

Is Unilateral Intervention Always Unethical?¹

Ned Dobos

Legal scholars are split as to whether the UN Charter confers a right of humanitarian intervention upon the Security Council. Those convinced that it does typically cite the article which empowers the Security Council to sanction the use of force in response to “any threat to the peace, breach of the peace, or act of aggression.” Their antagonists deny that this translates into a right of intervention. “The peace,” they say, refers specifically to the peace *between states*, which is not threatened by human rights abuses that occur entirely within a sovereign state’s borders. A common response is that the Charter leaves it to the Security Council to determine what constitutes a “threat to the peace,” and the nature of the peace to which this refers. But what of article 2 (7), which explicitly disclaims any authority of the United Nations to “intervene in matters which are essentially within the domestic jurisdiction of any state”? Apparently this has no bearing on the issue, since the violation of human rights is not something that is “essentially within the domestic jurisdiction” of individual states; it is the legitimate concern of the international community.² The debate rages on.³

Among those who agree that the Charter does give the Security Council the right to prosecute (or authorise) armed intervention in defence of human rights, there is a further divide between those who believe that the UN enjoys this right *exclusively*, and those who maintain that intervention by a regional organization, an ad hoc coalition, and even an individual state can also be lawful under certain circumstances. Article 2 (4) prohibits states and coalitions from “the threat or use of force against the territorial integrity or political sovereignty of any state.” But whether this proscribes unauthorised intervention is an open question. It all depends on how “territorial integrity” and “political sovereignty” are interpreted. Some have suggested that only conquest violates “territorial integrity,” and that anything short of political subjugation leaves sovereignty

intact.⁴ Thus humanitarian intervention, whether sanctioned by the UN or not, is (or can be) consistent with international law as long as it results in neither of the above.

Relative to the abundance of literature devoted to the legal significance of Security Council authorisation, little has been said about whether the UN's failure or refusal to sanction an intervention can ever suffice to make it *immoral*. This is the question that I intend to take up here, (though admittedly, the legality and morality of military intervention are closely related, as will become apparent in the course of our discussion).

First, I argue that UN authorisation (or lack therefore) can have some *indirect* bearing on the moral status of a humanitarian intervention. That is, it can affect whether an intervention satisfies *other* widely accepted justifying conditions, such as proportionality, “internal” legitimacy, and likelihood of success. Second, I consider whether the absence of a UN mandate can morally delegitimize an intervention independently of these other familiar considerations. The answer, I argue, depends on whether or not the Security Council was given the opportunity to act. A state is rightly condemned, at least under certain circumstances, for simply bypassing the UN. However where a mandate is sought but refused, unilateral action remains justified. Finally, I show that this has little to do with the contingent character of the United Nations Security Council. A number of ethicists have admitted that UN authorisation is not essential from a moral point of view, but most have put this down to the perceived ineffectiveness of the UN, or its various moral deficiencies. The implication seems to be that if these flaws were to be somehow ironed out, then the denial of a UN mandate *would* sometimes suffice to undermine the legitimacy of an intervention. This is mistaken. If the United Nations is ever reformed into (or replaced by) a perfectly just and effective body, my conclusion would not require substantial revision or qualification.

International Authorisation: Indirectly Necessary?

Let us begin by introducing two of the familiar conditions that an armed humanitarian intervention must satisfy in order to be ethical:

- 1) Prudence: The intervention must stand a reasonable prospect of success at an acceptable cost. A predictably futile intervention is unjust, as is an intervention whose expected human and material costs are excessive compared to the benefits of the operation. These two requirements – the success principle and the proportionality principle – represent the “prudential” constraints on war.

- 2) “Internal” legitimacy: The government that is waging the intervention on behalf of foreign nationals must not violate the rights of its own citizens in the process.

In some cases, it seems that UN authorisation can be the difference between a sufficiently “prudent”, internally legitimate humanitarian intervention, and an intervention which fails to satisfy prudential and/or internal requirements. In other words, UN authorisation is sometimes needed because without it, the intervention fails to satisfy these *other* familiar justifying conditions. In cases like this UN authorisation can be described as *indirectly necessary*. This point requires some elaboration.

Whether a humanitarian intervention is “internally” legitimate depends on whether the citizens of the intervening state are morally obliged to pay for it. If they are, then their government does them no wrong by prosecuting the intervention with public funds, (since to compel someone to do his duty is no infringement of his rights). On the other hand where a country’s taxpayers are *not* under any such obligation, their government forces them to make a sacrifice that they have every right to refuse by using their collective resources for humanitarian war in another country, and this is plausibly a breach of their trust.

Now suppose that one state—state X—plans to execute a humanitarian intervention in a troubled neighbouring country, and to shoulder all of its associated costs. X may be asking too much of its constituents, especially if success depends on a long-term and expensive occupation, justifying the people of X in declining to make this sacrifice. Should the government of X go ahead with the intervention regardless, it would be infringing the rights of its own

people. But what if the UN were to approve the intervention and arrange for its costs to be shared across different states? The sacrifice asked of the citizens of X would be reduced to a fraction of what would be required to facilitate a unilateral action, and this might be a cost that the people of X *are* morally obliged to sustain. Thus, while unilateral intervention would be internally illegitimate, contributing to an internationally sanctioned multilateral effort would be consistent with X's fiduciary obligations toward its own people.

A UN mandate can also help to ensure that an intervention satisfies the “prudential” constraints on war mentioned above. The motives of states that engage in humanitarian intervention unilaterally are often viewed with suspicion. This can be expected to aggravate the resistance from within the target society, which could potentially lead to mission failure and also increase the costs of the intervention. The motives of the international community, by contrast, seldom arouse the same amount of suspicion. In this respect at least, a UN mandate would seem to improve an intervention's prospect of success at an acceptable cost.

I do not mean to suggest that UN authorisation is *always* indirectly necessary. Sometimes the involvement of an interventional institution might actually interfere with the satisfaction of the prudential and internal requirements. I am simply saying that, where a unilateral intervention would be internally illegitimate, disproportional, or unlikely to succeed, a UN mandate *can* actually reduce the costs of the intervention, remove the impediments to its success, and reconcile it with the intervening state's obligations to its own people. In these cases, UN authorisation is necessary for the intervention to satisfy other widely accepted justifying conditions.

There is also another sense in which UN authorisation is, or can be, indirectly necessary.

The facts that are relevant to the evaluation of a humanitarian intervention are often contested. In 1992 an editorial in *The Chicago Tribune* likened the assault against Muslims in Bosnia to the Holocaust: “Are Nazi-era death camps being reprised in the Balkans? Unthinkable, you say? Think again... The ghost of World War II genocide is abroad in Bosnia....”⁵ Some reports estimated that

the conflict had claimed upwards of 200,000 lives by that stage. But this was by no means unanimously accepted. George Kenney put the number somewhere between 25,000 and 60,000 in total, and was dismissive of the *Chicago Tribune's* World War II comparison: "Bosnia isn't the Holocaust or Rwanda" he wrote; "it's Lebanon."⁶ The details of the Kosovo conflict later in the decade were also disputed. NATO claimed that civilians belonging to the province's ethnic Albanian population were being systematically slaughtered and expelled en masse. But the Wall Street Journal reported that there was only evidence to suggest a "pattern of scattered killings [mostly] in areas where the separatist Kosovo Liberation Army had been active."⁷

The question of whether an intervention is likely to succeed at an acceptable cost has also attracted widely divergent responses. For example the National Intelligence Council (NIC) predicted that an American-led invasion of Iraq would leave the country divided along sectarian lines and plagued by violence and conflict.⁸ Ken Adelman, a former assistant to Donald Rumsfeld and arms control director under Ronald Reagan, was more optimistic. He predicted that the liberation of Iraq would be "a cakewalk."⁹

Not only is there disagreement over the facts—the expected costs of intervention, the kinds of rights abuses taking place, and so on—there is also disagreement over whether the expected costs are "excessive," whether the rights abuses are "severe enough" to override sovereignty, etc. This can be seen as a disagreement over the *standards* brought to bear on the facts. Take for instance the US State Department's resolution that as many as 250,000 Iraqi civilian casualties would be acceptable to achieve the purposes of the recent war in Iraq.¹⁰ Tariq Ali sees this as proof that the US government does not accord to Iraqi life the same value that it accords to American life. There is an underlying assumption that "we are a superior nation, a superior race, and a superior people."¹¹ Ali's objection is not that the number of casualties is being underestimated, but that the threshold for what is considered "excessive" is too high.

Now a state is justified in going to war only if it is reasonably confident that it has its facts straight, and that its standards are impartial and not skewed (by

a sense of racial superiority or any other factor). If it is unable to convince the international community of this, can it proceed with the degree of confidence required? Plausibly UN approval is needed to validate the facts being cited to justify war, and to verify that the standards being applied are not out of sync with those of the international community. On this view, international authorisation is needed not because it actually affects the prospect of success at an acceptable cost, but because it determines whether a state has solid grounds for the belief that the conditions of success and proportionality have been met.

Thus there are two ways for the lack of UN authorisation to delegitimize an intervention *indirectly*. On either approach, whether an intervention is justified ultimately depends on whether it meets a number of familiar conditions, and international authorisation is important only because it has some bearing on whether or not these conditions are met (or the certainty with which we can judge that they have been met). The more interesting question is whether UN authorisation has any ethical significance independently of this. Should we think of UN approval as a condition of just intervention in *its own right*? It is to this question that I now turn.

International Authorisation: Directly Necessary?

Suppose that a humanitarian intervention has a just cause, is internally legitimate, and satisfies all of the standard prudential requirements, and that none of this can be reasonably denied. Why should we still think that international authorisation matters? What I want to consider here is whether an unauthorised intervention, *simply in virtue of being unauthorised*, conflicts with the rights of any identifiable individual or group. If so, then it may be possible for the UN's disapproval to morally delegitimize a humanitarian action without actually causing it to fall short of any of the other conditions of just war (prudence, internal legitimacy, etc). But whose rights are violated? Who is wronged by unauthorised intervention? The obvious answer is the UN itself. If the organisation possesses legitimate political authority then it has a right to rule. If it has a right to rule then to disobey its directives or to usurp its authority is to infringe its rights. I will come back to this. First let us gloss over some of the less obvious answers.

1) Rights of the Target State

What is it that justifies some people—those in government—in issuing commands and compelling others—the citizens—to obey? How is this to be reconciled with the moral equality of persons? One answer is consent. If I consent to your having the right to make and enforce law, your exercise of this authority is consistent with my autonomy and equality. This gives us some insight into what makes vigilantism objectionable. Insofar as he does not enjoy the consent of the people that he coerces into compliance with the law, the vigilante treats them in a way that is disrespectful; that is not consistent with their moral status. This is why only the police and courts, qua agents of the state, may enforce the law and administer punishments—assuming of course that the state *does* enjoy the consent that the vigilante lacks.

From this we can extrapolate that unilateral humanitarian intervention—the international analogue of vigilantism—constitutes an injustice against the target state. If we take it that the UN Charter empowers the Security Council exclusively to engage in or authorise humanitarian intervention—let us concede this for the sake of discussion—then we can say that every UN member state, having signed the Charter, has consented to the Security Council’s right to enforce international human rights agreements. But no state has consented to unilateral law enforcement by other states or by ad hoc coalitions. Hence unilateralism wrongs the target state in the same way that vigilantism wrongs its object.

But this is too quick. Consider more carefully law enforcement at the domestic level. On closer inspection it appears that whether or not the law-breaker is wronged by the vigilante depends on the nature of his offence. Suppose that your neighbour, a supermarket employee, spots you jaywalking or not wearing a seatbelt while driving, and takes it upon himself to try to force your compliance with the law. Your response is likely to begin with “excuse me, what right do you have...?” But what if the very same neighbour were to physically restrain you in order to protect your spouse against physical assault? Surely *anyone* is entitled prevent an assailant from murdering or maiming his victim. No special authority is necessary.

The difference between these two kinds of cases is that it is morally wrong to assault people independently of its being illegal. Jaywalking, on the other hand, is not something that is independently proscribed by morality. In legal parlance, it is *malum prohibitum*: wrong merely because prohibited by statute, as opposed to *malum in se*, or wrong in and of itself. To put it another way, if jaywalking is immoral, this is only because it is illegal and one happens to be morally obliged to discharge his legal duties.

A “victim” of vigilantism has grounds for complaint only if he is forced to refrain from behaviour that is *malum prohibitum*. The same can be said for law enforcement in the international arena. Some international treaties, especially those dealing with commerce and communications, require acts and forbearances that are morally neutral. With respect to these laws one could plausibly say that unilateral enforcement wrongs the target state. But respect for human rights is not a convention-dependent obligation with no force outside of international law. Rather, like an individual citizen’s obligation not to commit assault, the state’s obligation to honour human rights is pre-institutional and these are requirements that anyone may enforce.

Now perhaps this is too sweeping a claim. While the denial of some internationally ratified human rights is undeniably *malum in se*, is this true of all rights? Or are some based only on the consent of states, with no normative force outside of the law? Prominent human rights theorist James Griffin, among others, seems to suggest the latter. The right to periodic holidays with pay, the right to protection against attacks on one’s honour and reputation, the right to inherit property, freedom of residence, the right to work, and the right to “the highest attainable standard of physical and mental health,” are just a few of the more “lavish” human rights listed in the Universal Declaration and other international instruments.¹² Griffin denies that these are bona fide human rights. Hence a state’s obligation to honour them—if there is one—exists only in virtue of there being a law which requires that states do so. It follows that unilateral intervention in defence of these rights is objectionable in the same way that vigilantism is objectionable in cases of *malum prohibitum* offences domestically. But given that humanitarian intervention is only ever contemplated where the rights violations are incontrovertibly *malum in se*,

conceding this point is of little practical consequence.

Before moving on I should make one further qualification. Nobody would deny that an ordinary citizen is permitted to intervene in a domestic dispute to prevent serious assault. But this example presupposes that there is no time to call on the proper authorities, such that private law enforcement is necessary to prevent the crime. What if there *is* time to call the police? I take it that because vigilantism is unnecessary in this case, it is also unjustified, and this is despite the fact that the offence being committed is *malum in se*. By analogy, where there is time to engage the UN in dealing with a humanitarian crisis, a state that bypasses it and acts unilaterally is, at least in some cases, rightly condemned. This, however, is not because the state targeted by the unilateral action is wronged in any sense. Rather, it is because the international community is wronged.

2) Rights of our Co-signatories

By signing the UN Charter—which, we have conceded, confers a right of humanitarian intervention upon the Security Council exclusively—a state relinquishes its right to engage in unilateral intervention. Thus when a state engages in unilateral action, it breaches this contract and violates the rights of its co-signatories in the UN. This rather simple argument is I think the most persuasive of the lot. Yet it is only convincing where: 1) The intervention proceeds without a UN mandate having been sought, *and*; 2) the intervening state or coalition cannot plausibly claim that there was no time to engage the UN, or that authorisation would certainly have been denied. The argument fails where authorisation is sought but refused, or where the intervening state *can* plausibly claim that there was either no time to pursue a mandate, or no chance of winning one.

Admittedly this seems like a curious, if not downright incoherent position. For it suggests that UN authorisation is not morally necessary, but that the pursuit of it somehow is. Nevertheless we must follow the arguments wherever they lead.

Recall one of W.D. Ross' famous examples. You make a promise to meet a

friend at a certain time in a certain place for a trivial reason. On your way to the meeting place you come across the scene of an accident that has left a person injured and in need of urgent attention on the side of the road. If you stop to render assistance you will not be able to meet your friend and therefore you will break your promise. Nevertheless we all agree that stopping is permissible, if not obligatory. The explanation, crudely put, is that the obligations arising out of one's promises are *prima facie* and need to be weighed against countervailing moral considerations—including conflicting duties—before any *all things considered* moral judgment can be reached. In the example, the countervailing considerations are so weighty that they justify you in defaulting on your *prima facie* obligation to your friend.

Champions of multilateralism often fail to see or to acknowledge that the obligations arising out of a state's international contracts are equally *prima facie*. Unlike the promise to meet a friend for lunch in Ross' example, to be sure, these commitments should not be seen as trivial, and so a very strong justification needs to be provided for their transgression. Nevertheless in some cases there will be sufficiently weighty countervailing considerations.

Imagine that there are egregious human rights abuses occurring in some faraway country—mass murder, deliberate starvation, you name it—and that a neighbouring state proposes to intervene. If an application for a UN mandate is rejected, or if appealing to the UN is genuinely believed to be futile or prohibitively time consuming, then this state is caught between conflicting moral demands: fidelity to international covenant, or the prevention of mass starvation and killing. The state *must* break its international commitments in order to rescue the victims, and surely the countervailing considerations in play here are weighty enough to justify this. Unilateral intervention might, in these cases, constitute a rights *infringement* against the international community, but it is no rights *violation*. That is, it is not an *unjustified* infringement.¹³ For the imperative to prevent violations of human rights takes moral priority over the imperative to honour international agreements, just as the obligation to render urgent assistance at the scene of an accident overrides one's promise to meet a friend for lunch.

On the other hand, where there *is* time to pursue a mandate, and *no* reason to believe that the effort would be an exercise in futility, a state that intervenes without engaging the Security Council seems to have no good reason for breaking its international contracts. It cannot appeal to necessity here. It cannot claim that honouring the Charter would have resulted in the continuation of serious human rights abuses. It therefore does not simply infringe the rights of its co-signatories; it plausibly violates them.¹⁴

3) Rights of the United Nations

Invoking the rights of the UN at this point does not take us any further than we have already come. If the UN possesses legitimate political authority then it has a “right to rule”—a right to make and enforce laws. This corresponds to a duty of obedience (or at least a duty of non-interference) for everyone under its jurisdiction. Like the contractual rights of our co-signatories, however, this right is at most *prima facie*, and if it is overridden under any circumstances at all then it is surely overridden in the face of humanitarian emergencies. This merely reinforces the conclusion that states must seek a mandate, but need not refrain from unilateral action if it is not forthcoming. And arguably even this concedes too much. The premise that the UN enjoys a “right to rule”—even a *prima facie*, defeasible right—remains a bone of contention, especially given that the organisation does not seem to qualify as democratic in any meaningful sense. Things brings me to my next point.¹⁵

The ‘Non-Ideality’ of the UN

The UN has an embarrassingly poor track record when it comes to enforcing its human rights commitments. Its efforts in Rwanda and Bosnia are often cited in this connection. When the killing in Rwanda began, the 2,500 UN peacekeepers stationed in the country were assigned the responsibility of evacuating foreigners, but forbidden from defending Rwandans against genocidal assault. Mark Huband offers a glimpse into what followed:

A few yards from the French troops, a Rwandan woman was being hauled along the road by a young man with a machete. He pulled at her clothes as she looked at the foreign soldiers in the desperate,

terrified hope that they could save her from her death. But none of the troops moved. 'It's not our mandate,' said one, leaning against his jeep as he watched the condemned woman, the driving rain splashing at his blue United Nations badge... At Antoine de Saint-Exupery school, French troops lay on the roof with guns trained on the deserted road outside as the names of evacuees were read out in the courtyard below... The road was littered with up to 20 bodies. Halfway up the hill lay a pile of corpses. From nearby houses women, old and young, were casually led to the pile and forced to sit down on it. Men with clubs then beat the dead and dying bodies which surrounded the women as they sat, screaming, pleading for their lives. Suddenly the men turned on the women. They beat them until they no longer moved, then went to find more people to kill, within view of the school where the evacuees packed their children, pet dogs, teddy bears and suitcases into trucks.¹⁶

One survivor describes how she and 4,000 other Tutsis took shelter close to some Belgian troops hoping to be kept safe, only for the troops to depart and leave the people to their fate. "During that massacre I lost my husband, members of my family, all of my friends, neighbours" she said. "I slept among the cadavers for the whole night."¹⁷ An estimated 800,000 Tutsis and moderate Hutus were killed. The UN and former Secretary-General Kofi Annan have since accepted responsibility for failing to prevent the genocide.¹⁸

The handling of the conflict in Bosnia also attracted criticism. Between September 25 1991 and April 28 1995, the Security Council adopted 73 resolutions pertaining to Yugoslavia, and the President of the Security Council made 70 statements on the crisis.¹⁹ But to say that the UN didn't exactly "walk the walk" would be an understatement. Units were sent to the region in 1992 but the Security Council did not permit them to use force. As a result, Glover explains:

the UN on the ground found its authority endlessly mocked. In 1992 a Serb soldier shot Hakija Turajlic, the Deputy Prime Minister of Bosnia, while he was being carried by a UN vehicle. Repeated ceasefire

agreements were immediately broken. At one ceasefire signing ceremony at Sarajevo airport, the agreement was broken so quickly that the signatories had to take cover under the table they had just used.²⁰

The incident at Srebrenica made international headlines. The UN had declared the region a protected “safe area” before it was captured by Serbian forces under General Mladic. An estimated 8000 people were massacred—the largest mass murder in Europe since WWII—while 400 armed Dutch peacekeepers looked on, lacking the authorisation to act. Mladic ridiculed his victims in the presence of the troops: “Do you think the Dutch are afraid of me? I don’t fear them. I am stronger than all of you. They cannot protect you.”²¹

Now “The UN” cannot bear all of the blame for these failures. On May 17 1994 the Security Council did authorise a peacekeeping mission which allowed for the use of military force to secure safe areas in Rwanda, but certain member states were unwilling to provide the necessary troops and material. Nevertheless it has been argued that by its less than optimal performance on these occasions and others the UN has forfeited its claim to being the only legitimate authority that can sanction humanitarian intervention.²² A memorable editorial from the *New Republic* reads:

After the slaughters of the 90’s, all of which numbered the fecklessness and the cynicism of the UN among their causes, it defies belief that people of goodwill would turn to that organization for effective action.²³

Other contingent characteristics of the UN have also been highlighted to dismiss the need for its authorisation. According to Mark Evans it is purely a function of the “non-ideality” of the UN that humanitarian intervention can be legitimate without its approval.²⁴ We should not insist on a UN mandate, Evans argues, because of the veto system which prevents the Security Council from reaching decisions in a truly democratic manner.²⁵ In a similar vein, Fernando Teson disclaims the need for UN authorisation on the grounds that “the decision to assist victims of grievous injustice should not depend on the acquiescence of rulers who, at the very least, do not represent their people, and, at the very

worst, are tyrants themselves.”²⁶ Charles Krauthammer seems to share this sentiment when he asks: “By what possible moral calculus does an American intervention to liberate 25 million people forfeit moral legitimacy because it lacks the blessing of the butchers of Tiananmen Square or the cynics of the Quai d’Orsay?”²⁷

Should we take this to mean that the lack of UN authorisation *would* make an intervention unjust if the UN were reformed into something more representative, more democratic, and more effective?

Such reforms might I think strengthen the case for the *indirect* necessity of UN authorisation. Earlier I suggested that a unilateral action might provoke stiffer resistance from within the target society than an intervention which is seen to be the work of the international community. One reason for this is that the professed humanitarian motives of a state acting alone are likely to be met with greater suspicion. However the United Nations in its current form is seen by many around the world to be nothing more than an agent or puppet of the great powers, especially the US. Those who hold this view are likely to resist a UN-led intervention with the same vehemence that they would resist unilateral action. But if the UN were to become less reliant on, and less subservient to, the major powers, its supposed neutrality would probably be taken a lot more seriously, and this may well reduce resistance to its efforts to enforce human rights norms.

Moreover, lack of approval from the UN does not always cast doubt on the moral credentials of an intervention in the way described earlier. I suggested that if a state is unable to convince the Security Council that an intervention is proportional, likely to succeed, and so on, it arguably cannot judge that these conditions have been satisfied with the level of certainty and confidence that morality requires. But the veto system currently in place weakens this argument, or at least reduces the scope of its application. For even where the overwhelming majority of member states are convinced of the moral legitimacy of an intervention and vote in favour of a mandate, a single negative vote from any one of the Permanent 5 is sufficient to deny authorisation. The UN’s disapproval would be a more reliable indication that an intervention is

not justified according to the prevailing moral standards of the international community if the veto system were scrapped.

Apart from this, however, changes to the character of the UN would have little bearing on my conclusion. Where a mandate is sought but denied unilateral intervention remains justified all things considered no matter how close to the “ideal” the UN comes, since the imperative to prevent grave human rights violations will always take moral priority over fidelity to international contracts.

What if instead of reforms the UN were replaced by, or supplemented with, some other international body; one less defective, morally, and less prone to institutional deadlock and paralysis? US Senator John McCain has openly advocated the creation of a “League of Democracies” that

could act when the UN fails—to relieve human suffering in places such as Darfur, combat HIV/AIDS in sub-Saharan Africa, fashion better policies to confront environmental crises, provide unimpeded market access to those who endorse economic and political freedom, and take other measures unattainable by existing regional or universal-membership systems.²⁸

John Ikenberry and Anne-Marie Slaughter have similarly proposed what they call a “Concert of Democracies”,²⁹ and advisor to the Democratic Party Ivo Daalder has urged the democratic states of the world to unite for collective action.³⁰ The suggestion is not so much that a league of democracies should be introduced to replace, or even to compete with the UN (though it has been argued that competition between the institutions would be inevitable).³¹ Rather the hope is that the democratic league would exist alongside the UN, and that it would step in where action is desperately needed but the UN finds itself, yet again, locked in a stalemate. This would bring us one step closer to Francis Fukuyama’s vision of “multi-multilateralisms.”³²

I doubt that the endorsement of some such body would contribute to the proportionality and success of a humanitarian intervention in the same way

that the endorsement of a reformed United Nations might.

The authorisation of a UN Security Council in which no state exerts dominance or undue influence would plausibly reduce resistance to armed intervention and, in turn, minimize the costs and adverse consequences associated with it. A league of democracies, by contrast, would likely be seen simply as the latest manifestation of Western bullying, and its creation could further alienate those that it excludes, including 1.3 billion Chinese and 1.2 billion Muslims. As things stand UN-authorisation often does little to dispel the perception that a single state—usually the US—is behind the intervention. Authorisation by a league of democracies, most of whose members are allies of the lone Superpower, is hardly likely to improve the situation.

Driving the League of Democracies initiative is the belief that, unlike the UN, the league would be capable of prompt and effective action. The failures of the United Nations are attributed to its inability to bridge the ideological differences between its member states, as a result of which the organisation “usually endorses lowest-common-denominator actions or does nothing at all”. The claim is that the same thing is bound to happen in any international organisation where autocracies and democracies are tasked with reaching collective decisions, since the participants will always disagree not only on material interests “but on the core values that should be embedded in the international system”.³³ The world’s democracies at least share common values. Some think this would allow them to cooperate effectively and to avoid impasse.³⁴

The question is whether the ideological commonalities among democratic states will suffice to prevent deadlock when their material interests come into conflict. If past experience is anything to go by we should not get our hopes up. During the Cold War the United States sided with Communist China, and even with the Pakistani dictatorship, against its democratic co-ideologue India. More recently democratic South Africa refused to support Western efforts to isolate the Mugabe regime. State failure in Zimbabwe would have damaging consequences for its neighbours, and this obviously trumped other considerations. India started out supporting the West’s efforts to isolate Myanmar, but upon

realising that this threatened to push the country into the hands of China and create a satellite state on the border, India changed course radically and began to engage with the Burmese regime. So much for democratic solidarity. Democratic states may be less suspicious of one another's motives and more likely to cooperate given their moral and ideological similarities. This much is uncontroversial. But whether these ties are strong enough to resist the pull of *realpolitik* and override geopolitical differences is another matter entirely.

A final point: There is every reason to anticipate that the league of democracies will inherit many of the same moral defects that we find in the UN Security Council today. Recall that the presence of undemocratic regimes is but one of those defects. Another is the disproportionate power of certain member states. Stephen Schlesinger is right to ask:

Once convened, by what procedures would the group [of democracies] make decisions? One possibility is that each member state would have a single vote. But that means, for example, that Costa Rica would be equal in this regard to the United States. Would Washington see this as fair or satisfactory? Further, if majority rule were to determine decisions, might not a cabal of smaller democracies, constituting a majority, foist rulings on the larger democracies—the very complaint that is so often levelled at the UN General Assembly? Might that not actually push the bigger democracies to press for a two-thirds vote requirement for league action—or even unanimity, as was true in the old League of Nations? Or, in yet another variation, might some of the larger democracies simply demand the veto, as in the Security Council? That latter matter deserves serious consideration, for American senators (who, after all, must ratify any such agreement) have historically opposed U.S. involvement in global bodies where Washington lacks the veto power.³⁵

Though its frequency may vary, deadlock in international institutions seems inevitable. When it does arise—whether it be in the UN, a reformed UN, or the League of Democracies—and, as a consequence, authorisation for humanitarian intervention is withheld, this ought not be treated as a moral barrier to military

action.

Conclusion

I do not mean to deny that international authorisation is morally preferable. Indeed the preceding discussion has established that pursuing a UN mandate is an ethical imperative. For one, a UN mandate increases the chances of other familiar justifying conditions being met: an internationally authorised action is arguably more likely to succeed at an acceptable cost, and to be consistent with the domestic fiduciary obligations of the state or states that prosecute it. Nevertheless my conclusion is that the UN's refusal to sanction an intervention, where all other justifying conditions are clearly met, should not be treated as a moral barrier. And this conclusion would hold even if the various moral defects of the United Nations were corrected.

End Notes

- 1 This paper builds on the arguments presented in chapter 7 of Ned Dobos, *Insurrection and Intervention: the Two Faces of Sovereignty*, Cambridge: Cambridge University Press 2012. Some of the material also appeared in *Philosophia*, 38 (3) 2010, under the title "Is UN Authorisation for Armed Humanitarian Intervention Morally Necessary?"
- 2 Quoted in Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, New York: Oxford University Press, 2000, p.44.
- 3 For more on the legal significance of UN authorisation, see Wheeler, *Saving Strangers*, pp.40-52; Janne Haaland Matlary, "The Legitimacy of Military Intervention: How Important is a UN Mandate?," *Journal of Military Ethics*, vol.3, no.2, 2004, pp.129-141; Mark Stein, "Unauthorized Humanitarian Intervention" *Social Philosophy and Policy*, vol.21, no.1, 2004, pp.14-38; Oliver Ramsbotham and Tom Woodhouse *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization*, Cambridge Mass: Polity Press, 1996, pp.157-62; Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach based on Fundamental Ethical Principles in International Law and World Religions*, University Park: Pennsylvania State University Press, 2002, pp.309-383; J.L. Holzgrefe, "The Humanitarian Intervention Debate," in J.L. Holzgrefe and Robert O. Keohane (eds.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge: Cambridge University Press, 2003, pp.37-38. See Teson, *Humanitarian Intervention: An Inquiry into Law and Morality*, 3rd ed, Ardsley NY: Transnational Publishers, 2005, section 8.2, for a list of references to legal scholars who hold that intervention is only legitimate when authorised by the United Nations.
- 4 For a defence of this view, see Teson, *Humanitarian Intervention*, p.151.
- 5 "What Goes on in Bosnia's Camps?," *Chicago Tribune*, August 6 1992, Section 1, p.24.

- 6 George Kenney, "The Bosnia Calculation: How Many have Died? Not Nearly as Many as Some Would Have you Think," *The New York Times Magazine*, April 32, 1995, p.42.
- 7 Quoted in John Pilger, "How Silent are the Humanitarian Invaders of Kosovo," *New Statesman*, December 8 2004, at <<http://www.globalpolicy.org/security/issues/iraq/justify/2004/1208kosovocomp.htm>> retrieved on 30/8/2008.
- 8 See Noam Chomsky, *Failed States: The Abuse of Power and the Assault on Democracy*, New York: Metropolitan Books/Henry Holt, 2006, p.18.
- 9 Ken Adelman, "Cakewalk in Iraq," *The Washington Post*, February 13 2002, p.A27.
- 10 Tariq Ali and David Barsamian, *Speaking of Empire and Resistance*, London; New York: The New Press, 2005, p.27.
- 11 *Ibid.*
- 12 James Griffin, *On Human Rights*, Oxford; New York: Oxford University Press, 2008. The term "lavish" is used with reference to the right to the "highest possible standard" of health on. p.208.
- 13 The distinction between "infringement" and "violation" was introduced by Judith Jarvis Thomson in "Some Ruminations on Rights," *The Arizona Law Review*, vol. 19, 1977, pp.45-60.
- 14 Interestingly enough, my position bears some resemblance to that taken by the International Commission on Intervention and State Sovereignty (ICISS). Its 2001 report, *The Responsibility to Protect*, states that "Security Council authorization must in all cases be sought prior to any military intervention action being carried out". But it goes on to admit that, although the Security Council should be the first port of call, "the question remains whether it should be the last". International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty*, December 2001, §6.15. Available online at <<http://www.iciss.ca/report2-en.asp>>, retrieved on 2/5/2007.
- 15 Perhaps our democratic standards, while appropriate for judging domestic political authority, are too demanding when it comes to global governance institutions. Robert Keohane and Allen Buchanan articulate an alternative; what they call a "complex standard of legitimacy" which incorporates a raft of less stringent conditions by which to judge international regimes. Even on this relaxed standard of legitimacy, however, the UN has some way to go. See Allen Buchanan and Robert O. Keohane, "The Legitimacy of Global Governance Institutions", *Ethics and International Affairs*, vol.20, no.4, 2006, pp.405-37.
- 16 Mark Huband, "UN Troops Stand By and Watch Carnage," *The Guardian*, Tuesday April 12, 1994.
- 17 "UN Chief's Rwanda Genocide Regret," *BBC News*, 26/3/2004, at <<http://news.bbc.co.uk/2/hi/africa/3573229.stm>> retrieved on 30/8/2008.
- 18 *Ibid.* See also "UN Admits Rwanda Genocide Failure," *BBC News* 15/4/2000, at <<http://news.bbc.co.uk/2/hi/africa/714025.stm>> retrieved on 30/8/2008.
- 19 Sean D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order*, Philadelphia: University of Pennsylvania Press, 1996, p.216.
- 20 Jonathan Glover, *Humanity: A Moral History of the Twentieth Century*, London: Pimlico, 2001, p.135.
- 21 *Ibid.*, p.136.
- 22 See George R. Lucas Jr., "The Role of the International Community in Just War Tradition—Confronting the Challenges of Humanitarian Intervention and Preemptive War," *Journal of Military Ethics*, vol.2, issue 2, July 2003, p.130.
- 23 "Again," *The New Republic*, Monday May 15, 2006.

- 24 Mark Evans, "In Humanity's Name: Democracy and the Right to Wage War," in Mark Evans (ed.), *Just War Theory: A Reappraisal*, Edinburgh: Edinburgh University Press, 2005, p.82.
- 25 *Ibid.*, p.72.
- 26 Teson, *Humanitarian Intervention*, p.166.
- 27 Charles Krauthammer, "Democratic Realism: An American Foreign Policy for a Unipolar World," American Enterprise Institute for Public Policy research, Irving Kristol Lecture, February 10, 2004, at <http://www.aei.org/publications/pubID.19912,filter.all/pub_detail.asp> retrieved on 30/8/2008.
- 28 Quoted in Kishore Muhubani, "The Dangers of Democratic Delusions", *Ethics and International Affairs*, vol.23, no.1, 2009, pp.19-20.
- 29 "Democracies Must Work in Concert", *Financial Times*, July 10 2008.
- 30 Ivo Daalder and James Lindsay, "Democracies of the World, Unite", *The American Interest*, January-February 2007, available online at <http://www.the-american-interest.com/article.cfm?piece=220>, retrieved August 10 2010.
- 31 Because the league of democracies would, in at least some cases, function as an alternative to the UN, Schlesinger worries that "the prospect of such a league, however one defines its exact parameters, contains an implicit threat to the status of the United Nations." See Stephen Schlesinger, "Why A League of Democracies Will Not Work", *Ethics and International Affairs*, vol.23, no.1, 2009, p.15. "When a crisis arises, to which body should the affected parties turn in order to seek redress? The intrusion of the league into some sort of crisis situation, even one that is a violation of international law, could throw into disarray the role of the UN, place into question the edifice of international law, and undermine peacemaking efforts."
- 32 Francis Fukuyama, *America at the Crossroads: Democracy, Power, and the Neoconservative Legacy*, (New Haven: Yale University Press, 2006).
- 33 *Ibid.*, p. 7.
- 34 James M. Lindsay, "The Case for a Concert of Democracies", *Ethics and International Affairs*, vol.23, no.1, 2009, p.5.
- 35 Schlesinger, "Why A League of Democracies Will Not Work", p.16.