UNIVERSITY OF AZUAY
FACULTY OF LEGAL SCIENCES
SCHOOL OF INTERNATIONAL STUDIES

Legitimacy of Armed Intervention of the International Community in the Internal Affairs of a State. Libya Case Analysis

---

Graduation work prior to obtaining the Bachelor's degree of International Studies, bilingual references in Foreign Trade

Author: Andrea Astudillo F.

Director: Dr. Marcelo Chico Cazorla

Cuenca, Ecuador

2014

Dedication

I dedicate this work primarily to God, for giving me the opportunity of reaching this important moment in my career and the experiences along the way. To my mother for being the main example of motivation that encouraged me every day to achieve the most desired dreams. To my father and sister for their support and unconditional love.

Table of Contents

Abstract

This work reviews the legitimacy of the military intervention in Libya approved by the Security Council under Resolution 1973 on March 17 2011, which authorized the use of force by a coalition of UN member States and was later executed by NATO forces in order to end the violence and all crimes committed against civilians by pro-Muammar Gadafi forces. As a result, I chose to do a comparative analysis of cases in which the International Community has decided to intervene as a mean to restore international peace and security like the Kuwait - Iraq (1991) and Afghanistan (2001) conflicts. To have a better understanding of the justifications and objections regarding the intervention in Libya, this paper also analyzes its compliance with the principles of international law enshrined in the UN Charter, especially those relating to the use of force under Chapter VII. The final chapter of this paper contains an analysis of the military intervention by the International Community authorized under the doctrine of responsibility of protection and humanitarian intervention in Libya. It shows how these type of conflicts are currently implemented, although it does not validate the legitimacy of the actions executed in Libya.

Introduction

In the last decades, the world has witnessed the emerge of several inter-state conflicts that have demonstrated the incompetence of governments in their duty to protect the rights of their citizens. The terrible crimes and violations committed in these conflicts exposed the need of the intervention of supranational organisms to restore the order and peace. This responsibility was assumed by the United Nations since 1945, specifically by the Security Council, which is responsible for ensuring international peace and security. There are few cases in which the United Nations has decided to intervene and use armed force due to the severity of the violations.

The debate about military intervention on humanitarian grounds is not new. Actually, since World War I, the International Community has shown its commitment to protect and enforce human rights and international humanitarian law. The focus of discussion is under what circumstances and mechanisms the effective protection of human rights in extreme cases of violence is related to the principles of *ius cogens* such us: the principle of state sovereignty, the non-interference in domestic affairs principle and the prohibition of use of force, all of them stipulated in the Charter of the United Nations. Although each case of intervention has different political, social, religious and economic elements, each of them has set a precedent on the actions to take in case of any threat to peace, breach of peace or act of aggression. The fact that there have been huge differences between the actions taken by the United Nations in each conflict has created the need to wonder if the intervention is legitimate.

Recent conflicts have demonstrated the need to adjust these principles in order to fit in the current international situation. Armed intervention in Libya carried out by the United Nations in 2011 under resolution 1973 marks a point of discussion since it is an intervention that violates the non-interference in domestic affairs principle. The purpose

of this paper is to determine the legitimacy of armed intervention by the International Community (United Nations) in the internal affairs of a state by analyzing the Libyan case. In order to achieve this purpose, a comparative analysis of the conflicts in Kuwait (1991), Afghanistan (2001) and Libya (2011) will be carried out.

The chapters of this paper include the evolution of the principles of international law that regulate how the International Community act against threats to international peace and security, as well as their relation with humanitarian international law and their responsibility to protect. The first chapter includes the study of the principle of non-intervention, the concept of sovereignty, the use of force stipulated in Chapter VII of the Charter of the United Nations, the UN collective security system, and other fundamental rules of international relations. The second chapter contains a more detailed analysis of Chapter VII "Action in Cases of Threats to the Peace, Breaches of the Peace and Acts of Aggression", as well as the effects that the resolutions of the Security Council have, and an analysis of the intervention in the conflicts in Kuwait in 1991 and Afghanistan in 2001. The third chapter of this paper includes key points of the military intervention in Libya by the UN in 2011, the evolution of the military operation and the role of the International Criminal Court in the capture of former leader Muammar Gaddafi. Finally, chapter four contains the conclusions of this paper and the author's position on the legitimacy of the intervention in Libya.

CHAPTER 1: PRINCIPLE OF NON- INTERVENTION

Introduction

The principle of non-intervention is perhaps the most significant development of contemporary international law and it has generated more controversy in recent decades. First proclaimed in the French revolution in 1789 and established as a norm of *ius cogens*, the principle of non-intervention has become the main rule in international relations. This chapter will contain an analysis of the principle of non-intervention stipulated in the Charter of the United Nations, as well as the key elements to understand its importance within international law such as: sovereignty, responsibility to protect, international humanitarian law and the prohibition of the use of force.

Before we start with our analysis it is important to define the word intervention. Oppenheim (2005) defined it as "a dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual condition of things"[1] (p. 221). The principle of non-intervention is achieving recognition of the sovereignty of each State to govern itself without interference from a second dictatorial State and the sovereign equality of each of them, it would not be understood that being equal, States would have the power to intervene in matters within the jurisdiction of other States.[2] At an Inter-American level, the principle was the result of an accomplishment due to the constant interventions that targeted several States like El Salvador and Nicaragua in the 1980s and in the twenty-first century in Colombia under the excuse of combating drug trafficking. Many authors note that these interventions were a perfect tool for

[1] Translation made by the author of this document. The original text quoted: "a dictatorial interference by a State in the affairs of another State for the purpose of altering or Maintaining the present condition of things"

[2] The principle of sovereign equality is established in the first paragraph of Article 2 of the Charter of the United Nations "The Organization is based on the principle of sovereign equality of all its members."

neocolonialism used by the world powers. Therefore, and in order to avoid conflicts of greater intensity, the principle has been established not only in the UN Charter but also in the Charter of the Organization of American States, in the 16, 17 and 18, and the Charter of the African Union.

The principle concerning the duty of not to intervene is a general pillar of international law laid down in Article 2, paragraphs 4 and 7 of the UN Charter which states:

Art 2.4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Art 2.7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll.

In 1965, the General Assembly of the United Nations approved the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty[3] which reaffirmed the principle and gives the following extension:

1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.
2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, Finance, incite or tolerate

[3] Res. 2131 (XX), approved by the General Assembly on December 21, 1965

subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

However, the importance of the principle lies in the interpretation of its Articles:

a) Article 2.4. The prohibition of threat or use of force in international relations

The ban on the use of force represents the most significant provision against intervention. It is a general principle of international law that has a character of *ius cogens*, this means that it is universally accepted without admitting an otherwise agreement. So this prohibition requires both Member States and non-members to refrain from it, as provided in paragraph 6 of the UN Charter Article 2: " The Organization shall ensure that States which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security."

b) Article 2.7. The non-intervention of the United Nations in matters within the domestic jurisdiction of States.

This principle differs from the previous one that emphasizes non-intervention of the United Nations as an organization in matters which are essentially within the domestic jurisdiction of any state or *domaine réservé*[4] as it is also known. Thus, this article aims to set limits on the powers of the agency providing members a kind of brake on their behalf to ensure that the UN will not intervene in matters which are not of international legal regulation, respecting and preserving its sovereignty.

One of the key points that the article notes, is non-intervention in the domestic affairs of States, however, the Charter itself does not express directly what issues might be considered of domestic law and when these issues could become of international interest. In practice, it is extremely difficult to pinpoint exactly when the intervention is legal, since the States themselves determine the private affairs of their domestic jurisdiction. In fact, this clause has been used several times as a shield to prevent the

[4] Term used by the Institute of International Law at its meeting of Aix-la-Chapelle of April 29, 1954, stated: le domaine est celui des activités reservé étatiques ou la competence de l'État n'est pas par le droit international liée , Ann. 45, 1954, II, pag. 292.

actions of the organization, especially when there is a constant debate about the existence of privileges of the States in the Security Council, responsible for determining the issues that threaten international peace and security.

Returning to the issue of international interest, the article itself states "this principle does not force the Members to submit such matters or settle under the present Charter; but this does not preclude the application of enforcement measures under Chapter VII." Therefore it is clear that when an act threatens international peace and security, it is the duty of the organization to employ measures to restore order. In practice this goal has led the agency to directly and indirectly intervene in the internal affairs of a State. The recommendations made by the organization are a good example of indirect intervention

Regarding direct intervention, it is worth mentioning the case of apartheid in South Africa. The South African government alleged that the factor was merely an internal affair, but the General Assembly by the Security Council in Resolution 134 (1963), recognized that this problem had led to international friction endangering international harmony. Therefore, the organization has shown a tendency to unite domestic law situations that may affect international peace making them global interest situations, thus allowing the intervention.

In fact, it is the general international law which contains such provisions regarding the intervention, whether it is generally prohibiting it as stated in Article 2.4 and 2.7 of the Charter or allowing it in exceptional situations of self-defense against an armed attack as stated in article 51 of the Charter of the United Nations or when the Security Council itself decides its use against a threat to the peace, breach of the peace or act of aggression chapter VII of the Charter of the United Nations; exceptions that will be later discussed.

1.1. Sovereignty

Historically the concept of sovereignty has been a justification used by many States to commit crimes against International Public Law. The problem arises in the interpretation of the definition of sovereignty in international law. A. Ross (1947) stated that the international law covered the rules governing the relations of all sovereign legal

communities. Julio Diena expresses a double meaning of International Public Law stating:

"International Public Law can be considered as a science and as a positive law. Under the first aspect it is defined as the science which aims to study the legal principle for regulating the relations between the members of the International Legal Community, under the second aspect it can be described as the set of rules for mutual willingness of the States and other entities in their relations" (1941, qt in Marcano Salazar, 2005, p. 14)

The Portuguese Paul Reuter (1981) states that International Public Law regulates relations of sovereign States and their relationships, regardless of their political, economic and social system. For Luis Manuel Marcano Salazar (2005) the PIL is the set of conventional rules of empire-attributive character, conditioned by the international structure and its processes, governing relations between sovereign States and other subjects of law. The concept of sovereignty has undergone profound changes that have modified its use over time, especially to political developments, both nationally and especially internationally. Therefore, to perform an analysis of the doctrinal evolution of sovereignty it is necessary to understand the conflict arising from differing interpretations of the word and the effect especially when there is a need for intervention in sovereign countries that violate the protection of their population.

In feudal times, sovereignty was seen as the absolute power of the king or monarch within a State[5]. Jean Bodin even argued that not even the existence of a constitution could limit the power of the sovereign. These ideas led to what became known as the absolutist state, in which sovereignty was above the positive law. In the seventeenth century, Thomas Hobbes (1651) argued that sovereignty was not subjected to any kind of power and that, therefore, this power was absolute, even above religion. These ideas were accepted by various philosophers for centuries. However, there were doctrinaire who rejected this notion arguing that sovereignty was not absolute and that, on the contrary, it was restricted by the Constitution and by the positive law. Despite the differences in definitions of sovereignty, in the sixteenth and seventeenth century,

[5] Les six livres de la republique, 1576. First concept of sovereignty.

sovereignty remained as indivisible, either centralized in the hands of the monarch or in the people as a republic.

In the eighteenth century, a series of events determinedly changed the concept of sovereignty adopted in previous centuries. After the Peace of Westphalia (1648)[6] and the emergence of an organized Europe based on the existence of independent and equally juridical States, it became clear that sovereignty had varying degrees. Absolute sovereignty was attributed to fully autonomous monarchs, while the relative sovereignty was attributed to those monarchs subordinated to the others. This division is best understood with the transformation of the Confederation of the United States of America to the federal system in 1787. Whereby, the U.S. system was organized on the divisibility of sovereignty amongst federal powers conferred on national and internal powers of each state.

When new ideas appeared and liberal revolutions were introduced in the French Revolution (1789) sovereignty (expressed in the monarch) was transferred towards popular sovereignty. Jean -Jacques Rousseau's work (1762) *Social Contract*, argued that sovereignty was not indivisible but added an important element when transferring single sovereignty to the people. This means that now the people and their willingness established political power through the law. Thus sovereignty of the States would be limited by the Constitution, which would remain as the basis of their relationship with other States. The recognition of the ability of the peoples to politically and legally self-determinate themselves within their territory, became the fundamental principle in domestic law. With the emergence of the new doctrine of popular sovereignty, there were also other ideas that changed the political organization of Europe and later the worlds, such as human rights and the theory of separation of powers. These ideas were crucial to the foundation of modern constitutionalism that subsequently ushered in the constitutions of the United States and France.

[6] After completion of the 30-year war in Europe and with the objective of restoring order, the countries established treaties that became law of the Empire; hence the German jurists call this Contitutio Westphalica.

According to Oppenheim's work (2005), *International Law, a Treatise*, three factors influenced radically the conception of sovereignty in the nineteenth century. First, he mentions the transformation of the Christian Monarchies to Constitutional Monarchies; therefore, the absolutism from the previous century led to recognition that the power of the sovereign monarch would be restricted by the Constitution and positive law. The second factor is the transformation of the United States towards the federal system, a system that was adopted by Germany, Switzerland, Mexico, among others. The third factor and perhaps the most important, is the distinction between State sovereignty and the sovereignty of the body exercising the powers of the State. The importance of this distinction is that the monarch or Parliament is no longer sovereign but the State is.

Despite the development of the concept of sovereignty until the nineteenth century, it was clear that there was no unanimity among the authors, except for the recognition of sovereignty as supreme authority. According to Oppenheim,

"the problem that now arises to the science of law and politics is to determine the extent of sovereignty, as expressed in terms of the law of the State, this is like the upper and primal power and the exclusive authority to set its jurisdiction, it is compatible with the normal operation and development of international law and organization" (2005, cited in Camargo 2001, p. 115)

Thus, theories arise that question the legal status of international law based on the fact that it lacks permanent legislative body and a central coercive power.

According to the Dutch philosopher Baruch Spinoza, "the States are in a state of nature, in which the right of each of them goes until their power reaches the limit." (1672, qt in Camargo 2001, p. 63). Based on this theory, international security is not guaranteed, it depends on the will of States and on the moral principle to cede part of their sovereignty for a common good. Many authors of the eighteenth and nineteenth century agreed that there can be neither force nor legal power superior to the one of the State. Therefore, the validity and effectiveness of international law depend on the respective state wills. According to the Hegelian philosophy, when these individual wills do not reach an agreement to resolve a dispute the only solution is war. Following the doctrine of Hegel,

Adolf Lasson (1832-1917) held that States are unable to build a relationship of legal community; because between them only force decides. The ideas set forth above correspond to the so-called basis of international law in the State will. Such theories are divided into three areas: the foundations of international law on the unilateral will of the State, the foundation of international law on the common will of States and the foundation of international law on the fundamental rule.

Given the difficulties of reconciling the term in international law, some authors devised new terms. This is how Charless Rosseau's work *Droit International Public* of 1953 coined the term "independence" rather than "sovereignty". The ambiguity of the interpretation and application of the term sovereignty; the fact that the own States gave away part of their sovereignty to international institutions such us: the League of Nations and the United Nations; and the emergence of many States that adopted an independent political life as a result of colonialism and neocolonialism, allowed the adoption of ther the term independence. Thus, independence defines the state that, without interference from others, it performed jurisdiction over its territory, having exclusivity, autonomy and fulfillment of its powers, and it is able to enter into relations with other States or international law subjects.

The principle of political independence of the state should not be confused with the principle of territorial sovereignty, which is a manifestation of that. It is important to understand that independence emanates state power to exercise supreme authority over the people and things within its territory or territorial sovereignty. Hedley Bull (1977) notes that there are two types of sovereignty within a state: internal and external. Internal sovereignty implies supremacy over any existing authority among the population or territory and external sovereignty which means no supremacy, but independence from any external authority.

Both the sovereignty and independence are recognized by international law. Today the international society is based on the principle of equality and peaceful coexistence of its members, giving the State the power to require other States to refrain from violating their independence. The recognition of the sovereignty and political independence of States have been expressed in several documents of international law such as:

Article 10 of the UN Covenant which stipulated as a rule of international law that "the members of the Society undertake to respect and preserve against all external aggression the territorial integrity and political independence of all members of this Society."

In the Declaration of Rights and Duties of States of 1949 it is declared that "every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its form of government, without being subject to the will of any another state."[7] Furthermore, "every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law"[8]

In Article 2 of the Charter of the United Nations, "in pursuit of the Purposes stated in Article 1, the Organization is based on the principle of sovereign equality of all its Members."[9] The principle of legal equality of States was developed in Resolution 2625 (XXV) of the UN General Assembly (Declaration of Principles of International Law Governing Friendly Relations and Cooperation among States), which points out that "all States enjoy sovereign equality, have equal rights and equal duties and are equal members of the International Community, despite the differences in economic, social, political or otherwise order."

With the creation of the United Nations and the accession of almost all States, the word sovereignty took a new approach. By ratifying the Charter, the States voluntarily accepted entitlement to the rights and obligations established by the agency, changing the concept of sovereignty as control over their territory and their citizens to sovereignty as a responsibility with the International Community. According to the report on the Responsibility to Protect by the International Commission on Intervention and State Sovereignty published in December 2001, sovereignty should be considered a liability, not a privilege.

[7] Art 1. Res 375 December 6, 1949.
[8] Art 2. Ibidem
[9] Art 2.1 of the Charter of the United Nations

1.2. The Responsibility to Protect

Sovereignty means not only protecting the States against foreign interference, but it constitutes a load of responsibility that obliges States to respond to the welfare of their population. The responsibility to protect is a principle recognized by positive international law enshrined in Chapter I of the Charter of the United Nations, which contains the basic principles of international law and thus of international society. The fundamental pillars of the responsibility to protect are stipulated in the Final Document of the 2005 World Summit and they are as follows:

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

139. "The International Community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from such violations and their consequences. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are in situations of stress before crises and conflicts."

These principles of protection of the civilian population were embodied as a priority for the United Nations, especially after the terrible events that occurred in Rwanda in 1994 and later in 1996 at the Democratic Republic of Congo. The most internationally recognized States have pledged to meet these principles, adopting them in their

constitutions. However, when a State through its government or its leaders, violates these principles, the responsibility of protection immediately becomes an international responsibility.

The responsibility of protection encompasses different types of responsibilities: first is the responsibility of preventing the internal conflict by recognizing its direct causes of internal conflict. Second, the responsibility to act, responding with appropriate action to stop situations that violate the human rights of citizens, which may include coercive sanctions and military intervention in extreme cases. Finally, there is the responsibility to provide the necessary assistance for reconstruction, particularly after a military intervention. In practice, this responsibility to protect falls on the United Nations, since it is the organization with greater participation and with greater weight on the international scene.

1.3. International Humanitarian Law

The intervention of the International Community protected under international humanitarian law is a clear example of the need for an international law and its actors to adapt to the new relationships that develop in an international context, usually marked by increased conflict, either intrastate or interstate, highlighting the vulnerability of citizens and the difficulty of maintaining peace and security. The human development and international relations have undoubtedly been linked to the phenomenon of war. As a consequence that these armed conflicts has left have left is the protection of life and dignity of the human being. Accepting that war is an essential and unavoidable mechanism has imperative legal regulation thereof by the codification of international humanitarian law.

In the beginning, the International Humanitarian Law, was known as the law of war or *ius in bello*. It regulated the conduct of combatants, the conduct of hostilities, protection of victims, etc., but the historical evolution of its standards have made both content and purpose broader. Today it is known as International Humanitarian Law (IHL) or International Law of Armed Conflict (LOAC); the term was first used at the Conference on Human Rights in Tehran in 1968.

According to the International Committee of the Red Cross, International Humanitarian Law is defined as:

"international standards of conventional or custom origin, especially targeted at humanitarian problems arising directly from armed conflicts, international or not, and limit, for humanitarian reasons, the right of the parties to use methods and means of the warfare of their choice or protect people, affected property or potentially affected by the conflict."

The application of International Humanitarian Law (IHL) cannot be understood as the legalization or the legitimization of war, on the contrary, it emerges as a state of guarantee of fundamental human rights. The continuing violations of international law that led to armed conflict and the inability of States to provide mechanisms to prevent its advent, prompted humanitarian norms to acquire a dual nature of law and mandatory duty. The regulation of war began to take hold in the eighteenth century, the above stages were characterized by lack of humanitarian rules comparable with those developed by modern international law.

Contemporary International Humanitarian Law is part of the General International Law; it had its beginnings in what Carrillo Salcedo (2001) called the humanization of war, which means that in the present, the international law establishes the protection and promotion of human dignity as one of its primary objectives. At this stage Carrillo Salcedo established the Geneva Conventions of 1864, the Peace Conferences in Hague of 1899 and 1907 and the Geneva Conferences of 1949 and 1977. Previously, the law in Geneva aimed at protecting the military who stopped participating in combat and those who were not directly involved in hostilities, in other words, the civilian population. The Hague law determined the rights and obligations of belligerents in the conduct of military operations, limiting the means of attack. With the adoption of the Additional Protocols of 1977, the two branches have intertwined.

The debate about intervention on humanitarian grounds took place in a political, historical and essentially legal context in the development of standards and mechanisms that became stronger for the protection of human integrity. In the present, the protection

of human rights has become a fundamental principle of international law and thus of international relations. The Universal Declaration of Human Rights, the four Geneva Conventions and their two Additional Protocols of Armed Conflict in International Humanitarian Law, the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the agreements on civil, political, social, economic and cultural rights and the adoption of the Rome Statute in 1998 which later would lead to the establishment of the International Criminal Court (it creates an international jurisdiction which applies to war crimes in international conflicts) are considered the most significant advances in this area.

1.3.1. Definition of Armed Conflict

As mentioned above, International Humanitarian Law applies only in case of armed conflict. It is therefore very important to define what is meant by this. Based on international law, the International Criminal Tribunal for the Former Yugoslavia, in the case of Dusko Tadic stated:

An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.[10]

Likewise, the Criminal Tribunal for Rwanda said in the accompanying Akayesu case that:

The term, armed conflict in itself suggests the existence of hostilities between armed forces organized to a greater or lesser extent.[11]

[10] "An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State". Prosecutor vs. Tadic a/k/a «Dule», case n.° IT-94-1-T, Opinion and judgment, May 7th1997, paragraph 628.

[11] "The term, armed conflict' in itself suggests the existence of hostilities between armed forces organized to a greater or lesser extent". Prosecutor vs. Akayesu, case n.° ICTR-96-4-T, Judgment September 2nd, 1998, paragraph 620.

International Humanitarian Law makes a distinction between international armed conflict and non-international armed conflict. International armed conflicts are those in which two or more States face each other. According to Article 2 common to the Geneva Conventions of 1949:

"Apart from the provisions which shall be in force during peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more High Contracting Parties, even if one did not recognize the state of war"[12]

Under this provision, the expression High Contracting Parties refers to the States. The applicability of International Humanitarian Law norms are not subject to the existence of a declaration of an official war or recognition of the situation, finding the existence of violent or factual circumstances is sufficient. Thus, the rules that are applicable to international armed conflicts are mainly composed of the four Geneva Conventions and the Additional Protocol to the Geneva Conventions related to the Protection of Victims of International Armed Conflicts.

To establish a distinction between international armed conflict and internal character is difficult due to the increasing involvement of third countries and international organizations. However, we can state that non-international armed conflicts are those in which government forces and non-governmental armed groups confront each other or only between those groups. Some of the non-international armed conflicts are:

- Those referred to in article 3 common to the Geneva Conventions of 1949 which refer to the internal conflicts in general.
- Armed conflicts defined by the Protocol II additional to the Convention of Geneva relating to widespread civil wars, and;
- Those referred to by Protocol I, which states that "armed conflicts in which towns are fighting against colonial domination and alien occupation and against racist regimes in the exercise of the right of the towns to self-determination,

[12] Statutes of the International Red Cross and Red Crescent. art. 5.2.g. Opinion of the ICRC, March 2008.

enshrined in the Charter of the United Nations and the Declaration about Principles of international Law concerning friendly Relations and Cooperation among States in accordance with the Charter of the United Nations"[13]

Regarding the international armed conflict, the Geneva Conventions of 1949 and Protocol I of 1977 are applied, while non-international conflicts are applied in Article 3 common to the four Geneva Conventions and Protocol II.

1.3.2. Applicability of International Humanitarian Law

The States should prevent and even punish all violations of both human and International Humanitarian Law rights. To do this, the number of treaties, whose objective is the preservation and protection of man, increases. According to Salmon:

"International Humanitarian Law treaties and human rights treaties all share the conceptual body of treaties in general, but unlike most treaties, they not only establish obligations between subjects that conclude them, but set obligations to individuals who are or may be subject under the jurisdiction of those. To that extent, not only States, but also individuals are the main beneficiaries of humanitarian obligations" (Salmon, 2004, p 20)

Thus, International Humanitarian Law treaties acquire a special feature by not responding to the self-interests of States, but to the achievement of a common interest and therefore establish general and impersonal rules. In the current Constitution of Ecuador (2008), International Humanitarian Law treaties are directly applicable. This is stipulated in Article 417 of our Constitution:

"The international treaties ratified by Ecuador shall be subject to the provisions set forth in the Constitution. In the case of treaties and other international instruments for human rights, principles for the benefit of the human being, the non-restriction of rights, direct applicability, and the open clause as set forth in the Constitution shall be applied."

In the previous Constitution (1998) both the Constitution and international treaties were in equal rank, however, the current Constitution establishes as the supreme law

[13] Additional Protocol I, Article. 1.4

prevailing over any other legal system, subordinating even international treaties. Regarding the international human right treaties, there is an exception to the rule and its hierarchical equality is recognized by the Constitution, and even its superiority to it with those treaties establishing progressive rights that are not contained in the current legal standards.

It is important to note some key points regarding the treaties of international humanitarian law. First, the State's consent to be bound by treaty or also known as *ex consensu advenit vinculum*, which shall only bind on those States that accept and not the rest. Second is the existence of remaining reserves. Thus, the International Court of Justice (ICJ) in Advisory Opinion of 28 May 1951 affirmed on the validity of certain reservations on the Convention on the Prevention and Punishment of the Crime of Genocide, stating:

In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison d'être of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties.[14]

Although it seems illogical to accept bookings in treaties of this nature, because the number of Contracting Parties and the recognition of the principle of consent not to be bound to all clauses, the application of such multilateral conventions should be more flexible. It is important to note that there isn't a relative article in this specific convention, so one cannot conclude that they are banned.

The third point concerns to the effects linked to the breach of the treaty by a Contracting Party, which does not entitle the other States breach thereof, at this point the principle of reciprocity is not applied as condition precedent compliance the agreement or as grounds

[14] "In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison d'être of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties". CIJ, Recueil, 1951, pp. 21

for termination in case of a violation made by the other party. The Vienna Convention on the Law of Treaties of 1969 provides for the termination of a treaty or suspending its application as a result of violation:

"Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties"[15]

As stated above, the treaties relating to International Humanitarian Law are of a special nature because they aim to respect human life, making treaties like the Geneva Convention accepted by almost all countries endorsed by the principle of universality, recognizing that the international humanitarian law is not merely conventional, but its obligations are expressly required by general international law. Therefore the principle of reciprocity that characterizes international treaties, loses its value referring to the IHL. As Sir Gerald Fitzmaurice says, the obligation "exists for itself and has absolute and intrinsic strength for each of the Parties without being subject to its dual compliance by other parties" (Fitzmaurice, 1971, p. 38).

Therefore, and as to avoid confusion there are humanitarian rules of customary law codified that should be completed in any armed conflict, such as those contained in common Article 1, which States that States that are part of these treaties undertake to respect humanitarian obligations in all circumstances; Common Article 3, States that those who have laid down their arms and those who are out of combat due to sickness or injury must receive humane treatment at any time and place; or what's also established in Articles 4.1 and 4.2; 7 or 13 of the Additional Protocol II.

In conclusion we can say that whatever the type of conflict that arise, is the duty of the International Community to implement the General International Law and International Humanitarian Law by using the respective humanitarian standards to ensure the welfare of the population. However, it must be stated that when an armed intervention is carried out under the right or duty to intervene for humanitarian reasons, the problem does not

[15] Vienna Convention on the Law of Treaties. Art 60 lit 5.

concern only to the humanitarian law, but it concerns to the rules on the legality of the use of armed forces in international relations.

1.4. The Prohibition of the Use of Force and the UN Collective Security System

Due to the conflicts resulting from the interaction of States, international peace and security have been the main objectives of international law. Maintaining peace between nations has not been easy and on the contrary, recognizing this imperative rule is the final achievement of a slow process to limit the *ius ad bellum*[16], especially after the I and II World War. Contemporary international law creates the need and the obligation of States to refrain from the use of force to resolve disputes between them, so was of 1945 in the San Francisco Conference was established the need for this rule expressed in Section 2.4 of the Charter of the United Nations.

This section will address the study of the prohibition of the use of force prior to its codification by the United Nations, the study of Article 2.4 of the UN Charter will be discussed later in more detail as we enter in the third point to the exceptions to the rule and finally conclude with the performance of the Security Council of the UN on behalf of the International Community.

1.4.1. Previous Development Coding of the Prohibition of Use of Force

For centuries, the States resorted to war as a lawful sanction to respond violations of international law, despite the existence of international instruments adopted and developed by the Subjects of International Law themselves. Among the most important conventions we can point out those established under the framework of the League of Nations and the Treaty on Renunciation of War.

In order to regulate and bring order to the international scene after the I World War (1914-1919), the International Community faced the need to create a world organism that established international peace and avoided the emergence of new conflicts between nations through peaceful resolution of international disputes between Member States. Controversy means "a disagreement on matters of fact or law; a contradiction or a

[16] Latin to refer to the right of war

divergence of interests between two States"[17] Peaceful settlement of disputes, as customary state practice, gradually develops to the extent that war, as a sanction of traditional international law, has been banned in the twentieth century. This is how the International Community was transformed by the adoption of new means of conflict resolution, especially with the creation of the League of Nations in January 10, 1920.

Regarding the use of force it was stated that " Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations "[18] However, the war was prohibited only on the first three months of the issuance of a court judgment, an arbitration award or report issued by the Council of the League concerning a dispute arising between the parties and that could trigger the break of their relationships (articles 12.1, 13.1, 15.1, and 15.9). Under the omen of the League of Nations, the General Act for the Pacific Settlement was subscribed on September 28, 1928, also called General Act of Geneva arbitration, as amended by the General Assembly of the United Nations in 1949, the same that allowed States to settle their international disputes by conciliation, arbitration and judicial settlement. In conclusion, the Covenant only established a moratorium of war and limitations on its exercise. Although the League of Nations failed to outlaw war as a penalty, there was a breakthrough in establishing the commitment of the members not to resort to war with another country that has accepted the findings of the Council.

Likewise, the Covenant also established penalties in case a Member State resorts to war violating commitments noting that: " Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse

[17] Permanent Court of International Justice (TPJI), Series A No. 2 pp.. 11 and 12. Judgment, August 30, 1924. Mavrommatis Case
[18] Article 11 of the Covenant of the League of Nations.

between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.[19]"

In practice, Member States were free to resort to war as long as: a) the Council is on the settlement of the dispute by a simple majority, excluding the votes of the parties involved,[20] or b) the conflict concerns a question considered by international law and the exclusive jurisdiction of the States.[21]

With the advent of World War II in 1945, the League of Nations was dissolved when it was unable to meet the desired objectives. Despite the failure of the League of Nations, the ban on the use of force remained raised as an overriding principle for the coexistence of States; this is how the Treaty on renunciation of war or also known as Briand - Kellogg Pact arises.

1.4.1.1. Kellogg-Briand Pact

The Treaty of Paris or the Kellogg- Briand Pact[22] of August 27, 1928 is the first international convention under which the resort to war is condemned as a way of settling international disputes and in which its contractors are committed to give in to it as an instrument of national policy.[23] Among the exceptions expressed in the covenant prohibiting the use of force there is self-defense and collective armed action; exceptions previously established in the League of Nations. The penalty provided by this treaty, in case its contractors decided to fall into war was the denial of the benefits provided by such treaty. It is important to note that the Paris Pact represented a significant progress regarding the legal regulation of the *ius ad bellum*: due to the fact that it established the obligation for the Contracting Parties, that came to be more than sixty, which gave a quasi- universal character, serving as a precedent for the development of future treaties

[19] Article 16. Ibid.
[20] Art 15, paragraph 7 ibid
[21] Art 15, paragraph 8 ibid
[22] Named so by the foreign ministers of the France Aristide Brand and of U.S. FB Kellogg which were those who promoted the idea
[23] The treaty entered into force on 24 July 1929. It was signed by Germany, Belgium, Czechoslovakia, the United States, Britain, France, Italy, Japan and Poland. In 1939, 63 States formed part of it.

like the Covenant of nonaggression and conciliation (Saavedra Lamas Treaty), signed on October 10, 1933.

The efforts made with the Covenant of the League of Nations and the Kellogg - Briand Treaty to maintain peace and prevent further conflict, like what happened in World War II, come to an end with the Charter of the United Nations.

1.4.1.2. In The Charter of the United Nations

Since 1945 the United Nations became the most important international organization and the most influential one in the development of international law. Therefore the UN Charter was conformed as the Constitution of an organized International Community. Almost every recognized State has signed and ratified the Charter of the United Nations under which they accept and undertake to abide by the principles established to maintain and ensure international peace.

This multilateral international treaty codifies the principles of *ius cogens* which until 1945 were related to matters of doctrinal dispute over the penalties that result in their violation. The prohibition of the use of force or threat of force in international relations and the obligation of peaceful settlement of international disputes were first established in the Charter of the United Nations. The failure of the prohibition of the use of force and the resort to war, established in previous agreements, led to the new multilateral treaty imposing a more powerful ban and endowed with coercive power to impose mandatory sanctions for both Member States and nonmembers.

Thus, Article 2.4 of the Charter States:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations"

Despite the breakthrough that the prohibition means, the Charter does not clearly specify the concept of "force" or "threat", so there are several interpretations of the article. However most doctrinaire conclude that the content of the article imposes a prohibition of any form of threat and use of force, excluding only cases justified by the same Charter

and international law in general. Stance leading to justify the intrusion and armed action of the members under the authorization of the United Nations in certain cases will be analyzed later.

Similarly, the prohibition is reiterated in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty[24] stating that:

"No state has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other. Therefore, not only the armed interventions, but all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements that constitute it, are condemned."

Likewise, in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations[25] 1970 states that:

"Every State has the duty to 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. Such a threat or use of force constitutes a violation of international law and of the Charter of the United Nations and is never used as a means of settling international issues."

The only recognized exceptions in the prohibition of use of force in relations between subjects of international law are self-defense, individual or collective against armed attacks, and collective action or enforcement of the Security Council in case of threats to peace, breaches of the same or acts of aggression such as stated in Chapter VII of the Charter of the United Nations.

[24] Resolution 2131 adopted by the General Assembly on December 21, 1965
[25] Resolution 2625

1.4.2. Exceptions Recognized by the Charter of the United Nations to Ban the Use of Force

The first of the exceptions provided in the Letter to the prohibition of the use of force is self-defense under Article 51 of the UN Charter which states:

"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"

This exception is based on the intrinsic international law held by the State to respond to armed attack suffered by another State. The term "inherent right" mentioned in the article reaffirms the ancient rule of customary international law: *vim vi repellere licet*[26]. Thus, self-defense is an action even permissible for States that are not members of the United Nations, as manifested by the ruling of the International Court of Justice in 1986. Armed attack is the only justification accepted to execute self-defense, excluding the threat of armed attack or the right to anticipate self- defense that is exercised before the attack happens. Preventive measures of self- defense are contrary to the Charter of the United Nations.

At this point it is necessary to establish the definition of "armed attack" in order to determine the legality of self-defense. In accordance with Resolution 3314 (XXIX) of the General Assembly of the United Nations, aggression is defined as:

[26] Term used by Ulpian "vim vi licere repellere that id jus natura comparatur (Dig., 1.43, tit. 16, 1, & 27.)

"It is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations"[27]

"The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression."[28]

The resolution in Article 3 lists the acts that are considered acts of aggression, regardless of whether or not there is a declaration of war:

a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State.
c) The blockade of the ports or coasts of a State by the armed forces of another State.
d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State.
e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement.
f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State.
g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries which carry out acts of armed force against another State of such

[27] Article 1 Resolution 3314 (XXIX)
[28] Article 2 Resolution 3314 (XXIX)

gravity as to amount to the acts listed above, or its substantial involvement therein[29].

The resolution also states that in addition to the acts mentioned above, the Security Council as the highest body of the UN, may determine what other acts constitute aggression[30]. Thus, the definition states that the war of aggression constitutes a crime against international peace, which originates international responsibility[31]. Based on this document it can be determined that an armed attack is an act that is carried out by a State against another with the use of any weapon either directed towards its territory or any other property, and that is executed by the regular forces of a State or of forces acting on their behalf.

It is necessary to perform a deeper analysis of the last point. According to the document of the United Nations on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission (ILC) 2001[32], a State is internationally responsible for acts committed by its bodies[33], by a person or entity that is empowered by the law of that State to exercise elements of governmental authority[34], just like the acts carried out by the court of another State which have been made available, in the exercise of governmental authority of the State at whose disposal is found[35]. In addition, it is set as a state responsibility for acts committed by a person or group of people exercising public power allocations in the absence or default of the official authorities[36]; this requires that the State is in a chaotic situation in which the official authorities are inexistent, have fled or are unable to perform their duties. The acts of insurrectionary movement are also attributable to the State, whether these have become the new

[29] Article 3 Resolution 3314 (XXIX)
[30] Article 4 Resolution 3314 (XXIX)
[31] Article 5 Resolution 3314 (XXIX)
[32] The International Law Commission adopted articles on responsibility of States for internationally wrongful acts at its 53rd session in 2001. It refers to a compilation of decisions adopted by the courts, tribunals or international bodies that make reference to each one of the articles on responsibility of the State finally adopted by the General Assembly in 2001.
[33] Article 4 Responsibility of States for Internationally Wrongful Acts.
[34] Article 5 Responsibility of States for Internationally Wrongful Acts.
[35] Article 6 Responsibility of States for Internationally Wrongful Acts.
[36] Article 9 Responsibility of States for Internationally Wrongful Acts.

government of the state as if you form a new state[37]. Under these provisions, the State will not only be responsible for the wrongful acts performed but must also face the consequences and penalties arising from them.

However, the subjective interpretation of the article leaves a gap in its actual application when conflicts arise between States. The one thing essential to determine the permissibility of reactions to an armed attack is the one to determine the source and extent of the threats and to establish the conditions under which the attacked country responds. Once the attack has been recognized as such, the victim state must immediately report it to the Security Council before invoking its right of self defense. It is critical to establish that self-defense must be provisional and subsidiary to the action of the Security Council. Therefore, once the Council has taken the necessary measures, the right of self-defense will have no reason to be invoked. Another essential requirement of self-defense is the immediate response to the armed attack. The immediacy of the reaction carried out under the pretext of self-defense justifies its validity and the difference of becoming a retaliation to the armed attack, a fact that is prohibited by international law, assuming a violation of Article 2.4 of the Charter.

International law recognizes two types of self-defense: Individual, when the state responds to an armed attack by another State; and Collective, when one or more States respond with force against the aggressor of a third State. The coalition of several States can be established under a partnership agreement of self-defense or when the Victim State is associated with other States to respond the attack, for this reason it is essential that the Victim State declares the attack and gets help from one or more States. As an example of the action of collective self-defense is the dispute between Iraq and Kuwait (1990), that due to armed attacks by Iraqi forces into Kuwait, the Security Council in Resolution 661 recognizes the inherent right of self-defense and calls upon Member States to cooperate to protect the Government of Kuwait in order to end the invasion of Iraqi forces[38]. This particular case will be further discussed in the next chapter.

[37] Article 10 Responsibility of States for Internationally Wrongful Acts.
[38] Resolution 661 (August 6, 1990). See Article 6 specifically.

When the right of collective self-defense is invoked, in addition to the requirements set above, the International Court through the case concerning "*The military and paramilitary activities against Nicaragua*"[39] poses two requirements at the time of invoking the right of collective self -defense. The first refers to the existence of a collective defense treaty, although the agreement States the obligation to act in self-defense on behalf of another State, the State requesting assistance must be declared victim of an armed attack and must also be legally authorized to make use of its right of self defense. The second condition posed by the Court is the obligation of the Victim State to make a request for assistance to the State that justifies its intervention, either on a bilateral or multilateral treaty. Most of these demands for assistance are usually carried out preventively.

Among the mechanisms created by the American countries in favor of collective security is the Inter-American Treaty of Reciprocal Assistance, also called Rio Treaty. Agreements of this type arise from the need to protect and preserve the independence of the new American States, especially of the Hispanic. Later on, they were used by foreign powers, in the case of America by the United States to control the advance of socialism in the period of the Cold War (1945-1991). In the present, the American system of collective security is based legally on the Charter of the Organization of American States in Chapter VI and the Rio Treaty. This collective security agreement was signed at the Inter-American Conference for the maintenance of peace and security on the continent held in Rio de Janeiro on September 1947 and subsequently amending the Protocol adopted in San Jose, Costa Rica on July 26 1975.[40]

[39] Lawsuit brought by Nicaragua against the United States before the International Court of Justice on April 9, 1984, by military and paramilitary activities in and against Nicaragua under the justification of collective self-defense argued by the United States. The Court rejected the argument of collective self-defense and decided that the attacks perpetrated by the United States in the years 1983-1984, have committed violations of its obligation under customary international law, not to violate the sovereignty of another State, not to use force against another State, not to intervene in matters, not to violate its sovereignty and not disrupt the peaceful maritime commerce.

[40] Ecuador, through its head of state, Rafael Correa, signed a decree for the official departure of the Rio Treaty military defense, which it was part of since the days of the Cold War (1950). The decision was based on the ineffectiveness of the agreement for the

The Inter-American Treaty of Reciprocal Assistance is a multilateral agreement of collective self- defense under Article 51 of the UN Charter. According to Article 3.1:

" If (...) an armed attack by any State against a another State, shall be considered an attack against all State parties, and therefore each is committed to help cope with the attack, in the exercise the inherent right of individual or collective self -defense recognized by Article 51 of the Charter of the United Nations."

Another example of this type of mutual defense treaties is the North Atlantic Treaty Organization (NATO) signed in Washington on April 4, 1949, which in its Article 5 states:

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-defense recognized 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[41].

Under this article, any armed attack made against any NATO member will be considered an act of violence against all members, allowing them to take the necessary actions to assist the victim State. Importantly, any action that is used must be immediately reported to the Security Council and will end once the Council intervenes to restore international peace and security.

---

protection of Latin American countries against hegemonic powers, like it happened in the war between Argentina and Britain over possession of the Falkland Islands (1982).

[41] Article 5 of the treaty was invoked for the first time after the terrorist attacks of 9/11 against the United States.

The second of the exceptions established by the UN to ban the use of force relates to enforcement actions that the Council may conduct in accordance with Chapter VII, generally indicated as the chapter that structures the system of collective security. These actions are performed only when the Security Council establishes the existence of acts of aggression that could affect international peace and security. For which the approval of seven members of the Security Council, including all affirmative votes of the permanent members of threat, is indeed necessary. In order to carry out the necessary actions, the Charter provides an exception to the principle of non- intervention in the internal affairs organization of the State, known as the domestic jurisdiction clause.[42]

Prior to the adoption of coercive measures, the Security Council is in the ability to adopt provisional measures as stated in Article 40:

"In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures."

If these measures are not sufficient to resolve the dispute, the Council may adopt measures not involving the use of force such as complete or partial interruption of economic relations and from rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.[43] That is, it involves exhausting all available resources to bring a peaceful solution to the conflict before taking action that involve the use of force.

Once exhausted all mechanisms that are not used to employ the use of force, the Council may exercise, by the military forces of the Member States, the action it deems necessary

[42] Article 2, paragraph 7, ibid
[43] Article 41 of the Charter

to restore international peace and security. These actions include demonstrations, blockades, and operations by air, sea, or land forces.[44]

1.4.3. UN Collective Security System

International security has been established as a goal to achieve for centuries by all States. They have developed a number of methods to achieve its security, either through international legal standards, international agreements or treaties, diplomatic negotiations, etc; however, the problem of international security is based on the growing and necessary political, military and legal interaction between subjects of international law.

According to Rousseau (1957), international security is founded on two basis: the private or state security and the collective security. The first is based on self-defense capability of each state, either through arm capability, political alliances, the recourse to war and the right to neutrality. However, based on historical facts, including the security system was inefficient; it is evident that not all countries have the same military capability. With the emergence of the hegemonic powers, instability in international security reached its peak with the outbreak of the First World War, a conflict that demonstrated the ineffectiveness and danger to international peace and security a system based on the autonomous military power of each state.

After the I World War (1914-1918) arose a new concept of international security based on collective security. This new idea imposed the need for interstate cooperation involving all members of the International Community to reach a common safety. This creation and adoption of new methods, which attempted to avoid the use of force for the settlement of disputes, was necessary. According to Ziegler:

"collective security, in its technical sense, is a system of States that are associated, usually by signing a treaty, and take an express commitment by doing two things: (1) abandon the use of force to resolve disputes with another, and (2) promise to use force against any of them that break the first rule. All other system States will automatically

[44] Article 42 of the Charter

become allies in case of aggression. Meanwhile, it requires all States to participate in sanctions against the aggressor. A policy of isolation or neutrality is unacceptable." (Ziegler, 2000, op cit. Pg. 4)

The collective security system is based on the existence of sanctions by the International Community on any State using armed force illegally, giving protection to the State that was attacked. It gives more responsibility to the most powerful countries, since it places also greater military obligations in the event of a collective attack. For the collective security to meet its objectives, it is necessary that the international efforts, to maintain international peace and security, be directed by an organization of global nature, which is why since 1945, the United Nations has established itself as responsible for directing the efforts to maintain an international system based on collective security.

The Charter of the United Nations in its preamble states that it is important to save succeeding generations from the scourge of war, which twice in our lifetime has inflicted untold suffering to mankind, and that therefore it is the duty of all States to "unite our strength to maintain international peace and security." Thus Articles 2.3 and 2.4 respectively state the primary objectives of the UN, which as determined above are international peace and security.

According to Raquel Regueiro Dubra (2012) the Charter is structured according to three axes: first, it is prohibited, adamantly, the threat or use of force by States in their international relations, with exceptions specifically provided by the Charter itself; secondly, the obligation to settle international disputes by peaceful means is established and an international tribunal is created for it; finally the international peace and security is ensured by a system of collective security within the Organization whose body designated for this mission is the Security Council.

As for the dispute resolution, the General Assembly is a similar competition to the Council as a mediator body, but with restricted capacities. Therefore, the Assembly may make recommendations on matters relating to international peace and security, but cannot take direct action, as it is a unique ability of the Security Council. Thus, the Security Council was established as the highest body of the United Nations, composed

of fifteen members: five permanent and ten non - permanent. Among the permanent members are the powers of China, United States, Britain, France and Russia; regarding the non - permanent, these are elected by the General Assembly for a period of two years. When choosing the ten non - permanent members, we must pay special attention to the contribution of the United Nations to the maintenance of international peace and security, as well as equitable geographical distribution.

In order to ensure effective action by the UN, Member States have designated the Security Council as "the primary responsibility for maintaining international peace and security" and they recognize that such body acts on behalf of all members "carrying out its duties under this responsibility.[45]" To this end, Member States, through treaty, grant the means of coercion necessary in order to resolve conflicts that threaten international peace. These competencies were defined in Chapter VI (Pacific Settlement of Disputes: Articles 33 to 38), VII (Action in case of threat to the peace, breach of the peace or acts of aggression; Articles 39 to 51), VIII (regional arrangements, articles 52 to 54) and XII (International trusteeship System, articles 75 to 85).

Before analyzing the capabilities and functions that the Charter provides for the Security Council, it is necessary to establish the procedure followed by the Board against a certain situation threatening international peace and security. The Security Council can act: on its own initiative, at the request of any Member State or as a result of an indication of the General Secretary[46]. Moreover, the Charter makes a distinction about the seriousness of such disputes. In the case of any dispute, the continuance of which is likely to endanger the maintenance of peace and security, the Council can only make recommendations, urging the adoption of peaceful measures or recommending an appropriate procedure. But if the conflict is a threat, the Council no longer recommends, but it commands. As long as the Council is not limited by the action of veto, it may take enforcement action that require or not the use of force.

[45] Article 2,1 of the Charter.
[46] Article 99 ibid. If the Secretary deems necessary, according to their opinion, they may get the attention of the Council for any matter which might endanger the maintenance of international peace and security.

In chapter VI of the Charter, "Pacific Settlement of Disputes", the Security Council has the power to call upon the States that are part of any dispute, the continuance of which is likely to endanger the maintenance of peace, to adopt peaceful measures to end the conflict (Article 32.2). These measures include: research, negotiation, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements or other peaceful means of their own choice (Article 33.1). With regard to research, the Security Council may investigate any dispute that is capable of endangering peace and security, either on its own initiative (Article 34) or at the request of a State that is a member of the Organization or not, as manifested in Article 35.1 and 35.2:

"Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or the General Assembly."[47]

"A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.."[48]

If the State is not part of the United Nations, the General Assembly may make recommendations on issues that threaten international peace and security to the state or States concerned or to the Security Council. For this, all matters that require an action will be referred to the Security Council before or after discussion.[49] Meanwhile, the Security Council play functions with respect to a dispute, the Assembly shall not make any recommendation, unless requested by the Council. For which the General Secretary shall keep the Assembly informed of all matters relating to the maintenance of international peace and security that is carrying out the Council, and the cessation of such matters.[50]

[47] Article 35, 1 ibid
[48] Article 35, 2 ibid
[49] Article 11, ibid
[50] Article 13, ibid

Another function that the Charter gives the Security Council is to recommend procedures or methods of adjustment, as it deems appropriate, at any stage that the dispute is found.[51] This requires, first, to take into account all the procedures adopted by the parties for the settlement of the dispute[52]; and second, if the disputes are legal, as a rule, they shall be referred by the parties to the International Court of Justice in accordance with the Statute of the Court.[53] If the parties request, the Council may make recommendations to the effect that a peaceful settlement is met, without prejudice to Articles 33 to 37.[54] If the parties in a dispute do not reach a solution through the means indicated in Article 33, for example, by peaceful means, they will be subject to the Security Council.[55] If so, the Council shall adopt a conciliatory function and it will decide whether to take action under Article 36 of the Charter or to recommend terms of settlement that they may consider appropriate.[56] At this point the functions of the Security Council with regard to the peaceful settlement of disputes are completed.

In conclusion we can state that the Security Council under Chapter VI of the Charter can only make recommendations if the conflict is not considered a threat to international peace. In addition, the order established by the Charter for taking action tries to maintain to its minimum the negative impact that may arise from such conflicts, exhausting all methods before resorting to coercive measures to restore order. Indeed, now should begin the analysis of the capability to operate in case of threats to the peace, breaches of this or acts of aggression contained in Chapter VII of this treaty.

1.4.3.1. Vote in the Security Council

In accordance with the abilities given to the Security Council by the Charter of the United Nations in the search for the correct functioning of the collective security, Council decisions are determined based on a different voting system for procedural and substantive issues. The first refers to those non-substantive decisions, i.e., issues of how to agree on a subject matter or background. These decisions will be made by an

[51] Article 36, 1 ibid
[52] Article 26, 2 ibid
[53] Article 36, 2 ibid
[54] Article 38, ibid
[55] Article 37, 1 ibid
[56] Article 37, 2 ibid

affirmative vote of nine of the fifteen members who comprise the Council, whether they are permanent or non-permanent members.

Second, with regard to the substantive issues, are those decisions concerning matters that would lead to the adoption of direct measures for the maintenance of international peace and security. These direct measures include: the peaceful settlement of disputes, enforcement and preventive actions; admission, suspension and expulsion of Member States; the regulation of armaments, the management regime of strategic areas, the relations of the Security Council to the General Assembly and the International Court of Justice and the election of the General Secretary. The substantive issues will be made by an affirmative vote of nine members including the concurring votes of the five permanent members (China, U.S., Russia, France and the United Kingdom of Great Britain and Northern Ireland). In decisions adopted under Chapter VI of the Charter concerning the "Peaceful settlement of disputes", the State that takes part in the dispute shall abstain from voting, even if it is a permanent member. With respect to Chapter VII, "Action in cases of threats to peace, breaches of the peace and acts of aggression" means any permanent member state can block decisions of the Council, through the power of veto, and is the same state that is part of the dispute.

The veto in favor of the five permanent members of the Security Council is a privilege that confers the ability to impose the will of any member of the other decisions relating to international peace and security. Technically the veto, or in the terminology of the United Nations, the veto power is exercised when a permanent member casts a negative vote on a substantive resolution. When this happens, the draft resolution or decision is not approved. Generally, Council resolutions are approved by a recorded vote, that is, the position taken by the member on the issue examined, is identified. Because of the impact that has the veto in the global collective security, it has become one of the most discussed and criticized issues of the United Nations system.

There is talk of a dichotomy in the functioning of the Security Council, on one hand are the privileges of the five permanent members (the power of veto and permanent membership) with its powers without responsibility; and secondly, the other members who have responsibility without power. The veto privilege in favor of the five

permanent members is contrary to the principle of legal equality in which the United Nations is based[57]. The real conflict arises in the use the members give the veto in benefit of their national interests. Therefore, through the years there have been calls for reform at the United Nations and its voting mechanism.

With regard to the abstention of the permanent members at the time of the voting, it has been argued that if one or more of them abstain, this does not preclude the adoption of a legally binding decision. This practice is considered contrary to the Charter which provides its Article 27.3:

"Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; but in decisions under Chapter VI, and under paragraph 3 of Article 52, a part of a dispute shall abstain from voting."

However, the objective of the organization is not to hinder the settlement process and the restoration of peace and security, so that the non-attendance of a delegate of the Member States is considered an abstention vote and they will continue with the procedure laid down in Article 28.

[57] Article 2.1 of the Charter: "The Organization is based on the principle of the sovereign equality of all its members."

Chapter Conclusions

The principle of non-intervention is the cornerstone of relations between sovereign nations. This principle emerges from the constant abuse of powerful nations towards politically and economically weaker nations. The principle is set as a mandatory rule embodied in the UN Charter, as well as in several important documents and resolutions of various international bodies such as the Charter of the Organization of American States, or in judgments of the International Criminal Court, among others. The principle by which any state can intervene either directly or indirectly in relation to any matter falling within the domestic jurisdiction is based on the equality of states and on their capacity to manage their national interests.

Nevertheless, the domaine réservé issues create a problem and raise the question of when a conflict goes from being under domestic jurisdiction to become an international threat. To solve this problem, supranational organizations are in charge to determine when an intervention is necessary. Only those nations that are part of these organizations are required to comply with their demands, however they have repeatedly used the concept of sovereignty as an excuse not to comply. Nowadays, the sovereignty concept has changed its meaning as a duty of the States to protect and enforce the fundamental rights of their people. When governments commit abuses which violate human rights and affect the welfare of the population, the principle of nonintervention is surpassed by the responsibility to protect. Thus, the welfare of the population is the object of greatest interest in international law, being at the same level of governments and states' rights.

In order to ensure the enforcement of fundamental rights, the International Community has developed a system of collective security based on the commitment of all the nations to help the States in conflict. This system tries to use preventive measures not involving the use of force, however there are conflicts in which the integrity of the human being is in danger and therefore it requires the use of coercive measures. If the Security Council determines the existence of threats to international peace and security, exceptions such as the right of self-defense are accepted.

In order to avoid the abuse of power of the organization, certain rules were established to limit the use of force. The voting system of the Security Council is one of them. But, this voting system has proven multiple times to be inefficient and specifically designed to accomplish the interests of the Council's five permanent states. Although the system aims to find global welfare, in practice, when it involves the imposition of sanctions or intervention in any ally country of any of the permanent members, the decisions are taken drastically different.

CHAPTER 2: ANALYSIS OF CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS

Introduction

In line with the objective of this paper which is to determine whether the intervention of the International Community in the internal affairs of States authorized by the Security Council of the United Nations is legitimate, it is important to perform an analysis of Chapter VII of the Charter, for unlike the Chapter VI, it contains the most important powers that may be exercised by the Security Council in its duty to maintain international peace and security. Therefore, the decisions taken by the Council based on this chapter will generate different opinions and discrepancies in the International Community. The main topics of discussion focus on armed intervention; its effectiveness, its duration, the consequences of inaction, lack of consensus and international leadership, among others.

Chapter VII of the Charter "Action with Respect to Threats to Peace , Breaches of the Peace and Acts of Aggression " empowers the Security Council as the sole organ of the United Nations able to determine the existence of any threat to peace and international security , as stated in article 39:

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

These powers must be exercised in accordance with the aims and objectives of the United Nations[58]. The article in turn establishes an order to employ such measures. First,

[58] UN Charter, art. 24.2

you must determine the existence of the threat. If there is, you can make recommendations, interim measures (Article 40), or deciding if the use of measures not involving the use of force (Article 41) is made. If the actions taken thus far demonstrate not to be efficient, the Council may authorize the use of measures involving even the use of force (Article 42). However, the Charter does not specify any concrete definition for "threat to peace "," breach of the peace or "act of aggression" Similarly, the article details the parameters that determine its existence, so it is understood that the decision is fully available and responsibility of the members of the Council[59].

Several are the cases that may be mentioned on the various interpretations that the Council has made of Article 39 specifically regarding threats to peace. For example, the Civil War in Somalia in 1991[60], led to a general crisis characterized by massive human rights abuses, lawlessness, widespread famine caused by severe drought, among others, causing the Security Council to intervene. In Resolution 733 of January 23, 1992, it was determined that the acts that occurred in Somalia constitute a threat to international peace and security[61]. Another situation in which the existence of danger to peace and security was determined as the political conflict in Haiti in 1991 with the overthrow of

[59] Doc. 943 III/5, 11 United Nations Conference on International Organization Docs., p. 17

[60] The conflict in Somalia occurs when a coalition overthrows military movements Siade Barre 's regime in January1991 , breaking the existing alliance fragmented into a number of ethnic groups that fought to seize power , leaving the country divided into multiple regions that will be controlled by different Somali leaders . The SNM months later proclaimed independence in Northwestern Somalia, while in the south, the United Somali Congress, dissolved, and causing a series of battles between the major groups.

[61] Resolution 733 of January23, 1992:

"The Security Council ,

Gravely alarmed by the rapidly deteriorating situation in Somalia and the enormous loss of life and widespread material damage resulting from the conflict in the country, and aware of its implications for stability and peace in the region,

Concerned that the continuation of this situation is, as stated in the report of the Secretary- General, a threat to international peace and security.

the first democratically elected Jean -Bertrand Aristide from the country's military president. This serious violation of the democratic, political and institutional process was followed by a dictatorship which organized paramilitary forces that carried out a process of persecution and violence, forcing thousands of Haitians to flee the country seeking refuge in neighboring countries. By resolution 841 of June 16 1993, the Security Council has the situation in Haiti a threat to peace and security in the region. As a result, establishes an economic embargo recommended by the Organization of American States[62], a peacekeeping mission later is installed with the presence of international military forces[63]. Finally as a last example it is important to include the involvement of the Security Council on Afghanistan. In this particular case, the actions taken by the UN are based on a concept of threat to peace and security caused by terrorism. Following the bombings of U.S. embassies in Kenya and Tanzania in August 1998, the Council issued a series of resolutions condemning the incident, but it was not until the Resolution October 15, 1999[64] that the Council determined that the actions committed by the

---

[62] Resolution 841 of June 16, 1993:

"The Security Council,

Having received a letter from the Permanent Representative of Haiti to the Chairman of the Board ....

Requesting that the Council universal and compulsory trade embargo of Haiti recommended by the Organization of American States,

[63] The Performance of the Security Council reaches its maximum by Resolution 940 of July 30, 1994, by which authorizes Member States to use all necessary means to ensure the accountability of military rule and the return of President Aristide.

[64] Resolution 1257 of 15 October 1999,

"The Security Council,

Recalling the relevant international conventions against terrorism in particular the obligation of the parties to those conventions to extradite or prosecute terrorists,

Deploring the fact that the Taliban continue to provide a safe haven to Osama Bin Laden and allowing him and his associates directed a network of terrorist training camps in

Taliban as a threat to international peace. The resolution adopted on the basis of Chapter VII of the Charter required the Taliban the delivery of Osama Bin Laden over to appropriate authorities in a country which has been the subject of prosecution, which has to be returned or wherever arrested and prosecuted.

There are several arguments that the Security Council can use to invoke Article 39 and make measurements that end with what it considers a threat. As Erika Wet says: "The notion of threat to peace is a dynamic concept that can be developed by the subsequent practice of the organs of the United Nations" (Wet, 2004, p 167.). In the first example the struggle between ethnic and political instability (which remains today) generated the start of a conflict with large negative effects on the economic and humanitarian. In the case of Haiti, the danger of the establishment of an undemocratic system in the region alarmed not only the UN but also the Organization of American States. Despite the harsh criticism that the UN had to face relating to the intervention, the International Community seems to agree on the fact that the establishment of a government under circumstances is illegal and an undemocratic threat. And finally, the issue of terrorism which now has been established as the main threat to international peace and security.

Taliban-controlled territory and to use Afghanistan as a base to sponsor international terrorist operations,

Acting under Chapter VII of the Charter of the United Nations

Recalling further the Declaration of 16 February 1993 (S/25344), by which the Council noted with concern the humanitarian crisis, massive population displacement, becoming a threat to peace and security,

Acting in this way, in accordance with Chapter VII of the Charter of the United Nations

2. Demands that the Talibans hand over without delay to Osama Bin Laden over to appropriate authorities in a country which has been the subject of an indictment or the competent authorities of a country where it is to be returned or the competent authorities of a country where you have been arrested and prosecuted.

3. Decides that the provisions described in paragraphs 5 to 14 below, which are consistent with the trade embargo recommended by the Organization of American States, must take action at 00:01 EST on June, 1993.

The request for extradition of individuals for terrorist acts under the protection of Chapter VII of the Charter demonstrates the need to adapt the same principles to the global reality by issuing resolutions. Under these circumstances the refusal to extradite suspects can generate an imminent threat; it can trigger a unilateral military action.

Any other discussion arises regarding new adaptations made by the Board regarding the use of Chapter VII when it comes to intervention. Undoubtedly the

Interests of Board Members play an important role in deciding what action to take in case of conflict in a nation. However, whatever is at stake when it comes to conflicts that violate the rights of human beings, the question of intervention is inevitable. Many authors claim that the intervention has never solved the real problem and that unlike most serious problems have arisen particularly in countries lacking political and economic stability. So, say, the use of peaceful means is the real tool to maintain peace and security. What is certain is that the scope and type of measures vary from case to case, the issues that arise in cases of recommendation and the imposition, but are measures of a similar nature being equally different.

The use of force has always tried to keep as a last resort to be used in resolving conflict. Before that, a number of measures both economic, military, even coercive nature can be adopted by the Council under the protection of Articles 40 and 41 of the Charter respectively:

"In order to prevent aggravation of the situation, the Security Council may request the ..... concerned to comply with such provisional measures as it deems necessary or advisable ...."

"The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and may call upon the Members of the United Nations to apply such measures ....."

Both articles give the Security Council the authority to employ a variety of measures to give effect to its decisions. In fact leaves ample room for the implementation of those that he considers necessary under the analysis of the situation. To do this, it is common

that the Council establish subsidiary bodies to support or implement these measures. Among the most common are the so-called sanctions, which usually have the support of a committee or panel of experts or other mechanisms to monitor their implementation. Among the methods that the Council may be employed are: ceasefire, observations for peacekeeping, deployment of peacekeepers, provisional administration of the territory, foreclosures (making ships or aircraft, property and even country goods against which applicable), peaceful blockades (cutting all kinds of communication with the exterior), boycotts (interruption of commercial and financial relations, excluding those humanitarian measures), severance of diplomatic relations (bilateral or collective), etc. In conclusion, the Security Council can only issue decisions in response to particular situations.

If the above measures prove not to be effective for the restoration of peace, the Charter Article 42 authorizes the use of force in the measures used to quote:

"If the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be, may take such action by land air forces, naval or action necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea or land of the Members of the United Nations"

Within this article there are several points of analysis. First, as stated above, there must be an order of actions before the use of armed force. Before invoking Article 42 requires that the Council establishes the emergency situation through Article 39 and the applicability of the following items. However, in the practice, it's not always in that order. "The Council has a broad prerogative under the Charter to switch from using the powers under Chapter VII to another. The Council may, if desired, to use military measures under Article 42 at any time, if satisfied that the situation requires the immediate use of force "(Sarooshi, 1999, p. 199). The fact that decisions or resolutions without mentioning or invoke an article is taken, does not mean it has not taken into account in reaching the decision. For example in the case of Article 39, the Council has made a series of decisions based on it without making a specific reference.

Second, authorizing the use of force is explicit in the article: "... may take such action by air, sea, or land forces, the action is necessary ..." As already stated in the previous chapter there are certain exceptions to the use of force: self-defense, individual or collective against armed attacks, and collective action or enforcement of the Security Council with respect to threats to peace, breaches of the same or acts of aggression. To do this the Council may ask their members to immediately provide for the use of their armed forces under the command of the Military Staff Committee, which will consist of the Heads of State of the permanent members of the Security Council. Being a member of peace, the United Nations does not have its own armed forces so the help and cooperation of Member become indispensable and mandatory in cases of this magnitude, as it has the Charter in its Article 2, paragraph 5:

"Members of the Organization will pay it´s assistance in any action it take in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action."

The details and specifications under which the Member States shall give military aid are contained in special conventions established under the provision of Article 43. All though, the Organization will not have armed forces before the ratification of these conventions, which time that could be prolonged indefinitely. The difficulty of applying the provisions of this article is covered by Article 106[65]. During the time that the Security Council decides that agreements are effective to exercise armed actions, permanent Members may, on behalf of the Organization, to take the actions necessary for the establishment of peace and security. The text of Section 106 makes clear that not all special agreements for the provision of armed forces must be ratified before the Security Council to take military action, including not indicate the need for the existence

[65] CHAPTER XVII Transitional Arrangements on Security
Pending the coming into force of such special agreements referred to in Article 43 and which the Security Council enable it to exercise the powers referred to in Article 42, the parties to the Four Power Declaration signed in Moscow on 30 October 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires place with other members of the Organization, in order to agree on behalf of the joint action whatsoever necessary to maintain international peace and security.

of threats available, breaches or acts of aggression. Moreover the article does not refer to a time limit for the termination of your application. Based on these provisions could say that there are no specific boundaries of the powers of the Security Council, however, this does not mean that its outside of the law, however it is subordinated to international law and the rule of *ius cogens.*

2.1. Effect of Resolutions of the United Nations - The Security Council

The United Nations as the chief governing body of the International Community has certain capabilities that influence the development of international law as the power to issue resolutions, some of which can be seen as direct sources of international law or simply as compliance rules under treaty. According to Korovin YA (1947): "the decisions of international organizations and agencies can to some extent be regarded as a source of international law if they are recognized internationally" (quoted in Treaty of International Law, 2002, p 170.). While the decisions taken within the framework of international organizations are not mandatory (except supranational bodies such as the European Economic Community), they translate the majority opinion of the States and thus contribute as instruments of interpretation and complement the development of customary rules of international law. The resolutions issued by organs of the United Nations, including the General Assembly are not binding, except those mandated by the Security Council, so I need to make an emphasis on the effect they have on the behavior of the International Community.

As stated above, the Security Council is the body responsible within the United Nations to issue binding rulings and have binding effect on international peace and security. Its foundation is based on Article 25 of the Charter states that "Members of the United Nations agree to accept and carry out the decisions of the Security Council under the present Charter"[66]. The universality of this provision in turn is based on Article 2.6

[66] In the opinion of the Court in The Hague June 21, 1971 (Case of Namibia) is invoked and applied Article 25 as follows:

stating that "the Organization shall ensure that states which are not Members of the United Nations act in accordance with these principles to the extent necessary to maintain international peace and security." Thus the Council would become responsible for emitting the effects of these decisions. Such effects depend on the type of resolution. Within the practice of the United Nations, there are two types of resolutions: recommendations and decisions. The recommendations are those that have no binding effect, while decisions are those who possess it. As Díez de Velasco (1997) states,

"These recommendations differ from binding decisions, in which Member States are not obliged to implement its content, since the obligations under are procedural order rather than on the merits" (quoted in Marcano Monroy, 2007, p . 142)

However, it is important to note that in practice this statement is not entirely correct, since there are recommendations, especially those that are adopted unanimously, which have significant influence on international law, constituting with the passage of time and constant use usual norm[67].

The effects of decisions can be classified and analyzed under a number of different parameters, either by its compatibility with the Charter (intra vires or ultra vires), recipients (if it affects one member, multiple members, all members etc..), the terminology used (if recommended, decides, declare, etc..), the topic, the possible effects that takes into international custom, the manner in which they were adopted, legal (conventional base or custom), etc. According to Divac (2006) there are three types of legal effects or consequences arising from the resolutions. First, the creation of a rule establishing obligations, rights and powers derived directly from your application (also known as "substantial effects"). To create an obligation or right, the resolution should be able to change the nature of the relationship between the recipients; not only the decisions and recommendations will have this effect. Second, the creation of

---

Decisions made by the Council in paragraphs 2 and 5 of resolution 276 (1970), in relation to paragraph 3 of resolution 264 (1969) and paragraph 5 of resolution 269 (1969), have been adopted as with the purposes and principles of the Charter and articles 24 and 25. They are therefore binding on all States Members of the United Nations, which are therefore obliged to accept and implement.

[67] A clear example of this practice is repeated condemnation of apartheid.

determinations or legal situations triggered by the substantial effects (for example when an obligation was violated), to which is also known by the name of "causal effect". And finally how and when substantial effects operate (modal effects). Each of these is subdivided depending on the intrinsic or extrinsic effect it generates. Intrinsic effects are those derived directly and immediately from the adoption of the resolution, in which the basis of the legal effects are conventional sources, the same as acting on the domestic law of the UN; and extrinsic or consequential effects are those that are directly based on customary international law, due to the lack of necessary skills body.

Well after establishing the substantial effects, causes and manner of resolutions, it's time to analyze them from the intrinsic legal perspective. As we have determined, decisions have the ability to create reciprocal rights and obligations between the parties involved, which in turn generate legal consequences or not, depending on the actions committed by the parties in response to the decision. Only those actions that have a legal relevance possess a causal effect. With respect to modal effects, two points arise for discussion: the timing and reversibility. Within temporality, the decisions taken by the Security Council are executed immediately and have no retroactivity. On the issue of reversibility, there are special cases create resolutions to declare definitive legal effects, so it is impossible to reverse them. However, under normal circumstances, the general rule is that decisions are reversible either partially or completely when the same body that issued first, declare another.

Moreover, within the legal effects of decisions extrinsic mention two of the main issues that the International Court of Justice itself has addressed concerning the general customary international law: the *opinio juris* and practice. Doctrinal differ on whether the resolutions of the various organs of the United Nations only interpret pre-existing rules of international law or in fact have the ability to rethink new rules. In the Advisory Opinion on Nuclear Weapons, 1996[68], the General Assembly requested the Court's opinion on whether international law allows in some circumstances the threat or use of

[68] Advisory Opinion on nuclear weapons and the contribution of the International Court of Justice to international humanitarian law. 31.01.1997 Article, International Review of the Red Cross, Christopher Greenwood. Available at http://www.icrc.org/spa/resources/documents/misc/5tdlb3.htm

nuclear weapons, which showed that although the recommendations of the Assembly did not have a binding effect, in some cases they have a normative value, expressing the need to create new rules in international law to suit the reality of relations between states.

In conclusion we can say that the legal effects of decisions arise solely from the sanctions; declarations, recommendations and resolutions to interpret the Charter do not have legal effects on their own. Importantly, the resolutions do not generate legal effects by themselves but comes from the universal acceptance of the members of the United Nations. However, the binding effect they have is undeniable as it affects not only the organization and its members, but the entire International Community and the general international law. Below is a chart that will help in a better way to understand the effects generated by the resolutions:

EFFECTS	**INTRINSIC**	**EXTRINSIC**
Substantial Effects	Recommendations and sanctions.	Created by practice and opino iuris.
Causal Effects	Yes	No.
Manner Effects	Yes, flexible (with retroactive or not, final and /or reversible effects immediate or deferred)	Yes, but always with immediate effect, not retroactive and reversible.

Figure 1 Intrinsic and Extrinsic Effects of Resolutions

2.2. Is the Security Council a Judiciary Organ?

Before proceeding with this analysis it's necessary to make a clarification on the "judicial power" of the Security Council. As already stated on multiple occasions, the Security Council is the body responsible for ensuring international peace and security, this lens enables the Board to issue decisions with binding effects on the application of Chapter VII of the Charter, it is not the finding that he has committed a wrongful act, but the finding that a fact is a "threat to the peace, breaches of the peace and acts of

aggression" which gives this power. While the Council in fulfilling its functions attributed to certain members offenses, this does not make him the judicial organ of the United Nations. This is also manifested the International Criminal Tribunal for the Former Yugoslavia:

"Clearly, the Security Council is not a judicial body and is not provided with judicial powers (though it may incidentally perform certain quasi-judicial activities as making the determination of results). The main function of the Security Council is the maintenance of international peace and security in the performance thereof, the Security Council shall executives and decision-making powers."[69]

While the Security Council serves as a political body, its powers appear to be involved with other organs, especially with those of the International Court of Justice[70], creating a sort of confusion and overlapping powers. In order to clarify this problem, you need to go to its founding treaty, which it is established both powers, procedure and the limits of its various organs. So it is logical to assume that the validity of the resolutions of a body depends entirely on its conformity with the constitutive act, in this case with the Charter[71], so neither has the ability to update skills. This brings us to another key point that expresses the Charter with respect to the Security Council. Under Article 103 of the same points:

"In case of conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations prevail under the present Charter."

That is, the resolutions of the Council are not only required for the receiving State, they are given priority over all other obligations, be it conventional or customary, which lead

[69] Prosecutor vs. Dusko Tadic a / k / a "DULE" 35 ILM 32 (1996), p 45, para 37. Translation made by the author.

[70] The International Court of Justice, also known as the Court is the judicial organ of the United Nations. It is primarily responsible for deciding according to international law the legal disputes that may arise between States. It also issues advisory opinions on legal questions that may be submitted by bodies or specialized agencies of the UN.

[71] Article 24.2 of the Charter:
... In the performance of these functions, the Council shall act in accordance with the Purposes and Principles of the United Nations.

us to the conclusion that the obligations can change and contradict regulating force of international law. However, we must emphasize that these decisions apply only in specific situations.

With respect to the settlement of disputes and conflicts concerning the use of force, although the Security Council has the primary responsibility to address these issues, this does not prevent the Court if they have the states involved, to intervene if the problem in question needed a judicial review. This is stated in Article 36:

2. The Security Council should take into consideration any procedures adopted by the parties for settlement of the dispute.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule, shall be referred by the parties to the International Court of Justice in accordance with the provisions of Statute of the Court.

Prevent access of States to the Court would go against the Charter and the very principle of settlement of disputes by peaceful means, that points to the International Court of Justice as an existing resource. Inclusive, we note that unlike the Security Council, the Court cannot refuse to settle disputes that members decide voluntarily submit to its jurisdiction.

Specifically, the Charter of the United Nations makes mentions in certain chapters arranged capacities for each of their bodies, but not the detailed notes if they did their practical application would be void. In regard to the interaction of nations, it is inevitable that in order to solve the conflict, both the Court and the Security Council can act in parallel in the same situation. Do not forget that as autonomous bodies, each shall work in different areas, but shall be subject to the same guiding principles of the United Nations. The Court in exercise of its judicial functions considered and decided from a legal perspective the issues under its jurisdiction, regardless of whether these same issues are being or have been subject to analysis and decision of the Security Council. Both the Council and the Court act according to a principle of cooperation and without a

relationship of hierarchy, trying to develop their skills in harmony, preventing such actions conflict and ensuring the maintenance of international peace and security.

2.3. Intervention by the International Community in Conflict Kuwait-Iraq and Afghanistan

The Iraq-Kuwait (1990) and Afghanistan (2001) conflict, set a precedent in international law for the decisions of the United Nations Security Council on the Navy Intervention and the Use of Force as a means to end threats to international peace. Although, the acts committed in those countries had a different origin and effects, they were enough to authorize the coalition of Member States. These facts came to life and changed the way the military system of sanctions under Chapter VII of the Charter and its collective security system acts against the various conflicts. Determining the legality of the actions of the United Nations under the framework of the protection of international peace and security Nations is somewhat difficult due to the increasing diversification and expansion of the work of the organization and instability in the economic, social and humanitarian that could trigger a number of new threats. However, by analyzing these two conflicts we can gain a better understanding of the process carried out by the organization in its duty to preserve peace among nations.

2.3.1. Kuwait-Iraq Conflict (1990-1991) "Gulf War"

Background.-

The Gulf War took place between 1990 and 1991. It was the result of economic, territorial, religious and political factors that led to the invasion of Iraq on Kuwaiti territory. The two nations held territorial disputes in Kuwait, once belonged to the Ottoman Empire, in the province of Basra. After independence in 1961, Iraq did not recognize Kuwait as an independent nation, trying to annex its territory to their own. This fact was prevented by Britain and the Arab League. Likewise questions territorial, they continued to be interested in Iraq to curb the expansion of Shiite Islam in the region and its expansionist policies led by oil interests, between the years of 1980 and 1988 war with Iran broke out; this conflict left a winner but with terrible economic losses, making of Iraq a heavily indebted country. In this problem, the steady growth of inflation in the

country due to lower revenues from oil exports was added. As a source of escape from the economic crisis of the nation was, its ruler Saddam Hussein[72] who accused Kuwait in July 1990 of trying to lower the price of oil in order to exceed the rate of extraction and refining of oil. Besides to profit extraction hydrocarbon deposits located on the border between the two countries. Finally, Iraq decided to assert its sovereignty over the Warbad and Bubiyan islands located in the Persian Gulf off Kuwait's coast, where the Iraqi leader was planning the location of a port that will allow obtain the necessary funds for the reconstruction of the post-war country. So on August 2, 1990 Iraqi troops invaded Kuwait.

Against the invasion of Iraqi troops, the Security Council issued the same August 2, 1990 in resolution 660 which requires unanimous vote by the immediate and unconditional withdrawal of all Iraqi forces from occupied positions and calls for the involved nations begin immediately intensive negotiations to resolve their differences, promoting the principle of settlement of disputes by peaceful means. To support this pronunciation by the Arab League[73] and immediately the Council under Chapter VII of the Charter of the United Nations issued the following resolutions were added. In principle, the Council has determined the existence of a threat to the peace, breach of the peace or act of aggression (Article 39 of the UN Charter). In this situation the Council proceeded to order coercive measures based on Article 41:

"The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and may call upon the Members of the United Nations to apply such measures, which may include complete or interrupt part of

[72] Saddam Hussein Abdel Majid al-Tikriti (1937-2006) ruled the nation of Iraq under the Baath Arab Socialist Party from 16 July 1979 until April 2003, when he was overthrown and forced into hiding by the army of the United States. Captured in December 2004 he was convicted after two years of trial, November 5, 2006 by the Iraqi High Tribunal to die by hanging for crimes against humanity.

[73] The League of Arab States is an international organization that coordinates economic, trade relations, communications, culture and health among Arab States. Its main objective is to coordinate political action for close cooperation between them as a means to safeguard their independence and sovereignty. It consists of 22 member countries: Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria, North Yemen, Libya, Sudan, Morocco, Tunisia, Kuwait, Algeria, UAE, Bahasa, Qatar, Oman, Mauritania, Somalia, Palestine , Djibouti, Comoros, Islamic Republic of Afghanistan

economic relations and of rail, sea, air, postal, telegraphic, radio, and other media communications, and the severance of diplomatic relations."

Due to the refusal of Iraqi military forces to leave Kuwait, the Security Council proceeded to the adoption of measures not involving the use of armed force, in particular economic and financial sanctions. By Resolution 661 of August 6, 1990 the Council gave formal start to his intervention to end the conflict and restore peace in the region. In this resolution, the blockade was imposed economic in imports, exports, capital flows, supplies of arms or other military implement and financial resources[74], which led to the emergence of overall economic relations with Iraq, except those activities directly related to medical and humanitarian aid. In order to monitor the implementation of the embargo, a Sanctions Committee composed of all Members of the Council was established. On August 8, the naval forces of the United States and the United Kingdom were deployed in the Gulf in order to prevent any violation of the sanctions issued by the UN, to which troops sent by the Arab League would join later.

---

[74] According to Resolution 661: "all States shall prevent a) the import into their territories of all products originating in Iraq or Kuwait and exported therefrom after the date of this resolution. b) all activities by their nationals or in their territories which promote or are calculated to promote the export or transshipment of any commodities or products from Iraq or Kuwait, and any dealings by their nationals or their flag vessels or in their territories of products or goods originating in Iraq or Kuwait and exported therefrom after the date of this resolution, including in particular any transfer of funds from Iraq or Kuwait to attend activities or transactions. c) the sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes and, in humanitarian circumstances, foodstuffs, or any person or body in Iraq or Kuwait, or any person or entity in connection with any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply of such commodities or products. "Furthermore, "all States shall not make available to the government of Iraq, or any commercial, industrial or public utility company operating in Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their national and any persons within their territories, or disposing thereof withdrawn otherwise available to the government or these companies, any such funds or resources and submit any other funds to persons or entities who are in Iraq or Kuwait, with the sole exception of p.os strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs ".

Facing the bleak outcome of previous resolutions and 9 August 662 and 664 of 18 August, and the continued refusal of Iraq, the Security Council decided to apply Article 42 of the Charter:

"If the Security Council considers that measures to which Article 41 would be inadequate or have proved to be, you can exercise by means of air, sea, land forces, the action is necessary to maintain or restore international peace and security worldwide. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations. "

So by resolution 665 of August 25, 1990, the Council authorized a naval blockade[75] supported by the military forces of its members in order to ensure strict implementation of resolution 661. This air lock set the resolution added 670 of September 25, 1990, completing the interruption of economic relations. Finally, after three months of the start of the conflict, the Council of the United Nations by resolution 678 of November 28, 1990 authorized Member States to cooperate with the government of Kuwait to "use all necessary means to uphold and carry implement resolution 660 (1990) and all relevant resolutions that followed and to restore international peace and security. "It also establishes the January 15, 1991 as the deadline for Iraq to comply with previous resolutions.

2.3.1.1.A New Collective Security Practice: Resolution 678 (1990)

The resolution 678 marks a vital point in the development of international law because until that time, the resolutions issued before then were they involved preventive and penalties involving minimal use of armed force. Although the text of the resolution does not explicitly mention the word "force"; however, leaves a very wide interpretation to use "all necessary means". Therefore, the text does not exclude the use of force but nor prohibited by it to provides the possibility of using it as a new practice for resolving disputes between nations and to restore international peace and security.

[75] One of the main reasons why the Security Council decided to impose a naval blockade was the conduct of the Iraqi government to use its national flag vessels to export oil.

This new measure to implement collective security has been a topic of discussion among doctrinaire deep to determine the legality of the authorization and use of armed forces. The involvement of the Military Staff Committee, which, according to the Charter itself is responsible for managing the strategic direction of any armed forces placed at the disposal of the Council and covenants that must be established for the development of joint action were the main topics of discussion. According to Estevez Acosta (2004), the resolution 665 was presented as a "revitalization system" by asking members coordinating actions with the Military Staff Committee in addition to the Security Council[76] placed the control of blocking actions. However, the resolution 678 (1990) which allowed for the use of armed force did not require any control, asking only keep the Council informed. So in practice, military activities were fully borne by the Member States and the Council delegating own abilities, authorizing the implementation of actions on its behalf and on behalf of him. The management of military action fell on the United States of America; they requested only keep the Council informed on activities.

Another of the highlights on the legitimacy of the actions employed under the resolution 678 is the constitutional basis on which it was established. Carrillo Salcedo (1991) notes that:

"By authorizing the Security Council to cooperating with Kuwait to measures provided to ensure compliance with economic sanctions against Iraq (Resolution 665) and use all necessary means from January 15, 1991 states, if persists in Iraq (Resolution 678), one has the impression that proceeded to a strict application of Article 42 of the Charter, that is, the application of collective military action under the authority of the Board of Security with the help of the Military Staff Committee "(quoted in Albert Galinsoga, 2013, p. 281)

Authors like Becerra Ramírez (2011) further state that the grounds for such action are embodied in the right to self-defense under Article 51[77], because the requirements

[76] Article 47, section 3.
[77] .... Nothing in the present Charter shall impair the inherent the right of individual or collective self-defense, if an armed attack occurs against a Member of the United

stipulated by the Charter itself did not exist or were not met in this situation. It is argued that the Council only addressed legitimizes a pre-made intervention. In this regard Carrillo Salcedo (1991) argues that the United Nations, rather than acting as an instance of international authority, was used by the United Coalition as an instance of legitimization of their decision to resort to armed force against Iraq. The command of the multilateral coalition (United Kingdom, Saudi Arabia, Kuwait, France, Qatar, Italy, Poland, Czechoslovakia, Canada, Egypt, Syria, Morocco, Oman, UAE, Bahasa, Poland, Australia and Argentina) was responsible for United States, with France and the UK are the main suppliers. The lack of a UN armed contingent and the need for the provision of the armed forces of member states, leads us to the question of who bears responsibility for the actions taken. It stands to reason that the UN as the international organization that oversees the peace has no army on its own, so the participation of a multilateral coalition is vital. In the case of Iraq, Kuwait, such control was not nearly as efficient overall command to the U.S. left. The decision to transfer this capacity to one of the member countries of the organization and of the Security Council showed that in this case, Article 42 was applied.

Ambiguity Resolution 678 allows a series of judgments about its legal validity arise. However, despite all the discussions on the subject, resolution 678 demonstrated that the Charter system works effectively in its goal of restoring peace and security. The actions of the UN and especially the Security Council marked a turning point on its application to reality. While it is impossible that the Charter has all the answers to the unstable stage of international relations, it should at least provide the necessary guidance to resolve conflicts legitimately. Determine the legality of the actions committed in this conflict is extremely difficult, however, and in my opinion, the literal application of Chapter VII is impossible, as would limited the performance of the organization and of the Security Council. So the transfer capacity by the Council to delegate the use of force seems legitimate after all the Charter empowers the Board itself to a direct intervention on their own. In conclusion, a genuine and determining point in the legitimacy of the actions of the International Community at the hands of the Security Council on the conflict was the

---

Nations, until the Security Council has taken measures necessary to maintain international peace and security ...

intensity of the situation, in first instance the Council called for a ceasefire, then against refusal of Iraq is forced by different means in collaboration with Member States, will impose sanctions, and finally reaches the maximum point at which the use of force was decided to restore order between the two nations.

Due to the refusal of Iraq to invoke Resolution 678 (1990) and the date set as the limit of 15 January 1990 to withdraw its troops from the territory of Kuwait, on 16 January 1991 the attack began between the Allied forces and the Iraqi army. The Gulf War was an extremely uneven conflict where there was a clear superiority of the allied arms (an international coalition of more than 30 nations led by the United States) and Air Force. Likewise casualties were also uneven; while the allies were less than 500 people, Iraqis lost about 20,000 soldiers and more than 100,000 people in total[78]. The operation was carried out in two phases: air and ground. Under the command of General Scharwzkopf participation began the war by coalition air strikes, the same that lasted over a month. In response, Iraq attacked with missiles region of Saudi Arabia and Israel. Then they began ground attacks, an attack with a last four days, in which the capital was liberated. As a result of the conflict, Iraq was forced to retire and accept a nuclear and chemical disarmament. Kuwait reestablished its sovereignty over the territory and its Emir returned to power.

Following resolution 678, the Board issued 5 other resolutions (686 of March 2, 1991, 687 of April 3, 1991, 700 of June 17, 1991, 706 of August 15, 1991 and October 2, 778 1992). Finally on April 3, 1991, the Security Council established the conditions for a permanent cease-fire and sets. Recognition of the international border and possession of agreed islands between Iraq and Kuwait in 1963 Send to UN forces a demilitarized zone to be established between the two countries. Invites Iraq to sign international protocols ban employment, production or stockpiling of chemical and bacteriological weapons and the destruction of its stockpile of these weapons and rockets more than 150 kilometers, under international supervision. Iraq also must ratify the Treaty of Non-Proliferation of Nuclear Weapons of 1 July 1968 will not buy, build or employ such weapons. Decides

[78] USA. A nation under God?, José Carlos Diaz, 2006, p, 179. Available http://books.google.com.ec/books?id=Z6qvVaUlpisC&pg=PA179&dq=operacion+tormenta+del+desierto&hl=es&sa=X&ei=T

that all statements made by Iraq since August 2, 1990 are void. Repeals provisions of resolution 661 in regard to food and medicine and other essential goods passing civilians. Requires Iraq to prevent acts of international terrorism from its territory and prohibits funding or promotion.

2.3.2. The War in Afghanistan (2001)

On September 11, 2001, four planes were hijacked in the United States by 19 terrorists belonging to Al-Qaeda group. Two of them were deliberately crashed into each of the respective Twin Towers located in the World Trade Center in New York; the third crashed into the Pentagon in Virginia and was the fourth plane crashed in Pennsylvania. The day after the attack the Security Council adopted resolution 1368 (2001) of 12 September 2001, by which, the inherent right of individual or collective self-defense recognized while considering condemns attacks threaten international peace and security. The Taliban, the dominant political group in Afghanistan was accused by the United States to protect Osama Bin Laden (leader and founder of the Islamist group Al-Qaeda) in Afghanistan established and allow terrorist operations center.

Before the beginning of the military operations, specifically the September 20, 2011, the United States through its President George W. Bush established an ultimatum to the Taliban government that consisted of five specific demands no right to negotiate. First delivery is demanded U.S. authorities all the leaders of the Al-Qaeda network in Afghanistan are hidden. Second, he demanded the release of all foreigners, including U.S. citizens, who are unjustly imprisoned. Third, protect all foreign journalists, diplomats and aid workers in your country. Fourth, immediately and permanently close all terrorist training camps in Afghanistan and hand over every terrorist, and any other person belonging to the network. Fifth and finally, give the United States full access to terrorist training camps, to ensure that activities are definitely over. Faced with such requests, the Taliban government prefaced a series of deals to meet some points. Delivery of Osama Bin Laden Pakistan was proposed to be subsequently tried by an international tribunal that would operate according to Islamic law called Sharia.

On 28 September 2001, the Security Council adopted Resolution 1373, which reaffirmed by resolution 1368 and provided measures against terrorist financing also required its member states to refrain from actions that may directly or indirectly support any terrorist organization. Until then, the Security Council condemned the acts of September 11 but not expressly authorizing military activities to be carried out later under the name of "Operation Enduring Freedom". However, the lack of explicit recognition did not prevent the exercise of self-defense raised by the United States.

The International Community supported the U.S. decision to respond to the attacks on the grounds of self-defense. The issue of terrorism as a real threat to the world made major nations condemn the act and support the search for justice and punishment of the guilty. The European Union even considered legitimate U.S. decision to resort to use of force[79] and ratified its agreement to the resolution 1368 of September 12, 2011 the Security Council stated:

1. Unequivocally condemns the terrorist attacks of September 11 in New York, Washington DC and Pennsylvania and regards such acts constitute a threat to international peace and security;

2. Urges all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those complicit in these acts and responsible for supporting or harboring them will be held accountable for their deeds.

3. Urges the International Community to meet international counter-terrorism conventions and Security Council resolutions, in particular resolution 1269 (1999) of October 19, 1999;

4. Expresses its readiness to take all necessary measures to respond to the terrorist attacks of September 11, 2011.

[79] The support of the European Union for the use of force was subsequently clarified on October 7, 2011 in the statement of the President of the European Commission Romano Prodi in military activities against terrorism IP/01/1375.

Similarly, the Treaty Organization (NATO)[80] in response to the attacks delivered through its Secretary General condemning the attacks in the strongest shape and confirmed their commitment to the United States for assistance and support in decision take. Thus, the same September 12, the North Atlantic Council invoked Article 5 of the Washington Treaty which invoked:

The parties agree that an armed attack against one or more of them occurred 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 the exercise of self-defense, individual or collective, recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking individually, and according to others, the measures it deems necessary, including the use of armed to restore security in the North Atlantic forces. Any such armed attack and all nature resulting measures will be put immediately to the attention of the Security Council. These measures will end when the Council has taken measures necessary to restore and maintain international peace and security.

The unprecedented decision to urge this article sparked reactions from the International Community on the legality of the act. According to the objectives of the NATO military activities undertaken in the interest of safety of its members are restricted to the consent and actions taken in compliance with the objectives of the United Nations. His treatise establishes their commitment to resolve their differences by peaceful means as it establishes the United Nations Charter and to refrain from activities that conflict with the purposes of the UN, especially those relating to international peace and security. It also establishes the obligation not to interfere with or enter into any agreements contradict Convention keep their Member States and that are currently in force. NATO's role in this conflict can be understood as the massive hand of the United Nations. In view of many analysts the lack of a permanent force of imposition of UN peacekeeping has

[80] The organization of the North Atlantic, also known as the Atlantic Alliance is a military alliance based on the North Atlantic Treaty signed in Washington DC on April 4, 1949 by the Governments of the United States, Canada, Belgium Denmark, France, Holland, Iceland Italy, Luxembourg, Norway, the UK and Portugal. Its main objective is military cooperation in defense and security of its members. The organization currently consists of 28 members.

allowed NATO to act repeatedly without express mandate, forcing the proper functioning of the Security Council, as it has forced the facto to accept this kind of formal recognition of the actions committed by NATO. In other words we can say that the United Nations has the NATO mission and the means to "restore" peace and security among nations.

In response to the attacks of September 11, 2001, on 7 October of the same year, the United States supported by the UK government launched the attack on the territory of Afghanistan called "Operation Enduring Freedom". The actions taken were justified before the Security Council on the grounds of self-defense, protected by Article 51 of the Charter of the United Nations. However, when the U.S. first attacked terrorist camps in Afghanistan, ever the phrase "self-defense" was mentioned but the use of force as a direct consequence of the inability of the regime Taliban to comply with the terms of justified imposed by the U.S. ultimatum[81]. This would usher in a chase that lasted more than 10 years in the fight to end terrorism in Afghanistan.

Despite criticism that weighed on the decision of the United States, including the misgivings of some members of the Security Council itself, most nations supported the attack. Fear psychosis and global terrorism played a key role unite allies. The then Secretary General of the United Nations, Kofi Annan, described terrorism as an international scourge, adding that "a terrorist attack on one nation is an attack on all humanity" and therefore "all nations of the world must work together to identify the culprits and bring them to justice"[82] Bin speech before the attack of October 7, 2001 Laden "America will not know what is security" was the turning to Canada, Australia France, Germany along with 40 other countries support the development of the operation point. The offensive attacks included not only war generation mechanisms but also in a series of measures to block any funding source of radical Islamic organizations that are pursuing. The capture of Osama Bin Laden and bacteriological threat of a possible counter-attack by Al-Qaeda attacks reinforced the Allies.

[81] www.whitehouse .gov/news/releases/2001/10/20011007.8.html
[82] http://www.theguardian.com/world/2001/sep/22/September11.usa

On December 5, 2001, the International Force Security Assistance (ISAF) was created based on the Boon Agreements[83], with the aim to help the interim government headed by Hamid Karzai, who was constituted as the President designated transitional administration in December 2001. The Security Council in resolution 1386[84] authorized the establishment of such a force, it would be responsible for extending and exercising government authority throughout the country, starting around Kabul, and in this way to create the conditions for reconstruction and stabilization of the country. In October 2003, by resolution 1510 (extension of resolution 1386) the Security Council delivery address NATO ISAF authorizing the exercise of the mission to the entire territory of Afghanistan. Importantly, the ISAF was not a mission of the United Nations but was created based on a military international agreement between the United Kingdom and the interim government of Afghanistan. Agreement which was accepted later, on 10 January 2002 by all participating States of the international force including Spain through what was called a "Memorandum of Understanding". The figure of Spain is important at this point because his firm adhesion and is done illegally in violation of Article 94.1.b) of the Constitution, which requires the prior approval of Parliament for the conclusion of treaties or conventions military.

The NATO intervention by managing ISAF throughout Afghanistan exceeds the principles set out in Articles 5 and 6 of the North Atlantic Treaty. The same limiting self-defense operations in the territory of North America and Europe. The ISAF mission was the first of its kind for NATO and one of the most important to date. Its basis lies in the new Strategic Concept adopted in 1999 at a summit in Washington, which broadened

[83] Two months after the start of Operation Enduring Freedom, held in the German city of Bonn-called UN talks on Afghanistan.

[84] In accordance with Chapter VII of the Charter of the United Nations, at points 1 and 3, the Council:

1. Authorizes, as foreseen in Annex 1 to the Bonn Agreement, the establishment for 6 months of an International Force Security Assistance to support the Afghan Interim Authority in maintaining security in Kabul and surrounding areas, so that the Afghan Interim Authority and the staff of the United Nations to carry out its activities in a safe environment;

2. (...)

3. Authorizes the Member States participating in the International Force Security Assistance to take all necessary measures to fulfill its mandate.

its scope to the entire planet. The 19 states that then comprised the Strategic Alliance decided to take on new roles that were up to the new challenges of the XXI century. In this new model is to establish NATO as the only effective mechanism in sole possession of the means at the time of carrying out an intervention.

Operation Enduring Freedom became a war of persecution of terrorists in and out of Afghanistan that has cost millions of dollars to the United States as well as thousands of military and civilian lives. In the first years of operation (2001-2005) the U.S. victory over the Taliban and Al-Qaeda was undeniable. However, the Taliban were gradually regaining territory, that because Iraq in 2003 became the new scenario of the "war on terror" in the administration of George W. Bush. With the new administration of Barack Obama's efforts have focused on the reconstruction of the country and especially in the preparation of the national army for the systematic withdrawal of U.S. military forces. On June 22, 2011, President Obama announced the return over the next 15 months 33,000 soldiers as well as the possible end of military operations for 2014. This face of severe criticism of Americans against the amount of dollars spent in war and military personnel fallen in battle. On June 18, 2013, the National Security Force Afghanistan officially took control of military operations in his country.

2.3.2.1.Legality of Use of Force against Afghanistan 2001

There are many points of discussion about the legitimacy and authority of the Security Council in Operation Enduring Freedom and NATO's performance in handling the ISAF. The first point is the legal concept of self-defense which relied on the use of force. Although the Charter of the United Nations considered an exception in Article 2.4 thereof, there are a number of conditions that must exist to use this figure. The right of self-defense requires the existence of an armed attack, the immediacy of the response to the attack, the proportionality of the response and the time counter-attack. The existence of the attack is undeniable; the whole world witnessed the terrorist attacks of September 11, 2001 in the United States. However, according to Article 1 of resolution 3314 of the General Assembly of December 14, 1974, aggression is defined as the use of armed force exerted by a State against the sovereignty, territorial integrity or political independence of other State. Further clarifies that aggression is considered any action

including invasion, blockade, bombing or armed groups sent by or on behalf of a State against another. So you cannot blame Afghanistan for the actions committed by a terrorist organization that does not represent in any way. According to Willimson (2009), "The Charter of the United Nations only allows the use of force in two specific situations (when authorized by the Security Council and / or self-defense), none of which can be applied to use of force by a State against the Al-Qaeda in Afghanistan "(p. 205). While the provision of land for the installation of terrorist camps is considered support for terrorism. Therefore the commission of an internationally wrongful cannot be considered an armed attack that allows him to react in self-defense.

Moreover, the immediacy of the response to the attack also complies with the limits of the right of self-defense. Operation Enduring Freedom began on October 7, 2001, in other words 26 days after the attacks. Immediacy is defined as the state's response assaulted an ongoing attack. Likewise, it should be proportional to the attack. The ongoing operation that takes more than 10 years became one of the longest wars involving the United States after Vietnam. During these years more than 46 countries have contributed in the form of personnel, military or auxiliary participant in operations, including neutral states such as Sweden and Austria. A war that has spread throughout Afghanistan where there have been serious violations of international humanitarian law, which could be classified as war crimes. The bombing of Afghanistan affected not only terrorist groups but millions of civilians, mostly women and children, who were left without food and protection measures, not to mention the thousands of Afghans who fled to neighboring countries in search shelter. According to the UN, the humanitarian crisis in the country is not over. More than five million people still require assistance to survive[85]. Which brings us to the last point which is the provisional nature of self-defense, it should be temporary until the Security Council takes the necessary measures to restore international peace and security. It can be used to conclude that Enduring Freedom cannot be described as a war covered under the figure of self-defense, but as an act of aggression against a sovereign state that in addition to violating international law

[85] UN News Centre. 02/12/2014
http://www.un.org/spanish/News/story.asp?NewsID=28706 #. Ux-Qjz95OE4

was the cause of a severe humanitarian crisis dimensions one of the nations with the lowest rates of development and inaccessible.

The legitimacy granted by the Security Council that enabled the completion of Operation Enduring Freedom and NATO intervention in the conflict is the second most discussed topic among doctrinaire. The authorization for the development of Operation Enduring Freedom although it was not mentioned by the Security Council resolutions 1368 and 1373, it was indirectly through the resolutions approving the use of force by ISAF from specifically resolution 1510 of October 13, 2003 stating:

1. Authorized the extension of the mandate of the International Force Security Assistance so that they can, to the extent that resources permit, to support the Afghan Transitional Authority and its successors for the maintenance of security zones Afghanistan outside of Kabul and its environs, to the Afghan authorities and the staff of the United Nations and other international civilian personnel engaged, in particular humanitarian and reconstruction operations can you perform in a safe environment, and provide security assistance for the performance other support tasks Boon Agreement;

2. Authorizes the Member States participating in the International Force Security Assistance to take all necessary measures to fulfill its mandate.

The second part of the resolution reads:

Calls upon the International Force Security Assistance to continue to work in close consultation with the Afghan Transitional Authority and its successors and the Special Representative of the Secretary-General and with the Coalition holding Operation Enduring Freedom in the implementation of the mandate of Force.

Different interpretations can result from this resolution, and that is precisely the common factor that the resolutions of the Security Council have when it comes to use of force. The resolutions on the ISAF had the effect not only the non-condemnation of Operation Enduring Freedom but its legitimization. In practice, ISAF protected the land reclaimed by the troops of the coalition. Besides, ISAF handled humanitarian missions, maintaining security, reconstruction, tracking terrorists and even elimination of opium

cultivation. With the expansion of the functions of ISAF throughout Afghanistan and the delivery of it to NATO, became more evident the importance of the success of ISAF allies demonstrating the true purpose of creation. But even the very formation of the ISAF and its performance in the hands of NATO and its new Strategic Concept were illegal if Spain undue process is analyzed at the time of signing the MOU, and therefore the military support given to the coalition. Although ISAF has the authorization and under the United Nations, the actions committed under his name are not protected by Charter of the United Nations or the North Atlantic Agreement. All these violations and irregularities make the war in Afghanistan lacks legality.

Chapter Conclusions

Chapter VII of the Charter of the United Nations: Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression empowers the Security Council by Article 39 to determine the existence of a threat to international peace and security and it determines the guidelines to follow in such cases. The UN Charter as the constitution of the International Community establishes that all measures not involving the use of force such us economic, commercial, political or financial sanctions must be adopted before the intervention.

However, the Charter does not specify the conditions under which a conflict becomes a threat to international peace and security, leaving the Security Council the freedom to determine it. So the Security Council can issue resolutions binding for UN member nations and those that are not. This statement seems contrary to the provisions of the Vienna Convention on the Law of Treaties of 1969, however in matters relating to international peace and security, the collective welfare prevails.

Under articles 39 and 42 of Chapter VII, the Security Council authorized armed intervention in the conflicts in Kuwait-Iraq 1991and Afghanistan 2001 with the aim of restoring the order and international peace. The Kuwait-Iraq conflict was established under the concept of collective self-defense against the Iraq invasion. The transgression of international principles and the systematic violation of the rights of the Kuwaiti population by Iraqi forces resulted in the intervention of a multilateral coalition headed by the United States to recover the sovereignty of Kuwait. Previous military intervention known as Operation Desert Storm, the United Nations through the Security Council issued a series of decisions to block communications, trade, means of transportation etc. Finally, and because of Iraq's refusal to abandon the occupied territories and obey the past resolutions, the Council authorized the resolution 678 on November 29, 1990. This resolution marked a turning point in international law by authorizing member states to use all the necessary means to restore peace and security in Kuwait. Although the text of the resolution did not mention the words “use of force”, it left an extensive interpretation of "all necessary means". Thus, the use of armed force was carried out through military action by a multilateral coalition. The resolution was not illegal and it was protected

under Article 24 of the Charter. Another point of discussion among scholars was the establishment of treaties between the organization and its members about the use of the armed forces under Article 42. In my opinion the lack of conclusion of such agreements cannot be constituted as impediments to use these measures or an argument for the illegality of the action.

The second case analyzed in this chapter was the military intervention in Afghanistan. Though both share similar legal bases, the way that the UN handled the situation was completely different. Subsequent to the terrorist attacks by Al-Qaeda in U.S. on September 11, 2001, the issue of terrorism generated a global psychosis and caused general concern of the weak security of the country. The United States condemned the incident and appealed to United Nations for an authorization to attack in response. The Security Council also condemned the terrorist attacks and issued two resolutions (resolutions 1368 and 1373 of 2001) by which expressly recognized the inherent right of individual or collective self-defense in the Charter as an exception to the prohibition of the use of force. However, the Security Council condemnation of the facts is not a enough to invocate the self-defense right. This concept covered under Article 51 of the UN Charter sets out requirements for its legal invocation. Although the provision of territory for the occupation of terrorist camps is considered an international crime, this argument cannot be to use to blame Afghanistan for Al-Qaeda attacks. Besides, the State under attack must respond immediately, Operation Enduring Freedom was held nearly a month after the attacks and was obviously not proportional to it, on the contrary, the armed intervention generated a bigger humanitarian crisis. We can conclude that the military operation commanded by the United Nations members did not correspond to a self-defense war.

Another issue about the legality of the intervention is the participation of NATO in ISAF operation. Under Article 42 and the phrase "all necessary means", Operation Enduring Freedom was authorized by the Security Council. The defeat of the Taliban government was the result of the operation, followed by the immediate authorization of resolution 1368 and the creation of the International Force Security Assistance. A number of competences were given to this organism, showing that its creation was intended to

maintain control and to exterminate the terrorism in the nation. It is also arguably the subsequent action of NATO forces and the invocation of Article 5. NATO as the executing hand of the Security Council established a new practice in international law and with its intervention it demonstrated the inability of the United Nations to fulfill the duties that the International Community has given to it.

CHAPTER 3: CONFLICT IN LIBYA 2011

Introduction

The war in Libya was a direct consequence of the so-called Arab Spring, which was a phenomenon characterized by civil uprisings in some African and Middle East countries. Democracy, freedom of expression, respect for human rights and equality of opportunity were the main purposes of the protests and demonstrations. From late 2010 and throughout 2011, 2012 and 2013, North Africa and the Middle East were the scenes of important social protests against autocratic governments established for long periods and characterized by disrespect for the fundamental rights of its people. The Libyan case, unlike the riots in the Middle East, was characterized by the intervention of UN and NATO forces as a measure to stop with the abuses and violations committed by the former leader Muammar Gaddafi against civilians. For that reason, this chapter will contain the evolution of the Arab Spring and its impact on Libya, the historical context of the North African country under the autocrat's 42 years in power, the development of the UN armed intervention in the conflict, the NATO participation in the capture of Libya's Colonel Gaddafi, the key points of the intervention and finally the role played by the International Criminal Court against the crimes committed by Gaddafi forces.

3.1.The Libyan Conflict in the Context of the Arab Spring

During the twentieth century, there have been several uprisings of great geopolitical significance[86], the protests of the Arab Spring are a good example of these geopolitical changes. The immolation of Mohammed Bouaziz and the protests in a small village in Tunisia in late 2010 triggered a domino effect that would transform the social and political relations in Tunisia, Egypt, Libya, Oman, Morocco, Jordan, Yemen, Bahrain

[86] The rebellions of 1919 and 1921 in Mashreq, the Maghreb mobilizations during the first stage of the Cold War (1950-1960), the civil war in Lebanon in 1975, the Palestinian uprisings, among others.

and Syria. Although each case has its own individualities, we can set the common causes that characterized the Arab Spring. Some of the political causes were: governments with weak political legitimacy characterized by abuse of power, corruption and long-standing regimes with a monarchical succession system; lack of freedoms and limitations on freedom of expression and press, violation of fundamental rights, absence of political rights, unjustified imprisonment and bans on political expressions and the desire to establish a functional democracy. However, we cannot justify all this social protest under a purely political light, there are also a number of economic and social causes that intervened as motivators in the mobilizations, such as: unemployment of the economically active population, large groups living in poverty , inequitable income distribution, the increase in food prices, concentration of capital in certain sectors of power, the lack of a middle class, lack of opportunities for young people (which was established as the main actor of social protest), among others.

Access to technology, increased levels of education, media and social networks were also key factors to the desire for freedom and democracy from spreading to other nations in the region. Another important element in the Arab Spring was the support granted by the West and its idea of democracy; however we cannot consider the Western idea of democratization as the only reason why countries like the United States took part in the demonstrations. After the Cold War and the fall of the Berlin Wall, which marked the end of the Soviet bloc (1991), the region became a key piece for the Western powers; this was confirmed with the war in Iraq (1991) and the terrorist attacks of September 11, 2001. According to Gilberto Conde (2011), the lack of political leadership contributed to the spontaneity of the demonstrations as to its limitations at the time of establishing unified and alternative strategies for the overthrow of the dictatorial regimes, reason for which NATO and foreign powers entered to fill those gaps, but only in the cases of Libya and Syria.

The Arab Spring in Libya is an awakening of the population to a release of a dictatorial regime of over 42 years at the hands of Colonel Muammar Gaddafi. To understand the impact and development of protests in Libya is necessary to know the historical context of the nation. Between 1911 and 1949, Libya was an Italian colony. In 1951 it gained its

independence as a sovereign country and in 1952 it consolidated its new status with the election of King Idris. So in 1963 Libya became a centralized country, founded on family structures, clan and ethnic groups. Since its inception, the political life of the nation was characterized by the abuse of power of its leader. In 1969, through a coup d'état, power remained in the hands of Gaddafi, who proclaimed himself as the father of the nation and established a regime known as *Jamahiriya,* based not on a political constitution but a book with ideas of his own called *Green Book.* This text established a so-called "State of masses" in which the population manages the power of the nation through direct participation, however, in practice, Gaddafi was ruling without any opposition.

His sympathy in the Arab world was due to the nationalization of the oil industry and Italian properties, also he closed foreign military bases, as well as he showed himself as a strong opponent of the Western powers and Israel. During the Cold War, Libya became an ally of the Soviet Union, reason why in 1986 it was the subject of an airstrike carried out by U.S.[87] and it was later accused of committing terrorist attacks in Western Europe[88]. In January 1992, the Security Council established by resolution 748 (March 31, 1992), a total air and arms embargo against Libya. With Resolution 883 (November 11, 1993) the UN approved a package of economic sanctions that determined the freezing of funds in foreign banks. Finally, Gaddafi relented to international pressure delivering on 5 April 1999 two Libyan agents who were suspects for the bombings in Lockerbie. The agents were tried by a Scottish Court in the Hage, putting an end to the embargo.

[87] Before the attacks in April 15, 1986 in Tripoli and Benghazi launched by the United States under the leadership of then-President Ronald Reagan, Libya was on the black list of countries suspected of supporting terrorism. U.S. broke diplomatic relations with the African country, closing its embassy in Washington and banning imports of Libyan oil and the export of U.S. goods to that nation. http://www.elmundo.es/elmundo/2006/05/15/internacional/1147711702.html

[88] The crash of Pan Am in Lockerbie (Scotland) on December 21, 1988. Libya was also related with the bomb that exploded in a French UTA company DC-10, over the Niger desert on September 19, 1989.

The relation between Libya and the United States has always been characterized by mistrust and continuous monitoring. For the West, Libya was viewed as a threat in the region; that is why several countries imposed economic measures in order to neutralize it. So USA passed a law called as D'Amato-Kennedy Act (1996) that imposed penalties on U.S. or foreign companies that invested in the energy sector of Iran or Libya. In 2001, this law was extended for another five years. Similarly, the United Kingdom maintained a rupture of diplomatic relations with Libya. The rupture remained for fifteen years until 1999 when the Gaddafi government cooperated with the British authorities to clarify the death of a British police at the gates of the Libyan embassy in London in 1984. In the years prior to the Arab Spring and thanks to the new ideas that brought Gaddafi's son Saif Al-Islam, the relation between the U.S. and Libya began to improve[89]. It was expected that Saif's new proposals will improve the living conditions of the population, however, the economic reform as a result of the international openness of the country served to reinforce the country's paramilitary force (the military power of the regime focused on paramilitary forces led by the sons of the leader). Due to mismanagement of the country, Gaddafi administration confronted repeatedly attempts of coup d'etat.

Despite the similarities between the countries of the Arab Spring, Libya is a case that deserves a separate analysis to understand the development of the conflict. Several factors were responsible for the civil war in Libya in 2011. Isolation, international sanctions, the fall in oil prices, the repressive behavior of the regime, corruption, misdistribution of wealth, the impoverishment of large part of the population, the monopolization of political life and a government that remained in power for over 40 years gained Gaddafi the dominance of the country. While the protests began in Tunisia and spread to Egypt, the situation in Libya was different from the previous cases. To Salgó Valencia (2011), the social order of Libya is based on a tribal system. The

[89] Due to the commitment that the Libyan leader showed in the fight against terrorism, especially in the capture of Osama Bin Laden. In the past, the leader of Al-Qaeda tried to kill the Libyan leader. He also was part of the Islamic Fighting Group in Libya. Voltaire Network. "How Al Qaeda men came to power." <http://www.voltairenet.org/Como-los-hombres-de-Al-Qaeda> (07 October 2011)

political order consists of 140 fairly homogeneous tribes (except for small groups in the South known as sub-Saharan: Berbers, Tuareg and Toubou, separated from each other), but different in size and importance to the regime. Politically, the country is composed of three provinces: Cyrenaica (capital of Benghazi) in the East, Tripolitania (the capital of Tripoli, seat of the government and followers of Gaddafi) in the West and Fessan land of Gaddafi (Sebha Capital) in the South, all without any national integration. Since the arrival of Gaddafi, economic and political power was given to the tribe of the Gaddhaf, while state security was at the hands of the Maqariha tribe.

With the discovery and exploitation of oil fields in the East, the nation's economy improved considerably, although this did not benefit the 138 remaining tribes. These tribes focused on agro pastoral activity in a country in which 90% of its territory is desert. The situation worsened with the fall of oil prices and the international sanctions imposed in the 90s. In fact, for this reason we can understand why the uprising has begun in the East of the country. The greatest wealth of hydrocarbons in Libya is located in the region of Cyrenaica, where sits the largest tribe of the country with a population of one million people known as Warfalla. Before the conflict, this tribe maintained an alliance with the regime, but because of the abandonment and the inequitable distribution of oil revenues (10,490 euros per capita in 2009 thanks to the export of 1.8 million barrels per day)[90], the leaders of the tribe decided to react against the government.

It seems inconsistent that a country with one of the strongest economies in the region and influential in the oil world, as well as having the highest Human Development index in Africa (53 in 2010)[91], faced a general nonconformity to its government. But it is precisely the economic improvement that experienced the country in 2003 with the increase in oil prices and the cancellation of the embargo imposed by the UN that encouraged the gestation of a structured elite opposition. Unlike what happened in

[90] http://elpais.com/diario/2011/03/13/internacional/1299970816_850215.html
[91] United Nations Development Programme (UNDP).Human development reports. 2010 report. Human development report and its components. < http://hdr.undp.org/en/media/HDR_2010_ES_Table1_reprint.pdf > (October 17, 2011)

Tunisia and Egypt, Libya was a war of elite forces composed of deserters from Gaddafi's own government. To Jury Anaya (2011), economic liberalization led to the formation of sectors seeking for the establishment of new political reforms that will transform the "State of mass" into a Republic. This economic and political liberalization will include a written Constitution that regulates the political system and will install an independent judiciary system. In 2005 "the National Conference of Libyan Opposition" took place by the union of three Islamic factions: the Muslim Brotherhood, the Senussi Brotherhood and the Libyan Islamic Fighting Group (LIFG) (known as the reformists). At that meeting were established as immediate objectives the overthrow of Gaddafi and the establishment of a National Transitional Council that will implement in the course of a year a constitutional and democratic state. In 2010 the alternative of political reform was definitely buried by the regime, which caused the discontent of the population and the start of the first demonstrations in 2011. The opposition in Libya increased, extending to other sectors: deserters from the former spheres of power, young lay, insurgents, civilians, Islamists, soldiers, diplomats and other government officials.

3.2.Intervention in Libya and the Armed Operation

February 17, 2011 marked the beginning of the conflict in Libya with the so-called "Day of Rage" inspired by the uprisings of two thousand protesters in Benghazi after the arrest of human rights activist Fethi Tarbel. Throughout the month of February, demonstrations spread quickly to other cities of the country such us: Benghazi, Misrata and Tripoli. As first responses of the regime, the use of social networks was censored, Internet use was discontinued, banned the entry of Western journalists and deployed security forces in the capital. Opponents controlled Benghazi and some of the bordering cities with Egypt. At the same time the Minister of Justice Mustafa Abul Jalil (leader of the National Front for the Salvation of Libya, which will take up arms against Gaddafi) resigned from his post arguing the excessive use of force by the government against the protesters and civilians. On February 22, Gaddafi said that he will not leave Libya, nor forsake power. The next day a thousand protesters moved from Benghazi to Tripoli to release the city, while a Libyan member of the International Criminal Court amounted to10,000 dead since the beginning of the protests. Because of the violent events that occurred in the African nation, the International Community began to manifest.

Thus, the Arab League suspended Libya's participation in the organization, the U.S. decided to freeze the assets of Gaddafi and his family, the United Nations by resolution 1970 on 26 February 2011, approved the blockade of financial assets and economic resources which are on the territories of the UN Member States, that are owned or under the control of Gaddafi or anyone acting on his behalf or under his direction. It also imposed the embargo (purchase and sale) of any type of weapons related to military activities to the Libyan Arab Jamahiriya[92], the imposition of a travel ban for the Libyan leadership to any UN Member State and, supported the suspension of Libya in the Human Rights Council. The resolution also expressed the concern of the UN by referring the situation in Libya as a "serious and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of government"; and referred the situation in Libya to the International Criminal Court to initiate investigations against Gaddafi and members of his regime for alleged crimes against humanity since February 15, 2011.

In less than two weeks since the start of the riots, the National Transitional Council (rebels) was established as the temporary government of the nation, a status that was later recognized by the European Union and the Arab League. This new interim government was formed by the elites from the old regime and was headed by Prime Minister Mahmoud Jibril, a leading supporter of the liberal character stream and pro-Western. Despite the apparent success of the armed uprising in the early weeks, in March the loyal forces to Gaddafi (elite forces, sub-Saharan mercenaries and Revolutionary Guard and special units commanded by his sons, civilian forces belonging to the allied tribes) recovered control of Tripolitania and Fezzan, and threatened to take control of Benghazi. Due to the counter-offensive launched by Gaddafi counteroffensive and the hundreds of crimes committed by forces of the former

[92] Also the UN decides to establish a Committee of the Security Council consisting of all the members to report, monitor and control the implementation of the measures imposed in the resolution.

regime against civilians, on 17 March, 2011, the United Nations through the Security Council adopted resolution 1973 (adopted in less than a month since the first sanctions).

Because of the violation of resolution 1970 in which the UN called for the cessation of the indiscriminate use of armed force against civilians in Libya and the adoption of measures that would satisfy the legitimate demands of the population, the Security Council with 10 votes in favor and 5 against (including the abstentions of two members with veto power: Russia and China) decided to establish by resolution 1973, a no-fly zone, describing the situation of "armed conflict". In the resolution the Security Council authorized Member States to use the all the necessary measures to protect the civilian population, excluding land occupation. To understand the implications of that decision is necessary to analyze each of its parts:

Preamble:

The adoption of resolution 1973 is essentially justified on the violation of human rights and international humanitarian law, the commission of crimes against humanity against the Libyan people, refugees and expatriates. The level of violence and the severity of the situation constituted a threat to the region, going from being an internal matter to an international threat. This fact is supported by Article 2 of the UN Charter which prohibits intervention in affairs of domestic jurisdiction of any State, except those that threaten international peace and security. The text also mentioned the responsibility of the Libyan authorities to protect the Libyan population. This responsibility to protect becomes as a primary duty to the International Community when the government of a particular State has demonstrated its inability to do so or otherwise, as in the case of Libya, has taken direct actions that violate this principle. Thus, sovereignty and the right of non-interference become conditional and lose meaning as arguments to avoid international intervention. Therefore, the violation of human rights is a sufficient justification for military action for humanitarian purposes.

The responsibility to protect of the International Community also carries with it the responsibility of the actions taken to ensure the welfare of the population, which is why the preamble shows the reference made by the Security Council of the support granted

by the League of Arab States, the African Union and the Secretary General of the Organization of the Islamic Conference to authorize the use of force in Libya. With Russia and China abstaining from participating in the conflict in the African nation, for the United States (as leader of operations) it was critical to have the support of the neighboring countries of Libya to initiate any military activity. Thus under Article 42 of the Charter of the United Nations, the Security Council authorized the use of "all necessary measures" to fulfill this purpose. According to Pintado (2012) the actions taken by the Security Council in Libya cannot be considered as excessive and unlawful, therefore the conflict "was not a national problem, but a threat for all nations "(p. 8)

Objectives:

The immediate objectives demanded by the Security Council in resolution 1973 were:

1. The immediate cease-fire and terminate all acts of violence, including attacks and abuses against civilians;

2. Facilitate dialogue for a peaceful and sustainable solution to the crisis by responding to the legitimate demands of the population,

3. Respect and fulfillment of obligations and principles of the international humanitarian law, human rights and refugee law by the Libyan authorities, as well as the adoption of measures to ensure the transit of humanitarian assistance.

For this purpose and under the aegis of the international humanitarian law and the responsibility to protect, and acting under Chapter VII of the Charter of the United Nations, the Council:

1. Authorizes Member States acting nationally or through regional organizations or arrangements, to take all necessary measures to protect civilians[93]. However, the resolution also establishes the exclusion of any foreign occupation force in the Libyan territory. As in previous cases, the only requirement for states to

[93] Article 42 of the Charter of the United Nations

intervene is to notify to the Secretary-General the actions that they will take. It also requests the cooperation of the Member States of the League of Arab States to meet the objectives relating to the maintenance of international peace and security.

2. As a measure of implementing the use of force and to stop the attacks of the allied air forces of Gaddafi, a ban on flights over Libyan territory or the so-called no-fly zone (except for strictly humanitarian flights) was established. To enforce the ban, the Council authorized Member States and the States of the Arab League to overfly Libyan airspace to monitor, prevent, and if necessary to carry out the necessary operations to comply with the resolution.

3. Sets a reinforcement of the arms embargo established by resolution 1970. Resolution 1973 expands the measures giving Member States the authority to inspect, seize and destroy weapons in their territories, ports, airports, inland waters and on the high seas, vessels and aircraft bound to or from the Libyan Arab Jamahiriya. These measures will be carried out only if the State in question has substantiated information that such cargo contains items whose supply, sale, transfer or export is prohibited, including sending mercenary personnel. Once again it calls upon Member States "to apply all measures according to the specific circumstances to carry out such inspections".

4. The flight ban of any aircraft owned by nationals or companies from the Libya Arab Jamahiriya, as well as its overflight and landing in the territory of the Member States.

5. Expands and strengthens the freezing of financial assets and economic resources that were previously established in resolution 1970. Resolution 1973 also includes entities such as the Central Bank, Investment Authority, Foreign Bank, the Africa-Libya Portfolio Investment, the National Petroleum Corporation, whose headquarters are located in the territory of Member States. It also expands the list of people in the family and political environment of Gaddafi. This provision includes any person who violates the arms embargo.

The arms embargo, a ban on flights, the supply armed forces, the naval and air embargo, the freezing of assets and travel bans established in this resolution does not only obliges Member States of the United Nations, including Libya, but also to other non-member States, because it is an issue that threatens international peace and security[94].

The arms embargo, a ban on flights, supplying military, naval, aerial embargo, freezing of assets and travel bans set out in this resolution and the above does not only obliges Member States of the United Nations, including Libya, but also to other Member States do not, because it is an issue that threatens international peace and security.

Some authors argue that resolution 1973 marked a point of reference in International Public Lawby authorizing the International Community to intervene in the internal affairs of a sovereign and independent country. To Engelberk, Mohlin and Wagnsson (2014) is the first time since its inception in 1945 that the Security Council explicitly supports the use of force with the primary purpose of protecting the civilian population of a sovereign and independent country, objective guaranteed by the Geneva Convention and the doctrine of the responsibility to protect. However, to Mangas (2011) for example, this resolution recalls the structure and scope of the historic resolution 688 of April 5, 1991, adopted by the Security Council to protect the Kurdish population in Iraq from the repressive acts perpetuated by Saddam Hussein[95]. Despite the disparities between the scholars of international law, it is clear that the resolution can be interpreted according the interests of the countries involve. It is common to observe in the resolutions relating to the use of force the words "necessary means" to restore order and peace. In this case we can also see the intentions behind the paragraph of the resolution which establishes the authorization of Member States to act "nationally or through regional organizations"; words that

[94] Article 2.6 of the UN Charter.

[95] Resolution 770 (1992) to protect the population of Bosnia-Herzegovina, resolution 794 (1992) for the people of Somalia, and resolutions 872 (1993) and 912 (1994) in favor of the population of Rwanda

left the door open to act either through a coalition or a regional organization (in this case through the Treaty Organization NATO).

3.2.1. Operation “Odyssey Dawn” (2011)

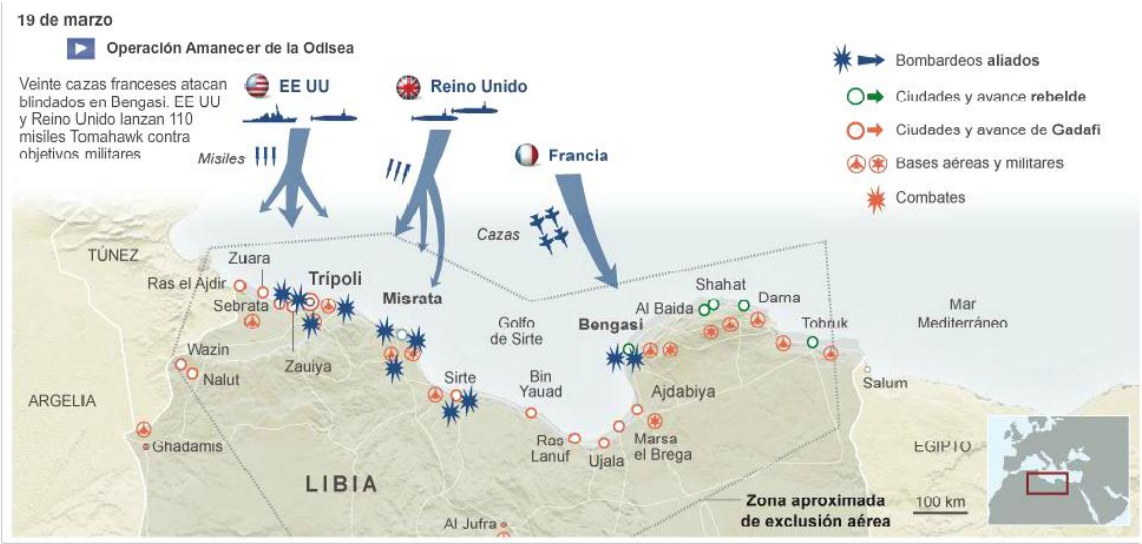
After resolution 1973 on March 18, 2011 the President of the United States Barack Obama issued the following statement:

"The United States, Britain, France and the Arab League have agreed that the ceasefire must be implemented immediately ... If Gaddafi does not comply with Resolution 1973,

the International Community will impose the respective consequences, including military action"[96]

The day after the statement, on March 19 the military action by the international coalition operation called "Odyssey Dawn" began. The army operation was led by the United States in order to protect civilians and enforce humanitarian action and the no-fly zone established. The first military actions were carried out with a strike by French fighter jets near Benghazi. Then the United States and Britain forces deployed 112 Tomahawk missiles from ships and submarines in the Mediterranean which reached 20 Libyan targets (Tripoli, Misrata and Sirte), fundamental objectives to implement the no-fly zone.

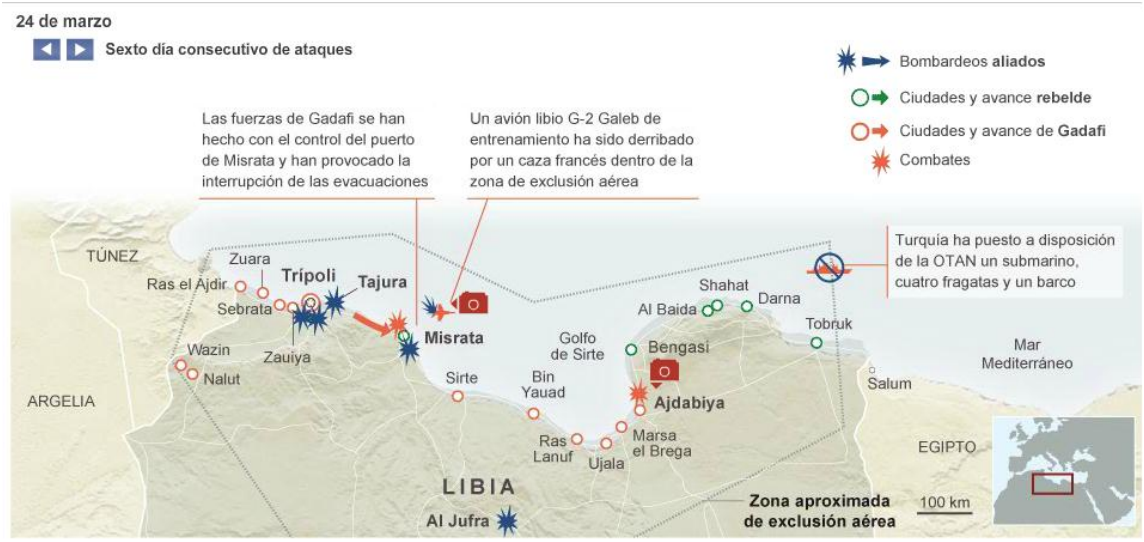
[96] http://www.whitehouse.gov/the-press-office/2011/03/18/remarks-president-situation-libya



Graphic 1 No Fly-Zone in the beginning of Operation "Odyssey Dawn"

Source: EL PAIS. http://elpais.com/elpais/2011/03/21/media/1300677009_720215.html

By 23 March, the no-fly zone covered the whole territory of Libya from coast to coast, including Tripoli. NATO decided to participate in the naval blockade as a measure to ensure the arms embargo. The Spanish and Turkish forces joined the allies with air and naval forces.



Graphic 2 Expansion of the No-Fly Zone after March 23, 2011

Source: EL PAIS. http://elpais.com/elpais/2011/03/21/media/1300677009_720215.html

After a week of the military operations of the coalition (USA, UK, France, Spain and Turkey) under the command of United States, on March 27, 2011, the Secretary General of NATO Anders Fogh Rasmussen announced that the organization will take complete military command of the operations from a NATO base in Naples (Italy). However, before the official decision, NATO forces already conducted overflights of Libyan territory and its maritime forces were deployed in the Mediterranean in order to ensure compliance with resolution 1973.

Military operations conducted by France and the UK in collaboration with the operation "Odyssey Dawn" received the names of operation Harmattan and operation Ellamy respectively. France was the first country to attack Gaddafi forces and probably the most interested in ending his government. On 10 March 2011, France became the first sovereign nation to recognize the Libyan National Transitional Council as the legitimate representative of the Libyan people. And on March 19, President Sarkozy called an emergency meeting with allies and leaders of the Arab countries, named "Summit in Paris" to establish the no-fly zone and end attacks by Gaddafi in Benghazi

Here are the main military operations carried out by NATO during the months the intervention took place:

April 4, 2011 -. Algeria prohibits to the Allied air forces to overfly its territory.

April 7, 2011 -. NATO air strike has left 50 people dead in Braga.

April 9, 2011 -. NATO launches the largest offensive so far in the city of Ajdabiya.

April 25, 2011 -. NATO bombs one of the residential complexes of Gaddafi in Tripoli.

April 30, 2011 -. Gaddafi accuses NATO of murdering his son and three grandsons.

May 8, 2011 -. Libyan forces loyal to Gaddafi attack civilians in Misrata.

May 16, 2011 -. The International Criminal Court applies for arrest warrants against Muammar Al-Gaddafi and his son Saif for alleged crimes against humanity (murder and persecution).

May 24, 2011 -. NATO's largest-ever offensive in Tripoli causes the death of more than a hundred civilians.

June 7, 2011 -. Rebels take over the mountain town of Yafran (about 100 km from Tripoli), a city that remained under the control of Gaddafi forces.

July 18, 2011 -. Rebels take control of the eastern part of Brega after five days of fighting.

August 21, 2011 -. NATO bombs Gaddafi's headquarters in Tripoli and an airport.

Although there were confusing reports of Gaddafi's capture and death, and questions remained over exactly how he was killed, finally on October 20, 2011 the rebels in Sirte capture and murder former Libyan leader Muammar Gaddafi. Most accounts agreed that after identifying the convoy he was traveling in, a NATO's French Mirage 2000 warplane intercepted and hit the target. Minutes later Gaddafi would be captured by a group of rebels who wounded him and executed. His son Muatassin and the Defense Minister of the regime were also executed. So on October 31, 2011 and after seven

months of fighting, NATO forces decided to end its military operations after a meeting with the Council of Ambassadors of 28 countries of the organization held in Brussels. The decision was taken on October 21, a day after the dictator's death. For this purpose, NATO ended its operations through a preliminary agreement in coordination with the UN and the new authorities of the National Transitional Council, leaving the country at the hands of Mustafa Abdel Jalil (Chairman of the NTC), qualifying NATO mission as successful.

3.3.Intervention in Libya: Key Points

Several questions emerge in the intervention in Libya. It is inevitable to make conclusions about the real interests of the Allied forces and NATO to end Muammar Gaddafi's government, a situation that did not happen with Bashar al-Assad's regime. Despite the protests started in Tunisia and Egypt, the International Community remained a simple spectator, while in the case of Libya decided to act without delay. The participation of France, the United Kingdom and the United States makes it clear that the desire to protect the Libyan population and respect for international humanitarian law were not the only interests that motivated the intervention. Western complicity and Arab indifference also prompted the desire to correct past mistakes and support the process of democratization in Libya but this should not hide the fact that this intervention had an economic and political basis. Strategic geographical positioning of Libya in the Middle East, the establishment of a democratic government and control over the country's oil became the real objectives of the intervention.

Libya, being one of the leading suppliers of oil and gas to Europe[97], it is not surprising the interest of the Western powers to control the future of the nation. The political analyst Abdullatif Haj Hussein in an interview to Xinhua (China) said: "We have learnt from Iraq and Afghanistan's experiences that foreign intervention is associated, to a great extent, with political and economic interests. In Libya's case, the Libyan oil constitutes

[97] According to the OPEC's report, Libya is the fourth largest producer of crude in Africa, after Nigeria, Algeria and Angola, with a daily production of 1.8 million barrels, 46.4 billion barrels of reserves and 55 trillion cubic feet. gas reserves

two thirds of the needs of some of the countries participating in the imposition of the no-fly zone over Libya"[98]

According to the same newspaper, Italy imports 523,000 barrels daily from Libya, followed by Germany with 210,000 barrels, France 173,000 barrels and then Spain with 104,000. The energy capacity of Libya is very attractive for the big countries of the West. Before the protests, the France major oil companies controlled 14% of Libyan oil and natural gas production[99]. Not only France has major investments in Libya, but China with the China National Petroleum Corp (CNPC), UK with British Petroleum, Spain with Spanish Oil consortium REPSOL, Italy with ENI, and the United States with ExxonMobil, Chevron, Occidental Petroleum, Hess, Conoco Phillips. The hidden economic interests and the ambitions of the big powers have played an important role in changing the path of the protests and in Gaddafi's removal. They were always seeking to install a new government that promotes an economic liberalization and privatization of the oil industry.

In the political sphere, Libya's opposition to Israel became a focal point for the Western powers. A clear sign of this was the abstention of Russia and China against the resolutions that authorized the intervention, leaving the decision and therefore the responsibility to the United States, Britain and France. In most of the cases in which the Security Council has decided to intervene on behalf of international peace and security, it has been by unanimous vote. However, Resolution 1973 demonstrated the political position of the Western powers. For instance, France and the UK were trying to show leadership as European powers in a time of economic and political crisis and a growing unpopularity of their governments. On the other hand, Russia and China with their resistance to Western intervention, especially after the events in Kosovo.

[98] Fayez el-Zaki Hassan "Sudanese analysts say economic, political interests behind Western intervention in Lybia" Xinhua, English News http://news.xinhuanet.com/english2010/world/2011-04/18/c_13833244.htm. April 18, 2011.

[99] http://www.foreignpolicyjournal.com/2011/11/19/libya-a-very-long-war-over-competing-energy-interests/#.Uzu5Uqh5OE5

The members of the Security Council were not fully convinced by the R2P discourse that France and Britain used as the main justification for the intervention "Liberal interventionism faces opposition from China and Russia, who so far Have Not embraced the West's Commitment to Responsibility to protect" (Miskimmon, O'Loughlin, Roselle, 2013, p. 90). Although China and Russia supported the Security Council in its decision to end with the violence in Libya, they had reservations about the content of resolution 1973. Russia, in particular, disagreed and concern about the way in which the Council established the no-fly zone.

And finally is the United States, which initially showed reluctance to use force in Libya, but nevertheless supported a last minute decision and even command the operation. The support of the League of Arab States and the African Union played a key role in the U.S. decision. After the events in Iraq (2003), the U.S. was not willing to take full responsibility of a new armed intervention in one of the most unstable scenarios.

"Recalling the condemnation by the League of Arab States, the African Union and the Secretary-General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that have been and are being committed in the Libyan Arab Jamahiriya"[100]

Similarly, in the provisions of the resolution, the UN requests the help of the regional organizations to enforce the embargo, the flight ban and the freezing of the assets. However, these regional organizations did not intervene in operation "Odyssey Dawn". According to Erlanger and Eric Schmitt in the publication of March 25, 2011 in the New York Times "the initial air strikes was assumed by France and the entire operation was later handed over to NATO, with operational command in the hands of a Canadian"

While the discourse of responsibility to protect and international humanitarian law are sufficient justification for intervention, we cannot ignore that these discourses are often used as excuses to carry out actions on behalf national interests. The protection of civilians was the essential objective of the armed operation, however, it is undeniable that under the actions carried out by NATO, thousands of civilians were injured and

[100] Preamble Resolution 1973

killed in the attacks against Gaddafi's forces. On the other hand, is also evident that the capture of Gaddafi was the main purpose of the intervention. Before the death of the leader, the allied forces and the rebels took control of almost the entire territory and even the Libyan National Transitional Council was established as a representative of the Libyan people. But it was not until Gaddafi's capture and death, the NATO Secretary General announced the withdrawal of its forces leaving the country to Libyan NTC control. Let us remember that the rebels were ex Gaddafi supporters, which demonstrates the lack of concern of the International Community for the establishment of a true democracy.

3.4.The Role of the International Criminal Court

In resolution 1970 on 26 February 2011, the Security Council, expressing grave concern at the situation in Libya, condemning the violence and use of force against civilians, and acting under Chapter VII of the Charter of the United Nations, decides to "refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court". Resolution 1973 on March 17, 2011 states "... stressing that those responsible for or complicit in attacks targeting the civilian population, including aerial and naval attacks, must be held to account"

The ICC is the first permanent, treaty based, international criminal court established to prosecute the perpetrators of war crimes. The history of its creation date back in the 90's to the tribunals created by Resolution 822 on May 25, 1993 and 955 on November 8, 1994 of the Security Council, to judge international crimes carried out in the former Yugoslavia and Rwanda respectively. These ad hoc tribunals were created to try crimes committed only within a specific time-frame and during a specific conflict. After their creation, there was general agreement that an independent, permanent criminal court was needed. On 17 July 1998, the International Community reached an historic milestone

when 120 States adopted the Rome Statute[101], the legal basis for establishing the permanent International Criminal Court.

To understand the role played by the International Criminal Court in the Libyan conflict in 2011, we should take a look of resolution 1970 in which the Security Council refers the situation in Libya to the Prosecutor of the Court. The Rome Statute Article 2 establishes the relationship of the Court with the United Nations:

"The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf"

Thus article 13:

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations.

Therefore, the Security Council was in full capacity to ask the Court to initiate investigations about the crimes committed in Libya during the 2011 protests by Muammar Gadaffi forces, his son Saif al Islam and his military intelligence chief Abdullah al-Senussi. On this occasion the Presidency of the Council received a letter from the Permanent Representative of the Libyan Arab Jamahiriya in the United Nations on the events that occurred within the country. The adoption of the resolution was based on Chapter VII of the Charter of the United Nations, under Article 41[102]. Although the

[101] The Rome Statute was amended on November 10, 1998, July 12, 1999, November 30, 1999, May 8, 2000, January17, 2001, and January16, 2002. Entering into force on 1 July 2002.

[102] The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Rome Statute in its article 16 establishes a period of 12 months to initiate investigations or prosecutions after the formal request of the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions. Based on these assumptions, the decision of the Council may also affect states that are not part of the Rome Statute, but members of the UN, so they will be obliged to cooperate with the Court.

Even where a Security Council referral has been made, there is still a role for the ICC Prosecutor in determining whether an investigation should actually proceed. Under Article 53 of the Rome Statute, the Prosecutor shall consider whether:

(a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;

(b) The case is or would be admissible under article 17; and

(c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

On March 3, 2011 the Prosecutor announced his decision to initiate an investigation into the situation of the nation. The case was assigned to the Pre-Trial Chamber I. A few months later, on June 27, the Prosecutor applied for an arrest warrant for Muammar Gaddafi, Saif Al-Islam Gaddafi and Al-Senussi Abullah on charges of crimes against humanity[103] committed by security forces under Gadaffi's control in various localities of the Libyan territory from 15 February 2011 until at least 28 February 2011. Among the crimes they were accused were: murders, imprisonment or other severe deprivation of physical liberty, other inhumane acts of similar character, torture, persecution; and for the alleged commission of rape, deportation or forcible transfer of population[104]. Besides war crimes as: acts of violence against persons under subparagraph i) of subparagraph c)

[103] Prosecutor v. Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi, ICC -01/11 -01/11, June 27, 2011.
[104] Crimes in article 7 of the Rome Statute as crimes against humanity.

of paragraph 2 of Article 8[105], intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities under subparagraph i) of subparagraph e) of paragraph 2 of Article 8, and intentionally directing attacks against buildings dedicated to religion, education, art or science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives, in accordance with paragraph iv) of paragraph e) of paragraph 2 of Article 8.

On November 23, 2011, the Trial Chamber closed the case against Muammar Gaddafi after his death, without compromising the investigation in relation to the other two[106]. Finally it is important to mention that such actions were under the Article 39 of the UN Charter that determines that the situation in Libya constituted a threat to international peace and security. Therefore, even though Libya is a State not party to the Rome Statute, but for being a UN Member State, the Court has international jurisdiction to conduct the investigations and prosecutions in this case.

[105] Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

[106] Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi May 1, 2012 http://www.icc-cpi.int/iccdocs/doc/doc1405819.pdf

Chapter Conclusions

The phenomenon of the Arab Spring and the revolts in the Middle East and North Africa during 2011, marked a turning point in the development of international relations and International Public Law. The search for democracy, a better quality of life, respect for human rights and the guarantee of human integrity caused that thousands of people participate in protests over the improvement of their life conditions, bringing the attention and concern of the entire International Community. Under an autocratic government of 42 years at the hands of Muammar Gaddafi, it is not surprising that this phenomenon also affect Libya. With the one of the best economies of the region, Libya was characterized by an unequal distribution of resources from the export of its oil. This fact together with a number of political, social and religious factors accelerated the deployment of rebels and anti-government groups. In response to the riots the Libyan people suffered systematic violation of their fundamental rights by the loyal forces of Gaddafi. Due to the critical situation of Libya, the Security Council invoked the R2P doctrine to intervene and end with violations and crimes against civilians.

The concept of the responsibility to protect recognized since 1999, establishes that it is the duty of the International Community to ensure the welfare and protection of civilians when the domestic governments have committed, as in this case, crimes against humanity. On this basis and by resolution 1970 of 2011, the Security Council recognized the serious situation that affected Libya and demanded the cessation of the indiscriminate use of armed force against civilians and the adoption of measures that would satisfy the legitimate demands of the population. Later, due to the refusal of the Libyan leader to comply with resolution 1970, the Council issued resolution 1973 (with the abstention of Russia and China) the use of the necessary means to restore international peace and security by defining the conflict as a global threat. To this end, the UN established a no-fly zone that was intended to end air attacks by Gaddafi's forces. To enforce the ban, the Council authorized Member States and the States of the Arab League to overfly Libyan airspace to monitor, prevent, and if necessary to carry out any operation to comply with the resolution.

The violation of rights also empowered the subsequent NATO intervention in the conflict. According to its Charter, the need to intervene should be demonstrated in order to launch NATO forces. Likewise, resolution 1973 authorized the intervention with the use of all necessary means either nationally or through regional organizations to restore the peace in the country. Indeed, NATO took command of the intervention known as Operation Odyssey Dawn. While the performance of UN members was justified under international humanitarian law and the responsibility to protect, the NATO intervention had no legal basis. As a regional organization created for collective security, its ability to act to act is restricted to the territories of the Northern Hemisphere where the majority of its Member States are, or in the territories of Nations that have committed an attack against one or more of its signatories. It's important to note at this point that before the official decision by NATO to intervene; military activities were conducted in the Libyan territory.

As a final point, we should mention Resolution 1970 again. On this resolution the Security Council referred the situation in Libya to the Prosecutor of the International Criminal Court since February 15 2011 in order to judge and punish the crimes committed by Muammar Gaddafi, as well as certain members of his government against the Libyan people. Although Libya is not a member of the Rome Statute and therefore of the International Criminal Court, referring the case to the Court was completely valid according to the Rome Statute Articles 2, 13 and 16 that establishes the existence of a link between the Court and the Security Council. This relationship demonstrates the existence of a system based on a quasi subordination built on the axis of a political body. Most of the States in the world recognize the ability of the organization to act in situations where the welfare of the population is in danger such us: war crimes, crimes against humanity and crimes of genocide. According to this, we can say that the administration of international criminal justice relating to international crimes would be based on the political interests of Security Council Members.

CHAPTER 4: CONCLUSIONS

The comparative analysis of the armed interventions in Kuwait, Afghanistan and Libya highlights the differences between these conflicts. Although in practice they look similar (counterinsurgency, weak governments in countries with poor political structure, concentration of economic power in the elites, chaos of major proportions and even a civil war with consequences that would cause a humanitarian crisis), each one has set a precedent in public international. In addition, they have put the efficiency and of the system of collective security system in the eye of the world, showing errors that have become a characteristic of United Nations. While armed intervention in Kuwait-Iraq in 1991 was defined as a legitimate process, with a gradual application of the rules contained in the Charter, and the use of all measures before the intervention by a multilateral coalition, interventions in Afghanistan and Libya demonstrated the validation of the action taken by other organisms (NATO) through the UN Charter.

1. The legal framework in international law on the use of force.

Throughout this work, we have emphasized on what should be and what is the collective security system in practice. Since the establishment in 1945 of the United Nations as the most important, the Security Council has become an organ of preferential jurisdiction over the General Assembly to address all issues relating to international peace and security (Article 24). Competence that has generated criticism among internationalists about the political tinge on its decisions. One of the most discussed topics is certainly the voting system and the veto right in the Security Council. The legitimacy of its actions is questioned when its permanent members decide what situation become a threat to international peace and security and therefor an armed intervention is authorized. In this context, the United Nations Charter prohibits the use of force and the right of non-intervention against the territorial integrity or political independence of any

state (Article 2). However, the Charter also provides exceptional situations to the rule: the legitimate individual or collective self-defense and when the Security Council under Chapter VII authorizes it. This is the legal framework in which the collective security system should act, however, with the emergence of new conflicts of different basis: social, economic, political and religious, determining when a situation becomes a matter of international concern allows the Security Council to use the Charter according its interests. In the cases of Kuwait and Afghanistan interventions, they were justified under self-defense principle (Article 51). In the first case, Iraq's actions constituted an act of aggression against Kuwait, while in Afghanistan the attacks were carried out by terrorist groups who did not represent the Taliban government. In the case of Libya, the intervention was justified on humanitarian issues and on the principles of international humanitarian law.

1. Effects of resolutions 678 (1990), 1368 (2001) and 1973 (2011) on the new practices of international law in cases involving the existence of a threat to the peace, breach of the peace or acts of aggression (chapter VII of the UN Charter).

Based on this analysis, we can conclude that each case constituted a turning point in the development of International Public Lawand international relations, specifically in the way the United Nations provides solutions to the conflicts. Previous resolution 678, resolutions relating to global security were about preventive measures involving minimal use of armed force. With resolution 678 the system of collective security was revitalized, military activities carried out under Operation Desert Storm were in fully responsibility of the Member States, delegating them competences to act on behalf of the Council. In the second case, military activities undertaken by the international coalition involved a new actor: NATO. With this conflict the cooperation among international organizations for the promotion of international peace and security was demonstrated. Although the competence of the Security Council to resolve such conflicts has been criticized, it's a relief that we can count on other organisms as long as they fulfill the purposes for which they were created. In the third case, by resolution 1973, the Security Council authorized the use of armed force by an international coalition in the internal affairs of a country for the first time. Although the intervention was justified under the

concern of the International Community about the protection of human rights, the responsibility to protect and international humanitarian law, it is undeniable that the international forces intervened in a matter that was of domestic jurisdiction However this does not eliminate the concern among scholars that such justifications are only used to intervene in the internal affairs of sovereign nations according to the interests of other nations, especially the Security Council permanent members.

2. The executing hand of the Security Council to restore international peace and security.

The UN Charter empowers the Security Council to be responsible for the actions to take in case of existence of breaches, acts of aggression and threats to international peace and security (Article 39). Under this provision the Council with the assistance of its members, through the use of all necessary measures and when the situation requires, it can authorize armed intervention (Article 42). In the case of Kuwait, by resolution 678 (1990), the Council authorized the intervention of an international coalition into Kuwaiti territory in order to carry out the withdrawal of Iraqi forces and to restore the sovereignty of Kuwait. About Afghanistan, the Council by resolution 1368 (2001) authorized the use of all necessary means to capture members of the terrorist network Al-Qaeda. The military operation was initially led by the United States and subsequently implemented by NATO forces. In this case, the United States as member of this organization and as the nation under attack (Article 5 of the NATO Treaty), the competence of NATO in the conflict was not discussed. However this leads us to the next case. Under resolution 1973 (2011) and again under the phrase "all necessary means" the Council authorized either through individual participation or through regional organisms the armed intervention in Libya to end with the abuses against the civilian population. Initially the Operation Odyssey Dawn was commanded by few UN members (U.S., France, and the UK) and then it was under NATO command. At this point we must ask: why did NATO intervene in the conflict? Unlike what happened in Afghanistan, the conflict in Libya had domestic causes, so, the intervention of a regional organism that has nothing to do with the reality of North Africa does not fit into this scenario. While the existence of threats to international peace and security allows a

series of unconventional practices in international law, it is necessary that the organizations fulfill the objectives they were created for. While the concept of the New Strategic Model promoted by NATO years before, allowed it to act in conflicts in which its jurisdiction would not fit, it does not mean that its intervention is legitimate.

3. The "use of all necessary means"

A similar characteristic in the three conflicts analyzed is the phrase "all necessary means". Even though such resolutions did not explicit authorize military armed operations (Operation Desert Storm-Kuwait, Operation Enduring Freedom-Afghanistan and Operation Odyssey Dawn-Libya), they leave the possibility of carrying it out if it is not expressly prohibit. The ambiguity of Council resolutions relating to the use of armed force allows it to take actions that are not under the principles of international law. In practice the effect of this ambiguity is remarkable and also prejudicial for the international system.

4. Protection of human rights and international humanitarian law as justification for the use of force and intervention.

Since the terrible events in the territories of the former Yugoslavia in 1993 and Rwanda in 1994, the International Community focused its efforts to prevent similar events. To do so, ad hoc tribunals were established to judge the war crimes committed. These tribunals were translated into the International Criminal Court. It was established to prosecute crimes against humanity. In addition, an emphasis was placed on preventing the perpetration of violence against civilians committed by the government leaders. Throughout this work we have concluded that the International Community has the responsibility to ensure human integrity and protect human rights. The Libyan case is a clear example of the commission of crimes against humanity by governmental forces against the population. The situation in Libya was neither the only nor the first in which it was argued the concern of the International Community for the protection of human rights and international humanitarian law for armed intervention. However it must be stated that, to the extent that such action is effected under the right or duty to intervene for humanitarian reasons, that problem should be governed by the rules on the legality of

the use of force in international relations. It is extremely difficult to determine when an armed intervention is actually effected by the concern for the protection of population and the responsibility to protect, because in most cases it is used as a justification for the fulfillment of political and economic interests.

For all these reasons, I conclude that the military intervention in Libya at the hands of the Security Council and subsequently carried out by NATO under the justification of a humanitarian crisis was not legitimate. Although the Libyan authorities did actually commit crimes against humanity, actions taken under Chapter VII of the UN Charter were not in accordance with the principles of International Public Law. The legitimacy of such intervention cannot be based on international humanitarian law, but it is necessary to take into account the way the organisms carried out military operations. NATO's intervention is the critical point for this conclusion. Although the resolutions of the Security Council legitimized the actions taken by NATO, these do not correspond what dictates the guiding principles of international relations.

References

Acosta Chevez B. (2004). El Capítulo VII de la Carta de las Naciones Unidas y el Ejercicio del Uso de la Fuerza Armada contra Iraq: ¿La ONU como instancia legitimadora del uso de la fuerza? *Anuario Mexicano de Derecho Internacional*, 11-65. http://biblio.juridicas.unam.mx/revista/pdf/DerechoInternacional/4/art/art1.pdf

Alonso, E. M. (2009). La Guerra de Afganistán: Una guerra también contra el derecho . *Revista de Derecho de la Universidad Autónoma de Madrid* . http://www.uam.es/personal_pdi/derecho/jarsey/3publicaciones/guerradeafganistan.pdf

Anaya, J. J. (2012). La Caída de la Yamahiriya: un fracaso de las estrategias de supervivencia neopatrimoniales. *Universidad de Sevilla*. https://www.academia.edu/4569349/La_caida_de_la_Yamahiriya_un_fracaso_de_las_estrategias_de_supervivencia_neopatrimoniales

Boisson de Chazournes, L., & Condorelli, L. (2000). Nueva Interpretación del artículo 1 común a los Convenios de Ginebra: protección de los intereses colectivos . *Revista Internacional de la Cruz Roja* .

Cabrera, M. G. (2007). Valor Jurídico de las Resoluciones de las Organizaciones Internacionales . *Anuario Colombiano de Derecho Internacional* , 139-159. http://www.anuariocdi.org/contemporaneo/1_5_valor%20juridico.pdf

Camargo, P. P. (2003). *Tratado de Derecho Internacional Público, tercera edición.* Bogotá: LEYER.

Cervera, R. C. (1993). *Dinámica de la Sociedad Internacional.* Madrid : Centro de Estudios de la Universidad Complutense de Madrid .

Chalifour, E. T. (s.f.). *Teoría y Práctica del Uso Legítimo de la Fuerza en Derecho Internacional* . México . http://biblio.juridicas.unam.mx/libros/7/3005/12.pdf

Chesterman, S. (2011). Leadin from Behind: The Responsability to Protect, the Obama Doctrine, and Humanitarian Intervention After Libya . *New York University Public Law and Legal Theory Working Papers* , Paper 282 . http://lsr.nellco.org/nyu_plltwp/282

Cimbala, S., & Forster, P. (2010). *Multinational Military Intervention; NATO Policy, Strategy and Burden Sharing* . England : ASHGATE.

Conde, G. (2011). Protestas Populares en África del Norte y en el Medio Oriente. Un primer balance. *Seminario Internacional "Protestas Populares en África del Norte y en el Medio Oriente".* México .

Council on Foreign Relations. (2011). *The New Arab Revolt.* New York : Foreign Affairs .

Cruz Roja Española . (s.f.). Obtenido de http://www.cruzroja.es/portal/page?_pageid=878,12647036&_dad=portal30&_schema=PORTAL30

Dubra, R. R. (2012). *La Evolución del Concepto de Legítima Defensa en Derecho Internacional Contemporáneo* . Madrid : Universidad Complutense de Madrid .

El País . (12 de abril de 2011). Cronología: Operación Amanecer de la Odisea sobre Libia. *El País*. http://elpais.com/elpais/2011/03/21/media/1300677009_720215.html

Engelbrekt, K. (2014). Why Libya? Security Council Resolution 1973 and the politics of justification. En K. Engelbrekt , M. Mohlin, & C. Wagnsson , *The NATO Intervention in Libýa* (págs. 41-63). New York : Routledge.

Erlanger , S., & Schmitt , E. (2011 de marzo de 2011). NATO Set to Take Full Comand of Libyan Campaign . *The New York Times* . http://www.nytimes.com/2011/03/26/world/africa/26libya.html?_r=0).

Espósito, C. D. (2011). Soberanía e Igualdad en el Derecho Internacional. *Anuario de la Facultad de Derecho de la Universidad Autónoma de Madrid*, 291-310. http://www.uam.es/otros/afduam/pdf/13/soberania-e-igualdad-carlos-esposito.pdf

Falk, R., Juergensmeyer, M., & Popovsky, V. (2012). *Legality and Legitimacy in global Affairs.* New York: OXFORD University Press, Inc.

Fayez el-Zaki Hassan *Sudanese analysts say economic, political interests behind Western intervention in Lybia*. Xinhua, English News http://news.xinhuanet.com/english2010/world/2011-04/18/c_13833244.htm. April 18, 2011.

Fisas, V. (1994). *El Desafío de Naciones Unidas; ante el mundo en crisis.* Barcelona : ICARIA.

Gray, C. (2008). *International Law and the Use of Force* . New York : Oxford University Press .

Hassan, F. e.-Z. (18 de abril de 2011). Sudanese analysts say economic, political interests behind western intervention in Libya . *English.news.cn*.

Herdegen, M. (2005). *Derecho Internacional Público.* México : Universidad Autónoma de México. Fundación Konrad Adenauer. Primera Edición.

Jorda, A. G. (2013). *El Conflicto de Iraq y el Derecho Internacional. El Caso Couso* . España: Ediciones de la Universidad de Lleida .

Lobato, M. P. (2012). El Consejo de Seguridad de la ONU y la Intervención en Libia. *Departamento de Derecho Internacional Público, Relaciones Internacionales e Historia del Derecho. Universidad del País Vasco*.

Londoño, L. F. (2007). *Derecho Internacional Público.* Bogotá : Pontifica Universidad Javeriana .

Malanczuk, P. (s.f.). *Humanitarian Intervention and the Legitimacy of the Use of Force.* Amsterdam : Het Spinhuis .

Mangas, A. (2011). La Autorización del Uso de la Fuerza Armada en Libia (ARI). *Real Instituto Elcano* .

Martin, A. M. (1999). *Conflictos Armados Internos y Derecho Internacional Humanitario* . España : Universidad Salamanca.

Miskimmon , A., O'Loughlin, B., & Roselle, L. (2013). *Strategic Narratives: Communication Power and theNew World Order* . New York : Routledge.

Oberg, M. D. (2005). The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ. *European Journal of International Law* , 879-906. http://ejil.oxfordjournals.org/content/16/5/879.full

Oppenheim, L. (2005). *International Law: A Treatise.* Clark, New Jersey : The Lawbook Exchange .

Organization of the Petroleum Exporting Countries . (2011). *World Oil Outlook 2011.* Austria : OPEC Secretariat . http://www.opec.org/opec_web/static_files_project/media/downloads/publications/WOO_2011.pdf

Quiroga, T. (2012). Relación del Consejo de Seguridad de la ONU y la Corte Penal Internacional. Darfur y Libia: ¿Intervenciones sumamente selectivas en derecho internacional penal? . *Revista Electrónica del Instituto de Investigaciones Ambrosio L. Gioga - Año VI, Número 8* , 120-145. http://www.derecho.uba.ar/revistagioja/articulos/R0008A006_0009_investigacion.pdf

Pérez, M. G. (2005). *Acción Preventiva y Legítima Defensa en Derecho Internacional: Algunas Consideraciones Jurídicas.* Mexico: UNAM Instituto de Investigaciones Jurídicas. http://biblio.juridicas.unam.mx/libros/4/1643/4.pdf

Montse Pintado (2012). *El Consejo de Seguridad de la ONU y la intervención en Libia* https://ehu.academia.edu/MontsePintado. Universidad del país vasco Euskal Herriko Unibertisitatea. Departamento de Derecho Internacional Público, Relaciones Internacionales e Historia del Derecho

Ramirez, M. B. (2003). El Papel de la Corte Internacional de Justicia en la Solución Pacífica de Controversias (El Caso de Nicaragua vs. Los Estados Unidos). *UNAM Instituto de Investigaciones Juridicas*, 839-855. http://biblio.juridicas.unam.mx/revista/pdf/DerechoComparado/60/art/art1.pdf

Ramirez, M. B. (2011). El Conflicto del Golfo Pérsico en el Marco del Derecho Internacional . *Boletín Mexicano de Derecho Comparado de la Universidad Autónoma de México* . http://www.juridicas.unam.mx/publica/rev/boletin/cont/77/art/art1.htm

Ramón, C. (1999). La OTAN, Vicaria de la ONU: Reflexiones sobre el sistema de seguridad colectiva a la luz del "nuevo concepto estratégico" acordado en Washington. *Anuario de Derecho Internacional de la Universidad de Navarra. XV*, 363-384. http://dspace.unav.es/dspace/handle/10171/22013

Salazar, L. M. (2005). *Fundamentos de Derecho Internacional Público: Introducción al Estudio de la Historia de las Instituciones del Derecho Internacional Público y su Impacto en las Relaciones Internacionales.* Caracas : Los Libros de El Nacional.

Salcedo, J. A. (2004). *Soberanía de los Estados y Derechos Humanos en Derecho Internacional Contemporáneo* . Madrid: Tecnos .

Salmón, E. (2004). *Introducción al Derecho Internacional Humanitario.* Perú: Corte Interamericana de Derechos Humanos.

Sanchez, V., Beltran, S., Bondia, D., & Carmen, D. (2010). *Derecho Internacional Público.* Barcelona: HUYGNES .

Sanchís, L. P. (1996). *Introducción al Derecho.* Cuenca: Universidad de Castilla-La Mancha .

Sarooshi, D. (1999). *The United Nations and the Development of Collective Security* . Inglaterra: Oxford .

Schweigman, D. (2001). *The Authority of the Security Council under Chapter VII of the UN Charter.* Estados Unidos: Kluwer Law International .

Serrano, A. S. (2007). *El Derecho Internacional Humanitario y las Operaciones de Mantenimiento de la Paz de las Naciones Unidas* . Madrid: Plaza y Valdés .

Tager, A. M. (2009). El Consejo de Seguridad de Naciones Unidas y la Acción Colectiva: la cuestión de la soberanía estatal . *Revista Pléyade No.3 Pontificia Universidad Católica de Chile* , 171-201. http://www.erevistas.csic.es/ficha_articulo.php?url=oai_revista436:81&oai_iden=oai_revista436

Universidad Carlos III de Madrid. (2007). Pacto de la Sociedad de las Naciones . *OpenCourseWare*.

Universidad de Sevilla . (2005). *Soberanía del Estado y Derecho Internacional* . Sevilla .

Wet, E. d. (2004). *The Chapter VII Powers of the United Nations Security Council* . Estados Unidos : Hart Publishing .

Williamson, M. (2009). *Terrorism, War and International Law. The Legality of the Use of Force against Afghanistan in 2001.* Gran Bretaña: Ashgate Publishing Company .

Other sources:

Rome Statute

Covenant of the League of Nations

United Nations Charter

The North Atlantic Treaty

Republic of Ecuador Constitution of 2008

The Geneva Convention relative to the Protection of Civilian Persons in Time of War

The Convention on the Prevention and Punishment of the Crime of Genocide

Vienna Convention on the Law of Treaties

Case Concerning Military and Paramilitary Activities In and Against Nicaragua

Protocols I and II additional to the Geneva Conventions

Responsability of States for Internationally Wrongful Acts: Report of the UN Secrety-General

Outcome Document of the 2005 World Summit

Summaries of Judgements, Advisory Opinions and Orders of the International Court of Justice (1948-1991)

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humatirarian Law Committed in the Territory of Former Yugoslavia since 1991, IT-94-1-T (United Nations May 7, 1997).

Prosecutor v. Dusko Tadic a/k/a "Dule" , IT-94-1-ICTY (Gabrielle Kirk McDonald, Ninian Stephen, Lal Chand Vohrah May 7, 1997).

Prosecutor versus Jean-Paul Akayesu , ICTR-96-4-T (International Criminal Tribunal for Rwanda September 2, 1998).

Statutes of the International Committee of the Red Cross and Red Crescent Movement

Report of the International Commission on Intervention and State Sovereignty (ICISS).

Remarks by the President on the Situation in Libya (Marzo 18, 2011).The White House Office of the Press Secretary .

Web Sites

International Committee of the Red Cross

http://www.icrc.org/eng/

International Court of Justice

http://www.icj-cij.org/homepage/sp/

International Criminal Court

http://www.icc-cpi.int/Pages/default.aspx

Organization of American States

http://www.oas.org/es/

United Nations

http://www.un.org/

North Atlantic Treaty Organization

http://www.nato.int/