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“Leading from Behind”: The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya

Simon Chesterman

Humanitarian intervention has always been more popular in theory than in practice. In the face of unspeakable acts, the desire to do something, *anything*, is understandable. States have tended to be reluctant to act on such desires, however, leading to the present situation in which there are scores of books and countless articles articulating the contours of a right—or even an obligation—of humanitarian intervention, while the number of cases that might be cited as models of what is being advocated can be counted on one hand.

So is Libya such a case? It depends on why one thinks that precedent is important. From an international legal perspective, debates have tended to focus on whether one or more states have the *right* to intervene in another for human protection purposes. From the standpoint of international relations and domestic politics, the question is whether states have the *will* to intervene. From a military angle, a key dilemma is whether states have the *ability* to intervene effectively. This essay considers these three issues in turn. The legal significance of Libya is

minimal, though the response does show how the politics of humanitarian intervention has shifted to the point where it is harder to do nothing in the face of atrocities. At the same time, however, military action to the end of May 2011 suggested a continuing disjunction between ends and means.

Law

For an international lawyer, the intervention in Libya is interesting but not exactly groundbreaking. Security Council resolution 1973 (2011) was consistent with resolutions passed in the heady days of the immediate post-cold war era. As early as December 1992 and April 1993 the Council had authorized the use of “all necessary means” to establish secure conditions for humanitarian relief and create safe havens in situations of internal conflict.¹ Though there are nuances of difference, such as those pointed out by Alex Bellamy in his contribution to these pages, the question of consent to an operation is not legally significant when it is authorized under Chapter VII of the UN Charter.² Tellingly, there was no need to include language that the situation was “unique,” “exceptional,” or “unique and exceptional” — phrases used in resolutions in the early 1990s to ensure abstentions by China and others on resolutions that significantly broadened the Security Council’s “international peace and security” mandate.

From a legal standpoint, then, resolution 1973 was hardly ground-breaking. Yet the complications of implementing those two resolutions of the early 1990s—in Somalia and

¹ SC Res 794 (1992); SC Res 819 (1993).

² See the contribution by Alex J. Bellamy to this issue.

Srebrenica—suggest that the problems have never been limited only to what the law allows, but also include what politics permits and what is militarily possible.

This is not to say that the emergence of the “responsibility to protect” (RtoP) has not been normatively important. In order to get consensus in the commission that coined the term and the UN General Assembly that embraced it, however, compromises were necessary. First, as Tom Weiss observes, the 2001 International Commission on Intervention and State Sovereignty (ICISS) sandwiched the military question between the “white bread” of prevention and post-conflict peacebuilding.³ Secondly, by the time “RtoP” was endorsed by the World Summit in 2005, its normative content had been emasculated to the point where it essentially provided that the Security Council could authorize, on a case by case basis, things that it had been authorizing for more than a decade.⁴

There is evident hesitation on the part of the Council to embrace the RtoP doctrine fully. Resolution 1973 refers only to the “responsibility *of the Libyan authorities* to protect the Libyan population.”⁵ This is consistent with earlier Council resolutions that had used variants of the phrase, but limited it to that first pillar of national protection.⁶ Two later resolutions went further,

³ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre, Ottawa, December 2001), available at <<http://www.iciss.ca>>. See the contribution by Thomas G. Weiss to this issue.

⁴ 2005 World Summit Outcome Document, UN Doc A/RES/60/1 (16 September 2005), available at <<http://www.un.org/summit2005>>, paras 138-139. Cf. Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action* (Cambridge: Polity, 2007), pp. 88-118; Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity, 2009), pp. 66-97.

⁵ SC Res 1973 (2011), preamble (emphasis added). Cf SC Res 1790 (2011), preamble.

⁶ Probably the first use of RtoP *strict sensu* was in relation to Sudan’s responsibilities in Darfur: SC Res 1564 (2004), preamble. In a resolution on the Great Lakes Region, the Council underscored that “governments in the region have a primary responsibility to protect their populations”: SC Res 1653 (2006), para. 10.

touching on the responsibility of the international community, but confined themselves to “reaffirming” the provisions of the 2005 Outcome Document.⁷ (Interestingly, a series of resolutions on Georgia beginning in 2002 “recalled” that the Abkhaz side bore “a particular responsibility to protect” returnees.⁸ This was arguably distinct from RtoP, but was repeated in subsequent extensions of the United Nations Observer Mission in Georgia (UNOMIG). Perhaps coincidentally, the phrase was dropped in the eight resolutions on UNOMIG adopted after the 2005 World Summit.)

Nonetheless, the significance of RtoP was never, in a strict sense, legal. Rather, it was political—and, importantly, *rhetorical*. The ICISS was funded in significant part by Canada and Britain, both of whom had participated in military action in Kosovo in 1999 that appeared to violate the UN Charter. Article 2(4) of the Charter prohibits the threat or use of force against member states. There are only two exceptions: self-defense and action authorized by the Security Council.⁹ Neither applied to Kosovo; and the dubious possibility of a General Assembly resolution in support of intervention—which would have required two-thirds of member states support and, for all that, would not have been binding—had been rejected by Britain.¹⁰

⁷ SC Res. 1674 (2006), para 4; SC Res. 1894 (2009), preamble.

⁸ SC Res 1393 (2002), para. 11; SC Res 1427 (2002), para. 12; SC Res 1467 (2003), para. 14; SC Res 1494 (2003), para. 15; SC Res. 1524 (2004), para. 16; SC Res 1554 (2004), para. 16; SC Res 1582 (2005), para. 18; SC Res 1615 (2005), para. 19.

⁹ See generally Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law*, Oxford Monographs in International Law (Oxford: Oxford University Press, 2001).

¹⁰ See UK House of Commons, Foreign Affairs Committee, Fourth Report: Kosovo, Minutes of Evidence – Volume II, HC 28-II, 18 January 2000, available at <<http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmfaaff/28/0011806.htm>>, Question 178 (Professor Adam Roberts).

It is noteworthy that in Kosovo—and virtually every other case of so-called humanitarian intervention—states were reluctant to justify their actions in legal terms. In particular, states chose not to articulate a legal argument that might be used by other states to justify other interventions. In relation to Kosovo, for example, the German government atypically used the phrase “humanitarian intervention” but emphasized that Operation Allied Force should not be a precedent for further action.¹¹ U.S. Secretary of State Madeleine Albright stressed that the air strikes were a “unique situation *sui generis* in the region of the Balkans.”¹² British Prime Minister Tony Blair retreated from his initial enthusiasm for the intervention to emphasize the exceptional nature of the air campaign.¹³ Kosovo was also unusual in that it was a case of alleged humanitarian intervention that actually made it to the International Court of Justice. In proceedings brought by Yugoslavia against ten NATO members, however, only Belgium presented a formal legal justification for the intervention.¹⁴ The case was ultimately dismissed on technical grounds.

¹¹ Deutscher Bundestag, Plenarprotokoll 13/248, 16 October 1998, 23129, available at <<http://dip.bundestag.de/parfors/parfors.htm>>. See also Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects”, *European Journal of International Law*, 10 (1999), p. 22.

¹² U.S. Secretary of State Madeleine Albright, Press Conference with Russian Foreign Minister Igor Ivanov, Singapore, 26 July 1999 available at <<http://secretary.state.gov/www/statements/1999/990726b.html>>.

¹³ See, e.g., UK Parliamentary Debates, Commons, 26 April 1999, col 30 (Prime Minister Blair). Cf Colin Brown, “Blair’s Vision of Global Police,” *Independent*, 23 April 1999. This was consistent with the more sophisticated UK statements on the legal issues. See, e.g., UK Parliamentary Debates, Lords, 16 November 1998, WA 140 (Baroness Symons); reaffirmed in UK Parliamentary Debates, Lords, 6 May 1999, col 904 (Baroness Symons). Foreign Affairs Committee (United Kingdom), Fourth Report - Kosovo (23 May 2000), available at <<http://www.fas.org>>, para 132 (concluding that “at the very least, the doctrine of humanitarian intervention has a tenuous basis in current international customary law, and that this renders NATO action legally questionable”).

¹⁴ *Legality of Use of Force Case* (Provisional Measures) (ICJ, 1999) pleadings of Belgium, 10 May 1999, CR 99/15 (uncorrected translation).

Such reticence was emulated in two major commissions on the topic. Richard Goldstone's Kosovo Commission obfuscated the issue by concluding that NATO's action was, in the now famous phrase, "illegal but legitimate."¹⁵ The ICISS report acknowledged that, as a matter of "political reality" it would be impossible to find consensus around any set of proposals for military intervention not authorized by the Security Council, but questioned where the greater harm lay: in the damage to international order if the Council is bypassed, or in the damage if civilians are slaughtered while the Council stands idly by.¹⁶ The commissioners pointedly failed to answer that question.¹⁷ From a legal standpoint, then, neither RtoP in general nor Resolution 1973 in particular have changed the standing prohibition on the use of force outside self-defense and Security Council-authorized enforcement action.

Politics

As Anne Orford has argued, however, although RtoP does not create rights or impose legal obligations, it may nonetheless be understood as conferring public power and allocating jurisdiction.¹⁸ Seen through such a lens, the vague formulations embraced by the 2005 Summit do not invoke "responsibility" in the strict legal sense of an obligation to act in a specific way, but rather in the sense of an allocation of responsibility to respond to a situation. This may be

¹⁵ Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: Oxford University Press, 2000), p. 4.

¹⁶ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, para 6.37.

¹⁷ Cf. Jennifer M. Welsh, "Humanitarian Intervention After September 11", in Jennifer M. Welsh (ed.), *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004); Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

¹⁸ Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge: Cambridge University Press, 2011), pp. 22-27

compared to the function played by Article 99 of the UN Charter, which allows the UN secretary-general to bring to the attention of the Security Council “any matter which in his opinion may threaten the maintenance of international peace and security.”¹⁹ It is no coincidence that much of the energy behind the adoption and, now, implementation of RtoP has come from the office of the secretary-general.²⁰ Much like Article 99, the true significance of RtoP is not in creating new rights or obligations to do “the right thing”; rather, it is in making it harder to do the wrong thing or nothing at all.²¹

Such a dynamic appears to have had some success at the international level, facilitated by the unusual clarity of the situation in Libya. State leaders are usually more circumspect in the threats they make against their population than was Qaddafi; impending massacres are rarely so easy to foresee. Combined with the support of African states and the Arab League for intervention, this left most states on the Council unwilling to allow atrocities to occur—and others unwilling to be seen as the impediment to action.

Such clarity of intent influenced the Obama administration in particular. Within a twenty-four hour period the United States pivoted from skepticism about intervention in Libya to forceful advocacy. That change of policy was partly driven by external events—in particular the imminent possibility of thousands being killed by Qaddafi’s troops—but also by the internal advocacy of Secretary of State Hillary Rodham Clinton, Ambassador to the UN Susan Rice, and

¹⁹ UN Charter, art. 99.

²⁰ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington, DC: Brookings Institution, 2008), pp. 46-51.

²¹ Cf. James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010), pp. 247-250.

National Security Council staffer Samantha Power.²² Rice in particular had used her first statement in the UN Security Council to endorse RtoP;²³ Power, the author of the Pulitzer Prize-winning book *A Problem from Hell: America and the Age of Genocide*, currently serves as the National Security Council's Senior Director of Multilateral Affairs and is a special adviser to the President.²⁴

Nevertheless, when President Obama articulated the reasons for the United States acting in Libya—at a time of upheaval in many other countries across the Arab world—those reasons were carefully confined to the Libyan case. As he noted:

America cannot use our military wherever repression occurs. And given the costs and risks of intervention, we must always measure our interests against the need for action. But that cannot be an argument for never acting on behalf of what's right. In this particular country—Libya—at this particular moment, we were faced with the prospect of violence on a horrific scale. We had a unique ability to stop that violence: an international mandate for action, a broad coalition prepared to join us, the support of Arab countries, and a plea for help from the Libyan people themselves. We also had the ability to stop Qaddafi's forces in their tracks without putting American troops on the ground.²⁵

²² Helene Cooper and Steven Lee Myers, "Shift by Clinton Helped Persuade President to Take a Harder Line", *New York Times*, 19 March 2011.

²³ Susan E. Rice, "Respect for International Humanitarian Law" (UN Security Council, New York, 29 January 2009), available at <<http://www.state.gov/p/io/rm/2009/115579.htm>>.

²⁴ Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002).

²⁵ Barack Obama, "Remarks by the President in Address to the Nation on Libya" (National Defense University, Washington, DC, 28 March 2011), available at <<http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>>.

Such a pragmatic assessment of individual cases can hardly be described as a “doctrine,”²⁶ and it was swiftly condemned by some for its passivity or naïveté.²⁷ The unfortunate quote from an administration official that the United States was “leading from behind” came to be a subject of ridicule—particularly when a lead role in the initial air strikes was assumed by France and the entire operation was later handed over to NATO, with operational command in the hands of a Canadian.²⁸ Bluster aside, however, and after a decade of belligerent and unsuccessful leadership from the front, the cautious policy implied by such a phrase seemed more closely tied to U.S. capacities and interests at a time when its relative power is declining and in certain parts of the world it continues to be reviled.²⁹

On the Ground

The lingering question, of course, is the military one. Jennifer Welsh rightly points out in her contribution to these pages that the disjunction between stated political objectives and available military means would have Clausewitz turning in his grave. As in many previous cases, the commitment of leaders to confining their countries’ involvement to air strikes alone and for a

²⁶ “The Birth of an Obama Doctrine”, *Economist*, 28 March 2011.

²⁷ See, e.g., Laura Meckler and Adam Entous, “Obama Defends Libya Fight—President Says Massacre Prevented”, *Wall Street Journal*, 29 March 2011; Charles Krauthammer, “The Obama Doctrine: Leading from Behind”, *Washington Post*, 29 April 2011.

²⁸ Steven Erlanger and Eric Schmitt, “NATO Set to Take Full Command of Libyan Campaign “, *New York Times*, 25 March 2011.

²⁹ Ryan Lizza, “The Consequentialist: How the Arab Spring Remade Obama’s Foreign Policy”, *New Yorker*, 2 May 2011.

limited duration was transparently a political rather than military decision.³⁰ The commencement of military action, as in many previous cases, swiftly showed that air strikes alone were unlikely to be effective. The potential tragedy of Benghazi soon devolved into farce as the Libyan rebels were revealed to be a disorganized rabble.³¹

The sixteenth-century proverb about the road to Hell is frequently invoked by critics of humanitarian intervention. The intentions behind the decision to intervene in Libya were good—as they were in Somalia, Srebrenica, and other efforts to respond to mass atrocity. Yet the difficulty in following through on those intentions in Srebrenica allowed the killing of 8,000 men and boys, and severely undermined the credibility of NATO; the decision to withdraw from Somalia led to the failed, pirate-ridden state of today, and indirectly to the mass graves of Rwandan, where genocide took place less than a year later.

Do something, do *anything*, is not a military strategy. At this writing, it is far from clear how the Libyan conflict will play out, but that outcome will have consequences that reach far beyond Libya itself. RtoP may have made it harder to say no, but what happens next will clearly affect the likelihood of whether future leaders will say yes.

³⁰ Cf. Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Oxford: Oxford University Press, 2007).

³¹ C.J. Chivers, “Libyan Rebels Don’t Really Add Up to an Army”, *New York Times*, 7 April 2011.