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Responsibility to Protect Civilians in Armed Conflict

Bachelor Thesis

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I hereby declare that I am the sole author
of this Bachelor Thesis and it has
not been presented to any other
university of examination.

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Abbreviations

AU	African Union
ECOWAS	Economic Community of West African States
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Civil Rights
UNSC	United Nations Security Council
UDHR	United Declaration of Human Rights

Introduction

I chose this topic because the use of force always divides opinions all over the world. Military actions to save population is difficult, and in rare occasions rewarding. However, something should be done, when life of population of innocent people are at stake because of conflict. International community is slow to react at some wars or unable to take any actions, although often people talk about the responsibility of international community to protect civilians from grave human rights violations.

The main goal of the thesis is to see the effectiveness and credibility of United Nations responsibility to protect and humanitarian intervention to protect civilians from grave violations of human rights in armed conflict. So far humanitarian interventions, that have been done has always been criticized regardless the outcome. Human rights violations are happening in some places, where the international community has not been able to take military action in the territory of sovereign state to protect human lives, and there are situations where they have acted. The international community is very divided, some will only act if they have interest in that specific area, and in some situations, it won't act because of different interest of power states. It is the international community's responsibility to provide peace and security to people and punish wrongful acts towards humanity and stop human violations that is committed by their own government, or by foreign state.

My research question is: Is humanitarian intervention and responsibility to protect enough reason to interfere in the domestic affairs of state? Due to various conflicts in the world, it's difficult to decide, which conflict requires military actions and which one can be solved by peace. Humanitarian intervention is practiced under the international community as a responsibility to protect human lives, and it is aimed to restore the peace and security as well as human rights protection in the concerning state. Still, some interventions are successful while others are not. Some countries use intervention as responsibility to protect just to interfere into domestic affairs of sovereign state for they own interest and in regime, forgetting the real reason for intervention?

The hypothesis of this thesis is the political interest and the motives behind the decision of international community to intervene in humanitarian crisis in which this thesis will study two

cases where the international community has intervened with and without the approval of United Nations Security Council.

This thesis will include 4 chapters that will eventually give an answer to the legal question. In the first chapter I will briefly define sovereignty, external and internal sovereignty. It is important to understand sovereignty, because military humanitarian intervention does violate state sovereignty, which could be the case for foreign state to politically intervene into internal affairs state. The chapter then continues with the relationship of sovereignty and humanitarian intervention, ending with principle of non-interference. In the second chapter I will provide us the development of human rights in the United Nations charter. Chapter three will gives an understanding of humanitarian intervention and responsibility to protect by a brief definition. In chapter four, I will analyze different military interventions before and after the Cold-War, but the focus will be the Libyan intervention, in which United Nations has authorized the use of force in sovereign country to save human lives from atrocities committed by state government. and Kosovo intervention. I will also analyze the Kosovo case where NATO has intervened in internal territory of state without its consent to put an end to violence in the country. I will also discuss the problems of authorizations procedure which is the reason why some interventions happen with and without the United Nations Security Council mandate.

Mostly, I will approach my research by using legal analysis, including the United Nations and security Council resolutions and reports. I will also use comparative analysis and case studies in my thesis which will eventually help me to reach my goal.

The reason why I chose the sources for this thesis is, because they are related to this thesis topic. which will help me to understand the issue. This subject exists in contemporary our contemporary society and it is affecting us in a way or another. For instance, refugee problems are a result from of conflicts, for instance the Syrian conflict forces people to flee to their neighboring countries and elsewhere.

1. State Sovereignty

In this chapter I will briefly define the concept of sovereignty by using different classic scholar's theories. The chapter then continues with the humanitarian intervention and sovereignty and ending with principle of non-interference.

The concept of state sovereignty is a topic that divides opinions of many, because it is not a simple concept to deal with, and it has a various definition, applicability and understanding. According to, the principle of unanimity, each state has the power to act and decide what they see as best for them within their territory, and enter into relations with other states.¹ For example states have more or less influence on their internal territory economically or culturally. The 1933 Montevideo Convention on the rights and duties of states lists three other criteria besides sovereignty: 1) Permanent population, 2) defined territory and 3) government.²

The basic understanding on the concept of sovereignty is that states has an absolute authority over their territories, in other words no other foreign states has the right to interfere in the internal affairs of states. The two aspects of sovereignty help to define the concept of sovereignty, which I will briefly talk about in this chapter.

1.1 Classical definition of Sovereignty

As mentioned before, the concept of sovereignty has many definitions referring to supremacy and the authority of a state. These are the common power by which independent state is formed, while supreme political authority refers to the right and to the power that regulates internal affairs of independent states, without interference of foreign state.³

Alain de Benoist defined sovereignty in two ways: *“The first definition applies to supreme public power, which has the right and, in theory, the capacity to impose its authority upon people. The second definition refers to the holder of legitimate power, who is recognized to have authority”*.

¹ Tutuianu, S. Towards Global Justice: Sovereignty in an Interdepend World. The Hague, Asser Press 2013, p.2

² Batir, K. Humanitarian Intervention in International Law: European Conflicts-NATO's Intervention to Kosovo. Saarbrücken, VDM Verlag Dr. Müller 2010, p 7.

³Tutuianu, S.(2013), *supra* nota 1, p 6.

The first one applies to the national sovereignty which deals with the independence of entity to act on their free will. The second one deals with power and legitimacy.⁴

According to, Jean Bodin, sovereignty, which is the power given to someone and this power is not limited in its meaning, or in not limited in its power. This power can only last for a certain period of time, which is given by other persons. After expiry of time, the person will once again become a private citizen. Persons who are truly sovereign can remove this so-called sovereign. Bodin wrote that sovereignty is a law which has the command and does affect the general interest of all. Bodin also stated that, sovereignty is not limited by its own law, but by the higher power and its nature. Shortly, it can be referred as the supremacy power of the state towards its citizens.⁵

Thomas Hobbes defined that sovereignty has the absolute power.⁶ Unlike Bodin, Hobbes considers sovereign as government and not a person to give security to nation.⁷ According to, Hobbes, absolute power is a social contract made be people and it can be achieved only by peaceful means.⁸ Just like Bodin, Hobbes also emphasized that the nature power of sovereignty is unlimited, undivided and he believes that the law is what sovereign commands.

The concept of sovereignty is divided into two aspects as a responsibility on state: internal and external sovereignty. Internal sovereignty refers to the state's relationship between its citizens, which means that the ruler has the supreme power over the ruled. The state has the political responsibilities to its nation. A state government may take any actions and deal with its internal conditions as they want, or reject any foreign interference in their domestic affairs. This supreme authority gives orders to its citizens, but it does not receive any orders. The will of supreme authority is absolute and it is subject to no legal limitation. Internal sovereignty gives freedom to the state, or it gives to nation autonomy to enter into international relations.⁹

⁴ De Benoist, A." What is sovereignty". Telos Summer (1999), pp. 99-118, p 1-3.

⁵ Meriam Jr, C. History of The Theory of Sovereignty Since Rousseau. Ontario 2001, p 7-8.

⁶ Hurtgen J.R. J. Hobbes's Theory of Sovereignty in Leviathan, Reasons papers, 5, pp. 55-67, p 7.

⁷ Ibid, p 13-14.

⁸ Ibid, p 8.

⁹ David A, L. The sovereignty in International Relations. International Studies Review (2003), 3(3), pp. 303-323, p 3.

The External sovereignty of states means that the state can freely act independently and its will or authority cannot be questioned by outsiders. This is understood as the independency of state from foreign powers which gives the protection to state territory integrity against the threat and interference of foreign powers. This also means even if a state is under international treaties or any other agreement it does not limit the supremacy of a state. External sovereignty has given a clear definition of a state, by regulating the relationship between the states on the basis of territorial integrity.¹⁰ The understanding of sovereignty is important, especially the two aspects of the concept. From the political view the two aspects are bounded together, because there won't be external border without internal sovereignty. The distinction must be made between

1.2 State Sovereignty and Humanitarian intervention

The discussion on of humanitarian intervention and state sovereignty constitutes a major problem for the international community and international law.¹¹ Ayoob mentioned, Robert Jackson has defined respect for sovereignty as “global covenant” which serves as the basis for international order.¹² Although this entails respect territorial integrity of states, it does conflict with the goal humanitarian intervention. Cook who seems to support humanitarian intervention over respect for sovereignty stated, ”we need to strike the correct between the sovereign right of states and humanitarian right of the international community to intervene where necessary”.¹³ To support Cook’s argument, the International Commission on Intervention and Stet Sovereignty (ICISS) new report The Responsibility to Protect (R2P) states that, the state has the primary responsibility to protect its nations from humanitarian catastrophic.¹⁴ However, if a state fails to do so, the international community will react.

The new definition of sovereignty focuses more responsibility of states to protect human rights than being “as a formal right of political autonomy and legal equality”.¹⁵ The context of the definition leans more in favor for humanitarian intervention, when human lives are at stake. It was stated by Head of State and Government, that the objective of Responsibility to Protect

¹⁰ Bisschop, W R. Sovereignty. *British Yearbook of International Law* (2007), pp. 1921-1922, 2017, p 4-5.

¹¹ Ayoob, M. Humanitarian intervention and State Sovereignty. *International Journal of Human Rights* (2001),6(1), pp. 81-102, p 81.

¹² Ibid

¹³ Holgreffe L, J. Keohane O, R. *Humanitarian intervention: Ethical, Legal, and Political Dilemmas*. Cambridge. Cambridge University Press (2003), p 263.

¹⁴ Ibid, 265

¹⁵ Chandler, D. R2P or not R2P? More Statebuilding, Less Responsibility. *Global Responsibility to Protect* (2010), 2, pp.161-166, p 162.

(R2P) objective is to strengthen sovereignty rather than weaken it.¹⁶ Holzgrefe and Keohane, determined that the need for humanitarian intervention only occurs in the absence of external authority.¹⁷ They refer to people who are in great suffer, whom doesn't have enough power and thus are unable to act.¹⁸ The new definition of sovereignty may be accepted in the Western world however, in Asia not everyone agrees with this. For example, some of the Chinese conservative members does not consider serious violations of human rights as a sovereign right.¹⁹

1.3 Principle of Sovereignty and non-interference

The principle of non-intervention has given a new concept of state sovereignty, which developed from the peace of Westphalia in 1648 and was established in UN Charter as a fundamental principle of the United Nation. The purpose of the principle of non-interference is to respect state's sovereignty which is known as the customary international law. The general understanding and the meaning of sovereignty is that states have the right to enjoy all the rights of being sovereign state with political independence and have the right to territorial integrity.²⁰ That being said, cases where humanitarian intervention occurs without authorizations of the UNSC, or if the intervention take place without the act of self-defense, then there is a conflict between principle of sovereignty and the principle of non-intervention.

Kofi Annan stated that he acknowledges the importance of sovereignty and the principle of non-interference to some other countries because the concept of humanitarian intervention has been criticized by many. He asked, "*if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica to gross and systematic violations of human rights that offend every precept of our common humanity*".²¹ The answer to this question will be criticized for intervening or for being silent. In Rwanda, the international community was criticized for not acting to stop the genocide. In Kosovo, the North Atlantic

¹⁶ Ibid, 164

¹⁷ Holzgrefe L, J. Keohane O, R. (2003), *supra nota* 13, p 281.

¹⁸ Ibid

¹⁹ Genser, J. Cotler, I. *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in our time*. New York. Oxford University Press Inc. (2012), p 137.

²⁰ Kreig, A. *Motivations for Humanitarian Intervention: Theoretical and Empirical consideration*. Dordrecht, Springer Netherlands 2013, p 10.

²¹ Annan, K. "We the peoples": *The Role of the United Nations in the 21st Century*. New York, United Nations (2000), p 47-48.

Treaty Organization (NATO) was criticized for intervening. The answer is complex and it is never easy because the opinion is divided.

The Principle of sovereignty and non-interference is found in the UN Charter in Art 2 (7), which does not authorize the use of force and prohibit UN not to interfere in internal affairs of state.²²

According to the article:

- *“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 or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”.*²³

Although the principle of non-interference prohibits the use of force and respects internal and external border of states, this does not always happen. Some states are continuously intervening in the internal affairs of states; a good example, the Russian Federation intervening militarily and politically in the internal affairs of Ukraine on the issue of annexation of Crimea, in 2014.²⁴ The debate on humanitarian intervention and sovereignty will not end soon. There are supporters of interventions and there are supporters of non-interference into internal affairs of a state, for instance the conservative members of Chinese government. Notably, many states are frequently condemning the acts of other states for intervening in their internal affairs. For example, in 2016 Chinese foreign minister warns U.S not to intervene interfere in their internal affairs.²⁵

2. Human Rights

In this chapter, I will talk about human rights in general and the development of the concept in the UN. It is relevant that in our contemporary society clash, violence, discrimination, poverty, injustice, the arm race, nuclear weaponry, terrorism and war are major cause of human rights abuses and threat to peace and development of the world. We as human beings have the right to

²² Kreig, A. (2013), *supra* nota 20, p 11.

²³ Charter of The United Nations and Statute of the International Court of Justice, San Francisco, 1945.

²⁴ Matzek, J. Annexation of Crimea by the Russian Federation. Policy Paper (2016), p 3.

http://www.politikaspolecnost.cz/wp-content/uploads/2016/01/Matzek_Annexation-of-Crimea_EN.pdf

²⁵ Spring, Jake. | Reuters (18, 2016). China foreign minister urges U.S not to interfere with Tibet in call to Kerry <http://www.reuters.com/article/us-china-usa-tibet-idUSKCN0Z501D>

live and let others live as well jointly and freely in the world with common basic needs and to fulfill such needs for survival, security, prosperity and peace.

Human rights can be viewed as the basic rights that are granted and belongs to all human beings and cannot be separated from their natural origin. Each person is granted freedom from the moment of their birth regardless the background, ethnic, religious, sex or age. This gives to each person dignity and value and that's why it is universal. Every individual is obliged to respect the human rights of each person and has equal. These human rights are protected at international level and they are Universal Declaration of Human rights, which are adopted by United Nations.²⁶

Human rights seek to protect the individual against arbitrary government interference. We recognize human rights by acknowledging and respecting these rights that are granted for all.²⁷ Promoting fairness and equality are important principles of human rights. Without fairness and equality, people would not be able to have freedom to make their own choices and build their own identity where they don't have fear of being discriminated. Human rights include the right to life, the right to a fair trial, freedom from torture and other cruel and inhuman treatment, freedom of speech, freedom of religion, and the rights to health, education and an adequate standard of living.²⁸

2.1 United Nations and development of international human rights

The term human rights are broadly used in today's world and in the press. It seems that these rights do indeed exist, but there are lots of contradictories in it. When the term human rights were used first time in the mid-twentieth, the concept of human rights has grown stronger and made individuals, groups and government identify with the use of such rights for the own purpose.

The United Nations was forced to deal with of serious mass violations of human rights and violations of the sovereignty of states. United Nations charter states:" we the peoples of the United Nations" is determined to save following generations from the horrors of war which has

²⁶ United Nations, Human Rights: a basic handbook for UN staff, Office of the High Commissioner for Human Rights United Nations Staff College Project, p 13-14.

²⁷ Ibid

²⁸ Ibid, p 109-110.

brought sorrow to mankind, and to give hope in fundamental human rights, in dignity and worth of the human, in the equal rights of men and women and of the nations. The primary function of the United Nations is to provide security and peace for nations. As mentioned before the United Nation Charter did not give any specified detailed of what was covered by human rights and it did not specify what are the state responsibility to promote these rights.²⁹

The first step being taken by the United Nation with respect to human rights was to assure the existence body of international human rights. The Universal Declarations of human rights, International Covenants on Civil and Political Rights and on Economic Social and Cultural rights. The United Nations adopted in 1948 the Universal Declaration of Human Rights in which rights are granted to all people. After this, the human rights system is complemented and developed into new agreements.³⁰

International human rights argue that the widespread acceptance emerged after the World War II, because of the brutal actions, hence it forced the human rights from domestic matter into the international concern. The Dumbarton Oaks conference was to discuss and negotiate the possibility to form international organization the United Nation could ensure peace.³¹ It is stated in the United Nation in Charter preamble that, ensuring respect for human rights and fundamental freedom is important, which ultimately was the reason why UN has been established. The first-time human rights were used in an international treaty was when the words “We the people of United Nations” was strengthen the faith in fundamental human rights. The Nuremberg Charter came after Nuremberg trials which gave greater understanding the concept of crime against humanity, and this led to Convention on the Prevention and Punishment of Crime of Genocide which was the first international treaty focusing on human rights.³²

The postwar events created and laid the foundations of international framework for human rights. The framework of human rights was protected under an international Bill of Rights, which comprises the Universal Declarations of human rights, International Covenants on Civil and Political Rights and on Economic Social and Cultural rights. The Universal Declaration of

²⁹ Sriram, C, Martin-Ortega, O, Herman, J. War, Crimes, Conflict and Human Rights: Theory and Practice, First Edition. New York, Routledge 2010, p 31.

³⁰ Alston, P, Goodman, R, Steiner, H. International Human Rights in Context: Law, Political, Morals, Third Edition. Oxford, Oxford University Press 2007, p 4.

³¹ United Nations. 1944-1945: Dumbarton Oaks and Yalta, UNITED NATIONS, <http://www.un.org/en/sections/history-united-nations-charter/1944-1945-dumbarton-oaks-and-yalta/> (13.2.2017)

³² Sriram, C, Martin-Ortega, O, Herman, J, (2010), *supra* nota 29, p 31-33.

Human Rights provides the understanding to what to become the accepted standard of rights given to all. In 1948, it was drafted and signaled a change the concept of human rights from domestic to the international. The representatives from all over the world were consulted the development of human rights during the drafting. In UN, General Assembly 48 countries voted to adopt the declaration and some countries did not vote against.³³

Far from Universal Declaration of Human Rights (UDHR), there are treaties and conventions that create rights and obligations for individuals, which states must ratify. UDHR, the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR) were debated by governments for an international binding treaty and because of Cold War, it was hard to reconcile different ideas concerning human rights.³⁴

2.2 Humanitarian intervention and Human rights

The relationship between humanitarian intervention and human rights is very close. The purpose of humanitarian intervention is to end grave violations of human rights that are happening in certain state. In other words, humanitarian intervention takes place in the name of human rights protection from the government of state or a foreign government under the law of the Use of Force, which then creates a tension between the prohibition on the use of force and the protection of human rights. It's clear that human rights violations are not acceptable and it is important to respect and promote human rights.

The United Nations Charter that promotes and respect human rights can be found in articles 55 and 56:

- Art 55 *“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:*

a.) higher standards of living, full employment, and conditions of economic and social progress and development;

³³ United Nations, The Foundation of International Human Rights, (3.3.2017),

< <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> >

³⁴ Bassiouni M, C. Globalization and its Impact on the Future Human Rights and International Justice. Intersentia 2015, p 41-42.

b.) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c.) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

- Art 56 “*All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.*”

This UN Charter together combined with authorization of the use of force is for enforcing human rights and for respecting human rights. The intervention by NATO against Serbia in 1999 is unquestionably serious human rights violations committed by the Federal Republic of Yugoslavia against the ethnic Albanian population. Promoting and respecting human rights is each state responsibility nationally and universally.

Another case where UN Security Council has used humanitarian intervention is 1973 resolution in Libya where UN Security Council stated that all the necessary measures including humanitarian intervention is to be taken to protect people against human rights violations. According to resolution:

- The Security Council authorize Member States, acting nationally or through regional organizations or arrangements, to take all necessary measures to protect civilians under threat of attack in the country, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory — requesting them to immediately inform the Secretary-General of such measures.

Military intervention is not always used to protect human rights. Sometimes economic sanctions are used against the state to stop human rights violations. This is controversial because individuals will also suffer from this. One example of economic sanctions is resolution S-22/1:

- “*The human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups*”

According to, Kenneth Roth, “Acknowledging that humanitarian intervention is sometimes necessary to stop genocide or mass slaughter, Roth suggests criteria that might justify its use”. There must be grave violations of human rights for military action to be taken.³⁵ Pierre-Antoine

³⁵ Human Rights Dialogue, Human Rights in Times of Conflict: Humanitarian intervention, Carnegie Council on

Louis argues in the article that “international community’s neglect of massive human rights violations in Sierra Leone at the same time as its overreaction to comparatively less egregious violations in Kosovo invites charges of imperialism, racism, and hypocrisy. He also charges that after nonintervention in countries like Rwanda and Sierra Leone, which lie outside the scope of Western interests, the NATO bombing of Kosovo actually damaged the universal legitimacy of human rights”. Pierre is referring to international community being a hypocrite, it will act only if they have an interest in the region to “stop” human rights violations.³⁶

3. Humanitarian Intervention and Responsibility to Protect

3.1 Defining Humanitarian intervention

There’s no one general accepted definition to the term humanitarian intervention.³⁷ According to Roberts, the term “Humanitarian intervention”, in its classical sense, may be defined as a coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants”.³⁸ Farer defines humanitarian intervention as” [...] the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of fundamental human rights....”.³⁹ Although there are various of definition to the term, there are common points which can be found between the definitions, for instance, “use of force, the absence of the target state’s permission, its aim is to help non-national and agency of intervention”⁴⁰

The term humanitarian intervention can be defined within the meaning of response to natural disaster and it’s focusing more on providing and assisting with the damages which were caused by the natural disaster.⁴¹ Humanitarian intervention for natural disaster has no contradictories on

Ethics and International Affairs, 2001, p 1.

³⁶ Ibid

³⁷ Murphy, S. Humanitarian Intervention: The United Nations in Evolving World Order. Philadelphia, University of Pennsylvania Press 1996, p 8.

³⁸ Roberts, A. The so-called “right” of humanitarian intervention. T.M.C, Asser, 2009, p. 4

³⁹ Kreig, A. (2013), *supra* nota 20, p 8.

⁴⁰ Kardas, S. Humanitarian Intervention: The Evaluation of the Idea of and Practice. Journal of International Affairs (2001), 6(2), p. 2 <http://sam.gov.tr/wp-content/uploads/2012/02/SabanKardas2.pdf>

⁴¹ Johnson, J. Humanitarian Intervention: The Responsibility to Protect and Sovereignty- Historical and Moral Reflections. Michigan State University College of Law International Law Review 2015, 23(3), pp. 609-634 p 609.

foreign states intervening into internal affairs of a state because there's no political issue. I will analyze on military humanitarian intervention and won't focus on the natural disaster.

During the Cold war, humanitarian intervention was barely used as justification, considering the cases which could have been regarded as a humanitarian intervention for instance, the Vietnamese intervention in Cambodia in 1978, and the intervention Tanzania in Uganda in 1979, where the intervened states preferred to appeal to self-defense.⁴² Appealing to the customary law is difficult, because of the decision was taken by International Court of Justice in the Nicaragua case, where it stated that "the use of force cannot be appropriate method" to ensure the protection of human rights.⁴³

After the Cold War, there has been a major change of thinking about human rights and state sovereignty⁴⁴, which is reflected in decision and actions taken by UNSC in protecting civilians and in some cases, it included the use of force for humanitarian reasons. The NATO air bombing in FRY in the spring of 1999 added more weight to the debate about humanitarian intervention.⁴⁵ The NATO's purpose of the air raids was to protect Yugoslavia's Albanian population in Kosovo against the gross violent committed by the Yugoslavian government.⁴⁶ In the early 21st century the international Kosovo Commission together with UN Secretary-General, among others, found it important to set up the legal framework for humanitarian intervention.⁴⁷

There are some states involved in NATO's operation in Kosovo did not want to regard it as a precedent that could support the emergence of a new general rule to justify humanitarian intervention, and some states were supporting and attempting to justify the doctrine of humanitarian intervention.⁴⁸ In 1999, when FRY brought an action accusing those NATO states before the national Court of Justice of illegal use of force, the accused states appealed on the

⁴² Gray, C. *International Law and the Use of Force*. New York. Oxford University Press Inc 2000, p. 26

⁴³ Chesterman, S. *Just War or Just Peace? Humanitarian intervention and International Law*. New York. Oxford University Press 2002. p 62.

⁴⁴ Tutuianu, S. (2013), *supra* nota 1, p 57-58.

⁴⁵ De Jonge Oudraat, C. *Humanitarian Intervention: The Lessons Learned*. *Current History* (2000), 99(641), pp. 419-429, p 419.

⁴⁶ Klinton W, A. *NATO's Intervention in Kosovo: The Legal Case for Violating Yugoslavia's "National Sovereignty" in the Absence of Security Council Approval*. *Houston Journal of International Law* (2000), 22(3), pp. 1-41, p 2-3.

⁴⁷ United Nations, Meeting Coverage and Press Release, Press Briefing on Kosovo Commission, 23.10.2000. <http://www.un.org/press/en/2000/20001023.kosovobrfg.doc.html>

⁴⁸ Gray, C. (2000), *supra* nota 42, p 24.

concept of humanitarian intervention in their defense.⁴⁹ Although the NATO intervention received a lot of sympathy by other states at the time and the intervention was not condemned by international organization nor by human rights NGO⁵⁰, still the legality of its intervention remained challenged. The Group of 77 (G77), which is representing the developing countries, including other organization like Organizations of Islamic Cooperation rejected the legality of humanitarian intervention in their declarations of the early 2000s.⁵¹ In this regard, the Outcome of UN World Summit in 2005 is important, because it put a stop to the debates about humanitarian intervention as an independent justification for the use of force and has authorized the Security Council to decide on the use of force on humanitarian purpose.

In August 2013, the British government discussed the matter of humanitarian intervention and published a statement about the possibility of military intervention in Syria that might be justifiable as humanitarian intervention to protect civilians⁵². The supporters of the intervention invoked for the three criteria that were met “there is convincing evidence...requiring immediate urgent relief, there is no practicable alternative to use force if lives are to be saved and the use of force must be necessary and proportionate”.⁵³ However, the parliament rejected such intervention and such an intervention would have been illegal under international law because it requires the authorization of UNSC. The United States instead, invoked to their air strikes in Syria as their rights for collective self-defense and anti-terrorist action as justifications for its limited air raids against Syria.⁵⁴ Hence, the US has clearly violated international law by attacking a sovereign country without the consent of the state.⁵⁵

⁴⁹ Roberts, A. NATO’s “Humanitarian War” over Kosovo. *Journal Survival Global Politics and Strategy* (1999), 41(3), pp. 102-123, p 107.

⁵⁰ Teson R, F. Kosovo: A Powerful Precedent for the Doctrine of Humanitarian Intervention. *Amsterdam Law Forum* (2009). 1(2), <http://amsterdamlawforum.org/article/view/62/119>

⁵¹ Masa S, A. Does Humanitarian Intervention Serve Human Rights? The Case of Kosovo. *Amsterdam Law Forum* (2009), 1(2), pp. 49-60, p 59.

⁵² Parliament United Kingdom. Intervention: when, why and How: Written evidence from the Humanitarian Intervention. Session 2013-14

<https://www.publications.parliament.uk/pa/cm201314/cmselect/cmdfence/writev/intervention/int10.htm>

⁵³ Ibid

⁵⁴ Tsagourias, N. Self-Defense against Non-State Actors: The Interaction between Self-Defense as a Primary Rule and Self-Defense as a Secondary Rule. *Leiden Journal of International Law* (2016), 29, pp. 801-825, p.802

⁵⁵ Ibid, p 803.

3.2 Responsibility to Protect

The Responsibility to protect is a concept that has emerged in the 20th century and according to the concept, the state has the primary responsibility to protect its population, international community has the responsibility to help the state and if state fails in protecting its people, it is the responsibility of international community to intervene to protect the population.⁵⁶ International community introduced responsibility to protect in the prevention of four crimes: genocide, crimes against humanity, war crimes and ethnic cleansing. The International community may intervene as well as preventive, peacefully and or by imposing sanctions and in extreme cases, international community may intervene militarily.⁵⁷ In this chapter, I will demonstrate the concept of responsibility to protect and then define it and then I will talk about UN Charter key points relating to the responsibility to protect as the wording of the Charter refers to the constant on the responsibility to protect resolutions and debates.

3.3 Definition of R2P

I will define Responsibility to Protect as it was defined in 2005 United Nations (UN) World Summit. This UN resolution was accepted by each State to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. The later additions on the concept of R2P are not approved in the same way as it was approved by all countries in 2005 World Summit.⁵⁸ Paragraphs 138-139 of the World Summit Outcome Document:⁵⁹

- *“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”.*

⁵⁶ Glanville, L. The Responsibility to Protect Beyond Borders. *Human Rights Law Review* (2012), 12(1), pp.1-32, p 1-4.

⁵⁷ Basaran, H R, Identifying the Responsibility to Protect. *Fletcher School of Law and Diplomacy*. Winter 2014, 38(1), pp.195-212, p 1.

⁵⁸ Peters, A. The Security Council’s Responsibility to Protect. *International Organisations Law Review* (2011), 8(1), pp.15-54, p 4.

⁵⁹ United Nations General Assembly, 2005 World summit., p 138-139.

- *“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 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 manifestly fail 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.”*

Each state has the responsibility to protect its population from genocide, crimes against humanity, war crimes and ethnic cleansing. The international Community has the responsibility to encourage and help states to follow and comply with their responsibility. The international community has the responsibility to use suitable diplomatic, humanitarian and other peaceful measures to protect the population from genocide, war crimes, ethnics cleansing or other crimes against humanity. If a country is unable to protect its population or fails to do so by peaceful means, the international community has the rights and obligation to address this and take collective actions to resolve this in accordance to UN Charter II.

“In 2009, UN Secretary-General Ban Ki-moon released a report in World agreement on Implementing the Responsibility to Protect, which outlined a three-pillar:

1. The State carries the primary responsibility for the protection of populations from genocide, war crimes, crimes against humanity and ethnic cleansing.
2. The international community has a responsibility to assist States in fulfilling this responsibility.

3. The international community should use appropriate diplomatic, humanitarian and other peaceful means to protect populations from these crimes. If a State fails to protect its populations or is in fact the perpetrator of crimes, the international community must be prepared to take stronger measures, including the collective use of force through the UN Security Council”.⁶⁰

Genocide is defined as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Genocide is carefully defined, and one of its features is the “intention” that’s why detection of genocide is rare. Crimes against humanity are defined in International Criminal Court preamble in article 7, and they refer to the widespread or systematic attack directed against any civilian population with knowledge. Crimes that can be considered as crimes against humanity are murder, extermination, enslavement and rape intentionally causing great suffering or other severe deprivation of physical liberty.⁶¹ War crimes are defined as the grave breach of Geneva convention and act against persons or property protected under the provisions of the relevant Geneva Convention , for instance willful killing, torture and inhuman treatment, the use of child soldiers, intentional attack against civilian objects and the use of serious weapons.⁶²

4. Intervention with and without United Nations Security Council Mandate

4.1 United Nations Security Council Intervention

In general, it is agreed that UN Security Council has the authority to authorize humanitarian intervention under UN Charter of Chapter VII.⁶³ Charter VII. is the chapter which that gives the authorizations to violate state sovereignty by intervening in a sovereign state to maintain or restore international peace and security which articles 39,41 and 42 refer to.

- “Art 39. *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*

⁶⁰ United Nations General Assembly, implementing the responsibility to protect, Report of the Secretary-General, 2009, p 2.

<http://responsibilitytoprotect.org/implementing%20the%20rtop.pdf>

⁶¹ Tutuianu, S. (2013), *supra* nota 1, p 104.

⁶² Rome Statue of International Criminal Court 2002, p 11-16.

⁶³ Stein, M S. Unauthorized Humanitarian Intervention. Social Philosophy and Policy Foundations 2004, 21 (1), pp.14-38, p 4.

*what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”.*⁶⁴

- *“Art 41. The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”.*⁶⁵
- *“Art 42. Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations”.*⁶⁶

Article 41 refers to the measures that do not include the use of force and article 42 refers to maintaining and restoring international peace and security. To take actions in accordance with article 42 the Security Council must come to the conclusion that required action has already proved to be insufficient.

The Security Council has the primary responsibility to maintain international peace and security under Article 24 of the UN Charter.⁶⁷ The trigger for collective measures under Chapter VII of the Charter is Article 39, which authorize the SC to decide what measure should be taken when there is a threat or breach to peace and security.⁶⁸ In this respect, the SC does enjoy a wide margin of discretion. Although the definition of an act of aggression is adopted by the UN General Assembly Resolution 3314(XVX)⁶⁹, the Security Council has not been able to use its decisions on this definition although it has gained authority. Instead, the SC has preferred to use

⁶⁴ Simma, B. Charter of United Nations a Commentary. Oxford, Oxford University Press (2012), p 717.

⁶⁵ Ibid, p 735.

⁶⁶ Ibid, p 749.

⁶⁷ Simma, B. The Charter of the United Nations, A Commentary. Second Edition Volume 1. New York. Oxford University Press (2002), p 442.

⁶⁸ Ibid, p 717.

⁶⁹ Wilmshurst, Elizabeth | United Nations Audiovisual Library of International Law. Definition of Agression http://legal.un.org/avl/pdf/ha/da/da_e.pdf

the concept of a threat of international peace and security on its decisions, which gives more room to the interpretation of the concept.

The authority of the Security Council competence to decide, if necessary on the use of force does not imply an automatic right to use force. Article 41 of the Charter contains a list of sanctions that could be employed as an alternative to armed force and that, by the logic of the Charter, should be given priority.⁷⁰ On the other hand, the Charter also underlines the primacy of peaceful means and the peaceful settlement of disputes. If the SC considers the non-military sanctions provided for in Article 41 as inadequate, it may take action provided in Article 42 if it finds it as necessary to maintain or restore international peace and security.⁷¹ Furthermore, in its resolutions on the use of force the Security Council has usually only generally referred to Chapter VII of the Charter without mentioning any specific articles. The UN Charter mentions the possibility to authorize regional organizations to act only within Article 53(1), in which no enforcement action shall be taken by regional agencies without the authorization of the Security Council.⁷² Hence, the Charter does not clearly provide for an authorization procedure, but the procedure can be based on the general powers of the Security Council to decide on the use of force for maintaining and restoring the international peace and security.

The Korean War is one of the earliest cases where the UNSC has recommended to take participation in the war to assist South Korea.⁷³ Another early case is UNSC resolution concerning Southern Rhodesia, where UNSC authorized United Kingdom to prevent the supply of oil to Southern Rhodesia by military force if necessary.⁷⁴ One can argue that The Gulf War was the direct starting point for a more active use of authorization by the statement of Attorneys-General of the UK and Australia, together with related Resolution 678(1990) it served as a model for later decisions.⁷⁵ During the past 26 years, the policy of UNSC authorization practice has a key tool, which has granted authorizations for the use of force by virtue of Chapter VII of

⁷⁰ Simma, B. (2002), *supra* nota 64, p 735.

⁷¹ *Ibid*, p 749.

⁷² Lesson Learned Unit Department of peacekeeping Operations United Nations. Cooperation between the united nations and regional organizations/ arrangements in a peacekeeping environment, Suggested Principles and mechanisms (1999), p. 6 <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/UNRO%20Cooperation%20between%20the%20UN%20and%20Regional%20Organizations.pdf>

⁷³ Chesterman, S. (2002), *supra* nota 43, p 116.

⁷⁴ *Ibid*

⁷⁵ Bellamy J, A. Feature-Legality of the use of force against Iraq: International Law and the War with Iraq. Melbourne Journal of International Law (2003), p 6. http://law.unimelb.edu.au/_data/assets/pdf_file/0008/1680362/Bellamy.pdf

the Charter to multilateral coalitions (intervention in Somalia in 1992)⁷⁶, regional organizations (NATO intervention in FRY in 1991-1995⁷⁷ and individual states (French intervention in Mali in 2013)⁷⁸. Although the Security Council mandate allows making preemptory decisions, in practice its decisions have been based on the consent of target states requesting for assistance. However, an exception to this general rule including the Gulf War are resolutions 940(1994) in Haiti⁷⁹ and resolution 1973(2011) in Libya⁸⁰. However, from the standpoint of the international legitimacy of the use of force, more problems arise from the situations that specifically relate to the authorizing power of the UN Security Council where its decisions are presented as justification for the unilateral use of force. Multilateral operations without an appropriate legal justification are also to be regarded as unilateral use of force in this sense.

The Libyan crisis is the first case where Security Council and the international community has authorized military intervention in a sovereign state without their consent, based on the responsibility to protect following the of grave human rights violations and killing that occurred to Libyan citizens. I will analyze the Libyan case by introducing the background of the case, UNSC resolution 1973 acceptance by UN, the motives behind the intervention and see if this case fulfilled the criteria for intervention.

4.1.1 Libya

At the end of 2010 and at the early beginning of 2011, in North Africa and Middle-East political movement erupted which is known as Arab Spring. People were not satisfied with political situation nor with the economic situation in the country. The movement started from Tunisia and later the political changes started in other countries like Egypt and Yemen.⁸¹ In February 2011, the political movement also began in Libya, and the people took to the streets to demonstrate their minds. The progress of Arab Spring encouraged people in Libya to demonstrate against

⁷⁶ Batir, K. (2010), *supra* nota 2, p 108.

⁷⁷ *Ibid*, p 150.

⁷⁸ Shurkin, M. France's War in Mali, Lesson for an Expeditionary Army. Santa Monica, Calif. Rand Cooperation (2014), p 1-2.

http://www.rand.org/content/dam/rand/pubs/research_reports/RR700/RR770/RAND_RR770.pdf

⁷⁹ Chesterman, S. (2002), *supra* nota 43, p 155.

⁸⁰ United Nations, Meeting Coverage and Press Release, Security Council Approves 'No-Fly Zone' over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions. SC/10200, 17 March 2011 <https://www.un.org/press/en/2011/sc10200.doc.htm>

⁸¹ Hehir, A. Humanitarian Intervention, Second Edition an Introduction, New York, Palgrave Macmillan (2013), p 282.

Gaddafi's regime, which started peacefully and later it turned into violent⁸², because Gaddafi's administration responded to these with violence. People began to join the opposition, including officers and the result was the establishment of Interim Transitional National Council (ITNC). The situation quickly turned into civil war when and people wanted to throw Gaddafi and his regime out of power when he responded to violations to the demonstration.

The international community was concerned on the Libyan situation, and together with UN, they condemned the grave violations of human rights. The condemnation was seen in February 22nd, in 2011 when The UN Human Rights Commission demanded Libyan regime to stop the use of force against civilians, and referred to possible crimes against humanity. The Secretary General's Special Adviser for the prevention of genocide and on the responsibility to protect discussed on cases of crimes against humanity, and called for the Libyan regime to comply with the protection of its civilians and their responsibilities with its commitment of R2P in 2005.⁸³ On February 25, the UN Security Council founded Commission, their task was to investigate human rights violations happening in Libya and called General Assembly for a meeting to expel Libya from Human Rights Council. Including the Arab League, also other regional organizations like the African Union (AU) and the Organization of Islamic Countries (OIC) expresses their concern on the Libyan situation and condemned Libyan regime on the use of force against demonstrators.⁸⁴

Both sides have committed war crimes including NATO, who refuses to admit killing innocent civilians during the air strike.⁸⁵ A terrible example of NATO civilian casualties is an international charitable organization led by Khaled El-Hamedin family and relatives who experienced a massacre.⁸⁶ NATO did not care about those who have fled the war in distress and rescue the displaced refugees. According to UN, about 1500 people who had escaped the war was lost in the Mediterranean Sea.⁸⁷

⁸² Zitcak, S. The Responsibility to Protect after Libya and Syria. *Melbourne Journal of International Law* (2013), 13(1), pp.1-33, p 1-2.

⁸³ Ibid, p 3.

⁸⁴ United Nation, Security Council 6491 meeting, resolution 1970, 2011, p 1.

⁸⁵ Glaser, John | antiwar.com (4.10.2011) NATO Refuses to Investigate Libyan Civilian Deaths. <http://news.antiwar.com/2011/10/04/nato-refuses-to-investigate-libyan-civilian-deaths/>

⁸⁶ Houston Free Thinkers (10.1.2013). My name is Khaled K. El-Hamedin, I am a Libyan citizen. <http://thehoustonsfreethinkers.com/my-name-is-khaled-k-el-hamedin-i-am-a-libyan-citizen/>

⁸⁷ Schwatz, Peter | WSW (13.8.2011). NATO allows Libyan refugees to drown in the Mediterranean. <http://www.wsws.org/en/articles/2011/08/nato-a13.html>

4.1.2 The acceptance of 1973 Resolution

UNSC adopted resolution 1973 in response to Gaddafi's threat to take actions against civilians⁸⁸ and this resolution was supported by ten votes in favor and five absented, Brazil, China, Germany, India and Russia.⁸⁹ This resolution had several measures which included the use of force, protection of civilians, creation of no-fly zone, ban of flights and the enforcement of the arms embargo and a ban on flights.⁹⁰ Resolution 1973 is acting under Chapter VII of the Charter of the United Nations and it defines Libya as a threat international peace and security and authorizes all necessary measures to protect civilians except bringing ground force.

On March 19 2011, NATO begun the air strikes on Libyan regime military bases, which was led by France, Britain and United States. NATO gave the impression that the operation would not last long, and it would be limited to enforcement of resolution 1973 if Gaddafi and his regime would fulfil three demands: "1) end attacks against civilian populated areas, 2) withdraw all military forces and 3) permit unlimited humanitarian access".⁹¹ One way or another NATO wanted the regime change in Libya, despite Gaddafi's promise to fulfill the demands set by NATO, so when the war against Gaddafi regime initiated, there was no intention to stop it. Although, there were cease-fire proposals which were made by the AU, NATO and the rebels did not on any of negotiations offered by AU. The consequences are the casualties, around 50000 people died in air strikes and in the ground battle.⁹² The military intervention did not stop the war in Libya, instead the war lasted long. Gaddafi was captured and killed in October, in the same month Security Council Removed the mandate to 1973 resolution in 2016.⁹³

Secretary General Ban Ki-Moon stated that "Resolution 1973 affirms, clearly and unequivocally, the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government". What was stated by Secretary

⁸⁸ O'Donnel, C. The Development of the Responsibility to Protect, An Examination of the Debate over the Legality of Humanitarian Intervention. *Duke Journal of Comparative & International law* (2013), 24(3)7, pp. 557-588, p 565.

⁸⁹ Adams, S. Libya and the Responsibility to Protect. *Global Centre for Responsibility to protect Occasional Paper Series* (5) 2015, p 9.

⁹⁰ United Nations, *supra* nota 80

⁹¹ Norooz, E. Libya, Resolution 1973 and the Responsibility to Protect (R2P). *Cejiss* 2015, p 95.

<http://static.cejiss.org/data/uploaded/1427712342560473/Article%2005.pdf>

⁹² Milne, Seumas | *The Guardian* (26.10.2011). If the Libyan war was about saving lives, it was a catastrophic failure.

<http://www.theguardian.com/commentisfree/2011/oct/26/libya-war-saving-lives-catastrophic-failure>

⁹³ *Ibid*, p 7-8.

General of UN clearly shows that the doctrine of R2P is accepted, however not everyone seems to agree with this. Immediately after resolution was adopted disagreements arose between scholars, some supported the intervention, others criticized it saying that it's illegal to interfere in the internal affairs of a state.⁹⁴ The supporters of military intervention sought military intervention in Libya as success case of responsibility to protect which was adopted by the UN at the 2005 World summit. Although, the case of Libya can be considered as concrete and successful example R2p, the practice of resolution 1973 has faced outcry, for example China stated that "China has always emphasized that, in its relevant actions, the Security Council should follow the United Nations Charter and the norms governing international law, respect the sovereignty, independence, unity and territorial integrity of Libya and resolve the current crisis in Libya through peaceful means".⁹⁵ The regime change in Libya gave reason to support critics to resolution 1973. The critics of resolution 1973 argue that protection of civilians is objective of R2P, not the regime change of a state.

The Libyan case is interesting and exceptional from other crisis that can be classified as threaten mass atrocities, because it fulfills the criteria for the intervention. According to, Eve Massingham article there six criteria for military intervention 1) *justa causa*, 2) right authority, 3) right intention, 4) proportional means, 5) reasonable prospects 6) last resort⁹⁶. First, *Justa causa* states that there must be "large scale of life and ethnic cleansing",⁹⁷ which clear happened in Libya looking at the death number and number if injured people.⁹⁸ Second right authority refers to the support of international community or organizations. This happened when in Libya, when the Arab League asked international community for a no-fly zone and it was supported by UNSEC. Third, right to intention of intervention must be for the purpose of to prevent human gross, which Sofie Rose article back the idea by stating that "the objective was to ensure the protection of civilians who were facing grave risks of mass atrocities committed by the Qaddafi regime".⁹⁹ The Fourth and fifth criteria are connected. Proportional means states that "the scale,

⁹⁴ Payandeh, M. The United Nations, Military Intervention and Regime Change in Libya. *Virginia Journal of International Law* (2012), 52(2), pp. 355-402, p 380.

⁹⁵ Naime, M. Libya and Resolution 1973: The Law of Politics. *Journal of Strategic Security* (2012), 2(5)2, pp.105-112, p 108.

⁹⁶ Massingham, E. Military intervention for humanitarian purpose: does the Responsibility to protect doctrine advance the legality of the use of force for humanitarian ends. *International review of the Red Cross* (2009), 91(876), pp. 803-831, p 817-822.

⁹⁷ *Ibid*, p 818.

⁹⁸ Daw, M, Dau, A, El-Boucedi, A. Libyan armed conflict 2011: Mortality, injury and population displacement. *African Journal of Emergency Medicine* (2015), pp.101-107, p 101.

⁹⁹ Sofie Rose | Warwelfare (5.7.2016). The NATO intervention in Libya. <https://sisloblog.wordpress.com/2016/07/05/the-nato-intervention-in-libya/>

duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective”.¹⁰⁰ This was well applied when the coalition used the no-fly zone over Libya and the result of it was very effective, which noted by Meyer in his article by stating “there are no indications that the scale, duration or intensity were out of proportion to the Libyan military force”.¹⁰¹ The fifth criteria is questioned by Larsson by saying “establishing a no-fly zone might be a proportionate response, but it doesn’t have a reasonable prospect of success, unless success is defined as the effective enforcement of a no-fly zone”.¹⁰² Larsson has also questioned the applicability of the last four criteria in Libya.¹⁰³

4.1.3 Motives behind intervention in Libya

There are believe to be many reasons why Gaddafi was thrown from the power. The opening of a prosperous Arab country to globalization, namely international big business interests is one of the motive. In 2009 Gaddafi announced that he is supporting the idea to nationalize foreign oil company operating inside Libya.¹⁰⁴ Gaddafi also took initiative step to give oil money directly to Libyan citizens, but he did not receive enough support from Libya’s people’s congresses, which is the country’s highest authority.¹⁰⁵ In 2010 Reuters news agency stated that “Gaddafi was offering to invest \$97 billion in the continent to be free from Western influence”¹⁰⁶ which many of Western actors may have felt as a threat.

The NATO-Libya operation enthusiastic actor was France. It is believed that president Sarkozy wanted to silence Gaddafi by directly bombing his former partner. The French authorities investigated Sarkozy case and uncovered evidence that Gaddafi supported Sarkozy financially

¹⁰⁰ Fukutomi, M. Humanitarian Intervention in Libya: Si it causing internal War? Hittotsubashi Journal of Law and Politics 2017, 45, pp.23-32, p 26.

¹⁰¹ Meyer, J. From Paralysis in Rwanda to Boldness in Libya: Has the International Community taken “Responsibility to Protect” from abstract Principle to Concrete Norm under International Law? Houston Journal of International Law (2011), 34(1), pp.87-107, p 103.

¹⁰² Daniel Larsson | The American Conservative (12.3.2011). The Appalling Irrationality of Libyan Intervention Arguments. < <http://www.theamericanconservative.com/larison/the-appalling-irrationality-of-libyan-intervention-arguments/> >

¹⁰³ Ibid

¹⁰⁴ Fleming, Sue | Reuters (21.1.2009). Gaddafi says looking at oil firm nationalization.

<http://uk.reuters.com/article/2009/01/21/businessproind-us-libya-gaddafi-oil-idUKTRE50K61F20090121>

¹⁰⁵ Ghanmi, Lamine | Reuters (3.3.2009). UPDATE 2 – Libyan congresses delay Gaddafi’s oil shareout plan. <http://uk.reuters.com/article/2009/03/03/libya-oil-idUKL359112620090303>

¹⁰⁶ Reuters (24.11.2010). FACTBOX-Libyan aid and investment projects in Africa. <http://af.reuters.com/article/energyOilNews/idAFLDE6AI0ZS20101124>

during his election campaign in 2006-2007 and after the elections.¹⁰⁷ There could have been other reasons why Gaddafi was killed, but the essence is to understand that in case of Libya as usual, acts of war proclaimed criteria differs from war measures of the real motives

Most crimes against humanity have been made during the war and its aftermath. The Libyan crisis has raised many questions which is indeed difficult to answer. For instance, why Western countries have not claimed the rebels accountable for crimes against humanity, even if there a lot of evidence that show them accountable? Perhaps because by doing so the Western countries admit at the same time their own guilt after giving unconditional support to any group that fought against the West problematic administration.

Today when we talk about Libya, almost everyone accept that Libya is in deep state of chaos. There has not been a functioning central government for a long time, nor army or police force. There are many groups who holds the power in Libya for example well-armed militias who are fighting in main towns, natural resources, ports and airports of control. Now the situation has led to the fact that the Western press has begun to question the intervention in Libya six-years ago. Hindsight, of course, may be in place when the consequences of intervention have become very visible. But only a few can return to Libyan events, and shows that they were right in 2011.

4.2 Intervention without UNSC Authorization

There are articles that do not authorize humanitarian intervention, Art 2(4) and article 2(7). The UN Charter article 2. defines those principles which states that all the members of United Nations must act. The interesting points in the article are points 4 and 7:

- *“Para 4. 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 United Nations”.*¹⁰⁸
- *“Para 7. 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 or*

¹⁰⁷ Lichfield, John | The Independent (3.1.2013). Nicolas Sarkozy DID take \$50 million of Muammar Gaddafi's cash, French judge is told. <http://www.independent.co.uk/news/world/europe/nicolas-sarkozy-did-take-50-million-of-muammar-gaddafis-cash-french-judge-is-told-8435872.html>

¹⁰⁸ Charter of The United Nations and Statute of the International Court of Justice, San Francisco, 1945, p 3.

shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.¹⁰⁹

The UN Charter article 2. emphasizes the territorial integrity of the and political independence of a state, which means that each state should respect the sovereignty of other states. This also applies to the UN not intervene into internal affairs of state, but Charter II. Coercive measure gives an exception to this. The intervention in northern Iraq in 1991, and Kosovo in 1999, has raised questions and critics because the UN Security Council was unable to act, thus it did not authorize the intervention in the first hand.

The UNSC may authorize regional organizations to use force to maintain international peace and security. Article 53 of the charter states that, regional organizations shall not engage military actions to restore peace and security, and in solving conflicts without the UNSC approval.¹¹⁰ The starting point is therefore that the regional organizations do not have broader rights to the use force than their member states. Regional organizations must also in accordance with article 54 to inform the SC all actions relating to the maintenance of international peace and security.¹¹¹ These provisions are in consistent with the with Article 24 of the Charter, whereby, Security Council has the primary responsibility for nations the maintenance of peace and security.¹¹²

Regional organizations such as Economic Community of West African States (ECOWAS) may send its troops to member states or elsewhere for peacekeeping mission or crisis management.¹¹³ However, the traditional peacekeeping mission is usually based on the consent of state¹¹⁴. This practice couldn't be applied in Somalia in 1991, there were no existing government to issue an invitation.¹¹⁵ The interventions of the ECOWAS in Liberia and Sierra Leone in the 1990s provides the possibility of authorization ex post facto. This issue related to 788 resolution, which

¹⁰⁹ Ibid

¹¹⁰ Simma, B. The Charter of the United Nations, A commentary. Oxford, Oxford University Press 1995, p 722.

¹¹¹ Simma, B. (1995), *supra* nota 110, p 752.

¹¹² Ibid, p 397.

¹¹³ Arthur, P. ECOWAS and Regional Peacekeeping Integration in West Africa Lessons for the Future. Africa Today, Winter. Indiana University Press (2010). 57(2), pp. 3-24, p 3-4.

¹¹⁴ Lijn D V, J. Briscoe, I. Drent, M. Homan, K. Putten D V. Zandee, D. Peacekeeping operations in a Changing World. Clingendael Strategic Monitor Project. Netherlands Institute of International Relations Clingendael (2015), p 25.

¹¹⁵ Berdal, M. Economids, S. United Nations Interventionionism. New York. Cambridge University Press (2007), p. 108 De Wet, E. Leiden Journal of International Law (2014), 27(2), pp. 353-369, p 358.

was adopted in 1992 at the time ECOWAS was authorized to use force in Liberia¹¹⁶, and 1132 resolution authorized ECOWAS to use force in Sierra Leone.¹¹⁷ This could be viewed as authorization by “ex post facto” depending on how it is interpreted.

It is interesting that note that, the provision in the Constitutive Act of the African Union gives the right to intervene in the internal affairs of a member states in cases of war crimes, genocide and crimes against humanity, and to restore peace and security in the region.¹¹⁸ This provision is contrary with article 53 of the UN Charter, which prohibit the use of force unless it has been authorized by the SC. However, this could be interpreted as having an effect within the organization, which justifies them to use force.

4.2.1 Kosovo

In 1999, NATO launched an air strikes which lasted for 78 days¹¹⁹ against Federal Republic of Yugoslavia (FRY) to prevent the serious crimes committed by Serbian troops which were directed towards the ethnic population of Albanian population.¹²⁰ The NATO operation in Kosovo, Allied Force was made in the name of humanitarian intervention without the UNSC authorization, which is controversial to the legitimacy of the intervention.¹²¹ According to the article, the controversial issue is “By launching air strikes against Yugoslavia, NATO wanted to tell the world that it could do anything to reach its goal, even without UN approval”¹²² which is clear violation sovereign states integrity and is not in accordance with the principle of humanitarian intervention. Although it was controversial, Teson argues that “NATO’s

¹¹⁶ Ibid, p 360.

¹¹⁷ Ibid, p 362.

¹¹⁸ Kioko, B. The Right of Intervention Under the African Union’s Constitutive Act: From non-interference to non-intervention. *International Review of the Red Cross* (2003), 85(852), pp. 807-826, p. 807

¹¹⁹ Chis, C, Manolache, D. NATO in the Former Republic of Yugoslavia. *International Conference of Scientific Paper 9 AFASES 2015*, pp.61-69, p 69.

¹²⁰ Massa, A. NATO’s Intervention in Kosovo and the Decision of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia not to Investigate: An Abusive Exercise of Prosecutorial Discretion. *Berkeley Journal of International Law* 2006, 24(2)9, pp 610-649, p 611.

¹²¹ Ke, J. Did the US Media Reflect the Reality of Kosovo War in an Objective Manner? A Case Study of the Washington Post and the Washington Times. *Intercultural Communications Studies* XVII 2008, 1, pp 157-168, p 158. <http://web.uri.edu/iaics/files/16-Jing-Ke.pdf>

¹²² Ibid, p 1.

intervention in Kosovo has confirmed the doctrine of humanitarian intervention as a legal custom”.¹²³

Wippaman argues in his article that, NATO’s intervention in Kosovo is” unique in two aspects”. First, “it was a collective action by the world's richest and most powerful States, the States most directly associated with and interested in the maintenance of the rule of law in international Affairs”. The second aspects,” the States involved made relatively little effort to shoehorn the intervention into the legal categories available under the U.N. Charter for the use of force”.¹²⁴

As previously mentioned article 2(4) of UN Charter prohibits the use of force against any independent state, article 51 allow the use of force in self-defense and article 42 authorizes the use of force by the Security Council. The Security Council adopted the first Resolution 1160 which condemned the serious violations actions against civilians in the country. The resolution also included arm embargo on FRY and urged both sides to negotiation table to find a peaceful political solution the situation.¹²⁵ The resolution 1160 was more in favor to Kosovo, because it gave them a “greater degree of autonomy and self-determination”.¹²⁶ However, this resolution did not stop the violations committed by both parties, because UNSC issued another resolution. The Security Council met on September 23 in 1998 and adopted resolution 1199 which urged both sides to commit to cease-fire, to stop the grave human rights violations in the country and to improve humanitarian situation and to find diplomatic solution.¹²⁷

The Security Council met the third time in 1998, to issue Resolution 1203 in which Russia and China obtained from voting. In paragraph 9 the resolution stated that “OSCE is considering arrangements to be implemented in cooperation with other organizations, and affirms that, in the event of an emergency, action may be needed to ensure their safety and freedom of movement”.¹²⁸ The United States and its NATO allies interpreted this statement as a justification to use force

¹²³ Tesson, F. Kosovo: A Powerful Precedent for the Doctrine of Humanitarian Intervention. Amsterdam Law Forum 2009, pp 42-49, p 42.

¹²⁴ Wippman, D. Kosovo and the Limits of International Law. Fordham International Law Journal 2001, 25(1)5, pp.129-150, p 130.

¹²⁵ UN Security Council, S/RES/1160 (1998)

¹²⁶ Tetzlaff, K. Humanitarian intervention post Kosovo: Does a Right to Humanitarian Intervention Exist in Customary International Law After Kosovo? If not, is there a Trend Towards the Creation of Right to Humanitarian Intervention in Customary Interventional Law? The New Zealand Postgraduate Law e-Journal (2007), p 5

¹²⁷ UN Security Council, S/RES/1199 (1998)

¹²⁸ United Nations, Meeting Coverage and Press Release. Security Council Demands Federal Republic of Yugoslavia comply fully with NATO and OSCE Verification mission in Kosovo. SC/6588, 24 October 1998 <http://www.un.org/press/en/1998/19981024.sc6588.html>

to stop violence in Kosovo when US representative stated that “The NATO allies, in agreeing to the use of force, made it clear that they had the authority, the will and the means to resolve the issue”.¹²⁹

Despite all the resolution made by the Security Council the violence in Kosovo continued forced NATO to start bombing the area. There were two major point which forced NATO to start bombing the area. First, the event in village of Rack where Serb forces slaughtered 45 Albanian civilians. Second, the failure of Rambouillet peace negotiation. The Rambouillet negotiation purpose was to find a political solution. Kosovo representatives agreed to signed the agreement, but Serbia representatives refused to sign the agreement because it was more in favor to Kosovo providing them autonomy and possibility to get independence. The Serbs felt they were under pressure to sign the agreement and said that a foreign military presence in sovereign country is a violation of sovereign state territory.¹³⁰

Now I will examine if NATO intervention in Kosovo met the criteria for humanitarian intervention. As previously mentioned, humanitarian intervention has 5 criteria which must be fulfilled. First, were there large scale of life and ethnic cleansing? According to Chamberlain and Pancevski, “Serb forces started a campaign of so-called ethnic cleansing, driving hundreds of thousands of Albanians into neighbouring countries. More than 2,000 people died”.¹³¹ In human rights watch report it is stated that “the municipalities of Glogovac (Glllogofc) and Srbica (Skenderaj) in the Drenica region, the cradle of the KLA, were the scene of multiple massacres of civilians, as well as arbitrary detentions, torture, and the systematic destruction of homes and other civilian property”.¹³² The General Assembly in Resolution 53/164 expressed their concern “gravely concerned about the systematic terrorization of ethnic Albanians...of torture of ethnic Albanians, through indiscriminate and widespread shelling, mass forced displacement of civilians,...executions and illegal detention of ethnic Albanian citizens...by the police and military”.¹³³

¹²⁹ Ibid

¹³⁰ Massa, A. (2006), *supra* nota 120, p 612-613.

¹³¹ Chamberlain, G, Pancevski, B. | The Telegraph (2.12.2007). Ethnic “cleansing” threat to Serbs in Kosovo. <http://www.telegraph.co.uk/news/worldnews/1571265/Ethnic-cleansing-threat-to-Serbs-in-Kosovo.html>

¹³² Human Rights Watch. Under Orders: War Crimes in Kosovo. Human Rights Watch, New York 2001, p 13.

¹³³ United Nations. General Assembly, Situation of human rights in Kosovo: report of the Third Committee, A/RES/53/164 (25.2.1999) < <http://www.refworld.org/pdfid/3b00f52e8.pdf> >

Second, Kosovo as threat to interventional peace? Greenwood argues that NATO intervention in Kosovo was not based on self-defense¹³⁴ and thus cannot fall under article 51. At that time Kosovo belonged to Serbia and Serbia was part of Former Republic of Yugoslavia where the conflict took place. Article 2(7) prohibits intervention in the matters of domestic jurisdiction which NATO did not respect and violated this article. According to UN Chapter VIII Article 53 paragraph 1, “the Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority...”¹³⁵ Although this article allows regional agencies to take action to restore peace and security, and in solving conflicts, the Security Council has to authorize it which in this case did not happen and it did not stop NATO from acting.

Third, the intention of intervention. There are many reasons stated by people and their opinion differs. Some say that the primary purpose of intervention by NATO in Kosovo was not about ending the massacres in Kosovo. For instance, Stone mentioned in his article that “Chossudovsky argues that NATO sought to dismantle the socialist economic system in Yugoslavia”.¹³⁶ Stones also said that “some argue that NATO is also seeking to control certain areas in the Caspian Sea in order to secure the route of a key oil pipeline”.¹³⁷ While other say that intervention in Kosovo primary is not to save lives, other have different opinion. The British Prime, Tony Blair said in his speech “We must act to save thousands of innocent men, women and children from humanitarian catastrophe from death, barbarism and ethnic cleansing by a brutal dictatorship and to save the stability of the Balkan region...”¹³⁸

Fourth, where there any other options. As stressed before, the Security Council met in three occasion trying to find a solution to the conflict but resolutions 1160, 1199 and 1203 have all failed. There was also attempt to get find solution in Rambouillet negotiations which have also failed. The only choice left was the authorization of the use of force which UN did not give, and eventually NATO had to act without UNSC. Fifth, the duration of intervention. The air strikes

¹³⁴ Greenwood, C. Humanitarian Intervention: the case of Kosovo. Helsinki, Finnish yearbook of Interventional Law 2002, pp. 141-175, p 154.

¹³⁵ Simma, B. (1995), *supra* nota 135, p 722.

¹³⁶ Brendan Stone | Global Research (29.12.2005). The U.S.- NATO Military Intervention in Kosovo, Trigger ethnic conflict as a pretext for intervention. <http://www.globalresearch.ca/the-u-s-nato-military-intervention-in-kosovo/1666>

¹³⁷ Ibid

¹³⁸ Parliament United Kingdom.

<https://www.publications.parliament.uk/pa/cm199899/cmhansrd/vo990323/debtext/90323-06.htm>

lasted for 78 days, but there was no time set for the intervention although the duration of intervention should be determined.

The unilateral interventions made without the authorization of UNSC is not acceptable and not in accordance with to UN Charter. The Secretary General Kofi Annan does not accept interventions made without the mandate of UNSC, however he also said “If, in those dark days and hours leading up to the genocide in Rwanda, a coalition of States had been prepared to act in defense of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold”.¹³⁹ This is indeed a difficult question and it seems that NATO was not willing to accept another Rwanda when they acted without the UNSC mandate in Kosovo. In Wheeler article, Foreign and Common office paper states that “A UNSCR would give a clear legal base for NATO action, as well as being politically desirable... But force can also be justified on the grounds of overwhelming humanitarian necessity without a UNSCR” and thus, support NATOs intervention in Kosovo.¹⁴⁰ However, as discussed above the intervention must meet with some criteria which is previously mentioned such factors as extreme humanitarian disaster on a large scale, there must be a clear objective and the intervention is necessary and to achieve the goal within a limited time. As it is stated above, there was indeed large scale of humanitarian disaster without question. Point where many do not agree is that there is no other alternative reason to the use of force than saving lives. There was no time limit set for the intervention. That being said, the critics towards this intervention will always remain.

4.3 Problems with the authorization procedure

The problems regarding the practice of authorization already emerged from the Gulf War resolution 678, when the SC authorized the coalition to use “all necessary means “to free Kuwait and to restore peace and security in the region and to force Iraq to comply with previous resolution 660.¹⁴¹ The coalition used the original 678 resolution as justification for the Iraq invasion in 2003 and invoking to validity of 678 resolution with the later resolutions.¹⁴² Thus to this context, the United States referred to customary law, whereby it justifies armed

¹³⁹ Wheeler, N. Unilateral Humanitarian Intervention and International Law. Instituto da Defesa Nacional (2003), pp. 199-218, p 201. https://comum.rcaap.pt/bitstream/10400.26/1396/1/NeD105_NicholasJWheeler.pdf

¹⁴⁰ Ibid

¹⁴¹ Murphy, S. (1996), *supra* nota 37, p 185.

¹⁴² Wall E, A. Was the 2003 Invasion of Iraq Legal?. International law studies. Pp 69-80, p 70.

<https://www.usnwc.edu/getattachment/8a142db5-2c57-472a-a68a-d11698ae83bb/Was-the-2003-Invasion-of-Iraq-Legal-.aspx>.

countermeasure for violation of cease-fire.¹⁴³ Resolution 1440 is the Iraqi latest resolution, which did not contain authorization of military action and thus cannot be considered that the SC had authorized coalition to take military action.¹⁴⁴

As it is stated previously in the case study, NATO air raids against FRY in spring 1999 objective was to protect the Albanian population in Kosovo in accordance with UNSC resolution, which had raised several questions relating to the unilateral implementation of Security Council decisions. Although, air raids remained controversial it can be regard as a positive step for future intervention. Albeit, SC released 1160 resolution and 1199 resolution declaring that Kosovo was a threat to peace and security in the region, it did not explicitly authorized any use of force.¹⁴⁵ Resolution 1244 which was unanimously adopted except China, who obtained from voting, the resolution did not condemn NATOs actions nor authorized the use of force.¹⁴⁶ Silence from the SC cannot be interpreted as the acceptance to air raids and appropriate way to protect civilians in Kosovo, even if its authorized by ex post facto which happened in this.

After the Kosovo intervention, many questions has been raised about the problem of lack of authorization situations where the Security Council is unable to act although the situation would justify armed intervention for humanitarian purposes, which was address by Hehir in Eliens article.¹⁴⁷ This was also brought up by International Commission on Intervention and State Sovereignty (ICISS), when it referred to the powers of the UN General Assembly under the Uniting for Peace Resolution (377/V).¹⁴⁸ Although, this resolution does not provide the possibility for justifying military action, General Assembly may recommend appropriate coordinated action to the member states when it is necessary to use force.¹⁴⁹ Another proposal made by small state group (S5), in which the permanent members of the Security Council should agree about rules on the use of veto for situations of humanitarian emergency,¹⁵⁰ has been

¹⁴³ Wall E, A. (Was the 2003 Invasion of Iraq Legal?). *supra* nota 142, p 72.

¹⁴⁴ United Nations. Security Council, Resolution 1440 (2002), S/RES/1440 (2002), (24.11.2002) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/660/12/PDF/N0266012.pdf?OpenElement>

¹⁴⁵ Chesterman, S. (2002), *supra* nota 43, p 208-209.

¹⁴⁶ Greenwood, C. (2002), *supra* nota 134, p 152.

¹⁴⁷ Eliens, M. Humanitarian Intervention after Kosovo: Iraq, Darfur and the Record Global Society. Amsterdam Law Forum (2009) <http://amsterdamlawforum.org/article/view/66/126>

¹⁴⁸ Focarelli, C. The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine. *Journal of Conflict & Security Law* (2008), 13(8), pp 191-213, p 198.

¹⁴⁹ Tomuschat, C. UNITING FOR PEACE. *United Nations Audiovisual Library of International Law* (2008). P 1-2. http://legal.un.org/avl/pdf/ha/ufp/ufp_e.pdf

¹⁵⁰ Citizens for Global Solution. *The Responsibility not to Veto: A Way Forward* (2014), pp. 1-16, p 9. http://globalsolutions.org/files/public/documents/RN2V_White_Paper_CGS.pdf

brought up especially in the case Syria where Russia and China are continually using their veto power to block the Security Council's action to protect civilians.

As it turned out in case of Kosovo and Iraq, where there was lack of act from and authorization from the UNSC, which the forced action from NATO and individual states to use force to protect human lives and conflicted with the provisions of the UN Charter. As it was stated previously, NATO did not seek to justify its use of force as a humanitarian intervention, instead it rather appealed on the interpretation and to policies of SC 1203 resolution. In 2003 Iraq war, the coalition went back to 1990 SC resolution seeking for justification to their intervention. Thus, an open left resolution will be a subject to the interpretation, which in this case still a discussed subject. The probability of the use of force depends SC decision wordings, which could leave to many interpretations.

In chapter 3.3, paragraph 139 states that collective actions must be in the interest of international community, but before that peaceful means must be taken first to prevent any threats. There is conflict with interpretation of peaceful means and the decision to take collective actions. It must be noted that within this exceptionally authorized power, the SC can decide on peace and war on behalf of the world. However, this power doesn't belong individually to member states. Member states must not take justice on their own if SC is unable to act, because of disagreement between the member states.

Conclusion

Humanitarian intervention remains a hot topic to discuss, some support it and some are against it. Still, it is obvious that military humanitarian intervention in territory of sovereign states, where gross violations of human rights take place is legal justified on a moral level. However, the debate on large scale human rights violations will always remain. The research question researched in this Thesis: **Is humanitarian intervention and responsibility to protect enough reason to interfere in the domestic affairs of state?** The answer is yes, based on the analyzed topics and gathered evidence argued above. For instance, the doctrine of Responsibility to Protect which was adopted by UN support intervention on humanitarian grounds, even in cases where SC has not authorized. That being said, humanitarian intervention is justified and international community is responsible to protect populations, although the state has primary

responsibility to protect. Even the UN Charter of Chapter VII, articles 42 and 51 allow the use of force to maintain peace and security.

NATO's intervention in Kosovo in 1999 was carried out without the authorization from the SC to end suffering of many people in Kosovo. Although, some argument considers it to conflict with international law, in the moral grounds there's no doubt that it was justified. The international community had finally taken their responsibility to save human lives and acted, although they had no direct interest in the country. Even if humanitarian catastrophe is enough reason to legalize the military intervention in sovereign state, it is worth to notice sovereignty and peace are important in international relations. It is the right of each state to have their territory secured and balanced against any actors from outside to intervene in situations where human rights violations take place.

Jennifer Welsh definition to humanitarian intervention is perfectly suited to answer to this research question. The author defined, "humanitarian intervention is a coercive in the internal affairs of a state, involving the use of armed force, with the purposes of addressing massive human rights violations or preventing widespread human suffering".¹⁵¹ Verily, any military actions leads to human suffering, even if the means is to stop human from suffering against their own or foreign government, and thus it is the last option to consider. Intervention in Libya and the acceptance of 1973 resolution is clear response from the international community to show that they will not stand by and watch human suffering. Even tough, some consider the intervention as a regime change in Libya, the intervention has saved many lives which is primary objective of international community.

Military actions is not something to take lightly, even if it's for humanitarian reasons. In view of the death, destruction and disturbances that are often inherent in the wars and aftermaths, humanitarian intervention should be reserved as an alternative to ongoing or immediate mass flour. If the criteria for serious abuse of human rights is met, one must considered looking at other criteria as well to determine whether military actions is necessary for the purpose of humanitarian intervention. As it was mentioned in the text, there six criteria for humanitarian intervention to take place. First, the use of force must be the last reasonable option. Second, the intervention must be primarily for the purpose of humanitarian purpose. Third, it should be

¹⁵¹ Hjorth, R. Humanitarian Intervention and Moral Responsibility. *A Journal of Philosophical, Theological and Applied Ethics* (2015), 2(1)16, pp 19-34, p 24.

conducted to maximize respect for international human rights law. Fourth, it must be reasonably to do more good than harm. Finally, it should ideally, though not necessarily, be accepted by high authority, such as UNSC or another body with significant multilateral authority.

Arguably, the most important criteria to justify military intervention for humanitarian purpose is mass slaughter; in the Libya case, the Gaddafi regime has committed brutal actions to cause mass death. The same action was also committed by FRY regime against the Albanian and Kosovar population which are mentioned in both cases. There must be proof of large-scale killings for humanitarian intervention to take place. Last resort option; which was carried out in Libya in the form of no-fly zone, and in Kosovo it was carried out in air raids. International has no other option but to carry out this, if state continuously ignoring to comply with options they are giving, or continuously carry to slaughter people. In that case, international community must react. Humanitarian purpose; must be taken in order to maximize the result, as the intervention purely concern humanitarian reasons.

As the Libya case shows us, the aim of intervention is to stopping killings, there might be other reasons also behind the act, but the primary reason is humanitarian purpose which is the most important since it might influence many other decisions which could determine the prosperity of the mission to save human lives. Rather soon than never; the meaning of this that military intervention should be calculated for making things better than making it worse. This principle was carried out by NATO in Libya, although it received some critics. The approval from UNSC is necessary to justify the intervention, which was granted in the Libya and it was a success. It is stated in the UN Charter that SC oppose power for the maintenance of international peace and security and has the authority to determination whether the situation requires the use of force for the breach of peace. Attitude towards atrocities has changed, which is notable in the practice of the Security Council since the end of the Cold War, it has utilized its enforcement powers in response to humanitarian crises and gross violations of human rights, provided the political will to act is present and the interests of the major powers and regional groups within the UN coincide sufficiently to ensure that they will at least not actively oppose initiatives within the Council to provide authorization for military action

The reason for UN changing its course on humanitarian issues has to do with its failure to prevent and act in Rwandan genocide. It should have intervened to stop the genocide which is UN one of main principle, the protection of human rights. Hence, this has weakened its authority

and , thus one could argue that NATO was not willing to let another Rwanda to happen when they intervened in Kosovo. In the African region, international community has taken further steps for human rights protection. This can be seen within Constitutive Act of the African Union give blessing for intervention in the internal affairs of a member states in cases of war crimes, genocide and crimes against humanity, and to restore peace and security in the region. However, this applies only within the organization. Undeniably, this shows that interventional community is willing to act.

Michel Walzer has argued that, “the state exists to protect the individual lives and common life of the people within a territory”.¹⁵² This argument reminds the new definition of state which was released by ICISS in 2001, which focuses more on the responsibility of states towards its population. The author support military intervention, in case of state failing to comply with its obligation, by saying that state “will no longer qualify for principle of non-intervention”¹⁵³. It is said that, in many cases state governments are acting as an enemy to their own people referring to the new definition of sovereignty. This statement was stated by Deng and his colleagues, arguing that by not allowing international community to provide help for people in need, and thus government became as lawful authority in its internal border for not being able to provide security within its internal border.¹⁵⁴ That being said, without the understanding of humanitarian intervention and responsibility to protect, it will would be almost impossible to successfully prevent the grave human rights abuse. Koffi Anna’s argument, which he stated at the Millenium Report in 2000, proves the importance of humanitarian intervention over sovereignty in case of ending gross violations of human rights.

To concluded, humanitarian intervention is international community responsibility to protect population from grave violations of human rights, and thus it is legal to intervene into internal affairs of state to stop atrocities for saving human lives. The intervention may happen with or without the approval of UNSC, however to the use of force must be the last resort.

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