanitarian intervention as 'severe tyranny or anarchy' being applied on a systematic basis. According to him, an oppressive rule is also an exercise of tyranny, that is, qualification for intervention.¹¹² Likely, Geras brings forward a challenging question: What if the

¹⁰⁷ Holzgrefe, p. 47 – 49.

¹⁰⁸ Geras, p. 101 – 102.

¹⁰⁹ Tesón, *Loose Ends*, p. 195.

¹¹⁰ Geras, p. 103 – 105.

¹¹¹ Nardin, p. 66.

¹¹² Fernando R. Tesón, *Eight Principles*, p. 105 – 106.

regime in question is murdering or torturing people, not on a mass scale that would require people to consider an intervention; but over an extended period? Should we respect its sovereignty in that case? So he brings forward his own threshold for humanitarian intervention: “when a state is on the point of committing (or permitting), or is actually committing (or permitting), or has recently committed (or permitted) massacres and other atrocities against its own population of genocidal, or tendentially genocidal scope; or when, even short of this, a state commits, supports or overlooks murders, tortures and other extreme brutalities or deprivations such as to result in a regular flow of thousands of victims.”¹¹³

The threshold issue continues to be discussed below within the framework of the R2P, and the related normative threshold is going to be presented.

¹¹³ Geras, p. 105 – 107.

CHAPTER TWO

THE RESPONSIBILITY TO PROTECT

2.1. DEVELOPMENT OF RESPONSIBILITY TO PROTECT

In 1999, addressing the critics of humanitarian interventions, then the UN Secretary-General asked what should be done in the face of mass and systemic human rights violations such as in cases of Rwanda or Srebrenica, following which the independent International Commission on Intervention and State Sovereignty was established.¹¹⁴ The term Responsibility to Protect was initially put forward by this commission in its report published in 2001. This was followed by the High Level Panel Report in 2004, the Report of Secretary General in 2005, and ultimately, the term (R2P) was referred to by the UN member states in World Summit Outcome Document in 2005.

In order to see R2P in perspective, we need to consider the developments which took place during the decade that gave rise to this normative shift and ended up with the birth of the R2P. First of all, we witnessed international prosecution of war crimes committed in Yugoslavia and Rwanda. Second, former heads of states like Pinochet of Chile and Charles Taylor of Uganda were indicted for human rights violations that took place in their countries. Third, an international criminal court with jurisdiction over war crimes, genocide and crimes against humanity was established. Lastly, a number of UN authorized military interventions took place in response to humanitarian crises in Bosnia, Somalia, Rwanda, Haiti, Zaire and Albania. All of these factors, along with a new sovereignty understanding that holds states accountable for human rights abuses contributed to this *normative shift* which brought about R2P.¹¹⁵

The motive behind the replacement of the term humanitarian intervention with the R2P is explained by Gareth Evans and Mohammed Sahnoun, the chairs of the International Commission on Intervention and State Sovereignty, with reference to criticisms raised by humanitarian relief organizations regarding association of the word “humanitarian” with military intervention. Evans and Sahnoun argue that the

¹¹⁴ Dorota Gierycz, “From Humanitarian Intervention (HI) to Responsibility to Protect (R2P)”, **Criminal Justice Ethics**, Vol. 29, No. 2, 2010, p. 112.

¹¹⁵ Richard Caplan, “Seeing the Responsibility to Protect in Perspective”, **Ethnopolitics**, Vol. 10, No.1, 2011, p. 130.

replacement serves three purposes: First of all, it implies that the issue is being evaluated from the point of view of victims, not interveners. Secondly, it implies that the primary responsibility belongs to the state concerned, and it would only be transferred to the international community if that state is unable or unwilling to fulfill its responsibility; or the state itself is the perpetrator of the crime. Third, as a concept, the R2P is more than only a responsibility to react (an invasion to stop a crisis which is currently taking place); it covers also the responsibility to prevent and responsibility rebuild.¹¹⁶

The threats that the R2P cover are confined to serious atrocity crimes. Although some believe that it should cover a broad range of problems that threaten people like HIV/AIDS, climate change, proliferation of nuclear and other weapons of mass destruction and so on, Evans argues that the scale of protection must be limited to serious atrocity crimes. This is because, he argues, “[if] R2P is to be about protecting everybody from everything, it will end up protecting nobody from anything.”¹¹⁷

Bellamy names nine conflicts in which R2P has been referred to: Darfur (2003), Kenya (2007-2008), Georgia (2008), Myanmar (2008), Gaza (2009), Sri Lanka (2008-2009), Democratic Republic of Congo, and North Korea.¹¹⁸ In Georgian case Putin and Medvedev justified Russia's intervention in Georgia along R2P lines. They claimed that Georgia had committed mass violence that amounted to genocide when it deployed troops in South Ossetia. This claim of Russia won little support in international arena. In Myanmar case, the debate was on whether R2P could be applied to situations where government is unable to provide humanitarian relief in the wake of a natural disaster. General opinion was that R2P could not be applied to such cases. Bellamy argues that these two cases put two limits on the use of the R2P. First, Georgian case showed us that there must be strong evidence of genocide or mass atrocities; and second, Myanmar case showed us that the crimes must be associated with deliberate killing.¹¹⁹

¹¹⁶ Gareth Evans and Mohamed Sahnoun, “The Responsibility to Protect”, **Foreign Affairs**, Vol. 81, No. 6, 2002, p. 101.

¹¹⁷ Gareth Evans, “The Responsibility to Protect: An Idea Whose Time has Come ... and Gone?”, **International Relations**, Vol. 22, No. 3, 2008, p. 294.

¹¹⁸ Alex J. Bellamy, “The Responsibility to Protect – Five Years On”, **Ethics & International Affairs**, Vol. 24, No. 2, 2010, p. 149.

¹¹⁹ Bellamy, Five Years On, p. 151.

Darfur case is widely considered as a failure of R2P to force powerful states to “contribute peacekeepers to undertake complex and dangerous tasks in strategically unimportant regions.”¹²⁰ Bellamy argues that the failure is not related to complexity of the situation but to R2P’s limited capacity to “generate compliance pull” in international society, i.e. it failed to ensure a consensus in the UNSC about the relevant norms like whether host state’s consent is necessary or what ought to be done, and it failed to generate willingness on the part of member states to commit forces and resources to act in accordance with the Council’s will.¹²¹

Kenya represents a successful example to diplomatic action under the R2P. African Union Panel of Eminent Personalities, that consist of representatives mandated by AU, headed by Kofi Annan and supported by the Secretary General Ban Ki-moon, succeeded to mediate reconciliation between Raila Odinga of Orange Democratic Movement and Mwai Kibaki of Party of National Unity regarding the results of 2007 presidential elections, which President Odinga had rejected. The widespread and systematic violence that followed the announcement of 2007 election results had cost more than 1000 deaths and over 500, 000 displaced people.¹²² The case was referred as a case of R2P by Kofi Annan who declared Kenya “[as] a successful example of R2P at work.”¹²³ Moreover, in January 2008, French Foreign and European Minister Bernard Kouchner called out the UNSC to react “in the name of the responsibility to protect” in the face of widespread and systematic violence.¹²⁴ However, Bellamy argues that R2P’s role was marginal in Kenya case. The international engagement was provided by AU’s peace and security architecture, not R2P. The UNSC only supported the AU-led mediation; it

¹²⁰ Bellamy, *Five Years On*, p. 153.

¹²¹ Bellamy, *Five Years On*, p. 153 – 154.

¹²² As a country with more than 70 distinct ethnic groups, Kenya’s elections were dominated by ethnic divisions since the country’s independence in 1963. The political life is characterized by discrimination and exclusion of the ones in the opposition. The two political coalitions running in the 2007 elections, the Orange Democratic Movement and Party of National Unity were supported by different ethnic groups. Odinga’s claims of rigged polls was supported by foreign election observer missions and the European Union election monitors. The announcement of the results triggered violence between ethnic groups. Following the conflict, the evidence showed that political leaders from the both sides tempted their supporters for violence, and the police force was responsible for 40 percent of the civilian deaths. International Coalition for Responsibility to Protect, “The Crisis in Kenya”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya>, (21.09.2015).

¹²³ Bellamy, *Five Years On*, p. 154.

¹²⁴ International Coalition for Responsibility to Protect, “The Crisis in Kenya”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya>, (22.06.2015).

was unclear whether the UNSC would demonstrate willingness to act if violence escalated; and the killing was relatively small in scale.¹²⁵

Twenty-two days of military offensive between Israel and Hamas, which started with attacks launched by Israel on Gaza on 27 December 2008 and lasted until January 2009, claimed over 1300 lives (412 of them children), wounded more than 5450 (1855 of them children) and damaged civilian facilities, i.e. supplies of basic food and fuel, the provision of electricity, water and sanitation services.¹²⁶ One can think of relevancy of R2P with the Gaza case in two ways: Gaza as being an occupied territory, and Gaza as a territory under the full governing control of Palestinian Authority and Hamas. Most governments, international organizations and human rights experts consider Gaza as an occupied territory. They argue that Israel has *de facto* control over Gaza.

Israel's 2008-09 and 2014 ground invasion into Gaza suggests that Israel can adopt control over the territory at will. Israel's implementation of a buffer zone in Gaza as well as its ability to close off Gaza's borders further illustrates the control Israel has over Gaza's land, airspace and territorial waters. Furthermore ... Israel has authority over population registry, VAT rates, customs, currency and the general movement of goods and peoples.¹²⁷

Bellamy argues that the responsibility as well as sovereignty is shared between Israel, Palestinian Authority and Hamas (as a military organization exercising effective control over Gaza). Therefore, each is obligated to avoid committing any of the four atrocity crimes. Hamas exposes Palestinian civilians to threats by e.g. firing rockets into Israel, aimed at civilian neighborhoods, or using civilians as human shields. Actions of Israel Defense Forces should also be investigated to find the ones who are responsible for war crimes or crimes against humanity.¹²⁸ If we agree that Israel has control over Gaza, then the responsibility to protect Gaza population falls on all of the three parties: Israel, Palestinian authority and Hamas. If we do not consider Gaza as an occupied territory, then the crisis is a

¹²⁵ Bellamy, *Five Years On*, p. 155.

¹²⁶ UN News Centre, "Senior UN officials survey 'shocking' aftermath of Israeli offensive in Gaza", http://www.un.org/apps/news/story.asp?NewsID=29630#.VfwE6t_tmkp, (19.09.2015).

¹²⁷ International Coalition for Responsibility to Protect, "Crisis in Gaza" <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-gaza>, (19.09.2015).

¹²⁸ Alex J. Bellamy, "The Responsibility to Protect and the 2014 Conflict in Gaza", **E-International Relations**, 22.07.2014, <http://www.e-ir.info/2014/07/22/the-responsibility-to-protect-and-the-2014-conflict-in-gaza/>, (19.09.2015).

military offensive between two state entities. In that case, the R2P would not be applicable for the protection of civilians across the border. Nevertheless, the both governing bodies would have the responsibility to protect the populations living within their borders from atrocity crimes (i.e. genocide, war crimes, ethnic cleansing, and crimes against humanity) and for the crimes committed against the population across the border, rendering International Humanitarian Law still relevant. With regards to Gaza crisis in 2014, R2P was invoked by the UN Special Adviser on the Prevention of Genocide Adama Dieng, and the UN Special Adviser on R2P Jennifer Welsh, in a statement they released on 24 July 2014. The statement held the both parties responsible for violating international humanitarian law and international human rights law with their acts that could constitute atrocity crimes. The statement called upon Israel, as the “occupying power,” the Palestinian Authority and Hamas to fulfill their responsibility to protect the population in Gaza.¹²⁹

Roots of the Sri Lanka conflict can be traced back to the British colonization policies that had favored the minority Hindu Tamil population of the country over the majority Buddhist Sinhalese population. Peaceful protests of Tamils against the political discrimination that followed independence in 1948 became violent over time and mounted to a civil war by 1983. A major government offensive began in July 2007 that reached its peak by 2009 and the war ended when Tamils agreed to surrender on 17 May 2009. The final stage of conflict resulted in approximately 40, 000 deaths and over 280, 000 internally displaced people. According to the UN numbers, the war cost between 80, 000 and 100, 000 lives. The only UNSC document that addressed the issue during the last stage of the conflict was a press statement issued on 13 May 2009 which expressed grave concerns about the issue and called for “urgent action by all parties to ensure the safety of civilians.” An attempt at the UN Human Rights Council to initiate an investigation of human rights violations failed to produce results. An EU-backed resolution was put forward during a Human Rights Council session on 26 May 2009. The resolution was calling for internal investigation of war crimes committed by both sides. However, another resolution submitted by the Sri Lankan government that congratulated the Sri Lankan government for ending the civil war and ignored human rights concerns won the majority of the votes. Hence, the UN did not adequately address the violations of

¹²⁹ International Coalition for Responsibility to Protect, “Crisis in Gaza” <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-gaza>, (19.09.2015).

international humanitarian and human rights law. In an op-ed for the Washington Post on 22 April 2009, the then director of policy for the Global Center for Responsibility to Protect, James Traub, stated that the conflict produced the kind of results that “states vowed to prevent when they adopted ‘the responsibility to protect’ at the 2005 United Nations World Summit.”¹³⁰ On 8 May 2009, India’s largest human rights organization, the People’s Union for Civil Liberties, invoked R2P and called for UN action. Many civil society organizations including Amnesty International and Human Rights Watch, along with UN officials, called for an investigation of war crimes. On 31 March 2011, Secretary General of the UN released the report of the Panel of Experts on accountability in Sri Lanka which found that both sides committed crimes that amounted to war crimes and crimes against humanity.¹³¹ Although R2P was raised during the last stage of the conflict, discussions on the R2P was challenging for many UN members because they differed on the meaning of the concept.¹³²

Democratic People’s Republic of North Korea (DPRK) has long been known for its tight state control over the flow of people, goods and information and its considerable record of human rights violations. The UN General Assembly annually adopted a resolution condemning the country’s human rights records since 2003. In 2013, the UN Human Rights Council created the Commission of Inquiry on Human Rights in the DPRK to investigate human rights violations. The commission found that “crimes against humanity are ongoing in the Democratic People’s Republic of Korea”.¹³³ Many of the crimes that the Commission found to have been committed by the government such as extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, and persecution on political, religious, racial and gender grounds are considered crimes against humanity. Among the violations included in the Commission Report are also “denial

¹³⁰ International Coalition for Responsibility to Protect, “Crisis in Sri Lanka”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-sri-lanka>, (19.09.2015).

¹³¹ The Sri Lankan government was found responsible for the killing of civilians, shelling of hospitals and humanitarian objects in three consecutive No Fire Zones, denial of humanitarian assistance, forced displacement and torture. The Tamil Tigers was found responsible for using civilians as a human buffer, killing civilians attempting to flee, firing artillery in proximity to civilians and firing from civilian installations, forcibly recruiting children, forced labor and indiscriminate suicide attacks. International Coalition for Responsibility to Protect, “Crisis in Sri Lanka”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-sri-lanka>, (19.09.2015).

¹³² International Coalition for Responsibility to Protect, “Crisis in Sri Lanka”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-sri-lanka>, (19.09.2015).

¹³³ International Coalition for Responsibility to Protect, “Crisis in North Korea”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-north-korea>, (20.09.2015).

of the right to freedom of thought, conscience, and religion, as well as of the rights to freedom of opinion, expression, information and association.”¹³⁴ The Commission concluded that the international community failed to respond to serious crimes committed by the DPRK government. “The international community must accept its responsibility to protect the people of the Democratic People’s Republic of Korea from crimes against humanity, because the Government of the DPRK has manifestly failed to do so.”¹³⁵ Despite the Commission’s suggestion in favor of referral of the case to the ICC, the UN did not adopt a resolution to this end. Nevertheless, a non-binding resolution adopted by the UN General Assembly on 18th December 2014 decided to submit the Report of the Commission to the UNSC in an attempt to request from the UNSC to consider referring the situation in the DPRK to the ICC. However, such a referral seems unlikely given China’s unwillingness to include the issue in the agenda.¹³⁶

After this brief history of the concept, the following part dwells upon the differences between humanitarian intervention and the R2P, criticism regarding the selective application of R2P, the sovereignty understanding of the R2P, international documents on the R2P, the question of authority with regards to the R2P, and the discussions on whether the R2P is a legal norm.

2.2. WHAT DISTINGUISHES RESPONSIBILITY TO PROTECT FROM HUMANITARIAN INTERVENTION

R2P shifts the focus from the right to intervene to “the responsibility of all states to protect their own people from atrocity crimes and to help others to do so.”¹³⁷ It introduces a complementary understanding of responsibility: it is shared between the sovereign state and the international community. There are three situations where the responsibility is transferred to the international community: if sovereign authority is either unwilling or unable to fulfill its responsibility; if the sovereign state is the actual perpetrator of the crimes; and if the people living

¹³⁴ International Coalition for Responsibility to Protect, “Crisis in North Korea”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-north-korea>, (20.09.2015).

¹³⁵ International Coalition for Responsibility to Protect, “Crisis in North Korea”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-north-korea>, (20.09.2015).

¹³⁶ International Coalition for Responsibility to Protect, “Crisis in North Korea”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-north-korea>, (20.09.2015).

¹³⁷ Evans, *An Idea Whose Time has Come ... and Gone?*, p. 285 – 286.

outside of that country are being threatened by this particular crisis.¹³⁸ The focus of the new norm is not on intervention, but on protection; which proves that the norm looks at the issue from the perspective of victims, not invaders. The ICISS report defines responsibility as a continuum of three phases which are to prevent, react and rebuild. As Evans argues, the R2P is above all, a responsibility to prevent; an effort to prevent atrocity crimes through diplomatic pressure, sanctions, international criminal prosecutions and military action as the last resort.¹³⁹ R2P means taking preventive action at earliest possible stage of a conflict before the situation turns into genocide or atrocity crimes, while humanitarian intervention is nothing more than coercive military intervention for humanitarian purposes.¹⁴⁰

Apart from these, R2P, unlike humanitarian intervention, has an officially accepted constitutional document that was unanimously agreed upon by the UN member states, the Outcome Document. Unlike humanitarian intervention, R2P has a defined scope. As indicated in the Outcome Document, R2P can be applied only in four cases: genocide, war crimes, crimes against humanity and ethnic cleansing.¹⁴¹

2.3. SELECTIVE APPLICATION PROBLEM

R2P has been widely criticized for being applied on a selective basis. Mohammed Ayooob claims that military operations with humanitarian concern are mainly motivated by strategic and economic considerations. If UNSC decisions on such interventions were truly made on the basis of humanitarian concerns, all the cases would be treated equally and neither of them would be subject to great power trade-offs.¹⁴²

Ayooob argues that concerns of national interest are inevitably likely to be a motivational element in any humanitarian intervention, because we are living in an “international system in which the most important political and military decisions are taken not at the international, but the national level.”¹⁴³ As long as decisions are

¹³⁸ Carsten Stahn, “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?”, **The American Journal of International Law**, Vol. 101, No. 1, 2007, p. 103 – 104.

¹³⁹ Evans, *An Idea Whose Time has Come ... and Gone?*, p. 285 – 286.

¹⁴⁰ Evans, *An Idea Whose Time has Come ... and Gone?*, p. 290 – 292.

¹⁴¹ Gierycz, p. 114.

¹⁴² Mohammed Ayooob, “Humanitarian Intervention and State Sovereignty”, **The International Journal of Human Rights**, Vol. 6, No.1, 2002, p. 87.

¹⁴³ Ayooob, *Humanitarian Intervention and State Sovereignty*, p. 85.

made at national level, they would reflect national interest rather than some universal humanitarian interests. The historical data supports the fact that most states have avoided involving in interventions unless their national interests were threatened. He claims that decisions will be made largely on the basis of strategic and economic concerns while humanitarian concerns will only be used to justify them. In order to overcome the selectivity problem, he says, we need a transparent, fair, and broadly participatory international mechanism to define what the “international will” is. In the current system, the veto power of permanent members makes it hard for the UNSC to apply the same criteria to each case. This fact calls into question the legitimacy of the decisions for intervention by the UNSC.¹⁴⁴

One point that has been criticized about humanitarian intervention and R2P is politics of naming, that is, what is considered as a situation that requires application of R2P. Classifying self-interested interventions as humanitarian interventions while excluding cases in which there is no national interest harms the legitimacy of R2P and strengthens the position of extremist groups. For instance, labeling the war on terror in Iraq and Afghanistan as an intervention for humanitarian purposes while American foreign policy strategy lacks any effective response to many other human rights crises has led to the norm being questioned. If the US wants to protect its own interests, it should interpret and deploy R2P consistently. Being selective in application of R2P damages its ability to be at work when a serious human rights crisis breaks out.¹⁴⁵

Naming is critical in the decision-making process concerning whether a particular situation requires intervention. Mamdani argues that humanitarian intervention would be conducted only against those acts of violence which are named genocide, while counter-insurgency and inter-state war tend to be tolerated as the first is considered as an “exercise of national sovereignty” and the latter as a “standard feature of international politics.”¹⁴⁶ The critical point here is what is to be named as genocide and what is to consider as standard violence (counter-insurgency or inter-state violence). It is not clear who does the naming and, as Mamdani argues, we cannot say that the same criteria for naming are applied to all

¹⁴⁴ Ayoob, *Humanitarian Intervention and State Sovereignty*, p. 85 – 88.

¹⁴⁵ Francis Kofi Abiew, “Humanitarian Intervention and the Responsibility to Protect: Redefining a Role for ‘Kind-hearted Gunmen’”, **Criminal Justice Ethics**, Vol. 29, No. 2, 2010, p. 104 -105.

¹⁴⁶ Mahmood Mamdani, “Responsibility to Protect or Right to Punish?”, **Journal of Intervention and Statebuilding**, Vol. 4, No. 1, 2010, p. 57.

cases.¹⁴⁷ Mamdani's thesis may be restated as follows: In the international arena, the labeling applied to violence determines the permissible response that can be given to it. However, this labeling is done by the very actors who have interests in the consequent interventions. Furthermore, the current international environment lacks standard criteria for labeling violence. The resulting environment, therefore, suffers from a lack of adequate control mechanisms to prevent humanitarian discourse from being at the service of power politics.

Although the R2P as framed in the ICISS report is said to be compatible with sovereignty and the UN system (which will be discussed in more detail below), David Chandler argues that the precautionary principles¹⁴⁸ indicated in the Report, which are meant to define and limit the exceptional cases that necessitate military intervention, are incapable of preventing the norm to be in the service of power. He dwells upon three of the criteria that can easily be manipulated because there is little consensus on how they should be interpreted. For instance, how can we claim that there is just cause for intervention when it is not clear how to quantify large scale human rights violations or what is to be considered as clear evidence of violation? Another criterion, right intention holds that the intention for any intervention must be "to end human suffering." However the Commission also admits that no state would be willing to claim responsibility if no self-interest was involved. Is it possible to prove that the intervener actually has an interest in ending human suffering besides its self interests? The line between self interest and right intention (intention to end human suffering) is not clear and hence, open to manipulation as well.¹⁴⁹ The language of War on Terror is an example of how the language of morality could be manipulated by strong states to achieve their strategic aims. In his 2002 General Assembly speech, Bush presented the Iraq case in the framework of international responsibilities and he argued that failure to support the US action against Iraq, who was repressing its own people including minorities in breach of the UNSC resolutions, would make the UN "irrelevant."¹⁵⁰

The third criterion that Chandler points as being open to manipulation is right authority. Chandler states that the Commission's proposal for refraining from using

¹⁴⁷ Mamdani, p. 57 – 58.

¹⁴⁸ Just cause, right intention, right authority, last resort, proportional means and reasonable prospect for success.

¹⁴⁹ David Chandler, "The Responsibility to Protect? Imposing the 'Liberal Peace'", **International Peacekeeping**, Vol. 11, No. 1, 2007, p. 69 – 70.

¹⁵⁰ Chandler, Imposing the 'Liberal Peace', p. 74 – 75.

veto power bears the danger of turning the UN into a rubber stamp for the US and its allies' military interventions. Its other proposal which is in favor of letting coalitions of willing to act in cases where UNSC is paralyzed, according to him, will only result in a situation where might is right. In both cases, the norm will be in the service of powerful states.

The Report discusses about the need for placing the UN at the center of the legitimacy of military interventions. However, the Commission also argues that the ideals that are fundamental to the UN's identity such as protecting peace and promoting welfare must not be restricted due to the veto power of member states. The lack of consensus at the UNSC should not prevent taking action on moral grounds. For the cases where the UNSC is blocked by veto, the Commission, Chandler argues, prefers an ad hoc coalition to take charge and fulfil the responsibility over a General Assembly approval under Uniting for Peace procedure, because the two thirds majority that is required for it is difficult to achieve.¹⁵¹ The Commission states that if the UNSC "fails to discharge its responsibility," then it is "unrealistic to expect that concerned states will rule out other means."¹⁵² According to Chandler, this is an expression of the Commission's acceptance that "there is little to stop the US and its allies from ignoring the UN Security Council and taking action against the sovereignty of non-Western states."¹⁵³

So, the Commission argues, because of the UNSC veto, the UN will eventually be bypassed by coalitions of the willing, which in turn lead to the loss of the centrality of the UN vis-a-vis the legitimization of military interventions. However, Chandler argues that by arguing against the UNSC veto, the Commission underestimates the danger of "turning the UN into a rubber stamp for legitimizing unilateral action by the US and its allies."¹⁵⁴

It would appear that in seeking to ensure that the UN remains central to legitimizing intervention by giving UN legitimacy to any such intervention independently of the UN's political role in building an international consensus, the Commission's proposals, if acted upon, may well undermine the UN, rather than ensuring that it works 'better'.¹⁵⁵

¹⁵¹ Chandler, *Imposing the 'Liberal Peace'*, p. 71 – 72.

¹⁵² Chandler, *Imposing the 'Liberal Peace'*, p. 72.

¹⁵³ Chandler, *Imposing the 'Liberal Peace'*, p. 72.

¹⁵⁴ Chandler, *Imposing the 'Liberal Peace'*, p. 73.

¹⁵⁵ Chandler, *Imposing the 'Liberal Peace'*, p. 73.

Great power immunity to R2P is widely criticized. ICISS Report states that the “capricious use of the veto, or threat of its use, is likely to be the principal obstacle to effective international action in cases where quick and decisive action is needed to stop or avert a significant humanitarian crisis. [I]t is unconscionable that one veto can override the rest of humanity on matters of grave humanitarian concern.”¹⁵⁶ However, critics argue that the norm can only be applied to weak states, because the UNSC would veto any decision of military intervention when the crimes in question take place in any one of the Permanent Five or their allies. In response to these criticisms, Gareth Evans, co-chair of the ICISS, argues that there is this “balance of consequences” problem when it comes to using military force against militarily powerful countries, since waging war against a major power bears the danger of triggering a greater conflict and brings more harm than good.¹⁵⁷ However, as Chandler points out, there is no guarantee that major powers who are immune to any coercion to fulfill their international obligations will not abuse their immunity.¹⁵⁸

The solution that is proposed by the Commission to overcome the Permanent Five problem is a “code of conduct” that would be agreed upon by the permanent members regarding the use of the veto when action is needed to stop or avert a humanitarian crisis. “The idea essentially is that a permanent member, in matters where its vital national interests were not claimed to be involved, would not use its veto to obstruct the passage of what would otherwise be a majority resolution.”¹⁵⁹

Problem of selectivity is also admitted by the UN in Report of the Secretary-General’s on High-level Panel on Threat, Challenges and Change:

Too often, the United Nations and its Member States have discriminated in responding to threats to international security. Contrast the swiftness with which the United Nations responded to the attacks on 11 September 2001 with its actions when confronted with a far more deadly event: from April to mid-July 1994, Rwanda experienced the equivalent of three 11 September 2001 attacks every day for 100 days, all in a country whose population was one thirty-sixth that of the United States. Two weeks into the genocide, the Security Council withdrew most of its peacekeepers from the country. It took almost a month for United Nations officials to call it a genocide and even

¹⁵⁶ ICISS, *The Responsibility to Protect*, p. 51.

¹⁵⁷ Evans, *An Idea Whose Time has Come ... and Gone?*, p. 293.

¹⁵⁸ Chandler, *Imposing the ‘Liberal Peace’*, p. 76.

¹⁵⁹ ICISS, *The Responsibility to Protect*, p. 51.

longer for some Security Council members. When a new mission was finally authorized for Rwanda, six weeks into the genocide, few States offered soldiers. The mission deployed as the genocide ended.¹⁶⁰

2.4. THE IDEA OF POSITIVE SOVEREIGNTY

David Chandler argues that R2P borrows its account of sovereignty from liberal peace thesis since both liberal peace thesis and R2P hold that the responsibility to protect the common interests of humanity belongs to democratic and peaceful states.¹⁶¹ Intervention is compatible with sovereignty because states act as moral agents; they intervene when the host state is not able or willing to discharge its responsibility to protect and transfers this responsibility to the international community.¹⁶²

According to Aidan Hehir, ICISS report did not change the understanding of sovereignty, since it had been understood as responsibility at least since 1945 (referring to Chapter VII of the UN Charter), but it provided a framework for transfer of responsibility to the international society in cases where the sovereign state fails to meet its responsibility. However, it failed to provide necessary instruments to realize this responsibility; it did not suggest a reform of the UNSC or the creation of a new body to discharge this responsibility.¹⁶³

According to liberal theory, governments are mere agents of people. The very reason to create and maintain a state is to ensure the protection of rights and interests of individuals. The rights of states such as political independence and territorial integrity derive from the rights and interest of individuals. Political power is justified only as long as it is in the service of the individuals. When a government ceases to be the protector of the rights of the individuals living within its borders or violates these rights, it loses its legitimacy. Although the illegitimacy of a government is necessary, we cannot say that it is a sufficient condition for humanitarian

¹⁶⁰ A More Secure World: Our Shared Responsibility, **Report of the Secretary-General's on High-level Panel on Threat, Challenges and Change**, United Nations, 2004, p. 23, http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf, (02.12.2015).

¹⁶¹ Chandler, Imposing the 'Liberal Peace', p. 60.

¹⁶² Chandler, Imposing the 'Liberal Peace', p. 63.

¹⁶³ Aidan Hehir, "The Responsibility to Protect: 'Sound and Fury Signifying Nothing'?", **International Relations**, Vol. 24, No. 2, 2010, p. 231.

intervention.¹⁶⁴ “Humanitarian intervention cannot be solely based on moral illegitimacy of the régime, because there may be other reasons not to intervene.”¹⁶⁵

According to some, the traditional account of sovereignty granted states the right to treat their people as they please without external interference.¹⁶⁶ Evans and Sahnoun state that sovereignty in the classic Westphalia system was understood as “the state’s capacity to make authoritative decisions regarding the people and resources within its territory.” International system under the UN was a continuation of this system with its principle of sovereign equality and norm of non-intervention that reinforced state’s ultimate authority within its territory.¹⁶⁷

Gareth Evans argues that starting from the emergence of the modern state system in the 1600s until the end of the Second World War state sovereignty had been “a license to kill.”¹⁶⁸ Although the end of the Second World War was followed by some progress on positive sovereignty understanding (such as the recognition of universal human rights in the UN Charter and the Universal Declaration; the adoption of the concept of “crimes against humanity” in Nuremberg Trials Charter in 1945 and the signing of Genocide Convention in 1948), it wasn’t until the 1990s (after the end of the Cold War) that the principle of non-intervention seriously came into question. However, this new sovereignty understanding was far from being universally accepted and had problems with the application. First of all, for the newly independent states of the post-colonial era humanitarian intervention was a threat to their right to sovereignty, and perhaps to their very existence. Secondly, the application of the idea was not without problems. The international community acting through the UN failed to respond properly to the situations crying for help in Somalia in 1993, in Rwanda in 1994, in Srebrenica in 1995 and in Kosovo, where almost all governments agreed on the need for an external military action but were stopped by the threat of Russian veto.¹⁶⁹ However, in Kosovo “[t]he action that needed to be taken was eventually taken, by a coalition of the willing, but in a way that challenged the integrity of the whole international security system (just as the invasion of Iraq

¹⁶⁴ Tesón, *Eight Principles*, p. 94 – 96.

¹⁶⁵ Tesón, *Eight Principles*, p. 95.

¹⁶⁶ Inter Action Council, “International Humanitarian Law, Humanitarian Crises and Military Intervention”, **High-level Expert Group Meeting**, The John F. Kennedy School of Government Harvard University, Cambridge, Massachusetts, 22-23 April 2002, <http://interactioncouncil.org/international-humanitarian-law-humanitarian-crises-and-military-intervention-1>, (02.12.2015).

¹⁶⁷ Evans and Sahnoun, p. 102.

¹⁶⁸ Evans, *An Idea Whose Time has Come ... and Gone?*, p. 284.

¹⁶⁹ Evans, *An Idea Whose Time has Come ... and Gone?*, p. 284 – 285.

did four years later in far less defensible circumstances).¹⁷⁰ In 2001, the norm R2P was introduced by the International Commission on Intervention and State Sovereignty. The report “turned the notion of the right to intervene upside down.”¹⁷¹ It was no more a matter of right to intervene, but a responsibility to protect from harm.¹⁷² The modern account of sovereignty in the report is based on a twofold responsibility: an external responsibility to respect sovereignty of other states, and an internal responsibility to respect human rights of its own citizens.¹⁷³ We can see that for Gareth Evans and scholars who claim that there used to be a tradition of absolute sovereignty which provided the sovereigns of the time with the right to treat their subjects as they pleased, the adoption of R2P by the UN in 2005 signals to a victory of positive sovereignty against the traditional absolute sovereignty.

However, some scholars object to the idea that sovereignty had traditionally been structured as non-interference. Hehir argues that the idea of collective intervention by an internationally recognized body has been present at least since the foundation of the UN, given that it has a place in the Chapter VII of the Charter. However, the number of Chapter VII mandated interventions was low during the Cold War years, due to the rivalry between the permanent members of the UNSC. So it was not the lack of international legal base but political will that blocked many humanitarian interventions before the 1990s.¹⁷⁴ Carsten Stahn argues that the idea of sovereignty as responsibility goes back to the 17th century natural law theorists, Grotius being among them. In his account, the aim of organizations in state and state behavior is to provide benefit to their subjects. It would be just to resort to force against those states who are “maltreating its own subjects,”¹⁷⁵ because there is no higher authority to enforce the natural law over the states. Therefore, all the sovereigns have a right to punish the crimes another state commits, even when this sovereign commits these crimes against its own nationals. Nardin argues that the idea that states have a right to enforce natural law on other states gave rise to principle of non-intervention in the 18th and 19th centuries as a reaction.¹⁷⁶

¹⁷⁰ Evans, *An Idea Whose Time has Come ... and Gone?*, p. 285.

¹⁷¹ Evans, *An Idea Whose Time has Come ... and Gone?*, p. 285.

¹⁷² Evans, *An Idea Whose Time has Come ... and Gone?*, p. 285.

¹⁷³ Evans and Sahnoun, p.102.

¹⁷⁴ Hehir, p. 229.

¹⁷⁵ Stahn, p. 111.

¹⁷⁶ Nardin, p. 62.

We can observe that non-interventionism was defended by many thinkers in this era, although there were also thinkers defending the possibility of external intervention in certain cases as mentioned in the first chapter of this study. Writing in the 19th century, Pufendorf argued that states may assist other states' peoples in their struggles against slaughtering only upon calls by those peoples. Another thinker of the same century J.S. Mill argued that the idea of self-determination requires people to fight their own wars and win their own freedoms without external assistance. W.E. Hall claimed that intervention could not be based on morality, but only codified international law. If states claim such a right to intervene on humanitarian basis, they need to agree on a codified law of intervention first.¹⁷⁷ Besides the competing ideas regarding the interventionism, there are examples of the political practice of interventionism in those centuries, as mentioned in the first chapter. For instance, as Stahn points out, protection of the well-being and interest of people or groups of people was a concern in the Treaty of Versailles, where Poland agreed to "protect the interest of inhabitants of Poland who differ from the majority of the population in race, language or religion."¹⁷⁸ Moreover, he argues, although it was designed to praise and secure state sovereignty and the principle of non-intervention, the UN Charter makes several references to the importance of human rights protection in i.e the Preamble, Article 2(7), Article 1(3) and Article 55.¹⁷⁹

Wesley argues that positive sovereignty was interrupted with the end of the Second World War until the shift back to it came in the 1990s. Between 1945 and the early 1990s, there was not much criticism on the part of Western states regarding the state of human rights in the post-colonial states and human rights abuses in general. The colonial powers were engaged in many human rights abuses during both the colonial and decolonization periods. Only after the Cold War human rights abuses were considered to be demanding "direct preventive and corrective intervention by the international community."¹⁸⁰ Moreover, the 9/11 attacks were also effective in the shift back to positive sovereignty. Wesley argues that out of 9/11 attacks, there was born a new type of interventionism which he calls *governance*

¹⁷⁷ Nardin, p. 62 – 63.

¹⁷⁸ Stahn, p. 111.

¹⁷⁹ Stahn, p.109 – 112.

¹⁸⁰ Michael Wesley, "Toward a Realist Ethics of Intervention", **Ethics & International Affairs**, Vol. 19, No. 2, 2005, p. 64.

interventionism. The premise of governance interventionism is to “[make] states effective in controlling what occurs and arises from within their borders.”¹⁸¹

Governance has become so important because globalization made developed states vulnerable to the effects of state failures and weaknesses in the developing or underdeveloped world. So, if weak states are not strengthened, their internal chaos can threaten the wider international security. In this regard, those states that are not capable of preventing terrorist movements flourishing within their borders are deemed to be subject to governance intervention.¹⁸²

Some scholars claim that this new era of positive sovereignty associated with humanitarian interventions serves as a new and useful framework to reinforce strong states’ control over the rest of the world. For instance, David Chandler argues that with the end of the Cold War, the US, the only super power of the post-Cold War era, lost its legitimate framework to exercise its power with the defeat of the enemy. Positive sovereignty together with its by-product humanitarian intervention provided the US a new framework to exercise its power all around the world.¹⁸³

Another critical scholar, Mohammed Ayoob argues that sovereignty is a shield for weak states against unwanted interventions. He defines sovereignty as authority: “the right to rule over a delimited territory and the population residing within it.”¹⁸⁴ Sovereignty helps to mitigate the disadvantage the weak states in the system suffer from, because the right to rule of a state requires it to be recognized by other states. Although Ayoob himself acknowledges that sovereignty and the principle of non-intervention were never entirely able to stop strong states to make interest-based interventions, they function as a restraint and at least force them to seek justifications for their action.¹⁸⁵ According to him, sovereignty as responsibility is a return of colonial policies and the “standard of civilization.”¹⁸⁶ The standard of civilization was determinant in civilized states’ behavior towards the states that were considered as barbarians until the end of the 19th century. The barbarian states were denied to enjoy equal status with the civilized ones and mutual recognition of

¹⁸¹ Wesley, p. 66.

¹⁸² Wesley, p. 67 – 68.

¹⁸³ David Chandler, “Culture Wars and International Intervention: An ‘Inside/Out’ View of the Decline of National Interest”, **International Politics**, Vol. 41, 2004, p. 362.

¹⁸⁴ Ayoob, Humanitarian Intervention and State Sovereignty, p. 82. Ayoob refers to Janice E. Thomson, “State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research”, **International Studies Quarterly**, Vol.39, No.2, June 1995, p. 213 – 233.

¹⁸⁵ Ayoob, Humanitarian Intervention and State Sovereignty, p. 82 – 83.

¹⁸⁶ Ayoob, Humanitarian Intervention and State Sovereignty, p. 84.

sovereignty in their interactions with others. "This denied them the protection of norms that had been developed in Europe to govern interstate relations, the chief among them being the principle of non-intervention in the internal affairs of states."¹⁸⁷ They would be under the tutelage of sovereign-civilized European powers.¹⁸⁸

According to Ayoob, with the adoption of the new sovereignty understanding, the newly born states are denied to go through the state making and nation-building processes which were experienced between the 16th and the 19th centuries in Europe. State-making involves a degree of violence, as a requirement of "imposition, maintenance and legitimization of political order."¹⁸⁹ The double standard being applied to today's new states prevents them to impose control over their peoples and territories. While states enjoy a comparatively higher degree of legitimacy within their borders in the North, their counterparts in the South, (which are at a comparatively early stage of state-making) usually face several challenges to their political power by domestic groups. While states in the North, therefore, are more interested in justice within states and order among them, states in the South (with fragile legitimacy) prefer order within states and justice among them.¹⁹⁰ Ayoob defends that states in the global south need to be tolerated to a certain degree enough to consolidate their political power and legitimacy within their territories and avoid grave crimes to take place while they are still going through a state-making process, as Europe and the US had gone through in the past. However, he accepts that "[it] would be extreme to suggest that sovereignty is absolute to the point of protecting the right of a state to carry out genocide, massive human right violations, and generally terrorizing the population."¹⁹¹ How can one distinguish between a situation being abused by great powers for the sake of their own benefits and another that cries out for intervention? What Ayoob suggests as a solution to this dilemma is a transparent and legitimate mechanism through which the interventions would be carried out.¹⁹²

¹⁸⁷ Ayoob, *Humanitarian Intervention and State Sovereignty*, p. 84.

¹⁸⁸ Ayoob, *Humanitarian Intervention and State Sovereignty*, p. 84.

¹⁸⁹ Ayoob, *Humanitarian Intervention and State Sovereignty*, p. 94.

¹⁹⁰ Ayoob, *Humanitarian Intervention and State Sovereignty*, p.98 – 99.

¹⁹¹ Ayoob, *Humanitarian Intervention and State Sovereignty*, p.94. Ayoob refers to Frederic J. Petersen, "The Façade of Humanitarian Intervention for Human Rights in a Community of Sovereign States", *Arizona Journal of International and Comparative Law*, Vol.15, No.3, 1998, p. 882.

¹⁹² Ayoob, *Humanitarian Intervention and State Sovereignty*, p. 93 – 94.

Another critic, Mahmood Mamdani, points out the resemblance between the languages of trusteeship period and of positive sovereignty and responsibility:

The new language refers to its subjects not as bearers of rights – and thus active agents in their own emancipation – but as passive beneficiaries of an external ‘responsibility to protect’. Rather than rights-bearing citizens, beneficiaries of the humanitarian order are akin to recipients of a charity. Humanitarianism does not claim to reinforce agency, only to sustain bare life. If anything, its tendency is to promote dependency. Humanitarianism heralds a system of trusteeship.¹⁹³

The roots of international humanitarian order rest in the history of colonialism, Mamdani argues. The colonial language of the 19th century (UK, France and Russia being the major colonial powers) was that of “protection of vulnerable groups.”¹⁹⁴ Sometimes they used this language of protection to portray interventions as acts to stop what they called barbarian practices like child marriage, infanticide, slavery, female genital mutilation etc., to legitimize their imposition of power over those countries; and sometimes they claimed to protect religious minorities like Jews and Christians living within empire territories to legitimize their strategic power politics.¹⁹⁵

2.5. RESPONSIBILITY TO PROTECT IN INTERNATIONAL DOCUMENTS

2.5.1. 2001 ICISS Report

ICISS was established by the Government of Canada in 2001 as a response to the then Secretary General of the UN Kofi Annan’s call to “find a common ground in upholding the principles of the Charter, and acting in defense of our common humanity” in 1999.¹⁹⁶ The Commission’s mandate is defined in the report as follows:

Our mandate was generally to build a broader understanding of the problem of reconciling intervention for human protection purposes and sovereignty; more specifically, it was to try to develop a global political consensus on how

¹⁹³ Mamdani, p. 54 – 55.

¹⁹⁴ Mamdani, p. 55.

¹⁹⁵ Mamdani, p. 55 – 56.

¹⁹⁶ ICISS, The Responsibility to Protect, p. 2.

to move from polemics – and often paralysis – towards action within the international system, particularly through the United Nations.¹⁹⁷

Moreover, the Report makes clear that its task is not sidelining the UNSC but contributing to the existing international security system with the UN in the center:

If international consensus is ever to be reached about when, where, how and by whom military intervention should happen, it is very clear that the central role of the Security Council will have to be at the heart of that consensus. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work much better than it has.¹⁹⁸

The Report acknowledges the new actors, new security issues and new demands of the era. Proliferation of internal military conflicts is considered among the new security issues of the era. The report draws attention to the fact that governments may tend to use “excessive and disproportionate” force to suppress these conflicts, which result in the suffering of civilians. Moreover, sometimes regimes launch “campaigns of terror” on their own populations based on ideological, religious, racial or ethnic differences. In today’s globalized world, the report reads, destabilizing effects of these conflicts can be felt in every country unrelated with the place they occur.¹⁹⁹

As a response to the new security issues of today, the Report draws attention to the need for replacing outdated UN peacekeeping strategies that were tailored for old security concerns like interstate wars.²⁰⁰ The new era has new determinative factors, human security being the most prominent among them. All the human-rights related achievements of the past decades, as listed in the Report, the Universal Declaration of Human Rights, the four Geneva Conventions and the two Additional Protocols on international humanitarian law, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the two 1966 Covenants relating to civil, political, social, economic and cultural rights, and the adoption in 1998 of the Statute for the Establishment of an International Criminal Court, have changed the perception of what is acceptable state conduct. Human rights now have

¹⁹⁷ ICISS, *The Responsibility to Protect*, p. 2.

¹⁹⁸ ICISS, *The Responsibility to Protect*, p. 49.

¹⁹⁹ ICISS, *The Responsibility to Protect*, p. 3 – 5.

²⁰⁰ ICISS, *The Responsibility to Protect*, p. 5.

a central place in international relations and hence, the concept of security contains not only state security, but human security as well.²⁰¹

The definition of human security in the Report is as follows: “Human security means the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms.”²⁰² In this sense, the fundamental components of human security are namely the security of people against threats to life, health, livelihood, personal safety and human dignity. The use of the term R2P helps to shift the focus from the traditional, narrow definition of security whose focus is on territorial security, to “human needs of those seeking protection or assistance.”²⁰³

The ICISS report claimed to change the relationship between sovereignty and intervention by re-characterizing sovereignty. However, it presents state sovereignty as a necessary element for a stable and peaceful international environment:

All that said, sovereignty does still matter. It is strongly arguable that effective and legitimate states remain the best way to ensure that the benefits of the internationalization of trade, investment, technology and communication will be equitably shared. Those states which can call upon strong regional alliances, internal peace, and a strong and independent civil society, seem clearly best placed to benefit from globalization. They will also be likely to be those most respectful of human rights. And in security terms, a cohesive and peaceful international system is far more likely to be achieved through the cooperation of effective states, confident of their place in the world, than in an environment of fragile, collapsed, fragmenting or generally chaotic state entities.²⁰⁴

As mentioned above, responsibility in the ICISS report is threefold: responsibility to prevent, responsibility to react, and responsibility to rebuild.

2.5.1.1. Responsibility to Prevent

Prevention constitutes an important part of the responsibility as it is presented in the ICISS Report. The Report underlines the need for development of

²⁰¹ ICISS, The Responsibility to Protect, p. 6.

²⁰² ICISS, The Responsibility to Protect, p. 15.

²⁰³ ICISS, The Responsibility to Protect, p. 15.

²⁰⁴ ICISS, The Responsibility to Protect, p. 8.

early warning capacity for preventive causes. The UN has an early warning capacity. Under Article 99 of the Charter, Secretary General is provided with a special mandate to “bring the attention of the Security Council any matter that in his opinion may threaten the maintenance of international peace and security.”²⁰⁵

However, the Report draws attention to the need for developing the UN’s early warning capacity. Accordingly, the UN needs a special unit to analyze information gathered from member states and several organizations about *conflict prone areas* to be directly reported to the Secretary General. Getting regional actors involved in such an initiation has crucial importance since they have a better understanding of local dynamics and perhaps better access to regional information.²⁰⁶

Prevention, as it is presented in the ICISS Report, may take the form of root cause prevention or direct prevention. In each case, there are political, economic, legal and military aspects of prevention. There are a number of measures in order to address political root causes including democratic institutions and capacity building, support for constitutional power sharing, confidence building measures between different groups, support for press freedom and rule of law and promotion of civil society. More direct political prevention efforts may include the UN Secretary General’s direct involvement in mediation or threat and application of political sanctions, diplomatic isolation, and suspension of organization membership or travel and asset restrictions.²⁰⁷

The prevention of economic root causes may include development assistance, addressing inequalities in the distribution of resources and opportunities, permitting greater access to external markets, and encouraging necessary economic and structural reform. Direct prevention of economic root causes may include coercive measures like threats of trade and financial sanctions, withdrawal of investment or threats to withdraw IMF and World Bank support.²⁰⁸

From the legal perspective root cause prevention measures can be support for strengthening the rule of law and independence of judiciary, and protection of vulnerable groups and human rights organizations. More direct ways of prevention in legal terms include deployment of monitors to observe compliance with human

²⁰⁵ ICISS, *The Responsibility to Protect*, p. 21.

²⁰⁶ ICISS, *The Responsibility to Protect*, p. 22.

²⁰⁷ ICISS, *The Responsibility to Protect*, p. 23, 24.

²⁰⁸ ICISS, *The Responsibility to Protect*, p. 23, 24.

rights standards. It may take the shape of establishment of specialist tribunals to deal with war crimes as in the examples of Yugoslavia, Rwanda and Sierra Leone. Moreover, International Criminal Court, Geneva Conventions and Additional Protocols establish a universal jurisdiction over a wide range of crimes listed in these documents.²⁰⁹

The list of military root cause prevention provided by the Report includes strengthening civilian control mechanisms, ensuring accountability of security services for their actions and adherence to terms of arms control. Military prevention may take a more direct form like preventive deployment as in the case of UN Preventive Deployment Force in Macedonia (UNPREDEP).²¹⁰

2.5.1.2. Responsibility to React

Responsibility to react does not necessarily mean military intervention. As it is stated in the ICISS Report, there are “coercive measures short of military intervention”²¹¹ which ought to be resorted first according to the Commission. These measures are mostly military, economic and political sanctions aimed at persuading authorities to act in a certain way to stop the crimes being committed. In the military area, such measures could be applying arms embargo or ending military cooperation and training. In the economic area, it could be sanctions against foreign assets of a country, a rebel movement or a terrorist organization. Another option, and which is highlighted as a particularly effective one, could be restricting activities that are financing the state or the organization in question like oil, diamond or drug trade. Other than that, restriction to access to the petroleum products and aviation bans could also weaken the military capacity. In political and diplomatic area, sanctions may include restrictions on diplomatic representation; suspension of membership to a regional or international organization; expulsion from international

²⁰⁹ ICISS, The Responsibility to Protect, p. 23, 24.

²¹⁰ ICISS, The Responsibility to Protect, p.23, 25. UNPREDEP was established on 31 March 1995 by Security Council resolution 983. It was the first mission of UN peacekeeping with a preventive mandate. The mission was established to serve as an early warning source for the Security Council and mandated to “monitor and report any developments in the border areas which could undermine confidence and stability in the former Yugoslav Republic of Macedonia and threaten its territory.” Within this framework, UNPREDEP “helped to strengthen mutual dialogue among political parties and assisted in monitoring human rights as well as inter-ethnic relations, both at the national level and in areas populated by ethnic minorities.” See, “United Nations Preventive Deployment Force”, http://www.un.org/en/peacekeeping/missions/past/unpred_b.htm, (21.09.2015).

²¹¹ ICISS, The Responsibility to Protect, p. 29.

or regional organizations; or refusing the state from being a member to an organization.²¹²

Intervention can only be an option in extreme cases. Other than that, the principle of non-intervention prevails.²¹³ The Commission provides a list of six criteria which are to be used in evaluation of the military option in exceptional cases: just cause, right authority, right intention, last resort, proportional means, and reasonable prospects.

The Commission provides two sets of circumstances that constitute just cause for military intervention for human protection purposes. Just cause would not be satisfied unless either or both of these circumstances are present: "Large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation;" or "large scale ethnic cleansing," actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."²¹⁴

The Commission provides a more detailed guide to define what is included and what is excluded in this definition. Those conditions listed in the 1948 Genocide Convention that include large scale loss of life or threat of it; threat or actual large scale loss of life with or without genocidal intent and with or without state involvement; ethnic cleansing, including systemic killing of a group of people, systemic physical removal of a group of people, acts of terror to force people to flee and systematic rape for political purposes; crimes against humanity and war crimes listed in the Geneva Convention and Additional Protocols; state collapse and following civil wars or mass starvation; natural disasters that threaten or result in significant loss of life and civil suffering and where the state is either unwilling or unable to deal with are included in the definition.²¹⁵ The Commission specifies the situations which would not be sufficient to constitute the just cause. Human rights violations that do not include outright killing or ethnic cleansing (like imprisoning or repressing opposition groups) could constitute sufficient conditions for political, military or economic sanctions but not military intervention. Secondly, military coup d'états could be countered with diplomatic or economic measures like suspension of organization membership or international recognition, or withdrawal of investments

²¹² ICISS, The Responsibility to Protect, p. 29 – 31.

²¹³ ICISS, The Responsibility to Protect, p. 31.

²¹⁴ ICISS, The Responsibility to Protect, p. 32.

²¹⁵ ICISS, The Responsibility to Protect, p. 33.

(unless there is no threat of or actual large scale loss of civilian lives or ethnic cleansing). Thirdly, situations such as the use of military force by a state in order to rescue its nationals on foreign territory or the use of military force by a state in response to terrorist attacks in its territories are considered by the Commission falling under the jurisdiction of international law, and particularly Article 51²¹⁶ of the Charter.²¹⁷

Right intention requirement in the Report holds that “the primary purpose of the intervention must be to halt or avert human suffering.” The Commission explains what is not included in the definition of right intention to avoid the possibility of manipulation of a military intervention by states with self-interested intentions:

Any use of military force that aims from the outset, for example, for the alteration of borders or the advancement of a particular combatant group’s claim to self-determination, cannot be justified. Overthrow of regimes is not, as such, a legitimate objective, although disabling that regime’s capacity to harm its own people may be essential to discharging the mandate of protection – and what is necessary to achieve that disabling will vary from case to case. Occupation of territory may not be able to be avoided, but it should not be an objective as such, and there should be a clear commitment from the outset to returning the territory to its sovereign owner at the conclusion of hostilities or, if that is not possible, administering it on an interim basis under UN auspices.²¹⁸

Military option must be the last resort after diplomatic and other non-military options prove to be inadequate or if there is strong evidence that non-military options would not be successful.²¹⁹ Proportional means requirement holds that “scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question.”²²⁰ Besides the international humanitarian law which should be strictly followed all the while, even higher human rights standards could be applied since it is not an all out war, but a military action with a smaller scale or more narrowly defined focus and target.

²¹⁶ Article 51 of the UN Charter: Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

²¹⁷ ICISS, *The Responsibility to Protect*, p. 34.

²¹⁸ ICISS, *The Responsibility to Protect*, p. 35.

²¹⁹ ICISS, *The Responsibility to Protect*, p. 36.

²²⁰ ICISS, *The Responsibility to Protect*, p. 37.

There must be a reasonable prospect of success. Since the right intention for a military intervention is to end human suffering, we can say that there must be a reasonable chance for the intervention to put an end to this suffering. The Commission states that military intervention must be avoided if there is no prospect of success or there is a possibility of triggering a wider conflict as a result.²²¹

The Commission underlines that it is not in favor of applying the criteria equally in every case. The Permanent members of the UNSC and other major powers are considered immune to intervention. In its defense, the Commission brings forward the argument that an intervention against those powers at the best would fail to achieve its objectives if it would not trigger a wider conflict. The Commission suggests other types of pressure like economic, political or military sanctions in such cases. This leads us to conclude that from the Commission's perspective, satisfying the criteria is necessary but not sufficient for considering military intervention as an option in every case, since especially great powers would be immune to intervention even if the criteria for intervention were met.²²²

2.5.1.3. Responsibility to Rebuild

Post-intervention obligations have four dimensions: peace building, security, justice and reconciliation, and development. As far as *peace building* is concerned, the Commission states "there should be a genuine commitment to helping to build a durable peace, and promoting good governance and sustainable development."²²³ It will require reserving funds and resources for reconstruction; staying in for a certain period of time after the intervention; and cooperation with local people. The Commission underlines the importance of getting former enemies of the conflict together in the reconstruction of their country which would avoid reoccurrence of conflict between parties.²²⁴

The intervention force is responsible for providing *basic security* for lives and property of all the parties. The aim here is to avoid revenge killings and reverse ethnic cleansing which are likely to follow intervention. Two things are essential in this regard: reintegration of local armed fractions into the society, since a group of

²²¹ ICISS, The Responsibility to Protect, p. 37.

²²² ICISS, The Responsibility to Protect, p. 37.

²²³ ICISS, The Responsibility to Protect, p. 39.

²²⁴ ICISS, The Responsibility to Protect, p. 39.

people with military capacity may turn into armed opposition if not properly integrated to the society; and rebuilding of new national armed forces and police force.²²⁵

With regards to *justice and reconciliation*, the Commission states that an important part of the intervention is bringing the human right violators to justice, which is vital for the credibility of the whole intervention.²²⁶ Another issue is the problem of refugees and internally displaced persons. The Commission underlines the importance of “creating the right social and economic conditions for returnees” including protection of property (applying property law equally), access to health service, education and other basic services.²²⁷

Encouraging *development*, that is encouraging economic growth; recreation of markets; and sustainable development, is vital for overall recovery. The mandate for economic development, however, should be transferred to local authorities, as soon as possible. Again, integrating demobilized armed groups into economic life is only possible if they are provided opportunities to have a sustainable income.²²⁸

2.5.2. 2004 Secretary General’s High-Level Panel Report on Threat, Challenges and Change

Report of the Secretary-General’s on High-level Panel on Threat, Challenges and Change that came out in 2004 acknowledges the R2P and sovereignty as responsibility most prominently in the following paragraphs:

The successive humanitarian disasters in Somalia, Bosnia and Herzegovina, Rwanda, Kosovo and now Darfur, Sudan, have concentrated attention not on the immunities of sovereign Governments but their responsibilities, both to their own people and to the wider international community. There is a growing recognition that the issue is not the “right to intervene” of any State, but the “responsibility to protect” of every State when it comes to people suffering from avoidable catastrophe - mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. And there is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by the wider international community - with

²²⁵ ICISS, The Responsibility to Protect, p. 40 – 41.

²²⁶ ICISS, The Responsibility to Protect, p. 41.

²²⁷ ICISS, The Responsibility to Protect, p. 42.

²²⁸ ICISS, The Responsibility to Protect, p. 42 – 43.

it spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies. The primary focus should be on assisting the cessation of violence through mediation and other tools and the protection of people through such measures as the dispatch of humanitarian, human rights and police missions. Force, if it needs to be used, should be deployed as a last resort.

We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.²²⁹

Carsten Stahn argues that in the High-level Panel report, R2P was related to the UN's institutional reform. The Panel presented the application of collective responsibility among the tasks of the UNSC.²³⁰ Accordingly, the norm is actually a part of the UN's international security system and the Chapter VII of the Charter. In that sense, the UNSC has the authority and the responsibility to take action in the face of humanitarian crises. The Panel also urges member states to refrain from using their veto power when the UN has to act against such crises. The panel report clearly puts the intervention under UNSC authorization and contrary to the ICISS report, it does not indicate that the responsibility could be taken over by a coalition of willing, should the UNSC failed to act.²³¹

The Panel urges that legality and legitimacy states enjoy when they act in their self defense under Article 51 of the Charter does not apply to cases of collective security. Use of force in a reactive or preventive way is only possible upon the UN authorization. "The question is not whether such action can be taken: it can, by the Security Council as the international community's collective security voice, at any time it deems that there is a threat to international peace and security."²³²

As far as legitimacy is concerned, the Panel sets five criteria as a guideline for the UNSC about the use of force: First of all, there needs to be a serious threat; second, the invasion has to have a proper purpose; third, invasion must be the last resort; fourth, the invader(s) should be using proportional means to stop the violence; and lastly, there needs to be a balance of consequences, that is, there

²²⁹ Report of the Secretary-General's on High-level Panel on Threat, Challenges and Change p. 65 – 66.

²³⁰ Stahn, p. 105.

²³¹ Stahn, p. 106.

²³² Report of the Secretary-General's on High-level Panel on Threat, Challenges and Change, p. 64.

must be a reasonable possibility that an intervention would bring more good than bad.²³³ The reason for right authority to be left out of the list might be that it is underlined several times in the body of the Report that the only right authority to authorize and mandate the responsibility is the UN.

As far as conflict prevention is concerned, the High-level Panel draws attention to the need for strengthening the role of UN in preventing wars. Accordingly, the UN needs to develop international regimes and norms by creating laws, agreements and arrangements as in the case of establishment of the ICC by the Rome Statute; build information sharing relationships with regional organizations whose early warning systems could be highly beneficiary for the UN to improve its preventive capacity; provide transparency in international arena, as in the case of The United Nations Register of Conventional Arms which was founded in 1991 to provide military transparency; devote more resources to its function of mediation and negotiation to provide “more consistent and professional mediation support;” consider early deployment of peacekeepers to make parties to seek peaceful resolutions as in the case of Former Yugoslav Republic of Macedonia where deployment was requested by the state itself;²³⁴ prevent recruitment to terrorist organizations by addressing the root causes, strengthening responsible states, rule of law, and fundamental human rights and to this end, to develop a global strategy, provide education and foster public debate, and support states to build capacity against terrorist recruitment and operations.²³⁵ The Panel suggests extending the authority of the Counter-Terrorism Executive Directorate to make UN function better.²³⁶

2.5.3. 2005 World Summit Outcome Document

Another establishing document of the norm came in 2005. The R2P was acknowledged by the heads of states in the paragraphs 138 and 139 of the World Summit Outcome Document:

²³³ Report of the Secretary-General's on High-level Panel on Threat, Challenges and Change, p. 67.

²³⁴ Report of the Secretary-General's on High-level Panel on Threat, Challenges and Change, p. 35 – 38.

²³⁵ Report of the Secretary-General's on High-level Panel on Threat, Challenges and Change, p. 48 – 49.

²³⁶ Report of the Secretary-General's on High-level Panel on Threat, Challenges and Change, p. 50.

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.²³⁷

Among the constitutional documents of the R2P, the Outcome Document is the first one that was officially accepted by states. It was adopted by both the General Assembly and the UNSC, and that made it politically and legally binding on the member states of the UN.²³⁸ There are deviations from the ICISS report in the Outcome Document. For instance, while the ICISS report leaves the door open for intervention without UNSC authorization, the Outcome Document failed to strengthen the capability of states to legitimately act without UNSC authorization.²³⁹ There are other deviations from the ICISS report in the Outcome Document. Unlike the ICISS report, the Outcome Document failed to call upon states to refrain from using their veto power in the face of genocide, war crimes, ethnic cleansing or crimes against humanity “when no vital interest is at stake.”²⁴⁰ According to the

²³⁷ 2005 World Summit Outcome Document, Resolution A/RES/60/1 (New York: United Nations, (2005), paragraph 138 – 139, <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>, (02.12.2015).

²³⁸ Gierycz, p. 114.

²³⁹ Hehir, p. 222 – 231.

²⁴⁰ Diana Amnéus, “Responsibility to Protect: Emerging Rules on Humanitarian Intervention?”, **Global Society**, Vol. 26, No. 2, 2012, p. 245.

ICISS report, the responsibility is to be transferred to the international society either when the host state fails to act or when it is the perpetrator of the crime, while in the Outcome Document it is limited to the situations where the host state is the perpetrator.²⁴¹ Another deviation is the exclusion of precautionary principles from the Outcome Document upon the opposition from the US, China and Russia, which were previously presented in the ICISS report.²⁴² Instead, it is stated that the intervention option would be evaluated on a case-by-case basis, in an attempt to avoid the fear that the intervention will be undertaken automatically once the criteria are fulfilled.²⁴³

2.5.4. 2009 Report of the Secretary-General: Implementing the Responsibility to Protect

The Secretary General's Report of 2009 underlines that its task is "not to reinterpret or renegotiate the conclusions of the World Summit but to find ways of implementing its decisions in a fully faithful and consistent manner."²⁴⁴ However, the report also reminds us that the measures in the Outcome Document could only be taken "in conformity with the provisions, purposes and principles of the Charter of the United Nations."²⁴⁵ Following the Outcome Document, the Report stated that the responsibility only applies to the four crimes listed in the Outcome Document and that extending the scope of this responsibility would undermine the 2005 consensus.²⁴⁶ The Report puts emphasis on the peaceful means to implement this responsibility. Military force is to be appealed only as the last resort, upon a UNSC authorization. Secretary General's Report considers the responsibility not as something outside of the UN system, but as a part of the international security system in the UN: it is not a means to establish alternatives to the UNSC, but an instrument "to make it work better."²⁴⁷ However, Stahn argues, unlike the High Panel

²⁴¹ Hehir, p. 222.

²⁴² Amnéus, p. 246.

²⁴³ Gierycz, p. 116.

²⁴⁴ Report of the Secretary General, **Implementing the Responsibility to Protect**, United Nations, 2009, p. 4, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677, (12.02.2015).

²⁴⁵ Report of the Secretary General, **Implementing the Responsibility to Protect**, p. 5.

²⁴⁶ Report of the Secretary General, **Implementing the Responsibility to Protect**, p. 8.

²⁴⁷ Stahn, p. 107.

Report, the Report of Secretary General does not explicitly rule out the possibility of intervention by individual states or alliances of willing.²⁴⁸

The Secretary General's report represents the norm in a three pillar structure which are 1) primary responsibility of states; 2) international assistance and capacity-building to support states to fulfill their responsibility to protect; and 3) responsibility by the international community to respond collectively "in a timely and decisive manner." Pillar I explains that the primary responsibility to protect, as it is stated in the Outcome Document, rests on the sovereign state. How are member states expected to exercise their responsibility according to the Secretary General's Report? States should "move from identity-based politics to the effective management, even encouragement, of diversity through the principle of non-discrimination and the equal enjoyment of rights."²⁴⁹ They should enhance respect for human rights, equal access to justice for people from different segments of society; encourage a lively civil society, an independent press and openness to international and domestic scrutiny; consult with other states that had dealt or are dealing with similar threats and regional and international organizations; and train the critical agents like police, army, judiciary and legislators to build a better capacity.²⁵⁰

Within the framework of Pillar II, the Report aims to clarify the provisions of paragraph 139 about international assistance and capacity-building. Pillar II, as it is referred to in the report, contains military assistance as well as persuasive measures. Dialogue, education and training on human rights, humanitarian standards and norms are among peaceful means to encourage states exercising sovereignty as responsibility.²⁵¹

The use of military force under Pillar II should be a measure of last resort. The Secretary General's Report states that the use of force could be considered when states or non-state actors commit atrocity crimes and upon government consent. Military force can be used in the shape of preventive deployment of military units. The focus of the preventive action in the Secretary General's Report is on eliminating the reasons that facilitate the conflicts to break out or to mount. Preventive action could be in shape of fighting against underdevelopment (which is

²⁴⁸ Stahn, p. 107.

²⁴⁹ Report of the Secretary General, Implementing the Responsibility to Protect, p. 10.

²⁵⁰ Report of the Secretary General, Implementing the Responsibility to Protect, p. 10 – 14.

²⁵¹ Report of the Secretary General, Implementing the Responsibility to Protect, p. 15 – 16.

likely to exacerbate the competition for scarce sources) through expanding development assistance, supporting the poor and minority groups to enable them to have a stronger voice/position in their societies; enhancing equality, social justice, education level and political participation; or encouragement of good governance through enforcement of rule of law, a competent and independent judiciary, human rights, security sector reform, a robust civil society, an independent press and a political culture that favors tolerance, and dialogue.²⁵²

The use of military force under Pillar III includes coercive military measures for the purposes stated under Chapter VII of the UN Charter regarding the protection of human life. The Pillar III measures are to be applied to the cases that require a timely and decisive response when the state concerned fails to respond to the grave crimes taking place within its borders and when peaceful means prove to be inadequate.²⁵³

The report underlines that in paragraph 139 of the Outcome Document, where member states are called on for collective action in a timely and decisive manner, the Outcome Document suggests that the response to such crimes should be “tailored to the circumstances of the situation” and in accordance with the Charter provisions. The Secretary-General’s Report urges member states to prioritize saving lives over procedures and results over process.²⁵⁴

Non-coercive and non-violent methods prevail under Pillar III. For instance under Article 34 of the Charter, the UNSC may investigate any dispute that may give rise to a conflict. This may be an opportunity to inform the parties of the conflict about the position of the international community. Another option before deploying military force is to impose sanctions on travel, financial transfers, luxury goods, arms and so on. The Secretary General’s report acknowledges that imposing sanctions alone may not be a sufficient answer to aggression, but they could help to send a message to the aggressor on behalf of the international community regarding their commitment to uphold international peace and security by resorting to force, if necessary.²⁵⁵

²⁵² Report of the Secretary General, Implementing the Responsibility to Protect, p. 18 – 20.

²⁵³ Amnéus, p. 256.

²⁵⁴ Report of the Secretary General, Implementing the Responsibility to Protect, p. 22 – 23.

²⁵⁵ Report of the Secretary General, Implementing the Responsibility to Protect, p. 25.

Last but not the least, the Secretary General urges permanent members to refrain from using their veto power and blocking the international community to fulfill its responsibility to protect:

Within the Security Council, the five permanent members bear particular responsibility because of the privileges of tenure and the veto power they have been granted under the Charter. I would urge them to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect, as defined in paragraph 139 of the Summit Outcome, and to reach a mutual understanding to that effect.²⁵⁶

2.6. QUESTION OF AUTHORITY

A crucial question of the whole debate is about the issue of the proper authority: Who should intervene? This has been debated over since the cases of Somalia and Bosnia in the 1990s. The UN was not successful in Somalia and failed to act in Rwanda and Bosnia because of the political divisions in the UNSC. The UN's failure to take effective action in the face of mass human right violations harmed its reputation as the proper authority to intervene in the name of the international society and opened the way for interventions by individual powerful states and coalitions of willing which did not bring comparatively successful results either.²⁵⁷ The ICISS report leaves no room for question that the primary responsibility to protect rests on the sovereign state of the country where the humanitarian crisis takes place. The problem arises when the sovereign fails to act and the responsibility is transferred to the international community.

The problem here is that, as Thomas Weiss points out, the term *international community* does not refer to a particular agency that is responsible for taking action. It is a vague term that makes us unable to point at who failed to act when no action is taken in the face of humanitarian crises.²⁵⁸ The ICISS report suggests two solutions for cases where the UNSC is unable or unwilling to act. The first option is to bring the issue before the General Assembly under the Uniting for Peace procedure; and the second is to take the issue to regional or sub-regional

²⁵⁶ Report of the Secretary General, Implementing the Responsibility to Protect, p. 27.

²⁵⁷ Gierycz, p. 111.

²⁵⁸ James Pattison, "Whose Responsibility to Protect? The Duties of Humanitarian Intervention", *Journal of Military Ethics*, Vol. 7, No. 4, 2008, p. 263.

organizations under Chapter VIII, and these organizations would also be seeking for UNSC authorization.²⁵⁹ However, Amnéus argues that the use of military force under the Uniting for Peace procedure is a bit problematic. The Uniting for Peace Resolution by the General Assembly is confined to the cases of “breach of the peace” and “act of aggression;” the Assembly traditionally would not decide on the use of military force under the Uniting for Peace Resolution in cases of “threat to peace” (humanitarian interventions in cases of “threat to peace” have been historically authorized by the UNSC).²⁶⁰ However, the ICISS report leaves the door open for intervention by individual states or groups of states. It is presented in the report and in following publications as choosing between the two evils: damage that bypassing the UNSC would cause in international law; and the damage a humanitarian crisis that remained untouched would cause. Intervention by individual states or groups of states without UN authorization bears two risks. First, without UN control there is no assurance that the intervening states can manage intervention properly. Secondly, if individual states or coalitions conduct the intervention independently of the UN, and they behave properly, i.e. according to the principles presented earlier, it may diminish the relevancy of the UN in the eyes of member nations and make them question its necessity.²⁶¹ Although the ICISS report urges the members of the UNSC to refrain from using veto power, David Chandler warns against the danger of authorizing every intervention which would undermine the UN’s international consensus-building role and eventually turn the organization into “a rubber stamp for legitimizing unilateral action by the US and its allies.”²⁶²

According to the Outcome Document, the only authority to decide on the use of force is the UNSC. The Document urges states to take “collective action in a timely and decisive manner through the Security Council, in accordance with the Charter, including Chapter VII on a case-by-case basis and in cooperation with relevant regional organizations as appropriate.”²⁶³ Some scholars argue that by subjecting any intervention to UNSC authorization, the document seems to leave no room for intervention by individual states or coalitions of willing.²⁶⁴ The Document has no statements regarding the cases where the UNSC fails to act, which,

²⁵⁹ Evans and Sahnoun, p. 107.

²⁶⁰ Amnéus, p. 255.

²⁶¹ Evans and Sahnoun, p. 108.

²⁶² Chandler, *Imposing the 'Liberal Peace'*, p. 72 – 73.

²⁶³ 2005 World Summit Outcome Document, paragraph 139.

²⁶⁴ Gierycz, p. 115.

according to the Global Center for the Responsibility to Protect, means that an intervention without the UNSC authorization is considered unlawful. Another proof that the Document rules out unauthorized intervention is that the R2P paragraph in the Document was placed within the chapter about human rights and rule of law, instead of use of force.²⁶⁵

Some authors bring up the counter argument that the Outcome Document falls short of portraying the UN action as the only legitimate way to answer mass atrocity crimes by including no statement that rules out individual action.²⁶⁶ Derived from that, some argue that the Document is permissive for unilateral action, though with some limitations. The Outcome Document is permissive for unilateral action in two ways. First of all, according to the sovereignty definition adopted by the document, which is sovereignty as responsibility, a state that fails to stop atrocity crimes committed against its people or that is the perpetrator of these crimes is not immune to intervention on sovereignty grounds since it loses its right to sovereignty. Secondly, when the UN fails to act in the face of atrocity crimes, this is a failure to fulfill a duty, since protecting people from the danger of such crimes is an obligation for the UN, rather than being optional. Should individual states choose not to act following the UN's failure to act in the face of atrocity crimes, it would be their failure to fulfill their responsibility. Of course such a mandate for unilateral action is with some limitations. First, there needs to be proof that such atrocity crimes are actually being committed. Second, there is a hierarchy of actors: states should try every possible way to act through the UN before taking unilateral action. Third, coercive action could only be taken after diplomatic ways proved to be useless.²⁶⁷

Another challenge to UNSC monopoly over authorization came from the Interaction Council. In their High-level Expert Group Meeting in 2002 the Interaction Council indicated that the Council authorization is not a prerequisite for a legitimate humanitarian intervention in the presence of the right to veto: "A dogmatic commitment to Council authorization as the sole determinant of the legitimacy of intervention will be problematic in the face of political obstinacy expressed through the use of veto power." However, the same report also draws attention to the danger of *unilateralist claims of the right to intervene on humanitarian grounds* since it is

²⁶⁵ Amnéus, p. 248.

²⁶⁶ Stahn, p. 109.

²⁶⁷ Alicia L. Bannon, "The Responsibility to Protect: The UN World Summit and the Question of Unilateralism", **The Yale Law Journal**, Vol. 115, No.5, 2006, p. 1161 – 1165.

open to abuse, and recommends bringing the issue before the General Assembly rather than taking action individually.²⁶⁸

However, this debate revolves around who the proper authority to authorize an intervention is; not who the proper agency is to conduct it.²⁶⁹ Which particular agent is to discharge the duty has serious implications for both the intervening party and those suffering from the humanitarian crisis. The intervener's abilities to handle the intervention properly may have serious results for lives, security and future of the victims. The people of intervening state may be imposed upon some extra taxes, and may suffer from decreased spending on public services as well as military casualties. An intervention may have significant implications for the wider international system as well. "For instance, an illegitimate intervener might weaken international law and order and destabilize certain regions and areas, such as by creating refugee flows."²⁷⁰

Pattison argues that the ideal solution is institutionalization of R2P, that is, to assign the responsibility to a special body mandated to discharge the responsibility in the name of international society. Institutionalization ensures that the agent acts whenever necessary, without being selective and that the decisions are made through a democratic process. Institutionalization also guarantees effectiveness, for that special body will be provided with all the sources necessary for intervention. Although the existence of a special body that would discharge the responsibility whenever it is needed and wherever the crisis takes place is the ideal solution, we are far from achieving this point in the current system and such an institution would require significant reform of the international system.²⁷¹

Scholars disagree on whether regime type of the intervener matters or not; whether the intervener needs to have a democratic regime or be respectful to human rights. For instance, Nardin argues that the moral principle requires us to act, no matter who we are, if we are able to do it at a "reasonable cost."²⁷² Contrary to some moralists who argue that only those governments who respect the human

²⁶⁸ Inter Action Council, "International Humanitarian Law, Humanitarian Crises and Military Intervention", **High-level Expert Group Meeting**, The John F. Kennedy School of Government Harvard University, Cambridge, Massachusetts, 22-23 April 2002, <http://interactioncouncil.org/international-humanitarian-law-humanitarian-crises-and-military-intervention-1>, (02.12.2015).

²⁶⁹ Pattison, *Whose Responsibility to Protect?* p. 263.

²⁷⁰ James Pattison, "Legitimacy and Humanitarian Intervention: Who Should Intervene?", **The International Journal of Human Rights**, Vol. 12, No. 3, 2008, p. 397.

²⁷¹ Pattison, *Whose Responsibility to Protect?* p. 272 – 273.

²⁷² Nardin, p. 67.

rights can be legitimate interveners, Nardin argues that common morality requires us to act no matter who we are. He says: “a murderer is not forbidden to save a drowning child.”²⁷³

Tesón argues that the authority to approve a humanitarian intervention is the community of democratic states (whether or not it is also authorized by the UNSC). According to Tesón, UN approval gives the *illusion of democratic legitimacy* whereas the UNSC lacks the moral legitimacy to authorize a humanitarian intervention. He indicates three reasons that harm the legitimacy of UNSC decisions. First, the right to veto gives disproportionate power to some member states, and blocks any attempt to undertake an intervention against the permanent members. Second, the right to veto enjoyed by the Permanent Five can cause inaction in the face of humanitarian crises. Third, some members are politically illegitimate: they lack the liberal values of respect and democratic legitimacy, and they are not entitled to speak in the name of their citizens. Hence, he argues, the ideal solution for a humanitarian intervention is the approval by a coalition of democratic governments, who are guided by the above-mentioned liberal values and therefore represent their citizens who will bear the real burden of an intervention. Nevertheless, he argues, even if the system of authorization for the use of force in the international system is changed in such a way that interventions will be authorized by a coalition of democratic states, authorization may sometimes fail, and humanitarian crises may remain unanswered. In that case, as Kosovo and Rwanda cases showed us, governments can act without authorization.²⁷⁴

Mark Evans argues that it is only democratic states who can exercise power over people legitimately, basing his argument on Article 21 of the Universal Declaration of Human Rights, which holds “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives” and “The will of the people shall be the basis of the authority of government.”²⁷⁵ He says that popular support is what distinguishes the freedom fighters from terrorists: “their existence/actions are supported by the people whose support they claim to have.”²⁷⁶

²⁷³ Nardin, p. 68.

²⁷⁴ Tesón, *Eight Principles for Humanitarian Intervention*, p. 107 – 109.

²⁷⁵ Article 21, The Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/index.shtml#a21> (17.06.2015).

²⁷⁶ Evans, *Just War, Democracy, Democratic Peace*, p. 195 – 196.

Pattison evaluates the options from a consequentialist perspective. In his account, there is an unassigned duty to intervene, which needs to be assigned to a specific agent to avoid the danger of lack of reaction to humanitarian crises.²⁷⁷ From a consequentialist point of view, he argues that the primary determinant for intervener's legitimacy is its effectiveness.²⁷⁸ There are three more qualities along with effectiveness for an intervener to be legitimate which are fidelity to principles of *jus in bello*, internal support and external support. In most cases, all of these four qualities should be present, effectiveness being of the primary importance. However, following consequentialist logic, Pattison argues that in cases where "hugely beneficial consequences are more than likely" only effectiveness is *sufficient* for the intervener to be considered legitimate.²⁷⁹

Pattison argues that what leads him to conclude that the duty should be assigned to the most effective intervener is the General Duty Approach, which is adopted by the ICISS. Once we adopt the General Duty Approach, we assume that there is an unassigned *duty* to intervene, which means we do not need to seek for special relationships between the intervener and the state that is going to be intervened to generate a duty, since that duty exists for each agent. We do not need to justify why a particular agent has the duty to intervene; what needs to be done is to find the most appropriate way of assigning this duty. Those who believe that there is a *right* to intervene, rather than a duty, adopt the General Right Approach, based on a permissive not obligatory logic. It assumes that there is only a negative duty not to give harm to others. In this case, the agent possesses the right, but the duty needs to be generated through positive (i.e. special ties between the states) or negative (i.e. where the invader caused the human rights crisis) relationships between the intervened and the state that is to be intervened. If we adopt the General Right Approach, it would be unfair to assign this duty to the most effective candidate since it would only have permission, not obligation to intervene. Why an effective intervener would go beyond its negative duty not to give harm? However, Pattison argues that having a negative duty not to cause harm still generates an unassigned duty to intervene. According to him, causal relations are far more complex than we usually assume and every single agent might have a role in the chain of events that lead to a humanitarian crisis, which means that everybody

²⁷⁷ Pattison, *Whose Responsibility to Protect?*, p. 264.

²⁷⁸ Pattison, *Legitimacy and Humanitarian Intervention*, p. 398.

²⁷⁹ Pattison, *Legitimacy and Humanitarian Intervention*, p. 402.

violates its negative duty not to cause harm. Moreover, in order to have a duty to intervene, an agent should first possess the right to intervene, which means that it should meet the permissibility criteria for its intervention to be justifiable. A *duty* to intervene can only be generated if there is a *right* to intervene.²⁸⁰

Effectiveness is threefold: local external effectiveness, global external effectiveness and internal effectiveness. Local external effectiveness requires the intervener to be successful in tackling the humanitarian crisis. Global external effectiveness holds that an intervention in a specific geographical area should not harm enjoyment of basic human rights in the world at large. Internal effectiveness is about an intervention's cost to the intervener's own citizens. The possible decrease in citizens' enjoyment of basic human rights that an intervention may cost should not be excessive. According to Pattison, a combination of these three types of effectiveness is *necessary* for legitimacy of an intervener; an intervener that lacks three of them cannot be legitimate.²⁸¹

Once we adopt General Duty Approach, we do not need to generate a duty but we need to find the most appropriate way of assigning this duty, that is, we need to find who the most effective intervener is. An effective intervener needs to possess certain characteristics. First, it needs to have sufficient military resources which is a combination of a high number of well trained and motivated military personnel; military equipment; strategic lift capacity which enables the transfer of military personnel and equipment to wherever the intervention takes place; and logistical support to sustain its force abroad. Secondly, political and economic resources to establish a transitional authority if necessary; and reconstruct a new political community. Thirdly, an effective intervener needs to have a suitable strategy for the effective use of its military and non-military (political and economic) resources. Fourth is the ability to respond in a timely manner. Lastly, it is very important that an intervener to be perceived legitimate by the political community that is being intervened. Geographical proximity has an effect on the effectiveness. Although a neighboring country that is being affected by the refugee influx or potential spread of crisis into its territories may have very reasonable motives to intervene, this does not

²⁸⁰ Pattison, *Whose Responsibility to Protect?*, p. 268 – 271.

²⁸¹ Pattison, *Legitimacy and Humanitarian Intervention*, p. 399 – 400.

necessarily render it the most effective intervener since it may lack the above-mentioned necessary capabilities to be effective.²⁸²

2.7. IS RESPONSIBILITY TO PROTECT A NEW LEGAL NORM?

Is R2P a new legal norm, or is it in the process of becoming a legal norm? Does any of its sources (the ICISS Report, the High Level Panel Report, the Secretary General Report and the Outcome Document) can be said to be generating a new legal norm? There are contradicting arguments regarding this issue. While it is claimed to be an emerging norm of international law by Gareth Evans and Mohamed Sahnoun,²⁸³ it has fallen short of being so according to some others. Diana Amnéus argues that R2P failed to introduce a new legal norm other than the ones we already have under the UN Charter. The military measures included in the norm and endorsed by the sovereign states in the World Summit in 2005 are compatible with the international law proper. However, other propositions considered within the R2P formula which are drawn from Just War theory, the ICISS report and doctrines of humanitarian intervention, and which fall outside the international law proper are not accepted or agreed upon by the states, which is a sign for the weakness of the norm in introducing a new legal norm. According to Amnéus, states only agreed upon the measures (which fall under Pillar II and Pillar III in the Secretary General's Report) already defined within the current international security system.²⁸⁴ Moreover, UNSC authorization of interventions of the 1990s (Bosnia 1992-1994, Somalia 1992, and Rwanda 1994) prove that human rights crises were already included in the UNSC's definition of the "threat to peace" back in the 1990s. Thus, the practice of humanitarian intervention during 1990s already established a "permissive legal right" to authorize humanitarian intervention under the UN Charter.²⁸⁵

According to another argument, what R2P failed to do is individualization of international law that is, replacing the current international law with a new one which places individuals' rights above states' rights. By shifting the focus from rights of states to rights of individuals and responsibility of states to protect those rights, R2P

²⁸² Pattison, *Whose Responsibility to Protect?* p. 266 – 267.

²⁸³ Evans and Sahnoun, p. 102.

²⁸⁴ Amnéus, p. 251.

²⁸⁵ Amnéus, p. 257 – 258.

draws a framework where individuals rather than states are becoming right holders in international arena. This is close to definition of world society in the English School Approach. World society is where *order and justice between people*, not between or within states, prevails. The focus is on individuals, non-state organizations and global population; individuals, rather than states are the primary right holders in the world society.²⁸⁶

Non-interventionism of the Cold War era was challenged by the humanitarian interventions of the 1990s. However, this was not a move toward the world society since it was still the state that had the right to intervene. Contrarily, R2P puts the individual on the spot. Order is to be achieved through justice between people. R2P places individuals' human rights above state rights and protects individual against state; injustice and harm to individual (of course in massive scale) constitute the just cause for intervention. This could be considered as a step towards world society. However, given that just cause is never enough for an intervention and it has to be present along with at least four other criteria (last resort, right intention, proportional means and reasonable prospect for success), the norm is permissive rather than being obligatory. Given that states have no obligation but *right* to intervene, they are still the right holders, which in this context, means that international society has not evolved yet into a world society and R2P has fallen short of changing the international law.²⁸⁷

There are similar criticisms regarding R2P's failure to overcome state-centrism. Discussions regarding the implications of responsibility on sovereignty signal a turn back to the state-centric model.²⁸⁸ According to the ICISS report, "sovereignty does still matter" and a peaceful international system would only be achieved through the cooperation of effective states. State is considered as the most proper actor to carry out responsibility. Moreover, "the concept of intervention is tied to territoriality and sovereignty." Violation of human rights may be a generating factor for responsibility but when we look for a responsible for these violations, we are first looking at the state within whose borders these violations are taking place. We explain the reason behind the violation as the failure of that state to

²⁸⁶ Douglas Brommesson and Henrik Friberg Fernros, "Individualisation and Destabilisation of the International Order. The Case of the Responsibility to Protect", **International Review of Sociology**, Vol. 19, No. 2, 2009, p. 319 – 320.

²⁸⁷ Brommesson and Fernros, p. 321 – 324.

²⁸⁸ Daniel Warner, "Responsibility to Protect and the Limits of Imagination", **The International Journal of Human Rights**, Vol. 7, No. 3, 2003, p. 155.

fulfill its responsibility.²⁸⁹ Another proof for the commitment to state sovereignty in the ICISS report is that it frames intervention as substituting state: intervention is until a responsible legitimate authority is re-established. All forms of assistance, either under responsibility to prevent or responsibility to rebuild, are for getting the sovereignty back to a local authority.²⁹⁰

²⁸⁹ Warner, p. 156.

²⁹⁰ Warner, p. 157 – 158.

CHAPTER THREE

HISTORY OF INTERVENTIONISM IN THE MIDDLE EAST AND LIBYAN EXPERIENCES

3.1. COLONIAL HISTORY AND MORE RECENT INTERVENTIONS

The roots of today's Arab perspective on interventionism rest in the history of the region's interactions with the Western countries. Both distant (like crusades) and recent (like Afghanistan or Iraq wars) memories of western interference have always had a considerable impact on the regional political discourse as well as public opinion with regards to daily political issues or long-established problems of the region. As Sorenson explains, memories of events like Crusades that took place a thousand years ago are still fresh in the Arab mind: "The legends live on as the centuries pass. The impact is often a strong belief that the West (and the most powerful Western country, the United States) is once again plotting against the Arab and Islamic world."²⁹¹ This perception manifests itself in reactions such as seizure of the United States Embassy in Tehran (it is worth to note that although it was not a reaction by an Arab or former colonized country to a colonial power, it was a reaction by a group of people from a Middle Eastern country who believed that their lives were affected by a strong Western power). As Edward Said states,

[W]hen Iranians seized the United States Embassy in Teheran they were responding, not just to the former shah's entry into the United States, but to what they perceived as a long history of humiliation inflicted on them by superior American power: past American actions "spoke" to them of constant intervention in their lives, and therefore as Muslims, who they felt, had been held prisoner in their own country, they took American prisoners and held them as hostages on United States territory, the Teheran Embassy.²⁹²

In this chapter, the analysis of the effect of Western interference in the Middle East is confined to a brief look at the colonial history of the region and more recent interactions like the Gulf War and Iraq War in 2003, which is thought to be useful for grasping the Arab perspective on interventionism. Before discussing these

²⁹¹ David S. Sorenson, **An Introduction to the Modern Middle East**, Westview Press, Boulder, 2008, p.3.

²⁹² Edward W. Said, **Covering Islam: How the Media and the Experts Determine How We See the Rest of the World**, Vintage Books, London, 1997, p.lvi.

historical events, we should recall the primary reasons for which the Middle East is important to the West. The significance of the region emanates from mainly two factors: its oil production, which constitutes three quarters of world supply, and its strategic location for world commerce, given that the Suez Canal is used for seaborne trade between Europe and Asia, and the Straits of Hormuz for most of the world's oil transit.²⁹³ The US, in particular, was interested in the region because of four basic reasons: first, during the Cold War, the US policy aimed at containing the Soviet expansion across the region; second, the oil crisis of 1973-74 showed the importance of preserving Western access to two thirds of the world's known oil reserves; third, the US had an interest to contain Arab radicalism and maintain pro-Western regimes in the region; and last, the US's commitment to the security of Israel.²⁹⁴

Western interference in the Middle East in the twentieth century was a result of the demands that industrialization brought to Europe, though European countries claimed that their actions were intended to help the Middle East to recover from its backwardness.²⁹⁵ The economic ties between Western powers and the Middle East were already present before direct colonization:

European Businessmen, investors and merchants had already established strong economic ties with the region by the middle of the nineteenth century. Their ambition was to turn the markets of the East towards the West, create levels of dependency, establish a local bourgeoisie ready to support the capitalist venture at home, and encourage the religious and political rulers of the Ottoman Empire to opt in to western-based capital markets.²⁹⁶

These economic ties made Western powers willing to fight in order to protect their economic interests in a competition to gain more influence in the region. This competition is most significantly revealed in Britain's occupation of Egypt in 1882. Egypt was occupied by France, in Napoleon's rule, in 1870s in an attempt to protect French trade interests and prevent Britain's access to India, which was a market for

²⁹³ Sorenson, p. 2.

²⁹⁴ Avi Shlaim, **War and Peace in the Middle East: A Critique of American Policy**, Penguin, New York, 1994, p. 38.

²⁹⁵ Beverly Milton-Edwards, **Contemporary Politics in the Middle East**, Polity Press, Oxford, 2000, p.15.

²⁹⁶ Milton-Edwards, p. 17.

Britain's exports and a cotton supplier for British mills. In the end, Britain occupied Egypt in 1882 to secure Suez Canal, its passage to India.²⁹⁷

Trade relations and the ensuing governmental interactions were supported by missionary activities, as well as artists, writers and travelers who contributed to the western image of the Middle East as a region with an inferior population who cannot appreciate its archeological richness or prosperous culture. During the 1800s, Protestant, Catholic, Anglican, Quaker, American Protestant, Presbyterian missionary societies established missions to convert Muslims and Jews to Christianity in an attempt to erase bad memories of "humiliation of the Crusader kingdoms."²⁹⁸ It might be argued that part of the reason for establishing missions to convert Muslim population of the region to Christianity was the image of Islam in western memories as a demonic religion. As Edward Said states,

For hundreds of years great Islamic armies and navies threatened Europe, destroyed its outposts, colonized its domains. It was as if a younger, more virile and energetic version of Christianity has arisen in the East, equipped itself with the learning of the ancient Greeks, invigorated itself with simple, fearless, and warlike creed, and set about destroying Christianity. Even when the world of Islam entered a period of decline and Europe a period of ascendancy, fear of "Mohammedanism" persisted. Closer to Europe than any of the non-Christian religions, the Islamic world by its very adjacency evoked memories of its encroachments on Europe, and always, of its latent power again and again to disturb the West.²⁹⁹

Consulates and diplomatic missions were established. European travelers returned to their countries with a certain image of "Orient" which they spread with the help of literature and art.³⁰⁰ This image of Orient helped to build a relationship of supremacy between the West and the Orient, the former being superior to the latter. The components of Orient culture were examined within the dominant western discourse, in the light of the assumptions regarding the identity of the Orient. Orientalism demonstrates the Euro-Atlantic power over the Orient. It is a complex of institutions and practices, which influenced the daily lives of people with the help of financial investments that were made for the maintenance of this image for many years. The idea of inferiority of Orient (and other non-European cultures) vis-à-vis

²⁹⁷ Milton-Edwards, p. 19.

²⁹⁸ Milton-Edwards, p. 19.

²⁹⁹ Said, *Covering Islam*, p. 5.

³⁰⁰ Milton-Edwards, p. 20.

Europe, according to Edward Said, is one of the most important components of the European culture as well as its hegemony within and outside Europe.³⁰¹ Such a perception of Orient as an inferior culture manifested itself in Western political discourse as we see in the speech that Arthur James Balfour gave in the House of Commons on 13 June 1910 where he pointed out the Orient's disqualification for self-rule in comparison with the West.³⁰² Although the British and French primacy in the Middle East brought an increase in per capita incomes by the end of the 19th century, the class-based society structures generated unequal income distribution where most of the wealth was distributed among the privileged groups of the society such as foreigners, minorities, wealthy Muslims, army and bureaucrats.³⁰³

Arab distrust in the West owes a lot to the allied powers' dishonesty regarding their support for Arab independence during the First World War. European powers, particularly Britain, fostered the spread of nationalism among Arab people in an attempt to ease the defeat of the Ottoman Empire.³⁰⁴ Britain managed to compel Sharif Hussein of Mecca to start a revolt against the Ottoman rule in 1916. This was accomplished by promising support for Arab independence as revealed in the McMahon-Hussein Correspondence. However, hopes for independence were dashed when the Paris and San Remo peace conferences revealed the secret Sykes-Picot Agreement signed in 1916 between France, Britain and Russia regarding the partition of the Middle East; and the Balfour Declaration of 1917 in which Britain was promising Jews its support for establishing a Jewish homeland in Palestine. "Arab leaders, who had led the Arab Revolt along with T. E. Lawrence as part of the war effort, realized they had been cruelly deceived by the Europeans."³⁰⁵ Instead of full independence, what they achieved as a result was being "the puppet heads" of new nation states under British or French mandate: Sharif Hussein's three sons, Abdullah, Faisal and Ali were to be ruling Iraq, Syria and Transjordan.³⁰⁶

Colonial rule was far from bringing permanent solutions to region's problems. Britain, who promised its support for the establishment of a Jewish homeland through the Balfour Declaration, failed to bring solution to the problems between

³⁰¹ Edward W. Said, **Şarkiyatçılık: Batı'nın Şark Anlayışları**, Trans. Berna Ülner, 6th edition, Metis Yayınları, 2012, p.14 – 17.

³⁰² Said, **Şarkiyatçılık**, p. 42 – 43.

³⁰³ Milton-Edwards, p. 20.

³⁰⁴ Lisa Anderson, "Religion and State in Libya: The Politics of Identity", **Annals of the American Academy of Political and Social Science**, Vol.483, 1986, p. 64.

³⁰⁵ Milton-Edwards, p. 22.

³⁰⁶ Milton-Edwards, p. 22.

Arab and Jewish populations in Palestine that arose following the influx of Jewish immigrants in the 1930s. Killings of retribution by the extremists from both sides further deteriorated the situation. Although the British rule made several attempts to bring a solution to the issue, such as the partition plans offered by Royal Commissions like Peel Commission in 1937 and Woodhead Commission in 1938, and St. James Conference in 1937 to get the parties into negotiation, none of these moves of Britain achieved its goal.³⁰⁷ As a result, Britain withdrew from Palestine in 1948, leaving the conciliation issue to the UN. However, the UN's partition plan was not embraced by the parties and bloody campaigns were continued.³⁰⁸

Although Britain survived as the sole power with a significant influence in the region in the aftermath of the Second World War, war indebtedness and rise of nationalism at the global level forced Britain to ease its hegemony in the region. Changes in the global balance of powers were reflected in the Middle East as well as elsewhere in world. Emergence of nationalist groups and more radical leaders in such countries like Egypt, Palestine, Algeria, Jordan, Syria, Iran, Iraq and Libya was a challenge for colonial powers. Also, the rivalry between the US and Soviet Union was carried to the Middle East and now they were trying to build their own spheres of influence.³⁰⁹ Soviet Russia used its anti-imperialist rhetoric to win postcolonial countries over. However, it lacked the necessary financial capacity to support postcolonial states and these Islamic countries were not always willing to accept help from "atheistic communism." As part of its rivalry with the United States, the Soviet Union recognized the new regimes that came to power (e.g. Egypt in 1952, Iraq in 1958, and the Baathist Party's takeover in Syria in 1966) by overthrowing old regimes, which either created or were supported by Western imperialist powers. The Soviet Union's growing presence in Iran, and the pressure from Turkey and Greece compelled the United States to increase its influence through Truman Doctrine in 1946.³¹⁰ The same concerns (confronting Soviet expansion) forced the United States and Britain to bring Turkey (feeling threatened by the Soviets), Pakistan and Iraq together around Baghdad Pact in 1954, which started a chain of events that resulted in Suez Canal crisis, a prominent example for the Cold War confrontation in the region. Nasser, who perceived this pact as a Western effort to dominate the

³⁰⁷ Sorenson, p. 18.

³⁰⁸ Sorenson, p. 22-23.

³⁰⁹ Milton-Edwards, p. 27 – 29.

³¹⁰ Sorenson, p. 21.

Middle East, sought military support from the Soviet bloc. The US reacted by cancelling to fund the build of Aswan high dam, which was an important project for Egypt's agricultural economy and electric supply. As a response, Nasser declared the nationalization of Suez Canal, which was Britain's gateway to Asia. That resulted in Britain's, accompanied by France and supported by Israeli guerillas, getting engaged in a war with Egypt over the Canal. The Soviets threatened attack on the Western forces. Being concerned with critics regarding western neo-colonial aims, the US managed to transfer the issue to the UN, who appointed the United Nations Emergency Force (UNEF) to monitor the ceasefire. Nasser presented the whole issue within an anti-imperialist frame and announced the ceasefire as the defeat of imperialist powers alongside Israel.³¹¹

Suez Crisis was followed by a series of Arab-Israeli wars. As Avi Shlaim indicates, "with each successive war ... America became more deeply committed to Israel, culminating in direct military involvement following Israel's 1982 invasion of Lebanon."³¹² The consequences of the 1967 War³¹³ triggered further border disputes that remained unresolved until today. The UNSC Resolution 242 adopted in the aftermath of the 1967 War was interpreted in different ways by Israel, the Arabs and the Americans. The Resolution stated that all states should live "within secure and recognized boundaries" and Israel should "withdraw from territories occupied in the recent conflict."³¹⁴ However, the wording of the Resolution left the boundaries of "territories" in question undefined; the Resolution was referring to "territories" rather than "the territories." According to Israeli interpretation, the Resolution did not require Israel to withdraw from all the territories. Moreover, in Israeli perception, Israel had to retain some of the territory it had occupied in order to establish secure

³¹¹ Sorenson, p. 25 – 26.

³¹² Shlaim, p. 37.

³¹³ The 1960s witnessed the competition between Egypt and Syria to promote themselves as the leader of Arab nationalism which encouraged them to control Palestinian movement. To this end, Nasser supported formation of the Palestine Liberation Organization (PLO) as an official organization to represent Palestinians in 1964. As a response to this move of Egypt, Syria sponsored a small revolutionary group, Fatah who organized attacks to Israel beginning from 1965. The 1967 War broke out in an atmosphere where Israel was threatening Syria with retaliation and Nasser ousted the UNEF forces from the Sinai Peninsula upon the misinformation provided by the Soviets about Israeli deployment of troops at the Syrian border, which constituted a *casus belli* for Israel. Israel responded by attacking on Egypt on 5 June 1967. The War had dramatic results for Arab states and Palestinians: Israel occupied the Gaza Strip, the Sinai Peninsula, the West Bank and the Golan Heights and annexed the East Jerusalem. Charles Smith, "The Arab-Israeli Conflict", **International Relations of the Middle East**, (ed. Luise Fawcett), Oxford University Press, Oxford, 2005, p. 224 – 225.

³¹⁴ Smith, p. 226.

boundaries mentioned in the Resolution.³¹⁵ According to the Arab perception, the Resolution was calling for immediate Israeli withdrawal from all the territories it had occupied. From the American perspective, it required minor adjustments in the West Bank borders, demilitarization measures in the Sinai and the Golan Heights, and reconsideration of the status of Jerusalem.³¹⁶ Avi Shlaim argues that with the 1967 victory, Israel proved its military abilities to the US and turned the unequal American-Israel relationship into a strategic partnership. From Nixon and Kissinger's "globalist" perspective³¹⁷ having a powerful ally in the Middle East was serving American interest. To this end, America offered Israel diplomatic support, economic assistance and arms.³¹⁸

When Palestinian guerillas attacked King Hussein in 1970,³¹⁹ Nixon and Kissinger believed that this was a consequence of the Soviet influence, which reinforced their view that American-Israeli partnership was necessary to circumvent Soviet influence and Israeli superiority had to be secured for stability in the region.³²⁰ The Yom Kippur War in 1973 cast doubts on this belief. Egypt and Syria attacked Israel on 6 October 1973, in an attempt to recover the Sinai Peninsula and the Golan Heights. The War ended with Israeli victory.³²¹ Shlaim argues that "following [Anwar] Sadat's rise to power there was opportunity for a negotiated settlement. The chance was missed not because of the Soviet stand but as a result of Israeli

³¹⁵ Smith, p. 226.

³¹⁶ Shlaim, p. 44.

³¹⁷ According to Avi Shlaim, there have been two approaches in the American foreign policy regarding the relations with Israel: globalist approach and regionalist approach. The globalist approach politically, militarily and morally sees Israel as an asset against Soviet expansionism, and the regionalist approach as a liability. The first tend to look at the issues from the Cold War perspective while the latter focuses less on the Soviet Union and more on local sources of conflict. According to globalists, Israel is the only advanced, intelligent and reliable ally in the region, and supporting Israel against its enemies would be in America's interest. According to regionalists, uncritical support for Israel undermines American interests in two ways: prevents America to build positive relations with other actors in the region, and pushes those regimes closer to the SU. Shlaim, p. 39 – 40.

³¹⁸ Shlaim, p. 45.

³¹⁹ This goes back to the War of Attrition that Nasser initiated because no diplomatic solution had been brought to the issue of occupied territories. The loss of Sinai Peninsula encouraged Egypt to start a war of attrition against Israel in 1968, which meant combating Israel across the Suez Canal. The Soviets sent troops to strengthen Egypt's defense. The conflict continued until the UN managed to broker a ceasefire between the two countries with the US backing in 1970. Palestinians were disappointed, because any agreement with Israel meant recognition of the state of Israel and acceptance of refugee status of Palestinians. Palestinian organizations called for overthrow of conservative Arab regimes to establish a more radical Arab front. The first step was overthrow of King Hussein of Jordan. King Hussein's army crushed Palestinians and PLO moved its command to Lebanon. Smith, p. 226 – 227.

³²⁰ Shlaim, p. 46.

³²¹ Smith, p. 228.

intransigence backed by global strategists in the White House.”³²² Sadat’s offer to Israel of an interim settlement, following his rise to power, which included a limited withdrawal of Israel into Sinai and reopening of Suez Canal, was rejected by Israeli Prime Minister Golda Meir. Israeli-American policy of the time was to turn down Sadat’s proposals until he came to Israeli terms, but, instead of making further concessions, Sadat chose to go to war in 1973.³²³ Having learnt his lesson from the Yom Kippur War, Kissinger began to develop a more even-handed approach following the war.³²⁴ He managed to negotiate Israeli pullbacks from Sinai and Golan in 1974 with the hope that limited agreements that included minor withdrawals by Israel would create a climate of confidence and trust in which full peace agreements might follow.³²⁵ Having concluded that “America [was] the only power capable of delivering territorial concessions from Israelis” Sadat shifted to American camp.³²⁶

With the election of Jimmy Carter as the US president in 1976, the US left Kissinger’s limited agreements approach for a comprehensive Arab-Israeli accord. However, Carter’s efforts for concluding a comprehensive peace treaty at Camp David were scaled down to the Egyptian-Israeli peace accord in 1979.³²⁷ In return for leaving Sinai to Egypt, America promised Israel to subsidize Israeli oil requirements; its involvement in favor of Israel if any violations occurred; and a continuing commitment to Israel’s military and economic requirements.³²⁸ From Israeli perspective, this was consolidation of Israel’s hold over the other occupied territories as reflected in Begin’s words: “the Sinai had been sacrificed but Eretz Israel had been won.”³²⁹ Begin believed that, by leaving Egypt out of the equation, now he had right to retain the West Bank and Gaza.³³⁰ Palestinians felt betrayed by Egypt. From their point of view, proposal of autonomy was a cover for Israeli annexation of the occupied territories.³³¹ Israel recognized the “legitimate rights of

³²² Shlaim, p. 47

³²³ Shlaim, p. 46 – 47.

³²⁴ Shlaim, p. 48.

³²⁵ Smith, p. 228.

³²⁶ Shlaim, p. 49.

³²⁷ Camp David Accords had content related to the Palestinian-Israeli issue as well. It was suggesting a five-year transition period following the election of a self-governing authority and a full autonomy to the inhabitants of the West Bank and Gaza while the final status of the territories would be negotiated towards the end of the transition period. Shlaim, p. 50.

³²⁸ Shlaim, p. 51 – 52.

³²⁹ Smith, p. 230.

³³⁰ Shlaim, p. 53

³³¹ Shlaim, p. 51.

Palestinian people,” but continued denying Palestinian people’s right to self determination.³³² As Shlaim points out:

In the eyes of many Arabs, Carter’s inability to persuade Begin to recognize the legitimate rights of the Palestinian people further discredited the Camp David accords, increased Egypt’s isolation from the rest of the Arab world, and undermined America’s credibility as an honest broker between Arabs and Israelis.³³³

American interference in favor of Israel brought about dramatic results in Lebanon Civil War.³³⁴ The US supported Israeli invasion of Lebanon. The US President Reagan and the Secretary of State Alexander Haig were anti-Soviet globalists who were holding the Soviets responsible for the turmoil in Lebanon. In order to guarantee American support, Israeli Defense Minister Ariel Sharon presented the issue from the prism of the cold war: the invasion would weaken pro-Soviet forces which were the PLO and Syria. In May 1982, Haig assured Ariel Sharon that the US would not oppose a limited military attack to Lebanon. However, it was not the SU but the US who made a direct military involvement. America deployed a “peace keeping” force in Beirut. When militants blew up the US Headquarters in Beirut, American forces withdrew.³³⁵ This was followed by revenge killings which culminated in Israel’s allowance of Maronite militias to enter Sabra and Shatila refugee camps. American forces returned after Sabra and Shatila massacres were committed.³³⁶

One of the major interferences of the US in the region was the Gulf War. The US, who was tolerant of the Iraqi aggression during the Iran-Iraq War, was not tolerant of Saddam’s invasion of Kuwait in 1990. During the period between the end of the Iran-Iraq War and the Gulf War, Iraq was considered by the Reagan and Bush governments as the new guardian of American interest in the Gulf, which allowed them to remove Iraq from the State Department’s list of government sponsoring

³³² Shlaim, p. 52.

³³³ Shlaim, p. 53 – 54.

³³⁴ With the shift of PLO command to Beirut from Jordan, Lebanon became a ground for the clashes between PLO and Maronite Catholic militias who were supported by Israel. From Israeli perspective, crushing PLO would remove the hopes of West Bank Palestinians and ease Israel’s hold on the West Bank. Israel invaded Lebanon in June 1982 and assaulted civilians. This was followed by an international intervention and PLO agreed to leave Lebanon and moved its command to Tunisia. Following PLO’s leave, American forces withdrew. They returned after the Sabra and Shatila massacre by the Maronite militias with the allowance of Israel. Smith, p. 231.

³³⁵ Shlaim, p. 54 – 56.

³³⁶ Smith, p. 231.

international terrorism; and turn a blind eye to Saddam's brutality.³³⁷ As Avi Shlaim argues, Saddam was the monster Western powers, together with the oil-rich Gulf states, created during the Iran-Iraq War, and they simply "expected this monster to behave reasonably after the war."³³⁸

Saddam Hussein's invasion of Kuwait proved that they were wrong. Being afraid of a possible takeover of Saudi Arabia, which would put Iraq in charge of the 40 percent of world's known oil reserves, the US convinced Saudi Arabia, who was reluctant about allowing the US presence in the region, for deployment of American troops on Saudi territory. The US presented the issue as if it was a requested help by Saudi Arabia and declared that the deployment of the troops had a defensive aim. This defensive mission was called Operation Desert Shield.³³⁹ On 29 November 1990, the UNSC passed the Resolution 678. Resolution 678 authorized the use of "all necessary means" to remove Iraq from Kuwait.³⁴⁰

Operation Desert Storm was launched on January 16 and continued until February 28. Air bombing attacks were followed by a ground war and resulted in Allies' victory over Iraq. Shlaim states that the war achieved its basic objectives which were the removal of Iraqi forces from Kuwait and the restoration of the Kuwaiti government-in-exile. However, Saddam Hussein remained in power and crushed Shiite and Kurdish populations who rose against his rule following the Gulf War. Despite his calls on Iraqi people to revolt against Saddam Hussein during the Gulf War, Bush decided that he would only intervene in Saddam's assaults on Kurds and Shiites if Saddam used fixed-wing aircraft and poison gas against civilians. According to Shlaim, Bush overlooked Kurdish and Shiite suffering under Saddam's attacks, because what he had in mind when he called on Iraqi people to revolt against Saddam rule was not a more liberal regime, but a new a Sunni rule supported by military force. Bush administration believed that this was the most appropriate formula to keep the state together and manageable for the US.³⁴¹

Once again, Western interference was far from resolving deep-rooted problems of the region. As Shlaim states, "[t]he war also demonstrated that Americans are better at short, sharp bursts of military intervention designed to

³³⁷ Shlaim, p. 89-91.

³³⁸ Shlaim, p. 89-90.

³³⁹ Shlaim, p. 97.

³⁴⁰ Shlaim, p. 98-99.

³⁴¹ Shlaim, p. 100-102.

restore the status quo than at sustained political engagement to resolve the underlying origins of instability in the Middle East.”³⁴²

The US engagement in the region remained in the aftermath of 9/11 attacks. The US first targeted the Taliban regime in Afghanistan for its support to Al-Qaeda that claimed responsibility for those terrorist attacks and then turned to Saddam Hussein regime in Iraq, which was, according to American President George W. Bush, a member of “axis of evil” together with Iran and North Korea.³⁴³ The US forces, joined by British and Australian partners, started Operation Iraqi Freedom on 20 March 2003 with missile attacks, entered Baghdad in three weeks and announced the victory of coalition powers by May 2003.³⁴⁴ Although the coalition powers’ aim was to “improve the lives of Iraqi people” along with eliminating the threat the current regime poses to the US and its allies,³⁴⁵ the coalition forces could not manage to end human suffering; and their inability to carry out their “responsibility to rebuild” until a stable regime got established caused a great number of killings, injuries and displacement of many people even after the announcement of the end of the war. The clash between Sunni and Shiite populations mounted as Sunnis got excluded from the political regime following the demise of Saddam Hussein regime. Violence escalated further as the US troops withdrew from Iraq in 2011. The mounting violence and power vacuum after US withdrawal paved the way for the emergence of militant rebel groups, most prominently and recently the Islamic State in Iraq and Syria, whose aim is to remove the borders established by the colonial powers in the aftermath of the First World War and to establish a caliphate state on Iraqi and Syrian territories. The first democratic elections in Iraq after the war could only be held in 2010. The post-election uncertainties along with the withdrawal of US forces by the end of 2011 led to the resurrection of violence by the armed militias.³⁴⁶

As a very recent confrontation with the West, the 2003 Iraq War with its serious human cost and its flawed legal basis, has had a major effect on the perception of region’s people about intervention. According to United Nations

³⁴² Shlaim, p. 103.

³⁴³ Sorenson, p. 39.

³⁴⁴ Alex J. Bellamy, “Ethics and Intervention: The ‘Humanitarian Exception’ and the Problem of Abuse in the Case of Iraq”, **Journal of Peace Research**, Vol.41, No.2, 2004, p. 131.

³⁴⁵ Bellamy, Ethics and Intervention, p. 131 – 132.

³⁴⁶ International Coalition for the Responsibility to Protect, “The Crisis in Iraq”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-iraq>, (06.08.2015).

Assistance Mission for Iraq (UNAMI) figures, a total of 3238 civilians were killed in the year 2012 alone.³⁴⁷ UNAMI estimates the number of civilians that were killed between January 2013 and June 2015 to be 22000, with a dramatic increase in June (1531), July (1186) and August 2014 (1265).³⁴⁸ Iraq Body Count (a project that records war casualties from 2003 to up until today by using evidence “drawn from crosschecked media reports of violence leading to deaths, or of being found, and is supplemented by the careful review and integration of hospital, morgue, NGO and official figures and records”³⁴⁹) estimates a total of 112,017 – 122,438 civilian deaths from violence between 20 March 2003 and 14 March 2013.³⁵⁰ Those numbers were combined with a large number of injured and displaced people. The total number of displaced people as a consequence of war mounts to 1.2 million.³⁵¹

As far as its legal and humanitarian bases are concerned, as Bellamy points out, the Iraq case sets an example for danger of humanitarian exception to positive international law’s ban on the use of force.³⁵² The legal justification for the war depended on the British and Australian interpretation of Resolutions 678³⁵³ (29.11.1990), 687³⁵⁴ (03.04.1991) and 1441³⁵⁵ (08.11.2002), where they argued that a material breach of Resolution 687 revived the authority to use force under Resolution 678; and Resolution 1441 found Iraq to be in breach of Resolution 687.³⁵⁶ In addition to this legal reasoning, the US declared the Iraq War to be a continuation of the “war against terror” and justified it under the preemptive defense doctrine as defined in the National Security Strategy in 2002. However, there are problems with this legal basis. First, Bellamy argues that Resolution 687 does not state that Resolution 678 can be reactivated if Iraq fails to comply. Moreover, the US

³⁴⁷ United Nations Iraq, “UNAMI Human Rights Office Civilian Casualties: 2008-2012”, http://www.uniraq.org/images/documents/UNAMI_HRO_%20CIVCAS%202008-2012.pdf, (06.08.15).

³⁴⁸ United Nations Iraq, “Civilian Casualties”, http://www.uniraq.org/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=159&Itemid=633&lang=en, (06.08.15).

³⁴⁹ Iraq Body Count, “About the Iraq Body Count Project”, <https://www.iraqbodycount.org/about/>, (06.08.15).

³⁵⁰ Iraq Body Count, “The War in Iraq: 10 Years and Counting”, <https://www.iraqbodycount.org/analysis/numbers/ten-years/>, (06.08.15).

³⁵¹ International Coalition for the Responsibility to Protect, “The Crisis in Iraq”, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-iraq>, (06.08.2015).

³⁵² Bellamy, *Ethics and Intervention*, p. 132.

³⁵³ U.N. Security Council, 2963rd Meeting, “Resolution 678 (1990)”, S/RES/678, 29 November 1990, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/678\(1990\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/678(1990)), (13.12.2015).

³⁵⁴ U.N. Security Council, 298th Meeting, “Resolution 687 (1991)”, S/RES/687, 3 April 1991, <http://www.un.org/Depts/unmovic/documents/687.pdf>, (13.12.2015).

³⁵⁵ U.N. Security Council, 4644th Meeting, “Resolution 1441 (2002)”, S/RES/1441, 8 November 2002, <http://www.un.org/Depts/unmovic/documents/1441.pdf>, (13.12.2015).

³⁵⁶ Bellamy, *Ethics and Intervention*, p. 134.

and the UK's failed efforts to pass a resolution to use force in Iraq in 2002 shows the UNSC's omission of the use of force option. Secondly, preemptive defense discourse of the US lacks the legal basis for justification. The preemptive defense strategy represents "a broader understanding of self-defense," where existence of an imminent threat (not necessarily evident) constitutes justification for the use of force. However, according to Bellamy, this strategy fails to explain what new type of threat those "rogue states" pose to require this new strategy as a response.³⁵⁷

Once it became clear that the UNSC was not going to authorize a resolution for the use of force in Iraq, Blair moved the emphasis to humanitarian necessity of the intervention. He argued that the alternative to war was sanctions regime, under which Iraqi people suffered for long years. Sanctions regime was imposed with the hope that pressuring people would force them to overthrow Saddam regime, but failed to achieve its goals. Therefore, war was morally required. However, problems with sanctions regime had been evident before 2003. First, it did not discriminate between those responsible for the breach of international law and civilians. Secondly, it was disproportionate; it brought more harm than good between 1991 and 2003. Use of sanctions as a response to killings did not stop killings.³⁵⁸ Moreover, coalition forces argued that Saddam regime's humanitarian record constituted a moral basis for intervention.³⁵⁹ Although Saddam regime did really have a record of breaking natural (1988 and 1991 attacks on Kurds and Shi'ites) and positive international law (1981 invasion of Iran and 1990 invasion of Kuwait), human rights situation did not worsen towards 2003.³⁶⁰ Bellamy argues that "the use of force against Iraq in either 1988 or 1991 would have been morally legitimate, because it would have been a direct response to state-led mass murder and hence an act of defense for others against breaches of natural law."³⁶¹ He concludes that "humanitarian justifications were abused to justify a war that could not be justified by either positive international law or reasons of state (the defense of the state and its allies)."³⁶²

³⁵⁷ Bellamy, *Ethics and Intervention*, p. 134 – 135.

³⁵⁸ Bellamy, *Ethics and Intervention*, p. 136-137.

³⁵⁹ Bellamy, *Ethics and Intervention*, p. 137.

³⁶⁰ Bellamy, *Ethics and Intervention*, p. 142.

³⁶¹ Bellamy, *Ethics and Intervention*, p. 142.

³⁶² Bellamy, *Ethics and Intervention*, p. 145.

After this brief coverage of western interference in the region, the next part dwells upon the colonial history of Libya and the era after the independence up until the 2011 intervention.

3.2. A BRIEF HISTORY OF LIBYA

3.2.1. Pre-Colonial and Colonial Era

Libya had a strategic location for the 19th century world commerce, since three of the four major caravan routes that crossed across Sahara passed through Libyan territory. Tripoli and Benghazi were important ports for African exports to Europe.³⁶³ Libyan interaction with Arabs dated back to 642 AD, when the first Arab troops arrived at Cyrenaica and imposed annual tax on native Berber population. Then, despite the serious resistance of Berber population, they captured Tripoli. By 1050-1100 AD, Berber population was almost totally assimilated by the bedouin Arab tribes in terms of language, culture and religion. As nomadic culture consolidated, agriculture went down and caravan trade became the backbone of the economic life. Libyan ports became highly important for the trade between Mediterranean and central Africa.³⁶⁴

Crusader attempts to capture those cities failed and Tripoli, Cyrenaica and Fezzan came under the Ottoman rule in the 16th century. By the 18th century, the central Ottoman rule was loose and the real power was concentrated in local rulers' hands that were originally from Turkey. Libya, together with Somalia and Eritrea, was given to Italy at Berlin Congress of 1884-1885. Italy, which achieved national unification only in the 1860s, was late to become a colonial power and had to settle for these relatively poor colonies, which were not already claimed by other European powers. This was followed by the policy of "slow economic penetration" of Libya by Italy. The government encouraged businessmen to buy Libyan commercial and manufacturing firms and to control the shipping lines and export trade (main goods were esparto grass that was used in manufacturing of high quality paper, cereals, ivory, wool and sponges). By 1940, Banco di Roma had branches in many towns including Benghazi and Tripoli. The major reason behind following a gradual

³⁶³ Carole Collins, "Imperialism and Revolution in Libya", **Middle East Research and Information Project Reports**, No.27, 1974, p. 3.

³⁶⁴ Collins, p. 3.

economic penetration policy was the fear that an aggressive move could frighten other great powers.³⁶⁵

Italian economic penetration in the late 19th and early 20th centuries hindered development of indigenous Libyan bourgeoisie since most of the commercial and manufacturing businesses were now owned by Italians. Society was still organized along tribal lines. Italian colonization disturbed nomadic life but had no aim to incorporate Libyan people to new manufacturing or commercial initiatives. Libyans were denied to hold certain jobs, which were available to Italians. This situation prevented development of indigenous classes within the native Libyan population that could resist economic exploitation.³⁶⁶

Yet, Italy realized that it should adopt a more militant policy in order to restrain the Ottoman impact and other great power claims over those territories. The policy of gradual economic penetration failed to convince the Libyan people to sell their properties to Italian interests, in part due to counter-efforts by the Ottoman administrators. As a result, Italy started its military invasion of Libya in 1911. By that time, Libya was in bad economic condition because of the diversion in the Saharan trade as a result of great power involvement in the region and Berlin Congress decision to end piracy; two main economic sources of Libyan people. As a response to economic decline, a non-military religious revivalist-reformist movement named Sanusi Order was born in Cyrenaica. It was founded by Sayyid Muhammad ibn Ali as-Senussi as a non-military religious brotherhood that defended economic self-support. The brotherhood developed ties with many tribes mostly from Cyrenaica, as well as Fezzan and Tripolitania.³⁶⁷ Gradually, it would consolidate its place in social and political life of Libya, and become a major political actor:

The order was able to bring a relative stability to the disintegrating economic situation in the Libyan hinterland and to the inter-tribal feuding that had so sapped the resources and energies of the nomadic and pastoral tribes. It also led to increased political as well as religious influence for the Sayyid himself, and, after 1859, to his son, bringing him increasingly into conflict with the European imperialist powers surrounding Libya.³⁶⁸

³⁶⁵ Collins, p. 5.

³⁶⁶ Collins, p. 7.

³⁶⁷ Collins, p. 6.

³⁶⁸ Collins, p. 6.

The Order's first resort to arm was in 1902 against French expansionism, which resulted in defeat of the order. When the Italian military invasion started in 1911, the Sanusi order became the major nationalist resistance force against the invasion.³⁶⁹ The Ottomans helped the Libyans to organize resistance; they sent military reinforcement including the officer Mustafa Kemal to the province, which nurtured pan-Islamic sentiments among the Libyans unlike the rising Arab nationalism elsewhere in the region.³⁷⁰ Although resistance by the Sanusi order, joined by other tribal leaders and supported by the Ottomans, was strong enough to restrict Italian military invasion, the Ottomans, faced with other challenges in the Balkans at that time, agreed to sign a treaty in 1912 which recognized independence of Cyrenaica and Tripolitania under Italian sovereignty. During the First World War, Sanusi forces were supplied arms against Italy by the Turks, Germans and Austrians.³⁷¹ The Ottomans, who signed a peace treaty with Italy in 1912, retained their military support unofficially in a way that fostered the pan-Islamic sentiments among Libyan people. The Sanusi forces were convinced by the Ottoman officers to attack British forces in Egypt in 1915 in an attempt to weaken them.³⁷² Once the Sanusi forces were defeated by the British in 1916, Italy regained the control of Libya and an armed truce between the Sanusi order, Italy and Britain was agreed in 1917.³⁷³

Italy followed what it called "pacification" policy between 1922 and 1935, which involved the brutal repression of Libyan opposition. The Italians occupied Sanusi camps. By 1929, most of Tripolitania and Fezzan were occupied. Sanusi *zawiyas* (Islamic religious schools) that were suspected to be in relationship with guerillas were closed. Almost the entire nomad population of Cyrenaica was forced to live in concentration camps, away from conflict zones. By the end of 1931, the Italians succeeded to eliminate resistance through indiscriminate use of force, torture, and destruction of tribal economic resources. In September 1931, the Italians captured and hanged Omar Mukhtar, who was a tribal sheikh and a prominent resistance leader.³⁷⁴ A large part of the native population was wiped off

³⁶⁹ Collins, p. 7.

³⁷⁰ Anderson, p. 66.

³⁷¹ Collins, p. 8.

³⁷² Anderson, p. 66.

³⁷³ Collins, p. 8.

³⁷⁴ Collins, p. 9.

during the period of 'pacification'. A population of 1.4 million was reduced to 825,000 in 1933.³⁷⁵

Between 1932 and 1942 was the period of settler colonialism. The land was confiscated and given to unemployed people and peasants from Italy while Libyan nomads and farmers were forced to move to poorer areas. Settlements built for nomadic people, with the aim of settling nomads, were inferior to the ones built for the Italians. The Libyans were denied to attend Italian schools. As a result, the Libyans were only qualified for manual and menial jobs. No Libyan person could work in a position higher than an Italian person. Libyan people's access to education was so restricted that in 1949, there were only 16 Libyan university graduates.³⁷⁶ The Islamic law was replaced with the Italian colonial code and Arab language in public services and offices was replaced with Italian.³⁷⁷

In 1943, Britain occupied Cyrenaica and Tripolitania while France occupied Fezzan. After the end of the Second World War, the Great Powers agreed that Libya was not economically ready for independence, and the issue was transferred to the UN. According to the UN decision in 1949, Libya was to be independent by January 1952 after a transitional process guided by a UN Commissioner and a special council consisting of representatives from major and regional powers.³⁷⁸ On December 24 1951, Libya was declared as a sovereign state in a monarchical form and the throne was given to Idris, who had become the Sanusi leader after the failed attack on the British in 1916, and fled the country in 1922 for Cairo where he had consolidated his relations with the British.³⁷⁹

³⁷⁵ Ingrid Tere Powell, "Managing Colonial Recollections", **Interventions: International Journal of Postcolonial Studies**, Vol.17, No.3, 2014, p. 454.

³⁷⁶ Collins, p. 9 – 10.

³⁷⁷ Powell, p. 456 – 457.

³⁷⁸ Collins, p. 11.

³⁷⁹ Anderson, p. 67.



United Nations. Cartographer. **Libya. Map. 2015.** Retrieved from <http://www.un.org/depts/Cartographic/map/profile/libya.pdf>

3.2.2. Idris Era (1951-1969)

The Libyan economy was in bad shape after the independence. There was no capital, no industry, no agricultural productivity, and no educated people to become private entrepreneurs and diversify economic sources as the Libyans had been denied from education under the colonial rule. The economy was dependent on external funding received mainly from the US and the Great Britain in return for some military base rights secured by the Libyan government.³⁸⁰

Oil rent became a major economic source of the Libyan economy in the 1960s after oil was found in Libya. Oil production reached 3.6 million barrel per day in 1970, a rate very close to that of the long-established oil producers of the region like Iran and Saudi Arabia; and Libya became the fifth largest oil exporter in the world.³⁸¹

Idris era witnessed popular resentment which emanated from four main reasons. First reason was the unequal distribution of the oil wealth. Under the Idris regime, oil producing areas were divided into many concessions which were given to different oil companies including the major ones. Concessions and contracts were given in line with the payments made to members of royal family by those companies. Second reason was the recruitment of foreigners for qualified jobs because Libyan people lacked the technical training due to the insufficient education system that did not respond to the industrial needs. Third reason was bad economic conditions. Libya was tackling with high inflation and unemployment rates arising out of its import-dependent economy, as the Libyan industry was too underdeveloped to provide the goods and services now demanded as a result of the growth in oil revenues. There was no major industry other than the oil industry, because the Idris regime was unable to diversify the economy. Fourth reason was Idris regime's close relations with the Western countries. Libyan nationalists showed reaction to the Suez Canal crisis and demanded the government to break the diplomatic relations with the Western powers. With Egypt's help, armed Libyan nationalists attacked British and American installations. The government suppressed the uprising but

³⁸⁰ Collins, p. 12.

³⁸¹ Collins, p. 13.

resentment continued. American and British embassies were attacked after the defeat of Arabs in 1967.³⁸²

Without embracing Libyan patriotism or Arab nationalism, the Idris regime was primarily loyal to its tribal ties with Cyrenaica. The regime's corruption which was associated with its favoring of Cyrenaica and Sanusi members hindered development of a loyalty to Libyan state or Islamic identity among Libyan people, and instead, cemented the notion of Arab nationalism. Domestic politics of highly corrupted regime was guided by family relations, while foreign policy was almost entirely in accordance with great powers' interests. The Arab nationalists were unhappy about the regime's close relations with the US and Britain.³⁸³ The regime's political legitimacy was only religious (for Idris was the leader of Sanusi order). All these socio-economic conditions, westward policies and corruption gathered several classes together in opposition to Idris rule.

3.2.3. Gaddafi Era (1969-2011)

On September 1, 1969, army officers and soldiers overthrew the Idris government with a bloodless coup d'état. The Revolutionary Command Council (RCC), comprised of the officers who led the coup, took the control of government. Captain Muammar Gaddafi, one of the officers, was promoted to Colonel and became the leader of the coup and the RCC.³⁸⁴ The members of the Council had different regional backgrounds which assured the Libyan people that no particular tribal or regional element would be favored by the new government. The new regime, though it seized Sanusi properties, depended on religious elements. It adopted religious criminal codes and provided the orthodox *ulama* positions in legal structure. However, Gaddafi's relations with the *ulama* deteriorated in time as he consolidated his power. His economic policy denied them to access the economic sources they previously enjoyed. His ill-treatment of the religious establishments was rooted in his distrust of the Sanusi order which he equated with corruption and closeness to the West.³⁸⁵

³⁸² Collins, p. 12 – 15.

³⁸³ Anderson, p. 68 – 69.

³⁸⁴ Collins, p. 15.

³⁸⁵ Anderson, p. 69 – 71.

The ideology of new regime was named as the “Third International Theory” by Gaddafi. It was a reconciliation of Nasser’s Arab nationalism, Bedouin desert egalitarianism and stateless ideology. Although it claimed to build a “state of masses” where people were able to influence political decisions through popular committees, the power was actually concentrated in the hands of Gaddafi and his inner circle known as the “men of the tent,” a small group of people consisting of friends, family members and advisers. The notion of state or loyalty to Libyan state that could not flourish during the Idris regime due to the regime’s favoring of tribal loyalties once again failed to develop under Gaddafi rule. This can be attributed to the co-existence of four power structures in the society: Gaddafi and family members, people from Gaddafi’s inner circle, the tribal structure of society, and the formal structure of “state of the masses.”³⁸⁶ The “state of masses” system, although formally considered as a source of power, had limited impact in political life. The system was working through a large number of committees, congresses and regulatory and supervisory bodies. As Paoletti quotes from Pargeter, the existence of so many institutions only limited their role in the wider power structure. Pargeter argues that Gaddafi’s power was reinforced by the existence of so many institutions since he was “regarded as the voice of wisdom” in the middle the chaos that emanated from the complexity of those institutions.³⁸⁷

The new regime as defined by Gaddafi was anti-capitalist and anti-communist. In Gaddafi’s account, the West constituted the biggest threat against Arab unity, Arab control over resources and Arab independence; nevertheless Soviet imperialism was as exploitative as western capitalism. He named his ideology as Arab Socialism or Socialist Islam. The new regime cancelled the purchase of air defense system from Britain. American volunteers who came to train Libyans were asked to leave. Street signs were changed to Arabic. In order to nationalize the economic life, businesses owned by foreigners, if could not be claimed by Libyans due to the lack of capital, came under public ownership. Foreign employees were replaced with Libyans. The new regime aimed at a self-sufficient economy and greater Libyan control over Libyan sources, which required greater state involvement in economic life (industry and commerce), and diversification of economic base. The significant sectors like banking and petroleum marketing were

³⁸⁶ Emanuella Paoletti, “Libya: Roots of a Civil Conflict”, **Mediterranean Politics**, Vol.16, No.2, 2011, p. 315 – 316.

³⁸⁷ Paoletti, p. 317.

nationalized. Sources of aid, technical assistance and trade partnerships were diversified in order to avoid dependence on either (western or Soviet) camps.³⁸⁸ However, just like the Idris regime, the Gaddafi regime failed to diversify economy by initiating new industries and retained rentier state tradition.³⁸⁹

Both King Idris and Gaddafi based their political authority on tribal structures. Tribal leaders were given the status of Popular Social Leadership as “respected natural leaders” of local communities, which they would serve for three years on a rotational basis. Thus, they had a considerable social power which they used for protecting tribal or regional interests. For instance, until 2011, three most powerful tribes, Warfalla, Magariha and Qadhafa were in charge of military and all security forces. So, from the Ottoman times to the end of Gaddafi rule, domestic politics had always involved family or tribal loyalties.³⁹⁰

The fact that Libya became an independent state had little effect on Italian way of thinking of Libya even after the overthrow of Western-oriented monarchy. For instance, in a 1998 agreement, the Italian government agreed to cooperate for the recovery of landmines left from the Second World War and building a hospital for those wounded by landmines. When Gaddafi asked for compensation for Italian colonialism during the talks, Lamberto Dini, then the Minister of Foreign Affairs, replied, “Fifty years ago the common ethic justified colonialism, and now we can only say sorry,” a statement which legitimizes the colonial system by arguing that what happened in the colonial era was right for its time, in a very Eurocentric way that assumes European colonial claims to be the “common ethic.”³⁹¹

The colonial past has been strategically used by both parties. In 2008, the agreement of “friendship, partnership and cooperation” was signed between Libya and Italy, which promised Libya 5 billion dollars as a compensation for colonial damages. Italy and Libya started signing economic agreements that granted Italian investors opportunities to make investments in Libya. In return for the financial support given by Italy under the name of compensation for the colonial past, Libya agreed to prevent migration from North Africa and Sub-Saharan Africa to Italy and Europe through the Mediterranean borders of Libya. In 2010, in a meeting regarding the migration issue, Berlusconi stated that the “wound has been healed” and

³⁸⁸ Collins, p. 16 – 18.

³⁸⁹ Paoletti, p. 318.

³⁹⁰ Paoletti, p. 317 – 318.

³⁹¹ Powell, p. 462.

colonial past now “belongs to history books,” implying that no more demands by Libya on this basis would be responded positively while Gaddafi claimed that Italy had not done enough to compensate for the damage it gave in the past and demanded 5 billion Euros in order to prevent migration from Africa to Europe.³⁹²

3.2.4. Arab Spring and the Road to Intervention

The wave of protests in the Arab world, which would later be called Arab Spring, broke out by December 2010. The origins of the unrest in the Arab World rest in socio-economic demands that had not been met by the governments, and the oppressive state apparatus, which is a heritage of the colonial past. For decades, governments of Arab states were able to control political dissidence by distributing the revenues among loyal groups. Social and political rights were traded in return for social and economic opportunities provided by the state. Arab governments’ failure to reform their economic systems together with the effect of the world financial crisis contributed to popular discontent and built up the way for region-wide political protests. They were affected badly by the world economic crisis; food and gasoline prices went up. The protest in Egypt and Tunisia were originally about rising food prices and lack of welfare provisions by the government.³⁹³ The other factor that triggered the unrest was the “colonially-imposed oppressive state apparatus in the Arab World.” The regulatory and security apparatus of the oppressive “uncivil” colonial state were adopted by the new indigenous rulers with small modification after independence.³⁹⁴ The uprising was “an attempt by the Arab masses to chart a path independent of their colonial past, and strive for a politics and statehood that is disconnected from the legacy of the uncivil state.”³⁹⁵

By mid-February 2011, protests spread to Libya and unlike preceding examples of Egypt and Tunisia, turned violent in a very short time. This partly owes to Gaddafi’s assertiveness to use force against the protesters which showed itself in his speech where he stated that he had not yet used as much force as he could use and that he would crush the protesters for national unity that is “worth more than a

³⁹² Powell, p. 464.

³⁹³ El Hassan bin Talal and Rolf Schwarz, “The Responsibility to Protect and the Arab World: An Emerging International Norm?”, **Contemporary Security Policy**, Vol. 34, Issue: 1, 2013, p. 6.

³⁹⁴ Jacqueline S. Ismael and Shereen T. Ismael, “The Arab Spring and the Uncivil State”, **Arab Studies Quarterly**, Vol. 35, No. 3, 2013, p.229 – 233.

³⁹⁵ Ismael and Ismael, p. 230.

small number of protesters” whom he called “rats and drug edicts”³⁹⁶ and urged his supporters to “go out and attack the cockroaches demonstrating against his rule.”³⁹⁷ The quick establishment of an armed opposition under the name of Transitional National Council (TNC) also contributed to protests to turn violent.³⁹⁸

Some scholars argue that the situation in Libya was a little different than it was reported by the western media. Accordingly, many protesters were armed from the first day of the uprising in February 2011 whereas the Gaddafi forces initially responded with rubber bullets and water cannons. For instance, in Benghazi, violence was triggered when protesters threw petrol bombs in February 15 and in Tripoli, protesters initiated violence by burning government buildings. A French doctor working in a Benghazi hospital explained that in the first days of the conflict, government forces shot people first in the legs and abdomen and only then in the chest and head.³⁹⁹

Human Rights Watch reported that, after seven weeks of fighting in Misurata, only 22 of the total 949 casualties were women. This statistic contradicts the claims of indiscriminate use of force by the Gaddafi forces. If government forces used indiscriminate force, the percentage of female casualties would likely be higher. Moreover, when rebel-held cities were re-captured by the government forces, like Ajdabiya, Bani Walid, Brega, Ras Lanuf, Zawiya and Misurata, rebels who laid down their arms were not pursued by the government forces. On March 17, Gaddafi, addressing the rebels of Benghazi, declared that those who lay down their arms would not be pursued by the government.⁴⁰⁰

On February 22, the League of Arab states suspended Libya’s membership to the organization until the demands of people of Libya were met.⁴⁰¹ On February 23, African Union Peace and Security Council issued a statement that “strongly condemns the indiscriminate and excessive use of force and lethal weapons against peaceful protestors” and urged both the Libyan authorities and people of Libya “to

³⁹⁶ Ben Quinn and Jonathan Haynes, “Qadhafi speech and Libya unrest: as it happened”, **The Guardian**, 22.02.2011, <http://www.theguardian.com/world/blog/2011/feb/22/libya-gaddafi-speech-reaction-live-updates>, (14.12.2015).

³⁹⁷ “Libya Protests: Defiant Qadhafi refuses to quit”, **BBC News**, <http://www.bbc.com/news/world-middle-east-12544624>, (19.08.2015).

³⁹⁸ Luke Glanville, “Intervention in Libya: From Sovereign Consent to Regional Consent”, **International Studies Perspectives**, Vol. 14, No. 3, 2013, p. 333.

³⁹⁹ Alan J. Kuperman, “A Model Humanitarian Intervention: Reassessing NATO’s Libya Campaign”, **International Security**, Vol.38, No.1, 2013, p. 108 – 110.

⁴⁰⁰ Kuperman, p. 111-113.

⁴⁰¹ “The Arab League Suspends Libya Until Demands of the People are Met”, **BBC News**, 23.02.2011, http://www.bbc.co.uk/worldservice/africa/2011/02/110223_libya_arableague_focus.shtml, (24.08.2015).

exercise maximum restraint and to put an end forthwith to all acts of violence and the destruction of property.”⁴⁰² On March 10, The Council issued another statement where it rejected any foreign military intervention.⁴⁰³

On 7 March 2011, the Gulf Cooperation Council (GCC) called upon the UNSC to “take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya.”⁴⁰⁴ On 8 March 2011, Committee of Permanent Representatives of the Organization of Islamic Cooperation (OIC) issued a statement to express member states’ concerns regarding the bloodshed in Libya. The statement “emphasized the imperative of respecting the sovereignty, territorial integrity of Libya and noninterference in its internal affairs” and underlined that the OIC would be against any form of military intervention to Libya. However, the Committee also stated that the Emergency Meeting would review the developments in Libya and make decisions on various recommendations, including whether to establish a no-fly zone over Libya. If so established, the no-fly zone would be under UN supervision and would be implemented according to a Resolution by the UNSC. Such a no-fly zone would be explicitly tasked with protecting the civilian population.⁴⁰⁵ On March 12 2011, the League of Arab States called upon the UNSC to impose a no-fly zone over Libya to protect civilians however by rejecting “all forms of military intervention.”⁴⁰⁶

On 25 February 2011, Human Right Council of the UN established the International Commission of Inquiry on Libya in emergency session “to investigate all alleged violations of international human rights law in Libya.” The Commission found that “international crimes, specifically crimes against humanity and war crimes, were committed by Qadhafi forces in Libya. Acts of murder, enforced

⁴⁰² African Union Peace and Security Council, **Communiqué of the 261st Meeting of the Peace and Security Council**, 23 February, 2011, <http://www.au.int/ar/sites/default/files/PSC%20Communiqué%20on%20the%20situation%20in%20Libya.pdf>, (23.08.2015).

⁴⁰³ African Union Peace and Security Council, **Communiqué of the 265th Meeting of the Peace and Security Council**, 10 March, 2011, <http://www.peaceau.org/uploads/communiqué-libya-eng.pdf>, (20.01.2016).

⁴⁰⁴ Lauterpacht Centre for International Law, “Statement by the GCC Concerning Libya, 7 March 2011”, http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya_13_AFP_Report.pdf, (23.08.2015).

⁴⁰⁵ Lauterpacht Centre for International Law, “Final Communiqué Issued By The Emergency Meeting Of The Committee Of Permanent Representatives To The Organization Of The Islamic Conference On The Alarming Developments In Libyan Jamahiriya, 8 March 2011”, http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya_16_Final_Communique_Committee_of_Permanent_Representatives%20.pdf, (23.08.2015).

⁴⁰⁶ Glanville, p. 334.

disappearance, and torture were perpetrated within the context of a widespread or systematic attack against a civilian population ... additional violations including unlawful killing, individual acts of torture and ill-treatment, attacks on civilians and rape.”⁴⁰⁷

The Commission stated that it received “a first-hand account of orders from Colonel Qadhafi to suppress demonstrations ‘with all means necessary,’”⁴⁰⁸ and that its findings on significant deaths and injuries proved the excessive use of force by Gaddafi forces with an intention to kill, level of which signified “a central policy of violent repression.”⁴⁰⁹ Based on testimonies of survivors and witnesses, the Commission concluded that torture and unlawful killings by Gaddafi forces in several official and unofficial detention centers amounted to a war crime; and given that many of detainees were part of the civilian population “the systemic and widespread executions constitute a crime against humanity.” Moreover, based on interviews with victims, the Commission determined that torture, rape and other types of sexual assault were committed by Gaddafi forces sometimes during and after arrests.⁴¹⁰

On 26 February 2011, the UNSC adopted Resolution 1970. The Resolution refers to condemnation by the Arab League, the AU and Secretary General of the OIC of the human rights violations in Libya⁴¹¹ and recalls “the Libyan authorities’ responsibility to protect its population.”⁴¹² The measures taken in Resolution 1970 by the UNSC under Article 41 of the Chapter VII includes referral of the situation in Libya to the Prosecutor of the ICC,⁴¹³ imposition of arms embargo,⁴¹⁴ imposition of travel ban for 16 individuals,⁴¹⁵ and asset freeze for Gaddafi and his 5 children.⁴¹⁶

On 17 March 2011, the UNSC issued another resolution upon “the failure of the Libyan authorities to comply with resolution 1970.”⁴¹⁷ The Resolution 1973

⁴⁰⁷ United Nations Human Rights Council, International Commission of Inquiry on Libya, 19th Session, **Report of the International Commission of Inquiry on Libya (A/HRC/19/68)**, 8 March 2012, p.1, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.68.pdf>, (02.12.2015).

⁴⁰⁸ Human Rights Council, para. 16

⁴⁰⁹ Human Rights Council, para. 22.

⁴¹⁰ Human Rights Council, para. 24, 25, 26, 27, 28, 35.

⁴¹¹ U.N. Security Council, 6491st Meeting, “Resolution 1970 (2011)”, S/RES/1970, 26 February 2011, preamble, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970(2011)), (02.12.2015).

⁴¹² Res. 1970, preamble.

⁴¹³ Res. 1970, para. 4.

⁴¹⁴ Res. 1970, para. 9

⁴¹⁵ Res. 1970, para.15

⁴¹⁶ Res. 1970, para.18

⁴¹⁷ U.N. Security Council, 6498th Meeting, “Resolution 1973 (2011)”, S/RES/1973, 17 March 2011, p.1, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973(2011)), (02.12.2015).

expresses the international community's concerns regarding "widespread and systematic attacks ... against the civilian population" in Libya, which "may amount to crimes against humanity."⁴¹⁸ The Resolution reiterates the condemnations by the Arab League, the AU, and the Secretary General of the OIC of the violations of human rights taking place in Libya.⁴¹⁹ Most significantly, acting under Chapter VII of the UN Charter, the Resolution, which determines that the situation in Libya "continues to constitute a threat to international peace and security," decides to establish a no-fly zone in the airspace of Libya,⁴²⁰ and authorizes member states "to take all necessary measures ... to protect civilians and civilian populated areas under threat of attack in Libyan Arab Jamahiriya."⁴²¹ The Resolution further states "a ban on all flights in the airspace of the Libyan Arab Jamahiriya constitutes an important element for the protection of civilians as well as the safety of the delivery of humanitarian assistance and a decisive step for the cessation of hostilities in Libya."⁴²²

Five states, including two permanent members, Russia and China, abstained over the disagreement on whether the use of force was necessary. China, for its part, explained that they were against the use of force. Russia explained its concerns that it could "potentially open the door to large-scale military intervention." Germany and Brazil abstained fearing that use of force could worsen the existing situation.⁴²³ India drew attention to lack of enough diplomatic effort to solve the problem with non-military measures. Russia and China stressed on the importance of position of regional organizations. In that sense, the Arab League's call for a no-fly zone opened the way for abstention instead of vetoing.⁴²⁴

After the adoption of the Resolution 1973, the humanitarian intervention was first conducted by a coalition of states (Belgium, Canada, Denmark, France, Italy, Norway, Qatar, Spain, UK and US) and then transferred to the NATO. The NATO-led Operation, Unified Protector, comprised three elements: imposition of a no-fly zone over Libya to prevent civilian targets to be bombed; imposition of a maritime arms embargo to prevent any transfer of arms in the Mediterranean Sea; and

⁴¹⁸ Res. 1973, p.1

⁴¹⁹ Res. 1973, p.1

⁴²⁰ Res. 1973, para. 6-12

⁴²¹ Res. 1973, para. 4

⁴²² Res. 1973, p. 2.

⁴²³ Justin Morris, "Libya and Syria: R2P and the Spectre of the Swinging Pendulum", **International Affairs**, Vol. 89, No.5, 2013, p.1272.

⁴²⁴ Bruce D. Jones, "Libya and the Responsibilities of Power", **Survival**, Vol. 53, No. 3, 2011, p. 54.

military measures against military forces that engage in attacks or threaten attacks to civilians and civilian populated areas.⁴²⁵ The operation ended on 31 October 2011.

3.2.5. Resolution 1973

Resolution 1973 is significant because it is the first UNSC resolution that authorizes use of force for human protection purposes “against the wishes of a functioning state.”⁴²⁶ The two previous resolutions for military intervention were authorized either with the host state concern, as in the case of Rwanda (Resolution 929), or in the absence of a functioning state authority, as in the case of Somalia (Resolution 794). In Kosovo and Iraq cases, interventions took place without UN authorization.⁴²⁷ Resolution 1973 is also significant for being the first resolution explicitly authorizing imposition of a no-fly zone for the purpose of protecting civilians. The two preceding resolutions that involved the imposition of no-fly zones were Resolution 688 in 1991 (Gulf War/Iraq) and Resolution 781 in 1992 (Bosnia). Resolution 688 had no explicit reference to no-fly zone although it was used to legitimize one. Resolution 781 regarding the situation in Bosnia justified a no-fly zone, because it was “necessary for the delivery of humanitarian aid;” not for the protection of civilians.⁴²⁸

An important fact about Resolution 1973 is that it “reasserted the centrality of the Security Council”⁴²⁹ in the R2P debate. Although ICISS Report privileges the UNSC in authorization of action, it mentions alternative ways in case the UNSC is paralyzed. However, in Libya case, western states, particularly NATO members, made it clear that they would not act without the Council’s mandate. In a way that gave central role to the UNSC unlike the ICISS report.⁴³⁰

Another point about Resolution 1973 is that it talks about “protection of civilian populated areas” as well as “protection of civilians.” By doing that, the UNSC

⁴²⁵ Talal and Schwarz, p. 8.

⁴²⁶ Alex J. Bellamy, “Libya and the Responsibility to Protect: The Exception and the Norm”, **Ethics & International Affairs**, Vol. 25, No. 3, 2011, p. 263.

⁴²⁷ Glanville, p. 325.

⁴²⁸ Tim Dunne and Jess Gifkins, “Libya and the State of Intervention”, **Australian Journal of International Affairs**, Vol. 65, No. 5, 2011, p. 523.

⁴²⁹ Jennifer Welsh, “Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP”, **Ethics & International Affairs**, Vol. 25, No. 3, 2011, p. 256.

⁴³⁰ Welsh, p. 257.

aimed to block Gaddafi and his forces from certain cities; an approach reflected in President Obama's ultimatum to Gaddafi to withdraw from rebel strongholds. The wording of the Resolution is significant for it breaks impartiality and the UNSC is now taking side with the rebels.⁴³¹

Despite the Secretary General's explicit reference to both pillar one (national level) and pillar two (international level) elements of R2P, the member states refrained from any explicit reference to international responsibilities within the framework of R2P and instead only pillar one elements were included in the textual composition of Resolution 1973 without any explicit reference to the broader international responsibilities falling on the international community.⁴³²

Resolution 1973 is being criticized on the basis of the speed of its authorization because it passed without its effects being sufficiently considered. As Bellamy argues,

[T]here is no hiding the fact that the form of intervention in Libya was highly imperfect, that it delivered indirect and patchy protection at best, and that it placed the region's long term stability in the hands of fractious rebels about whom little is known. Such late-in-the-day decisions about military intervention to prevent atrocities will always be taken in a context of deep uncertainty about their effects and will be driven by the specific political context.⁴³³

Pattison points out some problems with the Libya intervention. Firstly, although the intervention meets the criteria for humanitarian intervention, there was not enough cause for regime change in Libya. The operation meets the just cause requirement for a humanitarian intervention, because Gaddafi regime's intention to massacre people of Libya was clear from the speech where he declared that he would show no mercy to opponents, and by the time the intervention started the regime had killed an estimated of 1,000 to 10, 000 people. The operation meets the right intention requirement as well, because the coalition forces targeted the areas clear from civilians, which demonstrate that the initial intention for the operation was to protect civilians. However, Pattison explains, there is some evidence that by the mid-May 2011, the primary objective of the operation became regime change rather than the protection of civilians. It was clear from the speeches of several coalition

⁴³¹ Welsh, p. 259.

⁴³² Morris, p. 1272 – 1273.

⁴³³ Bellamy, *Libya and the Responsibility to Protect*, p. 269.

leaders that they equated the success of the operation with the overthrow of the Gaddafi regime. He argues that the bar for permissible regime change must be higher than the bar for humanitarian intervention since the dangers of the former are greater than that of the latter, as it is seen in the Iraq case. War casualties (both civilians and soldiers) are likely to be higher in case of regime change. Moreover, it bears a greater potential of instability for the neighboring regions. In Libyan case, however, there was not sufficient cause for regime change. Once the objective for operation became regime change rather than protection of civilians, it lacked other requirements. Since an operation for regime change would likely to bear much more human cost, it was not expected to be in line with *jus in bello* principles. An operation for regime change was not the last resort, because there were other non-military options like imposition of sanctions to force Gaddafi step down. The operation's success was not certain since there was no guarantee that the new regime would have a better human rights record.⁴³⁴

There is evidence that the real intention of the operation was regime change, instead of the protection of civilians. First, if the purpose of the intervention was not regime change, NATO would not be bombing Gaddafi forces that were retreating less than two weeks into the intervention. Second, NATO would not be bombing the forces in Gaddafi's hometown Sirte, where Gaddafi forces were not posing a threat to civilians who were supporters of the regime. Third, instead of seeking to broker a ceasefire, NATO chose to aid the rebels who rejected reconciliation and insisted on the overthrow of Gaddafi, which "significantly extended the war and magnified the harm to civilians, contrary to the intent of the UN authorization."⁴³⁵ The TNC, headed by Mustafa Abdul Jalil, rejected any offer of mediation and refused to talk while Gaddafi accepted Venezuela's offer of mediation by early March 2011 and UN's proposal for an immediate cease-fire by early April 2011. On May 26, the Libyan government offered a ceasefire, negotiations for a constitutional government and compensation to victims. Although it is impossible to know Gaddafi's real intent, NATO did not use its leverage to encourage the rebels to explore the possibility of reconciliation. Instead, it provided unconditional help to the rebels who sought regime change.⁴³⁶

⁴³⁴ James Pattison, "The Ethics of Humanitarian Intervention in Libya", **Ethics & International Affairs**, Vol.25, No.3, 2011, p. 272 – 274.

⁴³⁵ Kuperman, p. 114.

⁴³⁶ Kuperman, p. 113 – 115.

However, Thomas G. Weiss argues that regime change and other outcomes like keeping oil price low or sending message to Iran were not the dominant motivation but the byproducts of the intervention; that the dominant motivation for intervention remained as the protection of civilians.⁴³⁷ Bernard-Henri Lévy, in an interview, argued that criticisms regarding the real purpose of the intervention (i.e. Libyan oil) are pointless since “[h]ad the problem been oil, the easiest solution would have been to maintain Qadhafi’s presence” because “one can ‘deal’ very well with dictators.”⁴³⁸

The coalition forces were criticized for their failure to respond to humanitarian crises elsewhere like Bahrain, Syria and Yemen. The point that is being criticized here is not about morality of the intervention in Libya; the problem is that the coalition forces chose to intervene in Libya while they did not respond to worse situations where an intervention could save greater number of people’s lives and would also be in line with permissibility requirements.⁴³⁹ However, some others argue that, although the urgency of other cases cannot be denied, Libya intervention still serves the humanitarian purposes since it sets an example and a “dissuasive factor” for other dictators.⁴⁴⁰

After this brief coverage of the history of events in Libya and the broader region, the next chapter seeks to have a closer and more focused comprehension of the Arab perception of Libya intervention through examination of columns and commentaries published by two prominent English broadcasting media organs, Al-Jazeera and Asharq Al-Awsat.

⁴³⁷ Thomas G. Weiss, “RtoP Alive and Well after Libya”, **Ethics & International Affairs**, Vol.25, No.3, 2011, p. 291.

⁴³⁸ Bernard Henri Lévy, “Behind the Scenes of France’s Lead on Libya”, **New Perspectives Quarterly**, Vol.28, No.2, 2011, p. 50 – 51.

⁴³⁹ Pattison, p. 276.

⁴⁴⁰ Lévy, p. 51.

CHAPTER FOUR

ARAB PERCEPTION OF NATO'S INTERVENTION TO LIBYA AS IT IS REPRESENTED IN AL-JAZEERA AND ASHARQ AL-AWSAT

This chapter aims to grasp Arab perception of Libyan intervention in 2011 through articles published on two prominent media institutions of the region: Al-Jazeera and Asharq Al-Awsat. To this end, the main questions raised in these articles about the Libyan intervention are extracted and analyzed, by taking the main components of the debate on R2P into consideration. The similar and conflicting views in response to these questions are compared and contrasted under the following headings. Articles to be examined in each section were chosen due to their relevancy to the main theme of each section. In order to avoid repetition, only the articles with the clearest and the most-to-the-point arguments, and those with a focus on the issue are included in the discussion.

4.1. WHAT DOES MILITARY INTERVENTION MEAN? DOES IT NECESSARILY MEAN BOOTS ON THE GROUND, OR CAN WE DESCRIBE ESTABLISHING A NO-FLY ZONE A MILITARY INTERVENTION AS WELL? IS NO-FLY ZONE ANY BETTER THAN AN INTERVENTION BY GROUND TROOPS?

The articles examined in this part point to a general opposition to Western military intervention. However, authors differ on the question of whether imposition of a no-fly zone is military intervention or not. While some authors argue that imposition of a no-fly zone by the Western powers, as long as it is imposed upon the calls from the rebel forces or regional powers, only gives the rebels the chance they need to fight their own wars; some others insist on the argument that a no-fly zone is military intervention by all means.

In his article, where he calls upon the "international community" to take action against the tyranny that Libyan people had been suffering from, Tariq Alhomayed, the former Editor-in-Chief of Asharq Al-Awsat, points to the Arab League's and GCC's decisions that call upon the international community to apply a no-fly zone over Libya which, accordingly, gave the international community the necessary mandate to take action. Although he does not exactly answer the question "Can we consider a no-fly zone as a foreign intervention?", it is clear from

the statement below that he apparently does not consider it as a foreign intervention in the strict sense:

Germany and France were quick to welcome the Arab League resolution, even though the Germans were asking: how can the Arab League call for a no-fly zone whilst rejecting foreign intervention? The answer is simple; the decision to impose a no-fly zone will come from the Security Council, and therefore it has international legitimacy, and is not an individual act by one state in particular. Consequently, there must be a unified European and American position, and the imposition of the no-fly zone must be carried out quickly through the Security Council. Of course, this will be a tough diplomatic battle, but the foundations are in place, and the justifications are genuine.⁴⁴¹

What this statement implies is that Arab League's and GCC's decisions, as regional organizations, in favor of a no-fly zone give the international community the necessary mandate to take action; and it is clear from these lines (and the headline; "The Arabs Did It... What About the West") that such an action is expected from the West, who has the capacity to apply a no-fly zone, of course, as underlined above, under "international mandate." So, as long as it is carried out under the international mandate, it is justified as an action to protect Libyan civilians, rather than treated as a "foreign intervention." Alhomayed clearly does not consider it as a foreign intervention in real terms as he answers Germans' question "How can the Arab League call for a no-fly zone whilst rejecting foreign intervention?" by underlying the international mandate under which a possible intervention would be carried out.

Similarly, in his article *Libya: A Horrific Scenario*,⁴⁴² Osman Mirghani, Asharq Al-Awsat's senior editor-at-large, lists a number of actions that could be taken in order to end the "massacre" taking place in Libya and that cannot be named as a "widespread" military intervention; among which he principally mentions a no-fly zone:

In light of this situation, and because we cannot stand idly whilst the Libyan people are massacred, we must request a resolution from the UN Security Council. A no-fly zone does not mean widespread military intervention in Libya; there are many military methods and techniques available that can be used to jam the communication systems used by Gaddafi's forces. Steps can

⁴⁴¹ Tariq Alhomayed, "Arabs Did It... What About the West?", **Asharq Al-Awsat**, 14.03.2011, <http://www.aawsat.net/2011/03/article55247181>, (15.03.2013).

⁴⁴² Osman Mirghani, "Libya: A Horrific Scenario", **Asharq Al-Awsat**, 17.03.2011, <http://www.aawsat.net/2011/03/article55247145>, (15.03.2013).

also be taken against command and control systems, and against radars and computers, thus affecting the air and field capacity of the regime forces. It is also possible to help the Libyans by sending military equipment to the rebels, to enable them to confront Gaddafi's military machine.

Tarak Barkawi from University of Cambridge makes a more skeptic evaluation in his article published on Al-Jazeera.⁴⁴³ In the article where he asks whether NATO's operation to Libya stands as a model for future Western interventions or not, Barkawi portrays the use of air power as a less innocent option than it is widely believed to be:

Airpower offers the illusion that a "clean" war can be fought. Only the "bad guys" are hit by precision guided munitions. The complexities and moral ambiguities of intervention on the ground are seemingly avoided.

To be sure, contemporary airpower, especially in the hands of the experienced professionals in the USAF and the RAF, is extraordinarily precise. Whatever else one can say about Libya, very few civilian casualties were caused by Western air action.

Airpower, however, remains subject to the vicissitudes of war and the diabolical dilemmas of armed intervention. Its use - and withdrawal - may yet contribute to a protracted civil conflict in Libya.

It is clear from these lines that he intends to give an answer to those who claim that a no-fly zone cannot be considered as a widespread military intervention. He obviously argues that the use of air power bears almost the same dangers that a ground war does.

In his article published on Al-Jazeera,⁴⁴⁴ Phyllis Bennis from Institute for Policy Studies and the Transnational Institute in Amsterdam makes it clear that a no-fly zone is a foreign intervention by all means:

Of course, a no-fly zone is foreign intervention, whether one wants to acknowledge it or not, but it is not surprising that the Arab League's approval was hesitant - it is, after all, composed of the exact same leaders who are facing inchoate or massive challenges to their ruling power at home. Supporting the attack on a fellow dictator - oops, sorry, a fellow Arab ruler - was never going to be easy.

⁴⁴³ Tarak Barkawi, "Intervention without responsibility", **Al-Jazeera**, 23.11.2011, <http://www.aljazeera.com/indepth/opinion/2011/11/20111121161326433590.html>, (16.02.2013).

⁴⁴⁴ Phyllis Bennis, "Libya intervention threatens the Arab spring", **Al-Jazeera**, 22.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/20113227357222118.html>, (11.04.2013).

Similarly, Sami Hermez from Center of Lebanese Studies at St. Antony's College, Oxford University, names no-fly zone as military intervention as he mentions possible military options in Libyan case. He equates the imposition of a no-fly zone to military intervention, "since its enforcement would entail patrolling the Libyan skies, shooting down planes and otherwise disabling the Libyan air force."⁴⁴⁵

One can observe the tendency of those who call for the enforcement of a no-fly zone not to classify it as a kind of military intervention and invalidate or counter the accusations by bringing up the issue of international mandate under which a possible action would take place. On the other hand, there are also more skeptic voices who unquestionably describe it as a foreign or military intervention.

Definitions matter. The first part of the question that is raised in this section is about whether imposing a no-fly zone can be described as military intervention. The answer of this question is crucial because it determines whether we can apply the six criteria that require to be met within the context of responsibility to react. If it is considered as military intervention in any sense, then it has to be based on a just cause and in accordance with the other precautionary principles. Apart from that, it can be observed that some of the answers given in this section are related to principles of just cause, right intention, right authority and reasonable prospect for success. As it is seen in the section above, intervention is justified on the basis of protection of civilians, which constitutes the just cause for intervention and implies that the right intention should be protecting civilians. Statements that underline the need for regional support for an intervention, and present Western states as the ones who should carry out the intervention with their capacity can quite reasonably be attributed to principle of right authority. The first part implies that the proper authority for decision making should include regional actors and the second part points to proper authority to carry out the intervention from the perspective of effectiveness (i.e. the Western states). One article which indicates that the adverse outcomes such as a civil conflict that may follow the use of air power are no less serious than that of ground intervention looks at the issue from the perspective of the principle of reasonable prospect for success.

⁴⁴⁵ Sami Hermez, "Libya and the folly of intervention", **Al-Jazeera**, 07.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201135141253240339.html>, (12.04.2013).

4.2. DID GADDAFI REGIME LOSE ITS LEGITIMACY? IF SO, DOES IT MAKE INTERNATIONAL INTERVENTION NECESSARY AND THEREFORE LEGITIMATE?

Although Gaddafi's mistreatment of the population is something that is widely agreed on, the articles handled below in this section, besides the one that represents the very common argument that Gaddafi regime was by no means legitimate given its brutality against the Libyan population, help us to develop a better understanding of the difficulties one may face to determine a regime's legitimacy in the Middle East. They challenge the assumption that once the regime is illegitimate, whoever rises up against it or temporarily replaces it as a governing opposition entity is legitimate by questioning, e.g. what proportion the rebels constitute in the whole population or whether the temporary governing body represents the will of people.

Osman Mirghani⁴⁴⁶ from Asharq Al-Awsat, like many others, thinks that Gaddafi regime had lost its legitimacy because of his ill-treatment of his population. In his words: "Gaddafi's regime has lost its legitimacy after the deaths of thousands of its people, and because of horrors and crises it has brought upon the country today." According to him, it was Colonel Gaddafi who internationalized the issue in the first place by recruiting mercenaries from all over the world and using international companies to recruit them. Moreover, although he admits that "no sane person wants to see foreign intervention in an Arab country," Gaddafi himself, by slaughtering its own people and ordering his army to kill his people which he calls "the rats" without "mercy or pity," called the intervention upon his country. It seems that even if Mirghani does not advocate foreign intervention, he considers this option necessary to prevent Gaddafi from retaining power, which would free him to seek revenge later on.

In his article on Asharq Al-Awsat Adel Al Toraifi, Editor-in-Chief of the newspaper, points to a question which is confusing the minds of Arab intellectuals who supported the popular uprisings: "Could we justify starting a civil war, or resorting to foreign intervention to change a regime, whenever certain citizens take to the streets? Who has the right to self-determination in this case? Citizens as a

⁴⁴⁶ Osman Mirghani, "Why the Colonel has got to go", **Asharq Al-Awsat**, 25.03.2011, <http://www.aawsat.net/2011/03/article55247048>, (17.03.2013).

whole, or just the revolutionaries?”⁴⁴⁷ This is originally a question of regime legitimacy that contains a number of more questions within itself. First of all, as Toraifi mentions, in case a group of people claims a right to self determination, it is important to ask whether it is a group of people who claims the right or it is the nation as a whole. Treating a limited number of people as if they were a whole nation could produce solutions that would be unfair and/or harmful for other parties. Secondly, it is important to observe and investigate whether this group of people is really assaulted by their government so that there comes out a situation that requires intervention or international intervention. All these questions lead us to the basic question of regime legitimacy.

However, Al Toraifi gives three reasons that make it difficult to label regimes as democratic or non-democratic and therefore legitimate or illegitimate in the Middle East. First of all, the tribal, sectarian and provincial identities are still influential. Secondly, rather than being related to democracy, political problems arise from cultural, religious, social, political and economic infrastructure problems which, accordingly, “nurture the culture of autocracy,” rather than democracy. Thirdly, he points out the fact that throwing out the existing system does not always lead to a democratic one.

While there are concerns about the legitimacy of the Gaddafi regime, significant concerns exist about the TNC that is recognized by many foreign governments, including the US and Britain, as the government of Libya. Phyllis Bennis argues, “it is by no means clear that it [TNC] is recognized as such by the rebel militiamen” given the statements by several militiamen that express disloyalty to the TNC like the one reported by *The Independent*: “The rebel fighters in Misrata, who fought so long to defend their city, say privately that they have no intention of obeying orders from the TNC.”⁴⁴⁸ So even if the answer to Adel Al-Toraifi’s question, “Who has the right to self-determination in this case? Citizens as a whole, or just the revolutionaries?” can be ‘Yes, it is the nation as a whole who has the right to self determination because the rebels represent the whole nation,’ whether the TNC represents the rebels (in this case the nation) still remains to be seen.

⁴⁴⁷ Adel Al-Toraifi, “Our Intellectuals and the Revolution”, **Asharq Al-Awsat**, 19.03.2011, <http://www.aawsat.net/2011/03/article55247126>, (15.03.2013).

⁴⁴⁸ Phyllis Bennis, “Libya: Too soon to declare victory”, **Al-Jazeera**, 24.08.2011, <http://www.aljazeera.com/indepth/opinion/2011/08/2011823123039439122.html>, (09.09.2015).

Another important point that is highlighted is whether Gaddafi's loss of legitimacy automatically makes the intervention (not the rebels, but the intervention) legitimate? The intervention's legitimacy depends on many variables several of which are discussed in different sections of this work (e.g. *Is it possible to consider Western military support to opposition forces as a legitimate and useful foreign policy tool*, or, *Did NATO's intervention to Libya set a model for future Western intervention*). Still worth to discuss in this section, if we set aside everything that happened afterwards, the one thing that was considered very crucial *to make the decision for intervention* in Libya was regional support for intervention, which the legitimacy of the decision heavily depended on.

In his article on Al-Jazeera,⁴⁴⁹ Phyllis Bennis argues that the Arab League Chief Amir Moussa's criticism of the Western military operations as soon as the air strikes began was an alarm for the legitimacy of the intervention. After all, the Arab League's support was a precondition for Obama administration to approve Libyan intervention. Having suffered from the lack of legality and legitimacy in the Iraq War and deep drawn into Afghanistan, the US government was not willing to handle another intervention without clear legality and legitimacy provided by the UN and the regional organizations, most notably the GCC and the Arab League. A call for intervention by regional leaders and organizations had been considered as a prerequisite for intervention in all circles. What Bennis points out here is that the legitimacy, partly owed to a call for intervention by the regional organizations, would inevitably be damaged when one of them declared its criticism about the way intervention was handled.⁴⁵⁰

⁴⁴⁹ Phyllis Bennis, "Libya intervention threatens the Arab spring", **Al-Jazeera**, 22.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/20113227357222118.html>, (11.04.2013).

⁴⁵⁰ Many comments in the mass media covered criticisms by several leaders as well as Arab League chief Amr Moussa regarding the conduct of intervention. Simon Tisdall presented the issue as the shattering of the international coalition on Libya in his article where he points to Russian, Chinese, South African and Indian criticisms among others that came out following the first bombing raids. China and Russia, who abstained in the UN Security Council voting, called for immediate ceasefire. Nigeria, and India, who also abstained in the UN voting, demanded Britain and France to step back. The South African President, who had voted in favor of Resolution 1973, also expressed concerns about civilian casualties and called for immediate ceasefire. See Simon Tisdall, "The consensus on intervention in Libya has shattered", **The Guardian**, 23.03.2011, <http://www.theguardian.com/commentisfree/2011/mar/23/libya-ceasefire-consensus-russia-china-india>, (15.11.2015). The Head of Arab League Amr Moussa stated "[w]hat has happened in Libya differs from the goal of imposing a no-fly zone and what we want is the protection of civilians and not bombing other civilians." Beckford argues that Amr Moussa's statement, along with criticisms by Russia, China and India risk undermining the legitimacy of the intervention. See Martin Beckford, "Libya attacks criticised by Arab League, China, Russia and India", **The Telegraph**, 21.03.2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8393950/Libya-attacks->

The questions raised in this section regarding the regime and intervention legitimacy are closely related to the principles of just cause, right intention and right authority. The views expressed with regards to Gaddafi's loss of legitimacy for his slaughter of Libyan people concern the principles of just cause and right intention. Gaddafi's aggression towards his own people constitutes the just cause for intervention and the purpose of ending human rights violations is in line with the principle of right intention. The main question about Gaddafi's loss of legitimacy is present with the sub-questions which are about whether the rebels represent the nation, and whether the NTC, which is recognized as the legitimate governing entity of Libya by the Western states, represent the rebels and hence the will of nation. Thus, if it is found out that rebels do not actually represent the whole nation, the regime slaughters only a group of people and violence is not nation-wide, then the just cause for intervention becomes questionable. Similarly, if the NTC is not actually considered by the rebels as their representative, the legitimacy of intervention is again called into question since the NTC is recognized by Western states as the legitimate head of the nation in the present situation with whom they discuss political strategies. Another issue discussed in this section is whether the legitimacy of intervention was damaged following the criticisms by the Arab League Chief. Given that regional support was considered vital for making the decision to intervene, this discussion can be considered as being indirectly related to the principle of right authority.

criticised-by-Arab-League-China-Russia-and-India.html, (15.03.2015). From a similar perspective, Amr Moussa's criticism is presented as the "first potential crack in the coalition" in an article on Independent by Donald Macintyre, "Arab support wavers as second night of bombing begins", **Independent**, 23.10.2011, <http://www.independent.co.uk/news/world/africa/arab-support-wavers-as-second-night-of-bombing-begins-2247752.html>, (15.11.2015). See also, Edward Cody, "Arab League condemns broad bombing campaign in Libya", **The Washington Post**, 20.03.2011, https://www.washingtonpost.com/world/arab-league-condemns-broad-bombing-campaign-in-libya/2011/03/20/AB1pSg1_story.html, (15.11.2015). Moussa's statement was considered to have so much effect on the legitimacy of the intervention that he had to reiterate his support for Resolution 1973 on the next day, following a meeting with the UN Secretary General Ban Ki-moon. In the statement he said: "We are committed to UN security council resolution 1973. We have no objection to this decision, particularly as it does not call for an invasion of Libyan territory." See Martin Chulov, "Arab League to reiterate backing for Libya no-fly zone", **The Guardian**, 22.03.2011, <http://www.theguardian.com/world/2011/mar/22/arab-league-libya-no-fly>, (15.11.2015).

4.3. WHO SHOULD CONDUCT A POSSIBLE MILITARY INTERVENTION; WESTERN POWERS OR ARAB STATES? DO THE LIMITED MILITARY CAPABILITIES OF ARAB STATES LEGITIMIZE AN INTERVENTION CONDUCTED BY THE WESTERN POWERS?

The views expressed regarding who should conduct an intervention are highly parallel. As it was discussed in the first section of this chapter, no one wants to see foreign troops fighting on the Libyan ground. Revolutionary process should be executed by the locals. However, they also admit that the Arab world lacks the necessary unity or capacity to conduct such an intervention. Therefore Western interference is considered acceptable in order to provide the rebels with the necessary space and capacity to fight their own war and carry out the revolutionary process. One important point to highlight is that the type of intervention discussed here is not an intervention aimed at “promotion of democracy,” but an intervention totally on human rights ground. The premise is: “If the West is the one who can stop the bloodshed, then it would be appropriate to expect them to act.”

In his article regarding the Arab revolutions Ali Ibrahim,⁴⁵¹ Asharq Al-Awsat’s Deputy Editor-in-Chief, makes it clear that he does not find a direct foreign intervention proper and thinks that such revolutionary processes should be directed and controlled by local parties. As an example to the bad practices in the Arab world in that context, he points to the protests that occurred in front of the US embassy in Bahrain during which the protesters demanded the US to pressure on the Bahrain government to implement political reforms. Asking a foreign party to get involved in a domestic political process is certainly on the *not to do list* of Ibrahim as he says, “With the involvement of external parties, the scene only becomes more complex at a whole new level, and this does not benefit any side of society.”

Acknowledging that it is difficult for any state to stay neutral regarding such developments related to human right abuses in today’s world, Ibrahim argues that since democracy cannot be imposed from outside, we should distinguish human rights advocacy from direct foreign intervention. However, as far as the Libyan case is concerned, he claims that an *external approach* was necessary:

⁴⁵¹ Ali Ibrahim, “From North Africa to Bahrain, what do we want from Washington?”, **Asharq Al-Awsat**, 09.03.2011, <http://www.aawsat.net/2011/03/article55247253>, (15.03.2013).

In Libya, the revolution has taken a different path, which in turn has required a different (external) approach. A one-sided military battle has emerged between the opposition based in the East, and the ruling forces entrenched in Tripoli. Massacres have occurred as a result, which have led to the proposal of a no-fly zone over Libya, to protect the opposition from pro-Gaddafi airstrikes. Colonel Gaddafi, for his part, was also demanding Western support under the pretext of fighting al-Qaeda and extremism.

As understood from his lines above, Ibrahim only considers an external intervention necessary in case there are mass human right violations, i.e. massacres, and where the aim is protecting civilians from being slaughtered rather than promoting democracy.

In his above-mentioned article *The Arabs Did It... What About the West*,⁴⁵² Tariq Alhomayed argues that the Arab League's call on the UNSC and the GCC's call on the international community to impose a no-fly zone over the Libyan airspace put the responsibility of taking action on the international society's shoulders. He particularly mentions the West as the one who should carry out the intervention with its "capacities and mechanisms to apply the no-fly zone." Since the regional calls for intervention would provide legitimacy for a western intervention, an *international intervention* seems to be understood as an intervention called for by Arab leaders and applied by the Western forces in this case.

Osman Mirghani⁴⁵³ is also among those who think that letting Gaddafi stay in power would set a bad example for other dictators which would lead them to resort to brute force to stay in power. Mirghani, who praises the Arab peacekeeping force which was formed by the Arab League in the 1970s, states that he would prefer a united Arab force to impose a no-fly zone over Libya, rather than international forces. Although he underlines in his article that "nobody wants to see foreign troops fighting on the ground in Libya," Arab states' inability to create a joint force to take action about Libya made the Arab world "request a resolution from the UN Security Council" to stop the massacre going on in Libya. However, it is important to revisit Mirghani's perception of intervention. First of all, he does not consider a no-fly zone as a widespread military intervention. Second, he mentions the other ways to help Libyans. Providing the rebels with military equipment is one

⁴⁵² Tariq Alhomayed, "Arabs Did It... What About the West?", **Asharq Al-Awsat**, 14.03.2011, <http://www.aawsat.net/2011/03/article55247181>, (15.03.2013).

⁴⁵³ Osman Mirghani, "Libya: A Horrific Scenario", **Asharq Al-Awsat**, 17.03.2011, <http://www.aawsat.net/2011/03/article55247145>, (15.03.2013).

way to do it. Accordingly, not only imposing a no-fly zone but providing the rebels with the equipment that they require to defend themselves against Gaddafi's military force is also an intervention, and it would be helpful for the Libyans to stop the *massacre* that is going on in Libya.

What Mirghani expects from the international society at large and the West in particular is clearly not a widespread military intervention that would take the lead from Libyans and dominate the entire revolutionary process. Instead, he expects only a limited help (keeping Gaddafi forces out of the Libyan air space or providing military equipment) to provide the rebels with material equality against the Gaddafi forces and enable them to have their own fight against their enemy.

Ahmed Moor, in his article on Al-Jazeera,⁴⁵⁴ derives attention to two points: First, interveners should not get involved in the conflict directly and instead "[support] the rebels in the capacity that they desire." Second, interveners should not be attempting to overthrow the current regime and install a new one. Of course these two conditions alone are not enough to justify an intervention, but they are, "crucial components" of a legitimate intervention. Derived from that, one can perfectly argue that according to Moor, supplying the rebels in military capacity is not only an "acceptable" practice, but "what is expected" from the interveners. After all, it was the rebels who requested aid from the outside world. As a matter of fact, the indigenous resistance would almost certainly fail if they did not get Western aid. In his account, Western aid to the rebels, whether in the shape of supply of arms or air strikes, gives them a chance to fight their own wars. Moor explains:

We can aspire towards helping young Libyans reform their society to make it more democratic, just and anti-imperialist. But before they can do that they must survive Gaddafi's pulverizing onslaught. And that's something that the Western offensive gives them a chance of doing.⁴⁵⁵

In his article *Obama at War: a Study in Ambiguity*⁴⁵⁶ written before the intervention, Amir Taheri from Asharq Al-Awsat criticizes Obama's hesitation to intervene (as he calls it, "distancing himself from his previous warlike position")

⁴⁵⁴ Ahmed Moor, "A War of Western Imperialism?", **Al-Jazeera**, 28.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201132472924305721.html>, (09.09.2015).

⁴⁵⁵ Ahmed Moor, "A War of Western Imperialism?", **Al-Jazeera**, 28.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201132472924305721.html>, (09.09.2015).

⁴⁵⁶ Amir Taheri, "Obama at war: A study in ambiguity", **Asharq Al-Awsat**, 01.04.2011, <http://www.aawsat.net/2011/04/article55246970>, (19.03.2013).

following the pro-intervention speech that he had given a while ago. According to Taheri, having declared that the ongoing bloodshed in Libya is a threat to national security of the US, Obama “cannot walk away without losing credibility.” Criticizing Obama’s hesitation, he argues that it would be the Obama administration who would be blamed if Gaddafi succeeded to stay in power. He points out the difficulties to take a unified action against Gaddafi unless the US takes the lead. In this sense, US leadership is considered vital since an uncertain stance by the US results in some worrisome statements by the others, as we see in the examples of Russia, Italy, Algeria and Turkey:

Russian Foreign Minister Sergei Lavrov has started accusing the US and its allies of intervening in a civil war rather than implementing a UN resolution. Clearly, the Russians want to remain in Gaddafi’s good books, just in case.

Italian Prime Minister Silvio Berlusconi, an old pal of the colonel, is proposing a ceasefire, a move designed to kick the whole thing into tall grass in the hope that the anti-Gaddafi opposition would splinter while Western opinion turns against military intervention.

Algeria’s President Abdulaziz Bouteflika has also started making noises against “intervention in the domestic affairs” of an Arab country in the hope of splitting the Arab League and helping Gaddafi remain in power, thus also easing pressure on his own regime.

Turkey’s Prime Minister Recep Tayyip Erdogan is offering his “mediation” which means hedging his bets in case Gaddafi or part of his regime manage to hang on.

To sum up, Taheri argues that without US leadership the international society would remain timid to intervene in Libya, which would result in an even more complicated situation in that country. So Taheri’s answer is a Western intervention, which he actually names *war*, under US leadership.

Palestinian writer and political analyst Bilal Hassen takes a more anti-interventionist stance. In his article published on Asharq Al-Awsat,⁴⁵⁷ he complains about the lack of a unified stance in the Arab world regarding international interference into Arab affairs. Hassen criticizes the Arab world in general and the Arab League in particular for their failure to generate an Arab understanding of the concept “everything that was previously national is now international” which provides ground for NATO’s interference in the Arab affairs today, and formulate an Arab

⁴⁵⁷ Bilal Hassen, “The internal and external factors affecting the Arab world”, **Asharq Al-Awsat**, 22.06.2011, <http://www.aawsat.net/2011/06/article55246066>, (28.03.2013).

policy to confront it. As a result, he claims, the Arab world today is unable to adopt a unified stance regarding international interference in the region.

Hassen admits that states can no more address their internal problems without taking the outside world into consideration. However, he argues, the principle that “everything that was previously national is now international” could be easily abused, as it is currently being abused by Europe:

It is no longer beneficial for us to deal with what is happening in our region as being mere internal incidents. However following the principle that “everything that was previously national is now international”, whenever any incident takes place in the Arab world, foreign powers prepare to interfere in order to steer events in a specific direction that does not jeopardize their political, economic or military interests. This is what happened with regards to events in Tunisia; no sooner had the news been announced that President Ben Ali had fled the country than European pressure was exerted to ensure that Tunisia remained within the European political sphere of influence, and therefore within Europe’s economic sphere of influence as well. The same situation occurred in Egypt following President Hosni Mubarak’s ouster, with the US exerting political pressure in order to ensure that Cairo remains within its influence.

According to Hassen, in order to strengthen the Arab world, two things need to be done by Arab states. First, Arab regimes need to adopt changes in accordance with the nature of each country. Secondly, the Arab world needs to rearrange its international relations. As countries such as Russia, China, Brazil and India have been gaining influence in world politics, the Arab world may consider building new international alliances around the new realities of international politics.

However, Mark LeVine, in his article published on Al-Jazeera,⁴⁵⁸ argues that “foreign intervention is the lesser of two evils when it comes to stopping a regime that is becoming more murderous with each passing day.” Hassen is suspicious of the true interests that motivate foreign intervention, while LeVine is concerned with the long-term results of interventions which seem unlikely to include installation of a functioning democracy (reasons will be discussed in detail below). However, having admitted that interventions are sometimes imperial in nature, LeVine seems to leave aside the possible imperial aims that the US and Europe might have to invade Libya when it comes to stopping the violence and bloodshed. However, he also adds that

⁴⁵⁸ Mark LeVine, “Pioneering new forms of intervention”, **Al-Jazeera**, 23.02.2012, <http://www.aljazeera.com/indepth/opinion/2012/02/20122392948513900.html>, (11.04.2013).

the only way that such intervention will not lead to another violent and dysfunctional phase is if the citizens who demand the intervention are in support of pro-democracy forces in the aftermath. On the other hand, Hassen's suggestions focus rather on reforms and policy changes to avoid future foreign interference in the long term; but they do not provide a solution for emergency cases.

In his article, *Gaddafi's Fallujah*⁴⁵⁹ on Asharq Al-Awsat, Osman Mirghani blames the Arab world for "standing idly, whilst people are being slaughtered in this barbaric fashion." Not only Arabs has their share from Mirghani's criticism, the West is also highly criticized for their inaction, which contradicts with its former interventionism:

The West has lectured us for years about spreading democracy in the Arab world, and has used this as a justification for its foreign interventions. Yet when a spark ignites genuine revolutions calling for change, with young voices demanding freedom and democracy, Western attitudes seem hesitant and confused. They do not know whether to support these youth revolutions and popular uprisings.

Although Mirghani does not explicitly call it hypocrisy, he draws attention to the incoherence between the previous interventionist policies of the West and its current hesitation to intervene in the Libyan case. In light of the statements above, we can conclude that he clearly expects the West to take action and help Libyan rebels, since Arab nations "stand idly" in current situation. In parallel to this, Abdul Rahman Al-Rashed, former editor-in-chief of Asharq Al-Awsat, also states that it would be impossible to overthrow Gaddafi without "external assistance."⁴⁶⁰

While providing the rebels with military equipment is considered as a useful foreign policy tool by many, there are also more skeptical voices like Adel Al Toraifi from Asharq Al-Awsat and Sami Hermez from Al-Jazeera. Adel Al Toraifi draws attention to impropriety of supporting the rebels with guns, "without knowing who they are and how they see the future of the country,"⁴⁶¹ while Sami Hermez, warns

⁴⁵⁹ Osman Mirghani, "Gaddafi's Fallujah", **Asharq Al-Awsat**, 23.02.2011, <http://www.aawsat.net/2011/02/article55247415>, (10.03.2013).

⁴⁶⁰ Abdul Rahman Al-Rashed, "Arab Dreams and Gifts", **Asharq Al-Awsat**, 26.03.2011, <http://www.aawsat.net/2011/03/article55247041>, (17.03.2013).

⁴⁶¹ Adel Al-Toraifi, "Our Intellectuals and the Revolution", **Asharq Al-Awsat**, 19.03.2011, <http://www.aawsat.net/2011/03/article55247126>, (15.03.2013).

us against the danger of adopting such a policy for it could support Gaddafi's claims of being a victim of the unrest backed by the West.⁴⁶²

As can be understood from the lines above, none of these authors could be considered pro-interventionist. They all think that Western interventionism is motivated by imperialist ambitions rather than saving lives or promoting democracy; but they generally agree that international intervention is necessary in the Libyan case to stop the violence, for the Arab world lacks the proper tools and the unified stance that is required.

The objection to direct foreign intervention expressed in this section points to Libyan people as the proper authority to fight the actual war on the ground. However, the West is credited as the proper authority to impose the no-fly zone to give Libyans the opportunity to fight their own war, because the Arab world lacks the necessary capacity and unity to act. Again, mass human rights violations is presented as the just cause and the motivation to end it as the right intention for intervention whereas promoting democracy and regime change are opposed. Apart from that the concerns expressed regarding the true motivations behind the intervention and the possible imperial aims that the Western powers might have are also related to the principle of right intention.

4.4. WHAT ARE THE CRITERIA FOR DECIDING ON MILITARY INTERVENTION AS A SOLUTION TO DETERIORATING SITUATION?

Examining objections and rationale for interventions can be very helpful to derive a conclusion about the criteria commonly agreed upon. In that sense, Amir Taheri's article on Asharq Al-Awsat where he discusses objections to a possible intervention to Syria, and specifies a number of objections currently being discussed, gives an idea about perception of criteria.⁴⁶³ Apart from the ones he discusses, one can add the need for regional calls and support for intervention, which is underlined by many actors and authors.

The first objection Taheri mentions, which is namely "having no clear strategy for intervention," shows that having a clear strategy is among the criteria.

⁴⁶² Sami Hermez, "Libya and the folly of intervention", **Al-Jazeera**, 07.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201135141253240339.html>, (12.04.2013).

⁴⁶³ Amir Taheri, "Syria: Is it Time for Military Intervention", **Asharq Al-Awsat**, 18.02.2013, <http://www.aawsat.net/2013/02/article55290365>, (09.03.2013).

After Taheri highlights that an intervention as “foreign armies’ march to Damascus” would not be welcomed, he puts forward two objectives that a possible intervention must fulfill: To enforce the arms embargo, which would require a naval blockade and aerial and ground surveillance, and to set up safe heavens and to protect them from Assad’s brutality. As for the second objection, he mentions that an intervention by the Western powers would result in a broader conflict with Russia and Iran. Here, one can conclude that not giving rise to a broader conflict is also among criteria. As Taheri also points out, the lack of legality of a possible intervention, which results from the Russian veto in UNSC is one of the main objections for sure. Considering the UN approval as the legal basis for an intervention, means that it is considered as one of the criteria.

The ongoing discussion comparing the geographical locations of Libya and Syria shows that Geography is also taken into consideration when deciding whether to intervene or not. While the common approach claims that geographic conditions were more suitable for intervention in the Libyan case, the author claims just the opposite. According to him, Syria, with its shorter coastal line, would be an easier case for naval blockade. But this might be an advantage only for naval blockade option. What about the no-fly zone option? As Marwan Bishara, the senior political analyst of Al-Jazeera, mentions in his article *Tides of the Arab Revolutions*, the Syrian military is heavily deployed in the population centers so that hitting Syrian military targets would cost lots of civilian lives.⁴⁶⁴

Cost of war is obviously another consideration, as Taheri points out. However, he claims that a broader conflict that spreads over the region as a result of inaction would be even more costly for Western nations, who are currently hesitating to take action against the ongoing massacres in Syria.

The sixth objection concerns the ethnic and religious diversities in the societies, according to which military intervention would not result in a “harmonious transition” in such societies. Again, Mr. Taheri brings out a counter-argument that a nation has a right to seek its freedom no matter how diverse it is. Nevertheless, ethnic or religious diversity in a society is an issue that is being considered when deciding whether or not to intervene, for the results that would come from such an intervention would be complicated in that case.

⁴⁶⁴ Marwan Bishara, “Tides of the Arab Revolutions”, **Al-Jazeera**, 26.11.2011, <http://www.aljazeera.com/indepth/opinion/2011/11/2011112692441408185.html>, (12.04.2013).

The seventh objection he mentions also gives a clue about criteria. Those who object the intervention argue that they do not know what would follow once the current government is toppled down: chaos, or another dictatorship. Based on this argument, we may claim that foreseeing the post-intervention state of affairs is considered necessary for making a decision. An intervention should not lead the country to a worse situation.

Contrary to those who think that “democracy could not be imposed by force” (the eighth objection), Taheri argues that force could be used to remove the obstacles in front of democracy. Here, the main purpose of a possible intervention would be putting the people in charge of their own future. As also understood from this debate, whether the intervention would create the proper environment for a real, functional democracy to take hold is another issue of consideration.

Another important issue to consider is the chemical weapons that the Assad regime possesses. What if Assad regime resorts to chemical weapon option as a response to international intervention (ninth objection) which would definitely cause an even greater disaster in the region? However, Taheri looks at the situation from a different standpoint. According to him, danger of a possible disaster should not be an excuse for inaction about the daily killings going on in Syria right now. This would let Assad “blackmail his people and the entire humanity with his chemical arsenal.”

Security of Israel is also an issue of consideration (the tenth objection). As a response to intervention, the Assad regime might attack Israel through Hezbollah or Islamic Jihad. However, Taheri counters this argument by claiming that Syrian people’s lives should not be the price that world pays for Israel’s security.

As a response to those, who argue that military intervention should not be considered unless all the diplomatic ways fail (the eleventh objection), Taheri argues that the diplomatic ways have already failed. He points out the failed missions led by Kofi Annan and Lakhdar Brahimi to prove that there are no other diplomatic ways around. So running out of diplomatic options is also considered among the criteria.

Regional support for the intervention is also an issue of consideration that was put forward as a condition by western states and organizations for several times. As Tariq Alhomayed mentions in his above-mentioned article, *The Arab Did It... What About the West?*, before the GCC and the Arab League declared their

support for an intervention, the lack of unified position by the Arab states had been one of the excuses of the West for inaction.⁴⁶⁵

In this section, as expected, all of the six criteria are found to be discussed within the context of criteria for deciding on military intervention. Among them, not giving rise to a broader conflict that spreads over the region; an ethnic conflict, given the present division of societies on ethnic and religious lines in the Middle East; possible chaos or dictatorship that may follow overthrow of the present regime are all related to the principle of reasonable prospect for success. Requirement of UN approval as the legal basis for an intervention and the expressed need for regional support for deciding on intervention can be attributed to the principle of right authority. It is stated that the purpose of using force should not be the imposition of democracy from outside, but rather the removal of the obstacles in front of it or, in other words, putting people in charge of their own future. This clearly points to the principles of just cause and right intention. In the Arab perception, air bombing as a method of intervention should not cause an excessive loss of human lives. This discussion on human cost of an intervention relates to the principle of proportional means. Last but not the least, the principle of last resort is discussed as one of the criteria.

4.5. CAN WE ATTRIBUTE THE INTERVENTION TO INTERNATIONAL RESPONSIBILITY; OR IS IT “NEW COLONIALISM?”

Although the arguments regarding “true intentions of the West” or “new colonialism” cannot be discussed in isolation from other related questions discussed in this chapter, the articles examined in this section discuss the issue in detail. Three points can be derived in general: (1) as it is discussed above, intervention by Western powers is only legitimized on human rights grounds, and therefore must be of limited scope leaving room for the local population to fight its own war; (2) Western intervention, in case it is necessary, should be limited to performing tasks for the sake of human rights that the nation itself, the rebels, and the Arab world are incapable of; and (3) there is a common assumption that the true intention of interventionism is the protection of Western interests – expressed in several ways,

⁴⁶⁵ Tariq Alhomayed, “Arabs Did It... What About the West?”, **Asharq Al-Awsat**, 14.03.2011, <http://www.aawsat.net/2011/03/article55247181>, (15.03.2013).

e.g. justification for liberal imperialism, new colonialism, or reassertion of US leadership.

In his above-mentioned article, *The Internal and External Factors Affecting the Arab World*,⁴⁶⁶ Bilal Hassen from Asharq Al-Awsat discusses the principle “everything that was previously national is now international” and argues that the Western nations can easily take advantage of it to put the events in a direction that would serve their economic, political or military interests; just like how they ensured that both Tunisia and Egypt remained within the Western economic and political sphere of influence following the regime changes in those states. Although he admits that no country can face its problems alone under these circumstances, he points out the need for a revision of international relations of each Arab state due to the changing international balance of powers and also warns against foreign intervention:

When this is the situation that we are facing, no country – whether it is Arab or non-Arab – can face its problems alone, not can it address its problems or be committed to its internal affairs without taking a broader look at the outside world, whether regionally or internationally. We cannot ignore the fact that an international conflict is taking place over the Arab world, and so we see China and Russia issuing a joint announcement that they will confront any new attempts of military intervention in the Arab world. If this is the position taken by China and Russia, how can any Arab country protect itself? The situation in the Arab world now requires changes within each regime, in a manner that is commensurate with the nature of each country. However the state of affairs in the Arab world also requires a new network of international relations. The US today is deeply hostile to the Arab world due to its strong relations with Israel, whilst America is also facing economic problems that may prove to be dangerous, whilst the influence of countries such as Russia, China, India and Brazil is on the rise, which necessitates thinking about a new map of international alliances in order to strengthen our region, in a climate of fierce international struggle.

If it is our duty to focus on the need for change in the Arab world, then we must also warn against foreign intervention or interference in our affairs at the same time, particularly as this is something that is taking place on a daily basis, and this is not merely an expression of the so-called “conspiracy mentality”, as it is often claimed.

Having admitted the inevitability of foreign intervention in an environment where all the great powers are so interested in the domestic issues of Arab states,

⁴⁶⁶ Bilal Hassen, “The internal and external factors affecting the Arab world”, **Asharq Al-Awsat**, 22.06.2011, <http://www.aawsat.net/2011/06/article55246066>, (28.03.2013).

Hassen also draws attention to how illogical it is to stay within the Western sphere of influence while the US is so hostile to Arab states, which is consistent with its Israel policy, and its economy is in decline and other powers such as China and Brazil are on the rise. He clearly suggests a reconstruction of international relations in the region, which, he probably thinks, would decrease the Western influence.

Hayrettin Yucesoy from Washington University in St. Louis is much more critical of the true intention of the West. In his article, *A mission to 'civilise' the East, again?* on Al-Jazeera,⁴⁶⁷ he argues that the mentality behind the Libyan intervention is equal to the mentality of the Berlin Conference, during which the colonial powers declared that they would "bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being ... instructing the natives and bringing home to them the blessings of civilization." Accordingly, the Western discourse for Libyan intervention is very similar to discourse of "mission civilisatrice" which was adopted to justify colonial policies and proved helpful to "reshape the identity, culture, and socio-economic and political structure of the colonized in such a way that it becomes understandable and useful to the colonizer."

Yucesoy basically argues that when it comes to Western states' relations with the Middle East, nothing has changed from the Berlin Conference of 1885. He questions the political morality of what he calls a "spontaneous, self-invited, and unwelcome intervention" by asking:

What is it that makes the military intervention, for the American and European actors, desirable, palatable, and familiar despite its crude, insanely pragmatic and selfish, patronising, and disrespectful nature? Why do the governments arrogate to themselves the power prerogative to launch military attacks despite the fact that their action lacks legitimate popular support domestically and obvious demand from the Libyan people?

According to him, the answer is simple: "They consider the region too important to leave alone." He argues that NATO powers were willing to play the big role in the removal of Gaddafi to secure their shares of future oil contracts and set a model for future interventions in the region. Behind this *white man's burden*

⁴⁶⁷ Hayrettin Yücesoy, "A mission to 'civilise' the East, again?", **Al-Jazeera**, 11.04.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/20113319222581597.html>, (19.12.2015).

discourse what they actually aim to get is a friendly government that would not pose a threat to their economic or political interests in the region.

Yucesoy argues that this mentality, which he defines “offensive, selfish and arrogant” must be confronted for two reasons. First of all, the revolutionaries would lose their credibility and the dictator would come up with a nationalist and xenophobic discourse as a response. Secondly, it would invite new forms of colonialism and dependency to the region.

In his article *Intervention without Responsibility*,⁴⁶⁸ another skeptical writer Tarak Barkawi explicitly calls the norm R2P “a wonderful justification for intervention and liberal imperialism” and argues that the Libyan intervention has inflamed the hopes for this kind of tools, which had not been used effectively as a consequence of UN ineffectiveness. He is also critical of selective application of the norm, whose “primary targets have been weak African states.”

Mahmood Mamdani argues that humanitarian intervention has not been proven to be a proper tool to dispose a certain threat as far as Iraq and Afghanistan cases are concerned, and claims that whether the West picks intervention or political resolution depends on its respective interests:

The logic of a political resolution was made clear by Hillary Clinton, the US secretary of state, in a different context: "We have made clear that security alone cannot resolve the challenges facing Bahrain. Violence is not the answer, a political process is." That Clinton has been deaf to this logic when it comes to Libya is testimony that so far, the pursuit of interest has defied learning political lessons of past wars, most importantly Afghanistan.⁴⁶⁹

As far as the legitimacy of the intervention in Libya is concerned, Mamdani points to some notable failures of both the UN decision-making process and the implementation of sanctions, which damage the legitimacy of intervention. First of all, the five governments that abstained during the UN voting, i.e. Russia, China, India, Brazil and Germany, represent the vast majority of humanity. Moreover, while the two African countries in the UNSC, South Africa and Nigeria, voted in favor of the resolution, they later on expressed their concerns about the way the intervention was actually conducted. Secondly, Resolution leaves the implementation of the

⁴⁶⁸ Tarak Barkawi, “Intervention Without Responsibility”, **Al-Jazeera**, 23.11.2011, <http://www.aljazeera.com/indepth/opinion/2011/11/20111121161326433590.html>, (16.02.2013).

⁴⁶⁹ Mahmood Mamdani, “Libya: Politics of humanitarian intervention”, **Al-Jazeera**, 31.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201133111277476962.html>, (11.04.2013).

measures to the member states “acting nationally or through regional organizations or arrangements,” but does not provide specific information about by whom they would be enforced or rules of conduct. However, it is clear that it can only be conducted by the ones who possess the necessary power, i.e. NATO and the US.

As to the implementation of asset freeze and arms embargo, there are no specific arrangements either. For instance, Mamdani argues, most of the Libya’s foreign assets, which are equal to hundreds of billions of dollars, are in Europe and the US. The US treasury froze \$30bn and US banks \$18bn assets. In the absence of any specific arrangement, those assets became an interest-free loan to the US Treasury and US banks.

To sum up, according to Mamdani, the UN voting was rather a “legitimizing exercise” and it only paved the way for “passing the initiative to the strongest of member states. The end result is a self constituted coalition of the willing.”

In her article on Al-Jazeera, Phyllis Bennis also draws attention to the declining legitimacy of NATO intervention to Libya.⁴⁷⁰ According to her, although the UN resolution provides a legal ground for the intervention, the legitimacy of the operation is in decline for several reasons. First reason is the Arab League’s removal of its support for the intervention right after the air strikes began. From the very beginning, the Arab League’s support was considered a precondition by the West, particularly by the Obama administration. According to Bennis, the no-fly zone that the Arab League called for in its resolution was “a far narrower military operation;” and the same resolution also stated the League’s objection to any direct foreign intervention.

The League’s chief Amr Moussa criticized “Western military assault” right after the air strikes began. Secondly, the West “overlooked” the AU. According to Bennis, the West simply dropped the AU support from the list of preconditions for intervention, when the Union had made it clear that it would not have approved such a move. Moreover, immediately after the bombing began, the AU committee on Libya called for an “immediate stop” to military attacks and “necessary political reforms to eliminate the cause of the present crisis.”

⁴⁷⁰ Phyllis Bennis, “Libya intervention threatens the Arab spring”, **Al-Jazeera**, 22.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/20113227357222118.html>, (11.04.2013).

“So,” Bennis says, “within 48 hours of the bombing campaign's opening salvos, the US and its allies have lost the support of the Arab and African institutions the Obama administration had identified as crucial for going ahead.”

Sami Hermez, in his article on Al-Jazeera,⁴⁷¹ argues that some calls for international intervention did not aim at ending the bloodshed, but rather for reasserting US leadership in the world. He criticizes the interventionist policy and UN sanctions regime for several reasons, three of which are worth mentioning under this heading. The first problem is about the imposition of arms embargo. Hermez argues that the purpose in imposing an arms embargo is to prevent foreign government and arms manufacturers from selling arms to the Libyan government. However, without a mechanism to monitor compliance, the UN falls short of holding actors who violate the embargo accountable. In other words, “The UN has allowed the international community and arms manufacturers to escape accountability.”⁴⁷²

Secondly, the Resolution refers Gaddafi and some others close to him to the ICC, but Hermez argues that this is not an effective measure either. According to him, that measure suffers from the lack of consistency, for the international community had not referred to the ICC Hosni Mubarak or Zine El Abidine Ben Ali who had committed similar crimes against their people. Moreover, this lack of consistency has strengthened Gaddafi's hand, as it gives him a reason to claim to be subjected to “selective justice” of the international community. On the other hand, Hermez also argues that although the ICC prosecution is an important mechanism to strengthen regime accountability in the long term, it would not bring any short term benefits for it would not stop the ongoing bloodshed in Libya. Besides that, there is no ground to believe that the fear of an ICC prosecution would push the people from Gaddafi's inner circle to defect, because Hermez argues, economic sanctions, which he believes to be similar to ICC prosecution in terms of carrying “the threat of punishment,” imposed on Iraq and Zimbabwe at the time had not been proven to be effective to push people to defect from the regime. Quite the contrary, it would even push them to hold on to regime. So, he does not believe that ICC measure of the Resolution would be a deterrent for Gaddafi and his associates.

⁴⁷¹ Sami Hermez, “Libya and the folly of intervention”, **Al-Jazeera**, 07.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201135141253240339.html>, (12.04.2013).

⁴⁷² Sami Hermez, “Libya and the folly of intervention”, **Al-Jazeera**, 07.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201135141253240339.html>, (12.04.2013).

Thirdly, Hermez argues that just like the ICC prosecution, freezing assets was not a consistent move either, for it had not been taken against Mubarak or Ben Ali. Having stated that it is not certain whether it would damage the Gaddafi regime, who had survived under the sanction regimes before, Hermez also warns against the possibility that sanctions (or intervention in general) would also serve to strengthen the regime.

Hermez is one of those who thinks that intervention is a proof of the hypocrisy of the US and Europe. According to him, after delegitimizing Iraq for years, as we witnessed before its invasion, now imposing UN sanctions on Libya shows that both the US and its European allies are seeking their own national interests under the cover of defending human rights, with a hope to build friendly relations with the future government, which, perhaps Hermez thinks, would provide them with a certain share from the oil contracts.

Quite parallel to this, in his article *Tides of the Arab Revolutions*,⁴⁷³ Marwan Bishara, Al-Jazeera's senior political analyst and a former professor of international relations, argues that by portraying themselves as acting in the name of the international community, the West is seeking for "greater access to independent nations on economic, security and humanitarian grounds." Bishara counsels Arab states on the dangers of Western intervention saying, "The Arabs need to remember that regional and international powers have "interests" – not "friends" – in this region."⁴⁷⁴

The question about "new colonialism" is related to the principle of right intention. Some views expressed in this section forge a link between today's interventionist language and colonial discourse such as mission civilisatrice and white man's burden. In such statements intervention on 'allegedly' human rights grounds is described as an imperialist behavior motivated by an aim to reassert US leadership or to gain greater access to those intervened states to ensure their stay within the Western sphere of influence. In this respect, the UN mandate is considered only as a cover-up for those ambitious Western goals. Right authority is discussed again in this section. The Arab League Chief's criticisms regarding the conduct of intervention and the West's disenrollment of AU support from the list of

⁴⁷³ Marwan Bishara, "Tides of the Arab Revolutions", **Al-Jazeera**, 26.11.2011, <http://www.aljazeera.com/indepth/opinion/2011/11/2011112692441408185.html>, (12.04.2013).

⁴⁷⁴ Marwan Bishara, "Tides of the Arab Revolutions", **Al-Jazeera**, 26.11.2011, <http://www.aljazeera.com/indepth/opinion/2011/11/2011112692441408185.html>, (12.04.2013).

requirements for intervention are described as the factors that cast doubt on the legitimacy of the intervention.

4.6. DOES THE REMOVAL OF A DICTATOR BY MILITARY MEANS DESTROY THE VERY FUNDAMENTAL MECHANISMS THAT HOLD THE STATE TOGETHER AND RESULT IN GREATER INSTABILITY AND SUFFERING? IS INTERVENTION A SOLUTION FOR THE REGION'S PROBLEMS?

One can detect a general skepticism among the authors regarding possible outcomes of an intervention. Articles examined in this section draw attention to dangers of a revolutionary regime change in the region where social, political and economic institutions that hold the state structure together are far from being institutionalized or consolidated and heavily depend on strong leader cult, which means that overthrow of a regime is likely to be followed by chaos. In this sense, the two very recent experiences of Iraq and Afghanistan, together with the bad memories of the past, constitute a reference point.

Adel Al-Toraifi from Asharq Al-Awsat supports an evolutionary process rather than a revolution that would lead to anarchy and act of vandalism. In his article, *Our Intellectuals and the Revolution*,⁴⁷⁵ he criticizes those Arab intellectuals, who were quick to embrace protesters without knowing who they were and the tendency to label those who criticize the chaos and violence by rebels as pro-regime supporters. This mindset which he calls as "revolutionary tyranny" holds that the revolutionaries have every right to destabilize state institutions which would bring about a state of chaos without being criticized. Chaos is considered as the "price of freedom." For instance, he explains, no one criticized the rebels that "got out of control" in Tunisia or the "act of vandalism against public institutions and sense of lawlessness" that was present in the Egyptian case from the very beginning of the protests. In Libya, protesters took up arms right after the start of the protests. According to Al-Toraifi, one does not necessarily have to support acts of vandalism, disorder and anarchy in order to stand against the tyranny of the existing regime. Distinguishing peaceful demonstrations from violent protests, Toraifi claims that contrary to the common belief among Arab intellectuals, violent protests would not bring about perfect

⁴⁷⁵ Adel Al-Toraifi, "Our Intellectuals and the Revolution", **Asharq Al-Awsat**, 19.03.2011, <http://www.aawsat.net/2011/03/article55247126>, (15.03.2013).

democracies. He rather suggests “a gradual transfer of power through the governing elite and society at large.”

In another article on Asharq Al-Awsat, *The King and the Elephant*,⁴⁷⁶ Toraifi gives a more detailed explanation why he advocates a gradual change rather than a revolution. He criticizes the assumption that a regime change will be better than the current situation in those Middle Eastern countries, whose regimes “have lost their legitimacy.” He claims that these regimes would not be replaced by plural democracies right after the existing governments are toppled, because once they are toppled, there will be no institutions to create a new and working state mechanism. According to Toraifi, no less important than the problem of tyranny, the Middle Eastern states suffer from the absence of stable economy and institutions. The existing regimes are able to keep the state mechanism going, but their replacement through revolutionary ways would be committing the same mistake as in Iraq in 2003:

With the exception of elections that were overshadowed by sectarianism, Iraq as a state has failed to restore normality to its economy and security, not to mention the government’s provision of services, and the country has transformed into an arena of sectarian warfare, murder and terrorism. The country is now a mere extension of Iran’s influence. The only thing preventing the total disintegration of the state is the fact that U.S. forces remain stationed on the ground.

Having stated that “popular uprisings are transitions with uncertain consequences,” Toraifi claims that as in the Iraq case, revolutionary regime changes would be unlikely to improve the present situation given the chronic problems concerning the economy and institutions, and the ethnic, sectarian and regional tensions present in these countries. Demonstrations, he says, are not enough to produce better regimes. He rather suggests institutional development and economic growth as the keys to good governance, which he considers as the real problem that the Middle Eastern states are facing.

A very similar argument is put forward by Mark LeVine in his article *Pioneering New Forms of Intervention* on Al-Jazeera,⁴⁷⁷ where he discusses the

⁴⁷⁶ Adel Al-Toraifi, “The King and the Elephant”, **Asharq Al-Awsat**, 06.07.2011, <http://www.aawsat.net/2011/07/article55245901>, (27.03.2013).

⁴⁷⁷ Mark LeVine, “Pioneering new forms of intervention”, **Al-Jazeera**, 23.02.2012, <http://www.aljazeera.com/indepth/opinion/2012/02/20122392948513900.html>, (11.04.2013).

worrisome long-term results of intervention. Accordingly, the intervention would dismantle the economic, social and political institutions that hold the state structure together, which is unlikely to be replaced by a working mechanism in near future. More than the domestic difficulties emanating from internal dynamics, they are mostly the political, economic, and strategic dynamics of the current world system that make it very difficult to replace one state structure “with particular set of interests, networks and constituencies” with a new one. Based on his personal observations of the Iraq case, LeVine argues that the existing world system makes it very difficult for the interveners, even if they actually want to help, to build a functioning democratic structure. At the end, what they do only serves the elites of both sides, “who’ve been working together to preserve the existing system.”

LeVine, who is personally in contact with people working for the US in Iraq, argues that even the ones who had been very ambitious about building a functioning democracy in Iraq had to ally with “more conservative and less democratic groups” after a while. In the immediate aftermath of the intervention, he reports, a civil society that was composed of previously oppressed groups and women found a chance to develop. However, the US bureaucracy in Iraq chose to eliminate this burgeoning civil society because of their negative attitude towards the US presence in Iraq, and allied themselves with those who were more tolerant towards the US presence that LeVine defines as “the most conservative and least democratic elements.”

From a very similar point of view, in their article *The Problem with Removing Dictators* on Al-Jazeera,⁴⁷⁸ Nathan Hodson and Jason Pack remark the function of dictators in “holding the state together” in those decolonized countries that are not nations in the sense that we understand. Building functioning economic, political and social institutions in these countries, whose populations are usually divided on ethnic and sectarian lines, is only possible in the presence of a “strongman.” So, according to Hodson and Pack, in order to eliminate their tyrants from power, these states should go through “organic processes” to build new identities and functioning institutions, and an outside intervention only “short-circuit” this process by dismantling the existing institutions and replacing them with new ones. Hodson and Pack make a point very similar to Mark LeVine’s about the disadvantages of a

⁴⁷⁸ Jason Pack and Nathan Hodson, “The Problem with Removing Dictators”, **Al-Jazeera**, 07.08.2012, <http://www.aljazeera.com/indepth/opinion/2012/08/20128684712352153.html>, (12.04.2013).

foreign intervention for building a functioning state structure. A foreign intervention is likely to cause a domestic reaction on people's side, which would push intervening states to support only certain domestic power centers that are "willing to collaborate"; a process that is likely to exclude many domestic actors who constitute an important part of civil society.

Having stated that Libyan intervention was not "morally and strategically justified," Hodson and Pack express their concern regarding the post-Gaddafi process. In the absence of national unity and coherent institutions, they argue, there is always a possibility of chaos, which would be reinforced by conflicting interests of regional and great powers. They also point to the fears of some groups in Libyan society, who do not identify themselves with their new political leaders, about the era after Gaddafi.

In his article *Politics of Humanitarian Intervention*,⁴⁷⁹ Mahmood Mamdani expresses his disapproval of humanitarian interventions as a solution to the region's problems by referring to the failures in Iraq and Afghanistan. He states that these two cases proved that intervention "does not end with the removal of the danger it purports to target." A very similar point of view is expressed in Marwan Bishara's article *Tides of the Arab Revolutions* on Al-Jazeera.⁴⁸⁰ Other than drawing attention to the human cost of the Libyan intervention, Bishara argues that no domestic or international military answer proved to be successful to solve "central issues of governance, development and freedom." Egyptian and Tunisian revolutions stand as good examples for peaceful transformation that should be preferred to the military one.

As far as the Libyan case is concerned, there is a general reluctance to call for intervention. As mentioned above, those who call for the imposition of a no-fly zone tend to separate it from "intervention." One can argue that those who see the "external option" as the only solution to stop violence are not happy with the fact that the situation requires external help. They are not vigorous advocates of intervention. They are concerned with the "true intentions" of the West or the possible adverse long-term results of an intervention on that country's democratization process. Yet they have to accept it because it is the "lesser evil" within the limitations of the

⁴⁷⁹ Mahmood Mamdani, "Libya: Politics of humanitarian intervention", **Al-Jazeera**, 31.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201133111277476962.html>, (11.04.2013).

⁴⁸⁰ Marwan Bishara, "Tides of the Arab Revolutions", **Al-Jazeera**, 26.11.2011, <http://www.aljazeera.com/indepth/opinion/2011/11/2011112692441408185.html>, (12.04.2013).

current situation. For example, after having stated that he does not want to see a foreign intervention in an Arab country even if it is authorized by the UN, Osman Mirghani seems to admit that Gaddafi regime's conducts left people without choice when he says "it is Colonel Gaddafi who has brought this intervention upon his country."⁴⁸¹ In another article we see Mirghani suggesting a limited external help like imposition of a no-fly zone or supporting rebels in financial and military capacity.⁴⁸² Another example is Ali Ibrahim's statement which admits that the revolution process in Libya evolved in such a way that required the external approach. Although he believes that changes in the Arab world "must take place through local, responsible hands, without direct intervention from foreign parties, except in later providing assistance for the reconstruction process," and that "democracy can neither be imported nor imposed from outside," he points that "massacres" taking place as a result of unequal capacities of rebels and Gaddafi forces required Libyans to appeal for external help.⁴⁸³ We may also recall Mark LeVine stating that "foreign intervention is the lesser of two evils when it comes to stopping a regime that is becoming more murderous with each passing day."⁴⁸⁴

The question raised in this section is related to the principle of reasonable prospect for success. The statements examined above reveal the worries regarding the post-intervention state of affairs. Recent experiences of Iraq and Afghanistan raise doubts regarding the overthrow of tyrannical regimes through revolutionary means. Past experiences prove that replacement of these regimes with plural democracies is unlikely. The main factor underlined in this respect is the lack of consolidation of the social, political and economic institutions in these states. In most cases the state structure with all of its institutions is tied together around a strong leader cult in the region. Once these institutions are demolished by a revolution, the new state is deprived of the institutional basis to be built on. Therefore, the intervening parties, within their responsibility to act upon a reasonable prospect for success, should be concerned about the risk of subsequent civil conflict and chaos in a likely case of revolutionary outcome.

⁴⁸¹ Osman Mirghani, "Why the Colonel has got to go", **Asharq Al-Awsat**, 25.03.2011, <http://www.aawsat.net/2011/03/article55247048>, (17.03.2013).

⁴⁸² Osman Mirghani, "Libya: A Horrific Scenario", **Asharq Al-Awsat**, 17.03.2011, <http://www.aawsat.net/2011/03/article55247145>, (15.03.2013).

⁴⁸³ Ali Ibrahim, "From North Africa to Bahrain, what do we want from Washington?", **Asharq Al-Awsat**, 09.03.2011, <http://www.aawsat.net/2011/03/article55247253>, (15.03.2013).

⁴⁸⁴ Mark LeVine, "Pioneering new forms of intervention", **Al-Jazeera**, 23.02.2012, <http://www.aljazeera.com/indepth/opinion/2012/02/20122392948513900.html>, (11.04.2013).

4.7. DID NATO INTERVENTION IN LIBYA SET A MODEL FOR FUTURE WESTERN INTERVENTIONS IN THE REGION?

The Libyan intervention deviated in several respects from an ideal example for future interventions to follow. However, if the Libyan case is to be regarded as an example for the shape of future interventions, authors believe that it points to a worrisome future.

In his article *Intervention without Responsibility*,⁴⁸⁵ where he asks whether the Libyan intervention sets a model for future interventions, Tarak Barkawi addresses several points. He dwells upon three rationales to doubt that Libyan intervention would set a model for future interventions. First of all, he argues that contrary to the general view, air strikes do not help to fight a “clean war” or to avoid all the ethical discussions about ground intervention. Secondly, Barkawi argues, having derived lessons from the Libyan experience, such states like Russia and China, who chose not to veto the Resolution 1973, will approach a future UNSC resolution for imposing a no-fly zone with greater skepticism. In that case, a future intervention would lack the UN authorisation, which is present in the Libyan case. Thirdly, Barkawi claims that the US’s NATO allies are incapable of conducting such military missions without assistance from the US, considering their dependency on the US for intelligence, command and control, and refueling during the Libya intervention.

On the other hand, Barkawi states that Libyan intervention gives some clues about future interventions. First of all, contrary to Afghanistan and Iraq, the US did not commit itself to reconstruct the whole social, economic, and political structure in Libya. Instead, the US and NATO allies preferred not to get involved in a large scale intervention. By choosing the means of air strikes, the West avoided the responsibility for political and social consequences of the intervention. According to Barkawi, invading without taking the responsibility of what happens afterwards will be a preferred kind of intervention in the future. He argues that the use of drone strikes outside Afghanistan shows us that it is going to be a common method for

⁴⁸⁵ Tarak Barkawi, “Intervention Without Responsibility”, **Al-Jazeera**, 23.11.2011, <http://www.aljazeera.com/indepth/opinion/2011/11/20111121161326433590.html>, (16.02.2013).

future interventions. Overall, he thinks that this will be a way to avoid all “social work” that an intervention would require:

In retrospect, Libya may appear less a model for the enlightened use of force than a step on the way to a world in which armed intervention is more common and shorn of the “social work” that has characterised both counter-insurgency and UN peacekeeping operations. We may return to an era in which it is thought that military power can be used “surgically” to deal with problems that are ultimately political, social and economic in nature.

Barkawi examines the issue from different angles that lead him to this uncertain conclusion about the future of Western interventions. In some respects, it is difficult to say that Libya would set an example for future interventions, while in some other respects it points to a worrisome future.

Richard Falk, in his article on Al-Jazeera⁴⁸⁶ argues that although the West was quick to pronounce the NATO intervention to Libya a “victory,” it hardly sets a model for future interventions. He explains, in Western circles, the intervention was portrayed as a success story in many respects: “as a military success that achieved its main goals at acceptable costs, as a moral success in averting a humanitarian catastrophe, and as a political success that created an opportunity for freedom and constitutionalism on behalf of a long oppressed people.” However, he objects to the idea that Libyan intervention is a “precedent.” According to Falk, the pro-interventionists refrained from revealing their real intentions during the UN debates preceding the Resolution 1973 in fear that abstained members would resort to their veto power and block the Resolution. Once the Resolution was adopted, NATO went beyond the UN mandate and “almost immediately acted to help rebels win the war and to make non-negotiable the dismantling of the Gaddafi regime without much attention to the protection of Libyan civilians.” The mission carried out by NATO was beyond “what was acknowledged during the debate that preceded the adoption of Resolution 1973.”

The criticisms raised in this section regarding the Western states’ unwillingness to take post-intervention responsibilities associate with the third pillar of the R2P, which is responsibility to rebuild. Another criticism which underlines pro-interventionist states’ hypocrisy about their true intention during the UN voting that

⁴⁸⁶ Richard Falk, “Chapter VII: a loophole for imperialists?”, **Al-Jazeera**, 06.09.2011, <http://www.aljazeera.com/indepth/opinion/2011/09/2011958322588815.html>, (09.09.2015).

came to surface once the intervention began and the NATO took side with the rebels is really questioning whether intervention met the requirement of right intention.

4.8. IS IT SELECTIVELY APPLIED?

Many authors draw attention to different policies of Western states towards different human rights crises, which implies that despite the human rights arguments that the West builds its interventionism on, selection of cases to intervene is made upon strategic calculations and national interests. Many authors compare the different responses of the Western powers to the human rights crises in Libya and Syria, which implies selectivity in the application of the so-called “responsibility” and perhaps, hypocrisy.

Tariq Alhomayed from Asharq Al-Awsat⁴⁸⁷ follows the uprisings in the Arab world with deep concern as he complains that “the voice of reason has been absent” in the uprisings and revolutions that were taking place at the time of writing. He urges us against what he calls hypocrisy of the masses, media, states and intellectuals, which is no less dangerous than hypocrisy of authoritarian regimes in the Arab world. He asserts that matters are portrayed in a way which is different than they really are and by saying that he actually expresses his concern about the danger of manipulation of these events by some actors. As an example, he dwells upon Hilary Clinton’s speech⁴⁸⁸ where she declared support for the political transitions in the Arab world and called them a “strategic necessity.” He questions, whether European countries and the US who, at the time of writing, were raising up the possibility of using force against Gaddafi for understandable reasons, would be eager to take similar action in other cases. He asks whether the US will support Iranian opposition and undertake military action against the Iranian government who threatened two opposition leaders (at the time of writing) with imprisonment and house arrest, like in the Libya case. Would the US respond militarily if the Yemeni president insisted on staying in power despite the opposition’s demands for his departure, “especially as some in Washington fear that al-Qaeda is gaining control

⁴⁸⁷ Tariq Alhomayed, “How Far Will This Fire Spread”, **Asharq Al-Awsat**, 01.03.2011, <http://www.aawsat.net/2011/03/article55247351>, (13.03.2013).

⁴⁸⁸ Hillary Clinton: Middle East facing 'perfect storm', **BBC News**, 05.02.2011, <http://www.bbc.com/news/world-middle-east-12372983>, (05.09.2015).

there?” He presents the case in a way that implies the incoherency of political answers given by the West to similar cases. Although he does not provide an answer about what could be the reason for adopting different policies for the US, he draws attention to the selectivity of the US about the cases to intervene as he asks “[how] can America support change in the region, and consider it strategic, but be fearful of such change in Yemen for example, or remain silent regarding the 13 demonstrators killed in Iraq?” He suggests that Arab governments should take the responsibility and adopt the necessary political and economic reforms to avoid “this massive fire which is spreading without reason and prudence.”

In another article, *Obama: Between Bahrain and Syria*⁴⁸⁹, Alhomayed blames Obama administration (and the West in general) for remaining silent regarding what is going on in Syria. Perhaps, he wants to draw attention to the Western incoherency regarding the human rights crises taking place in different countries:

Here is a question for Washington and particularly President Obama, who is famous for his “change” slogan: what is the difference between Daraa and Darfur, or between Daraa and Kosovo? Which is worse, what is happening in Syria’s Daraa, or what happened in Israel as a result of Hamas’ rockets launched from Gaza? Which is worse, what is happening in Daraa or what is happening in Bahrain, which is being documented by an international media prohibited from entering Syria?

Although Alhomayed is seemingly asking Obama to explain his different stances with regard to different cases, his strategic choice of the cases shows us that he really wants to prove that there is national interest behind the decisions that are allegedly made for humanitarian reasons. He attributes this silence of the Obama administration regarding what is going on in Syria to its discriminative foreign policy, which is built on seemingly universal human rights but actually on national interests:

If Obama believes that his speech in Cairo⁴⁹⁰ had an impact he must realize that his silence regarding the Syrian regime will have an even greater and deeper impact. The reasons for his silence are well known – to protect Israel and not the Syrian people, who, it seems, are not included when it comes to

⁴⁸⁹ Tariq Alhomayed, “Obama: Between Bahrain and Syria”, **Asharq Al-Awsat**, 02.05.2011, <http://www.aawsat.net/2011/05/article55246651>, (19.03.2013).

⁴⁹⁰ “Obama’s Speech in Cairo”, **The New York Times**, 04.06.2009, <http://www.nytimes.com/2009/06/04/us/politics/04obama.text.html>, (05.09.2015).

the “universal rights of the people”, which the US President calls for and demands the Bahrainis to respect!

All these examples that Alhomayed gives make one think about the criteria that the West deploys to make its decisions regarding the human rights crises all over the world. One conclusion derived from his lines might be that the West is principally acting in accordance with its own interests when making vital decisions like humanitarian intervention rather than applying objective or standard criteria. This is what also Sami Hermez criticizes about UN Resolution 1970 (which referred the situation in Libya to the ICC, and imposed an arms embargo, a travel ban and asset freeze) when he states that neither the ICC prosecution nor the freezing of assets was considered as a measure against Mubarak or Ben Ali.⁴⁹¹

Phyllis Bennis is also among the authors who draw attention to the Western inaction regarding the human rights violations by other governments in the region. When “the US backed and US-armed” Yemeni forces killed 52 unarmed protesters and wounded more than 200 on 18 March,⁴⁹² President Obama “strongly condemned” the attacks but did not threaten the Yemeni government with a travel ban or an asset freeze. In “US-allied Bahrain”, 13 people were killed by government forces and 63 people were reported missing following the arrival of 1500 Saudi and UAE troops on 15 March, whose purpose was protecting the Bahraini government from the opposition. Hillary Clinton, then US Secretary of State, responded by calling for a political rather than a violent process. She did not demand that foreign troops leave the country or call for imposition of a no-fly zone or air strikes on the “home of US Navy’s Fifth Fleet.”⁴⁹³

Mshari Al-Zaydi from Asharq Al-Awsat also blames Arab regimes for their inaction regarding the situation in Syria in his article where he asks: *Why is this silence?*⁴⁹⁴ According to Al-Zaydi, although Arabs were quick to criticize and call for action against Gaddafi regime’s human rights violations, they currently remain silent

⁴⁹¹ Sami Hermez, “Libya and the folly of intervention”, **Al-Jazeera**, 07.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201135141253240339.html>, (12.04.2013).

⁴⁹² On 18th March 2011, 45 people were killed and 200 were wounded in an attack by some gunmen in civilian clothes to the Yemeni protesters who had just ended midday prayer. This attack, which is thought to be organized by the government and the pro-Saleh gangs is considered to be the deadliest attack during the 2011 uprising. Letta Tayler, “Yemen’s Friday of Indignity”, **Human Rights Watch**, 18.03.2013, <http://www.hrw.org/news/2013/03/18/yemen-s-friday-indignity>, (12/01/2014).

⁴⁹³ Phyllis Bennis, “Libya intervention threatens the Arab spring”, **Al-Jazeera**, 22.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/20113227357222118.html>, (11.04.2013).

⁴⁹⁴ Mshari Al-Zaydi, “Why is this silence?”, **Asharq Al-Awsat**, 19.06.2011, <http://www.aawsat.net/2011/06/article55246096>, (03.04.2013).

regarding the Syrian government's assaults on the rebels which have gone well beyond the former. While the militias fighting against the Gaddafi forces were supported by NATO, "unarmed civilians who can only chant slogans, scream in pain, and sacrifice themselves" in places like Daraa, Latakia, Homs and al-Qamishli lack the same protection by the international society. From this point of view, if the Libyan intervention had been legitimized on human rights basis, the same criteria should have been applied to Syria as well:

If the rationale behind the explicit political and military Arab intervention in Libya is the killing of "civilians" by Gaddafi's battalions, in Syria the civilians are being shelled by the army's fourth division, and run down by tanks without receiving the protection of NATO aircraft.

According to Al-Zaydi, not only the Arab World, but the West, particularly the Obama administration, is also guilty for ignoring what he calls a "more explicit ethical and political scandal in Syria:"

I believe the Syrian blood being shed relentlessly will soon expose everyone, including the Obama administration, which justified its military and political intervention in Libya on moral and humanitarian grounds, whilst turning a blind eye to the more explicit ethical and political scandal in Syria.

What Al-Zaydi implies by drawing attention to double standards of the West and Arab world regarding the two cases is that taking action on seemingly humanitarian basis in one case and ignoring a human rights crisis elsewhere proves that the formal rationale for intervention did not reflect the real motives behind it, which is perhaps their national interest.

One would ask why it was in the Western interest to intervene in Libya. Without specifying a particular reason, Bilal Hassen argues that the Western engagement with the region aims at keeping the region in its sphere of influence. According to Hassen, as we have seen following the regime changes in Tunisia and Egypt, the US and Europe asserted their pressure on the new regimes to keep developments in a track that complies with their political, economic and military interests.⁴⁹⁵

⁴⁹⁵ Bilal Hassen, "The internal and external factors affecting the Arab world", **Asharq Al-Awsat**, 22.06.2011, <http://www.aawsat.net/2011/06/article55246066>, (28.03.2013).

Huda Al Hussein from Asharq Al-Awsat puts forward a more concrete argument as she argues that the real reason behind the intervention was the decrease in the Libyan oil production:

Libya used to produce 1.6 million barrels of oil per day. Colonel Muammar Gaddafi was storing oil, as he did not want to sell the surplus – Libyan oil is more expensive and refined, and Eastern Europe relies on it. However, after problems began to emerge, production was reduced to 700,000 barrels per day, and heated discussions began between concerned countries. Then questions arose: Should NATO interfere, or should there be a no-fly zone? The US stood against all of these measures. France, together with Britain, continued to mount pressure, and the US continued to refuse. Then Libya's daily production rate decreased to only 300,000 barrels, and still the US did not move a muscle. Finally, when production decreased to zero, the US voted for Security Council Resolution No. 1973.⁴⁹⁶

The question of selectivity is related to the principle of right intention. The views expressed in this section draw attention to different policies adopted by the Western states with regards to different conflicts, and most prominently to the inaction in the Syrian case. Human rights become weaker grounds for intervention in the perception of the people in the region as more humanitarian crises are considered ineligible for intervention. This incoherency between the Western responses is basically explained with reference to their concerns of national interest. The criticisms raised in this section can be associated with the worries expressed in previous sections regarding the possible imperialist aims of the Western states. The real motivation behind an intervention legitimized on humanitarian grounds is suspected to be some kind of imperialist goals that serve the national interests of Western states.

4.9. DID THE INTERVENTION ACHIEVE ITS AIMS IN LIBYA? DID IT GO BEYOND THE UN'S MANDATE TO PROTECT CIVILIANS?

There is a general view that the intervention went beyond the UN's mandate to protect civilians and civilian-populated areas. One can argue that there is almost an agreement that the intervention's real aim was regime change. There is a common complaint that, far from maintaining the no-fly zone, NATO was functioning

⁴⁹⁶ Huda Al-Husseini, "The GCC in Bahrain: Measure meant to prevent foreign intervention", **Asharq Al-Awsat**, 13.06.2011, <http://www.aawsat.net/2011/06/article55246166>, (21.03.2013).

as the air force of rebels' army. Another point that is underlined is the human cost of the intervention which was claimed to be conducted to protect civilians.

During an interview on Al-Jazeera, Seumas Milne, the columnist and associate editor of The Guardian newspaper, defined the result of the Libyan intervention as a "catastrophic failure." Given the huge human cost of the intervention, including mass ethnic cleansing, torture, mass detentions and the destruction of cities, e.g. Sirte, what the intervention has achieved is the regime change, rather than the protection of civilians. The Libyan case has proven that an external military intervention is not the way to stop killings.⁴⁹⁷ Marwan Bishara states that the estimated deaths were about one to two hundreds before the intervention started while it became tens of thousands by the end of the intervention.⁴⁹⁸ What these statements imply is that the Libyan intervention went beyond the UN's mandate to protect civilians; produced harmful outcomes for civilians and resulted in regime change, which is not the authorized aim of the intervention by the UNSC.

In his article on Al-Jazeera, Gregg Carlstrom raises his concerns regarding the true intention of the Libyan intervention by drawing attention to the British Foreign Office's statement, where it is declared that what the intervention aims to achieve is a country "not run by Gaddafi." He underlines the improperness of using R2P as a justification for regime change and argues that the objective declared by the British Foreign Office "goes beyond the mandate of simply protecting civilian life."⁴⁹⁹ This is among Tarak Barkawi's considerations when he argues that the Libyan intervention would not set a model for future interventions, because both China and Russia would be more skeptical to allow the UNSC to issue such a decision next time, especially after they saw that it was interpreted as a legitimization for regime change by the US, the UK and France.⁵⁰⁰

In her article on Al-Jazeera which was published on 22nd March 2011, Phyllis Bennis criticizes the US, the UK and France for calling for a regime change in

⁴⁹⁷ Empire, "Transcript: A revolution for all seasons", **Al-Jazeera**, 3.11.2011, <http://www.aljazeera.com/programmes/empire/2011/11/2011111072216938979.html>, (10.11.2011).

⁴⁹⁸ Marwan Bishara, "Tides of the Arab Revolutions", **Al-Jazeera**, 26.11.2011, <http://www.aljazeera.com/indepth/opinion/2011/11/2011112692441408185.html>, (12.04.2013).

⁴⁹⁹ Gregg Carlstrom, "Responsibility to protect or right to meddle?", **Al-Jazeera**, 24.03.2011, <http://www.aljazeera.com/indepth/features/2011/03/2011324121253913547.html>, (16.02.2013).

⁵⁰⁰ Tarak Barkawi, "Intervention without responsibility", **Al-Jazeera**, 23.11.2011, <http://www.aljazeera.com/indepth/opinion/2011/11/20111121161326433590.html>, (16.02.2013).

Libya.⁵⁰¹ Mahmood Mamdani from Al-Jazeera puts forward some pieces of evidence to prove that the western powers went beyond the UN mandate.⁵⁰² Firstly, according to the New York Times report, “Libyan tanks on the road to Benghazi were bombed from the air Iraq War-style, when they were retreating and not when they were advancing.” Secondly, US ground forces’ presence on Libyan soil, which was revealed when the pilots of a US fighter jet that crashed near Benghazi were rescued by CIA operatives, is a clear violation of Resolution 1973. Moreover, according to Mamdani, the Western coalition showed their disinterest in political solution when NATO did not allow AU delegation who was in pursuit of a political negotiation with Gaddafi, to fly over Libya. Apart from that, in another article on Al-Jazeera, Mamdani argues that, while the expected outcome of the intervention was the protection of civilians, another outcome is likely to be “a more insecure world,” since other world leaders seems to have derived lessons from the Libya case. For instance, a North Korean foreign ministry official accused the US of diminishing Libya’s nuclear capacity before the intervention. He stated: “The truth that one should have power to defend peace has been confirmed again.” The intervention seems to have alarmed many leaders regarding a similar future as long as they do not improve their military capabilities. Interventions, that are claimed to serve the dream of a more secure world seems to end up encouraging world leaders to improve their military capabilities in order to secure their regimes.⁵⁰³

Abdul Rahman Al-Rashed from Asharq Al-Awsat⁵⁰⁴ argues that the intervention actually aimed to remove the ruling regime. He argues that the “[Resolution] ... passed by the UN Security Council, resulting in Libya today becoming – like Afghanistan – the scene of an international war that aims to forcibly remove the ruling regime.” He further argues that the resolution did not only authorize imposition of a no-fly zone, as it was initially believed, but to target Gaddafi forces. Phyllis Bennis from Al-Jazeera⁵⁰⁵ states that it was the US,

⁵⁰¹ Phyllis Bennis, “Libya intervention threatens the Arab spring”, **Al-Jazeera**, 22.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/20113227357222118.html>, (11.04.2013).

⁵⁰² Mahmood Mamdani, “Libya: Politics of humanitarian intervention”, **Al-Jazeera**, 31.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201133111277476962.html>, (11.04.2013).

⁵⁰³ Mahmood Mamdani, “Libya after the NATO invasion”, **Al-Jazeera**, 09.04.2011, <http://www.aljazeera.com/indepth/opinion/2011/04/201148174154213745.html>, (09.09.2015).

⁵⁰⁴ Abdul Rahman Al-Rashed, “Colonel Gaddafi: Between victory and defeat”, **Asharq Al-Awsat**, 19.03.2011, <http://english.aawsat.com/2011/03/article55247120/colonel-gaddafi-between-victory-and-defeat>, (10.09.2015).

⁵⁰⁵ Phyllis Bennis, “Libya: Too soon to declare victory”, **Al-Jazeera**, 24.08.2011, <http://www.aljazeera.com/indepth/opinion/2011/08/2011823123039439122.html>, (09.09.2015).

European, and NATO officials “who made the actual decisions about the use of force” and NATO planes were “functioning as the air force of the opposition army” following the decision. Likewise, Richard Falk, in his article on Al-Jazeera,⁵⁰⁶ argues that Resolution 1973 was “converted operationally and openly by NATO into a mandate to achieve regime change in Tripoli by dislodging the Gaddafi leadership.” If we agree that the operation went beyond the UN mandate, this also implies a conclusion regarding the operation’s legitimacy. If we adopt Moor’s framework, which asserts that operational legitimacy requires, among other things, not attempting to install a new government and not going beyond indirect support for the rebel forces,⁵⁰⁷ then the fact that the operation went beyond the UN mandate to protect civilians and aimed at regime change forces us to admit that the operation’s legitimacy was damaged.

The criticisms above regarding the Western powers’ statements in favor of regime change and NATO’s alleged function as the rebels’ air power are related to the principle of right intention. As the examination of Arab media coverage in this chapter reveals, an intervention aimed at regime change is considered as a breach of UN mandate to protect civilians in the Arab perception and criticisms on this basis can be placed within the context of right intention. Criticisms regarding the human cost of the intervention which is raised as an element damaging the legitimacy of the intervention can be understood within the framework of right intention as well. Apart from that, the concern with excessive human cost can be considered as assessing the intervention with regard to the principle of proportional means.

⁵⁰⁶ Richard Falk, “Sovereignty revisited as interventions grow”, **Al-Jazeera**, 15.07.2011, <http://www.aljazeera.com/indepth/opinion/2011/07/20117111055357786.html>, (09.09.2015).

⁵⁰⁷ ⁵⁰⁷ Ahmed Moor, “A war of Western imperialism?”, **Al-Jazeera**, 28.03.2011, <http://www.aljazeera.com/indepth/opinion/2011/03/201132472924305721.html>, (09.09.2015).

CONCLUSION

One conclusion that can be drawn from the whole analysis is that the memories of colonial era and recent experiments of Iraq and Afghanistan are still fresh, strong and influential on the Arab perception of the West in general and the US in particular. A general tendency that is observed is the tendency of Arabs to see any Western interference in the region from the prism of imperialism. There is a fear that any intervention under the banner of human rights protection has a hidden motivation of keeping the regional politics under Western control in such a way that would serve Western interest.

So, how can we explain the calls for the imposition of a no-fly zone by some columnists despite their concerns regarding the imperial motivations that they claim to be present behind the ostensible human rights discourse? The study shows that none of the authors advocates a foreign military intervention, but there are two types of opponents: the first type opposes intervention in any shape, including imposition of a no-fly zone, and the second type does not consider imposition of a no-fly zone as dangerous as a ground military intervention. They seem to tolerate an intervention only to the point that it creates equal conditions for the rebels against the Gaddafi's army. Defenders of no-fly zone base their argument on mainly two grounds: given the lack of Arab unity and capacity, an international intervention carried out mainly by the West is the only way to stop the bloodshed and save lives, and the intervention that is authorized by the UNSC has international legitimacy.

With regards to conduct of intervention, the writers are divided into two camps. The both camps agree on one basic issue: Although an Arab force would be favored over the Western one, if external help is necessary it could be appealed to when civilian lives are in danger. The first group asserts that external support should be in the shape of supporting the rebels' capacity. They do not defend a widespread military intervention but only one that provides a material equality between the rebels and Gaddafi forces (with international authorization). However, there are skeptical voices too. One writer points attention to the danger of supporting rebels' military capacity without knowing who they really are. There are some writers who are more favorable to Western military conduct. One suggests to set aside concerns about possible imperial intentions and to give priority to saving lives. In this sense, some writers openly express that they can tolerate Western powers' direct

intervention given their superior hard power capacity compared to Arabs' and the uncertainty of the identity of rebels.

As far as the criteria for intervention are concerned, it was observed that the "Arab perception" has parallels with the literature on R2P. The analysis of the media coverage reveals that three of the precautionary principles that are listed in ICISS report and articles on R2P coincide with the intervention criteria that are found to be present within the Arab perception. These precautionary principles are reasonable prospect of success, right intention, and last resort. The principle of reasonable prospect for success is in line with the widespread idea in the Arab media which holds that an intervention should not give rise to a broader conflict, or put the invaded country in worse conditions. The principle of right intention corresponds with the Arab expectation from interventions not to bear the purpose of regime change. The principle of last resort is also shared by the Arab media as they argue that military option can only be appealed to after all types of non-military measures failed.

The literature on humanitarian interventions is replete with discussions on the linkage between the national interests of intervening states and the possibility of interventions. It is generally argued that states usually take the decision of intervention only if it does not conflict with their own interests. Arab media examined within the scope of this study admits that cost of intervention is an issue of concern in deciding to intervene.

The study reveals that some commonly put forth views in the Arab media complies with the third pillar of the international responsibility that is discussed in the ICISS report, which is the responsibility to rebuild. First, as mentioned above, the argument in the Arab media that an intervention should not put the country in worse conditions is in accordance with the "security" dimension of the responsibility to rebuild which holds that invader should provide the security of lives and property in the aftermath of intervention. Another issue discussed in the Arab media is that invader is responsible for creating a proper environment for a functioning democracy. This expectation of Arabs regarding the post-intervention responsibilities is in line with "peace building" dimension of the responsibility to rebuild.

There is not much similarity between the approaches in the R2P literature and Arab media regarding the UN authorization issue. Contrary to divergent views in the literature with regard to the necessity of UN authorization (one may recall that

the ICISS report leaves the UN authorization question open-ended along with the scholars that stand in a similar manner while it is openly defended in the Outcome Document, Secretary General's 2009 Report and elsewhere), Arab sources agree on the need for UN authorization for the international legitimacy of the intervention.

Although the media that is analyzed reflects an agreement that Gaddafi regime had lost its legitimacy and Gaddafi himself called the intervention upon his country by mistreating his people, concerns regarding the legitimacy of the TNC and the NATO intervention are also present. It is observed in the study that there are writers who express doubts on whether TNC represents the rebels, given the statements made by some rebels that express disloyalty to TNC. There are also complaints regarding the legitimacy of the intervention which are raised mainly on three related grounds: the hidden "true motives" behind the intervention; selective application of the R2P; and the violation of the UN mandate to protect civilians.

The study shows the relationship between the three complaints that can widely be seen in the examined Arab media: Selective application is a result of imperialist motives, and they explain why NATO went beyond the UN mandate to protect civilians. The real motives behind the formal purpose of protecting civilians are described with several names: new colonialism, liberal imperialism, or reasserting US leadership. One writer argues that pro-interventionists refrained from revealing their real intentions to make the Resolution pass. They all imply that today's policies are designed to keep region's politics under Western control similar to the colonial era and R2P is a label for liberal imperialism. The Western powers, it is argued, are exploiting the R2P principle for greater access to the region's politics and to keep countries in the region under their control by putting friendly governments in charge in those countries. This, according to those critical writers, explains the selective application of the R2P principle. Some complain that the R2P mostly targets the weak African states.

This selective application is attributed to strategic calculations of Western states. As the study shows, some writers question the West's relative silence towards other regimes that also treat their people poorly like in Syria. They draw attention to the incoherency between the Western policies in different human rights violation cases. If Libya intervention was about the protection of civilians, then why did the international society act (and continue to act) differently on other human rights violation cases such as Syria? As the present study shows, these criticisms

about selective application are in line with the criticisms in the literature, particularly those of Mahmood Mamdani and Muhammad Ayoob.

The region's distrust of the West which exposes itself in their critics of selective application, liberal imperialism and so on, as mentioned in several instances in this study, reveals a deep suspicion regarding whether Western interventions are in accordance with the principle of right intention. Despite this mistrust on the Arab side, their lack of capabilities coerce them to call upon an intervention by the West limited to acts to give the locals a chance to fight their own war and put them in control of their own future. Given the region's history of Western interventionism, any breach of the principle of right intention would feed the long established distrust on the part of Arabs regarding the West's true intentions; make it harder for both parties to build a constructive relationship; and make future interventions more and more unwelcome in the region.

Among the issues that are named by the columnists in the list of wrongdoings in the different stages of the intervention process, we can underline the following ones: It was not clear who was going to carry out the intervention authorized through Resolution 1973; states that abstained during the UNSC meeting (Russia, China, Brazil, Germany) represent the vast majority of humanity; the Libyan assets that were freezed by the US and European countries became interest-free loans for the US treasury and European banks; the asset freezing and ICC referral measures taken against the Gaddafi regime are incoherent with the measures taken in other similar cases (they were not taken against Ben Ali or Mubarak); British Foreign Office stated that the aim of the intervention is a country "not run by Gaddafi" and other statements of France, Britain and the US also involved calls for regime change; NATO bombed the Gaddafi tanks while they were retreating to Benghazi; the US violated Resolution 1973 by operating on the Libyan soil; and the Western coalition was disinterested in finding a political solution in the aftermath of the intervention.

Some of the wrongdoings mentioned above are raised as issues damaging the intervention's legitimacy: the abstention of the four countries in the UNSC voting; the statements made in favor of regime change; and the criticisms that the regional organizations made after the bombings began. Especially the Arab League's withdrawing its support, which had been considered as a precondition by the West for the intervention, right after the intervention began, was pointed as a sign of declining legitimacy.

With regards to the measures taken against the Gaddafi regime, complaints converge around the incoherency between the Libya case and other human rights violation cases. Moreover, the arms embargo, the referral to the ICC, and the asset freeze measures taken against Gaddafi were not regarded as right acts because, firstly, there was no mechanism to monitor international compliance with the arms embargo; secondly, there was no ground to believe that the ICC referral would encourage people to abandon the regime (and actually they rather chose to hold on to the regime); and thirdly, the assets that were freezed by American and European banks turned into interest-free loans.

Some of the complaints of the columnists are related to their concerns regarding the violation of the UN mandate to protect civilians: Statements for regime change are interpreted as a sign of the imperial ambitions and a certain violation of the UN mandate. Needless to say, in either situation, it decreases or detracts from the legitimacy of the intervention. The study shows that NATO is criticized for functioning as the air force of the rebel army and for converting Resolution 1973 into a mandate for the regime change. As the study also mentions, NATO's violation of the UN mandate is criticized in the literature as well, e.g. Kuperman's work.

Libya intervention is interpreted as a failure by one author, given its violation of the UN mandate, despite the fact that it was declared as a victory in the Western circles. Therefore, he argues, the Libya case cannot be considered as a model for future interventions. However, another argues, it may give us a clue about how interventions will be conducted in the future. It is clear that the US and Europe did not want to get involved in a large scale intervention in Libya. They may retain this policy of hesitancy in the future. Moreover, unlike Afghanistan and Iraq cases, the West was not committed to the post-intervention rebuilding process in Libya case. As the present study shows, from the Arab perspective, the invaders were expected to provide a harmonious transition process after the intervention, ensure that situation was not getting worse, and contribute to creating a proper environment for a functioning democracy. In this respect, if invading without taking the responsibility of post-intervention process will be the general policy of future interventions, it does not match the Arab expectations.

The study reveals Arab's worries about the chaos that was likely to follow a revolutionary regime change. They pointed out that removing the current regime did not necessarily lead to a better one. The writers' views are complementary in this case: One writer draws attention to the fact that the problems that people suffer from

under these regimes in the Middle East are grounded in long-lasting problems of the region like governance, development, and freedom. Military option is no solution to any of these problems. Another writer argues that Iraq and Afghanistan cases proved the inability of military option to deal with the region's problems. Some others point to the problem with institutions: A revolutionary process would dismantle the economic, political, and social institutions that the regime had relied on. In the Libyan case, for instance, Gaddafi's function was to hold the state institutions together as the strong man of the regime. Societies that are divided on ethnic and sectarian lines, as one writer argues, need a strong man to hold the state structure together. So, in the absence of a stable economy and institutions, overthrow of dictators with revolutionary tools is unlikely to lead to a plural democracy, as another writer indicates, because there will be no structure to build a new state mechanism on.

The present study aims to help develop a better understanding of the Arab perception of interventionism and the international responsibility to protect people. To this end, the research strives to reveal Arabs' concerns, needs and expectations by looking at the Arab media. Further studies may conduct a similar analysis on the media broadcasting in Arabic language. One may also prefer to make a discourse analysis on the regular news reports rather than columns and commentaries. A study on terminology used in news reports may also help to grasp a deeper perception of R2P. Needless to say, media analysis is not the only way to understand Arab perception. There are other means that can be used as a source, most prominently, people of the region. A survey based on direct interviews with people from different Arab countries may reveal similarities and differences between the different Arab societies regarding their approach to the R2P. The Arab region is one of the prominent areas where the R2P is applied and where the high possibility of its future application exists. In this sense, and given the region's history of constant interference by the West, the region's perception of the concept is of prime importance.

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APPENDICES

Appendix 1: African Union Peace and Security Council Communique of the 261st Meeting

AFRICAN UNION
الاتحاد الأفريقي



UNION AFRICAINE
UNIÃO AFRICANA

P.O. Box: 3243, Addis Ababa, Ethiopia, Tel.: (251-11) 551 38 22 Fax: (251-11) 551 93 21
Email: situationroom@africa-union.org, oau-ews@ethionet.et

PEACE AND SECURITY COUNCIL
261ST MEETING
ADDIS ABABA, ETHIOPIA
23 FEBRUARY 2011

PSC/PR/COMM(CCLXI)

COMMUNIQUE

**COMMUNIQUE OF THE 261ST MEETING
OF THE PEACE AND SECURITY COUNCIL**

The Peace and Security Council of the African Union, at its 261st meeting held on 23 February 2011, considered the situation in the Great Socialist People's Libyan Arab Jamahiriya and adopted the following decision:

Council,

1. **Takes note** of the statements made by the Commission and the Permanent Representative of the Great Socialist People's Libyan Arab Jamahiriya;
2. **Expresses** deep concern with the situation in the Great Socialist People's Libyan Arab Jamahiriya and **strongly condemns** the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and international Humanitarian Law, which continues to contribute to the loss of human life and the destruction of property. Council **stresses** the need for the people of Libya to spare no effort in avoiding any further loss of life. Council **conveys** its condolences to the families of the victims and **wishes** those that have been injured an early recovery;
3. **Calls** on the Libyan authorities to ensure the protection and security of the citizens and also **ensure** the delivery and provision of humanitarian assistance to the injured and other persons in need;
4. **Appeals** to the people of Libya to work together to find a lasting solution to the problems facing their country. Council **urges** the authorities and the people of Libya to exercise maximum restraint and to put an end forthwith to all acts of violence and the destruction of property;
5. **Underscores** that the aspirations of the people of Libya for democracy, political reform, justice and socio-economic development are legitimate and **urges** that they be respected. Council further **calls** on all parties, in particular, the Government, to desist from making statements that could escalate the situation. Furthermore, Council **stresses** the need to preserve the territorial integrity and unity of the Great Socialist People's Libyan Arab Jamahiriya;
6. **Decides** to urgently dispatch a mission of Council to Libya to assess the situation on the ground;
7. **Decides** to remain actively seized of the matter.

Appendix 2: African Union Peace and Security Council Communique of the 265th Meeting

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

P.O. Box: 3243, Addis Ababa, Ethiopia, Tel.:(251-11) 551 38 22 Fax: (251-11) 551 93 21
Email: situationroom@africa-union.org

PEACE AND SECURITY COUNCIL
265TH MEETING
ADDIS ABABA, ETHIOPIA
10 MARCH 2011

PSC/PR/COMM.2(CCLXV)

COMMUNIQUE

**COMMUNIQUE OF THE 265th MEETING
OF THE PEACE AND SECURITY COUNCIL**

The Peace and Security Council of the African Union (AU), at its 265th meeting held at the level of Heads of State and Government, on 10 March 2011, adopted the following decision on the situation in Libya:

Council:

1. **Takes note** of the statements made by the Chairperson of the Commission, as well as by the representative of the Great Socialist People's Libyan Arab Jamahiriya;
2. **Recalls** communiqué PSC/PR/COMM(CCLXI) adopted at its 261st meeting, held on 23 February 2011, and the statement issued, the same day, by the Chairperson of the Commission;
3. **Expresses AU's deep concern** at the prevailing situation in Libya, which poses a serious threat to peace and security in that country and in the region as a whole, as well as to the safety and dignity of Libyans and of the migrant workers, notably the African ones, living in Libya. Council is **equally deeply concerned** with the resulting humanitarian situation;
4. **Expresses AU's solidarity** with Libya, and **underscores** the legitimacy of the aspirations of the Libyan people for democracy, political reform, justice, peace and security, as well as for socio-economic development, and the need to ensure that these aspirations are fulfilled in a peaceful and democratic manner; in this context, Council **takes note** of the stated commitment of the Libyan authorities to embark upon the path of reforms;
5. **Reiterates AU's strong and unequivocal condemnation** of the indiscriminate use of force and lethal weapons, whoever it comes from, resulting in the loss of life, both civilian and military, and the transformation of pacific demonstrations into an armed rebellion; Council **deeply deplores** the loss of human life, **conveys its condolences** to the families of the victims and **wishes** early recovery to those who have been injured;
6. **Reaffirms its strong commitment** to the respect of the unity and territorial integrity of Libya, as well as its rejection of any foreign military intervention, whatever its form;
7. **Expresses its conviction** that the current situation in Libya calls for an urgent African action for: (i) the immediate cessation of all hostilities, (ii) the cooperation of the competent Libyan authorities to facilitate the timely delivery of humanitarian assistance to the needy populations, (iii) the protection of foreign nationals, including the African migrants living in Libya, and (iv) the adoption and implementation of the political reforms necessary for the elimination of the causes of the current crisis;
8. **Decides** to establish an AU *ad-hoc* High-Level Committee on Libya comprising five Heads of State and Government, as well as the Chairperson of the Commission; Council **requests** the Chairperson of the Commission to finalize the consultations undertaken in this respect and to

announce the composition of the Committee as soon as possible. Council **further decides** that the Committee is mandated to:

- (i) engage with all parties in Libya and continuously assess the evolution of the situation on the ground,
- (ii) facilitate an inclusive dialogue among the Libyan parties on the appropriate reforms,
- (iii) engage AU's partners, in particular the League of Arab States, the Organization of the Islamic Conference, the European Union and the United Nations, to facilitate coordination of efforts and seek their support for the early resolution of the crisis ;

9. **Further decides** that the AU *ad-hoc* High-Level Committee on Libya be supported by a team comprising the Ministers of Foreign Affairs/External Relations and/or other relevant Ministers of the countries concerned, as well as the AU Commissioner for Peace and Security;

10. **Requests** all AU Member States to provide logistical and humanitarian support to all African migrant workers wishing to leave Libya, as well as to those neighboring countries forced to bear a disproportionate burden and to the countries of origin to facilitate the socio-economic reinsertion of these migrant workers. In this respect, Council **requests** the Chairperson of the Commission to take the necessary steps to coordinate such an effort, including the convening of a conference to facilitate the mobilization of the required resources and other related measures;

11. **Recalls** the provisions of the OAU Convention on the Elimination of Mercenarism in Africa; Council **requests** the Commission to gather information on the reported presence of mercenaries in Libya and their actions, to enable it, should these reports be confirmed, to take the required measures in line with the Convention;

12. **Requests** the Chairperson of the Commission to transmit this decision to the United Nations Security Council, the League of Arab States, the Organization of the Islamic Conference, the European Union and other concerned AU partners, for their action as appropriate;

13. **Decides** to remain actively seized of the matter.

Appendix 3: Final Communiqué Issued by the Emergency Meeting of the Committee of Permanent Representatives to the Organization of the Islamic Conference on the Alarming Developments in Libyan Jamahiriya

Final Communiqué Issued By The Emergency Meeting Of The Committee Of Permanent Representatives To The Organization Of The Islamic Conference On The Alarming Developments In Libyan Jamahiriya, 8 March 2011.

The Committee of Permanent Representatives to the Organization of the Islamic Conference (OIC) held an emergency meeting at the OIC General Secretariat on 8 March 2011. The meeting discussed the critical situation in Libya and its dangerous and ongoing implications.

The meeting listened to the statement of H.E. the OIC Secretary General on the situation in the Libyan Jamahiriya and the efforts deployed by the OIC at the political and humanitarian levels. In this respect, the meeting applauded the statement issued by the Secretary General on 22 February 2011 which condemned the excessive use of force against civilians in Libya, considering that the repression and intimidation used in Libya amount today to humanitarian tragedy which contravenes Islamic values, human rights and international humanitarian law. The meeting also commended the Secretary General's genuine endeavours in harmonizing the OIC's position as well as the coordination with regional and international organizations vis-à-vis the alarming situation in Libya and requested him to continue his efforts in this regard.

The meeting recalled the importance attached by the Charter of the OIC and its Ten-Year Programme of Action for Member States to consolidate the principles of good governance, promote human rights, fight corruption, expand political participation and inclusive development, and address the growing challenges in the political, social and economic domains which cannot be tackled effectively except through the implementation of comprehensive reforms in various sectors.

The participants at the meeting extended their condolences to the families of martyrs of the peaceful demonstrations and their sympathies to the wounded and expressed their regrets over the heavy loss of lives of the Libyan people along with the colossal damage suffered by public and private properties in the country.

The meeting called upon the Libyan authorities to immediately end the military operations targeting civilians and empathized the importance of dialogue to address all their demands through peaceful means and stop bloodshed in order to restore Libya's unity, security and stability.

The meeting urged OIC Member States, international organizations, along with Islamic and international civil society organizations to move promptly and provide necessary and urgent humanitarian assistance to the Libyan people and to assist them in surmounting this grave crisis, in line with the statement issued by the OIC Secretary General in which he appealed to OIC Member States and humanitarian international organizations.

The meeting requested the General Secretariat to provide Member States with necessary information on the humanitarian needs of displaced persons particularly at the Libyan borders. It also called Member States to coordinate their humanitarian efforts with the OIC General Secretariat as well as providing regular information in this regard.

The meeting appealed to Member States and the international community to extend urgent and tangible assistance to evacuate citizens of Member States, displaced in Libya, in particular at the Tunisian, Algerian and Niger borders with Libya and to provide immediate bilateral support to them to mitigate the additional burden of this humanitarian crisis.

The meeting took note of the call by the Libyan authorities to send an OIC Fact-Finding Mission in order to get more acquainted with the situation on the ground.

The meeting emphasized the imperative of respecting the sovereignty, territorial integrity of Libya and non-interference in its internal affairs stressing the principled and firm position of the OIC against any form of military intervention to Libya.

The meeting called for the convening of an emergency open-ended meeting of the Executive Committee at the Ministerial Level and requested the Secretary General to coordinate with the Member States in this regard. The Emergency Meeting will further review the latest developments in Libya and to take decisions, as necessary, on various recommendations including the support for the international calls to establish no-fly zone over Libya under UN supervision to be implemented based on a Resolution by the UN Security Council aiming at protecting civilians.

The meeting requested the OIC Secretary General to intensify contacts and efforts with all parties with a view to stopping bloodshed in Libya and resolving the conflict by peaceful means while strengthening the OIC's efforts in the humanitarian aspect.

Appendix 4: Statement by the GCC Concerning Libya

AFP Report: Statement by the GCC Concerning Libya, 7 March 2011.

ABU DHABI: The six Gulf Arab states expressed support for a no-fly zone over Libya yesterday, amid divisions among the major powers over military intervention in the North African nation.

"The Gulf Cooperation Council demands that the UN Security Council take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya," the six-nation bloc said in a statement. The GCC statement also condemned the "crimes committed against civilians, the use of heavy arms and the recruitment of mercenaries" by the Libyan regime.

United Arab Emirates Foreign Minister Sheikh Abdullah bin Zayed Al Nahyan said the Gulf monarchies had reached their decision after Libyan authorities "totally refused to allow aid" to reach civilians.

He said "those responsible should be brought to justice".

"We call on the international community, especially the UN Security Council, to face their responsibilities in helping the dear people," Sheikh Abdullah told a GCC foreign ministers' meeting in Abu Dhabi.

"The meeting is being held amid difficult changes the brotherly Libyan people are going through, prompting us to join our efforts to help them in their crisis," he said.

The UN Security Council unanimously imposed sanctions against the Gaddafi regime and on February 26 ordered an investigation into possible crimes against humanity.

But the major powers have been deeply divided over British and French calls for the council to order a no-fly zone.

AFP

Appendix 5: United Nations Security Council Resolution 678

which the Council will need to take further measures under the Charter;

11. *Decides* to remain actively and permanently seized of the matter until Kuwait has regained its independence and peace has been restored in conformity with the relevant resolutions of the Security Council.

B

12. *Reposes its trust* in the Secretary-General to make available his good offices and, as he considers appropriate, to pursue them and to undertake diplomatic efforts in order to reach a peaceful solution to the crisis caused by the Iraqi invasion and occupation of Kuwait, on the basis of resolutions 660 (1990), 662 (1990) and 664 (1990), and calls upon all States, both those in the region and others, to pursue on this basis their efforts to this end, in conformity with the Charter, in order to improve the situation and restore peace, security and stability;

13. *Requests* the Secretary-General to report to the Security Council on the results of his good offices and diplomatic efforts.

Adopted at the 2951st meeting by 13 votes to none, with 2 abstentions (Cuba and Yemen).

Decisions

At its 2959th meeting, on 27 November 1990, the Council decided to invite the representatives of Bahrain, Egypt and Saudi Arabia to participate, without vote, in the discussion of the question.

At the same meeting, the Council also decided, at the request of the representative of Egypt,¹¹² to extend an invitation to Mr. Engin Ansary under rule 39 of its provisional rules of procedure.

At its 2960th meeting, on 27 November 1990, the Council decided to invite the representative of Qatar to participate, without vote, in the discussion of the question.

At its 2962nd meeting, on 28 November 1990, the Council decided to invite the representatives of Bangladesh, the Islamic Republic of Iran and the United Arab Emirates to participate, without vote, in the discussion of the question.

Resolution 677 (1990)

of 28 November 1990

The Security Council,

Recalling its resolutions 660 (1990) of 2 August 1990, 662 (1990) of 9 August 1990 and 674 (1990) of 29 October 1990,

Reiterating its concern for the suffering caused to indi-

¹¹² Document S/21968, incorporated in the record of the 2959th meeting.

viduals in Kuwait as a result of the invasion and occupation of Kuwait by Iraq.

Gravely concerned at the ongoing attempt by Iraq to alter the demographic composition of Kuwait and to destroy the civil records maintained by the legitimate Government of Kuwait,

Acting under Chapter VII of the Charter of the United Nations,

1. *Condemns* the attempts by Iraq to alter the demographic composition of Kuwait and to destroy the civil records maintained by the legitimate Government of Kuwait;

2. *Mandates* the Secretary-General to take custody of a copy of the population register of Kuwait, the authenticity of which has been certified by the legitimate Government of Kuwait and which covers the registration of the population up to 1 August 1990;

3. *Requests* the Secretary-General to establish, in co-operation with the legitimate Government of Kuwait, an order of rules and regulations governing access to and use of the said copy of the population register.

Adopted unanimously at the 2962nd meeting.

Decision

At its 2963rd meeting, on 29 November 1990, the Council proceeded with the discussion of the question.

Resolution 678 (1990)

of 29 November 1990

The Security Council,

Recalling and reaffirming its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990 and 677 (1990) of 28 November 1990,

Noting that, despite all efforts by the United Nations, Iraq refuses to comply with its obligation to implement resolution 660 (1990) and the above-mentioned subsequent relevant resolutions, in flagrant contempt of the Security Council,

Mindful of its duties and responsibilities under the Charter of the United Nations for the maintenance and preservation of international peace and security,

Determined to secure full compliance with its decisions,

Acting under Chapter VII of the Charter,

1. *Demands* that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions, and decides, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of goodwill, to do so;

2. *Authorizes* Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the above-mentioned resolutions, to use all necessary

means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area;

3. *Requests* all States to provide appropriate support for the actions undertaken in pursuance of paragraph 2 above;

4. *Requests* the States concerned to keep the Security Council regularly informed on the progress of actions undertaken pursuant to paragraphs 2 and 3 above;

5. *Decides* to remain seized of the matter.

Adopted at the 2963rd meeting by 12 votes to 2 (Cuba and Yemen), with 1 abstention (China).

Decision

In a letter dated 21 December 1990,¹¹³ the President of the Security Council informed the Secretary-General as follows:

"By resolution 669 (1990), adopted at its 2942nd

¹¹³ S/22033.

meeting, on 24 September 1990, the Council, recalling its resolution 661 (1990) of 6 August 1990, entrusted the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait with the task of examining requests for assistance under the provisions of Article 50 of the Charter of the United Nations, and making recommendations to the President of the Council for appropriate action.

"By letters dated 19 and 21 December 1990,¹¹⁴ the Chairman of the Committee transmitted the recommendations of the Committee with regard to the following 18 States: Bangladesh, Bulgaria, Czechoslovakia, India, Lebanon, Mauritania, Pakistan, Philippines, Poland, Romania, Seychelles, Sri Lanka, Sudan, Tunisia, Uruguay, Viet Nam, Yemen and Yugoslavia.

"At consultations of the whole of the Security Council held on 20 December 1990, it was decided to inform you of the above-mentioned recommendations of the Committee pursuant to resolution 669 (1990) in connection with requests for assistance under the provisions of Article 50 of the Charter and to request you to implement the actions contained in the recommendations."

¹¹⁴ S/22021 and Add.1.

THE SITUATION IN CAMBODIA

Decision

At its 2941st meeting, on 20 September 1990, the Council discussed the item entitled "The situation in Cambodia".

Resolution 668 (1990)

of 20 September 1990

The Security Council,

Convinced of the need to find an early, just and lasting peaceful solution of the Cambodia conflict,

Noting that the Paris Conference on Cambodia, which met from 30 July to 30 August 1989, made progress in elaborating a wide variety of elements necessary for reaching a comprehensive political settlement,

Taking note with appreciation of the continuing efforts of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, which have resulted in the framework for a comprehensive political settlement of the Cambodia conflict,¹¹⁵

Also taking note with appreciation of the efforts of the countries of the Association of South-East Asian Nations and other countries involved in promoting the search for a comprehensive political settlement,

Further taking note with appreciation of the efforts of Indonesia and France as Co-Presidents of the Paris Con-

¹¹⁵ *Official Records of the Security Council, Forty-fifth Year, Supplement for July, August and September 1990*, document S/21689, annex.

ference on Cambodia and of all participants in the Conference to facilitate the restoration of peace to Cambodia,

Noting that these efforts are aimed at enabling the Cambodian people to exercise their inalienable right to self-determination through free and fair elections organized and conducted by the United Nations in a neutral political environment with full respect for the national sovereignty of Cambodia,

1. *Endorses* the framework for a comprehensive political settlement of the Cambodia conflict¹¹⁵ and encourages the continuing efforts of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America in this regard;

2. *Welcomes* the acceptance of this framework in its entirety by all the Cambodian parties, as the basis for settling the Cambodia conflict, at the informal meeting of the Cambodian parties at Jakarta on 10 September 1990 and their commitment to it;

3. *Also welcomes* the commitment of the Cambodian parties, in full co-operation with all other participants in the Paris Conference on Cambodia, to elaborating this framework into a comprehensive political settlement through the processes of the Conference;

4. *Welcomes*, in particular, the agreement reached by all Cambodian parties at Jakarta¹¹⁶ to form a Supreme National Council as the unique legitimate body and source of authority in which, throughout the transitional period, the independence, national sovereignty and unity of Cambodia is embodied;

5. *Urges* the members of the Supreme National Coun-

¹¹⁶ *Ibid.*, document S/21732, annex.

Appendix 6: United Nations Security Council Resolution 687

⁷⁵ Subject to prior notification to the Committee of the flight and its contents, the Committee hereby gives general approval under paragraph 4 (b) of resolution 670 (1990) of 25 September 1990 for all flights which carry only foodstuffs or supplies intended strictly for medical purposes. This procedure applies equally to the civilian and humanitarian imports referred to in paragraph 3, the supply of which is subject to the no-objection procedure laid down in paragraph 4.

⁷⁶ It notes with satisfaction that the Government of Iraq has assured Mr. Ahtisaari's mission that it would accept a system of monitoring of imports and their utilization. The Secretary-General is requested, in consultation with the Government of Iraq and the International Committee of the Red Cross, to arrange for such a system of on-the-spot monitoring to proceed in conjunction with the despatch of United Nations personnel to Iraq to supervise the effective utilization, for the benefit of the civilian population in all areas, of all imports to be established under the responsibility of the United Nations.⁷

"I have the honour to request that you bring the above-mentioned decision to the attention of all States."

In a letter dated 26 March 1991,³⁵ addressed to the President of the Security Council for the attention of members of the Council, the Secretary-General referred to the letter of 19 March 1991 from the President of the Security Council³⁷ and informed the President that he had, on 26 March 1991, designated Mr. Richard Foran, Assistant Secretary-General, Office of General Services, Department of Administration and Management, as the official responsible for coordinating the return of property from Iraq to Kuwait.

At its 2981st meeting, on 3 April 1991, the Council decided to invite the representatives of Iraq and Kuwait to participate, without vote, in the discussion of the item entitled "The situation between Iraq and Kuwait".

Resolution 687 (1991) of 3 April 1991

The Security Council,

Recalling its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990, 677 (1990) of 28 November 1990, 678 (1990) of 29 November 1990 and 686 (1991) of 2 March 1991,

Welcoming the restoration to Kuwait of its sovereignty, independence and territorial integrity and the return of its legitimate Government,

Affirming the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq, and noting the intention expressed by the Member States cooperating with Kuwait under paragraph 2 of resolution 678 (1990) to bring their military presence in Iraq to an end as soon as possible consistent with paragraph 8 of resolution 686 (1991).

Reaffirming the need to be assured of Iraq's peaceful intentions in the light of its unlawful invasion and occupation of Kuwait,

Taking note of the letter dated 27 February 1991 from the Deputy Prime Minister and Minister for Foreign Affairs of Iraq addressed to the President of the Security Council⁴¹ and of his letters of the same date addressed to the President of the Council and to the Secretary-General,⁴⁰ and those letters dated 3 March⁴² and 5 March³⁷ he addressed to them, pursuant to resolution 686 (1991),

Noting that Iraq and Kuwait, as independent sovereign States, signed at Baghdad on 4 October 1963 "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters",⁴³ thereby formally recognizing the boundary between Iraq and Kuwait and the allocation of islands, which Agreed Minutes were registered with the United Nations in accordance with Article 102 of the Charter of the United Nations and in which Iraq recognized the independence and complete sovereignty of the State of Kuwait with its boundaries as specified in the letter of the Prime Minister of Iraq dated 21 July 1932 and as accepted by the ruler of Kuwait in his letter dated 10 August 1932,

Conscious of the need for demarcation of the said boundary,

Conscious also of the statements by Iraq threatening to use weapons in violation of its obligations under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,⁴⁹ and of its prior use of chemical weapons, and affirming that grave consequences would follow any further use by Iraq of such weapons,

Recalling that Iraq has subscribed to the Final Declaration adopted by all States participating in the Conference of States Parties to the 1925 Geneva Protocol and Other Interested States, held in Paris from 7 to 11 January 1989,⁴⁰ establishing the objective of universal elimination of chemical and biological weapons,

Recalling also that Iraq has signed the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972,⁶¹

Noting the importance of Iraq ratifying the Convention,

Noting also the importance of all States adhering to the Convention and encouraging its forthcoming review conference to reinforce the authority, efficiency and universal scope of the Convention,

Stressing the importance of an early conclusion by the Conference on Disarmament of its work on a convention on the universal prohibition of chemical weapons and of universal adherence thereto,

Aware of the use by Iraq of ballistic missiles in unprovoked attacks and therefore of the need to take specific measures in regard to such missiles located in Iraq,

Concerned by the reports in the hands of Member States that Iraq has attempted to acquire materials for a nuclear-weapons programme contrary to its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968,⁶²

Recalling the objective of the establishment of a nuclear-weapon-free zone in the region of the Middle East,

Conscious of the threat that all weapons of mass destruction pose to peace and security in the area and of the need to work towards the establishment in the Middle East of a zone free of such weapons,

Conscious also of the objective of achieving balanced and comprehensive control of armaments in the region,

Conscious further of the importance of achieving the objectives noted above using all available means, including a dialogue among the States of the region,

Noting that resolution 686 (1991) marked the lifting of the measures imposed by resolution 661 (1990) in so far as they applied to Kuwait,

Noting also that despite the progress being made in fulfilling the obligations of resolution 686 (1991), many Kuwaiti and third-State nationals are still not accounted for and property remains unreturned,

Recalling the International Convention against the Taking of Hostages,⁶³ opened for signature in New York on 18 December 1979, which categorizes all acts of taking hostages as manifestations of international terrorism,

Deploring threats made by Iraq during the recent conflict to make use of terrorism against targets outside Iraq and the taking of hostages by Iraq,

Taking note with grave concern of the reports transmitted by the Secretary-General on 20 March ⁵³ and 28 March 1991,⁶⁴ and conscious of the necessity to meet urgently the humanitarian needs in Kuwait and Iraq,

Bearing in mind its objective of restoring international peace and security in the area as set out in its recent resolutions,

Conscious of the need to take the following measures acting under Chapter VII of the Charter,

1. *Affirms* all thirteen resolutions noted above, except as expressly changed below to achieve the goals of the present resolution, including a formal cease-fire;

A

2. *Demands* that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters",⁵⁸ signed by them in the exercise of their sovereignty at Baghdad on 4 October 1963 and registered with the United Nations;

3. *Calls upon* the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on appropriate material including the maps transmitted with the letter dated 28 March 1991 addressed to him by the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations,⁶⁵ and to report back to the Council within one month;

4. *Decides* to guarantee the inviolability of the above-mentioned international boundary and to take, as appropriate, all necessary measures to that end in accordance with the Charter of the United Nations;

B

5. *Requests* the Secretary-General, after consulting with Iraq and Kuwait, to submit within three days to the Council for its approval a plan for the immediate deployment of a United Nations observer unit to monitor the Khawr 'Abd Allah and a demilitarized zone, which is hereby established, extending ten kilometres into Iraq and five kilometres into Kuwait from the boundary referred to in the "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters"; to deter violations of the boundary through its presence in and surveillance of the demilitarized zone and to observe any hostile or potentially hostile action mounted from the territory of one State against the other; and also requests the Secretary-General to report regularly to the Council on the operations of the unit and to do so immediately if there are serious violations of the zone or potential threats to peace;

6. *Notes* that as soon as the Secretary-General notifies the Council of the completion of the deployment of the United Nations observer unit, the conditions will be established for the Member States cooperating with Kuwait in accordance with resolution 678 (1990) to bring their military presence in Iraq to an end consistent with resolution 686 (1991);

C

7. *Invites* Iraq to reaffirm unconditionally its obligations under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,⁵⁹ and to ratify the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972;⁶¹

8. *Decides* that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

(a) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities related thereto;

(b) All ballistic missiles with a range greater than one hundred and fifty kilometres, and related major parts and repair and production facilities;

9. *Decides also*, for the implementation of paragraph 8, the following:

(a) Iraq shall submit to the Secretary-General, within fifteen days of the adoption of the present resolution, a declaration on the locations, amounts and types of all items specified in paragraph 8 and agree to urgent, on-site inspection as specified below;

(b) The Secretary-General, in consultation with the appropriate Governments and, where appropriate, with the Director-General of the World Health Organization, within forty-five days of the adoption of the present resolution shall develop and submit to the Council for approval a plan calling for the completion of the following acts within forty-five days of such approval:

- (i) The forming of a special commission which shall carry out immediate on-site inspection of Iraq's biological, chemical and missile capabilities, based on Iraq's declarations and the designation of any additional locations by the special commission itself;
- (ii) The yielding by Iraq of possession to the Special Commission for destruction, removal or rendering harmless, taking into account the requirements of public safety, of all items specified under paragraph 8 (a), including items at the

additional locations designated by the Special Commission under paragraph (i) and the destruction by Iraq, under the supervision of the Special Commission, of all its missile capabilities, including launchers, as specified under paragraph 8 (b);

- (iii) The provision by the Special Commission to the Director General of the International Atomic Energy Agency of the assistance and cooperation required in paragraphs 12 and 13;

10. *Decides further* that Iraq shall unconditionally undertake not to use, develop, construct or acquire any of the items specified in paragraphs 8 and 9, and requests the Secretary-General, in consultation with the Special Commission, to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with the present paragraph, to be submitted to the Council for approval within one hundred and twenty days of the passage of the present resolution;

11. *Invites* Iraq to reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, of 1 July 1968;⁶²

12. *Decides* that Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapon-usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above; to submit to the Secretary-General and the Director General of the International Atomic Energy Agency within fifteen days of the adoption of the present resolution a declaration of the locations, amounts and types of all items specified above; to place all of its nuclear-weapon-usable materials under the exclusive control, for custody and removal, of the Agency, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General discussed in paragraph 9 (b); to accept, in accordance with the arrangements provided for in paragraph 13, urgent on-site inspection and the destruction, removal or rendering harmless as appropriate of all items specified above; and to accept the plan discussed in paragraph 13 for the future ongoing monitoring and verification of its compliance with these undertakings;

13. *Requests* the Director General of the International Atomic Energy Agency, through the Secretary-General and with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General referred to in paragraph 9 (b), to carry out immediate on-site inspection of Iraq's nuclear capabilities based on Iraq's declarations and the designation of any additional locations by the Special Commission; to develop a plan for submission to the Council within forty-five days calling for the destruction, removal or rendering harmless as appropriate of all items listed in paragraph 12; to carry out the plan within forty-five days following approval by the Council and to develop a plan, taking into account the rights and obligations of Iraq under the Treaty on the Non-Proliferation of Nuclear Weapons, for the future ongoing monitoring and verification of Iraq's compliance with paragraph 12, including an inventory of all nuclear material in Iraq subject to the Agency's verification and inspections to confirm that

Agency safeguards cover all relevant nuclear activities in Iraq, to be submitted to the Council for approval within one hundred and twenty days of the adoption of the present resolution;

14. *Notes* that the actions to be taken by Iraq in paragraphs 8 to 13 represent steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons;

D

15. *Requests* the Secretary-General to report to the Council on the steps taken to facilitate the return of all Kuwaiti property seized by Iraq, including a list of any property that Kuwait claims has not been returned or which has not been returned intact;

E

16. *Reaffirms* that Iraq, without prejudice to its debts and obligations arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage - including environmental damage and the depletion of natural resources - or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait;

17. *Decides* that all Iraqi statements made since 2 August 1990 repudiating its foreign debt are null and void, and demands that Iraq adhere scrupulously to all of its obligations concerning servicing and repayment of its foreign debt;

18. *Decides also* to create a fund to pay compensation for claims that fall within paragraph 16 and to establish a commission that will administer the fund;

19. *Directs* the Secretary-General to develop and present to the Council for decision, no later than thirty days following the adoption of the present resolution, recommendations for the Fund to be established in accordance with paragraph 18 and for a programme to implement the decisions in paragraphs 16 to 18, including the following: administration of the Fund; mechanisms for determining the appropriate level of Iraq's contribution to the Fund, based on a percentage of the value of its exports of petroleum and petroleum products, not to exceed a figure to be suggested to the Council by the Secretary-General, taking into account the requirements of the people of Iraq, Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy; arrangements for ensuring that payments are made to the Fund; the process by which funds will be allocated and claims paid; appropriate procedures for evaluating losses, listing claims and verifying their validity, and resolving disputed claims in respect of Iraq's liability as specified in paragraph 16; and the composition of the Commission designated above;

F

20. *Decides*, effective immediately, that the prohibitions against the sale or supply to Iraq of commodities or products other than medicine and health supplies, and prohibitions against financial transactions related thereto contained in resolution 661 (1990), shall not apply to foodstuffs notified to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait or, with the approval of that Committee, under the simplified and accelerated "no-objection" procedure, to materials and supplies for essential civilian needs as identified in the report to the Secretary-General dated 20 March 1991,³³ and in any further findings of humanitarian need by the Committee;

21. *Decides* to review the provisions of paragraph 20 every sixty days in the light of the policies and practices of the Government of Iraq, including the implementation of all relevant resolutions of the Council, for the purpose of determining whether to reduce or lift the prohibitions referred to therein;

22. *Decides also* that upon the approval by the Council of the programme called for in paragraph 19 and upon Council agreement that Iraq has completed all actions contemplated in paragraphs 8 to 13, the prohibitions against the import of commodities and products originating in Iraq and the prohibitions against financial transactions related thereto contained in resolution 661 (1990) shall have no further force or effect;

23. *Decides further* that, pending action by the Council under paragraph 22, the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait shall be empowered to approve, when required to assure adequate financial resources on the part of Iraq to carry out the activities under paragraph 20, exceptions to the prohibition against the import of commodities and products originating in Iraq;

24. *Decides* that, in accordance with resolution 661 (1990) and subsequent related resolutions and until it takes a further decision, all States shall continue to prevent the sale or supply to Iraq, or the promotion or facilitation of such sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of:

(a) Arms and related *matériel* of all types, specifically including the sale or transfer through other means of all forms of conventional military equipment, including for paramilitary forces, and spare parts and components and their means of production for such equipment;

(b) Items specified and defined in paragraphs 8 and 12 not otherwise covered above;

(c) Technology under licensing or other transfer arrangements used in the production, utilization or stockpiling of items specified in paragraphs (a) and (b);

(d) Personnel or materials for training or technical support services relating to the design, development, manufacture, use, maintenance or support of items specified in paragraphs (a) and (b);

25. *Calls upon* all States and international organizations to act strictly in accordance with paragraph 24, notwithstanding the existence of any contracts, agreements, licences or any other arrangements;

26. *Requests* the Secretary-General, in consultation with appropriate Governments, to develop within sixty days, for the approval of the Council, guidelines to facilitate full international implementation of paragraphs 24, 25 and 27, and to make them available to all States and to establish a procedure for updating these guidelines periodically;

27. *Calls upon* all States to maintain such national controls and procedures and to take such other actions consistent with the guidelines to be established by the Council under paragraph 26 as may be necessary to ensure compliance with the terms of paragraph 24, and calls upon international organizations to take all appropriate steps to assist in ensuring such full compliance;

28. *Agrees* to review its decisions in paragraphs 22 to 25, except for the items specified and defined in paragraphs 8 and 12, on a regular basis and in any case one hundred and twenty days following the adoption of the present resolution, taking into account Iraq's compliance with the resolution and general progress towards the control of armaments in the region;

29. *Decides* that all States, including Iraq, shall take the necessary measures to ensure that no claim shall lie at the instance of the Government of Iraq, or of any person or body in Iraq, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Council in resolution 661 (1990) and related resolutions;

G

30. *Decides* that, in furtherance of its commitment to facilitate the repatriation of all Kuwaiti and third-State nationals, Iraq shall extend all necessary cooperation to the International Committee of the Red Cross by providing lists of such persons, facilitating the access of the International Committee to all such persons wherever located or detained and facilitating the search by the International Committee for those Kuwaiti and third-State nationals still unaccounted for;

31. *Invites* the International Committee of the Red Cross to keep the Secretary-General apprised, as appropriate, of all activities undertaken in connection with facilitating the repatriation or return of all Kuwaiti and third-State nationals or their remains present in Iraq on or after 2 August 1990;

H

32. *Requires* Iraq to inform the Council that it will not commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods and practices of terrorism;

I

33. *Declares* that, upon official notification by Iraq to the Secretary-General and to the Security Council of its acceptance of the above provisions, a formal cease-fire is effective between Iraq and Kuwait and the Member States cooperating with Kuwait in accordance with resolution 678 (1990);

34. *Decides* to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the region.

Adopted at the 2981st meeting by 12 votes to 1 (Cuba) with 2 abstentions (Ecuador, Yemen)

Decision

At its 2983rd meeting, on 9 April 1991, the Council decided to invite the representatives of Iraq and Kuwait to participate, without vote, in the discussion of the item entitled "The situation between Iraq and Kuwait: report of the Secretary-General on the implementation of paragraph 5 of Security Council resolution 687 (1991) (S/22454 and Add.1-3)".⁷

Resolution 689 (1991) of 9 April 1991

The Security Council,

Recalling its resolution 687 (1991) of 3 April 1991,

Acting under Chapter VII of the Charter of the United Nations,

1. *Approves* the report of the Secretary-General of 5 and 9 April 1991 on the implementation of paragraph 5 of Security Council resolution 687 (1991);⁶⁶

2. *Notes* that the decision to set up an observer unit was taken in paragraph 5 of resolution 687 (1991) and that the unit can be terminated only by a further decision of the Council; the Council shall therefore review the question of its termination or continuation every six months;

Appendix 7: United Nations Security Council Resolution 1441

United Nations

S/RES/1441 (2002)



Security Council

Distr.: General
8 November 2002

Resolution 1441 (2002)

**Adopted by the Security Council at its 4644th meeting, on
8 November 2002**

The Security Council,

Recalling all its previous relevant resolutions, in particular its resolutions 661 (1990) of 6 August 1990, 678 (1990) of 29 November 1990, 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991, 688 (1991) of 5 April 1991, 707 (1991) of 15 August 1991, 715 (1991) of 11 October 1991, 986 (1995) of 14 April 1995, and 1284 (1999) of 17 December 1999, and all the relevant statements of its President,

Recalling also its resolution 1382 (2001) of 29 November 2001 and its intention to implement it fully,

Recognizing the threat Iraq's non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles poses to international peace and security,

Recalling that its resolution 678 (1990) authorized Member States to use all necessary means to uphold and implement its resolution 660 (1990) of 2 August 1990 and all relevant resolutions subsequent to resolution 660 (1990) and to restore international peace and security in the area,

Further recalling that its resolution 687 (1991) imposed obligations on Iraq as a necessary step for achievement of its stated objective of restoring international peace and security in the area,

Deploring the fact that Iraq has not provided an accurate, full, final, and complete disclosure, as required by resolution 687 (1991), of all aspects of its programmes to develop weapons of mass destruction and ballistic missiles with a range greater than one hundred and fifty kilometres, and of all holdings of such weapons, their components and production facilities and locations, as well as all other nuclear programmes, including any which it claims are for purposes not related to nuclear-weapons-usable material,

Deploring further that Iraq repeatedly obstructed immediate, unconditional, and unrestricted access to sites designated by the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA), failed to cooperate fully and unconditionally with UNSCOM and IAEA weapons

02-68226 (E)

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inspectors, as required by resolution 687 (1991), and ultimately ceased all cooperation with UNSCOM and the IAEA in 1998,

Deploing the absence, since December 1998, in Iraq of international monitoring, inspection, and verification, as required by relevant resolutions, of weapons of mass destruction and ballistic missiles, in spite of the Council's repeated demands that Iraq provide immediate, unconditional, and unrestricted access to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), established in resolution 1284 (1999) as the successor organization to UNSCOM, and the IAEA, and regretting the consequent prolonging of the crisis in the region and the suffering of the Iraqi people,

Deploing also that the Government of Iraq has failed to comply with its commitments pursuant to resolution 687 (1991) with regard to terrorism, pursuant to resolution 688 (1991) to end repression of its civilian population and to provide access by international humanitarian organizations to all those in need of assistance in Iraq, and pursuant to resolutions 686 (1991), 687 (1991), and 1284 (1999) to return or cooperate in accounting for Kuwaiti and third country nationals wrongfully detained by Iraq, or to return Kuwaiti property wrongfully seized by Iraq,

Recalling that in its resolution 687 (1991) the Council declared that a ceasefire would be based on acceptance by Iraq of the provisions of that resolution, including the obligations on Iraq contained therein,

Determined to ensure full and immediate compliance by Iraq without conditions or restrictions with its obligations under resolution 687 (1991) and other relevant resolutions and recalling that the resolutions of the Council constitute the governing standard of Iraqi compliance,

Recalling that the effective operation of UNMOVIC, as the successor organization to the Special Commission, and the IAEA is essential for the implementation of resolution 687 (1991) and other relevant resolutions,

Noting that the letter dated 16 September 2002 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General is a necessary first step toward rectifying Iraq's continued failure to comply with relevant Council resolutions,

Noting further the letter dated 8 October 2002 from the Executive Chairman of UNMOVIC and the Director-General of the IAEA to General Al-Saadi of the Government of Iraq laying out the practical arrangements, as a follow-up to their meeting in Vienna, that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA, and expressing the gravest concern at the continued failure by the Government of Iraq to provide confirmation of the arrangements as laid out in that letter,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of Iraq, Kuwait, and the neighbouring States,

Commending the Secretary-General and members of the League of Arab States and its Secretary-General for their efforts in this regard,

Determined to secure full compliance with its decisions,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq's failure to cooperate with United Nations inspectors and the IAEA, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991);

2. *Decides*, while acknowledging paragraph 1 above, to afford Iraq, by this resolution, a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council; and accordingly decides to set up an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions of the Council;

3. *Decides* that, in order to begin to comply with its disarmament obligations, in addition to submitting the required biannual declarations, the Government of Iraq shall provide to UNMOVIC, the IAEA, and the Council, not later than 30 days from the date of this resolution, a currently accurate, full, and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons, ballistic missiles, and other delivery systems such as unmanned aerial vehicles and dispersal systems designed for use on aircraft, including any holdings and precise locations of such weapons, components, sub-components, stocks of agents, and related material and equipment, the locations and work of its research, development and production facilities, as well as all other chemical, biological, and nuclear programmes, including any which it claims are for purposes not related to weapon production or material;

4. *Decides* that false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq at any time to comply with, and cooperate fully in the implementation of, this resolution shall constitute a further material breach of Iraq's obligations and will be reported to the Council for assessment in accordance with paragraphs 11 and 12 below;

5. *Decides* that Iraq shall provide UNMOVIC and the IAEA immediate, unimpeded, unconditional, and unrestricted access to any and all, including underground, areas, facilities, buildings, equipment, records, and means of transport which they wish to inspect, as well as immediate, unimpeded, unrestricted, and private access to all officials and other persons whom UNMOVIC or the IAEA wish to interview in the mode or location of UNMOVIC's or the IAEA's choice pursuant to any aspect of their mandates; further decides that UNMOVIC and the IAEA may at their discretion conduct interviews inside or outside of Iraq, may facilitate the travel of those interviewed and family members outside of Iraq, and that, at the sole discretion of UNMOVIC and the IAEA, such interviews may occur without the presence of observers from the Iraqi Government; and instructs UNMOVIC and requests the IAEA to resume inspections no later than 45 days following adoption of this resolution and to update the Council 60 days thereafter;

6. *Endorses* the 8 October 2002 letter from the Executive Chairman of UNMOVIC and the Director-General of the IAEA to General Al-Saadi of the Government of Iraq, which is annexed hereto, and decides that the contents of the letter shall be binding upon Iraq;

7. *Decides* further that, in view of the prolonged interruption by Iraq of the presence of UNMOVIC and the IAEA and in order for them to accomplish the tasks

set forth in this resolution and all previous relevant resolutions and notwithstanding prior understandings, the Council hereby establishes the following revised or additional authorities, which shall be binding upon Iraq, to facilitate their work in Iraq:

- UNMOVIC and the IAEA shall determine the composition of their inspection teams and ensure that these teams are composed of the most qualified and experienced experts available;
- All UNMOVIC and IAEA personnel shall enjoy the privileges and immunities, corresponding to those of experts on mission, provided in the Convention on Privileges and Immunities of the United Nations and the Agreement on the Privileges and Immunities of the IAEA;
- UNMOVIC and the IAEA shall have unrestricted rights of entry into and out of Iraq, the right to free, unrestricted, and immediate movement to and from inspection sites, and the right to inspect any sites and buildings, including immediate, unimpeded, unconditional, and unrestricted access to Presidential Sites equal to that at other sites, notwithstanding the provisions of resolution 1154 (1998) of 2 March 1998;
- UNMOVIC and the IAEA shall have the right to be provided by Iraq the names of all personnel currently and formerly associated with Iraq's chemical, biological, nuclear, and ballistic missile programmes and the associated research, development, and production facilities;
- Security of UNMOVIC and IAEA facilities shall be ensured by sufficient United Nations security guards;
- UNMOVIC and the IAEA shall have the right to declare, for the purposes of freezing a site to be inspected, exclusion zones, including surrounding areas and transit corridors, in which Iraq will suspend ground and aerial movement so that nothing is changed in or taken out of a site being inspected;
- UNMOVIC and the IAEA shall have the free and unrestricted use and landing of fixed- and rotary-winged aircraft, including manned and unmanned reconnaissance vehicles;
- UNMOVIC and the IAEA shall have the right at their sole discretion verifiably to remove, destroy, or render harmless all prohibited weapons, subsystems, components, records, materials, and other related items, and the right to impound or close any facilities or equipment for the production thereof; and
- UNMOVIC and the IAEA shall have the right to free import and use of equipment or materials for inspections and to seize and export any equipment, materials, or documents taken during inspections, without search of UNMOVIC or IAEA personnel or official or personal baggage;

8. *Decides* further that Iraq shall not take or threaten hostile acts directed against any representative or personnel of the United Nations or the IAEA or of any Member State taking action to uphold any Council resolution;

9. *Requests* the Secretary-General immediately to notify Iraq of this resolution, which is binding on Iraq; demands that Iraq confirm within seven days of that notification its intention to comply fully with this resolution; and demands

further that Iraq cooperate immediately, unconditionally, and actively with UNMOVIC and the IAEA;

10. *Requests* all Member States to give full support to UNMOVIC and the IAEA in the discharge of their mandates, including by providing any information related to prohibited programmes or other aspects of their mandates, including on Iraqi attempts since 1998 to acquire prohibited items, and by recommending sites to be inspected, persons to be interviewed, conditions of such interviews, and data to be collected, the results of which shall be reported to the Council by UNMOVIC and the IAEA;

11. *Directs* the Executive Chairman of UNMOVIC and the Director-General of the IAEA to report immediately to the Council any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations, including its obligations regarding inspections under this resolution;

12. *Decides* to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security;

13. *Recalls*, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations;

14. *Decides* to remain seized of the matter.

Appendix 8: United Nations Security Council Resolution 1970

United Nations

S/RES/1970 (2011)*



Security Council

Distr.: General
26 February 2011

Resolution 1970 (2011)

**Adopted by the Security Council at its 6491st meeting, on
26 February 2011**

The Security Council,

Expressing grave concern at the situation in the Libyan Arab Jamahiriya and condemning the violence and use of force against civilians,

Deploring the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government,

Welcoming the condemnation by the Arab League, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that are being committed in the Libyan Arab Jamahiriya,

Taking note of the letter to the President of the Security Council from the Permanent Representative of the Libyan Arab Jamahiriya dated 26 February 2011,

Welcoming the Human Rights Council resolution A/HRC/RES/S-15/1 of 25 February 2011, including the decision to urgently dispatch an independent international commission of inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, to establish the facts and circumstances of such violations and of the crimes perpetrated, and where possible identify those responsible,

Considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,

Expressing concern at the plight of refugees forced to flee the violence in the Libyan Arab Jamahiriya,

Expressing concern also at the reports of shortages of medical supplies to treat the wounded,

* Second reissue for technical reasons (10 March 2011).

11-24558* (E)



Please recycle A small graphic of a recycling symbol, consisting of three chasing arrows forming a triangle.

Recalling the Libyan authorities' responsibility to protect its population,

Underlining the need to respect the freedoms of peaceful assembly and of expression, including freedom of the media,

Stressing the need to hold to account those responsible for attacks, including by forces under their control, on civilians,

Recalling article 16 of the Rome Statute under which no investigation or prosecution may be commenced or proceeded with by the International Criminal Court for a period of 12 months after a Security Council request to that effect,

Expressing concern for the safety of foreign nationals and their rights in the Libyan Arab Jamahiriya,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya.

Mindful of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

Acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41,

1. *Demands* an immediate end to the violence and calls for steps to fulfil the legitimate demands of the population;

2. *Urges* the Libyan authorities to:

(a) Act with the utmost restraint, respect human rights and international humanitarian law, and allow immediate access for international human rights monitors;

(b) Ensure the safety of all foreign nationals and their assets and facilitate the departure of those wishing to leave the country;

(c) Ensure the safe passage of humanitarian and medical supplies, and humanitarian agencies and workers, into the country; and

(d) Immediately lift restrictions on all forms of media;

3. *Requests* all Member States, to the extent possible, to cooperate in the evacuation of those foreign nationals wishing to leave the country;

ICC referral

4. *Decides* to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court;

5. *Decides* that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor;

6. *Decides* that nationals, current or former officials or personnel from a State outside the Libyan Arab Jamahiriya which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the

Libyan Arab Jamahiriya established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State;

7. *Invites* the Prosecutor to address the Security Council within two months of the adoption of this resolution and every six months thereafter on actions taken pursuant to this resolution;

8. *Recognizes* that none of the expenses incurred in connection with the referral, including expenses related to investigations or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily;

Arms embargo

9. *Decides* that 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 nationals, 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 activities 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, and decides further that this measure shall not apply to:

(a) Supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee established pursuant to paragraph 24 below;

(b) Protective clothing, including flak jackets and military helmets, temporarily exported to the Libyan Arab Jamahiriya by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only; or

(c) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee;

10. *Decides* that the Libyan Arab Jamahiriya shall cease the export of all arms and related materiel and that all Member States shall prohibit the procurement of such items from the Libyan Arab Jamahiriya by their nationals, or using their flagged vessels or aircraft, and whether or not originating in the territory of the Libyan Arab Jamahiriya;

11. *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;

12. *Decides* to authorize all Member States to, and that all Member States shall, upon discovery of items prohibited by paragraph 9 or 10 of this resolution,

seize and dispose (such as through destruction, rendering inoperable, storage or transferring to a State other than the originating or destination States for disposal) items the supply, sale, transfer or export of which is prohibited by paragraphs 9 or 10 of this resolution and decides further that all Member States shall cooperate in such efforts;

13. *Requires* any Member State when it undertakes an inspection pursuant to paragraph 11 above, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspections, the results of such inspections, and whether or not cooperation was provided, and, if prohibited items for transfer are found, further requires such Member States to submit to the Committee, at a later stage, a subsequent written report containing relevant details on the inspection, seizure, and disposal, and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report;

14. *Encourages* Member States to take steps to strongly discourage their nationals from travelling to the Libyan Arab Jamahiriya to participate in activities on behalf of the Libyan authorities that could reasonably contribute to the violation of human rights;

Travel ban

15. *Decides* that all Member States shall take the necessary measures to prevent the entry into or transit through their territories of individuals listed in Annex I of this resolution or designated by the Committee established pursuant to paragraph 24 below, provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory;

16. *Decides* that the measures imposed by paragraph 15 above shall not apply:

(a) Where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation;

(b) Where entry or transit is necessary for the fulfilment of a judicial process;

(c) Where the Committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in the Libyan Arab Jamahiriya and stability in the region; or

(d) Where a State determines on a case-by-case basis that such entry or transit is required to advance peace and stability in the Libyan Arab Jamahiriya and the States subsequently notifies the Committee within forty-eight hours after making such a determination;

Asset freeze

17. *Decides* that all Member States shall freeze without delay all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities listed in annex II of this resolution or designated by the Committee established pursuant to paragraph 24 below, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, and decides further that all

Member States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the individuals or entities listed in Annex II of this resolution or individuals designated by the Committee;

18. *Expresses* its intention to ensure that assets frozen pursuant to paragraph 17 shall at a later stage be made available to and for the benefit of the people of the Libyan Arab Jamahiriya;

19. *Decides* that the measures imposed by paragraph 17 above do not apply to funds, other financial assets or economic resources that have been determined by relevant Member States:

(a) To be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services in accordance with national laws, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant State to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets or economic resources and in the absence of a negative decision by the Committee within five working days of such notification;

(b) To be necessary for extraordinary expenses, provided that such determination has been notified by the relevant State or Member States to the Committee and has been approved by the Committee; or

(c) To be the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered into prior to the date of the present resolution, is not for the benefit of a person or entity designated pursuant to paragraph 17 above, and has been notified by the relevant State or Member States to the Committee;

20. *Decides* that Member States may permit the addition to the accounts frozen pursuant to the provisions of paragraph 17 above of interests or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen;

21. *Decides* that the measures in paragraph 17 above shall not prevent a designated person or entity from making payment due under a contract entered into prior to the listing of such a person or entity, provided that the relevant States have determined that the payment is not directly or indirectly received by a person or entity designated pursuant to paragraph 17 above, and after notification by the relevant States to the Committee of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for this purpose, 10 working days prior to such authorization;

Designation criteria

22. *Decides* that the measures contained in paragraphs 15 and 17 shall apply to the individuals and entities designated by the Committee, pursuant to paragraph 24 (b) and (c), respectively;

(a) Involved in or complicit in ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in the Libyan Arab Jamahiriya, including by being involved in or complicit in planning, commanding, ordering or conducting attacks, in violation of international law, including aerial bombardments, on civilian populations and facilities; or

(b) Acting for or on behalf of or at the direction of individuals or entities identified in subparagraph (a).

23. *Strongly encourages* Member States to submit to the Committee names of individuals who meet the criteria set out in paragraph 22 above;

New Sanctions Committee

24. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council (herein "the Committee"), to undertake the following tasks:

(a) To monitor implementation of the measures imposed in paragraphs 9, 10, 15, and 17;

(b) To designate those individuals subject to the measures imposed by paragraphs 15 and to consider requests for exemptions in accordance with paragraph 16 above;

(c) To designate those individuals subject to the measures imposed by paragraph 17 above and to consider requests for exemptions in accordance with paragraphs 19 and 20 above;

(d) To establish such guidelines as may be necessary to facilitate the implementation of the measures imposed above;

(e) To report within thirty days to the Security Council on its work for the first report and thereafter to report as deemed necessary by the Committee;

(f) To encourage a dialogue between the Committee and interested Member States, in particular those in the region, including by inviting representatives of such States to meet with the Committee to discuss implementation of the measures;

(g) To seek from all States whatever information it may consider useful regarding the actions taken by them to implement effectively the measures imposed above;

(h) To examine and take appropriate action on information regarding alleged violations or non-compliance with the measures contained in this resolution;

25. *Calls upon* all Member States to report to the Committee within 120 days of the adoption of this resolution on the steps they have taken with a view to implementing effectively paragraphs 9, 10, 15 and 17 above;

Humanitarian assistance

26. *Calls upon* all Member States, working together and acting in cooperation with the Secretary General, to facilitate and support the return of humanitarian agencies and make available humanitarian and related assistance in the Libyan Arab Jamahiriya, and requests the States concerned to keep the Security Council regularly informed on the progress of actions undertaken pursuant to this paragraph, and expresses its readiness to consider taking additional appropriate measures, as necessary, to achieve this;

Commitment to review

27. *Affirms* that it shall keep the Libyan authorities' actions under continuous review and that it shall be prepared to review the appropriateness of the measures contained in this resolution, including the strengthening, modification, suspension or lifting of the measures, as may be needed at any time in light of the Libyan authorities' compliance with relevant provisions of this resolution;

28. *Decides* to remain actively seized of the matter.

Annex I

Travel ban

1. Al-Baghdadi, Dr Abdulqader Mohammed
Passport number: B010574. Date of birth: 01/07/1950.
Head of the Liaison Office of the Revolutionary Committees. Revolutionary Committees involved in violence against demonstrators.
2. Dibri, Abdulqader Yusef
Date of birth: 1946. Place of birth: Houn, Libya.
Head of Muammar Qadhafi's personal security. Responsibility for regime security. History of directing violence against dissidents.
3. Dorda, Abu Zayd Umar
Director, External Security Organisation. Regime loyalist. Head of external intelligence agency.
4. Jabir, Major General Abu Bakr Yunis
Date of birth: 1952. Place of birth: Jalo, Libya.
Defence Minister. Overall responsibility for actions of armed forces.
5. Matuq, Matuq Mohammed
Date of birth: 1956. Place of birth: Khoms.
Secretary for Utilities. Senior member of regime. Involvement with Revolutionary Committees. Past history of involvement in suppression of dissent and violence.
6. Qadhaf Al-dam, Sayyid Mohammed
Date of birth: 1948. Place of birth: Sirte, Libya.
Cousin of Muammar Qadhafi. In the 1980s, Sayyid was involved in the dissident assassination campaign and allegedly responsible for several deaths in Europe. He is also thought to have been involved in arms procurement.
7. Qadhafi, Aisha Muammar
Date of birth: 1978. Place of birth: Tripoli, Libya.
Daughter of Muammar Qadhafi. Closeness of association with regime.
8. Qadhafi, Hannibal Muammar
Passport number: B/002210. Date of birth: 20/09/1975. Place of birth: Tripoli, Libya. Son of Muammar Qadhafi. Closeness of association with regime.
9. Qadhafi, Khamis Muammar
Date of birth: 1978. Place of birth: Tripoli, Libya.
Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.

10. Qadhafi, Mohammed Muammar
Date of birth: 1970. Place of birth: Tripoli, Libya.
Son of Muammar Qadhafi. Closeness of association with regime.
11. Qadhafi, Muammar Mohammed Abu Minyar
Date of birth: 1942. Place of birth: Sirte, Libya.
Leader of the Revolution, Supreme Commander of Armed Forces.
Responsibility for ordering repression of demonstrations, human rights abuses.
12. Qadhafi, Mutassim
Date of birth: 1976. Place of birth: Tripoli, Libya.
National Security Adviser. Son of Muammar Qadhafi. Closeness of association with regime.
13. Qadhafi, Saadi
Passport number: 014797. Date of birth: 25/05/1973. Place of birth: Tripoli, Libya.
Commander Special Forces. Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.
14. Qadhafi, Saif al-Arab
Date of birth: 1982. Place of birth: Tripoli, Libya.
Son of Muammar Qadhafi. Closeness of association with regime.
15. Qadhafi, Saif al-Islam
Passport number: B014995. Date of birth: 25/06/1972. Place of birth: Tripoli, Libya.
Director, Qadhafi Foundation. Son of Muammar Qadhafi. Closeness of association with regime. Inflammatory public statements encouraging violence against demonstrators.
16. Al-Senussi, Colonel Abdullah
Date of birth: 1949. Place of birth: Sudan.
Director Military Intelligence. Military Intelligence involvement in suppression of demonstrations. Past history includes suspicion of involvement in Abu Selim prison massacre. Convicted in absentia for bombing of UTA flight. Brother-in-law of Muammar Qadhafi.

Annex II

Asset freeze

1. Qadhafi, Aisha Muammar
Date of birth: 1978. Place of birth: Tripoli, Libya.
Daughter of Muammar Qadhafi. Closeness of association with regime.
2. Qadhafi, Hannibal Muammar
Passport number: B/002210. Date of birth: 20/09/1975. Place of birth: Tripoli, Libya. Son of Muammar Qadhafi. Closeness of association with regime.
3. Qadhafi, Khamis Muammar
Date of birth: 1978. Place of birth: Tripoli, Libya.
Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.
4. Qadhafi, Muammar Mohammed Abu Minyar
Date of birth: 1942. Place of birth: Sirte, Libya.
Leader of the Revolution, Supreme Commander of Armed Forces.
Responsibility for ordering repression of demonstrations, human rights abuses.
5. Qadhafi, Mutassim
Date of birth: 1976. Place of birth: Tripoli, Libya.
National Security Adviser. Son of Muammar Qadhafi. Closeness of association with regime.
6. Qadhafi, Saif al-Islam
Passport number: B014995. Date of birth: 25/06/1972. Place of birth: Tripoli, Libya.
Director, Qadhafi Foundation. Son of Muammar Qadhafi. Closeness of association with regime. Inflammatory public statements encouraging violence against demonstrators.

Appendix 9: United Nations Security Council Resolution 1973

United Nations

S/RES/1973 (2011)



Security Council

Distr.: General
17 March 2011

Resolution 1973 (2011)

**Adopted by the Security Council at its 6498th meeting, on
17 March 2011**

The Security Council,

Recalling its resolution 1970 (2011) of 26 February 2011,

Deploing the failure of the Libyan authorities to comply with resolution 1970 (2011),

Expressing grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties,

Reiterating the responsibility of the Libyan authorities to protect the Libyan population and *reaffirming* that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians,

Condemning the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions,

Further condemning acts of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel and *urging* these authorities to comply with their obligations under international humanitarian law as outlined in resolution 1738 (2006),

Considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,

Recalling paragraph 26 of resolution 1970 (2011) in which the Council expressed its readiness to consider taking additional appropriate measures, as necessary, to facilitate and support the return of humanitarian agencies and make available humanitarian and related assistance in the Libyan Arab Jamahiriya,

Expressing its determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel,

Recalling the condemnation by the League of Arab States, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that have been and are being committed in the Libyan Arab Jamahiriya,

11-26839 (E)



Please recycle A small graphic of a recycling symbol, consisting of three chasing arrows forming a triangle.

Taking note of the final communiqué of the Organisation of the Islamic Conference of 8 March 2011, and the communiqué of the Peace and Security Council of the African Union of 10 March 2011 which established an ad hoc High Level Committee on Libya,

Taking note also of the decision of the Council of the League of Arab States of 12 March 2011 to call for the imposition of a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in the Libyan Arab Jamahiriya,

Taking note further of the Secretary-General's call on 16 March 2011 for an immediate cease-fire,

Recalling its decision to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court, and *stressing* that those responsible for or complicit in attacks targeting the civilian population, including aerial and naval attacks, must be held to account,

Reiterating its concern at the plight of refugees and foreign workers forced to flee the violence in the Libyan Arab Jamahiriya, *welcoming* the response of neighbouring States, in particular Tunisia and Egypt, to address the needs of those refugees and foreign workers, and *calling on* the international community to support those efforts,

Deploring the continuing use of mercenaries by the Libyan authorities,

Considering that the establishment of a ban on all flights in the airspace of the Libyan Arab Jamahiriya constitutes an important element for the protection of civilians as well as the safety of the delivery of humanitarian assistance and a decisive step for the cessation of hostilities in Libya,

Expressing concern also for the safety of foreign nationals and their rights in the Libyan Arab Jamahiriya,

Welcoming the appointment by the Secretary General of his Special Envoy to Libya, Mr. Abdel-Elah Mohamed Al-Khatib and supporting his efforts to find a sustainable and peaceful solution to the crisis in the Libyan Arab Jamahiriya,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya,

Determining that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Demands* the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians;

2. *Stresses* the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people and *notes* the decisions of the Secretary-General to send his Special Envoy to Libya and of the Peace and Security Council of the African Union to send its ad hoc High Level Committee to Libya with the aim of facilitating dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution;

3. *Demands* that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance;

Protection of civilians

4. *Authorizes* 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;

5. *Recognizes* the important role of the League of Arab States in matters relating to the maintenance of international peace and security in the region, and bearing in mind Chapter VIII of the Charter of the United Nations, requests the Member States of the League of Arab States to cooperate with other Member States in the implementation of paragraph 4;

No Fly Zone

6. *Decides* to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians;

7. *Decides further* that the ban imposed by paragraph 6 shall not apply to flights whose sole purpose is humanitarian, such as delivering or facilitating the delivery of assistance, including medical supplies, food, humanitarian workers and related assistance, or evacuating foreign nationals from the Libyan Arab Jamahiriya, nor shall it apply to flights authorised by paragraphs 4 or 8, nor other flights which are deemed necessary by States acting under the authorisation conferred in paragraph 8 to be for the benefit of the Libyan people, and that these flights shall be coordinated with any mechanism established under paragraph 8;

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 above, as necessary, and *requests* the States concerned in cooperation with the League of Arab States to coordinate closely with the Secretary General on the measures they are taking to implement this ban, including by establishing an appropriate mechanism for implementing the provisions of paragraphs 6 and 7 above,

9. *Calls upon* all Member States, acting nationally or through regional organizations or arrangements, to provide assistance, including any necessary over-flight approvals, for the purposes of implementing paragraphs 4, 6, 7 and 8 above;

10. *Requests* the Member States concerned to coordinate closely with each other and the Secretary-General on the measures they are taking to implement

paragraphs 4, 6, 7 and 8 above, including practical measures for the monitoring and approval of authorised humanitarian or evacuation flights;

11. *Decides* that the Member States concerned shall inform the Secretary-General and the Secretary-General of the League of Arab States immediately of measures taken in exercise of the authority conferred by paragraph 8 above, including to supply a concept of operations;

12. *Requests* the Secretary-General to inform the Council immediately of any actions taken by the Member States concerned in exercise of the authority conferred by paragraph 8 above and to report to the Council within 7 days and every month thereafter on the implementation of this resolution, including information on any violations of the flight ban imposed by paragraph 6 above;

Enforcement of the arms embargo

13. *Decides that* paragraph 11 of resolution 1970 (2011) shall be replaced by the following paragraph : “Calls upon all Member States, in particular States of the region, acting nationally or through regional organisations or arrangements, in order to ensure strict implementation of the arms embargo established by paragraphs 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 paragraphs 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 authorises Member States to use all measures commensurate to the specific circumstances to carry out such inspections”;

14. *Requests* Member States which are taking action under paragraph 13 above on the high seas to coordinate closely with each other and the Secretary-General and *further requests* the States concerned to inform the Secretary-General and the Committee established pursuant to paragraph 24 of resolution 1970 (2011) (“the Committee”) immediately of measures taken in the exercise of the authority conferred by paragraph 13 above;

15. *Requires* any Member State whether acting nationally or through regional organisations or arrangements, when it undertakes an inspection pursuant to paragraph 13 above, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspection, the results of such inspection, and whether or not cooperation was provided, and, if prohibited items for transfer are found, further requires such Member States to submit to the Committee, at a later stage, a subsequent written report containing relevant details on the inspection, seizure, and disposal, and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report;

16. *Deplores* the continuing flows of mercenaries into the Libyan Arab Jamahiriya and *calls upon* all Member States to comply strictly with their obligations under paragraph 9 of resolution 1970 (2011) to prevent the provision of armed mercenary personnel to the Libyan Arab Jamahiriya;

Ban on flights

17. *Decides* that all States shall deny permission to any aircraft registered in the Libyan Arab Jamahiriya or owned or operated by Libyan nationals or companies to take off from, land in or overfly their territory unless the particular flight has been approved in advance by the Committee, or in the case of an emergency landing;

18. *Decides that* all States shall deny permission to any aircraft to take off from, land in or overfly their territory, if they have information that provides reasonable grounds to believe that the aircraft contains items the supply, sale, transfer, or export of which is prohibited by paragraphs 9 and 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, except in the case of an emergency landing;

Asset freeze

19. *Decides* that the asset freeze imposed by paragraph 17, 19, 20 and 21 of resolution 1970 (2011) shall apply to all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the Libyan authorities, as designated by the Committee, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by the Committee, and *decides further* that all States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the Libyan authorities, as designated by the Committee, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, as designated by the Committee, and directs the Committee to designate such Libyan authorities, individuals or entities within 30 days of the date of the adoption of this resolution and as appropriate thereafter;

20. *Affirms* its determination to ensure that assets frozen pursuant to paragraph 17 of resolution 1970 (2011) shall, at a later stage, as soon as possible be made available to and for the benefit of the people of the Libyan Arab Jamahiriya;

21. *Decides* that all States shall require their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in the Libyan Arab Jamahiriya or subject to its jurisdiction, and any individuals or entities acting on their behalf or at their direction, and entities owned or controlled by them, if the States have information that provides reasonable grounds to believe that such business could contribute to violence and use of force against civilians;

Designations

22. *Decides* that the individuals listed in Annex I shall be subject to the travel restrictions imposed in paragraphs 15 and 16 of resolution 1970 (2011), and *decides further* that the individuals and entities listed in Annex II shall be subject to the asset freeze imposed in paragraphs 17, 19, 20 and 21 of resolution 1970 (2011);

23. *Decides* that the measures specified in paragraphs 15, 16, 17, 19, 20 and 21 of resolution 1970 (2011) shall apply also to individuals and entities determined by the Council or the Committee to have violated the provisions of resolution 1970

(2011), particularly paragraphs 9 and 10 thereof, or to have assisted others in doing so;

Panel of Experts

24. *Requests* the Secretary-General to create for an initial period of one year, in consultation with the Committee, a group of up to eight experts ("Panel of Experts"), under the direction of the Committee to carry out the following tasks:

(a) Assist the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011) and this resolution;

(b) Gather, examine and analyse information from States, relevant United Nations bodies, regional organisations and other interested parties regarding the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;

(c) Make recommendations on actions the Council, or the Committee or State, may consider to improve implementation of the relevant measures;

(d) Provide to the Council an interim report on its work no later than 90 days after the Panel's appointment, and a final report to the Council no later than 30 days prior to the termination of its mandate with its findings and recommendations;

25. *Urges* all States, relevant United Nations bodies and other interested parties, to cooperate fully with the Committee and the Panel of Experts, in particular by supplying any information at their disposal on the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;

26. *Decides* that the mandate of the Committee as set out in paragraph 24 of resolution 1970 (2011) shall also apply to the measures decided in this resolution;

27. *Decides* that all States, including the Libyan Arab Jamahiriya, shall take the necessary measures to ensure that no claim shall lie at the instance of the Libyan authorities, or of any person or body in the Libyan Arab Jamahiriya, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolution 1970 (2011), this resolution and related resolutions;

28. *Reaffirms* its intention to keep the actions of the Libyan authorities under continuous review and underlines its readiness to review at any time the measures imposed by this resolution and resolution 1970 (2011), including by strengthening, suspending or lifting those measures, as appropriate, based on compliance by the Libyan authorities with this resolution and resolution 1970 (2011).

29. *Decides* to remain actively seized of the matter.

Libya: UNSCR proposed designations

<i>Number</i>	<i>Name</i>	<i>Justification</i>	<i>Identifiers</i>
Annex I: Travel Ban			
1	QUREN SALIH QUREN AL QADHAFI	Libyan Ambassador to Chad. Has left Chad for Sabha. Involved directly in recruiting and coordinating mercenaries for the regime.	
2	Colonel AMID HUSAIN AL KUNI	Governor of Ghat (South Libya). Directly involved in recruiting mercenaries.	

<i>Number</i>	<i>Name</i>	<i>Justification</i>	<i>Identifiers</i>
Annex II: Asset Freeze			
1	Dorda, Abu Zayd Umar	Position: Director, External Security Organisation	
2	Jabir, Major General Abu Bakr Yunis	Position: Defence Minister	Title: Major General DOB: --/--/1952. POB: Jalo, Libya
3	Matuq, Matuq Mohammed	Position: Secretary for Utilities	DOB: --/--/1956. POB: Khoms
4	Qadhafi, Mohammed Muammar	Son of Muammar Qadhafi. Closeness of association with regime	DOB: --/--/1970. POB: Tripoli, Libya
5	Qadhafi, Saadi	Commander Special Forces. Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations	DOB: 25/05/1973. POB: Tripoli, Libya
6	Qadhafi, Saif al-Arab	Son of Muammar Qadhafi. Closeness of association with regime	DOB: --/--/1982. POB: Tripoli, Libya
7	Al-Senussi, Colonel Abdullah	Position: Director Military Intelligence	Title: Colonel DOB: --/--/1949. POB: Sudan

Entities

1	Central Bank of Libya	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.
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<i>Number</i>	<i>Name</i>	<i>Justification</i>	<i>Identifiers</i>
2	Libyan Investment Authority	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	a.k.a: Libyan Arab Foreign Investment Company (LAFICO) Address: 1 Fateh Tower Office, No 99 22nd Floor, Borgaida Street, Tripoli, Libya, 1103
3	Libyan Foreign Bank	Under control of Muammar Qadhafi and his family and a potential source of funding for his regime.	
4	Libyan Africa Investment Portfolio	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	Address: Jamahiriya Street, LAP Building, PO Box 91330, Tripoli, Libya
5	Libyan National Oil Corporation	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	Address: Bashir Saadwi Street, Tripoli, Tarabulus, Libya