

Foreign Military Intervention in Libya: An Analysis of the Just War Principles of Jus Ad Bellum and Jus in Bello

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Abstract

Conflicts in the post-cold war era have taken new dimensions. Unlike the preceding periods, most of the post-cold war conflicts are intra-state in nature giving rise to large scale killings and humanitarian abuses of the extent that shock the conscience of mankind. These situations have equally led to new responses in the form of armed humanitarian interventions. The Libyan crisis of 2011 represents one among the many intra-state conflicts that define the character of the post-cold war world. The acclaimed political emergencies occasioned by the Libyan violent eruption, necessitated the imperative for the NATO-led foreign military intervention to quell the crisis and restore order in the country. Both the NATO led intervention in Libya and the principle on which it was executed have continued to generate varied interpretations and controversies. Adopting the just war theory which features the principles of jus in bello and jus ad bellum, this paper investigates the NATO-led intervention in the 2011 civil war in Libya. The paper concludes that the intervention in Libya was far from being just, and was a departure from the just war principles of humanitarianism.

Keywords: Intervention; Political; Military intervention; Community

Introduction

Following the character of conflicts and civil wars since the end of the cold war, phrases such as humanitarian intervention, collective action have resonated at every international forum as responses to the growing sense of the need to end mass atrocities and crimes against humanity, and the imperative to protect civilians millions of who have been entrapped in war situations that result in humanitarian emergencies. The frequency of these humanitarian concerns increased with the spate of intrastate conflicts mostly in Africa. These conflicts have accounted for high death tolls in most parts of the continent. Consequent upon this, the international community has affirmed its condemnation of gross abuse of human rights in forms of massacre and related gruesome killings, and has resolved that no case of mass-scale massacre should go unpunished. This consciousness perhaps arose after the failure to halt the massacre in Srebrenica in 1995 and the genocide in Rwanda in 1994. The continued increase in the intensity and frequency of intra-state wars world over, and the concomitant human rights abuses has over the years, sustained this resolve. The manifestations of these intra-state conflicts especially in Africa reflect the dysfunctional character of the African states. This is exemplified by the situations experienced in Sudan, Liberia, Sierra-Leone, Angola, Mozambique, Rwanda, Cote d'Ivoire, and Darfur etc. Irked by these cases of large human rights abuses, internecine killings and mass murders [1], the international community consequently began to advocate for stronger frameworks for civilian protection. To this effect, it became accepted to use "war" where appropriate, to avert or halt mass killings. This has brought to fore, the idea and practice of armed humanitarian intervention. As Enuke aptly captures the it, "Given the genocidal incidences that have defined and wretched the post-cold war era, a novel acceptance has made its foray into the international practice and politics, that a war against a sovereign state can be initiated and justified on humanitarian grounds" [1]. Compassion for the suffering of the helpless civilian population has evoked intervention and interference with the affairs of a state by another, several states or a group of states. "Where failed states exist or genocide is threatened, outsiders should ignore sovereignty and assert a right to intervene to protect threatened people".

The Libyan Civil War with concomitant devastating consequences was one among the many conflicts that characterize the post-cold war world. The Libyan civil war was between the government of Libya headed by Muamar Gaddafi, and rebel forces. Tribes and peoples who believe they have ethnic affinities for the Qadhafi tribe or Sirite region fought in government camps, while those who feel isolated by the government aligned with the rebels. This situation was visible in Tarwagha where the black inhabitants were severely killed during the civil war by the rebel groups on the allegation that they aligned with the regime forces or mistaken for black mercenaries. Gaddafi addressed the rebels as cockroaches who would be destroyed by his men. Ipsofacto, Gaddafi directed military tanks and aerial bombardments towards "enemy" territory in Benghazi ostensibly to make real his threat. The attempt to crackdown on protesters and re-assert the government's authority degenerated to a civil war. Alarmed by this situation and its accompanying brutality and varied human rights abuses by Muamar Gaddafi in his bid to exterminate opponents of his regime, the United Nations in 2011, decided to intervene into Libya. In its reaction to the humanitarian abuses occasioned by the Libyan Civil War, the United Nations came up with the Resolution 1973 which called for a no fly zone as well as a call by the international community to do all necessary to protect civilians in Libya [2]. This formed the premise on which NATO, invoking the norm of Responsibility to Protect (R2P), led the Operation Unified Protectors in Libya between February and October 2011. Using the Just War theory which features the twin principles of Jus in bello and Jus ad bellum, this paper investigates the foreign military intervention in Libya, especially NATO and its Operation

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Unified Protector. Beyond rhetorics, this paper judges NATO's assigned purpose, acclaimed motive and objective of saving helpless and hapless civilians in Libya. Weighed on the theoretical scale of the just war theory, the findings are that NATO's intervention in Libya 2011 left much to be desired.

The Libyan Civil War

An understanding of the multi-tribal nature of Libya shall serve for better understanding of the tendency of a speedy resort of that nation into a civil war. Libyan historian Faraj al Aziz Najim has listed about 140 influential tribes and clans in Libya among which only thirty exercise visible influence [3]. Yet some 15 percent of Libyan inhabitants do not belong to any tribe and can only trace their ancestral origin to the Berbers and Turks. The Libyan tribes are said to have played important roles in the fight against the Ottoman Empire as well as against Italian colonization from 1912 to 1943. Though it seems that the Gaddafi administration played down on these tribal divisions, it is yet clear, according Morkhefi, that certain tribes enjoyed greater influence within the army than others within the framework of Gaddafi's "divide and rule policy" especially the Qadhadfah tribe. Members of this tribe were deployed to most sensitive posts in a bid to ensure the leaders safety [3].

In March 1997, the Libyan parliament named a "code of honor" which enabled the imposition of collective punishment against tribes and clans usually through the withdrawal of government services whenever they engaged in activities against the regime [3]. One peculiarity of this tribal distribution is that the different tribes seem to be found in different regions of the state. Implying that most policies were conceived by others as repressive on tribal sentiments, for instance in Tripoli on the eastern part are the Al-Awager-Aluager. Warfalla has the Tarhona, Wershifana, Al-Fwatir, Awlad Busayf. Al Zintan is inhabited mostly by Al Rijban. Cyrenaica is predominated by Al Wagir, Al Abaydat. In sirite you see the Al- Quddadfa, Al-Magarba, Al-Magharha etc. Fezzan has the Al-Hutman, Al-Hassawna etc, and tribes [4]. Also the towns of Misrata and Tarwagha are said to be inhabited by a reasonable percentage of black skinned Libyans.

This distribution in tribal lines became thus a necessary condition for a civil war in Libya as in several other African countries. This is as a result of deep rooted resentments originating from the domination of governance by one tribe while the major tribes that yield the Libyan major income are situated in alienation. The Libyan civil war was not between any of these tribes and the other; rather it was between government and rebel forces. But one undeniable feature was that tribes and peoples who believe they have ethnic affinities for the Quadhafa tribe or Sirite region fought in government camps, while those who feel isolated by the government aligned with the rebels. This situation was visible in Tarwagha where the black inhabitants were severally killed during the civil war by the rebel groups on the allegation that they aligned with the regime forces or mistaken for black mercenaries. The armed rebels took to killing all seen as pro Gaddafi [5]. The police were deployed to disperse the protesters who had taken over the streets of Benghazi, Baida, Ajdabiya, Misrata and Zawiya. They attacked symbols of the regime as police intensified efforts to stop the protesters most of who already had arms and fired back at the police. The intensity of war increased as more volunteer militias were formed and more arms made available to them.

As should be expected in wars, both sides of the war killed, tortured, and maimed enemies. Both parties were perpetrators and victims of violence alike. The war raged to the extent in which Colonel Gaddafi

himself, Brother Leader, head of the Libyan Jamiriya, became victim of the combined forces of NATO, rebels and other countries. It is then necessary to investigate the humanitarian situations during the crisis which formed the justification, ethical and legal background on which NATO and its allies intervened in Libya in 2011.

Humanitarian Situations during the Civil War

The Libyan civil war resulted in several cases of human rights abuses from the side of the rebels and that of the government. International Criminal Court (ICC) estimated that 500-700 people were killed by security forces in February 2011 before the rebels took up arms. It is also on record that shooting was systematic [6]. Amnesty International similarly reported use of heavy artillery, rockets and cluster bombs in civilian areas. Many of those wounded were denied access to hospitals where they could be treated. Doctors were prevented from documenting the number of the dead and the wounded [7]. Cases were reported of the government's execution of soldiers who refused to fire on protesters most of who were, as claimed, burned alive [8].

There were revelations that the rebels threatened genocide in Misrata and Tawargha. The Wall Street Journal reported that in Misrata (then held by rebels) black Libyans were being targeted and were ethnically killed, with the intention of cleansing misrata of its black population [9]. Wall Street Journal further states that some rebel leaders, who claimed that Libya was one tribe called for the black residents of misrata and Tarwagha to be expelled [9]. In the words of a rebel leader as reported by WSJ, they should pack up, Tawargha no longer exist. They should be banished. The above source reports of a rebel slogan that appeared on the road between misrata and Tawargha which refers to the rebels as "brigade for purging slaves, the black skin. A documented account is also made available by Human Rights Watch in which about 53 pro Quadafi loyalists were summarily executed by rebel soldiers in Sirte [6].

The UN Human Rights Council's Commission of inquiry found that anti-Gaddafi's forces committed serious violations, including war crimes and breaches of international human rights laws. These crimes in their terms included unlawful killing, arbitrary arrest, torture, enforced disappearance, indiscriminate attack and pillage. The March 2012 report included attacks against former residents of Tarwagha.

The above humanitarian situations and many more unaccounted for, formed the justification for the United Nations Security Council Resolution 1973 which authorized military intervention in Libya. Preceding 1973 was Res. 1970 by the UNSC earlier in February 2011. The resolution called for an immediate end to the violence and "steps" to fulfill the legitimate demands of the population. Resolution 1970 also referred Libyan leaders alleged to be involved in human rights abuses to the prosecutor of International Criminal Court. Finally, this resolution imposed an arms embargo on the Libyan state, travel ban on selected individuals, and asset freeze of listed individuals.

Foreign Military Intervention

The military operation in Libya was coordinated by NATO among who were 14 member states and four partners under a unified command. The United States played a critical role, providing intelligence, fueling and targeting capabilities. France and UK flew over 40 percent of the sorties, together destroying more than a third of the overall targets. Italy provided aircraft for reconnaissance missions and along with Greece, access to a large number of air bases. Belgium Canada, Denmark, Norway, and the United Arab Emirates deployed fighters for the operation and Jordan, the Netherlands, Spain, Sweden,

Turkey and Qatar helped enforce the no-fly-zone. Many of these deployed Naval assets to enforce the arms embargo.

On March 19, 2011, the United States led coalition launched air and missile strikes against Libyan forces. They launched series of attacks on large concentration of armored vehicles approaching Benghazi, the headquarters of the revolution and home to 750,000 people to whom Gaddafi allegedly threatened to fish out house by house [9]. In 72 hours, the advance to Benghazi was halted or at least retarded as aircraft and naval vessels were deployed. The U.S having led the mission so far through president Obama, sought NATO'S agreement in order to ensure the effective integration of allied and partnered militaries. Obama pledged that Washington would continue to participate in military operations but would do so mainly by gathering and analyzing intelligence, refueling NATO and partner aircraft and contributing other-high-end military capabilities such as electronic jamming.

The Siege of Misrata was another fierce battle that ended upon NATO'S intervention. Thousands were killed and wounded in Misrata [5]. The battle ended with the death of Gaddafi which in turn has raised serious challenges for Operation Unified Protector and the norm supporting it. It is yet unclear if operation unified protector in Libya was a humanitarian mission aimed at saving the lives and rights of a section of Libyans or if it was a manifestation of the perception that Gaddafi was a cancer that has to be removed [10].

The Just War Theory and Military Intervention in Libya

Nicholas wheeler believes that for an intervention to actually be called humanitarian, it has to satisfy certain tests. These requirements are derived from the just war theory [11]. Enuka adds that the basic assumptions of just war theory provide the framework for discussing the argument either for or against humanitarian intervention (Enuka 2015). As suggested by the above scholars, we shall use the just war theory which features the twin principles of jus ad bellum and Jus in bello as replicated in the ICISS R2P to measure the justness of the NATO led intervention into Libya. These principles are: (1) just cause, (2) right intention and proper motivation (3) right authority and proper authorization (4) proportionality and non-combatant immunity (5) probability of success (6) last resort.

Just cause

For a war to be just in the spirit of the just war theory, it should have in it a transparent purpose of preventing harm to others and the war should have the sole genuine purpose of preventing genocide, ethnic cleansing, war crimes and crimes against humanity. It is indeed notable that none of these conditions occurred before the Libyan intervention. The insurrection and resort to arms increased when the rebels got sure of external intervention. Mary O' Connel buttressed this point when she gave the actual number of casualties before and after resort to arms [12]. Similarly, Patrick Cockburn reports that initial fighting were in Benghazi and Baida where only a few people were killed. Most observers of the intervention opine that NATO and its allies relied more on media propaganda to justify their intervention in Libya. On March 1, 2011, the Russian military reported its doubts that jets were used in attacks by Gaddafi against his own citizens. When confronted with the question on whether there was evidence that Gaddafi actually fired on his people from the air, the Chairman of the Joint Chiefs of Staff responded "we have seen press reports but "we have no confirmation of that. The above makes false, the statement by Obama that "if we waited one more day Benghazi, a city nearly the size of Charlotte, could suffer a massacre that would have reverberated

across the region and stained the conscience of the world [13]. Same seemingly falsehood was repeated by the foreign minister of France when he said "we have very little time left, perhaps only a matter of hours". What took place in Libya was a people's reaction to situations they found dissatisfying, which is part of state making. Going by the provisions of just war theory that, only conditions of genocide, ethnic cleansing, war crimes and crimes against humanity, should attract intervention, the intervention in Libya may be adjudged a wrong act and did not meet the just cause criteria for intervention.

Right authority and proper authorization

The right authority criterion as a condition for intervention was met. This position is assumed considering the position of UN Charter's provisions which gives the UNSC the mandate to authorize intervention where necessary. The Libyan conflict was, until the intervention, an internal problem that fell within the domestic confines of Libya. The intensity of Libyan crisis was less than those of Rwanda and Srebrenica that attracted no interventions. It did not constitute any threat to international peace. Despite this, we assume that the intervention was properly authorized by the right body but to a wrong executor. NATO was a Cold War organization by the then western bloc. No country in Africa formed part of NATO or fell within the idea on which it was conceived. It was wrong that NATO engaged in executing an intervention in a region external to its purpose of formation.

No-fly-zone was intended to create a buffer zone between warring groups to avoid using aerial strikes on the perceived less privileged rebels. The same NATO on behalf of the rebel forces used aerial attacks on the government troops and strongholds. Right authority requirement, though met, was misused by the policy makers and interveners alike.

Right intention and proper motivation

One of the most difficult ventures in analyzing just war criteria is the issue of intention and motivation which cannot be taken on the face value. In the case of Libya, the long history of hostilities and antagonism between Gaddafi and the West is suspect. Any intervention by the former on the later deserves more than just a peripheral study. Situation had occurred before the Libyan war when a U.S President sent war planes to the government house in Tripoli in an effort to kill Gaddafi who was described as the "Mad Dog of the Middle East". Just like a U.S. secretary once said "Gaddafi is a cankerworm to be removed". This and several other hostilities make the western involvement in Libya questionable.

Gaddafi in 2009 had declared his intention to nationalize Libya oil companies or make the public able to control oil prices. This act forced cold shivers down the spines of Cocophlips, Marathon oil, Occidents Amerada Hess and Royal Dutch shell that have made new investments in Libya [14]. It is in this light that it is doubtful that the intervention was predicated on purely humanitarian concerns. Motivation to intervene in Libya was to a large extent propelled by other interests other than humanitarian interests.

Last resort

The just war theory provides that, military action for purpose of protection is to be a last resort on condition that other non-military options have failed. There have been several claims that calls were made to Gaddafi to stop the mass killings and or threats of it. It was said that the UN Secretary General Banki Moon spoke with Muamer Gaddafi on phone on 20th February 2011, telling him that violence against, civilians

must stop immediately. Gaddafi however, did not heed to the call. On 22 February, the UN High Commission for Human Rights Navi Pillay called for immediate cessation of the grave human rights violations by Libyan authorities. These were re-echoed by the U.N Secretary General Special Adviser's Joint Statement on Prevention of Genocide and Responsibility to Protect. The special advisers reminded Libya, in vain, of its pledge in the 2005 world summit to protect population against genocide, war crimes ethnic cleansing and crimes against humanity. The African Union allegedly followed suit through the chairman of the AU Commission Jean Ping calling for an immediate end to repression and violence in Libya. It was in reaction to Gaddafi's acclaimed defiance that the Arab league on 12 March called for a no-fly-zone. The above claims were contrasted by the BBC reports that the AU had brokered a ceasefire proposal which Gaddafi accepted. It seems therefore that the rebels were bent on removing Gaddafi contrary to what was held about threats of a massacre.

Conclusion

The Libyan conflict was one, among the many other conflicts that characterize Africa's political landscape particularly since the post-cold war times. The acclaimed resultant humanitarian emergencies and gross abuse of rights of Libyans, particularly the helpless and hapless non-combatant civilians, women and children, necessitated the foreign intervention spearheaded by the North Atlantic Treaty Organization (NATO), leading to the declaration of No Fly Zone and of course war against Tripoli. Though this military intervention had been praised, but this paper demonstrated that the intervention was fraught with flaws in many respects. There is no gain saying that the intervention war in Libya lost its justness. This is to say that the just war principles and its criteria were hardly observed in the intervention. NATO's intervention in Libya clearly demonstrates that ours is an international system where might is right. Given the indubitable and protracted bad blood between Tripoli and the West, the intervention by NATO into Libya was one in a series of vengeance against Gaddafi. The mandates of Resolution 1973, a framework upon which foreign military intervention into Libya was rationalized, should have been left for the African Union and not any other regional international body beyond Africa. NATO is a cold war security arrangement designed to oversee the security of Western European and North American States. Its role should have died with the cold war. This is in tandem with the neorealist expectation that

an alliance dissolves when the threat it was created to counter has disappeared. NATO in Libya was therefore, wrong. Though as held by Keohane that an institution should persist as long as their members have incentive to maintain them, yet such institutions should operate within the confines of their natural and active mandate. Western Europe and North America is NATO's domain. Meddling into Africa is extra-territorial, and as such a violation of extant international laws that makes sovereignty sacrosanct. This work calls on the policy makers of both NATO and United Nations to firmly reject the post-cold war transformation of NATO into an organization that now performs missions for which it is never designed.

References

1. Enuke, Chuka (2015) NATO in Kosovo: Armed Humanitarian Intervention in Post-Cold War Conflicts. Awka: Arise and Shine Publishers.
2. UNDOC (2011) United Nation Resolution 1973.
3. Mokhefi M (2011) Gaddafi's Regime in Relation to the Libyan Tribes. Al Jazeera Network 2-4.
4. Francis Chigozie CF, Ikechukwu A, Anthony U (2013) NATO's 2011 Intervention in Libya: Beyond Humanitarians Intervention. Net Journal of Social Sciences 1: 5-10.
5. Lindsey H (2012) Sandstorm: Libya in the Time of Revolution.
6. Sam D (2011) Libyan City Torn by Tribal Feud. The Wall Street Journal.
7. Dominic W (2011) Libyan Soldiers were Burned Alive. Sky News.
8. Nkolika EO (2012) The United Nations and the politics of Humanitarian Intervention: A Critical Analysis of United Nations Security Council Resolution 1973 on Libya.
9. Wambu C (2016) Armed Humanitarian Intervention in Civil Wars: A Study of NATO's Responsibility to Protect in Libya 2011. Dept of History and International Studies.
10. Wright C (1982) Libya and the West: Headlong into Confrontation. International Affairs 58: 13-41.
11. Nicholas W (1989) Saving Strangers: Humanitarian Intervention in International Society. Oxford University Press.
12. Mary OC (2011) How to Lose a Revolution in The Responsibility to Protect: Challenges and Opportunities in the Light of the Libyan Intervention.
13. Ivo D, James S (2012) NATO's Victory in Libya: The Right Way to Run and Intervention. Foreign Affairs 91: 2-7.
14. Christopher H (2009) Is Libya Going to Boot U.S. Oil Companies? Forbes.