The Ethics of Humanitarian Intervention in Libya

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Wars and interventions bring to the fore certain ethical issues. For instance, NATO's intervention in Kosovo in 1999 raised questions about the moral import of UN Security Council authorization (given that the Council did not authorize the action), and the means employed by interveners (given NATO's use of cluster bombs and its targeting of dual-use facilities). In what follows, I consider the moral permissibility of the NATO-led intervention in Libya and suggest that this particular intervention highlights three issues for the ethics of humanitarian intervention in general. The first issue is whether standard accounts of the ethics of humanitarian intervention, which draw heavily on just war theory, can capture the prospect of mission creep. The second issue is whether epistemic difficulties in assessing the intervention's likely long-term success mean that we should reject consequentialist approaches to humanitarian intervention. The third issue concerns selectivity. I outline an often overlooked way that selectivity can be problematic for humanitarian intervention.

The Case for Intervention

The moral permissibility of the intervention in Libya largely turns on two fairly tricky assessments. These are, first, whether the situation was sufficiently serious at the time the intervention was launched (the just cause question), and, second, what the predominant purposes of the intervention were (the right intention question).

First, in regard to just cause, was the situation in Libya sufficiently serious to warrant humanitarian intervention? Michael Walzer, writing in the *New*

Republic shortly after the launch of the intervention, doubts it. He argues that "a military attack of the sort now in progress is defensible only in the most extreme cases," which is reminiscent of his claim in *Just and Unjust Wars* that intervention is permissible only in response to acts that "shock the moral conscience of mankind."[1] However, as has often been noted, Walzer's account of just cause seems unconvincing since, first, it arbitrarily sets the bar extremely high for intervention, and, second, it is unclear precisely what constitutes acts that "shock the moral conscience of mankind."[2] A more morally defensible test (which I defend elsewhere) is the one proposed by the International Commission on Intervention and State Sovereignty. This test requires that there be circumstances of actual or apprehended (a) "large-scale loss of life," with or without genocidal intent, which is the product of deliberate action or neglect, or (b) "large-scale ethnic cleansing," whether carried out by killing, forced expulsion, or acts of terror or rape.[3]

Does the intervention in Libya meet this test? This seems likely. As Alex Bellamy notes in his contribution to this roundtable, Qaddafi indicated that his regime intended to commit a massacre in his now infamous "no mercy" speech, where he called on his supporters to "go out and cleanse the city of Benghazi."[4] Moreover, by the time the intervention was launched, the regime had already demonstrated its willingness to use force against its own people, given that an estimated 1,000 to 10,000 had already been killed.[5] The subsequent indiscriminate shelling of Misrata provides further evidence of the regime's willingness to use force against its people.

Nevertheless, although there may have been just cause for *humanitarian intervention*, the situation in Libya did not seem to be serious enough to provide just cause for *regime change*—or, more precisely, forcible regime change by an external party in support of a rebel movement. The dangers of regime change are generally greater than that of humanitarian intervention: a larger number of innocent individuals are likely to be killed; the potential for instability in neighboring regions is greater; and the costs of intervening in terms of the intervening soldiers' lives may be much higher, given the likely need for a significant deployment of ground troops. Given these harms, the bar for permissible regime change should be much higher than that for humanitarian intervention. This is because an exceptionally grave situation—more serious than that is required for humanitarian intervention to be permissible—is necessary to allow room for sufficient good to be done to outweigh these harms.[6] I would argue that this bar is unlikely to have been met in Libya. Although the Qaddafi regime is brutal and oppressive,

forcible regime change can all too often do more harm than good, as the war in Iraq has shown.

The issue, then, is whether the intention of the intervention is predominantly the protection of civilians—a humanitarian objective—or the removal of Qaddafi.[7] In the early stages of the intervention, at least, it seems that the predominant intention was the protection of civilians. First, the military targets selected for bombing were largely those that were a clear threat to civilians. Second, if regime change was the primary objective initially, the coalition would have bombed Qaddafi's troops wherever they were likely to be found, with less regard for civilian casualties. Third, the coalition would have immediately armed the rebels and potentially deployed ground troops. To be sure, in the early stages of the intervention regime change did appear to be an intention, but only a secondary one.

Additionally, if we turn our attention to other relevant requirements in the ethics of humanitarian intervention, the intervention in Libya seems to do well.[8] The limited scope of the intervention—the establishment of a no-fly zone and the protection of civilians—as well as the desert battle space meant that there was a reasonable expectation of fidelity to the principles of *jus in bello* (for example, the number of innocent casualties would be relatively low). Second, UN Security Council Resolution 1973 provided the coalition with the legitimate authority to intervene. Third, the imminent attack by Qaddafi's forces on Benghazi meant that the requirement of last resort (interpreted as requiring that reasonable alternative measures be attempted before the resort of force) was met; there were no other alternatives that would have prevented the attack. Fourth, the intervention had significant support from the individuals under threat and from the international community more generally—including, notably, the Arab League. Fifth, the intervention had a reasonable hope of success in protecting civilians (although, as I will suggest below, this point may be challenged).

NATO's intervention was, then, morally permissible (at least compared to not acting—see below). Nevertheless, the intervention faces three potential problems, which also raise issues for the ethics of humanitarian intervention more generally.

The Ethics of Mission Creep

The first potential problem concerns the possibility of mission creep. As of mid-May 2011, it appears that as the intervention progresses, the *primary*

objective may become regime change rather than the protection of civilians. Indeed, the rhetoric of several of the coalition leaders, who in various speeches have argued that Qaddafi must step down, suggests that the perceived success of the intervention will be measured primarily by whether Qaddafi's reign is ended. This may mean that the NATO-led coalition will ultimately attempt to achieve regime change so that the mission is perceived as successful and the coalition does not lose face politically.

But, again, I would argue that there is not sufficient cause for regime change. In addition, making regime change the primary objective would be morally problematic because it would most likely fail to meet several of the other qualities that are important for the permissibility of an intervention. An intervention aimed at regime change could not be reasonably expected to follow the principles of *jus in bello*, since it would most likely lead to a large number of innocent casualties. It would also not fulfill the requirement of last resort since there are other, nonmilitary options, such as long-term targeted sanctions, that could be successful in forcing out Qaddafi. Also, the likelihood of the campaign's success—measured in terms of the promotion of basic human rights—would be dubious. A new Libyan regime, even if it could be successfully implemented, may be little better in its human rights record, and the transition costs between regimes in terms of human rights could be severe.

However, most accounts of the ethics of humanitarian intervention, influenced heavily by just war theory, lack the conceptual tools to consider the morality of an intervention that was permissible when it was launched but that later becomes morally problematic. The *jus ad bellum/jus in bello* distinction is, in this regard, unhelpful. This is because, as traditionally conceived, *jus ad bellum* concerns only the decisions of political and military leaders to resort to force, and *jus in bello* concerns the conduct of the war by soldiers. Recent work in just war theory has challenged one aspect of this distinction: Jeff McMahan and others have claimed that the principles of *jus in bello* are determined in part by the *ad bellum* permissibility of the war.[9] The potential for mission creep in Libya points to the need for a further challenge. The principles of *jus ad bellum* should be reapplied throughout the war—that is, during the *in bello* period—to the decisions of political and military leaders to undertake various new and additional phases and operations. If the new phase or additional objective fails to meet these requirements—as I have suggested regime change in Libya would—it should not be undertaken. In fact, ultimately, I think that principles similar to that of *jus ad*

bellum should be applied not just to new and additional phases and operations but to *every* use of force during the war or intervention—that is, to all *in bello* acts, such as the bombing of a particular target. For each *in bello* act, it should be asked whether there is just cause for this *particular* use of force, whether *this* action is rightly intended, has legitimate authority, is better than the other options, and is likely to be successful.[10]

Consequentialism and Humanitarian Intervention

The second issue highlighted by the intervention in Libya concerns the problems of assessing the likely long-term consequences of humanitarian intervention. Although, as I have suggested, it was reasonable to expect that the intervention would help to protect the residents of Benghazi in the short term, the likely long-term success of the intervention is, on the face of it, uncertain. This seems to raise difficulties for the dominant approaches to the ethics of humanitarian intervention, which place considerable weight on the likely consequences.[11] If we cannot predict the likely outcomes of the intervention, then relying on likely consequences to judge its moral efficacy—as do consequentialists and those, like me, who give significant weight to consequences—leaves us unable to judge the case for intervention. Given the epistemic difficulties, it may seem better to adopt an alternative, nonconsequentialist account that focuses on seemingly more assessable considerations, such as whether the intervention has the requisite legal authority.

Such a move would be too hasty, however. It is a mistake to think that we are completely in the dark when it comes to judging the likely consequences of an intervention. On the contrary, there is in most cases sufficient information available to make a reasonable judgment about the long-term consequences of intervention. Although some of the particular details of the case may be murky, we can look to the presence or absence of several factors that tend to be central to an intervention's successful promotion of basic human rights. These factors include the military and nonmilitary resources of the interveners, a suitable strategy on their part, their commitment to stay the course, local and global support for the intervention, and the intervener's fidelity to the principles of *jus in bello*. The intervention in Libya (as long as it remains about the protection of civilians) appears sound according to these requirements, and for that reason can be expected to be successful in the long term.[12]

Selectivity Revisited

The third issue concerns one of the most common objections to humanitarian intervention and one that has been raised frequently in the public debates surrounding the intervention in Libya. The objection runs as follows: The intervention in Libya is morally problematic because the NATO-led coalition has failed to act in response to similar situations in Bahrain, Syria, and Yemen. The failure to act militarily in response to these crises demonstrates the inconsistent moral standards of the coalition and the dominance of self-interest in its decisions about where to intervene.

The standard account of this selectivity objection fails. First, there should be a degree of selectivity in where to intervene, given that humanitarian crises may be dissimilar. Accordingly, intervention may be permissible in response to one crisis and not another. Second, the objection misses its target. What the objection shows is not that the intervention in *Libya* is itself morally problematic, but that the *failure to act* in response to similar cases (for example, *if* it is true that interventions in Bahrain, Syria, and Yemen would have been permissible and obligatory) is morally wrong.

However, there is a sense in which selectivity *is* problematic that has been largely overlooked by both the advocates and critics of humanitarian intervention. The problem with the coalition's intervention is not one of double standards, but that the coalition chose to intervene in *Libya* rather than in response to *even worse* situations where it could have saved more lives (and also acted permissibly). Philosophers tend to agree that when there is a forced choice between saving two sets of people, numbers matter, and so you should save the greatest number.[13] Similarly, it might have been that the NATO-led coalition could have used the same resources to save a *greater* number of lives in Côte d'Ivoire (given the potential for the crisis in Côte d'Ivoire to lead to more deaths than in Libya) by, for instance, strengthening the French and UN operations there. Alternatively, more lives might have been saved by giving the hundreds of millions of dollars spent on the intervention in Libya to tackle global poverty instead. The fact that the coalition seems to have chosen to act in the *less serious* case, where fewer lives are likely to be saved, is wrong and therefore brings into question its moral justifiability.[14]

That said, the requirement to save the greatest number comes into play when there is a forced choice between two or more actions with only one being possible.

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The NATO-led coalition, given its extensive resources, may have been able to tackle permissibly one or more additional situations *as well*. If that is true, it was not the decision to intervene in Libya that was morally problematic, but rather its failure to provide assistance in the other cases. Moreover, there is one sense in which the intervention in Libya is permissible regardless: that is, when compared to *no action in Libya or anywhere else*, since saving some lives is better than saving none.

NOTES

1 Michael Walzer, "The Case Against Our Attack on Libya," *New Republic*, March 20, 2011; www.tnr.com/article/world/85509/the-case-against-our-attack-libya; and Michael Walzer, *Just and Unjust Wars*, 4th ed. (New York: Basic Books, 2006), p. 107.
2 See, e.g., Simon Caney, *Justice Beyond Borders* (Oxford: Oxford University Press, 2005), pp. 236–37, 247; and the symposium "Walzer and the Moral Standing of States," *Ethics & International Affairs* 23, no. 4 (Winter 2009).
3 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), p. XII; and James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010), pp. 20–24.
4 A transcript of the speech is available at blogs.aljazeera.net/live/africa/libya-live-blog-march-17#.
5 To be sure, the death rate in Libya was difficult to determine accurately. See James Downie, "When Numbers Lie: Why Isn't There an Accurate Death Toll in Libya?" *New Republic*, April 1, 2011; www.tnr.com/article/world/86090/libya-death-toll-war-qadaffi.
6 Note here that the considerations of proportionality bear on just cause according to my practically oriented version of just cause. I consider this point further in Pattison, *Humanitarian Intervention and the Responsibility to Protect*, pp. 20–24.
7 The issue of intent is crucial since in the philosophy of action an agent's intentions are generally held to play a large part in classifying actions (e.g., in determining whether an act is regime change or humanitarian intervention).
8 I defend the moral importance of several of these factors in detail in Pattison, *Humanitarian Intervention and the Responsibility to Protect*. It may do less well on the internal support requirement, since it is unclear whether the domestic publics of the NATO states supported the action. Notably, in the United States the action did not receive Congressional approval.
9 See, especially, Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009).
10 I defend this view in James Pattison, *The Morality of Private War* (Oxford: Oxford University Press, forthcoming). Also see Jeff McMahan, "The Ethics of Killing in War," *Ethics* 114, no. 4 (2004), pp. 693–733, at pp. 713–14; Christopher Toner, "The Logical Structure of Just War Theory," *Journal of Ethics* 14, no. 2 (2010), pp. 81–102; and especially John Lango, "Generalizing and Temporalizing Just War Principles: Illustrated by the Principle of Just Cause," in Michael Brough, John Lango, and Harry van der Linden, eds., *Rethinking the Just War Tradition* (Albany: SUNY Press, 2007), pp. 75–95.
11 See, e.g., Michael W. Doyle, "A Few Words on Mill, Walzer, and Nonintervention," *Ethics & International Affairs* 23, no. 4 (Winter 2009), pp. 349–69.
12 As Simon Chesterman notes in his contribution to this roundtable, perhaps most questionable is whether the coalition has a suitable strategy for a long-term resolution to the conflict that does not involve regime change. The establishment of such a strategy—which could, for instance, be to achieve a peace settlement and perhaps the deployment of UN peacekeeping troops—may be central to the future success of the action.
13 See, e.g., Nien-Hê Hsieh, Alan Strudler, and David Wasserman, "The Numbers Problem," *Philosophy & Public Affairs* 34, no. 3 (2006), pp. 352–72.
14 For simplicity's sake, I focus on the importance of saving the most lives. It may also be that when faced with several potentially permissible humanitarian interventions, interveners should focus on the case in which they are likely to do best according to the other morally relevant factors, such as their likely fidelity to the principles of *jus in bello*.