Humanitarian Intervention and Geo-Politics: A Complicated Confluence

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AMOS N GUIORA, SEP 11 2012

The philosophy behind humanitarian intervention is simple: it stems from the principle that "intervention for human protection purposes . . . is supportable when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator."[1] In other words, humanitarian intervention is based on the belief that "when a government turns savagely upon its own people . . ." it becomes the responsibility of "[a]ny state capable of stopping the slaughter . . . to try to do so."[2]

The question, then, is why has the Obama Administration chosen not to intervene in Syria given the sheer brutality of the Assad regime. Re-articulated: how does the Obama Administration distinguish between non-intervention in Syria and intervention in Libya? Why does the extraordinary violation of human rights in the latter justify international intervention whereas the massacre of innocent civilians in the former does not? With respect to Syria, the Obama Administration has limited its response largely to rhetoric; Secretary of State Clinton commented:

 "Syria's future is up to the Syrian people," she said, "but of course the efforts by the opposition to come together to organize in order to articulate a political agenda is an important part of political reform."[3]

Libya

Gadhafi's Libya was no different than Assad's Syria: both torture, imprison and kill; in both, thousands of citizens flee their homes recognizing the regime would brook no dissent, give open fire orders resulting in indiscriminate shooting by armed forces into crowds of individuals. In other words, both regimes were engaged in massacring their citizens.

In Libya, opponents of the regime took to the streets; though uncertainty existed regarding the identity and nature of their organization, the Obama Administration[4] and NATO[5] decided to intervene militarily on their behalf. Over a five-month period (April-August, 2011) the U.S. flew 5,316 sorties; that total included 1,210 airstrike missions and 101 Predator drone strike missions.[6] In addition, the U.S. was providing nearly 70% of the intelligence capabilities and refueling assets[7] and by July 31, 2011, had spent over $896 million once intervention began.[8] The stated purpose of the military engagement was to force Gadhafi to either step down or leaveLibya; that mission was accomplished.

However, there is an important dichotomy: an organized rebel group received significant international military assistance while a largely unorganized opposition barely receives meaningless platitudes that accompany non-intervention in the face of extraordinary violations of human rights. Declarations that the Syrian regime has lost legitimacy are true, but they are just that, declarations; devoid of intervention, they are akin to whistling in the wind. That, however, is the essence of the Obama Administration's policy with respect to Syria: mere words. Needless to say, that is a far cry from the aggressive intervention policy with respect toLibya.

Herein lies the rub: a compelling argument can be made that unorganized Syrians are in greater need of international intervention than were organized Libyan rebels. That is, the U.S.and NATO have deliberately turned their back on the citizens of one country while readily coming to the assistance of the citizens of another country.

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Humanitarian Intervention

As Professor Ryan Goodman asked, "Should international law permit states to intervene militarily to stop a genocide or comparable atrocity without Security Council authorization?"[9] According to Article 39, Chapter VII of the U.N. Charter:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.[10]

Syria

While the U.N. authorized military force against Libya,[11] it has not done so regarding Syria.[12] Does that mean the U.S. cannot intervene in Syria? As Professor Goodman and others have written,[13] international humanitarian intervention raises legitimate questions regarding pretext to "wage wars for ulterior motives."[14] Humanitarian intervention is an inherently complicated proposition, because it clearly implies both that nation state 'A' is engaged in significant violations of the human rights of its own citizens, requiring nation state 'B' and/or the international community to recognize that intervention is essential.[15] However, analysis of when intervention is deemed essential and criteria justifying intervention suggest both lack of clarity and lack of objective standards and benchmarks.

The lack of clear criteria as to when intervention is justified, if not required, suggests that the question is one of interpretation, subject to specific circumstances and particular interests.[16] In that vein, then, the question is: why does the U.S. not determine that the actions of the Syrian government justify international humanitarian intervention? As of September 2012, the Syrian death toll was estimated to exceed 20,000 people[17] ; according to reports 5,000 were killed in August 2012.[18][19]In addition to the rising death toll, thousands of protestors have been reported missing or in Syrian custody since the protests began.[20]

In fact, a high-level U.N. human rights team reported finding systematic human rights violations by the Syrian government, including summary executions, prisoner torture, and targeting children during the government's crackdown on opposition protestors.[21] Based on its findings, the U.N. team recommended that Syria be referred to the International Criminal Court for prosecution of the alleged atrocities. By comparison, the Libyan death toll was estimated at over 1,000 on February 23, 2011,[22] only weeks before the U.N. authorized intervention inLibya and NATO began flying sorties over the country.

Larger Meaning

Precisely because international law does not articulate either normative or architectural standards as to when international humanitarian intervention is justified, national leaders arguably have a responsibility to act.[23] For a variety of reasons, the international community has determined—whether actively or passively—that the massacre of the Syrian population by the Assad government does not justify international humanitarian intervention. While the human rights violations occurring on a daily basis do not compare to the horrors of Rwanda,[24] Kosovo,[25] or Sierra Leone[26] they are not less compelling than the events transpiring in Libya.

Unlike Libya whose natural resources are essential to understanding the basis for international intervention, Syria is devoid of resources. However, unlikeLibyawhose larger (other than resources) geo-political importance is a matter of debate Syria's geo-political importance is worthy of consideration. After all, the Assad regime has proven itself to be a reliable proxy state for the Iranian regime, particularly as a conduit for weapons supplied to Hezbollah in southernLebanon. The increasing realization by the Obama Administration of Syria's strategic importance—–particularly as the Iranian regime moves ever closer to fulfilling its nuclear ambition—-perhaps reflects a change inUSpolicy.

While some will consider this development suggestive of greater US involvement in Syria, the Obama Administration's foreign policy is best described as "policy". From both a broader geo-political perspective and a

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narrow humanitarian perspective the lack of consistency is troubling. National leaders seeking to discernUSdirection and goals are hard-pressed to do so; leaders of resistance movements, brutalized by a horrific regime, recognize that relying on US assistance is a woebegone exercise in futility. The combination of geo-political inconsistency and lack of clear principles with respect to humanitarian intervention is deeply troubling both practically and philosophically. Practically because decision makers are hard-pressed to predict US actions; philosophically because US inconsistency has dramatic implications in a world whose increasingly inherent instability will be further challenged by the seeming inevitability of a nuclearIran.

While the humanitarian crisis in Syria is, indeed, a human tragedy, the decision whether to intervene in Syria has implications beyond the horrors afflicted by the Assad regime. The complicated confluence of humanitarian intervention and geo-political considerations require the Obama Administration to articulate and implement consistent, well thought through principles and values. This is not the time for mere lip service predicated on mere platitudes; rather it is the time for leadership, decision-making and articulation of a consistent foreign policy.

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[1]See Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect (2001) available at http://responsibilitytoprotect.org/ICISS%20Report.pdf.

[2]See Michael Walzer, Just and Unjust Wars: A Moral Argument with Historical Illustrations 101, 108 (4th ed. 2006)

[3] Sebnem Arsu,Clinton ChidesTurkey on Rights Record, N.Y. TIMES, July 17, 2011, at A10.

[4] President Obama deployedU.S. military forces toLibya without receiving congressional authorization under the 1973War Powers resolution. See Charlie Savage & Mark Landler, White House Defends Continuing U.S. Role in Libya Operation, N.Y. TIMES, Jun. 16, 2011, at A16 ("U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve U.S. ground troops," rendering War Powers authorization unnecessary in the eyes of the Administration); see also Paul Starobin, Op-Ed., A Moral Flip-Flop? Defining 'War,' N.Y. TIMES, Aug. 7, 2011, at SR5 (illustrating the issue of framing the Libyan intervention through a critical examination of Department of State Legal Adviser Harold Koh's position on the applicability of the War Powers resolution).

[5] See Paula Newton, NATO: Libya Mission Will Be to Protect, Not Arm, CNN (Mar. 28, 2011), http://articles.cnn.com/2011-03-28/world/libya.nato_1_nato-civilians-libya-mission?_s=PM:WORLD (indicating that NATO's control of the Libyan operation increased during its early stages).

[6] Luis Martinez, US Military Intervention in Libya Cost At Least $896 Million, ABC NEWS (Aug. 22, 2011), http://blogs.abcnews.com/politicalpunch/2011/08/us-military-intervention-in-libya-cost-at-least-896-million-.html (tallying total cost as of Aug. 22, 2011).

[7] United States Activities in Libya, FOREIGN POL'Y 9, http://www.foreignpolicy.com/files/fp_uploaded_documents/110615_United_States_Activities_in_Libya_–_6_15_11.pdf (last visited Jan. 4, 2012) (providing a detailed overview of American operations inLibya compiled by the White House).

[8]Martinez, supra note 7

[9] Ryan Goodman, Humanitarian Intervention and Pretexts for War, 100 AM. J. INT'L L. 107, 107 (2006).

[10] U.N. Charter art. 39.

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[11] Jay Solomon, Adam Entous & Joe Lauria, U.N. Clears Way for Attack on Libya, WALL ST. J. (May 18, 2011), http://online.wsj.com/article/SB10001424052748703818204576206373350344478.html (noting that the U.N. Security Council authorized military force against Libya).

[12] U.N. Security Council Issues Statement Condemning Violence in Syria, CNN (Aug. 3, 2011), http://www.cnn.com/2011/WORLD/meast/08/03/syria.unrest/index.html?hpt=hp_t1 (noting that thus far, the U.N. Security Council has only issued a statement condemning the violence in Syria).

[13] Goodman, supra note 126; see e.g., Jacob Katz Cogan, The Regulatory Turn in International Law, 52 HARV. INT'L L.J. 321 (2011) (purporting that there has been an unnoticed change in international regulatory law allowing for states who treat their citizens improperly to come under international scrutiny); Jonah Eaton, An Emerging Norm? Determining the Meaning of Legal Status of the Responsibility to Protect, 32 MICH. J. INT'L L. 765 (2011) (discussing the emerging norm in the U.N. General Assembly to protect during humanitarian intervention); Nicholas Lamp, Conceptions of War and Paradigms of Compliance: The 'New War' Challenge to International Humanitarian Law, 16 J. CONFLICT & SECURITY L. 225 (2011) (arguing that modern new wars pose challenges to international humanitarian law).

[14] Goodman, supra note 14

[15] See Learn about the International Coalition for the Responsibility to Protect, INT'L COAL. FOR RESP. TO PROTECT, http://www.responsibilitytoprotect.org/index.php/about-coalition (last visited Jul. 14, 2011) (detailing an effort to impose a normative standard for demanding preventative intervention).

[16] Compare Chris Borgen, The "Libya and Humanitarian Intervention" Meme, OPINIO JURIS (Feb. 24, 2011), http://opiniojuris.org/2011/02/24/the-libya-and-humanitarian-intervention-meme/ (compiling internet responses related to the humanitarian intervention in Libya), and Asli Ü. Bali & Ziad Abu-Rish, On International Intervention and the Dire Situation in Libya, JADALIYYA (Feb. 23, 2011), http://www.jadaliyya.com/pages/index/725/on- international-intervention-and-the-dire-situation-in-libya (advocating for solutions to the situation and Libya and describing the condemnation of the violence in Libya), with Issandr El Amrani, A Different Take On Foreign Intervention in Libya, ARABIST (Feb. 24, 2011), http://www.arabist.net/blog/2011/2/24/a-different-take-on-foreign- intervention-in-libya.html (opposing foreign military intervention), with Shadi Hamid, Libya Uprising: It's Time to Intervene, SLATE (Feb. 23, 2011), http://www.slate.com/id/2286184/ (giving the international community options for supporting a regime change in Libya).

[17] See http://www.bbc.co.uk/news/world-middle-east-19460919, last visited September 3, 2012

[18] http://www.globalnews.ca/6442588297/story.html, last visited September 3, 2012

[19] http://www.thedailybeast.com/cheats/2012/09/04/assad-meets-with-red-cross.html?utm_medium=email&utm_source=newsletter&utm_campaign=cheatsheet

[20]See "Syrian Arrests Are Said to Have Snared Tens of Thousands". *New York Times*, (June 27, 2012), http://www.nytimes.com/2012/06/28/world/middleeast/beyond-arms-syria-uses-arrests-against-uprising.html?_r=2

[21] U.N. Human Rights Council, Rep. of the U.N. High Comm'r for Human Rights on the Situation of Human Rights in the Syrian Arab Republic, ¶22, U.N. Doc. A/HRC/18/53; GAOR, 18th Sess. (Sept. 15, 2011) (listing human rights violations in Syria); see also Frank Jordans, U.N. Syria Mission Finds Systematic Human Rights Violations, HUFFINGTON POST (Aug. 18, 2011), http://www.huffingtonpost.com/2011/08/18/un-syria-hman-rights_n_930577.html.

[22] Rachel Donadio, Italy Says Death Toll Is Likely Over 1,000, N.Y. TIMES (Feb. 23, 2011), http://www.nytimes.com/2011/02/24/world/europe/24italy.html.

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[23] See Jayshree Bajoria, Libya and the Responsibility to Protect, COUNCIL ON FOREIGN REL. (Mar. 24, 2011), http://www.cfr.org/libya/libya-responsibility-protect/p24480 (stating if a state fails to protect its citizens from genocide or other war crimes, it becomes the international community's responsibility to do so); Irwin Cotler & Jared Genser, Libya and the Responsibility to Protect, N.Y. TIMES (Feb. 28, 2011), http://www.nytimes.com/2011/03/01/opinion/01iht-edcotler01.html?_r=2 (authorizing action from the international community to protect a state's population from genocide or other war crimes if that state is unable or unwilling to protect its citizens, or if that state is the perpetrator of such actions at a U.N. world summit in 2005); The Crisis in Syria, INT'L COAL. FOR THE RESP. TO PROTECT, http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria

(last visited Jan. 4, 2012) (discussing alleged human rights violations by the Syrian government and calling for intervention by the international community).

[24] See Bureau of Democracy, Human Rights, and Labor, 2009 Human Rights Report: Kosovo, U.S. DEP'T OF STATE (Mar. 11, 2010), http://www.state.gov/g/drl/rls/hrrpt/2009/af/135971.htm.

[25] The death toll in Kosovo was estimated between 5,000 and 12,000. See Q & A Counting Kosovo's Dead, BBC NEWS (Nov. 12, 1999), http://news.bbc.co.uk/2/hi/europe/517168.stm. For a more recent report, see Bureau of Democracy, Human Rights, and Labor, 2009 Human Rights Report: Kosovo, U.S. DEP'T OF STATE (Mar. 11, 2010), http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136039.htm

[26] See Bureau of Democracy, Human Rights, and Labor, 2009 Human Rights Report: Sierra Leone, U.S. DEP'T OF STATE (Mar. 11, 2010), http://www.state.gov/g/drl/rls/hrrpt/2009/af/135975.htm.

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