

The Responsibility to Protect – The Cases of Libya and Ivory Coast

Written by Marjorie Cohn

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MARJORIE COHN, MAY 15 2011

The United States, France and Britain invaded Libya with cruise missiles, stealth bombers, fighter jets and attack jets. Although NATO has taken over the military operation, U.S. President Barack Obama has been bombing Libya with Hellfire missiles from unmanned Predator drones. The number of civilians these foreign forces have killed remains unknown. This military campaign was ostensibly launched to enforce United Nations Security Council Resolution 1973 in order to protect civilians in Libya.

In addition, the United Nations and France have been bombing the Ivory Coast to protect civilians against violence by Laurent Gbagbo, who refuses to cede power to the newly elected president after a disputed election. UN Secretary Ban Ki-Moon insists that the United Nations is “not a party to the conflict.” France, former colonial ruler of Ivory Coast, has over 1,500 troops stationed there. Ivory Coast is the world’s second largest coffee grower and biggest producer of cocoa. The bombing of Ivory Coast is being undertaken to enforce Security Council Resolution 1975 to protect civilians there.

The UN Charter does not permit the use of military force for humanitarian interventions. The military invasions of Libya and Ivory Coast have been justified by reference to the Responsibility to Protect doctrine.

The Responsibility to Protect is contained in the General Assembly’s Outcome Document of the 2005 World Summit. It is not enshrined in an international treaty nor has it ripened into a norm of customary international law. Paragraph 138 of that document says each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Paragraph 139 adds that the international community, through the United Nations, also has “the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”

Chapter VI of the Charter requires parties to a dispute likely to endanger the maintenance of international peace and security to “first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” Chapter VIII governs “regional arrangements,” such as NATO, the Arab League, and the African Union. The chapter specifies that regional arrangements “shall make every effort to achieve pacific settlement of local disputes through such regional arrangements . . .”

It is only when peaceful means have been tried and proved inadequate that the Security Council can authorize action under Chapter VII of the Charter. That action includes boycotts, embargoes, severance of diplomatic relations, and even blockades or operations by air, sea or land.

The Responsibility to Protect doctrine grew out of frustration with the failure to take action to prevent the genocide in Rwanda, where a few hundred troops could have saved myriad lives. But the doctrine was not implemented to stop Israel from bombing Gaza in late 2008 and early 2009, which resulted in a loss of 1,400 Palestinians, mostly civilians.

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Security Council Resolution 1973 begins with the call for “the immediate establishment of a ceasefire.” It reiterates “the responsibility of the Libyan authorities to protect the Libyan population” and reaffirms that “parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians. The resolution authorizes UN Member States “to take all necessary measures . . . to protect civilians and civilian populated areas” of Libya.

But instead of pursuing an immediate ceasefire, immediate military action was taken instead. The military force exceeds the bounds of the “all necessary measures” authorization. “All necessary measures” should first have been peaceful measures to settle the conflict. Yet peaceful means were not exhausted before the military invasion began. A high level international team – consisting of representatives from the Arab League, the African Union, and the UN Secretary General – should have been dispatched to Tripoli to attempt to negotiate a real cease-fire, and set up a mechanism for elections and for protecting civilians. Moreover, after the passage of the resolution, Libya immediately offered to accept international monitors and Qaddafi offered to step down and leave Libya. These offers were immediately rejected by the opposition.

Security Council Resolution 1975 regarding Ivory Coast is similar to resolution 1973 regarding Libya. The former authorizes the use of “all necessary means to . . . protect civilians under imminent threat of physical violence” in Ivory Coast. It reaffirms “the primary responsibility of each State to protect civilians” and reiterates that “parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians.”

The UN Charter commands that all Members settle their international disputes by peaceful means, to maintain international peace, security, and justice. Members must also refrain from the threat or use of force against the territorial integrity or political independence of any state or in any manner inconsistent with the Purposes of the United Nations.

Only when a State acts in self-defense, in response to an armed attack by one country against another, can it militarily attack another State under the UN Charter. The need for self-defense must be overwhelming, leaving no choice of means, and no moment for deliberation. Neither Libya nor Ivory Coast had attacked another country. The United States, France and Britain in Libya, and France and the UN in Ivory Coast, are not acting in self-defense. Humanitarian concerns do not constitute self-defense.

There is a double standard in the use of military force to protect civilians. Obama has not attacked Bahrain where lethal force is being used to quell anti-government protests because that is where the U.S. Fifth Fleet is stationed. In fact, the *Asia Times* reported that before the invasion of Libya, the United States made a deal with Saudi Arabia, whereby the Saudis would invade Bahrain to help put down the anti-democracy protestors and Saudi Arabia would enlist the support of the Arab League for a no-fly-zone over Libya.

The League’s support for a no-fly-zone effectively neutralized opposition from Russia and China to Security Council Resolution 1973. Moreover, the military action by the U.S., France and Britain has gone far beyond a no-fly-zone. Indeed, Obama, France’s President Nicolas Sarkozy and Britain’s David Cameron penned an op-ed in the *International Herald Tribune* that said the NATO force will fight in Libya until President Muammar Qaddafi is gone, even though the Resolution does not sanction forcible regime change.

When Obama defended his military actions in Libya, he said “Some nations may be able to turn a blind eye to atrocities in other countries. The United States of America is different.” Two weeks later, the Arab League asked the Security Council to consider imposing a no-fly-zone over the Gaza Strip in order to protect civilians from Israeli air strikes. But the United States, an uncritical ally of Israel, will never allow the passage of such a resolution, regardless of the number of Palestinian civilians Israel kills. This is a double standard.

The military actions in Libya and Ivory Coast set a dangerous precedent of attacking countries where the leadership does not favor the pro-U.S. or pro-European Union countries. What will prevent the United States from stage-managing some protests, magnifying them in the corporate media as mass actions, and then bombing or attacking

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Venezuela, Cuba, Iran, or North Korea? Recall that during the Bush administration, Washington leveled baseless allegations to justify an illegal invasion of Iraq.

During a discussion of the Responsibility to Protect in the General Assembly on July 23, 2009, the Cuban government raised some provocative questions that should give those who support this notion pause: “Who is to decide if there is an urgent need for an intervention in a given State, according to what criteria, in what framework, and on the basis of what conditions? Who decides it is evident the authorities of a State do not protect their people, and how is it decided? Who determines peaceful means are not adequate in a certain situation, and on what criteria? Do small States have also the right and the actual prospect of interfering in the affairs of larger States? Would any developed country allow, either in principle or in practice, humanitarian intervention in its own territory? How and where do we draw the line between an intervention under the Responsibility to Protect and an intervention for political or strategic purposes, and when do political considerations prevail over humanitarian concerns?”

The Responsibility to Protect doctrine violates the basic premise of the UN Charter. Last year, the General Assembly’s Fifth Committee declined funding for the office of the new Special Advisor on Responsibility to Protect. Some member States argued that the Responsibility to Protect had not been agreed to as a norm at the World Summit. The debate will continue. But for many States, this is a slippery slope that should be viewed with extreme caution.

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