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# Is Humanitarian Intervention boon or bane?

## A Critical Analysis of Humanitarian Intervention in Libya

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### ABSTRACT

*A generally accepted norm in International Law is that no state is supposed to intervene in a sister state's affairs, unless it is on grounds of humanity. The author in the paper, through the Libyan crisis, studies analysis the pre-intervention and post-intervention scenario of a nation. This paper also aims to study the case of Libya, and the Humanitarian Intervention that took place during the Gaddafi Regime, by NATO. This article mainly initiates scrutiny of the Libyan crisis, and the Humanitarian Intervention led by NATO. This paper shall also observe the moral stance of the use of force to protect civilians, and whether the interference of such a defence by the global powers, for the humanitarian intervention vary fundamentally. With the analysis of the Libyan situation, especially of the non-combatants, the author aims to identify whether the suffrage of the civilians can be dealt within international settlement of disputes.*

**Keywords:** humanitarian intervention, Libya's intervention by NATO, international settlement of disputes

## I. INTRODUCTION

Oppenheim defines intervention as “a forcible or directorial interference by a state in the affairs of another state to impose certain conduct or consequences on that other state.”<sup>2</sup>

Contrary to the intuition of people from the concept of Responsibility to Protect, the responsibility seems to have resulted in more contributions to the tragedy rather than prevention. The Libya Intervention is one of the most recent humanitarian interventions that was justified based on “responsibility to protect”.<sup>3</sup> It is believed by international advocates that Humanitarian Intervention is based on the premise of doing more good than harm, which depends on two factors: firstly, the perpetrators of violence act in an aggressive manner before

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<sup>2</sup> Oppenheim's 'International Law', Vol. 1, Ninth Edition (1992), Page No. 430

<sup>3</sup> Kuperman, Alan J. “A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign.” *International Security*, vol. 38, no. 1, 2013, pp. 105–136. JSTOR, [www.jstor.org/stable/24480571](http://www.jstor.org/stable/24480571). Accessed 12 Apr. 2021.

the interveners; secondly, the intervention rewards the militants, which encourages the rebellions thus endangering the lives of the civilians or non-combatants.<sup>4</sup> Noam Chomsky, a well-known American social critic and political activist, had stated in an interview, the problem of humanitarian intervention as a concept used to justify violent and aggressive military intervention be leading Global powers.<sup>5</sup> The Kosovo Intervention by NATO in 1999, although illegal, was considered legitimate, based on the premise that the Humanitarian Intervention was to do more good than harm, thus justifying the bombing campaign and acting out without the UN authorization.<sup>6</sup> The humanitarian intervention in Libya, led by the United States, Great Britain and France launched a bombing campaign, which resulted in the destruction of Libya's Infrastructure and killed around 10,000 people, which left Libya defenseless, and continues to be in the same state till today. <sup>7</sup>

The recrudescence of "Humanitarian Intervention" took place in the early 1900's, when the United Nations implemented various air and ground forces in the then Iraq, Bosnia and Somalia. The revolt against Muammar Gaddafi took place in late February 2011, post the influence of Arab Springs in Libya. There is a glaring difference between pre-intervention and post-intervention military and political support from NATO and the United Nations. On one hand, before the intervention, the support received from NATO was conspicuous, but on the other hand, post the intervention, the support received by Libya was minimal, and the reconstruction of the damage caused by the international community was left upto the now defenseless and leaderless nation. <sup>8</sup> Since 2011, Libya has been in a state of embargo, constant conflict, and political unrest. <sup>9</sup>

This article mainly initiates scrutiny of the Libyan crisis and the Humanitarian Intervention led by NATO and shall also observe the moral stance of the use of force to protect civilians, and whether the inference of such a defense by the global powers, for the humanitarian intervention vary fundamentally. This paper shall also closely review the Libyan situation of the non-combatants and aims to identify whether the suffrage of the civilians can be dealt within the international settlement of disputes.

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<sup>4</sup> Ibid.

<sup>5</sup> 'Noam Chomsky on 'Humanitarian Intervention' and Imperialism' Telesur (14 February 2018) <https://www.telesurenglish.net/news/Noam-Chomsky-Humanitarian-Intervention-US-Imperialism-20180214-0028.html>

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Terry, Patrick CR. "The Libya Intervention (2011): Neither Lawful, nor Successful." *The Comparative and International Law Journal of Southern Africa*, vol. 48, no. 2, 2015, pp. 162–182., [www.jstor.org/stable/24585876](http://www.jstor.org/stable/24585876). Accessed 12 Apr. 2021.

<sup>9</sup> Ibid.

## **II. NATO'S INTERVENTION IN LIBYA**

### **(A) State of Libya pre-Intervention**

The reverberation of Arab Spring caused the popular uprisings in Libya. Gaddafi refused to put up with these protests by employing mercenaries, deploying air force, and was prepared to punish the civilians who threatened his regime.<sup>10</sup> On monitoring the ill-treatment of the civilians by Gaddafi's forces, the Security Council of United Nations immediately adopted the resolution 1973 to put an end to the violence in Libya, by use of force.<sup>11</sup>

### **(B) The Intervention**

On getting a grasp of the intensity of the situation, the United Nations concertedly issued the resolution 1970 and 1973, imposing stringent measures against the Libyan regime which included an arms embargo, asset freeze, travel ban, a no-fly zone, and a referral of the situation in Libya to the International Criminal Court for investigation.<sup>12</sup> The vigorous attempts of Libyans to overthrow Gaddafi resulted in his regime relying on shoot-to-kill policies and use of other forms of brutality against the unarmed non-combatants.<sup>13</sup> As the Intervention progressed, the line between protecting civilians and ending Gaddafi's regime became hazy. For instance, France was in violation of the arms embargo, as it kept providing arms to the rebel forces of Libya.<sup>14</sup>

### **(C) Post-Intervention**

NATO might have succeeded in ousting the Gaddafi regime and achieving their military objectives, but post the intervention, the nation disintegrated from the political unrest, lack of security and having to reconstruct the nation after the bombings and attacks. The economy was majorly impacted because; one, there was an arms embargo and the assets of the nation were frozen; two, due to the immense destruction, the civilians lacked proper medical facilities; three, there was poor currency flow. The political turmoil could have resulted in the collapsing

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<sup>10</sup> Ibid.

<sup>11</sup> Pommier, Bruno. "The use of force to protect civilians and humanitarian actions: the case of Libya and beyond." *International Review of the Red Cross*, vol.93, no.884, 2011, pp.1063-1083., <https://www.corteidh.or.cr/tablas/r29540.pdf>

<sup>12</sup> Asli U Bali and Ziad Abu-Rish, 'The drawbacks of intervention in Libya' Aljazeera (20 March 2011) <https://www.aljazeera.com/opinions/2011/3/20/the-drawbacks-of-intervention-in-libya>

<sup>13</sup> Ibid.

<sup>14</sup> Matthias Dembinski and Theresa Reinold, 'Libya and the Future of the Responsibility to Protect African and European Perspectives' Peace Research Institute Frankfurt (PRIF) 2011, report no. 107. <https://www.peacepal.acelibrary.nl/ebooks/files/369284305.pdf>

of the nation.<sup>15</sup>

### III. HUMANITARIAN INTERVENTION OF LIBYA: LEGAL OR ILLEGAL?

As per Article 2(4) and 2(7) of the UN Charter, the Civil War in a state is an internal affair, and hence the principle governing doctrine is that the UN is not allowed to intervene in an internal affair of a particular state. The exception to this is given under Article 39 of the Charter, where in the UNSC possesses the concluding vote to determine whether the Civil War in a state poses a threat or breach of the peace. This was determined in the case of *Yugoslavia v United States of America* by the ICJ<sup>16</sup>, that whenever there is a threat to breach of peace and security, UNSC shall be given special responsibilities under Chapter VII to take collective action and implement a concerted intervention if deemed necessary.<sup>17</sup>

Immanuel Kant stated that, “*But so long as the internal dissension has not come to this critical point, such interference by foreign powers would infringe on the rights of an independent people struggling with its internal disease; hence it would itself be an offense and would render the autonomy of all states insecure*”.<sup>18</sup> The author strongly agrees with Kant’s philosophy in the case of Libyan Intervention, as NATO instead of adhering to the principle of “responsibility to protect” and protecting the civilians first, took sides in the civil war and supported the anti-government forces. NATO’s constant disregard of Gaddafi’s repetitive offer of truce evinced that their sole motive was targeting the Gaddafi regime instead of protecting civilians. It clearly proves that the intervention was not on grounds of humanity, as the civilians were least protected in the scenario and hence should not be tolerated under the International law. NATO’s violation of the arms embargo, and their reliance on the massive aerial bombing which ended up killing many civilians went against the doctrine of “Responsibility to Protect”.<sup>19</sup>

On one end, the rebels were dispensed with close air cover while proceeding against Gaddafi forces, whereas on the opposite end, the allegedly pro-Gaddafi civilians were not provided any

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<sup>15</sup> ELHARATHI, MILAD M. “Humanitarian Intervention: Morals Versus Realism: THE USE OF FORCE IN THE DEFENCE OF HUMAN RIGHTS IN LIBYA.” *World Affairs: The Journal of International Issues*, vol. 18, no. 1, 2014, pp. 72–85. JSTOR, [www.jstor.org/stable/48504954](http://www.jstor.org/stable/48504954). Accessed 18 Apr.2021.

<sup>16</sup> *Yugoslavia v United States*, [1999] ICJ Rep 916

<sup>17</sup> Jyoti Rattan, “Changing Dimensions of Intervention Under International Law: A Critical Analysis” (26 April 2019) <https://doi.org/10.1177/2158244019840911>

<sup>18</sup> Immanuel Kant, “Perpetual Peace: A Philosophical Sketch” (1795) [http://fs2.american.edu/dfagel/www/Class%20Readings/Kant/Immanuel%20Kant,%20\\_Perpetual%20Peace.pdf](http://fs2.american.edu/dfagel/www/Class%20Readings/Kant/Immanuel%20Kant,%20_Perpetual%20Peace.pdf)

<sup>19</sup> Terry, Patrick CR. “The Libya Intervention (2011): Neither Lawful, nor Successful.” *The Comparative and International Law Journal of Southern Africa*, vol. 48, no. 2, 2015, pp. 162–182., [www.jstor.org/stable/24585876](http://www.jstor.org/stable/24585876). Accessed 12 Apr. 2021.

assistance by NATO states, in spite of knowing that the rebel forces had also committed crimes against the alleged supporters of the regime.<sup>20</sup>

Paragraph 4 of the resolution 1973 demands the states to take such actions with a goal of “protection of civilians or civilian populated areas that were under attack.”<sup>21</sup> NATO’s actions demonstrated the lack of objective to protect civilians. The intentions for the arms embargo and the intervention were ambiguous and the way the Western nations authorized the intervention did not make it look like the protection and safety of the civilians of Libya were of paramount interest. Firstly, they authorized the intervention only after making sure that all the Western nationals were brought to safety. Secondly, the evacuation paths that were used to help the Western nationals, were not made available to the non-combatants of Libya or to the African migrant workers that were stuck there, thus leaving them there. If the intervention was indeed a R2P measure, then why were the interveners only concerned with their own nationals being saved, but not the humanitarian welfare of the civilians of Libya. Hence, the intervention was contrary to the paragraph 4 of the resolution itself.

The GA Resolution 2625 (XXV) of 1970 declares that “*Every state has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state.*”<sup>22</sup> Yet, NATO picked sides in the civil war, and provided them with arms and helped the rebels overthrow the government. International Humanitarian Law requires for civilians stuck in the conflict to be treated humanely in all circumstances and protected against all forms of violence, without any discrimination.<sup>23</sup> Unfortunately, the Libya Intervention was a gross mishandling of the humanitarian law and a dangerous precedent to set. It is pertinent to accommodate a whole new procedure, with stricter rules and regulations so that the non-combatants, in violation of those rules and regulations, possess a remedy in the international law.

As of now, the provision for protection of civilians under the Second Additional Protocol to the Geneva Convention of 1977 strictly bans the intervention of foreign parties in the internal civil wars of a state. The Geneva Convention and the Additional Protocols, though extensive, in this case have been completely violated. The civilians ought to be given reparation as they

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> General Assembly (2626 (XXV)) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, (1970) A/RES/2625 <https://unispal.un.org/DPA/DPR/unispal.nsf/0/25A1C8E35B23161C852570C4006E50AB>

<sup>23</sup> Huma Haider, “International Legal Frameworks for Humanitarian Action : Topic guide” GSDRC, University of Birmingham (2013) <https://reliefweb.int/sites/reliefweb.int/files/resources/International%20Legal%20Frameworks%20for%20Humanitarian%20Action.pdf>

were the ones who suffered maximum loss in this conflict. Mere mentioning of the necessity of a goal for the Humanitarian Intervention is not enough. There must be a penalty imposed on the states that intervene on “humanitarian grounds” but end up serving their own interests. The intervening state also failed to adhere to the precautionary principle of proportional means, where in the scale, duration and intensity of the planned military intervention should be the minimum necessity to secure the defined human protection objective.

#### IV. DO CIVILIANS HAVE REMEDIES UNDER THE INTERNATIONAL LAW?

A civilian under Article 50(1) of the Additional Protocol I adopted in 1977 is defined as ‘any person not belonging to the armed forces’, including the **non-nationals** and **refugees**. Principle of Humane Treatment requires that civilians are always treated humanely as per GCIV article 27.<sup>24</sup> NATO violated this principle in two major scenarios, first was when they had the option of a ceasefire provided by Gaddafi, and they ignored that option, putting the life of civilians at risk, and without even evacuating them before choosing sides in the civil war of another country; second, was when they did not let the migrant workers and civilians use the evacuation routes which were only meant for people belonging to their nationals, thus discriminating and treating them inhumanely.

Three responsibilities are subsumed within the Responsibility to Protect; one, the *responsibility to prevent*; two, the *responsibility to react*; and third, the *responsibility to rebuild*. Amnesty International in the year 2012 demanded the NATO to investigate and pay full reparation to the families of the civilians who were caught in the middle of the war.<sup>25</sup> And yet, they were not compensated. This proves that apart from ending the Gaddafi regime, the intervening party had no intention to fulfill the responsibility to rebuild the nation, which requires full assistance to help recover, reconstruct and reconcile.

#### V. CONCLUSION

The Responsibility to protect was not followed in this case. Ten years since the intervention, the civilians are still suffering as the country is a political mess. The intervention implemented by the United Nations and NATO only proves how dangerous this concept is and if it is not made into a stronger law and amended, it will always be prone to be exploited by the powerful

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<sup>24</sup> Huma Haider, “International Legal Frameworks for Humanitarian Action : Topic guide” GSDRC, University of Birmingham (2013)

<https://reliefweb.int/sites/reliefweb.int/files/resources/International%20Legal%20Frameworks%20for%20Humanitarian%20Action.pdf>

<sup>25</sup> Amnesty demands compensation for victims of NATO's Libya campaign (19 March 2012)

<https://www.france24.com/en/20120319-amnesty-international-demands-probe-compensation-victims-nato-libya-campaign>

foreign states, who will use their own discretion in the intervention, thus not actually protecting civilians, but furthering their own personal agenda, such as in this case, the interveners only targeted ending the Gaddafi regime.<sup>26</sup> Importance must be laid in distinguishing what powerful forces like NATO can do and what they can achieve. Humanitarian Intervention and Responsibility to Protect must not become a “White Man’s burden” by allowing the Western Nations to interfere in internal affairs of a state for the “sake of the people”, which ends up disintegrating the state, for the furtherance of their self-interest.

This notion has also been extremely ambiguous with regards to what is the next step in the post-conflict nation. The ones advocating and implementing the doctrine have failed to deliver a clear idea as to what must be done in a post-conflict society. The author staunchly believes that the interveners owe it to civilians to provide for compensation and ensure that families of the victims of war have been fully compensated. They should also be liable for the destruction caused by them and should help in post-conflict nation building.<sup>27</sup> Arguably, if the international law does not develop a non-ambiguous R2P based norm, the globally powerful nations shall continue to conduct such humanitarian interventions outside the purview of the international legal framework, justifying an intervention filled with self-interest as one based on humanitarian grounds.

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<sup>26</sup> Terry, Patrick CR. “The Libya Intervention (2011): Neither Lawful, nor Successful.” *The Comparative and International Law Journal of Southern Africa*, vol. 48, no. 2, 2015, pp. 162–182., [www.jstor.org/stable/24585876](http://www.jstor.org/stable/24585876). Accessed 12 Apr. 2021.

<sup>27</sup> *Ibid.*