

CHAPTER IV

The Analysis of Libya's Conflict and the Protection toward Civilian in time of Conflict

A. General Overview of Libya

Libya is located in North Africa, sharing extensive borders with the Egypt and Sudan to the east, Tunisia and Algeria to the west, Chad and Niger to the south.³⁶ With an area of 1.80 million sq km, Libya is the fourth largest country in Africa, yet its population is only about 6.4 million, one of the lowest in the continent.

Libya has nearly 42 billion barrels of oil in proven reserves, the ninth largest in the world. With a reasonably good per capita income of \$ 14000, Libya also has the highest Human Development Index (HDI) in the African continent. However, Libya's unemployment rate is high at 30 percent taking some sheen off its economic credentials.³⁷

Traditionally, Libya divided into three distinct regions; Cyrenaica in the east, Tripolitania in the northwest, and Fezzan in the southwest. Those three regions are relatively autonomous from one another with different political and economic identities. Comprising the eastern half of the country, Cyrenaica and its capital city of Benghazi served as the seat of power for King Idris I under the Sanusi Monarchy. Historical enmity

³⁶ Anthony Bell and David Witter, *The Libyan Revolution: Roots of Rebellion*, *The Institute for*

between Cyrenaica and Tripolitania has grown since independence in 1951 as both regions struggled for control of national leadership.³⁸

Libya is a Roman colony for several centuries was conquered by the Arab forces in AD 647 during the Caliphate of Ustman bin Affan. Libya was ruled by the Abbasids and the Shite Fatimids till the Ottoman Empire asserted its control in 1551. The Ottoman Empire rule lasted for nearly four centuries and the ending of Ottoman Empire defeat in the Italian-Ottoman war. The Italians ruled till their defeat in the Second World War.³⁹

In 1949 the Libyan Constitution was enacted under the government of Mohammed Idris or what so called King Idris. Under the government of King Idris, Libya became an independent state. In 1969 King Idris reigned when Colonel Muammar Gaddafi overthrow him through military coup. Colonel Muammar Gaddafi controls the state with a heavy hand. He abolished the monarchy, revoked the Libyan constitution and adopted laws by his own ideology what so called The Green Book and without hesitation he eradicates the dissidents against him.

One week after the revolution in Egypt and Tunisia, a rebellion against Muammar Gaddafi's government appeared on Benghazi, Libya's second largest city and quickly spread across the whole of east and to some part of the west. This is shown that there has been-and there will be- no serial collapse of authoritarian regimes leading to a democratic future

Instead of revolution, the talk now is of uprising, revolt or even simply crisis.⁴⁰

Arab societies and polities have tight interconnections and some important characteristics. The beginning of the modern state system in the Middle East influenced by the potent myth of the Arab nation and common public space pervaded by the idea of Arabism.⁴¹

1. The roots of Libya's Conflict

There are several reasons that caused the uprisings in some Arab state in 2011 as follows: an explosive mix of socio-economic problems and widespread and deepening political grievances constituted a common causal thread behind all the uprisings.

The one which played the role is there is a clash between expectations and reality. The high expectation from peoples regarding on the good government isn't the same with the reality. Still many people who didn't get a job, means that the rates of unemployment is high especially among youth (an educated youth), corruption happened, internal regional and social inequalities and a further deterioration of economic conditions because of the global 2008 financial crisis and food price increases.⁴²

⁴⁰ Katerina Dalacoura, *The 2011 Uprisings in Arab Middle East: Political Change and Geopolitical*

The socio-economic grievances described that the rebellions were a call for dignity and a reaction to being humiliated by arbitrary, unaccountable and increasingly predatory tyrannies. The unprecedentedly widespread use of social media and other means of communication made the rebellions possible and increased their strength and allowing the revolt to spread across borders.⁴³

In line with the Libya's conflict, the roots of conflict appeared from the disappointment of peoples over the authoritarian government of Gaddafi. That's authoritarian power has brought the people of Libya to live in restrains of Gaddafi's regime. There are three important pillars in the government of Gaddafi; to keep his authoritarian power such as: family, money, and loyalist.

In case of family, Gaddafi puts his son, Khamis Gaddafi in an important position to lead the special elite force what so called Khamis Brigade. United States said that the position of Khamis Gaddafi as a leader of Brigade is to become Libya's protector.⁴⁴ Brigadier General Abdullah Sanusi who became an actor behind the crackdown on anti-government action in Benghazi and other cities in Eastern Libya was a stepbrother of Muammar Gaddafi.

Rebellion against Gaddafi's government is a reflection of peoples against the regime of Gaddafi that is considered failure in

⁴³ Ibid., p. 68

⁴⁴ Tinjauan Konflik di Libya dan Kebijakan AS Terkait Krisis Politik di Libya. Downloaded from <http://www.library.unsw.edu.au/odf/5E8C8D8144/204613022/RAR%20II.pdf> on July 31, 2013 at

order to present the interest of peoples through Gaddafi's policies, a political dissatisfaction, and the demands of democracy. Throughout the history of Libya's government, Gaddafi's regime is the most dominated, so the existences of Libya's people are impasse.

And then peoples of Libya try to show their grievances through demonstrations in Benghazi on February, 15, 2011. Their bravery influenced by the revolution of their neighbors; Tunisia and Egypt. But the respond given by the government of Libya was quickly and decisively, which increased its chances of survival.

Gaddafi ordered troops loyal to him to quell the rebellion. He also announced the intention to "fight to the last drop of blood".⁴⁵ In this case, the regime leader's reaction to the rebellions which was partly about personal character was crucial in determining how the rebels develop. Gaddafi's reaction toward the rebellion shows the dictator and tyranny characteristic were exist in his government.

2. The Conduct of Hostilities

a. The Battle in Eastern Libya

In the beginning of 2011, Libyan Arab Jamahiriya had for over 42 years been ruled by an authoritarian regime with Muammar

Gaddafi as its leader.⁴⁶ The demonstrators first erupted in Benghazi

an Eastern Libyan city following the arrest of a human rights campaigner and lawyer Fathi Terbil on February, 15.⁴⁷

The members of demonstrator are civilians consist of teachers, students, lawyers, oil workers, and some of the professional soldier that defected from Libyan Army and then joined the demonstration.

In the development of the political crisis in Libya, there are two groups involved. The first group comes from the loyalist; group that in line with the government of Gaddafi and wants to maintain the leadership of Muammar Gaddafi. In other group is opposition group; consist of peoples who want to oust the government of Gaddafi.

This group organized under the National Transition Council (NTC). Its establishment has been dated by various sources between February, 27 and March, 5, 2011, claiming to be the legitimate government of Libya.⁴⁸ The NTC was complemented by a military council set up to coordinate armed activities that oversaw at least some of the opposition troops.⁴⁹

The demonstration progressively enlarged in Benghazi, Derna, and Bayda and it was peaceful during the first few days. Although the first indication of unrest appeared in early February, they escalated with large scale demonstration known as the Day of

Range on February, 17, 2011, however security forces began firing live ammunition on February, 17 and killing more than 150 people over the next day.⁵⁰

The Libyan security forces responded to demonstrators with lethal force, targeting funeral processions for those killed in the demonstration, while the demonstrators responded with the few weapons they had.⁵¹

According to various reports, by 19 or 20 February, local armed units started emerging in western cities of Al Zawiyah and Misrata as well as in the east of the country in Benghazi and Shahat, even in Tripoli.⁵²

In order to stop the demonstrations, police of Benghazi and Tripoli arrested some demonstrators who were caught and majority of them were human rights activists. According to the Cable News Network (CNN), this clash caused 20 peoples died.⁵³ By the 19 February, there was happen a bloody clash between the demonstrators and the security forces. The security forces shot the demonstrators using bullets and caused almost 84 peoples died.

The regime of Gaddafi used the state-owned cellular company to send threats message. The message contains news that

⁵⁰ Anthony Bell and David Witter, *op.cit.* p. 24

⁵¹ *Ibid.*, p. 24

⁵² Kubo Macak and Noam Zamir, *op.cit.* p. 406

⁵³ Tinjauan Konflik di Libya dan Kebijakan AS Terkait Krisis Politik di Libya. Downloaded from <http://www.library.unsw.edu.au/e4/5/EIS/DS1/11/20/1613022/DAR%20U.pdf> on July 31, 2013 at

the demonstrations wouldn't be tolerated. On the 19 February, in order to disrupt the opposition's ability to organize and communicate, the Libya's internet connection to the outside world was abruptly severed by the government.⁵⁴ The demonstrations reached Tripoli on 20 February and it was the first clashes between demonstrators and the security forces in the capital city.

These clashes led to speculate that Gaddafi would resign from his regime, seeing the demonstration was rapidly collapsing. On the night of 20 February, Saif al-Islam; the second son of Muammar Gaddafi delivered a speech on state television-rebroadcast around the world- to the tense nation.⁵⁵

He warned that if the demonstrations continued and the country continued on its course, it would led into a civil war along tribal and regional lines; between Cyrenaica and Tripolitania. He also concluded that regime would not fold peacefully, while declaring, "We will fight until the last man, until the last woman, until the last bullet."⁵⁶ A few times after Saif al-Islam finished his speech, the anti-regime of Gaddafi and the pro regime of Gaddafi backed by riot police on Green Square in Tripoli throughout the night.

In the morning of February, 21, the security forces opened fire to the demonstrators which caused they looted and burned the

police station. Then the Gaddafi's forces deployed helicopter gunships and warplanes in the crackdown.

In order to prevent the anti-regime of Gaddafi from arming themselves, the pro regime of Gaddafi were likely used to bomb arms depots left unguarded around the capital.⁵⁷ From that clash, about sixty people had been killed and scores wounded.⁵⁸

In the next day, the loyalist forces continued to crack down the demonstrations in the capital city by establishing a heavy military presence in the restive neighborhoods and forced dissidents underground. Although Gaddafi did everything to secure the capital city, he had lost control over almost all of Cyrenaica by February 22, including Benghazi, Ajdabiya, Derna, Al Bayda, and Tobruk.⁵⁹

The government of Libya recruited several mercenaries from abroad to stop the demonstration by gunning down the unarmed demonstrators, while most of the unarmed demonstrators were civilian. Not only shot and gunning down, they also torture the demonstrators who were caught alive and even shot the mosque which have been a place to take shelter by the demonstrators.

The issue of mercenaries was also reports about violence committed by the rebels against African migrant workers and black Libyans accusing them to be part of mercenaries force loyal to

⁵⁷ Ibid.,

⁵⁸ Ibid.,

⁵⁹ Ibid., p. 30

Muammar Gaddafi.⁶⁰ By the 20 February, governmental units opened machine-gun fire on the demonstrators and the Libyan Air Forces warplanes and Navy warships bombarded rebel-controlled cities.⁶¹

b. The Battle of Zawiyah

Zawiyah is a major city in western Tripolitania located on the fertile Jafara Plain; a flat and densely populated area that starts west of Tripoli and stretches along the Mediterranean coast to the Tunisian border.⁶² Zawiyah has a population estimated at 200,000 and it is the fourth largest city in Libya with a middle-class city surrounded by farming communities.

Zawiyah becomes important for the regime to keep under its control because of its port facilities and oil refinery as the primary source of fuel for Tripoli.⁶³ The demonstrations in Zawiyah began on February 18 with hundreds of residents congregated in Martyrs Square as the center of the city to protest the regime's brutal crackdown in Benghazi.⁶⁴

Many interventions from outside comes soon after the fighting started, as follows the intervention from France, The British Naval, U.S, and most of the members of NATO. The U.S AND European leaders called for Gaddafi to leave power but

⁶⁰ Ajish P Joy, *op.cit.* p. 3

⁶¹ Kubo Macak and Noam Zamir, *op.cit.* p. 406

⁶² Anthony Bell and David Witter, *op.cit.* p. 30

⁶³ *Ibid.*, p. 30

⁶⁴ *Ibid.*,

limited their involvement to a short term UN-mandated air campaign to protect civilians and enforce a non-fly zone over Libya.⁶⁵

In the period between August and October 2011, the rebel forces seized most of the territory including the capital city of Tripoli and the forces loyal to Muammar Gaddafi retreated mainly to the area around the city of Sirte.⁶⁶ The battle of Zawiyah shows that Gaddafi has an effective strategy to recapture Misrata, Benghazi and other rebel-held cities.

The main target of the rebel is Muammar Gaddafi was found and was shot in the head by the rebel forces. And then the 9 months Libyan conflict was declared over by the National Transition Council and followed by the decision of NATO to stop all of the military operation in Libya at the end of October 2011.

B. The Protection of Civilian in Time of Libya's Conflict

Generally, in every warfare there are certain peoples who should be protected. One of them is civilian. The Black Laws Dictionary stated that civilian is a person who not serving in the military or in the other word civilian is a person who doesn't belongs to military member.

International Humanitarian Law has defined the status differences in a non-international armed conflict, between combatant and civilian. The

⁶⁵ Ibid., p. 14

⁶⁶ Kubo Macak and Noam Zamir, *op.cit.* p. 423

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⁶⁷ Toni Pfanner, Various Mecha
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⁶⁸ 1949 Fourth Geneva Conventio

protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion, or political opinion.

However the parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Additional Protocol II also regulates about the protection toward civilian in article 7, 13, 14, and 17. Article 7 contain of the protection and care toward all the wounded, sick, shipwrecked; they must be protected, treated humanely and cared for without any distinction founded on any grounds other than medical ones.

While article 13, 14, 17 more consent on the protection to the civilian population. The protocol declares neither the civilian population as such, nor individual civilian may be the object of attacks.⁶⁹

In 2001 the Report of the International Commission on Intervention and State Sovereignty (ICISS) put fourth models of Responsibility to Protect (R2P).⁷⁰ Responsibility to protect (R2P) is an international organization formed through U.N Security Council.

⁶⁹ Additional Protocol II

⁷⁰ Amelia Mae Wolf, *Operationalizing the Use of Force under Pillar III of the "Responsibility to Protect" Framework-A Case Study of Libya (2011)*, downloaded from <http://www.academia.edu> on June 21, 2013, 11:38 pm

The purpose of this organization is to settle any kinds of issues related with humanity as like as genocide, war crimes, war against humanity, and ethnic cleansing.

The role of R2P is to take military intervention to the States which had proven committed offense against humanity. In 2009, U.N Secretary General, Ban Ki-moon reports the "Implementing the Responsibility to Protect" which outlined three-pillar approach to implementing R2P:

Pillar I: The State has the primary responsibility to protect its populations from the four crimes of genocide, war crimes, crimes against humanity, and ethnic cleansing;

Pillar II: The international community has the responsibility to assist States in fulfilling the responsibility;

Pillar III: The international community should use appropriate "diplomatic, humanitarian, and other peaceful means" if the State fails to protect its population or is the perpetrator of the crime;

Pillar IV: A wider range of collective actions, either peaceful, or non-peaceful, could be invoked by the international community if two conditions are met: (a) "should peaceful means be inadequate" and (b) "national authorities are manifestly failing to protect their populations"⁷¹

In the beginning of February 2011, there was a report escalated to the international community regarding war crimes and crimes against

humanity committed by Libyan government against civilian population during Libya's conflict.

The report stated that at least 233 peoples were death over the course of four days and it's shown that Gaddafi had no intention of protecting his people.⁷² This strengthened by June 1, 2011 the International Commission of Inquiry in Libya, established by the U.N. Human Rights Council (HRC) on February, 25, 2011 issued a report that war crimes and crimes against humanity had been committed by both pro Gaddafi and anti Gaddafi forces.⁷³

By acting under Chapter VII of the Charter of the United Nations in Resolution 1970, the U.N. Security Council recognized that the situation in Libya was a matter of international concern. Because of the situation was categorized as a threat to peace, the Security Council is granted the power under article 41, to "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 Members of the United Nations to apply such measures".

This is shown that it is allowed for the implementation of non-fly zones, otherwise it would amount to unlawful "use of force" in violation of Article 2 (4).

The situation in Libya constituted a threat to international peace and security and leads the authorized Member States to take all necessary measures to protect civilians and civilian populated areas under threat of

attack in Libya. According the history of the United Nations, the term all necessary means has been the standard phrase used by the Security Council to authorize military actions.⁷⁴

Because of the failure of Libya's government to uphold its responsibility to protect, the responsibility to protect the Libyan population was transferred to the international community.

With this responsibility to protect, to prevent violation of the civilian population of Libya on the shoulders of the international community, the U.N. Security Council took immediate action as like as 15 North Atlantic Treaty Organization (NATO) member countries, began to collectively enforce a no-fly zone in Libya during the conflict. This is indicates there was an effort to protect civilian in time of conflict.

The moment when that Member State engaged in implementing the non-fly zone, NATO forces were required to act in accordance with international humanitarian law. The essence of international humanitarian law lies in the 1949 Geneva Conventions and Additional Protocol and customary international law.

Additional Protocol 1, Article 48

"Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian object and military objectives and accordingly shall direct their operations only against military objectives". While in article 51(2); "civilian population as

⁷⁴ Ibid., p. 10

such as well as individual civilians, shall not be the object of attack". That article also supported by article 51(4):

"Indiscriminate attacks are prohibited and are defined as those of a nature to strike military objectives and civilians or civilian objects without distinctions". Principles of proportion also stipulated in the article 51 (5) of Additional Protocol I;

"Disproportionate attacks are prohibited and are defined as those which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."

This caused by the strong pro-Gaddafi's forces. Military force in Libya mostly from the tribes loyal to Gaddafi and the military leaders are family of Gaddafi. In addition, a lot of people of Tripoli and the surrounding areas are very loyal and willing to fight for Gaddafi.

To ensure that international humanitarian law is applied in situations of armed conflict, the entire range of implementation mechanism provided for in the law itself must be used to full, including in peace time. We called it as national implementation measures.

This general obligation to take measures is stated in Article 80 of Additional Protocol I:

The parties shall without delay take all necessary measures for the execution of their obligations under the Conventions and this Protocol

Means that the state should adopt a national law to make sure the treaties are applied and adopt any necessary legislative measures to determine appropriate penal sanctions for grave breaches of international humanitarian law.⁷⁵

In the case of Libya, Libyan government even mobilized its military forces to attack the civilian population who are the members of the rebellion against Gaddafi's force. The Libyan government seems don't take any effort in order to protecting the civilian during the conflict. This is proven with the highest number of the war victim were civilians.