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Barack Obama as Just War Theorist: The Libyan Intervention

Harry van der Linden

Barack Obama has clearly placed himself in the just war tradition. In his acceptance of the Nobel Peace Prize on December 10, 2009, Obama voiced his sympathy with Martin Luther King, Jr., and his notion of nonviolence, but he also emphasized that nonviolence is inadequate with regard to expressions of evil that are not open to negotiation and responsive to reason, such as Hitler's expansionism and al-Qaeda's terrorism. In such instances, military force is both necessary and just to stop threats to the American people. Obama also stressed that "war promises human tragedy" and that "war itself is never glorious," thus distinguishing the just war tradition from militarism. Observing that "for most of history [the] concept of just war was rarely observed," President Obama implied that his Administration, at least, would adhere to just war principles for determining what constitute the just initiation (*jus ad bellum*) and execution (*jus in bello*) of war. On the whole, the acceptance speech displays a solid understanding of just war theory (JWT), even though, on my account of JWT, resort to force is only a matter of appropriately addressing threats rather than responding to evil as such. So we may ask how successful has President Obama in fact been as just war theorist? In other words, has JWT actually guided the Obama Administration?

In answering this question, I will first address American involvement in the NATO intervention in Libya. In my view, the record here of Obama as just war theorist is at best mixed. Next, I will briefly point out some other aspects of American resort to force under the Obama Administration that are in clear violation of JWT. I will conclude that Obama's failure as just war theorist is at least partly a failure of the theory itself. More specifically, I will argue that JWT fails as a critical theory, placing real constraints on American resort to military force, as long as it does not address issues of "just military preparedness."

The most pivotal moment in the civil war in Libya was the adoption on March 17, 2011, of U.N. Security Council Resolution 1973, demanding "the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians." The Resolution also authorized Member States "to take all necessary measures… to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamhariya [People's Republic], including Benghazi, while excluding an occupation force on any part of Libyan territory." More specifically, the Resolution authorized force to impose a "no-fly zone" against Gadhafi's air force. France was the first to execute military force on March 19, soon followed by cruise missile attacks across Libya by Britain and the United States. Additional NATO countries (e.g.,

Denmark, Italy, and Norway) soon participated in the military campaign, and a few non-NATO countries (e.g., Sweden and Qatar) fulfilled minor supporting roles. Command for the complete military operation was placed in NATO hands on March 31. Still, America's role remained indispensable, politically and militarily. It is evident that the U.N. authorization concerned the use of military force for humanitarian purposes only. Indeed, President Obama presented it as such in his Address to the Nation on March 28, stressing that a massacre was imminent.[1]

Obama's Address offers a justification of American involvement in the intervention that seems to be clearly based on *jus ad bellum* principles. He begins by sketching how the world community under American leadership first tried by nonviolent means to stop Gadhafi's aggression against his own people, thus in effect arguing that the principle of last resort was satisfied. It is debatable whether diplomatic and other nonviolent measures were as extensive and sincere as portrayed by Obama, but once the violence escalated and Gadhafi forces approached Benghazi, military intervention might indeed have been the only viable alternative to prevent massacre. Surely, the people of Benghazi perceived the issue this way at the time of the adoption of Resolution 1973. In Obama's own words, "if we waited one more day [with military intervention], Benghazi, a city nearly the size of Charlotte, could suffer a massacre that would have reverberated across the region and stained the conscience of the world." And Obama said later in his speech: "Some nations may be able to turn a blind eye to atrocities in other countries. The United States of America is different. And as President, I refused to wait for the images of slaughter and mass graves before taking action."

Obviously, the United States has a record of ignoring massacre – consider the Rwandan genocide – but the real issue is whether a massacre was in the making in Libya. This has been contested on the Left, for example by the ANSWER Coalition, which immediately organized protests against Resolution 1973 under the familiar heading of "No Blood for Oil." In a ZNet interview on March 31, 2011, Noam Chomsky argued for a more nuanced view, maintaining that the threat of massacre was real, that "Obama may have believed what he said in his presidential address on March 28 about the humanitarian motives for the Libyan intervention," but that we must nonetheless conclude that the real American motive is to create a Libyan regime friendly to Western oil interests.[2] It might be objected that Gadhafi had in recent years granted Western oil companies access, but, Chomsky argues, "Washington seeks … control, or at least dependable clients." Chomsky might be too generous concerning Obama's motives, but let us grant for the moment that the decision to intervene was based on humanitarian concerns that became effective only because Libya is an oil-rich country. Now the very fact that American humanitarian interventions may be selective and take place only when economic interests are at stake does not show they are wrong. Following the most plausible understanding of JWT, humanitarian interventions do not require purity of motive, but only that non-humanitarian motives do not distort the scope of the intervention. So granted that the purpose of prevention of massacre led to the adoption of Resolution 1973 and the corresponding initiation of American (and NATO) resort to force, it seems that the decision to intervene militarily satisfied the *jus ad bellum* principles of just cause, right intention, and, to some extent, last resort.

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[1] See http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya.

[2] "Noam Chomsky: On Libya and the Unfolding Crises," Chomsky interviewed by Stephen Shalom and Michael Albert, ZNet, March 31, 2011, http://www.zcommunications.org/noam-chomsky-on-libya-and-the-unfolding-crises-by-noam-chomsky.

Obama next articulated in his Libya Address the specific conditions for American contribution to the military intervention, summing them up as follows: "[A]n 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 [and] the ability to stop Qaddafi's forces in their tracks without putting American troops on the ground." These conditions concern the JWT principles of legitimate authority, reasonable chance of success, and macro-proportionality. We can grant Obama that the principle of legitimate authority was satisfied with regard to the authorization of force. Prevention of humanitarian disasters is best seen as a collective task and responsibility, reducing the chance that interventions are guided by ulterior motives and aims. Ten countries on the U.N. Security Council voted in support of Resolution 1973; five abstained. All in all, the community of nations supported the Resolution and so the principle of legitimate authority was satisfied. American involvement in the intervention, however, may be questioned in terms of the principle of legitimate authority in that President Obama mostly ignored the need for Congressional authority. Remarkably, Obama in his Libya speech had no hesitation in announcing to the American people a possible long-term military involvement on basis of only "consulting the bipartisan leadership of Congress." Finally, Obama's claim that NATO airstrikes alone (together with an enforcement of a no-fly zone) could prevent massacre was plausible, and the principles of macro-proportionality (no second Iraq here!) and reasonable chance of success seem to have been satisfied. Perhaps we should fault Obama for not making the declaration of no troops on the ground *explicitly* conditional on the capability of successfully meeting the humanitarian aims in this manner, but then Resolution 1973 seems to have prohibited a troop presence.

From a JWT perspective, the real moral problems with the Libyan intervention arise with regard to what Chomsky in a recent interview with the Egyptian *Al-Aharm Weekly* called the "second intervention." He said: "[T]here were two interventions…. One of them lasted about five minutes. That's the one that was taken under UN Security Resolution 1973 [with the] mandate of protecting civilians. [Then] almost immediately, not NATO but the three traditional imperial powers of France, Britain and the United States carried out a second intervention that had nothing to do with protecting civilians…, but rather was about participating in a rebel uprising."[3] In other words, most of the actual intervention in Libya concerned direct military support for the non-government faction in a civil war. Clearly, the intervention insofar as it aimed at "regime change" violated Resolution 1973, not only because it went beyond the aims of the Resolution but also because it involved a violation of the arms embargo imposed by the Resolution. The "second intervention" was criticized by some countries that had expressed support for Resolution 1973 or had abstained in the vote for this resolution (such as China and Russia). Obama in his Libya speech disingenuously denied that the "second intervention" was even on the table, saying that he ordered the troops to follow Resolution 1973 and that "if we tried to overthrow Qaddafi by force, our coalition would splinter." His promise of no troops on the ground in Libya was also misleading in light of the widely reported use of U.S. (and other NATO) Special Forces in Libya (presumably already before his speech and certainly afterwards).

[3] See "Libya and the manufacture of consent," Noam Chomsky interviewed by Dan Glazebrook, *Al-Ahram Weekly*, Issue 1073, Nov. 24-31, 2011, http://weekly.ahram.org.eg/print/2011/1073/intrvw.htm.

The "second intervention" not only violated international law, but also JWT. On most JWT accounts, interference in civil wars in support of a just rebellion lacks a just cause. Following Michael Walzer, outside parties should not interfere in civil wars because the criterion (derived from J.S. Mill) for determining whether a rebellious group represents the people and is fit to rule is the successful overthrow of the old regime by this group's own efforts and dedication. Foreign interference means that a sovereign is created that the country itself has not "chosen."[4] On Walzer's account, intervention is only justified as counter-intervention to another state's intervention. In my view, there is much to be said in favor of Walzer's approach here, but the notion that people are only entitled to better forms of government when they have created them as the result of their own efforts and commitment is ultimately unsatisfactory in light of the fact that modern governments have access to destructive policing, surveillance, and military power. So I am willing to grant that outside military support of a revolutionary group with justice on its side might constitute a just cause, at least if the revolutionary violence is reactive and a last resort option. I suspect that Obama also holds a similar view, leading him to state in his Libya Address that the United States is an advocate of freedom and that the triumph of Gadhafi would be a setback for evolving freedom in the region in general. In opposition to some on the Left, I think that justice was on the side of the popular uprising and that defenses of Gadhafi as "anti-imperialist" were misplaced expressions of solidarity.[5] However, I also hold that military intervention in civil wars typically is still to be rejected on basis of other just war principles such as the principle of macro-proportionality and that certainly the Libyan intervention insofar as it aimed at regime change was wrong on basis of these additional terms.

The principle of macro-proportionality councils against the intervention in civil wars since a permissive doctrine here would be a serious threat to the stability of the state system. Regimes that are not in the interest of other countries may be easily toppled under the cover of civil wars, and civil wars may easily turn into interstate wars when different states support the opposing parties in civil conflicts. So Article 2.7 of the U.N. Charter rightfully articulates a principle of nonintervention. Recently, the prohibition to interfere in the domestic affairs of a state has been qualified by the "Responsibility to Protect" doctrine. Regimes that fail to protect their own citizens or attack their own citizens lack full sovereignty and territorial integrity, and so a limited intervention with the aim to protect civilians (i.e., a humanitarian intervention) is not in violation of the Charter. The "second intervention" in Libya is a setback to this evolving doctrine. In the words of Richard Falk: "It is extremely disturbing that a restricted UN mandate was ignored and that the Security Council did not reconsider the original mandate or censure NATO for unilaterally expanding the scope and nature of its military role. By ignoring the UN's limits, NATO may have destroyed the prospects for future legitimate uses of the principle of responsibility to protect."[6] Another cost of the "second intervention" is that it might be a setback with regard to nonproliferation of nuclear weapons. The Gadhafi regime gave up its nuclear ambitions in 2003 (as well as its chemical weapons program) in the anticipation of improved relations with the West, and so it gave up a line of defense against overthrow by NATO forces.

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[4] See Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 88-89, 96-97.
[5] For a critical discussion of Left support of Gadhafi, see Richard Greeman, "Libya: Who's Side Are We On?" (April 1, 2011). http://www.usmarxisthumanists.org/articles/libya-whos-side-richard-greeman.
[6] Richard Falk, "Libya After Qaddafi," *The Nation*, November 14, 2011: 6.

Other countries – notably, Iran – might learn a lesson here that bodes poorly for the prospect of nonproliferation.[7]

In sum, a civil war that threatens to turn into a massacre warrants only a limited intervention aimed at preventing the massacre rather than overthrowing the government posing the humanitarian threat, unless, of course, it can be shown that regime change is the only way to prevent atrocity. This was not the case in Libya, and so the Libyan intervention insofar as it aimed at regime change was unjust. Regime change was on the American and NATO agenda from the very beginning, and so the Libyan intervention was unjust from the beginning and became increasingly unjust the more humanitarian goals became irrelevant in determining actual military operations and were replaced by regime-change goals. Obama made a good case for a limited humanitarian intervention in his Address to the Nation, but at the time of his speech the Libyan intervention as regime-change intervention was already in full swing. By then, NATO strikes against Gadhafi troops increasingly enabled rebel advancement rather than served civilian protection as such. A limited intervention also sufficed for what Obama in his Libya speech offered as a second rationale for the NATO intervention: "A massacre would have driven thousands of additional refugees across Libya's borders, putting enormous strains on the peaceful – yet fragile – transitions in Egypt and Tunisia."[8] A limited intervention could have prevented massacre and contained the conflict; subsequently, a renewed international push could have been made toward a negotiated peace between pro-Gadhafi forces and the rebels, each holding on to their own territory. The "second intervention," then, also violated the last resort principle. Obviously, it also lacked legitimate authority since it went beyond Resolution 1973. A more extensive intervention aimed at overthrowing the Gadhafi regime would have been justified only if this regime would have resisted at all costs a negotiated peace (as the basis for a political solution) or would have blatantly violated the terms of some negotiated peace arrangement (and so have become an aggressor nation). Finally, we may wonder here in the spirit of Walzer's rationale for rejecting military intervention in civil wars whether the current transitional Libyan government represents the real interests of the Libyan people. Did the rebels in requesting not only Western military protection against Gadhafi but also NATO support for the overthrow of Gadhafi not set into motion a process where Libyan resources and wealth will not adequately benefit the people themselves but rather Westerns interests? In short, a more limited intervention might have been better in the long run for the Libyan people themselves.

In *The Battle for Libya*, published in September 2011, Amnesty International reported limited violations of International Humanitarian Law by the NATO forces, gross violations by the Gadhafi forces, and more limited but still very significant violations by the opposition forces.[9] The report rightly argues that NATO destruction of television transmissions dishes constituted an attack on civilian objects (and so violated the principle of discrimination), while attacks on the

[7] Cf. Robert Dreyfus mentions this cost in "Washington's Weak Response," *The Nation*, September 12, 2011: 42.

[8] Similarly, Resolution 1973 also maintains that "the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security." It is widely accepted that Chapter VII measures (including the use of military force) become appropriate when a massacre ceases to be a matter of "domestic affairs" and spills over into neighboring countries.

[9] See Amnesty International, *Battle for Libya: Killings, Disappearances and Torture*, September 2011, http://www.amnesty.org/en/library/info/MDE19/025/2011/en.

homes of some close associates of Gadhafi that were allegedly used as command centers might have been inappropriate in light of the resulting civilian casualties (the micro-proportionality principle was violated and, arguably, also the principle of discrimination). More recently, an on-the-ground investigation by the *New York Times* of bombed sites across Libya notes that the air campaign was much less harmful to civilians than similar prior American campaigns (in Iraq in 1991and 2003) since such civilian infrastructures with military purposes as the electric grid were not attacked and no cluster bombs and depleted uranium were used.[10] Still, the investigation found instances of mistaken attacks (caused by failed intelligence or failed technology); it encountered destroyed civilian structures that had no apparent military purpose; and it came across evidence of airstrikes with undeniable significant risks to civilians. More generally, the investigative team found little preparedness on the side of NATO or the transitional Libyan government to investigate NATO-caused civilian deaths. The opposition forces committed numerous *jus in bello* violations, including the killing and mutilation of captured or surrendering soldiers and internal security forces, abduction, torture, and killing of Gadhafi supporters; unlawful detentions; and racist attacks against foreign nationals, especially from sub-Saharan Africa, with the unsubstantiated claim that they were mercenaries. The Obama administration is not free of responsibility with regard to some of these abuses since they were committed while the struggle to overthrow Gadhafi was at least partly directed by the US (NATO) military. Finally, it may be noted that the concern of the United States and its allies for the refugees created by the Gadhafi regime in March 2011 appears in retrospect at least partly hypocritical in light of the fact that many refugees from Libya's civil war – Amnesty International estimates more than 1,500 between March and September – have drowned trying to reach ("fortress") Europe.[11]

That the Obama Administration did not push for *jus in bello* constraint by the opposition forces (or, at least, not until the world was confronted with the execution of Gadhafi) is not altogether surprising. After all, quite a few policies of the Bush Administration in violation of *jus in bello* principles (and JWT more generally) were continued by the Obama administration, or are even pursued more extensively, leading one recent commentator to speak of a Bush-Obama Presidency.[12] In short, Obama has stepped up targeted assassinations by drones, including, at least in one case, an American citizen; he has not ended indefinite detentions and closed Guantanamo Bay; civilian trials have not taken the place of military tribunals; warrantless surveillance is still with us; and Obama has adopted the up-surge scenario of Bush and applied it to Afghanistan. Torture has been taken off the table, but the instigators of torturous interrogation have not been prosecuted, and so the Obama Administration has weakened the global effort to

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[10] See C.J. Chivers and Eric Schmitt, "In Strikes on Libya by NATO, and Unspoken Civilian Toll," *New York Times*, December 17, 2011, http://www.nytimes.com/2011/12/18/world/africa/scores-of-unintended-casualties-in-nato-war-in-libya.html.

[11] See *Battle for Libya*, 9.

[12] David Bromwich, "Symptoms of the Bush-Obama Presidency, *Huffington Post*, August 18, 2011, http://www.huffingtonpost.com/david-bromwich/symptoms-of-the-bushobama_b_930260.html. See also Stephen Carter, *The Violence of Peace: America's Wars in the Age of Obama* (New York: Beast Books, 2011), who notes that "on most matters relating to war the contrast between President Obama and his predecessor is quite a bit smaller than most observers expected" (4). Carter is less critical of this continuity than Bromwich. Ironically, both supporters and opponents of Obama have good political reasons to deny the continuity and so it has received as much attention as it should have.

reduce war crimes. Remarkably, all this has happened without any opposition resembling the outcry against the Bush war policies. This leads Jonathan Turley to make the chilling claim that "the election of Barack Obama may stand as one of the single devastating events in our history for civil liberties."[13]

How can we square Obama's stated commitment to JWT with the fact that many actions and policies of his Administration are clearly in violation of JWT? No doubt, part of the explanation is that Obama uses morality as window dressing, standing in a long tradition of American presidents who use lofty language to cover up dominant economic and political interests. Part of the explanatory story is also that one may need to compromise with regard to one's moral guidelines and positions in light of political reality. Compromise and accommodation may be virtues, but it also must be said, that taken to the extreme, as Obama frequently does, they become vices. It should be further noted that JWT is hardly a unified theory. What I take to be a violation of JWT some other JW theorists may defend as justified actions or policies. So my claim that the Obama Administration is inadequately constrained by JWT might be partly based on a different understanding of the moral requirements of JWT. Here a task lies for JWT to sharpen and further elucidate its principles. More broadly, the failure of JWT to place adequate constraints on American resort to force is, in my opinion, partly due to the failure of JWT to recognize the importance of what I have called in some previous papers "just military preparedness" as a new category of JWT.[14]

In my view, military preparation is just when it optimizes the just initiation, execution, and ending of military force. In a word, this requires a defense that is focused on human rights protection; a military that is trained with this purpose in mind; a military that is fully embedded in society; an allocation of resources that prioritizes diplomacy and the elimination of social causes of conflict above military measures; and full democratic oversight of the defense budget and the purchase of weapons. American military preparation violates all these requirements due to its hegemonic aims. Its posture is not defensive but rather one of power projection across the globe. It seeks to maintain an empire of bases and war machinery that is focused on domination and unchallenged military superiority. The American military is increasingly separate from society and its soldiers are predisposed to excessive use of force. Foreign policy is deeply militarized, as is reflected in the fact that the State Department budget is only a fraction of the Pentagon budget, which is close to 50% of the world's military budget. And the military industrial complex is antithetical to democratic oversight regarding military budget decisions.

This unjust military preparedness is bound to lead to increased injustice in the actual resort to force. A militarized foreign policy puts into question any claim to the effect that American resort to force was a last resort measure. (American weapon sales to Lybia were modest in recent years,

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[13] Jonathan Turley, "Obama gives torture a pass," October 2, 2011, http://www.newsday.com.

[14] See "Questioning the Resort to U.S. Hegemonic Military Force," in *The Moral dimensions of asymmetrical warfare: Counter-terrorism, western values, military ethics*, ed. Ted van Baarda and Desirée Verweij (Leiden and Boston: Brill Academic Publishers/Martinus Nijhoff, 2009); "From Hiroshima to Baghdad: Military Hegemony versus Just Military Preparedness," in *Philosophy after Hiroshima*, ed. Edward Demenchonok (Newcastle, UK: Cambridge Scholars Press, 2010); and, "Just Military Preparedness, U.S. Military Hegemony, and Contingency Planning for Intervention in Sudan," *International Journal of Applied Philosophy* 24:2 (2010): 135-152. See also note 15, below.

while EU sales were extensive.) U.S. military hegemony is a cause of terrorism and international conflict and so we must approach with some skepticism the common notion that American resort to force is defense against naked aggression. American wars typically lead to a strengthening of American military hegemony and increased challenges to this hegemony (or, at least, attempts to counter its impact), and thus must be questioned in terms of the principle of macro-proportionality. Similar observations apply to how hegemonic preparation raises the bar on justly executing and ending military force. JWT typically neglects issues of just military preparedness, and its blindness to the costs of American hegemony means that it is insufficiently critical of American resort to force. Accordingly, Obama's adherence to JWT does not preclude that his Administration engages in unjust wars.

Indeed, I anticipated this conclusion three years ago at the Eastern Division Meeting of the American Philosophical Association in a paper presentation with the title "Barack Obama, Resort to Force, and U.S. Military Hegemony." After a detailed discussion of how Obama's foreign and military policy declarations seem to point to his full acceptance of American military hegemony, I began the concluding paragraph with the following words: "Now granted that the Obama administration will fail to meet the standards of just military preparedness, we must conclude that it will presumably continue the American record of unjust military interventions that are also morally tainted in their executions."[15] Five weeks later I added in a footnote of the published version of the paper: "I have not yet seen any action of the new Obama administration that refutes my view that it will continue a foreign policy centered on U.S. military hegemony, but if it has initiated such action by the time of the publication of this article I will rejoice and exclaim, "so much better for the world!"[16] Alas, the occasion for rejoicing never emerged and the Obama record has been in some ways even worse than I anticipated.

[15] Harry van der Linden, "Barack Obama, Resort to Force, and U.S. Military Hegemony," *International Journal of Applied Philosophy* 23:1 (2009): 95-104, 101.
[16] Ibid., 102, note 1.