



Ambassador Jeffrey L. Bleich – Deakin Law Oration

**Remarks of Ambassador Bleich
Legal Basis for U.S. Military Action in International Realm
Deakin Law Oration**

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Thank you for the kind introduction. And thank you to Professor Rees, to Vice Chancellor den Hollander and to the Deakin University School of Law for inviting me to speak with you all this evening. It's an honor to join you tonight and to deliver the 2011 Law School Oration.

As Ann mentioned, I'm a recovering lawyer myself. I would tell some lawyer jokes to start out, but it turns out that lawyers don't think they're funny, and the rest of the world doesn't think that they are jokes. So instead, in keeping with the somber business of law school orations, I'd like to address a somber but important topic.

I want to talk to you tonight about the role of international law in preventing the slaughter of innocent people by their own government. One obvious case that raises this question today is Libya, where an international force currently seeks to protect the Libyan people from Moammar Qaddafi. Qaddafi, confronted by the fact that he had lost the confidence of his own people, responded with a threat to turn his nations weapons – weapons that were there to protect the Libyan people – and use them to slaughter his own citizens. Through a U.N. Security Resolution and the subsequent actions of NATO forces, we have sent a clear message to Qaddafi that international law condemns his actions. And we have reinforced the international understanding that nations are empowered to act to prevent the slaughter of the Libyan people.

Lawyers sometimes struggle to explain when and why the nations of the world may do this type of humanitarian military intervention. Part of this is because most of our codes of law, and most of our training as lawyers, is to prevent violence; so we are not trained to defend the use of force. Indeed, I often credit this as the great gift of our profession. There will always be conflicts among people, but the challenge for societies – and indeed one of the very reasons societies need legal systems – is to resolve those disagreements peacefully and without violence. This is how we as lawyers think. Our domestic laws and our international commitments, including Article 2 of the U.N. Charter, our lawyers, and our institutions, all tend to focus on controlling violence within groups.



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But we should not forget that our systems also allow for violence in just circumstances. For example, both Australian and U.S. laws forbid murder. But they allow people to use violence in self-defense; they allow police officers to use force to protect others. And so the nations of the world have wrestled with the international equivalent, that is the just use of force – wars of self-defense, and acts of humanitarian intervention.

The concept of self-defense is in ways easier for people to understand. Every child, (and I say this as a father, so I know) immediately understands the “but he started it” defense. And so, for example, when Germany invaded Poland, or when Iraq invaded Kuwait, the international community came together to help defend these nations against aggression. In general, we have come to accept that -- just as self-defense justifies violence in the schoolyard or in a murder trial -- self-defense also justifies using force against an invading nation. Thus, Article 51 of the U.N. Charter recognizes the customary international law right to self-defense. And this has been absorbed into our law. The international community recognizes that war is justified when certain conditions are met: if it is waged as a last resort or in self-defense; if the force used is proportional; and if, whenever possible, civilians are spared from violence.

But as our world changes, we have discovered that this one conception of a “lawful force” has not been sufficient. It does not encompass all situations in which international use of force is justified by the potential threat to innocent life. In the wake of the genocides of World War II, the Stalinist and Maoist purges, the killing fields of Kampuchea, and other terrible mass killings, it became clear that the world needed institutions that could help prevent slaughters within nations as well as between nations. From this experience the United Nations and other international mechanisms developed other ways to govern the waging of war, to define more clearly where and how force could be lawfully deployed, and to develop treaties to protect human rights, prevent genocide, and restrict the most dangerous weapons.

The United States, a nation that I represent and a nation that I love, must confront these issues every day. Our nation is at war in Afghanistan, it has only recently concluded a war in Iraq, and it has contributed to a NATO effort in Libya. We are called upon often to help end violence in the world and so we feel these issues directly. As President Obama stated upon receiving a Nobel Prize in 2009, this global engagement imposes special responsibilities on us. All nations -- strong and weak alike -- must adhere to standards that govern the use of force. He said -- like any head of state -- reserving the right to act unilaterally if necessary to defend my nation. “Nevertheless, I am convinced that adhering to standards, international standards, strengthens those who do, and isolates and weakens those who don't.” As a nation, we understand that we cannot insist that others follow the rules of the road if we fail to follow them ourselves. That is why the



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United States and Australia and other responsible nations support the rule of law, and why we work to establish a clear mandate for when militaries can help to keep the peace.

The need for a common mandate is never more important than in a case like Libya, where the purpose of military action extends beyond self-defense or the defense of one nation against an aggressor. More and more, we all confront difficult questions about how to prevent the slaughter of civilians by their own government, or to stop a civil war whose violence and suffering can engulf an entire region such as in Rwanda or the Balkans. We understand that when genocide is happening, when ethnic cleansing is happening somewhere around the world and we stand idly by, that diminishes our authority as an international community. And yet as nations we cannot intervene in every instance of depravity by a government against their people. Our challenge is to agree upon the conditions in which force is justified by an international community, and then to ACT as an international community to deter, prevent, or stop human slaughter. As President Obama said in Oslo: “the closer we stand together, the less likely that we will be faced with the choice between armed intervention and complicity in oppression.”

Long before Libya, those standards had already taken shape. President Obama articulated those standards in his Nobel Prize speech, in speeches he gave as a candidate, in a book that he wrote as a Senator, and most recently in describing the basis for U.S. action in Libya. One: there should be international agreement that a nation’s treatment of its people violates international law and is subject to sanction. Two: we should first strive to act without force through other sanctions that are tough enough to actually change behavior. And third, only when alternatives have been exhausted and slaughter is both probable and imminent, should force be used to prevent it.

In March 2011, the humanitarian crisis in Libya presented just this situation. In the exuberance of the Arab Spring, Libyans took to the streets, demanding that their government at last uphold universal rights and respect civil society. However, those protesters were met with an iron-fist. Instead of respecting the rights of his own people, Qaddafi chose violence. Innocent civilians were beaten, raped, imprisoned, and killed. Planes were deployed to strafe residential streets killing whoever happened to walk upon them. Peaceful protests were met with violence. Hospitals were attacked and patients mysteriously disappeared. A campaign comprised of intimidation and condemnation began.

It was clear that without the application of international pressure, Qaddafi would continue to slaughter his own people. And, as a result, thousands of innocent lives would be lost. The desperate calls of the Libyan people for help would go unanswered. Democratic values would be overrun. And so the international community acted.



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Australia, the United States, and the international community first tried diplomatic and economic efforts. But sanctions put in place by the international community did not stop Qaddafi. The U.N. Security Council imposed further sanctions, an arms embargo, and the specter of international accountability for Qaddafi and those around him. Australia, the United States, and other countries provided humanitarian assistance to the victims of violence inside Libya. But in the weeks that followed, Qaddafi made clear that those measures would not prevent him from slaughtering the Libyan people.

Qaddafi was warned by regional international bodies that he needed to stop his campaign of repression. The Arab League and the European Union also called for an end to the violence. They offered Qaddafi every opportunity to pursue an immediate cease-fire. However, he refused this offer or claimed to accept while he kept firing.

Finally, when all of these efforts were exhausted and it was clear that lesser measures than military intervention would fail, the UN Security Council adopted Resolution 1973. This Resolution sent a clear message to Qaddafi that the international community was prepared to act upon its authority to protect. It would act by whatever means were needed to prevent the slaughter of the Libyan people. Resolution 1973 authorizes the use of force with an explicit commitment to pursue all necessary measures, including the enforcement of a no-fly zone over Libya, to stop the killing and it strengthened sanctions and the enforcement of an arms embargo against the Qaddafi regime.

In response, Qaddafi announced that he intended to send troops door-to-door killing everyone in the City of Benghazi who had defied him. He called the protestors "rats" and promised to slaughter them all. At this point, Qaddafi left the international community no choice. As Foreign Minister Kevin Rudd later commented, "Had the Security Council not reached its decision at the end of last week, about now we would have been witnessing the butchery of Benghazi by the Libyan regime."

And so the international community acted to prevent the slaughter of the Libyan people. And it did so consistent with the law. The use of international force is never desirable, but for humanitarian purposes it is sometimes necessary.

Some have argued that if humanitarian intervention is justified in any case, then it must be used in every case or not at all. They complained that, in their view, the U.N. did not act as swiftly or decisively in other situations around the world. For example it waited until mass atrocities occurred before intervening in Rwanda and the Balkans. They say that we should not intervene in Libya unless we are also prepared to intervene in every place where violent repression is being exercised. But this is not an argument that withstands logic. It cannot be the case that unless we provide humanitarian relief for everyone then we should provide it to no one. If we can stop one slaughter that is better than stopping none. And we should not ignore that by acting even in one case, we may



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deter much greater violence in other nations. As President Obama explained "The democratic impulses that are dawning across the region would be eclipsed by the darkest form of dictatorship, as repressive leaders concluded that violence is the best strategy to cling to power. The writ of the U.N. Security Council would have been shown to be little more than empty words, crippling its future credibility to uphold global peace and security."

But we must also recognize that not all nations are alike. It is not always the case, as in Libya, that the intention to kill millions indiscriminately is both clear and convincing, that the international community has the resources and the vital interests to act, and that agreement can be reached on these subjects. To overcome the principle of state sovereignty and non-intervention, we need truly extraordinary circumstances. And the similarities that we sometimes see between two nations often mask very different histories, governments, potential repercussions, and international profiles. In evaluating whether the application of international force is justified in a situation, the difference in the reaction of the world must also be considered. The United States, Australia, Europe, the Arab League, and most importantly, Libya's neighbors, reached the same conclusion at the same time about Qaddafi. Each nation however based this both on collective interests and national interests, and made a unique calculus of how and when to respond to the threats to human life. It is not easy.

For that reason, one size does not fit all.

But all three requirements were present in Libya.

First, the use of force was justified under the rule of law by a legitimate authority that can authorize the intervention. In the case of Libya, the United Nations Security Council specifically authorized military intervention for human protection purposes.

Second, international force should be applied on a cooperative basis through effective political coalition. This coalition needs to work with its legal mandate. In Libya, there is a well-established international coalition of close allies and partners ensuring that Resolution 1973 is more than just hollow words. They are implementing and enforcing the international decision to protect the people of Libya.

Third, the application of international force must be for humanitarian purposes and to prevent slaughter and mass atrocities. We had three good indicators that just cause had been met: (1) Qaddafi said it! He was going to hunt his own people down like rats and kill them door to door and house to house. (2) Qaddafi had demonstrated that these were not empty words and that he would indeed kill his own people indiscriminately to keep power. (3) And an international coalition across different cultures believed him and were



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ready to take action. Indeed the people of Libya themselves believed him and were pleading and begging for intervention.

In those circumstances, the United States, Australia, and dozens of nations around the world agreed that we could not wait for the images of slaughter and mass graves before taking action. "In this particular country, at this particular moment, we were faced with the prospect of violence on a horrific scale."

Not every case will be as obvious. We cannot and should not expect the international community to intervene every time and in every instance where a humanitarian issue arises. Secretary Clinton put it well, that there is no magic formula that can prevent horrors in every nation. As she said: "... there's no magic wand. If there were, we'd be waving it like crazy." We need to evaluate each individual situation on a case-by-case basis.

But this is my point. The decision of when to apply international force for humanitarian purposes to prevent slaughters will always be a difficult one. It will be second-guessed and subject to complaints. But the right to apply such force when circumstances demand it should not be in doubt.

As lawyers, we abhor violence. We support universal values of human rights and protection of life. Throughout the Arab Spring our mantra in the U.S. and in Australia has not changed: that the will of the people should be respected and that governments should respond with reforms and with elections, and not with violence. We do not seek to impose change on these nations, nor do we even believe we really could. There as here, lasting change can come only from the people themselves.

So as a lawyer I understand why war – even a just war – is not popular. But we must also recognize that the belief that peace is desirable is rarely enough to achieve it. That's why NATO is in Libya. That's why we honor regional peacekeepers who discourage and stop violent repression. As President Obama said – "we honor them not as makers of war, but as wagers of peace."

Thank you.