

## CHAPTER IV

### THE TREATMENT OF GADDAFI AS PRISONERS OF WAR

#### A. The Conflict of Libya

The conflict between Libya armed forces loyal to Gaddafi and armed opposition groups amounted to a non-international (internal) armed conflict, regulated by Common Article 3 to the Geneva Conventions and the Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II), as well as customary laws of war. The conflict between the armed forces acting under Security Council (SC) Resolution 1973 (the NATO forces) and the Libyan armed forces loyal to Gaddafi amounted to an international armed conflict, and was governed by the Four Geneva Conventions of 1949 and customary laws of war.

In February 2011, peaceful pro-democracy protests broke out in Libya, and were quickly and violently repressed by Libyan government forces, leading to hundreds of deaths.<sup>44</sup> Despite the crackdown, protesters, buoyed by army defections, seized control of much of eastern Libya. The initially peaceful uprising rapidly evolved into an internal armed conflict between forces that remained loyal to Gaddafi and a broad coalition of opposition forces loosely coordinated under the banner of the NTC, the

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<sup>44</sup> "Libya: Governments Should Demand End to Unlawful Killings: Death Toll Up at Least 233 Over Four Days," Human Rights Watch news release, February 20, 2011,

“interim government” formed by opposition leaders in the eastern city of Benghazi on February 27, 2011.

On March 17, as military forces loyal to the Libyan leader Muammar Gaddafi closed in on Benghazi, the opposition’s key stronghold in the east, the United Nations Security Council (UNSC) passed Resolution 1973 imposing a no-fly zone over Libya and authorizing the use of “all necessary measures”—with the exception of an occupation force—to protect civilians. This led to NATO’s Operation Unified Protector, which consisted of an arms embargo, the creation of a no-fly zone over Libya, and military action to protect civilians from attack or the threat of attack.<sup>45</sup> Subsequently pro-Gaddafi forces failed to retake Benghazi and eastern Libya. France, Qatar, the United Arab Emirates, and possibly other governments provided weapons and training to opposition forces, and Qatar later acknowledged that it had deployed hundreds of its own forces on the ground.<sup>46</sup>

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<sup>45</sup> NATO, Operation UNIFIED PROTECTOR Final Mission Statistics, November 2, 2011, [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_11/20111108\\_111107-factsheet\\_up\\_factsfigures\\_en.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_11/20111108_111107-factsheet_up_factsfigures_en.pdf). However, US President Barack Obama, UK Prime Minister David Cameron, and President Nicolas Sarkozy of France published a joint op-ed on April 14, 2011, stating that Muammar Gaddafi had to leave power: There is a pathway to peace that promises new hope for the people of Libya—a future without Qaddafi that preserves Libya’s integrity and sovereignty, and restores her economy and the prosperity and security of her people. This needs to begin with a genuine end to violence, marked by deeds not words. The regime has to pull back from the cities it is besieging, including Ajdabiya, Misurata and Zintan, and return to their barracks. However, so long as Qaddafi is in power, NATO must maintain its operations so that civilians remain protected and the pressure on the regime builds. Then a genuine transition from dictatorship to an inclusive constitutional process can really begin, led by a new generation of leaders. In order for that transition to succeed, Qaddafi must go and go for good. Barack Obama, David Cameron, and Nicolas Sarkozy, “Libya’s Pathway to Peace,” *New York Times*, April 14, 2011 (also reprinted in the *International Herald Tribune*, *Le Figaro*, and *The Times of London*).

<sup>46</sup> See Black, “Qatar deploys hundreds of troops to support Libya rebels,” *Guardian*.

The Libya conflict resulted issued arrest warrants<sup>47</sup> for Libyan leader Muammar al Gaddafi, his son Saif al Islam Gaddafi - whom the court dubbed Libya's "de-facto" prime minister, and Libya's head of intelligence, Abdullah Al-Senussi, for war crimes and crimes against humanity. The warrants name Qaddafi for the commission of two categories of crimes against humanity: Murder under Article 7(1)(a) of the Rome Statute, and persecution of crimes against humanity under Article 7(1)(h) of the Rome Statute.

The conflict ended by two important events for Libya and the peoples. The event is declaration from National Transitional Council which was recognized as the representative of Libya by United Nations and died of former Libya leader, Muammar Gaddafi.

#### **B. The Death of Gaddafi In International Human Right Law And International Humanitarian Law**

Generally, everyone has right to life in secured, provides by International Human Rights Law concerning to the protection of human being by article 3 and 5 of Universal Declaration of Human Rights, as follow:

Article 3

Everyone has right to life, liberty and security person.

Article 5

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<sup>47</sup> <http://www.icc-cpi.int/iccdocs/docs/doc1099314.pdf>.

No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

The Universal Declaration of Human Rights that explicitly protecting the life and the dignity of human being. Gaddafi; the former of Libya leader is common human like everyone which protected by the declaration. The rights not to be subject of torture or inhuman treatment are belonging to him.

In Libya civil war, Gaddafi is object of present declaration, means he has rights to be protected like article 3 and 5 of declaration above explained. After the eight-month Libya civil war, the Libyan leader Muammar al Gaddafi and his entourage try to flee the beleaguered city of Sirte. They went in a small convoy which is spotted by British Tornado, fitted with raptor reconnaissance equipment. The Tornado calls in American unmanned Predator drone, which is shoots Hellfire missile at the line of the vehicles. The France Rafale jet joins the attack, firing rocket into the convoy and killing several loyalists.<sup>48</sup>

Based on description of Younis Abu Bakr Younis, one of the sons of AbuBakr Younis, Gaddafi's defense minister, who was himself at the scene of Muammar Gaddafi's capture on Human Right Watch report;

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Death of a Dictator: Bloody Vengeance in Sirte<sup>49</sup>, can be seen the armed opposition groups do not act based on the rule. Supported with the video clips filmed by mobile phone cameras at the time of Gaddafi's capture and posted on social media sites offer visual evidence for at least one such execution.

In one video clip showing Gaddafi in the custody of militia fighters at the drainage pipes just moment after his capture, a dazed but alive young man with his right leg in a cast can be seen sitting down on the ground behind Muammar Gaddafi and his captors, appearing virtually unharmed, with his hands raised in a gesture of surrender. As the phone camera pans away from the young man and focuses on Gaddafi and his captors, several short bursts of machine gun fire can be heard in the background.

In a second video clip apparently filmed just moments later, a group of men captured from the convoy are filmed on the main road above the culvert with the drainage pipes being brutally beaten by militiamen, and the phone camera then pans down to show the same young man with the cast on his leg lying lifelessly among the bodies of several dead Gaddafi loyalists, with blood still flowing from his wounds. While the actual moment of his killing was not caught on camera, the two video

clips taken together strongly suggest that he was shot dead by militia fighters in the moments immediately after his capture, as there do not appear to be any exchanges of gunfire taking place at the time the videos were recorded. A Human Rights Watch inspection of his body the day after the killing found that he had been shot in the chest and the upper right leg.<sup>50</sup>

Supported video analysis above the report explains the armed opposition groups keep the fire after air attack to the convoy. Gaddafi and his armed force at that time categorized as Wounded, Sick, and Shipwrecked which ruled in International Humanitarian Law as article 8 of Protocol I Geneva Convention provide:

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- (b) "Wounded" and "Sick" means persons, whether military or civilian who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from an act of hostility...
- (c) "shipwrecked" means person, whether military or civilian...

The First and Second Geneva Convention contain detailed legal regimes for the treatment of the wounded, sick, and shipwrecked. This regime may be summarized, in the language of the Red Cross Movement, as a duty to respect and protect, i.e. a negative duty not to do harm and a

positive obligation to take certain steps to assist the wounded, sick, and shipwrecked. Thus, there is a duty to collect and care for enemy wounded. They must be given same access to medical treatment as the State's own wounded and sick, priority between wounded persons being determined solely by considerations of medical need and not by nationality, allegiance, or status.<sup>51</sup>

Right after the air attack, the opposition takes the moment to catch and detain Gaddafi. The opposition militiamen ultimately put Muammar Gaddafi into an ambulance, and drove him away from the scene to Misrata in a massive convoy. Phone video footage obtained by Human Rights Watch taken at the scene of his capture appears to show Muammar Gaddafi's nearly naked and apparently lifeless body being loaded into an ambulance, suggesting that he may have been dead by the time he left the area of his capture. By the time Muammar Gaddafi arrived in Misrata, a trip of at least two hours, he was almost certainly dead, and images of his body began circulating. There, his body was displayed to the public. The exact circumstances of his death remain unclear: some militia fighters from Benghazi claim to have shot Gaddafi dead during a dispute with Misrata fighters about where to take him, but their claims remain

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<sup>51</sup> Geneva Convention I and II, Article 12; see also, Malcolm D. Evans, 2006, *International Law*

unconfirmed. The bodies of Muammar Gaddafi, Mutassim Gaddafi, and Abu Bakr Younis were ultimately buried in a secret, unmarked desert location, to prevent their burial place from becoming a rallying point for his former loyalists.<sup>52</sup>

The armed of the opposition group capture Gaddafi before he die, is the condition when Gaddafi categorized as Prisoner of Wars. Gaddafi has right to be threatening by the opposition well, explain by the Geneva Convention, as follows:

#### Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

### Article 12

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

### Article 13

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of

the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity measures of reprisal against prisoners of war are prohibited.

#### Article 14

Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

International Human Right and International Humanitarian Law provide a number of fundamental protections for non-combatants and combatants. It prohibits violence against such persons, particularly murder,

dignity and degrading and humiliating treatment. The prohibition against the extrajudicial killing of captured combatants, or combatants placed hors de combat because of their injuries or other reasons, is considered a fundamental principle of customary international law.<sup>53</sup>

Clearly above, Article 3 of the Geneva Conventions prohibits “violence to life and person, particularly murder of all kinds” of civilians as well as persons placed hors de combat. Murder is also specified as a war crime under the Rome Statute of the International Criminal Court with respect to both international and internal armed conflict.<sup>54</sup> The opposition group armed surely breach convention and fundamental principle on International Humanitarian Law and International Human Rights Law.

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<sup>53</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, 2009, *Customary International*

## **CHAPTER V**

### **CLOSING**

#### **A. Conclusion**

Based on the Universal Declaration of Human Right as a mother of the non derogable rights shown that the treatment of Gaddafi is acting which violate this provision. On the other word, the death of Gaddafi during his custody is a violation of human rights. In line with that, on the perspective of International Humanitarian Law, based on the provision of Geneva Convention III of 1949 article 3, article 12, article 13, and article 14 which specifically contain the protection of prisoners of wars was proved that during his status as prisoner of wars, Gaddafi's rights are violated.

#### **B. Suggestion**

There is one principle on the International Law known as Principle of Exhaustion of Local Remedies to answer the problem on this research. This is a principle of international law that protection of human rights should be carried out by national governments. National remedies are viewed as more effective way than international ones because they are easier to access, proceed more quickly and require fewer resources than making a claim before an international body. Access to international enforcement mechanisms is seen as a last resort, after the State has failed to correct the violation or to compensate victims.

The principle above required the relevant authorities of Libya have to investigate violation committed on their territory and prosecute the suspects where appropriate. The commitment to solve the problem has to be shown by the authorities of Libya if they won't international mechanism take over this matter as like as the principle above explained. When the authorities of Libya proved unable and unwilling to solve the