Libya and Criteria for Humanitarian Intervention[*]

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Abstract

When seeking guidelines for worst-case scenario, military intervention under the Responsibility to Protect looks to the just war tradition. We tried to pinpoint the most important criteria, drawing on the Responsibility to Protect report, subsequent RtoP development and relevant authors to create a background to which compare the NATO's operation in Libya. These criteria were not met during the intervention, as is shown in this article. The criterion of just cause could be seen as fulfilled, albeit this admission is done very grudgingly – the loss of life was not that large comparing to other tragedies that did not trigger intervention. The Libyan intervention is most questionable when it comes to right intentions and proportional means that suggest that the goal of interveners was to topple the regime not protect the civilians. These results bring the discussion of the weakness of the RtoP approach when it comes to defining, which populations should be helped under this doctrine and whether the nature of victims should be taken into consideration.

Keywords: Humanitarian intervention; Libya; just war theory; Responsibility to Protect; RtoP; NATO

1. Introduction

Africa has been witness to several military interventions that claim the title humanitarian. Be it the history of the continent that binds its countries to still-powerful Western players and makes them an object of interest, or the fact that its states are still fairly young, vulnerable, and weak, this continent has more than once seen force used in the name of humanitarian interests. In fact, nearly half the fifty UN peacekeeping missions in the post-Cold War era have been carried out in Africa, among them the most extensive such mission (Adebajo, Scanlon 2006: 5). From this, it follows that African states should express interest in the development of international norms on intervention. Some might claim the Responsibility to Protect is a Trojan

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horse; but there are many reasons that show Africans are not only interested in the topic, but have taken active steps connected to it and have participated in the debate (Spies, Dzimiri 2011). Also noteworthy is that polls say the majority of average Africans have a favourable view of military intervention when it is intended to prevent human rights abuses (Spies, Dzimiri 2011).

NATO's intervention in Libya has been cited as an operation framed in keeping with the Responsibility to Protect (Bellamy 2011: 263; Weiss 2011) and what Weiss calls a 'classic example of humanitarian intervention' using the typology of peace operations developed by Andrew Cottey. This means the action was nonconsensual, that force was used, that it took place in the middle of the conflict, and that the interveners were major Western powers (Cottey 2008; Pattison 2011). For many commentators, it constituted a successful application of the Responsibility to Protect. Lloyd Axworthy and Allan Rock, for example, concluded that 'Libya should be recognized as a major precedent for international engagement to protect people while respecting safeguard rules set out by ICISS, namely multilateral action sanctioned through the UN, using proportional force.' (Axworthy, Rock 2011). But for some authors, it remains open to question whether this military action may be viewed as a humanitarian intervention. Michael Walzer (2011) believes not; in his mind, a military attack of this sort would be 'defensible only in the most extreme cases. Rwanda and Darfur… would have qualified. Libya doesn't.'

In some circles there are misgivings about the collocation 'humanitarian intervention', but the label has become established for a certain class of events in the international sphere. At this particular point in history, the term may seem to have been replaced or rephrased in the debate on the 'responsibility to protect', but it would be unwise to dispose of the collocation just yet; the terms are, after all, used side-by-side, but they cannot be thought to name the same phenomenon. James Pattison offers a clear understanding of the two terms and their relations, placing humanitarian intervention within a larger effort, namely the 'responsibility to protect' (2012: 13–14).

The goal of this paper will be to first examine and discuss the criteria for humanitarian intervention, and then demonstrate the use of these criteria as applied to NATO's involvement in the Libyan intervention in order to assess how well they work or do not work on a practical level. Finally, criticism is offered of the widespread perception that this action was a paradigm example of humanitarian intervention. The authors are fully aware that NATO was not the only actor involved, but we have decided to focus on NATO as the chief actor in the military action.

Early discussions of the topic may be found in Ethics & International Affairs, Vol. 25, Issue 03–2011, featuring the leading researchers in the field of RtoP and humanitarian intervention. Their almost universal conviction that Libya represented the first real implementation of RtoP that boded well for the concept has been challenged at a distance of two years by Justin Morris (2013). Interesting thinking is also found in 'The Responsibility to Protect: Challenges & Opportunities in the Libyan Intervention', edited by Alex Stark, which is less rigorous, but this is more than compensated for by the quality of contributors. More in-depth insight into the process of diplomacy and manoeuvring that went on as resolutions 1970 and 1973 were drafted is offered by Adler-Nissen and Pouliot (Adler-Nissen, Pouliot 2014).

2. Humanitarian Intervention Concept and Criteria

Some might argue that there are no criteria for humanitarian intervention under RtoP. At least the 2005 World Summit Outcome, understood to be the official departure point for RtoP under the UN system, did not adopt the set of criteria debated in the report of the International Commission on Intervention and State Sovereignty (ICISS). The Outcome's wording is deliberately vague, leaving potential action under Chapter VII of the Charter of the United Nations to be evaluated 'on a case-by-case basis' (General Assembly, 2005), and allowing ample room for the Security Council to interpret what constitutes a sufficient cause for necessary measures to be authorized.

From a certain standpoint, it might nevertheless be recognized that there is an existing set of criteria, even if not acknowledged. James Pattison (2014) demonstrates this by drawing on Just War Theory and the ICISS report to point out where these sources have influenced the RtoP, though some of the principles involved have only quasi-legal status. We see his interpretation as valid, even if the ideas it contains are not fully overlapping. We propose the following criteria for humanitarian intervention, drawing on the RtoP debate, on Just War Theory, the ICISS report, and the conclusions of the Independent International Commission on Kosovo initiated by Swedish Prime Minister Persson in 1999 to evaluate the actions of all actors in the conflict (IICK 2000: 22). Both the ICSS and the IICK summarize overlapping but not identical threshold criteria for military intervention. The ICSS employs the parlance of Just War Theory and specifies threshold criteria in the areas of right authority, just cause, right intention, last resort, proportional means, and reasonable prospects. To this point, there has been no alternative set of criteria proposed that would be sensible in the broader debate.

Humanitarian intervention is an extraordinary measure, and the controversy that surrounds its use requires great care when it comes to stating the *just cause*. The 2005 World Summit Outcome settles for the lowest common denominator, focusing on cases in which states have been 'manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity' (General Assembly 2005). The ICISS Report explicitly excluded other violations of human rights, such as systematic racial discrimination, systematic imprisonment, or other repression of political opponents, limiting itself strictly to 'large-scale loss of life' (ICSS 2001: 32–34). To admit a wider range of potential causes would be to make the concept less clear-cut and thereby open the door to abusing it; in fact, the Secretary General was afraid that any attempt to broaden the RtoP concept would undermine the 2005 consensus and stretch the concept beyond recognition and operational utility (UN, Department of Public information, 2008). The same could be said for humanitarian intervention.

No quantitative criterion exists for defining 'large-scale'. If this is so, then context will be of the utmost importance, and the UNSC becomes the ultimate arbiter. Tom Farer's (2005) suggested legitimacy test includes as a criterion what he terms the 'spike test'. This means there must be a huge spike in gross violations of human rights. Although this characterization of what constitutes a just cause is intuitive, and although his reasons for insisting on a 'spike' are understandable, Farer considers this threshold 'high enough' – no one can then make a case for intervening in countries that chronically deprive their citizens of their democratic rights, nor those unable to protect their citizens from suffering brought on by natural disasters. So reasons that constitute just cause for invoking the responsibility to protect come down to

four crimes that 'shock the conscience of humankind': genocide, war crimes, ethnic cleansing, and crimes against humanity as defined by the Geneva Conventions and Additional Protocols and the 1948 Genocide Convention – there is no established threshold.

In evaluating the Libyan intervention, we place the entire problem of deciding whether humanitarian military intervention is permissible into the context of the events that surrounded the debate, i.e. Kosovo and Rwanda. Tens of thousands must have been murdered in an organized, widespread fashion. But the matter turns on more than just the number of victims; their identity should also be taken into consideration. There is a difference between conflict that shows features of civil war and conflict that demonstrates outright genocide. Rebels and freedom fighters have the option of facing repercussions for their (military) actions, or instead of altering their behaviour to avoid reprisals, but the victims of genocide have no such choice. Reprehensible as it may seem, it is not within the power of the international community to intervene in every single conflict.

For humanitarian intervention to be legitimate, *rightful authority* is an important criterion. The UN and UN-related documents, of course, consider the Security Council to be the ultimate arbiter over war and peace. Any intervention would hence require either an SC resolution, or at least the General Assembly's 'Uniting for Peace' resolution. Although a two-thirds majority in the General Assembly is not binding, it does place great legitimizing force behind the decision. Another option in the UN Charter is given to regional organizations acting within the borders of their member states, but they remain subject to the Security Council's authorization, which is thus still a key principle in claiming rightful authority.

The only *right intention* during the intervention should be humanitarian objectives. Economic or territorial goals do not provide legitimate reason; intervention would rightfully be seen as an act of aggression. But motives are very often hard to uncover. The IICK states that 'right intention is probably best carried out by withdrawing military forces and coercive economic measures at the earliest point in time consistent with the humanitarian objectives'(IICK 2000: 195).

Another major debate centres on the correctness of intervening states having the intention or motivation to instigate regime change. In some cases, it might be argued that regime change is a necessary precondition to halting violence, but this is still highly contested, since regime change in and of itself is not a legitimate goal of intervention (IICK 2000: 34).

Regime change as such is not a goal of humanitarian intervention, which should be restricted in scope. A related question then becomes: Did the military intervention in Libya fulfil humanitarian objectives, that is, did the interveners protect the civilian population from harm? Did they withdraw when those goals had been achieved?

As regards the *last resort* criterion, RtoP is built on three pillars of which military intervention is an option, but not the only option. RtoP seeks to extend preventive measures ranging from the political to the economic, so that the international community is not limited to asking only whether it should send in the marines or standby and watch the slaughter of the innocents (UN, Department of Public Information 2008). In addition, the Kosovo report insisted on exhausting all other measures short of military action, including sanctions, embargoes, etc., before military operations begin (ICSS 2001:34). The 2005 World Summit Outcome also expects that military measures to be used only 'should peaceful means be inadequate' (General Assembly 2005). So the question remains: Were alternative means exhausted before embarking on intervention?

The next criterion is that of *proportional means*. The Kosovo report calls for stricter adherence to the laws of war and international humanitarian law than during standard military operations; the ICSS report concurs (ICSS 2001: 37; IICK 2000: 195). The means employed as part of military interventions must be proportional to the original provocation and should reflect the limited nature of the mission to protect civilians from coming to harm. Last but not least, military intervention should only be carried out if it stands *a chance of achieving its goals*, that is, if it protects the populations. If the operation is not able to do so, or if launching it would worsen the impact on the population, such action should not be considered (ICSS 2001: 37). The most obvious examples of interventions doomed to fail this test are those which are aimed at a strong state, or even a major power that has considerable military might and would be able to draw the intervening forces into a protracted war.

3. NATO's Intervention in Libya

3.1. Rightful authority

The prevailing attitude is that the NATO intervention was in compliance with international law. Its defenders include UN General Secretary Ban Ki-Moon, who announced at a press conference at the end of the Alliance engagement in December 2011 that NATO had strictly implemented the mandate of resolution 1973 in implementing operations (UN, Department of Public Information 2011). The scholarly literature as well includes work that considers Operation Unified Protector in compliance with international law (Pattison 2011).

Soon afterwards, on 26 February 2011, the UNSC passed resolution 1970, which requires the termination of violence and asks the government to cooperate with the opposition, and places an arms embargo on the country. Furthermore, sanctions were imposed on the country's political elites and their families. Libyan assets abroad were frozen on the basis of this resolution. At the same time, the UNSC referred the case to the International Criminal Court (ICC) (UNSC 2011a). The resolutions requirements fell far short of fulfilment, and the conflict escalated further. As a result, political processes resulted in the adoption of resolution 1973 on 17 March 2011, with ten votes in the affirmative, and Russia, China, India, Germany, and Brazil abstaining. Together with Great Britain and France, the resolution was proposed by Lebanon (Anrig 2011: 90). The resolution pronounced the crisis a threat to international peace and proposed steps based upon Chapter 7 of the Charter. It called for measures against Libya including an arms embargo, the enforcement of a no-fly zone over Libya, and restricted access to bank accounts. In particular, the resolution

> (...) authorizes Member States that have notified the Secretary-General and the Secretary-General of the League of Arab States, acting nationally or through regional organizations or arrangements, to take all necessary measures to enforce compliance with the ban on flights imposed by paragraph 6 above, as necessary, and requests the States concerned in cooperation with the League of Arab States to coordinate closely with the Secretary General on the measures they are taking to implement this ban, including by establishing an appropriate mechanism for implementing the provisions of paragraphs 6 and 7 above. (UNSC 2011b)

The problem is whether humanitarian military intervention may be undertaken even if the UNSC (2011b) resolution makes no provision for it. The resolution pronounced the crisis a threat to international peace, embedded its provisions in Chapter VII of the Charter, and emphasized the 'responsibility of the Libyan authorities to protect the Libyan population and [reaffirmed] that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians.' From this wording, it is generally agreed that the document is an application of the RtoP concept, but UNSC resolution 1973 does not refer to the responsibility of the international community. In any event, this is the first instance in which the UNSC decided to employ military force to protect human lives in an organization member state without its acknowledgment (Bellamy 2011: 263). It is therefore possible to concur with the conclusion that it really is an attempt to apply the RtoP.

When it comes to applying the UNSC mandate, the chief problem lies in a lax interpretation of the resolution, which gave authority to enforce an arms embargo, keep a no-fly zone in force, and protect civilians. Nevertheless, in reality, the military operations that were conducted came quite near to providing close air support to Libyan rebel groups, indirect in the form of attacks on the country's military infrastructure, but at times even direct in the form of attacks on Libyan armed forces fighting against the rebels. Some interpretations of the resolution claim that it allowed attacks on Libyan ground forces for this purpose (Schmitt 2011: 45).

However, Ademola Abass (2011) highlights another controversial point of the Alliance intervention from the perspective of international law. He points out that paragraph 8 authorizes individual states and regional organizations or arrangements to intervene. These regional organizations or arrangements derive their legitimacy from Chapter VIII of the UN Charter. Yet according to this interpretation, the problem is that NATO is an organization of collective defence, which derives its legitimacy from Article 51 of Chapter VII of the UN Charter. Therefore it is not a regional organization under Chapter VIII like the LAS, which was authorized to make the intervention by UNSC resolution 1973. Thus intervention by the individual NATO members should be in accordance with international law, while the intervention of NATO as an organization already lies in a grey area, and its legality may be controversial. We do not agree with such a straightforward conclusion. One can discern that NATO was a tool used by its members. In that case, NATO was a rightful authority authorized to enforce the UNSC resolutions.

3.2. Just cause

The first protests against the Gadhafi regime started on February 16, 2011, metamorphosing into mass gatherings by the next day. At this stage of the conflict's development, the violent protests were suppressed by the state power apparatus (Powell 2012). Some sources reported protesters used stones and petrol bombs to attack government security forces (Reuters 2011), with the centre of unrest situated in the city of Benghazi, which was taken by the rebels on February 20. Amnesty International reported 109 people were killed by government security forces. The civil war quickly spread to other cities – on the same day, government forces used firearms to suppress protests in the capital Tripoli (Amnesty International 2011a: 16). Gadhafi tried to persuade the global public that the uprising had been provoked by radical Islamist

groups, and he justified his actions on that basis. He and his son Saif al-Islam were subject to an ICC arrest warrant for crimes against humanity committed during this period by forces loyal to the regime (Amnesty International 2011a: 17–21).

Some resources claim that the campaign conducted by Libyan security forces was brutal, failing to distinguish between rebels who bore arms and nonparticipating civilians. Gadhafi's security forces did not comply with international standards on armed enforcement of the law, and they also broke local norms that were less strict (Amnesty International 2011a: 26–28). Government forces surrounded many areas with a high population density and held them under fire, and hundreds of people disappeared without a trace. The most critical event from of this kind occurred in the city of Misrata (Amnesty International 2011a: 34–54). There were numerous media reports about the repression of protesters, mass rapes, attacks by government security forces and paramilitary forces against unarmed civilians, and against medical personnel and other illegitimate targets (Amnesty International 2011b; Meo 2011). Many of these reports were confirmed, but others proved to be false (Cockburn 2011). That many individual reports were untrue, however, does not alter the overall picture of what may be described as a humanitarian crisis in which the health, safety, and well-being of an enormous group of people were under threat.

Furthermore, according to the conclusions of the HRC commission, a great number of people were killed by Gadhafi's forces and tortured by his soldiers (HRC 2012). All in all, the commission reached the conclusion that

> (...) international crimes, specifically crimes against humanity and war crimes, were committed by Qadhafi forces in Libya. The Commission confirms its finding from its first report that there have been acts of murder, torture, enforced disappearance and certain acts of sexual violence committed by Qadhafi forces within the context of a widespread or systematic attack against a civilian population, with knowledge of the attack. These constitute crimes against humanity. (HRC 2012: 21)

That a humanitarian disaster was underway is also proven by the fact that the conflict triggered a wave of refugees, who flooded out to surrounding countries. But these were above all foreign workers and their families. Amnesty International claims that in September 2011, there were approximately 670,000 refugees (Amnesty International 2011a: 119; Ramoin 2012).

However, we cannot but agree with Michael Walzer (2011) that this was not the most extreme case to justify the use of military force. At the time of the mostly Western military intervention (supported by a handful of non-Western states, e.g., Qatar) casualties did not markedly exceed numbers typical in similar situations, i.e. situations in which some citizens launch an armed resistance against their own government, be it in response to suppressing originally nonviolent, or less violent political protests.

The NATO intervention in Libya could then be legitimized only as a just case of humanitarian intervention based upon valid threats of indiscriminate revenge to be taken against rebels by pro-Gadhafi forces in March 2011. Gadhafi stated that 'officers have been deployed in all tribes and regions so that they can rectify all decisions made by these cockroaches' and that 'any Libyan who takes arms against Libya will be executed.'(Bellamy 2011: 256) Regarding the dictatorial character of Gadhafi's regime, even though it had not barred Libya's

membership in UN human-rights forums in the recent past, one could suppose that the risk of a great number of human losses was real (Eyal 2012: 53–63; Gheciu 2011).

At the time of the NATO military intervention, Libya found itself on the verge of civil war, and the West faced the dilemma of whose side to take. It was out of the question for liberal democracies to support Gadhafi in this situation. Even Russia and China remembered to note in their justification for failing to vote in favour of UNSC resolution 1973 that they, too, were alarmed by the conflict's escalation in Libya, and they slowly disavowed Gadhafi's regime (Bellamy 2011: 266–267). Keeping in mind the burgeoning humanitarian disaster in the country and the history of Gadhafi's acts of repression and threats against his opponents, one may conclude that Libya was indeed a prima facie target for humanitarian intervention. But comparing the situation to that in Kosovo or Rwanda, one finds that although the rebels were threatened with violence, there was no genocidal intent and no ethnic subtext.

3.3. Right intention

According to the rhetoric, these operations were carried out in order to protect the Libyan people from government troops and to eliminate the abilities of government forces to cope with the establishment of a no-fly zone. Here it should be noted that UNSC resolution 1973 implies that the aim is to protect civilians, not armed rebels fighting actively against government forces. The officially declared and communicated task of these operations was to protect civilians and this line of argument runs throughout the NATO rhetoric over the entire Alliance engagement (Rasmussen 2011).

A similar tone is adopted in the document entitled a Statement on Libya from 14 April 2011, in which NATO declared its objectives for Operation Unified Protector. The operation was supposed to be maintained until

> 1. All attacks and threats of attack against civilians and civilian-populated areas have ended; 2. The regime has verifiably withdrawn to bases all military forces, including snipers, mercenaries and other para-military forces, including from all populated areas they have forcibly entered, occupied or besieged throughout all of Libya (…) 3. The regime must permit immediate, full, safe and unhindered humanitarian access to all the people in Libya in need of assistance. (NATO 2011a)

This interpretation was favoured by many influential public intellectuals, among them Vaclav Havel (2011). NATO adhered to the same argument that had been put forward by the West since the conflict had begun to escalate. But at a practical level, it was nevertheless providing air and other kinds of support to the rebels being pressured by pro-Gadhafi forces. Two more goals were added besides the originally defined aim of ending attacks against Libyan civilians, these are being to enable access for humanitarian aid to the country and to drive pro-regime forces back to their bases (NATO 2011b). NATO representatives made reference to the conclusions of the Berlin conference up until the very end of the operation.

But between late March and May 2011, Western rhetoric underwent a change. This shift is visible in Obama's statement from late May 2011 that the Alliance's aim was to give Libyans the chance to express their desires and put an end to tyranny (Schmitt, Sanger 2011). And

finally, the Contact Group document dated 15 July 2011 already recognizes the NTC (the National Transitional Council) as the legitimate representative for the entire country, making no mention of other actors. It clearly sets the subsequent goal of regime change, along with preserving the country's diversity and punishing war crimes (NATO 2011c).

There is no other way to interpret this rhetoric than that NATO had decided to contribute openly to toppling the regime, with which the West had entered into secret negotiations to force Gadhafi's ouster (Traynor 2011). Having made these announcements, one cannot doubt that the Alliance had intended to change the Libyan regime. This course of action was then confirmed by the means utilized. The protection of civilians was implemented out by systematically destroying the armed forces of an internationally recognized government and providing military support to its opponents.

Impartiality is also called into question if we take this term to mean that the intervening agent will employ military force against any party to the conflict that poses a threat to civilians. This was raised at the very outset of the Alliance engagement, both by journalists like Paul Brennan of Al Jazeera, and by politicians and analysts (NATO 2011d). It is hence essential to explore whether the Alliance used force as well against rebels who began to take revenge on Gadhafi's supporters, and who committed war crimes and violated human rights. Amnesty International documented many cases of rebels torturing, maltreating, lynching, and abusing local people who supported the regime, up to and including the murder of captured soldiers, mercenaries, and members of paramilitary forces (Amnesty International 2011a: 70–78). By these acts, the rebels threatened the civilians whose protection NATO used as its justification under UNSC resolution 1973. Since there are currently no trustworthy reports indicating action was taken, the impartiality of the Alliance intervention is subject to doubt. Some human rights organizations assert that NATO shares responsibility for the violation of human rights by the rebels which saw Gadhafi supporters murdered, attacked, and tortured. On the whole, the entire operation was conducted for the benefit of one side, in this case, the rebels.

Such a conclusion is also bolstered by the fact that Western countries provided military advisers to aid the rebels in training and tactics (Schmitt, Myers 2011). France and Qatar supplied arms to the rebels (Anrig 2011: 102) in violation of UNSC resolutions 1970 and 1973. According to available information, during the first weeks of the Alliance engagement, arms for the rebels should have been confiscated as part of enforcing the Alliance arms embargo. But during the campaign, the North Atlantic Alliance tried to sidestep direct questions as to who would supply the guerrillas with weapons. Because of the way the Alliance functioned, it is likely that arms supplies for the rebels were provided by individual member states, not NATO itself (NATO 2011d). Available sources indicate the USA did not play the leading role in the process. On 8 July, the US House of Representatives refused to support the rebellion by sending arms and military advisers (BBC 2011a).

Finally, the fact that the operation was undoubtedly intended to support the rebels is shown by the acknowledgment of the Chairman of the National Transitional Council, Abdul Jalil, of the great contribution made by Operation Unified Protector and the West in general to the rebels' victory. He expressed his appreciation for NATO's effort to minimize civilian casualties (BBC 2011b).

James Pattison emphasizes the evaluation of moral permissibility in the Alliance intervention. This centres on deciding whether the situation was so grave at the start of the intervention

that extreme loss of human life was threatened, and whether the main purpose of the intervention was to prevent that loss. Pattison believes that the circumstances were indeed at a level of severity that made the humanitarian intervention in Libya morally permissible. What he does not regard as acceptable is changing the regime. He perceives the risks to people that it engenders to outweigh the loss of continuing Gadhafi's authoritarian regime. Nevertheless, Pattison comes to the conclusion that regime change was not the intent at the start of the intervention (2011: 172–173).

The crucial concern of the entire mission consists in the political consequences of the Alliance engagement. With the West's and NATO's contribution in Libya, the authoritarian regime of Muammar Gadhafi was toppled. This may be regarded as the most significant result of the Alliance engagement – the rebels had been saved from defeat. NATO representatives consider both successes (Dadlder, Stavridis 2012: 2–7). Some proponents of the RtoP accept this as a reality, as well, among them Ramesh Thakur (2011), who states, 'If defeat of a non-compliant state or regime is the only way to achieve the human protection goals, then so be it.' But this is a dangerous way of thinking. The moment this door is opened, humanitarian intervention may be abused to justify a George W. Bush style of regime change all over the world. This is not only undesirable from a systemic standpoint, but also with a view to BRICS and other newly emerging powers.

3.4. Last resort

As a last resort, one might consider that the North Atlantic Alliance had a rather cautious approach at the beginning; it did not regard developments in the country as a direct threat to the security of its member states, and stressed the secondary impact of Libyan unrest for international security. The Alliance refused to launch active operations to capture war criminals, referring to the absence of a mandate, as UNSC resolutions 1970 and 1973 had not given NATO the necessary authorizations (NATO 2011e). Initially NATO also rejected the idea that the Alliance had had plans to intervene militarily in the Libyan conflict. The NATO Secretary General made a public announcement to this effect on 24 February 2011 (NATO 2011f). In this opening stage, the Alliance focused on evacuating foreign citizens from the country and providing humanitarian assistance (NATO 2011g). NATO was also involved in monitoring the situation in the country (NATO 2011h). Yet by early March, NATO policy had changed. In mid-March 2011, after adopting UNSC 1973, the NATO Secretary General was already claiming 'there is an urgent need, firm support from the region and a clear UN mandate for necessary international action. The Allies stand behind the legitimate aspirations of the Libyan people for freedom, democracy and human rights' (NATO 2011e).

This change in the Alliance's approach took place at approximately the same time as forces loyal to Gadhafi started to outflank the rebels and retook some important cities (Zawiyah, Bin Jawad). Gadhafi mobilized his supporters, blamed the West for having organized the uprising, and threatened to exact revenge from his opponents (EurActiv.com 2012). From this point forward, Alliance involvement in the entire operation, especially compared to what had taken place in past missions in the Balkans, was rapid. On 10 March 2011, NATO declared its potential willingness to intervene militarily, to strengthen its forces in the Mediterranean Sea, and began to plan other operations referring to UNSC resolution 1970 and the existence of an arms

embargo. After adopting UNSC resolution 1973 on 17 March 2011, the Alliance launched Operation Unified Protector, which was interpreted as an operation in response to UNSC resolutions. From 23 March 2011, NATO started to enforce an arms embargo, and from 25 March, a no-fly zone. The Alliance indicates 31 March as the date it took all military operations in Libya under its supervision (GlobalSecurity.org 2011; NATO 2011i, 2011j, 2011k, 2012).

Some critics oppose the Alliance intervention in Libya, claiming the situation in the country had not been so grave as to require military intervention. Germany took this position; after the revolt began, German representatives vigorously condemned the situation and supported a non-military resolution (Berenskoetter 2011). Against the background of the lessons learned in the Somalia, Rwanda, Bosnia and Kosovo crises, the West came to the conclusion that a well-timed, energetic military action would save many human lives and prevent humanitarian catastrophe on a gigantic scale. This attitude has its pros and cons. On the one hand, allows a repeat of the Bosnian and Kosovo scenarios to be avoided. On the other, however, the last resort criterion was not met in the Libyan case. As Mary Ellen O'Connell points out, sanctions were imposed within a very short time before the start of the military campaign, and the rebels' attitude towards negotiations with Gadhafi provided minimal space for compromise (O'Connell 2011). Though to be fair to NATO, initially the no-fly zone was seen 'as a purely defensive measure to prevent pro-government Libyan military forces from directly firing on civilian population centres' (Shanahan 2011).

The loss in human life was far from levels that would justify humanitarian intervention. It is questionable whether the action the action even came close to fulfilling the last resort criterion. But towards the achievement of what goal, then, was this intervention a last resort? To prevent a humanitarian disaster had not occurred on a massive scale, or to dispose of Gadhafi and change the regime?

3.5. Proportional means

The Alliance engagement was preceded by a series of coordinated, yet individual operations by NATO members France, Canada, the UK, and the USA (Anrig 2011: 89). Alliance military engagement was based on using air and sea power, which proved very convenient. Member states' domestic political scenes, therefore needed fear no impact of severe battle losses, and this mainly Western intervention would not be interpreted as an occupation of another Arab country (Anrig 2011: 102). That was a propagandist card played by Gadhafi. In any event, no other form of participation, for instance ground operations, would have been permitted under UNSC resolution 1973, which does not mention any potential deployment of ground forces in Libya. If NATO had wished to make the entire action appear legal, it could not but avoid the deployment of ground forces. The Alliance conducted air raids against ground forces loyal to the regime and focused especially on Gadhafi's elite forces, such as the Khamis Brigade. The intensity of these operations was at a much lower level than had been the case in Kosovo (Vira, Cordesman 2011). The actual short-term aims of the West, i.e. not to allow the rebellion to be put down, were achievable, in comparison to the complex aims of Western engagement in the Balkans and Afghanistan, even without the extensive use of Western ground forces. Similar to Kosovo, this role was assumed by local rebels. Western ground forces, to the extent they were deployed at all, took the form of individual member states' special force operations used for

the reconnaissance of targets, to collect information in the area, and possibly also to guide Alliance planes to individual targets. In its public announcements, the Alliance tried to obfuscate the issue and avoid giving clear statements (NATO 2011d).

Operation Unified Protector was officially terminated on 31 October 2011. The Alliance aerial campaign was the longest in the post-Cold War era but less intensive than the campaign against Yugoslavia in 1999 (Jebnoun 2012). The entire operation was carried out under highly demanding conditions in which it was difficult to distinguish combatants from non-combatants. This fact, together with the participation of many states, allowed great room for error and collateral damage both among civilians and rebels. Nevertheless, on the whole, NATO was quite successful in minimizing civil casualties and, generally speaking, it fulfilled the jus in bello criteria. On the other hand, NATO deployed forces more suited to toppling the Gadhafi regime than to protecting civilians; the Alliance relied on air power and conducted a series of raids against pro-government forces. However, it was not NATO's fault that ground forces were not deployed, as the UN mandate explicitly prohibited the use of ground forces. On 20 March 2011, the League of Arab Nations criticized participating countries for having exceeded the mandate (GlobalSecurity.org 2011).

When evaluating the proportionality of the means used, it is also necessary to explore whether the Alliance used force against rebels who began to take revenge on Gadhafi supporters (i.e. civilians), and who committed war crimes and violated human rights. Amnesty International and the UN Security Council documented many cases of torture, maltreatment, lynching and abuse of inhabitants supporting the regime by the rebels, including murders of captive soldiers, mercenaries, and members of paramilitary forces (Amnesty International 2011a: 70–78). In carrying out these acts, the rebels represented a threat to the civilians NATO was supposed to be protecting under UNSC resolution 1973; moreover, they committed war crimes. Some human rights organizations hold NATO directly co-responsible for the human rights violations carried out by the rebels, since Gadhafi loyalists were murdered, attacked and tortured (Stephen 2012). Even if this interpretation is not admissible, the Alliance did little or next to nothing to protect them.

The Alliance military intervention cannot therefore be seen to be proportional, either in terms of the types of forces deployed in the operation, or in terms of the aims of the operation. As regards the aims of the Alliance military action, the problem resides in the fact that it was not directed against rebel groups who threatened civilians, and it was directed in a one-sided manner against governmental forces to undermine the ruling regime and prepare the ground for it to be toppled.

3.6. Reasonable prospects

The reasonable prospects criterion requires that the intervening agent should be able to protect civilians, and should not end up causing more casualties than would otherwise occur as the war progresses if the international community allows it to go on. As regards the prospects for success, the situation in NATO at the time the decision was made to intervene militarily was not invidious. At that particular moment, nobody could guarantee that the military engagement in Libya would not change into a situation similar to Somalia or Iraq. Many warnings were sounded against the intervention. Chris Hedge, among others, stated that his experience

as Middle East Bureau Chief of the New York Times told him that the bloodshed had just begun (Hedges 2011).

Unfortunately, he proved correct. Contemporary Libya is very close to a failed state with no central authority, ruled by local warlords. The war itself ended with tens of thousands of casualties. Relying on the air force did offer an advantage from the perspective of eliminating one's own losses; but the declared aim of the operation – protecting civilians – could not be achieved in this way. The prospects for such an engagement were not very bright. It may be said with the knowledge of hindsight that NATO did not fulfil this criterion. The uprising might have turned into bloodshed similar to Rwanda or Bosnia. It is unfair to blame NATO after-the-fact, but this illustrates just how tricky the decision to intervene really is. NATO is, however, open to criticism for its lack of planning about what to do after the intervention had ended.

4. Conclusion

This paper has made the effort to tease out the possible criteria for military intervention on a humanitarian basis on the basis of Just War Theory, the ICISS and IICK reports, and the 2005 World Summit Outcome and discussions following from it, and to apply them to the NATO engagement in Libya. Humanitarian intervention should in every event be considered an extreme solution to a problem. The great unwillingness with which states approach the topic reveals its controversial nature, and the lack of any official guidelines for such military operations suggest that intervention should be approached with great care from both a conceptual and practical standpoint. It is also justified to set fairly strict criteria for disrupting the international order by violating state sovereignty and territorial integrity.

One subcriterion could be suggested that might help guide the decision-making process in terms of just cause. The degree to which a particular situation is extraordinary might be assessed by questioning the identity of the victims. Do they have the chance to alter their behaviour to escape repression, or is it in fact who they are that has motivated their oppressors to violence? This criterion would cover the most horrifying massacres, and at the same time would contribute to safeguarding the use of humanitarian intervention so that it does not fall subject to a hidden agenda by intervening states, such as the desire for regime change.

Must the situation fulfil all the criteria, in the sense that it is possible to intervene only if all the items on the list have been ticked off? That would be an ideal situation; but it is one that happens rarely in our imperfect world. We therefore argue that the criteria form a certain hierarchy. The most important would be those that ensure proper objectives and legitimacy under international law. This means right authority in the form of a mandate from the international community, just cause, and right intention on the part of the intervener: the objective should be to stop widespread suffering and abuse of civilians.

So how does the Libyan intervention measure up to these criteria? There is no problem with the NATO mandate. The reason lies in the fact that the UNSC resolution authorized UN members to intervene and a group of them just used NATO as a tool.

When it comes to just cause, the debate gets more interesting. At the time this mainly Western intervention was launched, Libya stood on the verge of civil war. Casualties were non-negligible, and yet the extent of the disaster is in no way comparable with the instances

that have catalysed the discussion on humanitarian intervention, those of Somalia, Rwanda, and Kosovo. It may therefore be judged that it is doubtful whether the catastrophe in its extent justified speedy intervention.

There is moreover a difference between conflicts that they are the features of civil war and those that involve genocide. Rebels have the choice of whether to face repercussions for their actions or change their behaviour to avoid reprisals; victims of genocide do not. The rebels faced repercussions for their actions and not because they belonged to a different sect of Islam or were from a different tribe or ethnicity. The only factor that justified NATO's intervention was threats of indiscriminate use of the armed forces made by members of the ruling regime.

The main impediment standing in the way of classifying the NATO mission as a humanitarian intervention is to do with *right intention*. The objectives set and the tools employed did not demonstrate sensitivity to this third of the most important criteria for such an action.

The true aim of the Alliance engagement was to support the rebels in their effort to topple the Gadhafi dictatorship, not to protect civilians. The means employed by NATO – airpower – were entirely unsuited to civilian protection, but they did suffice to upend the regime. Civilians are best protected militarily by the deployment of ground forces, with a day-to-day military presence on the ground. But this sort of intervention was excluded under UNSC resolution 1973. In addition, the Alliance military intervention was not directed against those rebel groups that represented a threat to civilians. It was thus clearly not proportional.

Nor does the Libyan intervention measure up well when it comes to the other criteria. Intervention and regime change, it might well be claimed, were not a matter of last resort in this case. Diplomatic solutions were not adequately pursued; other measures were implemented, but the resort to arms followed on in very short sequence, too short for them to have any impact on the situation.

As far as reasonable prospects goes, it must be reiterated that this is a highly problematic criterion because of the inability to project the future. Nevertheless, there was not much planning done for the postwar development period, even though it was anticipated the situation would be messy, with no clear political solution under conditions of limited knowledge about the country.

No question was raised about the proportionality of the military means employed by NATO. But there was clear partiality shown in the battle against pro-government forces, while allied rebels were allowed to commit the same war crimes unpunished.

On the whole, it may be seen that, when we set the criteria for humanitarian intervention strictly, as we have done here, interventions that may appear to have been justifiable to contemporaries turn out not to be, and this was the case with Libya. Though the Libyan intervention easily satisfied the authority criterion, it did not satisfy that of just cause, nor of right intention, and it at least partially failed to fulfil the remaining three.

Muammar Gadhafi was definitely to blame for countless human lives lost in Libya, in other African countries, and in the West. But the Alliance military action seriously impaired the existing international regime that regulates the use of military force, and it did not fulfil the strict criteria of humanitarian intervention. The RtoP was abused in the interests of regime change. The jury is still out on the long-term impact of the Libyan intervention, but at this writing it seems it did not encourage the application of the RtoP, or of humanitarian intervention under the concept.

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