**2013-09-24 Presentations:**

**Speaker: Giuseppe Nesi**

**Professor Li**: Pleased to invite Professor NESI, from Trento University, to visit our international law institute. The topic of today’s lecture is human rights and nonintervention. It’s an interesting and enduring topic since World War II. As we all know, Charter of the United Nations declare the observation and respect for human rights. Since the Charter, there are a lot of activities, events and theories about this topic. Let me tell you about the facts. I don’t think many people know these facts. At the very beginning of the United Nations, who first launched the claims against the policy of South Africa? It was India and China. I remembered that about 1948, India and China made complains in the United Nations Assembly against the policy of racial discrimination of South Africa, especially about the India African people and Chinese African people in the country. After that, there are a lot of resolutions in the United Nations Assembly first, then the economical social culture, after that, resolutions from the Security Council. ICJ involved in that. There are a lot of areas where human rights and nonintervention are sharply argued. In *Nicaragua* case, ICJ made a judgment against the United States, made a decision that the United States violated the non-use force and nonintervention principles. Since 1990s, we experienced a lot of conflicts, war, the Kosovo war, the great debate about the topic. In the process of Libya and recently Syria, also I think the key part is how to see the relationship between human rights and sovereignty, and it’s related to the non-use force and nonintervention principles. Professor NESI is rich in the international law experience. He used to be a legal adviser of the President of UN. He also used to be a legal adviser for the Security Council of the UN. So I think he has many useful sources about this topic.

**Professor NESI:**

Thank you very much, Professor Li Ming. Thank you for your invitation. It’s really kind and warm for me to be here. It’s my first time in China. It’s my first time in Beijing. I knew that you are the rising star in the international community, but now yet prove that you are more than the rising star as for the state in the world for many reasons. The reasons are that you show to the world that the strong development is possible and you can also always keep the root of your traditions somehow. So I am very pleased to be here and I’d also like to thank, of course, plenty of colleague, Professor Zhang Shouwen, as they were inviting me

I am thinking, and I propose the way to conduct the business to you. And I propose to make a presentation that is not too long then we have time for discussion. I will not make the presentation to be too fast.

The title of my presentation today, as Professor Li Ming has said, is concerns in international human rights and states sovereignty.

Another reason I was impressed by China, was in fact that China was so open minded that inviting me for the discussion without giving me any instructions. Allow me to talk about something that is really important.

I’d like to say how I want to deal with this topic.

First of all, Professor Li Ming already explained the development from the end of World War II, some of the main issues concerning state sovereignty and human rights. But I’d like today to especially address the last 20 years. And I would like to speak about what happened mainly within the United Nations’ environment. This is because in the last 20 years, I have working experiences in the UN, So I can tell you what I think is the best part of these experiences with regard to this issue of the human rights and state sovereignty. Professor Li Ming reminded that the UN Charters make references to the protection of human rights and freedom, but he also knows very well, as we all do that, the principle of non-interference of internal affairs is one of the main principles in the UN Charter. So the problem is always being that, applying to have a mid-ground between, on the one side, human rights, which is the recent topic; and the non-interference of internal affairs, as you know, is the very root of the states. And the States were those who drafted the UN Charter, so surely they have in mind what are their duties in respect to human rights. But they also know what are their rights, what are the principles guard their relations with other states. It’s why article 2 of paragraph 7 is something belong to the assents of states, and states were ones who wrote the Charter. So it’s not strange that the reference of the non-interference of internal affairs is in the Charter. So I’ll say something about the last 20 years about the activities in order to address the three main arguments.

The first one is about the relationship among the human rights, state sovereignty and counter terrorists. The second one will be the human rights, state sovereignty and the responsibility to protect. And the third one will be the human rights, state sovereignty and the suppression of the international crimes, so the punishment in the international crimes.

Why I decided is to touch upon the 3 main topics? Because in all these topics, the fundamental role is played by the United Nations, directly or indirectly.

So let’s start with human rights, state sovereignty and courter terrorists. You all know what happened in 11th, September, 2001. Terrorism was almost unknown to the Security Council until that day. So before 9-11, the Security Council only adopted 2 resolutions concerning the terrorism, and only in one of them they name the terrorism was in the reality, and that was the resolution concerning Afghanistan. After 9-11, in a short period of time, from 2001 to 2005 or 2006, 20 resolutions concerning terrorism were adopted by the Security Council. What does this mean? This means that terrorism didn’t exist before 9-11? No, terrorism existed more than that. The Security Council was extremely cautious in dealing with this phenomenon. Because it was clear to everybody that fighting terrorism, especially in the national terrorism, the use or means, could have a link about the human rights. This was one of the reasons. And the Security Council was extremely extremely cautious in not dealing with the human rights issues. Of course, human rights was within the main principles, but the Security Council didn’t accept or maybe digest it well until the first years of 2000 that it had to address the issue of human rights. That was the first commission of the UN Assembly to deal with the human rights, and there was the Human Rights Commission at the time .So it is not necessary for the Security Council to think about the human rights. Terrorism was a sort of shock, everybody understood, at that moment, that terrorism was surely something attacking international security and peace of our world. So it became necessary for the Security Council to deal with it. At the very beginning, I have to say, the Security Council was very clumsy in doing this. Because it didn’t have the tools or the experience. On the issues, such as working matters, not only China, Russia or the United States, but all the members of the Security Council had to deal from the very beginning from the creation of the United Nations. They sure of terrorism, found the Security Council, without the necessary tools to object it. What they need? As you know, they adopted the Resolution 1568, where reference was made to the conference on the inherent to self defense in relation to terrorism. And what’s more important, they adopted the Resolution 1373 of 2001, to which the counter terrorism committee was created. So why before this, the Security Council felt only with Afghanistan as a place where terrorism was conducted, and this is resolution of 1998, one of the two resolutions were making reference to. And they created the instructions committee as you may know. What change completely the landscape was the 2001 events. Of course, 1258 and 1373 were closely linked, but why the first one, about the 1998, refer to individual commanding, linked to the Taliban and al quada? Resolution 1373 was addressed to States. So what’s the key of the resolution? Because it is true and clear that when the resolution consuming the Taliban and al quada, the States were quested to suppress and to arrest the individuals, to put Taliban home about certain people. In 2001, the first target of the resolutions was the behaviour of States. And it is truly meaningful that States were required to sign and ratify the international conventions concerning counter terrorism. Many of the conventions were ignored by States until that time. After 9-11, with Resolution 1373, the States had to do something because there were sort of something of what States were going to do year by year. So the States were immediately called to action. It’s the reason why many of these conventions, at that time about 12 conventions and protocols were signed and ratified at that time. After 9-11, about 3 years time, many States had to adopt, sign and ratify these international conventions concerning counter terrorism. The number jumped from 3 or 4 to 150,160, which is quite impressive in the international community in a short period of time. What does this mean? This means maybe that States decided to open for signature these conventions with their idea of not signing or ratifying them? No. The idea was that maybe there was no need to do this. What was even more important and it was real in this field, was to say, they have to adopt legislations concerning counter terrorism. For many States in international community, terrorism was not part of the legal order. The phenomenon was unknown to some States, even some important States. This is the first important in the field. When you do this, you have to deal with human rights. You have come to fight with the criminal phenomenon, such as international terrorism, without thinking about international human rights in the national legal law. What’s more is the fact that in the years followed the 9-11, and also the resolutions concerning al quada and Taliban seems to do useless, States were eager to put on the list of those alleged terrorists. Many individuals and entities maybe have nothing to do with terrorism. But at the same time, there were problems for the States which decided to put the names of the individuals and entities on the list. When you are on the list of the sanction of the community, of the Security Council, it was quite easy for States like Italy, which has good security service, as the second State to provide the names of individuals and entities as the allegedly terrorists. But at the same time, there was a problem of human rights. How can you fight terrorism but try to respect human rights? This is something found in the Security Council which was not prepared to. There were many trials in the national court and many states and also in the ECHR etc. For those people whose names were put on the list, they were finally proved to do nothing with terrorism. So that’s the problem with human rights, in which the Security Council has to consider. Without thinking to the consequences, maybe some states have but not all of states have, the problem was with a lot of emotion about 9-11, whatever was proposed, everybody decided to support the idea that terrorism have to be suppressed, without taking into count what maybe the consequences. And this led to the situations in Security Council, in a couple of years, out of control. This was the first thought I’d like to present on the human rights, state sovereignty and terrorism.

The second thought I’d like to talk about was the human rights, state sovereignty and the suppression of international crimes, the so-called international criminal justice. I don’t want, of course, to go the end of the first world war, to the idea that those were held responsible for international crimes, such as crimes against humanity, war crimes, genocide should be prosecuted., and I will not talk about the Nuremberg and Tokyo Trial. I will talk about the last 20 years. In 1990s, international tribunals were set up by the Security Council. As you know, the international criminal tribunals have the connection with the Security Council, they were set up because there were tragic events happening in former Yugoslavia and Rwanda. The Security Council was quite brave. There were some important States in Security Council that were cautious of this. Because they understood that on the one side of course, you have the problem on protecting human rights, especially against international crimes, on the other side, UN shows understanding that what is happening may be on the state’s side. However, the Security Council decided to set up the international tribunals. They were appeared after the attack, so some of the criminal lawyers were objected to immediately. But when talking about the international crimes, it was not created as a legal matter by international tribunals, it was customary international law—the suppression of the international crimes and the value against the crime is something naturally belong to the customary international law. However, the international criminal tribunals were put within the UN systems, they were thought as professional system that accepted by international community, so the most important members of international community was accounted on the security council. The Security Council set up the tribunals was to gurantee the values through these tools. Other special tribunals also have linked to the Security Council. The Security Council have the responsibility for the creation of them. Also in this case, we have problems finding out the mid-ground between the punishment for those responsible and the sovereignty of States. In the near world, for some states, .there can be combatants to suppress these crimes. In 1998, there were a conference concerning the Rome Statute and the International Criminal Court, many countries went there discussing many issues. They also have continued to work. Now, as you may know, 122 States have ratified the Rome Statute. On the one side, the creation of ICC was sort of a dream coming true as regard to punishment of international crimes. On the other side, it is clear that finding mid-ground between human rights and state sovereignty. Many States in Africa objected to some of the trials of the ICC, like in Sudan and in Kenya. There were strong resistances to the action of ICC. And it was accused of being blind and western-presented without concerning the need and particular situations of certain states in the African communities .One of the main accusations that was made was the fact that sometime, prosecuting the officials alleged international crimes did harm to peace process. Some of the prosecuted persons were presidents of the States or some very important politicians, like recently the president of Kenya were brought to justice, without mentioning the case of Sudan.

I would say that only the future can tell us whether the international criminal court is something right for the community and how long will it be able to work smoothly, it must put more on concerns to make the international court works more smoothly. But now, it was only one decade since it was established. I am supportive on this court, but time must say that it has shown some problems that cannot be ignored. These problems always have to deal with the relationship between the human rights, state sovereignty and the international crimes. This has a link about the human rights, state sovereignty and R2P (Responsibility to Protect). R2P is the objective to close the circle about the international criminal justice and ICC. There’s opinion saying that the ICC, according the Rome Statute, can punish the persons who are responsible for the international crimes, only when the States were unable or unwilling to prosecute. Only at that time, ICC can start its trial. This was also discussed very much at the Rome Conference, and this was also a way to solve the problem of the relationship between the human rights and state sovereignty.

Then I go quickly to the third point, the third point is human rights, state sovereignty and R2P. R2P is raised in by an NGO in the 1990s.It was a principle raised at that time because of a series of events. It was a idea that a state has the obligation to avoid that those on it territory to be the victim of war crimes, crimes against humanity and genocide. This was not born into a week’s conference, it shall be dated back to many years ago. After what happened in the 1990s, it turned out that States shall do something, and try to put a limit to their own sovereignty when human rights are at stake.

This was the reason why in 2005, the outcomes summit documents, on the celebrations of the creation of UN, that was created in describing the states responsibility to protect. However, many states were objected to many ideas about the R2P. Because they saw these ideas add interference about their territory. This was something that not acceptable by States because R2P, at the very end, implied, and also the usual course by the international community provide that the Security Council allowed it .So and only of course, the international crimes, such as war crimes, crimes against humanity, genocide taken place in a certain area, and the State was not able to punish the international crimes. So this concept was actually having a very limited scope about implication and application. It seems that the Security Council has to say the last word. As you know, R2P was included in the Resolution 1970 and 1973 of the Security Council in 2011 concerning Lybia. All those show that Security Council accepted the idea that could be situations in which even usual force could be accepted or promoted if the States sometimes even contribute to the perpetration of international crime. But the Security Council must have the final words on that.

I will finish my presentation but it is just a beginning of our discussion. I want to stress one thing I have forgotten to mention as regard to ICC, according the article 16 of the Rome Statute, the Security Council can also have a word to say, as regard to also has the right to suspend the prosecutor of the international criminal court. And at the same time, it is important to recall that in the review conference of ICC in 2010, the issue of aggression was discussed. It was not easy at all to find the definition of aggression and reach an agreement on that in the conference, on the so-called the condition for the exercise, the jurisdiction of ICC in the case of aggression. Because the Security Council is very jealous of ICC on this issue. And the Permanent members of the Security Council was wondering why they accept the definition of the aggression. They Key five members will not happy at all with the idea of giving to the ICC their power to activate itself in case of aggression.

To conclude my presentation, when we speak about international human rights, state sovereignty, it is clear that, in the last 20 years, the Security Council keep an essential role in different situations, such as in respecting UN Charter, especially when it related to human rights. And this go back to the very beginning of my presentation.

**Discussion:**

Q: How do you see about the terrorism? About the human rights and state responsibility to protect them? States have the responsibility to protect citizens, if he gave up on the names of terrorists, I don’t see there is a problem.

A: It’s truly the state’s responsibility to suppress the crimes. The problem is that terrorism was not a common crime, it is the crime involved international cooperation. The Security Council created the sanctions in the community. It’s something that beyond the State sovereignty. It’s their duty to protect the alleged terrorists’ human rights. It needs international cooperation among states. If the State put a name on the list, they must have the evidence that these people and entities are terrorism. If not, States could be responsible if they have the violation of their human rights. In an case, in 2003, there was an Italian kidnapped someone, he was taken by American agent, he was sent to Egypt, he was tortured and finally came backed to Italy. He sued the Italian and American agent and the Court thought these people were responsible. On the one side, the state has the duty to prosecute the crimes, but only in the right way, otherwise, it will has risk to be guilty. I was serving my country but I was embarrassed. So the state really needs to be precautious.

Q: I have a question about the Resolution 1973 and 1970. My question was about the second resolution 1973. From my perspective, there is no real agreement in the resolution. There are two intentions. One is that the intention of Russia and China, their attitude was to establish a cure, to support the council, to some countries to use force and prevent using air force towards people. The other intention, followed by western countries, was very interesting. Do you think that my opinion about no agreement exists is right?

A: You are perfectly right. At the same time, there are some criticism about the actions of France and Italy. In some time, some powerful states don’t say yes, but not say no. The intention of Resolution are varied in this case.

Q: I also have a problem about the human rights and terrorism. You have mentioned about 9-11, as we know, US have taken some actions, like building some prisons and torture criminals. Some people think their action violated the human rights of the criminals, some argue that this was to protect the whole country? So how do you see the relationship between the human rights of the minority and majority?

A: This was talking about the actions promoted by US. It is clear, in certain cases, the State sovereignty prevailed the human rights. In this case, these people were not Americans, they belong to other states. In these cases, the United States were guilty twice because they don’t have any rights to torture and bring these people abroad. In war time, the rules applied are different in peace time. If it is war, the US can capture the combatants belong to the other party, they should try to ensure their treatment, perform their obligations under IHL. But the situation is different, the problem is that US was not having the people on its mainland. That is why the Guantanamo was created. Having these people in its mainland will cause more problems. Because it will be very difficult to apply legal rules. So they decided to take people oversea. The idea is difficult and embarrassing. There are people with different situations there, we don’t know the identity of people there. The Guantanamo phenomenon was known to the world. Some of people were under trial, as the US say. But there are problems about the human rights and state sovereignty there.

Q: Human rights and sovereignty is not only legal issue but also political issue. The resolutions passed by the Security Council were depend on not only legally issues. but also the power of States. That’s very complicated.

A: It’s true based on my experience. But what’s interesting is that, it is clear, political issues were always there, but at the same time, the resolutions always have legal backgrounds. As you understand, the first drafts are always in English. You have to understand that situations. Only when everyone agrees, there adopted the resolutions.