

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

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<https://www.e-ir.info/2014/01/25/libya-the-moral-permissibility-of-operation-unified-protector/>

IBEH MOSES CHIGOZIE, JAN 25 2014

Issues of humanitarian interventions generate questions of morality. The 2011 military intervention by the North Atlantic Treaty Organization (NATO) in Libya is no exception. Critics have been quick to point out that the intervention was impermissible and in light of this, it becomes imperative to examine it to ascertain if it could be deemed morally justified. An assessment of the intervention using the *jus ad bellum* principles shows that the accusations of immorality are unwarranted. NATO's intervention in Libya had a just cause, for it was undertaken primarily to protect civilians. Its benefits and evils were considered against each other; the intervention was the last resort at the time it was launched; and it was properly authorised. This paper refutes arguments against the intervention; rather it shows that the intervention offers an example of how to genuinely respond to the idea of civilian protection.

In recent years, Humanitarian Intervention (HI) has gained prominence in international politics. As noted by Murphy (2013:21-22), the protection of a people under oppression is not a 21<sup>st</sup> century invention: HI has already been in existence for over 500 years. Drawing from Holbraad (1970:162-76), Murphy describes the series of wars fought by the medieval Concert of Europe against the Othman empire to save Christian minorities around the dynasty as a form of HI.

Upon the signing of the 1648 Treaty of Westphalia, the idea of sovereignty was upheld. This demands that no nation shall intervene in the internal affairs of other nations. This principle has, in more recent times, been carried into Article 2 of the United Nations (UN) Charter – upon its establishment in 1945 – because it was regarded as a means of avoiding war.

Following the constant regime-led massacre of civilians, for example in Kosovo and Rwanda, the inviolability of state sovereignty came under question. To ensure an adequate protection of civilians' human rights, in 2005, the UN adopted the idea of "Responsibility to Protect" (R2P), which had been proposed by the International Commission on Intervention and State Sovereignty (ICISS). R2P ties a state's claim to sovereignty on its ability to protect its populace. If it fails to do so, the onus lies on the international community to discharge that duty (UN 2005:31).

That said, pundits such as Michael Walzer have consistently argued that genuine HI is rare. Most interventions, according to him, are undesirable and motivated by imperial ambitions (Walzer 1992); thus making them unjustified. The 2011 military intervention by the North Atlantic Treaty Organization (NATO) in Libya – codenamed "Operation Unified Protector" (OUP) – has also been questioned for its morality. Following Muammar Qaddafi's response to protesters calling for an end to his 42 year rule, NATO intervened, claiming that its motivation was civilian protection. However, NATO's quick response to the crisis raised questions regarding the desirability of that intervention. On this ground, this paper employs the principles of *jus ad bellum*, which is a division of the classical laws of war, to examine the intervention to ascertain if it could be deemed permissible at the time the intervention was launched.

This work is organized into two sections. Section One explicates the principles of *jus ad bellum*; Section Two applies the principles as explained in the first section to NATO's intervention in Libya.

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## Section One

### *Understanding Jus Ad Bellum*

*Jus ad bellum* is a set of Just War criteria that must be satisfied before a resort to war is deemed permissible. Here it is argued that it has five principles: Just Cause, Proportionality, Right Intention, Last Resort, and Right Authority (some authors would add Probability of Success, but it is argued that this is not a full principle of *jus ad bellum*). Satisfaction of *jus ad bellum* principles is the responsibility of the leaders of a nation, as they are the ones who make decisions about war. The permissibility of NATO's 2011 military intervention in Libya has continued to be questioned. In view of this, this paper seeks to weigh the intervention on *jus ad bellum* principles to ascertain its desirability. This section will focus on a review of how Just War theorists have interpreted the principles of *jus ad bellum* and how these principles are to be understood in relation to Libya.

Briefly, this section argues that civilian massacre and the threat of massacre are sufficient just cause for military intervention. Given the proportionality principle, it holds that war is deemed permissible when the relevant goods expected outweigh the relevant losses. Having a just intention is required of an intervener but having a secondary intention should not be used to deter an intervention in the face of civilian death. Also, this paper agrees with John Lango's stance that any consideration of a last resort should focus on a measure with reasonable prospect of success and which would be less awful when applied (Lango 2009). Finally, it acknowledges that a UN authorization is important before an intervention can be launched, as it gives such additional legitimacy. That said, this paper also maintains that its absence does not render an intervention impermissible once the intervener has competent authority of its own to act. Below, these principles will be discussed in detail.

### *Just Cause*

Just Cause is a principle of *jus ad bellum* that holds that, in order for war to be undertaken, there must be sufficient justification for it. It is the most important principle to be considered before any resort to war is justified, because a nation cannot fight without good reason. Just Cause therefore cuts across any decision to be taken in any part of war. It is the understanding of the very destructive nature of war that made the early framers of JWT place Just Cause as a major principle that must be in place before resorting to war. This is to avoid incessant fighting of wars for unjust reasons.

There are conflicting explanations of what constitutes a just cause for war. MacMahan (2005:11) claims that there is a just cause for war when those attacked have made themselves liable to be warred upon. This implies that those attacked have done grave wrong against those attacking them. The question is what offence would make a people liable to attack. In the past, aggression into a nation's territory was regarded as the only permissible reason to resort to war. Following the Westphalian treaty, which made the sovereignty of nations inviolable, trespassing into a nation's territory was regarded as a crime against a nation and its people. This is why it was justified when the allied powers employed coercive force against Germany following its invasion of Poland and Czechoslovakia in 1939. Following this sanctity placed on sovereignty, article 51 of the UN charter grants states the right to self defence against aggression. It is widely believed that aggression is a permissible reason to fight (May, Rovie and Viner 2006).

In recent times, following the humanitarian crisis witnessed in several countries, like Rwanda and Kosovo where leaders or a group with the governmental support engaged in severe human right abuses, HI has gained additional prominence as a sufficient reason to violate a nation's sovereignty. This is a very thorny issue in international politics due to the level of sanctity previously placed on the inviolability of the sovereignty of nations. However, the idea of HI as a just cause for war is not new in international politics. Medieval philosophy postulated on the need to declare war on humanitarian grounds, while in the past, nations also embarked on wars to rescue helpless minorities from attacks by abusive regimes. In line with this, Murphy (2013:21) cites Grotius (1925) as claiming that nations possess the right to declare war against a ruler who inflicts harms upon his subjects that are unwarranted and totally against the law of nature. Also, Murphy, drawing on Holbraad (1970:162-76), claims that the interventions carried out by the medieval Concert of Europe – to protect Christian minorities around the Ottoman Empire – was viewed as permissible by philosophers such as John Stuart Mill.

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

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This shows that the idea of saving oppressed people has long been held, if not labelled HI. Rather, abusive rulers were viewed as acting against the natural law – which is now regarded as human rights. A third party's invasion into the territory of another nation to save people who do not belong to the third party's territory, poses the question of who the aggressor is. The abusive regime had not invaded anyone's territory, but had its sovereignty violated by means of aggression carried out by foreigners in the name of saving civilians.

In response to the question of where the sovereignty of a nation belongs, Luban (1980:168-170) argues from the perspective of the social contract theory. For Luban, the sovereignty of a nation belongs to the people because prior to the formation of a state, it was the people, who existed as a nation, that surrendered their individual rights to the ruler to administer for the common good of all and to legitimize the nation. Thus, the state loses its legitimacy when it unjustly attacks the people on whose consent it derives its sovereignty. This opens the offending state to attack by outsiders to save its victims. This position is also defended in Walzer (1977:54). Though Walzer does not differentiate between the state and the nation, his argument is based on social contract theory, which states that the rights of political communities are derived from the consent of their members. The ideas of Luban and Walzer discussed above suggest that sovereignty is no shield to tyrants who would turn aggressive against their own people.

Yet, the acceptance of HI as a just cause for war is not without opposition. Idealists frequently describe it as a move by powerful countries to accomplish their imperial ambitions. In the earlier editions of his *Just and Unjust Wars*, Walzer was sceptical about HI, saying that, besides India's intervention in East Pakistan (now Bangladesh) in 1971, most other interventions were driven by selfish motives (Walzer 1977:106; 1992:105-107). Due to his fear of the imperial ambitions of great nations, he places his Just Cause bar so high (in terms of what he calls "acts that shock the moral conscience of mankind") as to make foreign intervention difficult (Walzer 2006:107). More recently, (in Walzer 2004a; 2004b), he has softened his stance on when it is right to intervene if a regime turns terrorist against its own people, and encourages third parties to intervene quickly to save civilians. Yet, writing in the *New Republic* upon NATO's intervention in Libya, he steered back to his earlier position whereby HI is only permissible when it is a response to "acts that shock the moral conscience of mankind" (Walzer 2011).

This brings about the question of what constitutes a sufficient just cause for war. This is unclear on Walzer's account of "acts that shock the moral conscience of mankind". The massacre of just a thousand people may shock some people's minds; while others may only be shocked when it is up to a million deaths; while some may never be shocked if the lives taken are those of strangers and not their fellow nationals. Rather, in examining whether there was a just cause for NATO's intervention in Libya, this paper will defend the account of Just Cause as defined in the 2001 ICISS report. This report says there is a just cause for intervention when there is a:

"large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape" (ICISS 2001: XII).

This definition of just cause given by ICISS is more precise, as it specifies the situations that warrant intervention and who to hold responsible in any case. That said, it does not adequately explain what amounts to "large scale loss of life" or the level such humanitarian abuses would reach to justify foreign intervention. For this, this paper will apply the proportionality principle to Just Cause. The proportionality principle, which will be discussed thoroughly below, means that the possible loss (to the just state and enemy civilians) associated with a war should be weighed against the possible good associated with it, not just after the war but also in the future. If the desired gain is greater than the possible evils of the war, it implies that there is sufficient just cause for war; if the bad outweighs the good, such a war becomes unjust.

## *Proportionality*

Proportionality is an *ad bellum* principle that is always under-explained, despite its importance in war consideration and in fighting itself. Literally, it is widely regarded as a principle that demands that the evil to be caused by a war should not be more than the good expected from a war. This relates to the explanation of Proportionality given by Mellow (2007:61), who says that the proportionality principle asks "did the relevant good effects outweigh the

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

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relevant bad effect?" Yet, this definition is too narrow, since it does not specify the limit of the goods or the evils to be calculated. Is it the outcome of the war for both the just side and the unjust side? What would count as evil, and which period should be considered while calculating Proportionality? Is it during the war, after the war, or predicted upon the war's possible future gains or evils? Orend (2005; 2006:59) comes closer to a generalised understanding of Proportionality by arguing that *ad bellum* Proportionality holds that the universal benefit of a war must be weighed against the bad effects that may occur from that war. Orend maintains the need for "universal benefit" which, according to him, implies that the general good that would accrue to both sides in a war should be weighed against the universal evils to both parties, in order to ascertain if the war was worth embarking upon (Orend 2005). This shows that nations should not be selfish while considering *ad bellum* Proportionality, by merely at the gains and the loss that they alone would suffer while disregarding maybe the relevant evils – like the death of civilians – which their opponent may suffer as well. That said, Orend's account of Proportionality is incomplete, for he fails to show which period of time may be considered in such a calculation.

A more plausible account of Proportionality is postulated by Hurka (2005:46). He argues that Proportionality looks at the expected gains and evils of a war to the just side and to those in the unjust side, who have not made themselves liable to attack (non-combatants) currently and in the future. His argument runs as follows: a HI by state Geria in state Leone would lead to the death of some innocent civilians, but would simultaneously help to overthrow a tyrant who, for a long while, had been terrorizing his people. In this case, the number of civilian deaths should not be weighed against the goods achieved by the intervention alone. The number of lives saved from the possible continuation, or future massacre, to be committed by the despot had the intervention not taken place, should also be counted into the good. Also, the prospect of the nation experiencing greater freedom in the future should as well be considered.

*Ad bellum* Proportionality could be calculated only when there is a just cause to weigh against the evils expected of a war. When there is no just cause for war, Proportionality could not be calculated, as there is no need for war in the first place. Whatever may be considered as a relevant good in a Proportionality calculation must be genuine and relate very well to the Just Cause for the war. This implies that factors such as economic greed, religious imposition, the need to exert vengeance for wrongs inflicted on one's own state by the unjust side in the past, and all other motives that are not part of one's current just cause for war, should not suffice in a Proportionality calculation.

Also, this paper agrees with Jeff McMahan and Robert McKim's argument that there are both sufficient and contributing just aims for war. They argue that sufficient just aims are reasons enough on their own to justify resorting to war, for instance to stop an aggressive regime from massacring its civilians. On the other hand, contributing just aims are not enough on their own to justify the employment of force, but are morally good enough to be pursued in a war once there is a sufficient just aim for that war. For example, an intervener may choose to punish an aggressive regime to serve as deterrence against future instances of massacre (McMahan and McKim 1993:502-503). Such punishing deterrents cannot be justified as a sufficient reason for external intervention, but could be pursued in the course of the war. Ultimately, the good it may generate when it deters tyrants from butchering their citizens in the future could count in the proportionality calculation. Proportionality assessment is very important as it helps to assure that greater damages are not committed while trying to correct a lesser evil.

Meanwhile, Proportionality calculations prior to a war is problematic because it is difficult to ascertain all that may transpire during the course of a war. One may add some possible evils while making the proportionality calculation, but may end up seeing some other unexpected occurrences during the war. Despite this problem, a just party to a war should aim at achieving their just cause for the war as soon as possible, and make every effort to reduce non-combatants casualties to the minimum.

Furthermore, the principle of proportionality may be criticised based on the difficulty of assigning weights to goods and evils that may occur in a war. In the Libyan case, how would NATO attach weight to the good they accomplished and the evil that came with their intervention? What may count as relevant good to some people may not be the same for others, thus making Proportionality less meaningful. This work shares Mellow's argument that calculating Proportionality demands not just judging the relevant goods and evils alone. It relies heavily on the consideration of what would happen if nothing were done to halt a massacre; which Mellow calls the principle of "do[ing] nothing" (2007:62). For instance, if the evils that would occur if there were no intervention outweighed the evils that may occur

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

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when there is intervention, then force is justified. If it is not, it becomes unjustified.

In calculating the Proportionality of NATO's intervention into Libya, this paper shall consider NATO's actions that promoted some goods and the losses that occurred as a result of that intervention.

## *Right Intention*

Having a just cause, according to this principle, is not sufficient to embark on a war; it holds that the just party to a war must also ensure that it is entering the war with the right intention. This means that when a state has a just cause, it does not entitle it to fight a war of retribution or hope to do whatever it likes. Rather, the principle of right intention demands that the state must fight the war in accordance with its just cause. A 1983 pastoral letter by United States (US) Catholic bishops says that right intention means that:

“war can be legitimately intended only for the reasons set forth above as a just cause, during the conflict, right intention means pursuit of peace and reconciliation, including avoiding unnecessarily destructive acts or imposing unreasonable conditions” (1983:19).

This explanation supposes that the permissible intentions for a war are those related to the just cause of the war. It goes further in asserting that Right Intention also plays an important role in the conduct of a war, stating that belligerents should not use force that would not contribute to the war effort, but which may end up imposing destruction on the innocents, but that achievement of peace should be seen as the ultimate goal.

Arguing in line with the US Catholic bishops, Orend (2005:8) says that war can only be just when it is fought in line with the reason for its just cause. These arguments by the US Catholic bishops and Orend are quite plausible, but their explanations of Right Intention seem rigid because they fail to put into consideration other intentions; those which are not wrong in themselves but were not part of the initial reasons for the war. This paper agrees with McMahan's argument (2005:2) that a just cause may change during a war; a just party to a war may be justified to continue fighting, even when the initial just cause for the war had been achieved. The nation may wish to pursue some other aims that are just on their own, but were not stated prior to the war. For instance, state Geria may intervene on humanitarian grounds in state Leone, after putting an end to the humanitarian crisis that was its just cause for intervention. Geria may then pursue disarmament and also force Leone's government to sign an accord conceding some rights to the abused section of its population. With regard to the definition of Right Intention given by Orend and the US Catholic bishops, Geria has failed the right intention principle because it is no longer fighting for the reason of its initial just cause. This is not true because Geria's disarming and forcing of Leone to the dialogue table is borne out of the right intention of achieving lasting peace. In the course of fighting, a just party may pursue any just cause that would help avert the situation that warranted their intervention in the future, once it has an initial sufficient just cause that permits it to war from the beginning.

The fear of powerful states using the guise of HI to meddle in the affairs of less powerful states or pursue self interest are the major reasons why most Just War theorists like Walzer are sceptical about HI. With regard to this, Walzer (2006:101) argues that ideal HI is very rare; that he has not seen any intervention with clear intention in recent times; and that the humanitarian motive is always one among other motives the intervener has. He adds that the lives of foreigners are not that important in the local decision making processes of a state, so HI becomes the guise through which they can pursue their self interest in those states (Walzer 2006:102). This shows why he placed the just cause for HI as a response to “acts that shock the moral conscience of mankind” which is so ambiguous and high level that it would be very difficult to satisfy. Writing in *The Argument about Humanitarian Intervention and Arguing about War*, he says that the manner by which some regimes turn savagely against their people has compelled him to soften his earlier position whereby right intention must be satisfied before a war is deemed permissible (2004a; 2004b:81). He argues, like Mellow (2007:57-58) and Kamm (2011:11), that once there is a just cause for intervention, the intervener's other intentions, like economic interests, should not be considered once they can also put an end to the humanitarian crisis which will save people's lives. But he adds that if the intervention is “expanded beyond its necessary bounds because of some ulterior motive, it should be criticized” (Walzer 2004a). However, his article in the *New Republic* shows that Walzer has reverted to his old stance that Right Intention should be thoroughly

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

Written by Ibeh Moses Chigozie

considered before embarking on the use of force (Walzer 2011).

This work sympathises with Walzer's argument in *The Argument about Humanitarian Intervention* that once an intervener would save lives, less emphasis should be placed on other motives surrounding his move. Suppose that state Geria aims to intervene in Leone to end a humanitarian crisis and to secure a new market for its resources, which hitherto had been imported from another country by the regime in power. This paper would argue that, despite having a secondary motive, Geria is justified in attacking and overthrowing Leone's government, which is engaged in grave human rights abuses. It could also further its economic interest with a new regime that may see it as their saviour. Some Just War theorists would disagree, but what should be asked is: does the level of lives Geria would save in Leone and other goods associated with the war be proportionate with the personal interest it seeks? If Geria could save 100,000 people from been killed, and also give them greater freedom of liberty and self determination in the future, while the personal interest it seeks is too small to outweigh these goods, the intervention should be carried out. But if its interest places a greater burden on the country, one that may even lead to the perpetuation of poverty in Leone if they intervene, the intention is thus unjustified.

Meanwhile, scholars, like Ascombe (1970:51) argue for the removal of the right intention principle from JWT. She argues that it is difficult to ascertain what the intention of a person is. She says that since it depends on an attacker to state his/her intention for every action in a war, he/she could claim to do everything with the right intention even when they were done out of bad intention. This is actually a convincing argument, but as argued above, the right intention principle should be made permissive, as making it rigid would deter intervention, in turn, leading to the death of some helpless, oppressed civilians. But it should also be subjected to the proportionality principle to ensure that it is not abused.

## *Last Resort*

Having a just cause for war is not enough reason in itself to embark on war hastily. War involves killing and massive destructions, which is why this principle says that it is important to make it the last option if there is any reasonable, peaceful alternative. Phillips (1984:16) notes that the purpose of Last Resort is to balance statecraft with morality. Powerful states, if not restrained, may be inclined to rush into war once they feel that they possess a sufficient just cause. Thus, Phillip rightly argues that Last Resort is able to help regulate state's hastiness towards war (Phillip 1984:16).

This *ad bellum* principle is a very important aspect of war consideration, and it is important to understand it profoundly for better appreciation of the principle. Walzer (2004:88) argues that this principle, if taken literally,

"would make war morally impossible. For we can never reach lastness, or we can never know that we have reached it. There is always something else to do: another diplomatic note, another UN resolution, another meeting".

Common knowledge sees Last Resort as a principle which says that war must be the last option to be undertaken after all other non-military measures of achieving peace have been tried. This is in line with the definition given by former US president, Jimmy Carter. He says that "war may be waged only as a last resort with other non-military options exhausted" (Carter 2003). According to the US Catholic bishops, last resort principle means "for war to be justified; all peaceful alternatives must have been exhausted" (1983:19).

But these definitions of Last Resort, given by the Catholic bishops and Carter, are mistaken. It is not every alternative to war that may be reasonable enough to be considered before a war may be launched. Childress (1982:75) captures the last resort principle clearly, as he opines that it does not demand for the trial of every non-military alternative when it is clear that there are no chances that they may work.

Johnson shares the same view as Childress, arguing that Last Resort implies that a judgement of the probability of the success of a non-military measure should be considered. Also, the proportionality of the likely harms to be produced by a non-military measure should be weighed against the possible harms expected from the use of military force (2006:184). These arguments mean that there is no need to try any non-violent means, where it appears a

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

Written by Ibeh Moses Chigozie

positive result will not be yielded in that situation. For instance, if it is clear that the imposition of a no fly zone on a regime cannot deter it from continuing its civilian massacre, it should not be attempted at all. Again, if non-military measures, like economic sanctions, could end up harming more people than actual military force, it becomes disproportionate to use it. Rather, the less harmful means should be employed in the situation.

In addition, Phillips (1984:15) argues that sometimes, war does not necessarily need to be the last option to be tried; it could become the first option if time does not permit the trialling of other peaceful alternatives. This implies that in a serious situation, like a grave humanitarian massacre or the expectation of imminent attack, the length of time involved in the trial of other reasonable peaceful alternatives may give the aggressor sufficient time to suck deep into its victims, thereby leading to unnecessary human loss. In such situations, Phillip rightly maintains that war may as well become the first option, although it will still be regarded as being the last resort at the moment (1984:15).

The most involving Last Resort explanation is the one given by John Lango. He agrees with Childress in that, for a non-military measure to be attempted before war is declared, there must be reasonable chances of success to warrant its trial (2009:115). Lango (2006), identifies good ways of determining when lastness is reached in the consideration of war, calling these feasibility and awful standards. The feasibility standard is the same as the Last Resort idea he shares with Childress (1982). The awfulness standard, like Johnson's proportionality argument, says that the reasonable less awful measure should be attempted prior to war. If a non-violent measure would reasonably not lead to more damage, such as civilian deaths when employed, they should be adopted. When it is clear that it would produce more harm than war itself, war should be adopted. This relates to the Last Resort argument made by Johnson (2006), which makes use of the proportionality principle to determine the awfulness level of Last Resort measures.

Someone may question how non-military means could produce more harm than war itself. The case of Iraq explains this well. The economic sanctions imposed by the UN on Iraq in 1990 (because of its regime's failure to adhere fully to the demands imposed on it after the First Gulf War) led to the massive hunger and death of Iraqi civilians. The target of the sanctions was Saddam Hussein's regime but the people who suffered most were the civilians. Furthermore, it never produced any positive result as Saddam jettisoned them until he was overthrown in 2003. This shows that military force against Saddam's regime would have been less awful had it been taken earlier and equally would have averted the humanitarian problems that followed the sanctions era. Throughout this paper, Lango's and Phillips' explanations of the last resort principle are applied to every Last Resort calculation.

## *Probability of Success*

This principle holds that the just party to a war has to consider its chances of success before resorting to war. If it has little or no chances of success, it should forgo the war. Elshain (2001:4) says that nations must be cautionary in resorting to war, even when they have suffered aggression or witnessed a heavy massacre of their people. They must first ascertain if they have a reasonable chance of achieving their just cause before going into war. Orend (2006:59) adds that states should respect this principle for their own good.

Probability of Success is not a full JWT principle. Here, this paper proposes a revisionist idea that has its root in the just cause for war, as postulated by Jeff McMahan. He argues against the "moral equality of combatants", which says that soldiers of both parties to a war, despite their moral nature, are legitimate targets to each other (Walzer 2006:127). McMahan rightly says that those who are liable to attack are those that have made themselves liable to attack (McMahan 2004). An unjust party to a war cannot attack the just side, despite them posing as threats to them. If they repel their attacks, they are committing further injustice as they have no just cause to defend. As McMahan argues, if a group without a just cause has an equal right to attack a just party, it implies that JWT rewards aggression.

Philosophically, it runs like this: if state Ganda is engaged in a massacre of its people and agent Thiope decides to intervene. (a) Can Ganda attack Thiope despite having no just cause? According to McMahan (2006; 2012), the reply is 'no' because it has made itself liable to attack, and Thiope deserves no harm because it has a just cause. (b) When Ganda cannot return the attack on Thiope despite being threatened, is there still any need to consider if

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

Written by Ibeh Moses Chigozie

Thiopia has a probability to succeed militarily in that war, i.e. the chance of defeating Ganda? Even if Ganda has strong military might, if it has no right to fight back, the weakest nation could defeat it. If Ganda attacks back, it is committing further injustice. Whilst having defensive rights in JWT is dependent on having a just cause, it strips aggressive regimes of any right to defend themselves when attacked; thus discouraging aggression or civilian massacre. While looking at the case of Libya, Probability of Success will not be considered as a distinct principle of *jus ad bellum*.

## *Right Authority*

This *ad bellum* principle advocates that having a just cause is not enough: war must only be declared by a body with the authority to do so. War is something that brings forth destruction and killing, and this is why JWT makes provision that it can only be declared by a right authority to avoid the prevalence of private wars.

In the case of HI, the problem is determining where the authority to authorize intervention resides, and if UN authorization is needed for an intervention to be deemed permissible. HI involves invasion of a state. Thus, it demands clarification on who has the right to intervene: must it be carried out by agencies such as the UN? Can individual states that have the capability of adequately addressing the situation intervene? Is UN authorization mandatory for HI? Over the years, international agencies have proved to be ineffective in halting humanitarian crises. The UN failed to intervene during the Rwandan genocide of 1994, where approximately a million people were killed. States, or a coalition of states, have proved to be more effective in stopping massacres, as they aim to achieve victory upon their invasion; unlike agencies like the UN and the African Union, which aim to separate belligerents instead of fighting to defeat an unjust party.

The major argument against unilateral or coalition interventions, such as NATO, is the possibility of the intervener(s) harbouring ulterior motive(s) aside from the just cause for war. Walzer (2004) identifies this when he says that NATO generates suspicion from idealists who fear the possibility of it having imperial ambitions. As argued in the right intention principle, the intervener's motives do not matter once it is proportionate to the possible goods the intervention would achieve. Pattison (2008) was right when he maintained that HI should be left for the intervener who will achieve the most effective result. Recent successful interventions like Kosovo have shown that states are more effective in stopping carnages.

Again, another question is: who can authorize interventions? Must it be the duty of international agencies such as the UN? Do states have the power to authorize HI? Advocating for group authorization, Rousseau, cited in Walzer (2004:77-78), argues that the individual interests of different parties involved in a negotiation would cancel out each other; thus giving room for the emergence of an interest not influenced by personal ambitions. This means that when an intervention is put up for deliberation among nations, some underlying motives of a proposed intervener would be removed, thereby leaving the intervention without motives unrelated to its just cause.

Walzer rightly argues that such consideration may lead to inaction on the part of the intervener. Non-intervention may also not be the general will of the international society (Walzer 2004:78). The time that would be spent by the UN deliberating on an intervention may give the aggressor too much time to commit a grave massacre. Occasionally, we witness some United Nations Security Council (UNSC) members blocking an intervention for one reason or another through their veto votes.

Lack of quick intervention is not ideal. A proper HI is one done when it is rightly needed. As argued above, an intervener's underlying motive should not be used to deter it from undertaking a HI if it could also save civilians. Had a country intervened in Rwanda during the genocide, Rwandans would not have minded if they had taken some resources, but only that they stopped the massive deaths they were experiencing.

The UN, like any other agency, is nothing but a voluntary association comprised of willing members. States' membership of it does not strip them of their rights as legitimate bodies with full authorities. States retain full authority to take actions on their own. Through a social contract, citizens give powers to their states to administer on their behalf. They never gave their powers to any agency. Thus, states must do what is in the best interests of their people.



# Libya: The Moral Permissibility Of 'Operation Unified Protector'

Written by Ibeh Moses Chigozie

If they support their state's intervention into another state, it is necessary for them to do that without looking for the authorization of any agency that depends on member states for its own power.

## Section Two

### *Jus Ad Bellum and 'Operation Unified Protector'*

Like every intervention, controversy has continued to trail NATO's 2011 intervention in Libya. Authors like Walzer (2011) and Nuruzzaman (2013) have argued that the intervention was unjustified. They maintain that there was no just cause at the time the intervention was launched; NATO's intention for entering Libya was not clear; and that overall, military force was not the last option available before the intervention. Meanwhile, scholars such as Adams (2012) and Pattison (2011) hold that the 2011 intervention in Libya satisfied *jus ad bellum* principles. They argue that the initial massacre and the threat of massacre made by the Qaddafi regime in February and early March of 2011 was sufficient just cause for intervention. They also maintain that civilian protection was NATO's primary aim and that military force was the last option available to the international community at the time the intervention was launched (Adam 2012:3, Pattison 2011:272-273).

This section finds that NATO's 2011 intervention in Libya satisfied every principle of *just ad bellum* because there was an ongoing massacre and the threat of civilian massacre in Libya, and the intervention was primarily targeted at protecting civilians. Also, the benefits of the intervention, such as the prevention of genocide, outweighed the harms associated with it. Furthermore, the employment of military force in Libya was the only reasonable alternative available to the international community before an intervention was launched. Finally, it concludes that the intervention was properly authorized as it received UNSC approval despite the fact that such authorization is not mandatory for justifying HI, as argued in section one.

### *Justification for Intervention in Libya*

Assessing the desirability of NATO's intervention in Libya rests on establishing if there was a sufficient reason that necessitated the use of military force at the time it was launched (Just Cause) and if the intervention was undertaken with a clear primary intention (Right Intention). It also considers if the relevant goods and evils (to both NATO and Libyans) expected during the intervention and in the future were carefully weighed against each other (Proportionality). Also, it examines if military force as employed by NATO was the last reasonable option available to the international community to resolve the conflict (Last Resort) and finally, it checks if NATO had the authority to intervene in Libya (Right Authority).

On the issue of Just Cause, Pattison (2011:272) argues that there was sufficient just cause for NATO's intervention in Libya, defending the just cause principle as written in the ICISS 2001 report. This report says that there is a just cause for intervention when there is a:

"large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape" (ICISS 2001: XII).

Drawing on this definition, Pattison argues that prior to NATO's intervention in Libya, Qaddafi's regime had shown its readiness to massacre his people through the initial killing of 1,000-10,000 people. It had also made clear Qaddafi's intent to commit further massacres when he enjoined his supporters to go out in Benghazi and attack protesters (2011:272).

On the other hand, Walzer, arguing in the *New Republic* not long after NATO launched the intervention, was sceptical on this. He argues that the situation in Libya was not serious enough at the time to demand foreign intervention. In his words:

"a military attack of the sort now in progress is defensible only in the most extreme cases. Rwanda and Darfur, where

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

Written by Ibeh Moses Chigozie

we didn't intervene, would have qualified. Libya doesn't" (Walzer 2011).

Before this, in his *Arguments about Humanitarian Intervention*, Walzer urged for quick intervention by third parties to save civilians from grave massacre. Considering his recent assertion, it shows that Walzer has leaned back to Just Cause as defended in *Just and Unjust Wars*, where he argued that "HI is justified when it is a response to acts that shock the moral conscience of mankind" (Walzer 2006:107). As argued previously, it is not clear what constitutes Walzer's "acts that shock the moral conscience of mankind", thus making it indefensible.

Like Walzer, Mohammed Nuruzzaman argues that the situation in Libya was not extreme enough to deserve military intervention (2013:63). He says that, despite the violence being perpetrated in Libya before NATO intervened, the condition of Libya at that time did not provide "concrete evidence that the case [was] really extreme and that it requires international collective action" (2013:63). Nuruzzaman fails to explain clearly what exact level of humanitarian disaster is sufficient to be called an extreme case. Is it 200 civilian deaths or 1,000,000? This lack of clarity makes his argument unconvincing.

Drawing from the ICISS report and the *ad bellum* proportionality principle, this paper further defends Pattison's position that Qaddafi's initial actions and utterances gave the intervention a just cause. It should be recalled that the Libyan revolution started on 16 February 2011, as a protest by Libyans who were calling for an end to the 42 year rule of Muammar Qaddafi. Rather than abdicating power, as his colleagues in Tunisia and Egypt did, Qaddafi decided to employ every violent means to hang onto power. The Human Rights Watch (HRW) says that between 15 and 19 February 2011, the regime killed at least 233 people in Benghazi alone, using live ammunition and machine gun fire (2011:1). In the Al Jalaa hospital, HRW confirmed through doctors that 70 bodies killed by gunshot wounds were received into their morgue (2011:2). In addition, the UN Human Rights Council's International Commission of Inquiry says that the medical records they got from doctors in Tripoli confirmed that 200 bodies of killed protesters were received in different morgues between 20-21 February 2011 (2012:6). Residents of Tajura, a city near Tripoli, also confirmed to Al Jazeera that numerous corpses were littering their streets (Al Jazeera 2011a). In early March 2011, Qaddafi's forces, according to Adams (2012:10), indiscriminately shelled Misurata, which led to several deaths. Adams also maintained that the regime's forces committed acts of rape and sexual torture against under-aged girls and women (2012:10).

As protest spread across Libya, the regime continued to undertake further civilian massacres on a people who were determined to achieve their cause even in the face of death, thus turning a peaceful protest into a civil war. Wolfram Lacher attests to this when he notes that the more the regime killed protesters, the more tribal, military and political leaders joined the revolt to defend their families and neighbourhood (2012:11). According to an estimate given by the International Criminal Court (ICC), over 500-700 civilians were killed by the Qaddafi regime in February alone (Simons and MacFarquhar 2011). As noted by Downie (2011) in his article in the *New Republic*, it was difficult to obtain the actual death toll in Libya before NATO intervened, due to the regime's ban on journalists and the inability to count civilian deaths amidst intense violence as it was going on in the country.

These early killings committed by the regime shows its intent to commit untold massacres against its people, which is against international agreement on the duty of states to protect their civilians. The 2005 World Summit Outcome, to which Libya was a signatory, says that:

"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" (UN 2005:30).

It also adds that when a state fails to protect its population, the international community is prepared to take timely and decisive action to fulfil that duty. As noted by Biggar (2011:702), Qaddafi was not only unwilling to protect Libyans, but he was actively engaged in their massacre. Thus, he surrendered his regime's right to sovereignty.

Critics may argue that the death toll in Libya prior to NATO intervention was not high enough to necessitate external interference. Drawing from the ICISS (2001) report, this paper holds that Qaddafi's massacre of his people was a

## Libya: The Moral Permissibility Of 'Operation Unified Protector'

Written by Ibeh Moses Chigozie

deliberate action by his regime. Without NATO's quick intervention, he showed his willingness to continue the civilian massacre until the protest against his regime was totally crushed. This intent was made clear when he appeared on Libyan national television inciting his loyalists to "move out and cleanse the city of Benghazi" (Al Jazeera 2011b). Also, in a statement that Bellamy and Williams (2011:838) describe as bearing direct echoes of the 1994 Rwandan genocide, Qaddafi announced that "soldiers have been deployed to all regions so that they can purify all decisions from these cockroaches, and any Libyan who takes up arms against Libya will be executed".

Separately, Saif Al-Islam, Qaddafi's son, appeared on Libyan television on 20 February, 2011 warning protesters that "rivers of blood" would flow and "thousands would die" if the rebellion failed to stop (Walt 2011). These threats gave sufficient reasons to third parties to intervene fiercely to avoid giving a power hungry regime enough time to make true its promises. This would have thus avoided another Rwanda, where the indifference of the international community to the war calls made by Hutu extremists over national radio led to the massacre of about a million civilians.

Moreover, considering the amount of good the intervention would have achieved when weighed on the wrongs it would cause, third parties were given a just cause to intervene. As discussed above, the rate at which Qaddafi was killing civilians and his intent to commit further massacres on a resilient and determined rebellion shows that he would not have stopped until the last defiant was crushed – thus leading to genocide. This averting of genocide alone, when considered against any evil that may have resulted from the intervention, still gives sufficient just cause for intervention. It is important to mention that the intervention had the massive support of Libyans who were under oppression. McMahan (2005:13) rightly maintains that HI is deemed permissible when those citizens a third party is trying to intervene on their behalf, requested it or that there is evidence that they need it.

An intervention done when those under oppression clearly do not want it is unjust. Does Libya satisfy this measure? It seems so. As it became clear to Libyans that they could no longer defend themselves against the onslaught of Qaddafi's forces, protesters made several calls to the international community for intervention. Fadel and Sly (2011) cite rebel fighters as calling for assistance, in the form of no-fly zones and military airstrikes, to stop the regime from shelling bullets on civilians using military jets. More concrete data on home support for NATO intervention can be seen in a survey conducted by Gallup in March-April 2012. The survey, which was generated by interviewing adults aged 15 and above, shows that 75% of Libyans supported the intervention; while 22% were against it; and 3% said they were undecided (Loschky 2012). The massive support for the intervention as seen from the Gallup survey shows the legitimacy of the intervention.

In summary, the initial massacre of Libyans by the regime, its intent to further massacre more civilians, as demonstrated through its speeches and actions and the demand by Libyans for external intervention, gives NATO's intervention in Libya a just cause.

Regarding the issue of Proportionality, when the universal good of the intervention (during, after and in the future) is weighed against the evils associated with it, NATO did well. In the Libyan crisis, the just party were those protesting against the long time despotic rule of Muammar Qaddafi; thus any calculation of proportionality should focus on the good of the intervention to them and NATO, but not to their oppressors because they had made themselves liable to attack. What could be said to amount to benefits and losses in NATO's action? The good of an intervention are events that were averted or made possible through the actions of the intervener. Some identifiable benefits of the intervention are the protection of Libyans from possible genocide; the lack of NATO's military casualty; and the exit of Qaddafi, giving Libyans the freedom to forge their own destiny. When these benefits are considered against a few losses, such as unintended civilian deaths caused by NATO strikes, some infrastructure destroyed, and the financial cost of the intervention to NATO, common sense shows that the intervention was proportionate.

On the other hand, as to what constituted NATO's primary intention for intervening in Libya remains controversial. This has become a critical aspect of the intervention, because the United Nations Security Council Resolution (UNSCR) 1973 mandated NATO to protect civilians. However, some of the targets NATO selected for attack, like Qaddafi's Tripoli compound and his convoy in Sirte, raise the question of NATO's primary aim. Was it the protection of civilians or regime change? Upon NATO's invasion of Libya, Walzer argues that the purpose of the intervention

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

Written by Ibeh Moses Chigozie

was totally unclear. He questions if it was a ploy to sustain the violence and make way for the rebels to kill Qaddafi, or to achieve a cease-fire.

Like Amitai Etzioni (2012:49), this paper holds that NATO's intervention in Libya was a pure humanitarian move. The manner the operation was undertaken lays credence to this: the enforcement of a no-fly zone and arms embargo, mandated by UNSCR 1973, were carried out to protect civilians from air attacks, and the procurement of weapons and mercenaries by the regime, respectively. Also, NATO attacked military targets that were threatening civilians and those preventing humanitarian aid to civilians; thus opening access to those cities after weeks of blockage by the regime (NATO 2011). One may question why NATO failed to attack rebel fighters who were accused of engaging in acts of torture and the summary execution of the regime's perceived supporters. During the intervention, NATO had no troops on the ground; thus, it could not afford to see all that was happening in every nook and cranny of Libya. Consequently, it went for an attack on military equipment that could be used against civilians.

In contrast, Emadi (2012:138) insists that the protection of civilians was not the major motivation for NATO's intervention in Libya; rather it was a move to topple a regime that crossed the line drawn by imperial powers. Emadi points to Qaddafi's defiance towards the West, and the determination by the US to punish him for his alleged role in the explosion of the Pan Am flight at Lockerbie in 1988, as the true motivation behind the intervention (2012:134). Arguing in line with Emadi (2012), Nuruzzaman (2013:63) maintains that oil interest in Libya was the reason NATO considered military assault against Qaddafi's regime, and not actually civilian protection. He argues that prior to the intervention, the US, France and Britain had made oil deals with the National Transitional Council. Like both Emadi (2012) and Nuruzzaman (2013), some world leaders, like the Russian Prime Minister, Vladimir Putin, concluded that NATO simply went to Libya to effect a regime change which they said was in violation of the mandate given to them (Spillius 2011).

No doubt, NATO, through the speeches of its leaders targeted regime change during the intervention, but such an aim amounts to what McMahan (2005:14) calls "conditional just cause" which can be pursued only when there is an "independent just cause". An Independent just cause is a crime that is sufficient on its own to deserve intervention while a conditional just cause is not, but can be targeted upon the presence of an independent just cause. As noted in the discussion of just cause above, NATO had an independent just cause, which was to protect civilians from an abusive dictator. It was not wrong for NATO to effect a regime change because regime change was part of the general attempt towards the long term protection of civilians and the achievement of lasting peace in Libya.

This work agrees with the interpretation of UNSCR 1973 given by Ryszard Piotrowicz, a professor of international law at Aberystwyth University. He says "all necessary measures to protect civilians" as stated in resolution 1973, means that "Targeted attacks on senior Libyan officials might be justified if this is the only way to stop attacks on civilians. That would include an attack on Colonel Gaddafi himself" (Wintour and Bowcott 2011). One cannot stop a mad dog from slaughtering a lamb only to walk away leaving both the dog and lamb in the same room; he may come back to see the lamb already eaten by the dog. NATO's aim for regime change in Libya was justified and it will help give Libyans more freedom in the future, preventing possible retaliation by the regime.

In addition, the argument that oil was the primary intention for NATO's intervention in Libya is unconvincing. When Qaddafi dropped his Weapon of Mass Destruction Project in 2003, he established oil deals with most western companies who were still doing business with Libya prior to the revolution. Even if oil interest was part of NATO's intention for intervening in Libya, it still does not make the intervention unjustified. The question should be; can NATO saving of Libyans from possible genocide outweigh its intention of securing a new market for oil? Or would it have been better for NATO to resort to what Mellow (2007:62) calls the principle of "do nothing" and thus allow genocide to occur? As argued in section one, having other intentions should not be used to deter an intervention, an intervener is allowed to harbour such intentions once it can also stop the ongoing civilian massacre.

As argued above, NATO's primary intention in Libya was to protect civilians from massacre, but regime change became necessary when it came to be a wider way of saving civilians and achieving enduring peace in Libya.

Again, controversy has continued to trail NATO's quick intervention in Libya, with commentators like Nuruzzaman

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

Written by Ibeh Moses Chigozie

arguing that military force was not used as the last resort. He says that UNSCR 1973, which ordered the use of force was passed just three weeks after UNSCR 1970 was adopted, without giving it some chance to work. Nuruzzaman concludes that military force should have been justified in Libya only if all other non-violent measures have been tried and failed (2012:63). This argument fails to understand what *ad bellum* last resort clearly implies. Drawing from John Lango's explanation of last resort which was discussed in section one, this principle does not require the trial of all non-violent measures before an intervention is deemed permissible. It demands that the measure that has reasonable chances of success and is also less awful when employed should only be tried (2009:15).

If measures like economic sanctions have reasonable prospects of stopping a humanitarian massacre and should cause less harm than good when employed, then they should be tried. When it is believed that such a measure would not make a difference when employed or that it would cause starvation and death among those you wish to save, it should not be tried. In this situation, defeating the regime militarily becomes the last resort. In addition, sometimes the length of time involved in the trial of measures other than force gives unnecessary time to the aggressor to waste more human lives. Thus Phillips (1984:15) rightly argues that when time does not permit for the trial of non-military measures, military force can immediately be undertaken, and it can still be regarded as the last resort.

Upon the massacre of protesters by the Qaddafi regime, on 26 February 2011 the UNSC adopted resolution 1970. The resolution mandated the regime to desist from killing protesters, imposed arms embargo, froze assets, put in place travel ban for top regime officials and referred the situation to the ICC (UNSC 2011a). All these measures were taken to pressure the regime to stop massacring civilians, but as Jon and Goldstein (2011:6) noted, the massacre still continued. When the regime made known its intent to further massacre civilians, through the speeches made by Qaddafi and Saif Al-Islam, The UNSC quickly passed resolution 1973 on 17 March 2011, authorizing "all necessary measures" to protect civilians in Libya, especially Benghazi (UNSC 2011b). O'Brien and Sinclair (2011:5) rightly argue that the regime, through its threatening speeches, lent urgency to an international military response in Libya. At the moment UNSCR 1973 was adopted, there was no other reasonable alternative that would stop the imminent massacre as promised by the regime, thus justifying military force as the last resort.

On the issue of right authority, Libyan intervention was properly authorised by the UNSC through resolution 1973, which received 10 votes in favour, with 5 abstentions (Brazil, China, Germany, India and Russia) but there was no veto vote. NATO also has the institutional capacity to intervene, as the UNSCR 1973 authorizes "Member States [...], acting nationally or through regional organizations or arrangements" to intervene (UNSCR 2011b). That said, as argued in section one, UN authorization does not need to be secured for an intervention to be legitimate. In situations of emergency, the UN often delays to save civilians; they may start setting commissions of inquiry or the Security Council may fail to take action because some permanent members are blocking such moves. For instance, the UN failed to intervene in Rwanda which resulted in genocide. Also in 1999, NATO intervened in Kosovo without UN authorization and saved thousands of Kosovo-Albanians from the onslaught of the Serbs, which is still justified despite arguments to the contrary.

In situations of urgent humanitarian need, any country, regional organisation or arrangement capable of effectively halting the situation should intervene with or without UN authorization. Though UN authorization gives interventions more legitimacy, as the intervener would have considerable support of most nations, its absence as argued earlier does not render it morally unjust. Libyan intervention also had the support of the league of Arab States, Organization of Islamic Countries and Gulf Cooperation Council (Bellamy and Williams 2011:839). This gives the intervention further legitimacy, as they all share either regional, economic or ethnic ties with Libya. This removes any suspicion of unjust invasion from it.

In conclusion, from the analysis made throughout this research, it has been shown that the continued massacre of Libyans by the Qaddafi regime and its threat to massacre more civilians, gave the war a just cause. Also NATO adequately calculated the proportionality principle before it intervened, as the benefits of the intervention such as the lives saved clearly outweigh any evil that occurred. NATO's targeting of military equipment that may have been used against civilians justifies that NATO actually invaded Libya primarily to save Libyans from massacres by the regime. Equally, at the time the intervention was launched, there was no other reasonable alternative to prevent both immediate and imminent civilian massacre in Libya, thus making military force the last resort. Finally, despite not

# Libya: The Moral Permissibility Of 'Operation Unified Protector'

Written by Ibeh Moses Chigozie

being mandatory, NATO had the full authorization of the UNSC to intervene in Libya. Considering all these factors, this research concludes that the intervention was permissible.

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# Libya: The Moral Permissibility Of 'Operation Unified Protector'

Written by Ibeh Moses Chigozie

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*Date written: October 2013*