



The Principle of Responsibility to Protect: A Violation of States' Territorial Integrity, The case of Libya 2011.

by

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Abstract

The American-NATO coalition intervened in the Libyan civil crisis of 2011, supposedly acting under the principle of Responsibility to Protect. The intervention, which had the backing of the United Nations Security Council (UNSC) led to an infringement on the Territorial Integrity of Libya. The UN Security Council passed a Resolution 1973 on Libya which authorized the intervention acting under the Principle of Responsibility to protect which consequently disregarded Libya's Territorial Integrity under the Law of Nations. The ensuing altercation constitutes the problem of this study. The paper aimed at establishing that Responsibility to protect is a violation of states' territorial integrity, using the Libya Crisis of 2011 as a case study. Adopting a Descriptive research process, data was obtained from secondary sources. Data gathered was analysed using Descriptive data analysis. Findings from this paper established that the United Nations Security Council disregarded the supremacy of a states' Territorial Integrity as enshrined in the United Nations Charter and authorized an intervention which does not uphold it. Conclusively, the American-NATO intervention under the principle of Responsibility to protect in Libya 2011 became a violation of the Libyan Territorial Integrity. The work submitted by recommending that the United Nations must ensure total compliance to the coded international laws in the UN Charter so as to avoid abuse by some member nations and to make certain that the Charter remains the standard for relations amongst Nations, especially as it concerns disputes.

Key words: *Principle, Responsibility, Protect, Territorial Integrity, Libya .*

1. Introduction

In 2001, the International Commission on Intervention and State Sovereignty introduced the Principle of responsibility to protect as a pacific medium to conflict resolution. Basically, the Concept was meant to be a preventive and not an offensive means to resolving conflicts. It rests on three pillars which assume that:

- i) The sovereignty that states enjoy is a responsibility and not a right. A responsibility to protect its citizens from Mass Atrocities;
- ii) The international community possess the responsibility to assist the state in fulfilling this fundamental responsibility;
- iii) In the event that a state cannot or will not protect its citizen from mass atrocities, the responsibility falls on the United Nations to protect the citizens.

According to its originators, responsibility to protect focuses on halting four kinds of abuses namely genocide, war crimes, crimes against humanity and ethnic cleansing all summed up as Mass Atrocities.(International Commission on Intervention and State Sovereignty Report, 2011)

In 2010, the concept was employed in Libya during the reign of late Colonel Gaddafi. It was enshrined in the United Nations Security Council Resolution 1970 and 1973 which authorized a no fly zone over Libya. However, the Resolutions did not explicitly authorize an external military intervention, the like of which was capitalized on by the American-North Atlantic Treaty Organisation (NATO) coalition that militarily attacked Libya supposedly acting under the principle of Responsibility to protect.

According to Orford (2003), the term Territorial Integrity refers to the total rights which a state possesses within the perimeters of its territory. This Territorial integrity, which is particular to each state, ought to be given due respect by other states. They form part of the sovereignty of a state. In a United Nations General Assembly Resolution 3314 of 1974, specific reference was made to the term 'Territorial integrity' emphasizing on the prohibition of armed intervention and aggression against a state as an integral part of its Territorial Integrity (General Assembly Resolution. 3314(xxix) 14 Dec 1974). It was embedded in the United Nations Charter Article 2(4) on the prohibition of force which suggests that this fundamental right of a state must be protected against external or internal force. In addition, Article 7 of the United Nations Charter further reinforces that force should

not be used within the borders of a state by external group or parties, except it is in the common interest (Simma, 1999)

THE MAP OF LIBYA



Land Area: 1.76 million sq. km. (slightly larger than Alaska)
Land Boundaries: 4,348 km (~40% more than U.S.-Mexico border)
Coastline: 1,770 km (more than 30% longer than California coast)
Population: 6,244,174 (July 2014 est.)
GDP (PPP, growth rate): \$73.6 billion, -5.1% (2013 est.); \$77.57 billion, 104.5% (2012 est.)
GDP per capita: \$12,300 (2012 est.)

Budget (spending; balance): \$41.87 billion, deficit 0.5% of GDP (2013 est.)
Literacy: 89.5%
Oil and natural gas reserves: 48.01 billion barrels (2013 est.); 1,547 trillion cubic meters (2013 est.)
External Debt: \$6.32 billion (December 2013 est.)

Sources: Graphic created by CRS. Map borders and cities generated by Hannah Fischer using data from Department of State, 2013; Esri, 2013; and Google Maps, 2013. At-a-glance information from CIA World Factbook.

Sourced from *CIA World Fact book*

2. Statement of the problem

When the American-NATO coalition intervened in the Libyan crisis supposedly acting under the principle of Responsibility to protect, with the authorization of the United Nations Security Council Resolution 1973, the territorial Integrity of Libya was violated. Although the claim was that the no fly zone was only within the Libyan airspace, there is no disputing the fact that it is still within Libya's Territorial Jurisdiction. Airspace, Water space and land space falls within the terms of a state's

Territory. The Extent of responsibility to protect is a threat to the territorial integrity of a state. The invasion of the Libyan air space is a classical instance of the scale to which the Principle of Responsibility to Protect violates the Territorial Integrity of any state faced with external force.

3. Objective of the study

The main objective of this paper is to establish that the principle of Responsibility to Protect violates states' Territorial Integrity.

4. Literature Review

Since the end of World War II the international political system has been organised around the notion of equal sovereignty of states, internal competence for domestic jurisdiction, and preservation of existing boundaries, and yet that these ideals have been violated frequently is incontestable (Elden, 2006). The concept of territory is traditionally understood to be a bounded space under the control of people, and in this context usually a state (Elden, 2005).

What is known as the sovereign state model has established itself as the cornerstone of the international system. The relationship between territory and sovereignty has been seen to challenge not only the state itself however, but also regional and global security throughout history. The legal principle of territorial integrity then, is of fundamental importance when looking at the context of the 'war on terror'. A number of states have been seen as potential 'breeding grounds' for lawlessness such as Somalia, Lebanon, Pakistan, Afghanistan and Iraq (Elden, 2009).

This expression of the state in the form of territory spatialises power relations and, therefore, reconceptualises many aspects of international politics (Eudaily and Smith, 2008). Such a model of sovereignty forms the basis which the United Nations sets out international law. Based on the concept of the state, and in turn upon the foundation of sovereignty, international law considers the nature of territory central to its functioning (Shaw, 2003).

Emphasis on territory as a central aspect of international law has prompted a corresponding set of rules protecting its inviolability. The 1933 Montevideo Convention stated: "*The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.*" Part b- a

defined territory - is of particular concern here as it explicitly deals with the extent of a states sovereign power (Elden, 2009). As previously mentioned, these aspects constitute the legal term 'territorial integrity'. In this sense, international law recognises the rights of states to continue to exist and to exercise sovereignty over specific territories (Hendrix, 2001).

The principle of the territorial integrity of states is well established and protected by a series of consequential rules prohibiting interference within the domestic jurisdiction of states and forbidding the threat or use of force against the territorial integrity and political independence of states. The principle has been particularly emphasised by Third World states in the past (Shaw, 2003).

As it stands Article 2(4) of the 1945 United Nations Charter introduces the most stringent limitation on the use of force by States against one another:

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.

“This principle of territorial integrity is an important part of the international legal order as enshrined in the Charter of the United Nations, in particular in Article 2, paragraph 4” (the prohibition of the use of force), as well as in other important texts, including those on self-determination. The concept includes the inviolability of the territory of the State, including territory under the effective control and possession of a State. The International Court has held that “the scope of the principle of territorial integrity is confined to the sphere of relations between States.”(International Court of Justice Reports, 2010)

Similarly, The United Nations Charter states specifically in Article 2(7) that both the organs of the United Nations and member states within the United Nations should respect the states' domestic affairs. Disputes within the borders of a state should not be submitted to the United Nations for settlement. However, the third specification by Article 2(7) established a limitation on it by the Chapter seven powers on the Charter which states that the United Nations can intervene in a state if the dispute becomes a threat to international Peace. (Simma, 1999). Clauses in Article 2(7) become problematic because of lack of specific definitions of 'not to intervene' and 'matters which are within the domestic jurisdiction. The United

Nations Security Council laid claim on Chapter Seven powers in intervening in Libya in 2011 but it is clear that the Libyan Crisis falls clearly within the domestic jurisdiction of the Libyan state and as such should not have warranted an external military intervention because it does not threaten international peace. According to Sadurska (1974), this difficulty arose out of a lack of specific criteria by Article 2(7). One which gives the organs of the United Nations ample flexibility in their application of the article to particular cases as was the case of Libya in 2011 (Sadurska,1974).

To Higgins (1972), the history of the United Nations has revealed that the organisation can decide to swing to either side concerning intervening in states matters. The Libyan experience is a classical example. So also the intervention in Ivory Coast, Iraq and Afghanistan. Karaosmanogin (2002) opined that all the UN need do is to classify any matter that they wish to intervene in as a threat to international peace. This removes it from the 'domestic jurisdiction' category and this gives the UN the lee way to intervene in the dispute acting the stipulations of Chapter VII powers.

It was in relation to the Spanish question that in 1946, the concept of international concern was first raised. While it was recognised in the security council that the nature of a regime was unquestionably a matter of domestic jurisdiction, a resolution was adopted to set up a sub-committee to determine if the situation in Spain has led to international friction and does endanger international peace and security (Higgins, 1972). The sub-committee determined that the Security Council had no jurisdiction to authorize or direct enforcement measures under Articles 40 and 42 of the United Nations Charter, it nonetheless submitted that the matter can be dealt with by the Security Council within the context of Chapter VI of the Charter which lays out measures for peaceful settlement and adjustments (United Nations Yearbook 1946-49).

Humanitarian assistance has been the supposed justification for the use of force by the US and NATO in the past (Chopra and Weiss 1992). Indeed Kofi Annan has stressed the need to rethink the principle of territorial integrity in terms of the exclusive internal sovereignty of states (Annan, 1999).

The principle of responsibility to protect underplays the right of a states' Territorial Integrity. According to the International Commission on Intervention and States Sovereignty, the Sovereignty that states possess is a responsibility and not a right. (International Commission on Intervention and states Sovereignty Report on

Responsibility to Protect). This totally leaves out Territorial Integrity as a consideration as far as Responsibility to protect is concerned. However, the principle is not an International law. It does not have any binding legal character on any nation neither has it been raised to the status of a norm. But the concept of Territorial integrity is enshrined in the United Nations Charter and as such should take pre-eminence over Responsibility to protect.

5. Study area and Methods

This paper focused specifically on the Libya, a North African nation. Libya is bordered to the north by the Mediterranean Sea and Europe, to the west by Algeria, to the east by Egypt and to the south by three countries - Niger, Chad and Sudan. Her climate is Mediterranean in the extreme north while the remaining portion is generally desert land. She is the fourth largest country in Africa with a land area of 1.76million square kilometres. With a population of 6,244,174 as at the last count in 2014, Libya is famous for her over 48bn barrels of crude oil reserves which is the largest in the world. She is also in possession of about 1,547 trillion cubic metres of gas reserves. Descriptive design was adopted for the study. Information was collected from using secondary sources.

6. Presentation and Analysis

The American-NATO intervention in Libya in 2011 was authorized by the United Nations Security Council under Resolution 1973 on Libya. The invasion of the Libyan airspace by the coalition was an infringement on the territorial integrity of Libya as the Crisis in Libya was not of an international dimension. Libya was facing a civil crisis that required a civil solution. It was by no means a threat to the peace of any other nation. But the United Nations Security Council played on the Flexibility of Article 2(4) and 2(7) of the United Nations Charter and organised an external military intervention against Libya acting under a principle which was not regarded as an international law and throwing away the stipulations of the charter regarding the Libyan matter. The charter of the United Nations clearly stipulates in Article 2 the extent to which states should uphold the territorial integrity of other states and refrain from intervening in their affairs. The case of Libya, as was Afghanistan and Iraq before it, is an instance of Gross violation of the territorial Integrity of these states. And if a concept like responsibility to Protect was to be super imposed on the United Nations charter to justify external intervention and

Territorial infringement, then there is need to amend such a principle so as to conform to the law of Nations. If states go about violating each others' Territorial Integrity without reservations, the International peace that is being canvassed for by the United Nations will only be a mirage as all relations will resolve to the Hobbesian state of Nature where life becomes brutish and short.

Chapter VII clearly states that the only recourse to international intervention was if the crisis threatened International Peace. The Libyan Crisis did not fall within this category. The author argues that the American-NATO intervention in Libya in 2011 was an act driven by selfish Interests and not the thrust for international peace of the Responsibility to Protect the Libyan Citizens during the crisis.

7. Results and findings

This paper was able to establish that The United Nations charter was in itself violated in the enforcement of a no fly zone by the United Nations Security Council acting under the Principle of Responsibility to protect. Articles 2(4) and 2(7) of the United Nations Charter were not implied in the intervention in Libya and both had no bearing within the tenets of Responsibility to protect. Responsibility to protect lays emphasis on a state's responsibility to protect its citizens during conflict situations from the four war crimes termed as crimes against humanity but leaves no room to uphold the Territorial Integrity of the states which makes them citizens. The territorial integrity of Libya was violated by the American-NATO coalition that invaded Libya as it was totally an act of illegality on the side of both the coalition and the United Nations Security council. Responsibility to protect is not a law. It ought not to be super imposed over a law, particularly an international Law as the Charter of the United Nations.

8. Conclusions and Recommendations

This paper has established that the principle of Responsibility to protect negates the law of Nations regarding upholding the Territorial Integrity of sovereign Nations. The Libyan experience was used as a case study to justify this stand. Other instances like Iraq and Afghanistan were referenced. Territorial Integrity is part of what defines a state and should not be violated by any other state or committee of states. The Libyan experience shows that the state has a greater possibility of degenerating to a Hobbesian state of Nature if due regard is not given to Territorial Integrity. In the Libyan Experience, Islamic State in Libya(ISIL) and other factions, apart from

the coalition government are laying claim to power. Since the American-NATO invasion in Libya, the once stable, oil Rich Arab state has remained a failed state. This is an aftermath of intervening in its domestic affairs and as a result, the violation of its Territorial Integrity.

Furthermore, it is recommended that the United Nations must ensure total compliance to the coded international laws in the UN Charter so as to avoid abuse by some member nations and to make certain that the Charter remains the standard for relations amongst Nations, especially as it concerns disputes among nations.

9. References

- Annan, K. A. (1999) 'Two Concepts of Sovereignty' *The Economist* (Online). Available From: [http://www.un.org/News/oss/sg/stories/articleFull.asp?TID=33&Type=ArticleAccessed](http://www.un.org/News/press/docs/2000/20000520.sgsm.htm) 18th May 2016.
- Chopra, J. and Weiss (1992) '*Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention*', *Ethics and International Affairs* volume 6. Retrieved from www.exploringgeopolitics.org. Accessed 18th May 2016.
- Elden, S. (2005). '*Missing the point: globalisation, deterritorialization and the space of the world*'. *Transactions of the British Institute of Geographers*. Volume 30. Retrieved from www.exploringgeopolitics.org/publication_scudder_jamie_territorial_integrity_modern_states_international_political_system_jurisdiction_peace_westphalia. Accessed on 17th May 2016.
- Elden, S. (2006) '*Contingent Sovereignty, Territorial Integrity and the Sanctity of Borders*', *SAIS Review*. XXVI (1). Retrieved from http://www.exploringgeopolitics.org/publication_scudder_jamie_territorial_integrity_modern_states_international_political_system_jurisdiction_peace_westphalia. Accessed on 17th May 2016.
- Elden, S. (2009) *Terror and Territory: The Spatial Extent of Sovereignty*. London, University of Minnesota Press.
- Eudaily, S. P. and Smith, S. (2008) '*Sovereign Geopolitics? – Uncovering the “Sovereignty Paradox”*', *Geopolitics*. Volume 13. Retrieved from http://www.exploringgeopolitics.org/publication_scudder_jamie_territorial_integrity_modern_states_international_political_system_jurisdiction_peace_westphalia. accessed on 17th May 2016.
- Hendrix, B. A. (2001) '*International law as a moral theory of state territory?*', *Geopolitics*. Volume 6. Retrieved from www.exploringgeopolitics.org. Accessed 17th May 2016.
- Higgins, R. (1972) *International Law and Civil Conflict in Evan Luard ed. The International Regulation of Civil War*. New York. New York University Press.
- International Commission on Intervention and State Sovereignty. (2001) *The Responsibility to Protect*. Ottawa International Development Research Centre.
- International court of Justice Reports. (2010). *Accordance with International law of the Unilateral Declaration of Independence of Kosovo*, Advisory opinion. Paragraph 80. Retrieved from www.pesd.princeton.edu. Accessed 17th May 2016.

- Karaosmangolu, A. (2002). UNFICYP and the problem of consent. In Resat Arun: Cyrus and international Law. Ankara foreign policy institute. Retrieved from www.euromesco.net/index.php?option. Accessed 29th January 2016.
- Orford, A. (2003). Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law. Cambridge: Cambridge University Press.
- Sadurska, R.(2003). '*Threats of Force*'. American Journal of International Law Vol. 82 No. 2. Accessed from <https://www.asil.org/resources/american-journal-international-law>.
- Shaw, M. N. (2003) International Law. Cambridge, Cambridge University Press.
- Simma, B. (1999) '*NATO, the UN and the use of force: Legal Aspects*', European Journal of International Law, 10/1. Retrieved from www.ejil.org. Accessed 11th December 2015.
- Simma, B. (ed). (1994). The Charter of the UN. Oxford, Oxford university press. Retrieved from www.global.oup.com. Accessed on December 7 2015.
- United Nations Charter. Retrieved from www.un.org/en/charter-united-nations. Accessed 19th July 2015.
- United Nations Yearbook 1946-47. P348. Retrieved from www.unyearbook.un.org. Accessed 4th January 2016.