

Libya After Gaddafi: A Dangerous Precedent? Richard Falk Al Jazeera 22 October 2011

(...) Looking at the Libyan experience from international perspective raises several additional concerns. The appraisal of the intervention as a precedent will be mainly shaped by whether what emerges in Libya seems stable, democratic, and equitable, and this will not be fully knowable for years. There are some aspects of the NATO undertaking that already make the Libyan experience a troubling precedent for the future. The UN Security Council, which authorized force under the rubric of 'the responsibility to protect,' was either duped or complacent, possibly both.

The authorising resolution, Security Council Resolution 1973 was framed by reference to the establishment of "a No Fly Zone" with the justification for force at the time focused upon protecting the threatened population of Benghazi. Yet this limited mandate from the UN was disregarded almost from the outset.

NATO forces were obviously far less committed to their supposed protective role than to ensuring that the balance of forces within Libya would be tipped in the direction of the insurrectionary challenge. If this intention had been revealed from the outset, it seems almost certain that Russia and China would have used their veto to block approval for any forcible interference under UN auspices. As it was these two states expressed their misgivings about encroaching on the sovereign independence of Libya during the debate and by abstaining when the vote was taken, and were joined by India, Brazil, and Germany as abstaining Security Council members.

It should be extremely disturbing that a restricted UN mandate to use force should be totally ignored, and then no action taken by the Security Council to reconsider the original mandate or to censure NATO for unilaterally expanding the scope and nature of its military role (...). If such a sentiment persists it could defeat even an urgently necessary protective initiative in the future. By ignoring limits the NATO undertaking may have destroyed the prospects for future responsible uses of the **responsibility to protect** principle.

The role of force

There are several dimensions of this concern. To begin with, the UN Charter is drafted to minimise the legitimate role of force in world politics, making war a last resort. To this is added the secondary undertaking of the Charter that is to assure that the UN itself is bound in Article 2(7) to refrain from intervening in matters essentially within the domestic jurisdiction of states unless necessary for maintaining international peace and security. The NATO intervention seems impossible to reconcile with these two core principles of the UN Charter, which is the

constitutional framework that is supposed to guide the behavior of the organisation.

It is true that as international human rights has emerged as a strong dimension of world order, these principles have been eroded by practice, although they still remain operative as guidelines. In this regard, it might have been legally and morally acceptable to mount in response to developments in Libya the narrowly conceived protective mission that had apparently been agreed upon in the Security Council, although even then in an atmosphere of skeptical approval either because some members distrusted the pro-interventionist reassurances of the United States and its European partners or anticipated that the pressures on the ground would inevitably produce a massive mission creep.

This experience also casts doubts on the

responsibility to protect

norm as a basis of principled action by the UN on behalf of a vulnerable people endangered by their own abusive government. Some doubts already existed about the selectivity of the Libyan application of the norm, especially given the failure to lift a UN finger on behalf of the beleaguered civilian population of Gaza, long suffering the ordeal of the long and punitive Israeli blockade. But beyond this geopolitically delimited contour of double standards is the sense that in Libya

responsibility to protect

was transformed into an opportunity to oust!

In the end, what becomes obvious is that such protective undertakings to achieve credibility in the future must be detached from geopolitics. The best mechanism for reaching such a goal would clearly involve the establishment of a UN Emergency Force that could be activated by a two-thirds vote in either the Security Council or General Assembly, and not be subject to the veto. Such UNEF would need to be funded independently, possibly by finally imposing some sort of UN revenue raising tax on international flights or currency transactions. Of course, such an arrangement will not be easy to bring into being precisely because its existence would threaten current geopolitical prerogatives. And it could be misused. There are no guarantees, but at least there would be a greater prospect that a framework of authorising guidelines would be respected, and that compliance would be supervised. (...)

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