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Was The 2011 NATO-Led Intervention In Libya A Just War?

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ABSTRACT

This paper seeks to analyse the level of compliance of the 2011 NATO intervention in Libya with the principles of the just war doctrine: *jus ad bellum*, *jus in bello*, and *jus post bellum*. These principles indicate the right to go to war, right conduct in war, and justice after the war respectively. The first criterion appears to have been met, albeit showing some controversies around the hidden agenda of NATO. On the contrary, the right conduct in the war was nearly infringed in its entirety, apart from military necessity which showed a discreet level of conformity. Nevertheless, the principle of *jus post bellum* was completely disregarded, as the NATO powers did not collectively work to establish new political institutions able to build a democratic state: the country was left at its own destiny instead. This treatment of Libya led to serious consequences on social, political, and economical levels that affected both Africa and Europe.

Keywords: International Security; Just War Theory; Military Ethics; NATO; Libya.

INTRODUCTION

“It seems that it is always a sin to wage war”
(Aquinas, 2002, p. 239)

In the 13th century, Thomas Aquinas started formulating the modern theory of ‘just war’ in his work *Summa Theologiae* (Originally published in 1485) by introducing concepts such as ‘just cause’ and ‘right intention’, inspired by the teaching of Greek

and medieval philosophers (Fisher 2011). Despite several studies finding the notion of 'just war' as antique, as it can be traced back to the Mesopotamian and Ancient Egyptian eras (Cox 2017; May 2018), several other scholars have also continued to focus on the subject matter. Most of the studies have always been an attempt to justify an act of war (May 2018).

The requirement for the justification of the 'act of war' has been long examined and expanded by Christian philosophers and theologians - Saint Augustine and Thomas Aquinas, who introduced the concepts of just cause, right intention, and competent authority, hence they mainly focused on the right to war (*jus ad bellum*) (Allhoff *et al.*, 2013). Nevertheless, they also analysed conditions that are now referred to as the principle of proportionality and military necessity, and thus regarding the right conduct in war (*jus in bello*) (Mattox 2018). Despite these terms (*jus ad bellum* and *jus in bello*) deriving from the Latin language and appearing to be centuries old, they were only introduced in the 20th century and mainly utilised after the end of World War II (Kolb 1997). The third criterion of the 'just war theory' - is known as 'justice after war' (*jus post bellum*), which is a relatively new concept. The concept *jus post bellum* was first introduced by Canadian academic Brian Orend in the early 2000s. He coined this term as he believed the just war doctrine was limited to justice before and during the war, but it did not include a focus on the aftermath (Orend 2000).

Theorists of this doctrine believe that war can be justified if its purpose is to prevent a greater evil and avoid the deaths of innocent people (Parkin 2014). Therefore, the just war principles are rules of war that are based on moral concepts, intending to preclude human suffering and provide welfare for the population (Fisher 2011). This paper critically analyses whether the 2011 NATO (North Atlantic Treaty Organization) intervention in Libya followed such principles to be regarded as a just war. It is divided into three parts that correspond to the above-mentioned criteria of just war theory: *jus ad bellum*, *jus in bello*, and *jus post bellum*.

It is important to evaluate the foreign intervention in Libya because, at the time of the conflict (in 2011), other Arabic countries were hit by overwhelming popular discontent and civil uprisings, namely the cases of Yemen and Syria. A peculiar aspect is that the Western powers have done little to interfere in these countries' affairs to safeguard the life and freedom of their citizens, as opposed to the case in Libya. For instance, several human rights abuses had occurred in Yemen before 2011, but there was no global decision to intervene with military forces (Fisher & Biggar 2011). Similarly, the alarming situation in Syria was initially overshadowed by the alleged interests of lucrative resources that Libya possessed, such as the impressive amount of oil reserves across the country (Fisher & Biggar 2011). As a result, it is crucial to determine whether NATO involvement in the Libya conflict was a just war, in order to comprehend the legitimate intentions of the West and reveal to what extent the economic driver has influenced the decision to intervene.

Different aspects from this event will be analysed in such a way as to evaluate whether the intervention in Libya can ultimately be justified by relevant theories. In the first part, the conflict is analysed in terms of *jus ad bellum*, hence, according to just cause, competent authority, right intention, and last resort. The second part will focus on the *jus in bello* concepts of military necessity, proportionality, distinction, and fair treatment of prisoners of war. Finally, *jus post bellum* is the last element to determine whether the intervention in Libya can be considered a just war.

AN OVERVIEW OF THE WAR IN LIBYA

Amid the Arab Spring, many Libyans, emboldened by the rebellions in Tunisia and Egypt, began revolting against one of the longest-lasting autocracies in the world, led by Muammar al-Gaddafi, who ruled Libya for forty-two years from September 1969 to October 2011 (Pargeter 2012).

Initially, the riots in Libya involved some hundred citizens demonstrating in Cyrenaica (The Eastern region of Libya), but the uprising quickly spread out across the rest of the country (Buera 2015). Protestors were rebelling against the tyranny of Gaddafi, who implemented oppressive policies in such a way as to take over the social, economic, and political apparatus of the country. His dictatorial regime dismantled the 1951 constitution (established after the revolution against the constitutional monarchy of King Idris) and legitimised the Revolutionary Command Council (RCC), which gained control of every ministry in the country (Buera 2015). In 1972, it also criminalised the formation of political parties, hence limiting political participation to a great extent, as the power was granted mainly to Gaddafi's affiliates. In addition, most of the decision-making occurred in Western Libya (Tripolitania), to the detriment of the other regions of the country (Lacher 2020). Furthermore, Gaddafi committed serious international law and human rights violations, such as the persecution of political opponents, which often involved arbitrary arrests, tortures, and public executions. He was also accused of enforcing death sentences without guaranteeing a fair trial (Buera 2015). All these factors led to an escalation of dissatisfaction and tension among the local population: together with the 1996 regime-led bombing of the Abu Salim prison in Tripoli, which killed over a thousand detainees, this growing discontent sparked various demonstrations across the country, up until a full-blown revolt in February 2011 (Lacher 2020).

The straw that broke the camel's back was the imprisonment of a human rights lawyer who was representing the families of the Abu Salim victims (Vandewalle 2012). On February 15, the uprising began in Benghazi, the largest city in Cyrenaica, a territory often neglected by Gaddafi. In the following days, it rapidly extended throughout the rest of the region, with harsh repressive responses from the regime, including dozens of civilian losses, as well as executions (Lacher 2020). By February 22, the al-Abraq airport was conquered by the insurgents, as was the eastern region from Benghazi to the Egyptian border. Although Gaddafi declared to hound the insurgents "house by house" (Lacher, 2020), the protest was also joined by some senior officials and soldiers of the regime. On February 27, the Transitional National Council (TNC) was established in Cyrenaica, with the approval of Western powers such as France, Great Britain, and the United States. On March 17, the United Nations Security Council ratified 'Resolution 1973' (S. C. Res. 1973, 2011), requesting a ceasefire and enacting a no-fly zone, as well as allowing the international community (including NATO) to adopt any measures to protect civilians, except the occupation of the country (United Nations Security Council 2011a).

The resolution was regarded as somehow ambiguous, as it might have implied that NATO could expand the mission's scope if it was deemed necessary. Moreover, the revolutionary forces were highly dependent on NATO's logistical and military support, hence essentially putting the alliance in the position of deciding the fate of Libya, as it became evident that its role was fundamental to defeat the regime's army (Vandewalle 2012). NATO powers ordered airstrikes against military and governmental targets, without deploying any ground troops, but drastically weakening the power and capacity of the Libyan National Army. As a result, on August 15, the NATO-backed rebels initiated an offensive against Tripoli and ultimately took over the Libyan capital in the following days. They also occupied the

military compound of Bab al-Azizia, the main base of Gaddafi, who fled to his hometown Sirte. The 2011 civil war ended in October with the conquest of this last stronghold and the subsequent killing of Muammar al-Gaddafi (Vandewalle 2012).

JUS AD BELLUM

The principle of *jus ad bellum* indicates whether a decision to resort to war is morally and legally acceptable and justifiable, according to different measures, such as just cause, right intention, competent authority, and last resort (Frowe 2011). The first and most important principle to consider in the event of a war is the principle of ‘just cause’, which establishes whether the decision to go to war is justified by a valid reason (Frowe2011).

It is commonly believed the intervention in Libya has met this criterion, as the leader Gaddafi allegedly started brutal repression of peaceful protesters and committed serious violations of human rights (Amnesty International 2011). It could thus be argued the NATO intervention in Libya complied with this principle because it includes the prevention of humanitarian abuses (Frowe2011). However; an issue that arises is whether the hostile response of the authorities led the protesters to resort to violence, or whether the rebels started acting aggressively. Kuperman (2013) argues that the forces of the regime initially reacted with non-lethal weapons, whereas the rebels utilised firearms and vehicle bombs, which eventually led the Gaddafi forces to resort to a more repressive and brutal response. The initial news coverage reported by BBC (British Broadcasting Cooperation) shows demonstrators escaping gunfire. However, the footage was later discredited because they were old videos and does not portray the current realities in then Libya (*BBC News*2011a).

The United Kingdom (UK) Foreign Affairs Committee (2016) also declared that “the threat to civilians was overstated and that the rebels included a significant Islamist element” (p. 3), as well as affirming that accurate intelligence was not utilised in the decision to intervene. Nevertheless, Gaddafi proclaimed the insurgents “would be hunted down house by house” (Lacher, 2020, p. 21) and, in this way, chose a rather hostile approach towards the protests. Many international organisations condemned the brutal force used by the regime during the riots, which escalated into an armed conflict in some regions of the country by late February 2011 (Amnesty International 2011). Therefore, the intervention would be justifiable based upon this criterion, but also the state sovereignty must be considered: this principle excludes foreign interference and regards revolution as a form of self-determination, hence not condoning an intervention (Walzer2015). Nonetheless, it must be said that states lose their right to sovereignty if they commit crimes against their citizens: governments have the responsibility to protect the wellbeing of their population, and, if they fail to do so, the concept of non-interference loses its validity (Bellamy 2010). As a result, the international community would have the right and duty to intervene.

Another principle to consider is the competent authority, which establishes whether the war has been declared by a legitimate authority, such as an international institution. In this case, the criterion was fully met as the intervention was authorized by the United Nations Security Council (2011a), which is the most adequate body to approve a military intervention for humanitarian purposes (International Commission on Intervention and State Sovereignty 2001). Notwithstanding this factor, the resolution was criticized by many governments, such as Germany and the BRICS countries (BRICS is an acronym for Brazil, Russia, India, China, and South Africa), that claimed the intervention did not solely have a humanitarian purpose (Todorov 2014).

This matter leads to another fundamental principle of *jus ad bellum*, the right intention, which cannot be guaranteed by the approval of a competent authority to intervene, since powerful states could abuse this decision and pursue objectives according to their self-interest (Glanville 2014). Many critics argued that there were other intentions at work, such as the willingness to secure the oil interests in the region (Fisher & Biggar 2011), while opposing the nature of this principle which says that “war should never be undertaken in a spirit of cruelty or a desire to dominate, but only to gain peace” (Reichberg, 2008, p. 13). In addition, the UN resolution was interpreted by NATO in such a way as to perform targeted attacks towards Gaddafi and the Libyan military, rather than prevent human suffering (Bellamy 2013). Another issue is whether NATO had the authority to remove the regime, especially when the main purpose was a humanitarian intervention and not a regime change (Bellamy 2014). The relation between human protection and regime change has been at the centre of many debates, especially because of the overlap between them, where the former could be used as a justification for the latter (Bellamy & Williams 2011). Although the intention of the UN may have been humanitarian, NATO and other military forces interpreted the resolution in their own way and showed they also had other motives.

Finally, the principle of last resort is crucial because, before engaging in a war, “every diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis must have been explored” (International Commission on Intervention and State Sovereignty, 2001, p. 36). On 26th February the United Nations Security Council (2011b) unanimously adopted a resolution which condemned Gaddafi and imposed a series of sanctions, such as travel bans, asset freezes, and an arms embargo, while referring to the situation in Libya to the International Criminal Court (S. C. Res. 1970, 2011). However, this measure did not stop Gaddafi from carrying on with violent reprisals, and more than a month later the UN authorized the intervention, as stipulated by Article 42 of the *Charter of the United Nations* (1945). The decision to intervene in Libya was taken only after peaceful and diplomatic approaches had been attempted, and thus it can be considered a last resort (Fisher & Biggar 2011).

JUS IN BELLO

Jus in bello refers to the justice in war and thus establishes how warfare should be conducted and the way combatants should act (Ohlin 2018). An aspect of this criterion is the military necessity, which can be defined by “whatever is necessary to win the war, but also whatever is necessary to reduce the risks of losing, or simply to reduce losses or the likelihood of losses in the course of the war” (Walzer, 2015, p. 144). This would imply launching attacks directed at legitimate military objectives, and it can be said that NATO followed this principle by planning strikes based on intelligence and targeting only military infrastructure (Wedgwood & Dorn 2015), in accordance with International Humanitarian Law (Henckaerts & Doswald-Beck 2005).

Another important factor to consider is proportionality, in such a way as “to ensure the overall costs of war are not disproportionate to the benefits to be secured; and during the war to ensure that the good achieved by a particular military action or actions outweighs any harm caused” (Fisher, 2011, p. 77). In this case, many critics argued that the level of the intervention was not proportional to the threats, especially if we take into consideration that some NATO countries and their allies were providing weapons to rebels (Brockmeier *et al.*, 2016). Egypt started shipping arms to the rebels in Libya a few days after the intervention was authorized

(Levinson & Rosenberg 2011). The two most popular French newspapers, *Le Monde* (2011) and *Le Figaro* also declared that France had parachuted weapons, after a meeting between the French President Sarkozy and one of the captains of the rebels (Gélie 2011). It was also confirmed by many prominent foreign news media, such as the BBC (*BBC News* 2011b), the *Washington Post* (Birnbaum 2011), and the *New York Times* (Jolly and Fahim 2011). Therefore, the arms embargo, imposed by the UN Security Council in both resolutions, was completely ignored by the international community. In addition, the UK Foreign Affairs Committee (2016) affirmed that the rebels were not only equipped with weapons but also with intelligence and personnel from countries such as the UK, Turkey, France, and the United Arab Emirates. Furthermore, President Obama allegedly authorized the CIA to deliver arms to the rebels, according to American officials (Friedersdorf 2011). The CIA performed secret operations in Libya after the intervention was authorized, which begs the question of whether the involvement of the United States and other countries was beyond civilian protection (*The Economist* 2011).

Moreover, it can be argued that the resolutions adopted by the UN Security Council were proportional to the tragic circumstance in Libya, but the same cannot be said about the execution of the mandate, which was overwhelmingly interpreted by NATO and its allies (Wedgwood & Dorn 2015). NATO launched overpowering air raids that also killed many civilians and damaged some hospitals, as reported by the news agency of the Vatican *Agenzia Fides* (2011). In particular, the Apostolic Vicar of Tripoli, Bishop Giovanni Innocenzo Martinelli, stated that 40 civilians were killed because of an airstrike in Tripoli, a few days after the intervention started (Kington 2011). Despite NATO announcing no civilian casualties, *The New York Times* also revealed that around 70 civilians were confirmed dead, according to their on-ground investigations, photographs, medical reports, and interviews with doctors and witnesses (Chivers and Schmitt 2011). These numbers were also confirmed by Human Rights Watch (2012a), who reported at least 70 civilian deaths. However, it must be said that these numbers were much lower than those in previous conflicts and interventions. The killings of civilians were not intended but represented collateral damage, which was not extreme. The intention was to protect civilians from the brutal repression initiated by Gaddafi and his military, who would have probably spread more violence and death if not promptly neutralized. In this case, the doctrine of double effect comes to mind, when an action that could have a negative side effect is considered legitimate if performed for a better cause (Frowe 2011).

Another crucial aspect of *jus in bello* is the distinction, which indicates that soldiers should “fight only combatants”, “attack only military targets”, “spare civilian persons and objects”, and “restrict destruction to what our mission requires” (May 2007, p. 94). This factor was respected by the intervening coalition, but not by the rebels. Human Rights Watch (2011) reported that rebel fighters and supporters damaged property, burned some homes, looted from hospitals, homes, and shops. They also beat individuals alleged to have supported government forces. Similar events were reported by the *Wall Street Journal*, with the rebels being accused of rape, pillaging, and burning houses (Dagher & Levinson 2011). These conducts are considered serious violations and war crimes according to International Humanitarian Law (Henckaerts & Doswald-Beck 2005).

The last principle to follow is the fair treatment of prisoners of war, which stipulates prisoners “should be treated humanely so that they are not subject to torture when captured and imprisoned” (May 2007, p. 140). According to Amnesty International (2011, p. 70) “opposition fighters and supporters have abducted,

arbitrarily detained, tortured and killed former members of the security forces, suspected al-Gaddafi loyalists, captured soldiers and foreign nationals wrongly suspected of being mercenaries fighting on behalf of al-Gaddafi forces". In addition, a report made by Human Rights Watch (2012b) revealed that, after the last battle in Sirte, rebels captured and detained around 70 people, and the majority of them were found dead the next day. The report also showed that the anti-Gaddafi forces were insulting, beating, and spitting upon the people held in custody, hence violating the humane treatment rule of International Humanitarian Law (Henckaerts & Doswald-Beck 2005). In this case, the violations were committed by the rebels and not by NATO or other allies, but since the latter have provided trust, weapons, and intelligence to the former, they may be held accountable for their actions. Possibly, if NATO had deployed ground troops, these atrocities may not have taken place.

JUS POST BELLUM

The last set of criteria that determines the morality of a war is *jus post bellum*, which refers to the conditions the powers involved must meet in order to end the war (Pollard 2013). In addition, as the name suggests, this concept indicates justice after war, hence the approach the winners shall adopt to establish a more just socio-political environment than the one existing before the intervention (Lee 2012). It is the responsibility of the political leaders to implement this change, rather than the military (McCready 2009). Winning a war and ending an armed conflict does not ensure the beginning of peace. To reach a just peace, a sufficient level of stability must be secured, and the threat of a future war minimized.

If the war abides by the principles of *jus post bellum*, it can be thus also affirmed that the criterion of right intention was met, which means the war needs to be just both before and during the war (Bass 2004): "an unjust war cannot produce a just peace" (Williams and Caldwell, 2006, p. 316). A just peace should provide better conditions and justice to all parties involved in the conflict. War crimes must be also investigated, and the perpetrators prosecuted, regardless of their rank or affiliation (Clifford 2012). In the case of Libya, the conflict has fragmented the Libyan military and political powers, and no legitimate institutional authority that emerged has been able to face the complicated post-war challenges, such as the creation of an institutionalized state (Vandewalle 2015). Instead, institutions were disregarded for many years. The process of justice after the Libya regime lacked determination, and crimes committed during and after the war were not appropriately investigated, which led to increasing tension among tribes that played an important role in the uprising (Lacher 2013). Therefore, the level of security drastically collapsed with the regime change and resulted in the spread of lawlessness and violence (Foreign Affairs Committee 2016).

The vast instability of the country was also demonstrated when the United States Ambassador and three other diplomats were murdered by Islamist militants during an attack in Benghazi (Matar 2012). After the war, the Libyan institutions were fragile and different groups detected it as an opportunity to gain power, since the 2012 election did not have the expected outcome. The country was mainly controlled by various armed gangs, tribes, and religious militias (Kuperman 2013). The NATO intervention dismantled the political structure and thus also the basic government services, giving the intervening coalition the responsibility to reestablish a political system. However, NATO did not actively participate in the process of rebuilding the country, which was left in a chaotic environment characterized by human rights violations even more severe than before the intervention (Hilpold 2015). This principle *jus post bellum* was evidently not met because the principles

should involve a long-term engagement of multilateral commitment and support (Clifford 2012).

The inactivity of NATO could reveal that the main and real intention was to overthrow Gaddafi, rather than preserving human rights or helping to rebuild the country after the regime change (Gaub & Weighill 2019). This approach left an unstable country to deal with the spread of many extreme Islamist groups, who are also affecting neighbouring countries (*The Economist* 2015). In addition, explosions, assassinations, and kidnapping often occurred, and the country was on the verge of a second civil war in 2014, just a few years after the intervention (Matar 2014). The crisis in Libya sparked a migrant crisis in the Mediterranean Sea in 2015, which caused thousands of victims amongst the displaced people who tried to reach Europe with precarious boats. This crisis also exposed the exponential increase of human smuggling along the Mediterranean route (Eljarh 2015).

CONCLUSION

The intervention in Libya met some of the conditions of the just war theory, but it did not respect the full criteria. In terms of *jus ad bellum*, the criteria of just cause, competent authority, and last resort were consistent with war ethical standards, albeit the first having some ambiguity. However, the principle of right intention was not followed, particularly because it is often believed the objective of NATO was a regime change, rather than a humanitarian purpose: this inconsistency could be proven by the fact that also Yemen was experiencing an uprising and numerous violations of human rights, but the intervention was merely considered in that case (Fisher & Biggar 2011). Furthermore, the interference in Libya complied with the principle of *jus in bello* only in terms of military necessity, as the conditions of proportionality, distinction, and fair treatment were not met: the NATO countries got involved in the conflict more than how stipulated by the UN, and they also backed rebels who committed a series of war crimes and violations of human rights, both during and after the war. Finally, the concept of *jus post bellum* was scarcely considered by the intervening coalition, which did not support the re-establishment of political and civil society. The aftermath of the war in Libya was worse than expected and resulted in the start of a new brutal civil war in 2014, which saw a former Gaddafi top military officer Khalifa Haftar recently launching an assault on Tripoli (United Nations Security Council 2019).

In conclusion, the intervention in Libya was a legitimate attempt by the UN to protect civilians from a brutal dictator, but the interpretation by NATO did not allow the war to be considered just, particularly according to the aftermath. The period after the war should have stabilized the country involved, in such a way as to avoid the recurring oppression that gave rise to the intervention. On contrary, Western powers took little interest in supporting the formation of new political institutions that would set the foundations of a democratic state. This circumstance could be the proof that both NATO and other Western alliances acted irrationally, and their decisions could be as a result of calculations of self-interest (Murray 2013). In addition, as Giuseppe Mazzini would argue, regime change could be a way to establish democracy, but the attempt would be more legitimate with a stronger involvement of the local population, rather than solely relying on foreign powers (Recchia 2013). This was not largely the case with Libya.

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