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FROM KOSOVO TO SYRIA THE ISSUE OF "HUMANITARIAN" INTERVENTION

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After the end of Cold War, the concept of humanitarian intervention has emerged as a controversial issue in the field of International Relations and among the states. Indeed, an objective definition or legal document about the concept has not been made up until now. However, basic elements of humanitarian intervention have been tried to be identified in international law by the supporter of the intervention on behalf of its legitimacy. It is also emphasized that certain circumstances must have occurred so that an intervention decision can be made up. Humanitarian intervention has been applied and justified against governments enforcing intensive systematic violations of human rights and state terror. The role of United Nations Security Council in the scope of humanitarian intervention is a matter of debate while it is supposed to have an active role on international peace-keeping process. It is also known that NATO made decisions to apply force in Kosovo and Libya examples under the name of humanitarian intervention. These decisions of NATO resulted in discussions on humanitarian intervention in terms of international law. Due to its nature including use of force, it is necessary to find out whether the intervention is legal according to international law or not. As a result of current conditions, this study deeply analyses the legal dimensions of humanitarian intervention relating with rules regulating the use of force (jus ad bellum). In this context, the claims of both the supporters and the objectors of the interventions are taken into consideration, and it is tried to identify the place of humanitarian intervention within customary law and treaties. Being studied the cases of Kosovo and Libya or the developments in Syria, and international law in practice, it is seen that there is not any accepted law justifying the humanitarian intervention. Consequently, this study claims that humanitarian intervention does not supply a basement for any state or international organization to intervene in another state.

Keywords: Humanitarian intervention, Kosovo, Libya, Syria, United nations.

Introduction

The concept of humanitarian intervention has rather contradictory position in law. When humanitarian concept is taken as a mean to use force against a regime breaching human rights systematically and extensionally, this brings about significant issues together with it.

The present study reveals a basic assumption that the great powers take advantage of humanitarian intervention concept on the purpose of their individual interests; and exemplifies this claim by several intervention cases observed in recent history. It is asserted that there are realist interests of great powers behind the illusion created through the values such as human rights, democracy or international law.

While our study tries generally to describe humanitarian intervention concept with its controversial position within the international law; on the other hand, disagreements between defenders and opponents

of such interventions are emphasized. From the point of view adopted by defenders of humanitarian intervention, justifications and criterions for intervention are presented. By this way, moral foundation which is tried to be structured criticisms against legitimacy of humanitarian intervention is set forward. Another aspect regarded in this scope is the position of humanitarian intervention concept in international law. In this context, it is demonstrated that humanitarian intervention is not applicable in terms of international law.

Additionally, the present study investigates historical origins and chronological process experienced by humanitarian intervention concept so as to explain its position and influence in the international system. During the research of this issue, studies of science people on that topic and relevant United Nations Security Council decisions and reports are utilized. The relevant articles of the UN Charter, which are significant in terms of humanitarian intervention, are explained.

1. Historical Progress of the Humanitarian Intervention Concept

Although humanitarian intervention is a contemporary concept, its origin is rather ancient. Since ancient eras, armed interventions have been tried to situate on a legitimate cause by putting reasons forward such as interest of state, security concern, and religious faiths, or claiming that they were done under the name of goodness or humanitarian values. Among these reasons, thought of war for goodness and humanitarian causes has been inherited until the present time as "humanitarian intervention".(Telli, 2012: 208) On the other hand, the concept of humanitarian intervention has also a discourse similar to those belonging to the medieval Christian philosophy defending legitimacy of wars for proselytizing Christianity based on concept of "just war". Similar to the concept of humanitarian intervention, according to the just war phenomenon, the party declaring war is required to consider benefit of society instead of its individual interests, not to aim punishment, and it must be based on legitimate rationales. In the renaissance period, through Machiavellist realist approach, a humanist tradition was developed which emphasizes necessity of peace and freedom by relying on fortunateness of individuals and society. (Türkmen, 2006: 26) While this philosophy underlines importance of cooperation among human beings, it advocates that wars cannot solely start based on an interest, people can declare them against ongoing injustices.

In the 17th century, although realism, under leadership of Thomas Hobbes, was prevailing, ethical principles and the view defending just war existed. Statement of Hugo Grotius, who is regarded as the founder of the international law, "in case a regime which abuse its rights on its own citizens, another state is entitled to cease this regime's mistreatment"(Benjamin, 1992: 126)resembles definition of humanitarian intervention in a contemporary concept. Beside Grotius, specialists at law such as Emmerich de Vattel (Le droit des gens, 1758) and Samuel von Pufendorf (De jure naturae et gentium, 1694) argued that military measures can be taken against oppressive regimes. (Köchler, 2001: 2) When it comes to 19th century, "intervention in name of humanity" came to prominence based on just war phenomenon in the European Oriental Policy. Mentioned intervention was in the form of legitimizing repeating interventions of European powers into Ottoman territory on a moral ground. Within this framework, European States intervened in Crete (1866), Greece(1826),Syria (1860), Armenia (1896) and Macedonia (1905) in the name of protecting its citizens. (Türkmen, 2006: 29)

In 20th century, international law norms began to be formed, and Covenant of League of Nations (1918) and Briand –Kellog Pact (1928) have laid the foundations of banning and limitation of military force intervention. However, in these texts there were no any attributions legitimizing humanitarian intervention concept.

Although the United Nations Charter banned the force intervention in general after the World War II, debates regarding humanitarian interventions continued along with the Cold War period. In this period, the world governments were polarized under the leadership of either the U.S. or the U.S.S.R; and they constituted western and eastern blocks respectively. Ongoing competition between the block leaders was the essential factor determining the world politics. In the meantime, The UN Security Council was not

able to play an effective role in maintenance of peace and security because of the counter veto of the U.S. and U.S.S.R.in the Security Council. Unilateral humanitarian interventions under these circumstances were observed in Eastern Pakistan (by India in 1971), Cambodia (by Vietnam in 1979)and Uganda (by Tanzania in 1979). (Türkmen, 2006: 93)

After the end of Cold War, there have been several humanitarian intervention cases that can be considered as breaching the prohibition of the use of force. Together with the dissolution of the U.S.S.R., the polarization among the developing countries relying on the competition between the two super power countries in terms of political, economic and military aspects has come to an end. Show of power and dominance of the U.S. and Soviet Union on third world countries concluded; political, administrative or religious partitions commenced in these countries which were disengaged influence and guidance of great powers. As local conflicts have intensified due to disappearing two-poled world status-quo, human rights have gained prominence in the international agenda as a universal value. As the influence of ever-developing mass communication tools on world public regarding experienced human right breaches combined with development of human right literature, intervention of the UN into the geographical regions where these breaches occurred has been inevitable. (Türkmen, 2006: 128) The U.N. Security Council adopted course of action concerning the human right breaches in Bosnia-Herzegovina and Somali; and managed to build a consensus for the situation in Ruanda although it was late. The most effective development to end up with this point was removal of dominance over joint security system as a result of conclusion of the Cold War. By overcoming the veto obstacle before the decision making procedure of the UN Security Council, the institution finally gained functionality. As a result of dissolution of the Soviet Union, attitude of the Security Council altered in the post-Cold War period. The Security Council, at first, determined that humanitarian crisis arose in Somali in 1991 as a result of collapse of the regime and break of a civil war in that country was a threat against the international peace and security. However, Security Council failed to respond to the Ruanda case similarly, in which 800,000 people incurred ethnical cleansing in such a short time of 100 days in 1994. (Battiste, 2010: 61) Security Council was just able to make a delayed decision for intervention; and only France volunteered to stop the genocide.

In the meantime, international intervention against the human right breaches in Kosovo is different from the ones in Bosnia-Herzegovina and Somali. The NATO's intervention into Kosovo was maintained without voting in the Security Council against the Russia's possible veto. As a result it has been found as a humanitarian intervention case study in the international public and it initiated discussions concerning legitimacy of these interventions.

As it has been observed, the Security Council has failed to approach objectively toward similar cases in the same period; intervention decisions have only adopted for the cases on which mutual interest of the council member states are aligned; or as it was seen from the Kosovo case, intervention was applied without consent of the council. In the Arab Spring process, the NATO intervention in Libya took place according to the decision of the U.N. Security Council against serious human right breaches of the Kaddafi regime. As this process resulted in overturn of Kaddafi regime and his execution without trial, this opened a debate on humanitarian intervention once again. Insurgence of the Bashar Al-Assad regime against civilians at massacre level during civil war in Syria, passive stance of the United Nations and the NATO has constituted a touchstone for whether humanitarian intervention has been a tool of western countries for their interests in their foreign policies.

2. The Concept of Humanitarian Intervention

The concept of humanitarian intervention is a major controversial issue within the scope of international law. Hence, neither the subject has been defined nor there has been a document confirming validity of the law issued. Humanitarian intervention, in general, is explained as a threat by one or multiple states, or an international organization to another regime which commits extensive and systematical human right breaches against its own citizens in order to protect them, or using force of intervention. (Başeren, 2003: 174) Basic claims of the authors who advocate right of humanitarian intervention on the ground of human

rights can be given as follows. At the present time, human right issues are not viewed sovereign authority of a state and they are recognized one of the basic issues of international society; and respecting these rights transforms into obligations (erga omnes) for all states.

Thus, according to the authors advocating humanitarian intervention, in case of violation of these obligations, all other states are entitled to take measures against the violator state by claiming that it gets harm. Imposing sanctions on Rhodesia and South Africa because of their racist policies, and additionally establishment of two ad-hoc international criminal court of justice because of the humanitarian crimes committed in Ruanda and former Yugoslavia Federal Republic suggest that there is a deviation from principle of not to intervene. Of the authors advocating this doctrine, Professor Lillich, Nanda and John Norton Moore suggest some conditions to take an initiative within the scope of humanitarian intervention;

(1) Prioritizing preventive diplomacy,
(2) Reluctant stance of relevant states regarding conforming with applicable law,
(3) Continuous basic role and responsibility of the Security Council,
(4) Systematic and intensive human right breaches,
(5) Conducting or legitimizing joint humanitarian intervention,
(6) Limited usage of force and declaration of territorial integrity of the intervened country explicitly. (Simma, 1999: 2; Zacklin, 2003: 375-379; Terry, 2004: 38-40)

Under these circumstances, essentials within the international law doctrine are tried to be set forth in the name of legitimacy of intervention by the authors advocating humanitarian intervention; and it is emphasized that there should be several conditions to take decision of intervention. In order to gain legitimacy for humanitarian intervention, first of all it should be based on humanitarian purposes; and if it will take place in the country where the force is used, there should be intensive violence and human right violations. Humanitarian objectives are defined as protection of basic human rights which are threatened by the host country. Mentioned breaches relate with basic human rights such as right to live and physical integrity. For humanitarian intervention that can be initiated due to violation of human rights, murders, torture incidents are required to be expanded across a society; and these violations need to be acknowledged by the international community without any hesitation. (Asgarov, 2008: 9) It is necessary to institutionalize the belief that the potential intervention that would be initiated as a result of conditions would contribute to solution of the current problem. (Duran, 2001: 91)

In case mentioned conditions are realized, current problem is required to be brought into agenda of the U.N. Security Council so as to legitimize the prospect intervention. (Demirel, 2013: 167) However, all peaceful options are required to be consumed before any military intervention. (Benjamin, 1992: 156) First of all, diplomatic and economic sanctions must be executed to the country considered for intervention. In case mentioned sanctions are not sufficient, one or several countries that would be authorized by the Security Council or an organization would conduct intervention; in this regard, there are cases of humanitarian interventions carried out by the NATO.

After taking decision of intervention and determining an institution or country that will conduct intervention, the important point to be paid attention is that intervention necessitates limitation in terms of duration and location. (Türkmen, 2006: 93) As soon the intervention acquires its objective, it must be ceased, and it must be carried on at the location where the humanitarian crisis is experienced. In case humanitarian intervention overspreads the region where human right violations committed, it will lose its legitimacy since it causes considerations that the intervention was aiming at sovereignty and territorial integrity of that specific country. Similarly, use of force is required to be proportional during humanitarian intervention. (Demirel, 2013: 168) It would be acceptable to use force just enough to eliminate the conditions that necessitates this intervention. Excessive usage of force harming infrastructure or natural resources of the country or causing civilian casualties, would eventually end up with questioning the intervention and even it would cause losing justified humanitarian foundation of the intervention. In addition to these criterions, a final point to be emphasized is that a multilateral intervention would be more acceptable compared to a unilateral one. (Duran, 2001: 91) In an intervention conducted by a single state, the interests of intervening country would be significant rather than

prevention of humanitarian crisis. It would be more appropriate to carry out the intervention operations by number of countries targeting to cease the humanitarian crisis instead of maximizing their individual interests in terms of justification of causes and legitimacy of the operations.

On the other hand, humanitarian intervention concept which has been in the center of critics as the sovereignty of countries is violated, has started to be reconsidered in the beginning of 2000s. At this point, especially statement of Kofi Annan regarding Darfur case, as it was included in the Millennium Report, "If humanitarian intervention is an unacceptable breach of sovereignty of a state, how could we respond to the devastating and systematic human right violations in Ruanda or in Srebrenica?" was influent; and for the first time, "responsibility to protect" concept was used in the ICISS report in ilk 2001.[1] In this report, it is emphasized that sovereignty is responsibility, instead of right; and outlines of the protection responsibility are determined. (Nanda, 2013: 6) In this approach acknowledging an intervention into the states failed in the name of international society citizens in order to maintain its responsibility in protecting its citizens, the word of intervention is replaced with protection so that military or economic interventions that can be made by other states to legitimize their own interests under the name of responsibility to protect. On the other hand the most significant reactions against the protection responsibility are exhibited by Asian and Latin American countries thinking that military operations initiated by the dominant powers on weak countries would be legitimized under the name of protection responsibility. (Seybolt, 2008: 2) At this point it is necessary to state that in the present study, it is preferred to use "humanitarian intervention" by remaining loyal to the original form of the concept.

While core outline of the intervention right is being determined by the supporters of humanitarian intervention, opponents of usage of force under the concept of humanitarian intervention claim that human rights will be misused by this way. According to the realist approach which considers that international system is shaped according to the pessimistic world view and each state is in search of way to increase its individual influence, it is not possible to refer military interventions simply as humanitarian intervention, carried out by other countries under motivation of aiding citizens of those countries. Within the security dilemma of the realist world, intervention can only take place according to the competing interests relying on offensive tendencies of countries; and this sort of intervention cannot be referred as humanitarian. Furthermore, there have been other serious criticisms against the view advocating humanitarian intervention along with the prohibition of using force based on the positive law and sovereign equality of states. (Türkmen, 2006: 30)

2.1 Humanitarian Intervention In Terms of International Law

Afterwards the World War II, the United Nations that took the stage as the determinant of the international system as it would include provisions to prevent humanitarian intervention concept to turn into precedent in the international law. A country's usage of force against another country is prohibited by the U.N. Charter. (Türkmen, 2006: 30) According to 4th Provision of the 2nd article of the Charter, use of force is explicitly forbidden as following:

> 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.[2]

On the other hand, according to the international law, there are two exceptions for use of force as it was regulated by the 51st article in Section VII of the U.N. Charter regarding self-defense right and allows the use of force by the Security Council:

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[1]Report of the International Commission on Intervention and State Sovereignty, http://responsibilitytoprotect.org/ICISS%20Report.pdf, 07 June 2015.

[2] Charter of The United Nations, http://www.un.org/en/documents/charter/chapter1.shtml, 07 July 2015.

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.[3]

According to the act in case one of the member states of the United Nations undergoes an armed action, until the Security Council takes necessary actions to protect international peace and security, individual or mutual natural defense right of this member cannot be vitiated. The measures taken by member states while they are using their legitimate defense right are notified to the Security Council; and this cannot affect authorization and duty of the Council in order to protect or re-establish the international peace and security in an appropriate way whenever it is found necessary. Besides, it is not possible to associate humanitarian intervention concept with self-defense concept. Executing armed force for self-defense can only be a matter of incurring an armed insult, humanitarian intervention cannot be legalized within the scope of this provision.

On the other hand, 39th article of Section VII of the U.N. Charter recognizes use of force as the second exception:

> The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security. [4]

According to the 42nd article of the same section,

> 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.[5]

Therefore, when the 39th and 42nd articles are taken into consideration, another method to use force against states threatening or tarnishing international peace and security can only be possible by means of decisions taken by the Security Council.

Except the foregoing articles presented, as countries are prohibited to use unilateral force, it is not possible to erode the prohibition by providing justification through a humanitarian intervention, and considering it as a lawful action, and establishing law norms along with this way. Each intervention is experienced with its own unique characteristics.

On the other hand, apart from the written resources, it is not possible to say that there is a code about humanitarian intervention within the international customary law which is considered among the international law sources. In order to consider existence of such a code within customary law, there are two conditions required. First of all, opinio juris (moral element) referred as existence of continuous and stable application adopted by countries in general; and execution of these applications based on a belief that this is a code of law. Views claiming that humanitarian intervention is included in the customary law, also claim that there is an adequate number of assumption that target country's territorial integrity is

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[3] Charter of The United Nations, http://www.un.org/en/documents/charter/chapter7.shtml, 07 July 2015.
[4] Charter of The United Nations, http://www.un.org/en/documents/charter/chapter7.shtml, 07 July 2015
[5] Charter of The United Nations, http://www.un.org/en/documents/charter/chapter7.shtml, 07 July 2015.

violated by other countries in order to terminate serious human right violations against the citizens of the target country after the execution of the U.N. Charter. They present incidents of India's intervention in Bangladesh (1971), Belgium's intervention in Congo (1983), the US's intervention in Granada (1983) and FRY (1999). Moreover, it is claimed that interventions in Somali and Northern Iraq are samples of humanitarian intervention as well. (Alpkaya, 1999: 13; Hoyner, 2002: 601-602)

Nevertheless, interpretation of the International Court of Justice in 1986 concerning the denial of intervention right of a country due to human right violations occurred within borders of another sovereign state, in the case of "Military and paramilitary activities against Nicaragua" was that "whereas the US was interpreting the status in Nicaragua regarding respect to human rights based on its own values, using force to ensure establishment and maintenance of this respect cannot be considered as an appropriate method. The Court of Justice concluded that the claim made up for protection of human rights in Nicaragua cannot be held accountable legal justification for the behavior of the US.[6] As it can be understood from the decision of the Court of Justice in this regard, using force by a country against another on the purpose of protection of human rights is not lawful, it conflicts with the U.N. Charter's provision concerning the principle of not to intervene in internal affairs. (Milano, 2003: 1010; Alpkaya, 1999: 19)Accordingly, there is neither material error nor psychological issue with the applicable international law that would gain customary qualification to any humanitarian intervention.

When examples of use of force after the World War II are evaluated, it is not possible to state that they were conducted according to the concept based on humanitarian purposes. Their motivations were not relying on humanitarian justifications, they cannot be interpreted as decisions taken routinely and political concerns were dominant over humanitarian concerns. (Telli, 2012: 207) On the other hand, samples of humanitarian intervention are not carried out based on existence of any code of law, this situation suggests that the psychological condition for establishing customary law code has not been fulfilled yet.

As it can be seen, in terms of international law, there has not been a regulation formed in order to legalize humanitarian intervention. Humanitarian intervention has not been included in the legal literature yet. Along these lines, material and psychological factors which enable formation of customary law codes regarding humanitarian intervention have not arisen yet.

In terms of political and legal aspects, while arguments concerning validity of humanitarian intervention are still on the agenda, applicability and legitimacy of humanitarian intervention has been tested in the recent history in Kosovo and Libyan crisis, or it is still being tested in Syrian civil war. Therefore, analysis of humanitarian intervention concept on these concrete samples would indicate whether this concept has established a position in terms of international law, or not.

2.2 Humanitarian Intervention into Kosovo

2.2.1 How the Issue was born?

When the civil broke out in the former Yugoslavia in the summer of 1991, it did not yield an outcome affecting the situation Kosovo. However, 1995, when the Dayton Peace Treaty, that was stopping Bosnia War, was signed, was milestone for Kosovo. Kosovan leaders saw this treaty as an opportunity to be recognized as an independent state and considered that they would be supported by the western countries. Nevertheless, there was no any regulation in Dayton Peace Treaty regarding Kosovo. As a result new ideology arose among the Albanians living in Kosovo. According to this view, it was not possible to take attention of the international community and to gain independency without going war against Serbians. The first relevant incident occurred 5 months after the execution of the Dayton Peace Treaty on April 21, 1996.As a result of murder of an Albanian youngster in an incident of stealing vehicle of a Serbian

[6]Case Concerning the Military and Paramilitary Activities In and Against Nicaragua (Nicaragua *v.* United States of America) (Merits), ICJ Reports (1986), http://www.icj-cij.org/docket/files/70/6503.pdf, par. 134.

immigrant in Kosovo, three Serbian immigrants in a bar in Deçani City were killed on the very next day, April 22nd as a retaliation. Then, patrolling members of Serbian Police Force in various places of Kosovo were attacked by gun fire and they were assassinated. In a short while, BBC Albania Office in London received a fax message stating that responsibility of these assaults were undertaken by an organization called Kosovo Salvation Army (KSA). (Glenny, 2001: 518)

Upon these developments, severe measures and interventions of Serbian Army and police forces against civilians caused massive immigration of Albanians from Kosovo to Albania and Macedonia. As serious human right violations of Serbs and enormous migration increased, and they started to threat stability and security of the neighboring countries and the region, both sides were called to cease assaults. Whereas international society demanded from Serbian regime to stop human rights violations, to call off their armed forces, to let the immigrants to return their homes and to recognize an extensive autonomy for Kosovo, Albania demanded giving up independency request and armed struggle. (Weymouth and Henig, 2001: 26)

2.2.2. Approaches of the United Nations and the NATO toward the Issue

There are several decisions at the level of international organizations as well. One of these decisions was taken by the United Nations, concerning the Kosovo crisis for the first time on March 31, 1998 as Security Council decision with 1160 serial number. In general outline, the decision was included that the Serbian police force was condemned for excessive force that they apply on civilians, the situation in Kosovo was a threat to international peace and security, and arms embargo was designated against the Federal Republic of Yugoslavia (FRY). Moreover, while territorial integrity and FRY's sovereignty were confirmed in the decision, leaders of Albanians in Kosovo were called for condemnation of all terrorist actions and to cease insurgencies. For resolution of the issue, it was necessitated that Serbian forces to be called off from Kosovo, represents and agents of the Contact Group and international organizations to be allowed to enter into the conflicting area, to support peace keeping initiatives of the Organization of Security and Co-operation in Europe (OSCE) to settle up on a treaty, and additional decisions would be taken unless the Kosovo crisis would not be resolved peacefully.[7]

Beside the UN, the NATO organization was also interested in this crisis after March 1998; and declared a plan to deploy a peace force at the Kosovo border of Albania. Together with the meeting held on May 28, 1998 by the Northern Atlantic Council at the Ministry of Foreign Affairs level, the Kosovo Crisis was taken into agenda of the NATO as well. In this meeting, two objectives of the NATO were emphasized concerning the Kosovo Crisis: (i) assisting for peaceful resolution of any crisis with the international society, (ii) supporting stability and security of neighboring countries, especially Albania and Macedonia.[8] (Crampton, 2002: 272)

As Milosevic ignored the initiatives of the Contact Group together with the UN Security Council decisions, and stated that the Kosovo issue was an internal issue of the Serbia; and thus, he passed off international society. When Serbian forces deployed tank units to the region upon these attacks, concerns of the western world regarding actions of the Serbs elevated; and the decision of the U.N. Security Council was issued on September 23, 1998 with 1199 serial number. (Weymouth and Henig, 2001: 26-27) In this decree, similar to the one with 1160 serial number, it was necessitated that both sides should cease armed conflict immediately; Serbian security forces should be called off from the region; and talk between Serbian and Albanian sides should be commenced in order to stop clashes between the sides. Additionally, it was requested that oppression on civilians in the FRY should be discontinued immediately; immigrants and homeless civilians should be allowed to return their homelands. In case mentioned conditions were not satisfied, then, it was stated that additional precautions and actions would be taken into account on the purpose of establishing and maintaining peace and security in the region. In

[7] UN S/RES./1160, 31 March 1998, http://www.un.org/en/sc/documents/resolutions/1998.shtml, 03.04.2015.
[8] NATO's Role in relation to the Conflict in Kosovo, http://www.nato.int/kosovo/history.htm#C, 24, 24.02.2015.

this decision, likewise the previous one, territorial integrity and sovereignty of FRY was guaranteed, and it was confirmed that deteriorating status in Kosovo was a threat to the peace and security in the region.[9]

One day after this decision, Ministers of Defense of member states of the NATO were gathered in Villamoura, Portugal with an agenda to organize a simultaneous and limited air strike against the FRY. In this meeting, an "Activation Warning" (ACTWARN) was issued. The ACTWARN, according to the request of the military commanders, aimed to accelerate preparations for military operations, at this stage, the NATO commenced preparation of military plans for an air strike against the FRY. Moreover, the general secretariat of the NATO made a statement regarding general situation of the organization. In spite of the U.N. decisions with 1160 and 1199 serial number, the FRY did not answer immediate requests of the international society; the humanitarian disaster in Kosovo reached serious levels; within a foreseeable future, a compulsory action plan was not expected from the UN Security Council regarding the status-quo in Kosovo; and the deteriorating status in Kosovo was an evident threat to peace and security in the region as it was mentioned in the decision with serial number of 1199; and the alliance acquired a legitimate foundation to threat for using force or to use actual force within the scope of that decision when it was necessary. (Aybet, 2000: 29-30; Simma, 1999: 7)

In spite of the decisions issued by the Security Council, Milosevic exhibited unwillingness to conform these conditions; and continued ethnic cleansing operations against Albanian community in Kosovo. Despite the ongoing talks and memorandums with the NATO, Belgrade administration commenced an operation called 'Horse Shoe' that was aiming dragging Albanians out of the region. Succeeding months of October, 20,000 Albanian exiled from their homes and in January, there were 200,000 Albanian without home. (Weymouth and Henig, 2001: 87) Although Milosevic reduced the number of security forces in Kosovo after the memorandum within a limited scope, he started to increase again under this operation once more. (Weymouth and Henig, 2001: 169) On January 15, 1999, 45 bodies of Albanian civilians were recovered in Rachak Village. After this massacre, as William Walker condemned Serbian police forces for these murders, Serbian forces did not allowed Louise Arbour, prosecutor of International Court of Justice, who was to enter into Kosovo to investigate murders committed in the former Yugoslavia. After this massacre, especially in western society, and administrations, reactions increased against intensive and systematic human right violations of Serbians toward Kosovan Albanians. (Crampton, 2002: 273) In a public statement regarding the status in Kosovo given by the Northern Atlantic Council, NATO on March 22, 1999, it was declared that the General Secretariat was authorized to carry out an extensive air strike and to make additional consultancy required.[10] The general secretariat made statement on March 23 that General Wesley Clark who was the European Alliance High Commander was given order to launch an air strike against the FRY. General Secretariat Solona mentioned in his speech that "For political resolution of the Kosovo crisis, all means had been tried and consumed through negotiations; however, there was no any other choice but to use military actions; and the NATO was fully supporting all relevant decisions adopted by the UN Security Council, and all efforts of the OSCE and its Contact Group; however, he was sorry that all these efforts did not yield a positive outcome, and purpose of the military operation was to support political efforts of the international society and to cease humanitarian disaster in Kosovo in order to establish stability in the region and their objective was not going war with the Yugoslavian people who had been isolated from Europe for long years because of their government's policy." Finally Solona emphasized that "They were aware that they took risk by taking action regarding the issue; nevertheless, all alliance was aware that remaining inert was bearing greater risk, and they had to stop an autocratic regimethat was oppressing its own people at end of the 20th century in Europe; and they had moral obligation to accomplish this".[11]

Finally, on March 24, 1999, 78-day NATO intervention began. Along the operation, 400 war planes performed almost 11,000 flight, more than 25,000 sortie on Yugoslavian territory; and 25,000 tons of bomb was used in the operations. Superiority of the US was seen evidently. 60% of all sorties, 80% of

[9]UN S/RES./1199, 23 September 1998, http://www.un.org/en/sc/documents/resolutions/1998.shtml, 01.04.2015.
[10] Press Release, (1999), http://www.nato.int/docu/pr/1999/p99-038e.htm, 24.04.2015.
[11]Press Release, (1999), http://www.nato.int/docu/pr/1999/p99-040e.htm, 24.04. 2015.

attacking sorties, more than 90% of advanced intelligence and investigation, and more than 90% of electronic war tasks were performed by the US Air Force; more than 80% of direct hits and 95% of cruise missiles were again fired by the US Force. (Ignatieff, 2001: 200; Weymouth and Henig, 2001: 204)

2.2.3. Approaches of States toward Humanitarian Intervention In Terms of Kosovo Case

Before and after the military operation in Yugoslavia, statements of chief of government administrations suggest that approaches concerning humanitarian intervention were not all matching each other.

As peace talks did not succeed, on March 19, President Clinton stated that "The only obstacle for the peace was President Milosevic" and justified the necessity of intervention into FRY expressing with following words:

> We must realize that peace in Balkans and Kosovo is to our benefit. This is a humanitarian crisis. This is a confrontation with no natural border. Our national interests are under threat. If current status prevails, it would cause further massive immigration and the immigration pressure on neighbor country would be intensified. This situation would damage stability inthe Continent as well as our and NATO's reputation. This situation could reignite historical hostilities among Albania, Macedonia, Greece and Turkey." (Youngs, Oakes and Bowers, 1999: 18-19)

Tony Blair, President of the United Kingdom, stated in his speech at the British House of Commons on March 23, 1999 that objective of the NATO was to stop ongoing pressure of Serbia to prevent humanitarian disaster in Kosovo and nullification of military capabilities of the Serbian regime. Blair said "It was necessary to take an action to save thousands of women, men and children from a humanitarian disaster, ethnical cleansing of a barbarian dictatorship; and Balkans experiencing a chaos that may consume all Europe should be stabilized". Additionally, Blair emphasized moral stance and necessity of the operation without mentioning legitimacy of this NATO operation by his statement as follow:

> As we are embracing a new millennium, all dictators should realize that they cannot get away from results of their oppressive regimes on their own people or their ethnical cleansing actions without punishment. We are not participating into this intervention for capturing soil; instead we do this for our values. In new internationalism, pressure on any ethnical group of people will not be tolerated". (Youngs, Oakes ve Bowers, 1999: 18-19, Weymouth ve Henig, 2001: 55)

Russia was considering that air operation of the NATO was organized with an agenda to intervene in international affairs of Yugoslavia and there was an intention to be a part of ethnical conflict in Serbia. According to Russia, the core objective of the intervention was to have control over power of Milosevic. In interpretations of Russian specialists, the US took advantage of the Kosovo crisis to maintain and strengthen cooperation among NATO's European members. (Henig and Weymouth, 2001: 205-206)

A day after the launch of the operation, on March 26, Russia submitted a proposal to the UN Security Council condemning NATO's usage of force, although it was denied because of the veto of the U.S., the Great Britain and France; there were twelve supporting votes supporting Russia's proposal from members such as China, Namibia, India, and Cuba. (Milano, 2003: 1010)

In air operation of the NATO against the FRY, targets across the country, including Kosovo, were hit with no distinction between military and civilian targets. Besides the important civilian targets such as water resources, bridges used by civilians, and power plants, residence of Milosevic, party center, and economic assets of groups who are supporting him were selected as targets. Cities in the heart of Serbia, such as Nis, Kragujevac, Cacak and Vajevo, were hit. This situation accelerated ethnical cleansing in Kosovo and result in intensive immigration. (Chomsky, 1999: 35)

On the other hand, arguments concerning legitimacy of the NATO's use of force against FRY arose. Russia, China, India, Ukraine, Namibia, Belarus and Cuba declared that NATO's intervention was illegal;

and it was stated in the 13th meeting of the UN Human Rights Commission by Mexico, Uruguay, Peru, Chile, Venezuela, Colombia, Sri Lanka, Ecuador, South Africa and Botswana that the NATO intervention was not conforming to the principles of the UN. Additionally, the Group of 77 emphasized the difference between humanitarian aid and humanitarian intervention the NATO operation was criticized. The Group of 77 stressed that they refused the right of humanitarian intervention which was not given any legitimacy neither in the UN Charter nor in international law; and that humanitarian aid must be managed in a respectful way to the political independency and territorial integrity of the country receiving aid.(Milano, 2003:1010-1011)

2.2.4 Legal Consideration of the Kosovo Intervention

It can be seen that there are no any decisions issued by the UN regarding Kosovo crisis, which authorizing any country or organization to use force against FRY. There are three decisions taken by the Security Council until the NATO intervention; and none of decisions of the Security Council with 1160, 1199 and 1203 serial numbers include an expression allowing the use of force. Although it is expressed in the second and third decisions that the Kosovo crisis which threatens peace and stability, the Security Council does not take one step further and avoided to take decision regarding usage of force under the scope of the 42nd article. In this way, without any authorization assigned by the Security Council, it is observed that the NATO's use of force against FRY is against the UN Charter.

Secondly, when the NATO intervention is evaluated in terms of self-defense right allowing use of force without authorization of the UN Security Council by a single or a group of countries, it is realized that a basic condition of the self-defense right, a country's armed attack to another, is not satisfied in the case of Kosovo crisis. In other words, since none of the NATO member countries were attacked by the FRY, the NATO's operational force against the FRY neither can be used based on the 51st article of the UN Charter nor 5th article of the Foundation Charter of the NATO.

> The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.
>
> Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security .[12]

Accordingly, mentioned NATO intervention even not relying on self-defense right can be considered as an offensive attack since it is contradictory to prohibition of use of force, set forth in the article 2/4 of the UN Charter, one of the essential documents of the international law, without relying on any decision issued by the Security Council. Furthermore, whereas the operation is against the articles of the UN Charter such as states are obliged to fulfill their responsibilities based on good faith (article 2/2.) and confrontations are required to be resolved in peaceful way (article 2/3.), the rule prescribed by the U.N. General Assembly in 1970 under the title of "Declaration of International Cooperation Among Countries and Friendship Relationships", avoiding use of force in resolution of conflicts among countries is violated. (Denk, 2001: 104-105) In a single way that can be followed in terms of legal foundation of the NATO intervention, it is necessary for the Security Council to take a decision allowing compulsory

[12] The North Atlantic Treaty, http://www.nato.int/cps/en/natolive/official_texts_17120.htm, 07 July 2015.

measurements after determining of intensive and systematic human right violations in a country that would damage international peace and security. (Simma, 1999: 4)

On the other hand, since approaches of five permanent members of the Security Council having authorization to veto toward these issues were not same, there was no opportunity to acquire a consensus on a single decree; thus, the Security Council was able to present a political will regarding resolution of the issue. (Zacklin, 2003: 374) These basic critics brought into the UN system induced efforts to legitimize interventions within customary law apart from the current international acts. Researchers and countries claiming that the NATO interventions were conforming international law, were relying on the humanitarian intervention doctrine and the claim considering that this doctrine was in customary law rather than UN Charter and the relevant Security Council decrees.

Authors advocating this argument tend to interpret 2/4 article of the U.N. Charter in a narrow sense, and they ground the NATO intervention on the humanitarian intervention case which they claim that it nests within customary law rather than the UN Charter.

Researchers such as Professor Lillich, Nanda and John Norton Moore who advocate use of force within the scope of intervention, are supporting legitimacy of the NATO interventions, they claim that humanitarian intervention doctrine is part of customary law though it is not included in international charters.

Regarding recognition of humanitarian intervention as a customary law, there are issues to persuade countries to generally adopt them. Application of Russia to the UN Security Council for condemnation of NATO's intervention was supported by 12 member countries, against three permanent members which are the US, the Great Britain, and France; number of countries stated that it was against the UN Charter at the 13th meeting of the Human Rights Commission; and the Group of 77 stated that they refused the right of humanitarian intervention, did not allow legalization of humanitarian intervention based on a qualification of customary law. (Milano, 2003: 1010-1011)

Primarily Russia and China, Latin American, African and Asian countries are seriously opposing humanitarian intervention; and they defend national sovereignty as an unalterable qualification. After all, in terms of humanitarian intervention as a traditional code, there is a division of opinion among the member countries of NATO. For instance, during the voting in the German Parliament concerning participation of Germany into the NATO intervention, Minister of Foreign Affairs, Kinkel, stated that the NATO operation should be sample case for the future and as the Security Council possesses the sole power, we need to avoid causing an unreliable situation. It can be seen that both German administration and German parliament emphasized the fact that this single incident concerning Kosovo could create a general policy or code. Likewise other alliance members, France, Italy, Norway and Germany have similar approach such that this exceptional intervention would not alter the general rule and the NATO intervention would not be sample case for the similar incidents in the future. These countries expressed that essential role of the UN was required to be continue during these joint security operations in abroad. (Zacklin, 2003: 376-377; Simma, 1999: 13; Aybet, 2000: 41)

As a result of issues mentioned so far, in terms of general adoption of humanitarian intervention by countries, as a prerequisite for existence of customary rule, objections from various sections of the international society suggest that there is no formal institutionalization on the issue. Moreover, it is not possible to introduce an exception under the reference of humanitarian intervention right apart from self-defense exception brought about through an agreement against the prohibition under the UN Charter bearing "jus cogens" qualification and boundary for all countries concerning use of force thread or direct use of force. In case, humanitarian intervention right would be adopted as a customary law code apart from the current UN Charter, this would open way for other countries to use force by claiming the very same right. Furthermore, since there is no recognized standard for using this right, it is not certain that there would be an intervention in humanitarian crisis in other countries. Hence, attitude of the US exhibited in Cambodia against the Pol Pot regime was not the same as the one in Kosovo. (Chomsky, 1999: 74-75)

Finally, international precedent law, even in severe human rights or humanitarian law violations, does not include humanitarian intervention right which assigns states' individual or joint use of force; and

at this stage, it is not possible to talk about any precedent law currently. (Alpkaya, 2002: 21) In this case, the first question that comes to a mind would be what the US would like to do by NATO's intervention in the FRY from the point of Kosovo crisis.

Authors such as Tarık Ali, Noam Chomsky and Peter Gowan criticized American Intervention in the FRY loudly. According to these authors, the purpose was not let any challenge against existed American hegemony; and it was desire of the western world to maintain economic and political superiority in the new world order in the post-communism period. In our contemporary time, legal, civil and virtuous norms will be determined by the perception of the western world. This is called as "moral imperialism" or as, with Chomsky's words, "new military humanity"; and stopping people who erodes these values like Milosevic is being viewed as righteous according to the perception of the western world. (Weymouth and Henig, 2001: 30)What was aimed through the NATO intervention was nothing but compelling a country to transform in terms of political and economic aspects by force. For western world in post-Kosovan period of Yugoslavia, the process of overturning Milosevic was the acquisition of the first successful transformation of a rambler country which was not declared in the post-cold war period. Thus, replacing Milosevic with someone who is open to relationships with the western world also means that incomplete revolutions in the Europe would finally be completed. (Holsti, 2001: 63; Uzgel, 2001: 165) Following the Kosovo case, it was observed that western countries targeted Muammar Kaddafi and Libya under humanitarian intervention concept once again.

2.3 From "Humanitarian" Intervention into Libya to Closing Eyes on Syria Case

Arab Spring born in the Middle East spread to Libya in February 2011, afterwards regime changes in Tunisia and Egypt. Forty-two years old Muammar Kaddafi administration suppressed the rebellion, which aimed to terminate the regime and to change the administration system through severe methods. While attention of international public was focusing on Libya due to the violence and losses in this country, the UN, regional organizations, the NATO and International Court of Justice made call for resolution of the crisis. (Iyekekpolo and Offiong, 2013: 28) United Arab League, Islamic Cooperation Organization, and Africa Union condemned violence in Libya; and invited sides to cease fire for resolution. (Paris, 2014: 580) In this period, the UN initiated an arm embargo against Libya; and issued a travel prohibition for Kaddafi.[13] Then, a non-flight zone was created on Libyan air space[14] and cooperation was demanded among countries and international organizations in order to protect civilians. In other respects, the UN Security Council authorized member states and regional organizations to take all necessary precautions and to use force in order to maintain no-flight zone. (Zifcak, 2012: 5)

Although the intervention can be explained by righteous reasons such as protection of local people in Libya or, in wider perspective, avoiding repeating cases such as Ruanda, it is not possible to ignore the opinion viewing the NATO interventions as a Troja Horse of the Western Imperialism and refuses it. Opponents of the intervention claimed that the main objective was to give message to Iran or pushing the oil prices down aligning with interests of the western world. (Iyekekpolo and Offiong, 2013: 26) Crisis in Libya was turned into an opportunity for western world, especially for the US to overturn Kaddafi regime conflicting with interests of the western world. As this situation was accompanied by desire of France to build up the security umbrella and the opportunity to supplying Libyan petrol to European and American markets, an intervention was organized into Libya through humanitarian mottos. (Iyekekpolo and Offiong, 2013: 27) Even decision with 1973 serial number was taken by the Security Council, the fact that there was no consensus on the humanitarian intervention issue exposed upon council members of Russia, China, Brazil, India and Germany remained abstained during voting. (Dunne and Gifkings, 2011: 522) However, in the same process, although there are casualties in the Syrian civil war ignited on February 2012, refraining from expressing the same attitude exposes that the Libya intervention was not

[13]UN S/RES./1970, 26 February 2011, http://www.un.org/en/sc/documents/resolutions/2011.shtml, 12.05.2015.
[14]UN S/RES./1973, 17 March 2011, http://www.un.org/en/sc/documents/resolutions/2011.shtml, 12.05.2015.

carried out just because of humanitarian reasons. Especially, Russia and China's opposition to any Security Council decision that may allow use of force against the Syrian regime suggests that humanitarian intervention is a subject that is commonly adopted by the international society. (Paris, 2014: 587-588) Another point strengthening this thesis is the conflict between attitudes of the countries that are considered as advocators of human rights in the world while they are exhibiting determination concerning intervention in Libya, a country which can create danger for Europe due to its location, and on the other hand they remained silent for the humanitarian crisis in Darfur.

On the other side, while Russia was avoiding using its voting right against intervention in Libya, and thus legitimizing this intervention, but doing vice versa for the Syrian intervention suggested that humanitarian intervention phenomenon is not used to cease all sorts of humanitarian crisis all around world, instead it is shaped according to the political motivation. Similarly, the UN did not issue a decision for intervention while genocide was being experienced in Ruanda before the Syrian war; it exhibited an attitude approving NATO's intervention without authorization of the Council; or it did not oppose Afghanistan and Iraq invasions. This picture suggests that countries with exclusive position in the Security Council execute interventions when human right violations occurred in a country aligning with their individual interests, or they do not take decision for intervention regarding the countries experiencing similar humanitarian crisis but does not promise any interest to those exclusive countries.

Conclusion

It was observed that an approach prescribing that a state or states/organization can use unilateral force against another state which applies intensive and systematic human right violations is embraced neither by states across the world in general nor by the relevant literature; and this has been still a conflicting issue. However, it was seen that states and authors who advocate that humanitarian intervention is legitimate use a starting point suggesting that if human right violations are not intervened, the violating state would further threat international peace and security extensively and humanitarian crisis would be deepened. Supporters of this concept claim that customary law allows humanitarian intervention rather than statutory law so that they can provide a moral ground for intervention.

However, it is evident that international law does not allow unilateral use of force based on humanitarian intervention concept. It is seen that both 2/4 and 2/1 articles of the UN Charter which prohibits using force or threatening with force or is still applicable and customary law does not include an established principle allowing interventions under the name of humanitarian intervention due to the sovereign equality of countries principle. Measures that can be taken against the states committing intensive and systematic human rights violations can be applying compulsory actions against the violator state, whether these measures include using force or not within scope of the 41st and 42nd articles of the UN Security Council Charter in the current system.

Furthermore, it is contradictory that humanitarian intervention approach has been tried to be legitimized based on the customary law. Hence, it has been observed that necessary material and psychological elements for formation of a customary law as a part of the international law have arisen in terms of humanitarian intervention concept. As it is claimed by the states and authors advocating this concept, if we assume that these two elements arise for a moment; then, we must ask "Why it did not applied in case of Cambodia, Sudan/Darfur or recent Syria while intervention right is used for Kosovo and Libya cases? In fact it can be deducted from the various reactions presented by states toward Kosovo, Libya and Syria cases that there is not a common perception among countries to allow the humanitarian intervention concept to be a customary legal code.

Finally, discriminating use of force under humanitarian intervention discourse by some countries against others due to the human right violations experienced in those countries suggests

that great powers in international system utilize humanitarian intervention concept for their interests, and that humanitarian aspect of these interventions turns into a tool rather than being the core objective. The ignorance exhibited toward the Syrian crisis while Kosovo and Libya crisis were responded with intervention as they had similar characteristics, suggests that this concept was applied without concrete legal foundation. The current conditions show that use of force is unacceptable under the name of humanitarian intervention right according to international law.

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