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We Don't Need U.N. Approval to Save Libyan Lives

Why is the Obama administration deferring to an international body that protects brutal dictatorships?

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By JOHN YOO

President Obama this week said "Moammar Gadhafi has lost the legitimacy to lead, and he must leave." Yet the Obama administration continues to shun the very steps that might hasten the Libyan tyrant's fall—imposing a no-fly zone over Libya and arming the rebels. Why? Because the United Nations hasn't give the green light. Desperate to avoid any parallels with Bush foreign policy, the White House has chosen to follow the lead of a dysfunctional international body that protects brutal dictatorships against the advance of human liberty.

According to reports in this newspaper, Gadhafi has sent modern tanks to attack peaceful protesters. He has dispatched fighter jets to bomb rebel positions in Brega, the location of an important oil refinery, and Ajdabiya, home to a large arms depot. A no-fly zone would eliminate a crucial government advantage over the rebels, who lack an air force or effective antiaircraft systems. Lest we forget, in the wake of the 1991 Gulf War, Saddam Hussein used air power to swiftly suppress rebellious provinces and regain control over Iraq.

Yet in testimony to Congress last week, senior administration officials criticized a Libyan no-fly zone. Secretary of Defense Robert Gates made clear that enforcing the zone would mean the extensive use of force against Libyan air and ground targets. "Let's just call a spade a spade," Mr. Gates said. The United States would have to carry out pre-emptive strikes on Libyan defense sites and antiaircraft systems. "A no-fly zone begins with an attack on Libya."



AFP/Getty Images

Even though a no-fly zone had earlier received the support of Secretary of State Hillary Clinton and British Prime Minister David Cameron, Defense and White House officials raised the specter that such a move would be illegal under international law. In a House hearing, Mr. Gates made clear that the U.N. Security Council has not authorized a no-fly zone over Libya. Privately, senior administration officials have told the press that the U.S. would not act without that approval, which would likely provoke a veto

from Russia or China, two permanent members of the Council. While he moved some limited military assets to the region, Mr. Obama stressed that it was important for the U.S. to act "in

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consultation . . . with the international community."

The administration's apparent refusal to act without U.N. approval harms not only America's national interests but the interests of democratic movements world-wide.

The U.N. Charter guarantees the "territorial integrity" and "political independence" of each nation, from the freest democracy to the most brutal dictatorship. Nations may use force only in self-defense, or when authorized by the Security Council to protect international peace and security. The Charter gives the U.S., Great Britain, France, Russia and China a veto over any Security Council decision. Authorizations to use force are rare. Even recent U.N. moves to impose on states a "responsibility to protect" their citizens require Security Council approval.

As authoritarian regimes, China and Russia generally oppose any intervention into what they consider "internal" affairs, especially the repression of political and economic freedoms. They have become a defense bar for dictators, and the U.N. Charter has become a legal shield for the oppression of their peoples. Nations, like the U.S. and its allies, that accept the higher responsibility for maintaining peace and advancing free-market democracy become lawbreakers. States that undermine international stability, promote authoritarianism and abuse human rights hide behind an international status quo maintained by the U.N. Charter.

Thankfully, the U.S. has not waited in the past for the Security Council's permission to protect our national interests. The U.S. acted with the council's blessing in Korea in 1950 (thanks to a Soviet boycott of the vote), the 1991 Gulf War, Somalia and Haiti, but we would have intervened even without it. We didn't seek approval during the Cuban Missile Crisis, the Vietnam War, interventions in Central America, Grenada, Libya (1986), Panama or Kosovo.

President Bush did seek U.N. approval in the months before the 2003 invasion of Iraq—and international lawyers have argued over whether U.N. resolutions from the first Gulf War or 2002 requiring Iraq to eliminate its WMD program justified the invasion—but the Security Council never explicitly authorized the invasion.

Meanwhile, the U.N. and the "international community" stood idly by in the face of the gravest disasters, such as the Rwandan genocide that killed one million civilians. American power, not international law or the U.N., rebuilt Western Europe and Japan, contained communism, maintained the West's international economic system, and spread democracy and capitalism to nations that had never known them.

The Obama administration might be trotting out this sea change in U.S. foreign policy to conceal its passivity and confusion. But deference to the U.N. represents more—it amounts to a triumph of the Democratic Party's pacifist base. The antiwar left has long viewed the U.N. as a valuable constraint on American power, which it sees as a threat to international peace.

These arguments reached a crescendo in the lead-up to the 2003 invasion of Iraq. Leading academics, some of them now in the Obama administration, saw the war as New York University's Thomas Franck (who has since died) did at the time—as part of "a much broader plan to disable all supranational institutions and the constraints of international law on national sovereignty."

It should come as no surprise that an administration dominated by academic thinking on Iraq is making a fetish of international law in Libya. This pious elevation of international law over American national interests means that more innocent civilians will die and authoritarian regimes will last longer. A better way, consistent with the traditions of U.S. foreign policy, would spread democracy and capitalism to critical regions like the oil-rich Middle East. This is not some moralistic, Wilsonian conceit. Democracies tend not to go to war with each other, and they share a common interest in recognizing individual liberty. By putting aside the U.N.'s antiquated rules, the United States can save lives, improve global welfare, and serve its own national interests at the same time.

Mr. Yoo is a law professor at the University of California, Berkeley. He was an official in the Justice Department from 2001-03 and is a visiting scholar at the American Enterprise Institute.

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