

The Dilemma of Humanitarian Intervention

Written by Sarah Joseph

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SARAH JOSEPH, MAR 27 2011

On Friday 18 March, the UN Security Council adopted Resolution 1973 which authorised “humanitarian intervention” in Libya in the form of a no fly zone and all other necessary measures to protect civilians in that country. About 36 hours later, French planes bombed strategic targets in Libya, and military force from Western States, particularly missile strikes by the US, have continued since.

“Humanitarian intervention” refers to the threat or use of force by a State or States to stop another State from committing extensive and grave violations of humanitarian law and human rights law. The waging of international warfare is generally illegal in international law unless it constitutes an act of self defence or is authorised by the Security Council under Chapter VII of the UN Charter. Hence, humanitarian intervention is illegal in international law unless it is authorised by the Security Council. Once the Council has determined that there is a breach of international peace, it may authorise States to take measures which fall short of the use of force pursuant to Article 41 (such as those measures taken in Resolution 1970 of 26 February 2011 which called for an investigation by the International Criminal Court, an arms embargo and economic sanctions against Libya), or it may authorise the use of force pursuant to Article 42.

The Gaddafi regime, both before and during the civil war against the anti-Gaddafi rebels, has committed gross violations of human rights including crimes against humanity. Even though the crisis was largely contained within Libya, the situation constituted a breach of international peace. For example, the crisis is generating massive outflows of refugees, particularly into Tunisia. Previous Security Council actions regarding Iraq (concerning Saddam’s repression of the Kurds in 1991), Somalia and Haiti are precedents which indicate that the Libyan situation was grave enough to activate its Chapter VII powers.

Double Standards?

Given how the Security Council has acted with regard to Libya, many have queried its failure to act in other situations, such as Bahrain, Yemen and Syria. The lethal responses by the governments of those countries to pro-democracy protests are appalling, but it cannot be said that the crisis in those States has reached the proportions of Libya so as to be true candidates for humanitarian intervention. After all, humanitarian intervention is war. A situation has to be extremely grave and intransigent before war can be deemed to be a necessary or responsible solution. While it may seem crude to compare numbers of deaths, the death toll in all three crises combined is in the low hundreds, compared to the thousands of deaths and the open warfare in Libya that preceded Resolution 1973. Over 300 died in the Egyptian protests in January-February, but no one can seriously suggest that it would have been preferable for the international community to have intervened militarily in that country to resolve the standoff between the protesters and then-President Hosni Mubarak.

Furthermore, alternative mechanisms may remain available for the international community to help alleviate those other situations. Both Yemen and Bahrain are US allies, so one could imagine that the US could bring considerable diplomatic and economic pressure to bear if it wished. In contrast, serious economic sanctions had already been imposed on Libya without apparently curbing Gaddafi’s belligerence. The rebels faced a massacre on the weekend of 19-20 March had international air power not come to their assistance. Gaddafi himself claimed that no quarter would be given if his troops won back the rebel stronghold of Benghazi. Such urgency does not yet exist in Bahrain,

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Yemen or Syria.

The closest current analogue to Libya is Cote d'Ivoire, where a civil war has been brewing for many months since the incumbent Laurent Gbagbo refused to accept the results of elections in December 2010 won by his opponent, Alassane Outtara. Since that time, hundreds have been killed and up to a million have been displaced. Crimes against humanity have taken place. Chillingly, a few days ago, a BBC correspondent based in the country reported that the atmosphere resembled Rwanda in the days before the 1994 genocide.

Will the international community act in Cote d'Ivoire? I do not believe Western powers will act militarily. There is a possibility however that the Security Council will authorise action by ECOWAS (the regional grouping of West African States) and/or the African Union. There are relevant precedents, with the Security Council authorising military intervention by ECOWAS in Liberia (1991) and Sierra Leone (1998) (in fact such authorisation was retrospective). It is probably preferable that any intervention in Cote d'Ivoire take place at the behest of regional bodies, thus avoiding concerns over Western imperialism and the consequent inflaming of a region (concerns which currently exist regarding the Libya intervention despite the Security Council authorisation).

None of the above is to deny the existence of international hypocrisy when it comes to where and when force will be authorised or used. The UN has authorised the West (and others) to rush to the aid of the Libyan rebels, but it never authorised humanitarian intervention in Sudan, and it may yet leave Cote d'Ivoire to a horrendous fate. However, from a legal standpoint, hypocrisy is not relevant to the question of whether the Security Council was legally empowered to authorise action in Libya: hypocrisy is more likely to be relevant with regard to its *failure* to act in comparably awful situations and a possible breach of its "Responsibility to Protect".

The Responsibility to Protect

The Responsibility to Protect ("R2P") implies that in certain crises, the Security Council has an obligation rather than merely a right to authorise force. In 2005, the UN General Assembly endorsed this principle, which imposes a duty on each State to protect its people from grave human rights abuses, notably genocide, war crimes, ethnic cleansing and crimes against humanity (a duty which clearly existed long before 2005). If a State, such as Libya, fails in that duty, the R2P devolves to the international community. If force is necessary to stop such abuses, the Security Council should take timely action as appropriate. The Security Council itself endorsed R2P in April 2006. Nevertheless, R2P, insofar as it concerns the use of force against States, seems at best an evolving norm with moral rather than legal force.

The cries of hypocrisy imply that the enforcement of international law should be fair, and indeed it is hard to deny the moral cogency of such an argument. However, the international legal arena cannot be completely divorced from the international political arena and, to that extent, it is not a level playing field. Unfairness is probably most apparent when talking of the use of force. There is a clear disincentive for example, for the international community to take on a State with nuclear weapons, such as North Korea, in spite of its long-standing gross abuses of its own people. Furthermore, the Security Council's extraordinary powers regarding the legal use of military power obviously privilege the Permanent 5 (US, UK, France, Russia and China) and their closest allies, who will always be protected from the Security Council's wrath by a P5 veto. And before one gets carried away in condemning the double standards of the Security Council, remember that individual States exhibit those same double standards because States are inherently political not moral creatures. The true motives behind humanitarian interventions are never entirely humanitarian. For example, it has been speculated that France's eagerness for war with Gaddafi was partly motivated by the terrible poll numbers for President Sarkozy: perhaps Libya can deliver popular support to him in the same way the Falklands war rescued Margaret Thatcher in 1982. All of this indicates that the truly consistent and fair implementation of any Responsibility to Protect is a pious dream.

Which means that the legal use of international force remains, outside the arena of self defence, the prerogative of the Security Council, which may choose to act or not to act. And the cards are stacked in favour of the latter, as the diverging interests of the P5 make the likelihood of a veto against military force high. The requirement that force be approved by 9 of the 15 Security Council members is also a considerable threshold to overcome, given that many

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non-permanent members, particularly developing States, are generally wary of any use of force, particularly by former colonial powers or the West.

But perhaps that is not such a bad thing. War is war, and it is unpredictable and messy. Civilians will almost inevitably die as “collateral damage”. Humanitarian intervention may not work, it may pour fuel on the fire and further destabilise the relevant region. Indeed, regarding Libya, there is great uncertainty over how the endgame might play out. Given all of these variables, perhaps it is best if “humanitarian” force is only authorised in those rare situations when enough global consensus builds to permit the Security Council to bring itself to act.

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