The Legitimacy of Armed Intervention:
Changing moral and legal justifications for the use of force and the implications for interventionist foreign policies

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Abstract

From the late 1990s onwards, states like the United Kingdom have been seen to engage in liberal interventionism, premised on an 'ethical foreign policy', prioritising the humanitarian imperative to act in order to circumvent the constraints of international law. As such, interventions like the NATO operation in Kosovo in 1999 were accepted by the international community as an illegal but legitimate infringment of another states sovereign territory. However, the legitimacy of such humanitarian interventionism was short-lived; the misuse of altruistic, moral justifications as a veneer to hide underlying goals of state self-interest has subsequently robbed humanitarianism of its credibility as a legitimate case for military intervention. The purpose of this dissertation is to map out why this is so. By using elements of social constructivism, the aim is first to provide a theoretical basis regarding why in the international system legitimacy for the use of force is essential in the first place, before going on to examine the nature of the moral and legal concepts that statesmen use to establish that legitimacy. By showing how moral arguments have increasingly been used to circumvent legal constraints on the use of force, the concluding argument demonstrates how the mendacious use of these moral arguments has created a crisis of legitimacy for humanitarian intervention today.

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Introduction

When, on 27th May 2012, the massacre of civilians in the Syrian village of Houla was brought to light in the western media, there were renewed calls for forceful intervention to protect the Syrian population from Bashar al-Assad's violently oppressive regime. Although there was uncertainty regarding the precise circumstance of the massacre – both government forces and Syrian rebels were implicated – the fact remained that over one hundred civilians, including 49 children and 34 women, were dead.[1] It seemed that a cease-fire brokered by former UN secretary-General, Kofi Annan, was in tatters and civil war accompanied by a humanitarian disaster in Syria was imminent. Yet decisive military intervention to protect innocent Syrians form their fate remains improbable. Notwithstanding Russian diplomatic ties to Damascus that make any authorisation of force by the UN incredibly doubtful, any state or coalition with the will and capacity to enforce peace in Syria will find it almost impossible to generate legitimacy and support in the wider international community to take unilateral military action. The reason for this inactivity is the experience borne from over a decade of western liberal interventions in which the use of force has all too often been premised on humanitarian grounds but has rapidly evolved into something altogether more belligerent, normally ending in regime change. The misuse of humanitarian motives has, therefore, left an uneasy suspicion in the minds of the international community. Irrespective of any moral imperative to act, there is a growing reluctance to provide a positive consensus regarding the legitimacy of humanitarian intervention because the subsequent use of force has rarely been seen to be limited to humanitarian motives. As such countenancing humanitarian intervention is now perceived to be tantamount to giving powerful western states the freedom to exercise their will and depose regimes in states they see as contrary to their wider strategic interest.

This dissertation maps out why this is so. Fundamentally, it is an investigation of how the force is seen to be legitimate in the international community. Chapter one provides a theoretical basis as to why states must strive to present their actions as legitimate. Using concepts within the social constructivist idiom of international relations, furnished with empirical examples from a number of case studies, chapter one's intention is to challenge realist perspectives of international relations and suggest that power is less a function of material strength but instead is borne from the ability of statesmen to generate ideas of what it is to be legitimate such that material strength can be

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[1] "Houla: How a massacre unfolded," *The BBC,* 28 May 2012.

used without punitive censure. Chapter two goes on to explain how statesmen use moral and legal concepts and language to present their use of force as legitimate, before chapter three makes two critical assertions: firstly, that the way in which statesmen legitimise force (e.g. for ethical, humanitarian motives) governs the character and extent to which force may be employed in pursuit of those motives; and secondly, when statesmen legitimise force in one way (again, perhaps for humanitarian aims) but subsequently use force for other, less altruistic aims (regime change perhaps), then the credibility of humanitarian intervention is chronically undermined. The result, as chapter four details, is that moral and ethical imperatives to act are treated today with suspicion and without any inherent legitimacy, a fact that the recent intervention in Libya served to cement in the minds of many influential states within the UN. As such, the reader will be forced to conclude that western liberal interventionism, which for so long relied on the legitimacy afforded by humanitarian motives to use force, has come to a sticking point. No longer will Britain and the like be able to intervene as they wish, without the specific legal authorisation of the UN, using an ethical pretext to justify their actions instead. Liberal interventionists have cried wolf once too often, misusing moral arguments to legitimise the use of force, and the result is international paralysis when it comes to dealing with real humanitarian disasters of the type we see in Syria today.

1. Theory - The Importance of Legitimacy

'I have struck out from my customary diplomatic vocabulary the use of the
words legitimacy and divine right'

Klemens Von Metternich.[1]

A useful point of departure in our analysis of legitimacy and its importance in the application of force in the 21st Century is to examine a definition of the word. Intuitively, from the Latin root of the word *legitimus* (lawful: according to the law), we might conclude legitimacy is synonymous with legality.   However, take a moment to consider the comments of the British ambassador to the United Nations (UN) in 2003, Sir Jeremy Greenstock, giving evidence to an inquiry on the British Government's decision to go to war in Iraq that year: 'There was a failure to establish legitimacy although I think we successfully established legality in the UN.'[2] Notwithstanding the public debate on the legal status of the war, Greenstock's interpretation as a diplomat appears to be that legality does not necessarily confer legitimacy. Instead, legitimacy seems to have a deeper moral dimension, which can even lead, in certain circumstances, to actions that are technically illegal. NATO's operation in Kosovo in 1999 is a case in point where, although military intervention was illegal, in that it was not specifically authorised by the UN, because of the humanitarian and moral imperative to act the use of force was accepted in the international community as both justified and legitimate.[3]   As such, and as Ian Clark suggests, we might best understand legitimacy to be a function of some composite of both moral and legal contexts against which the behaviour of a state is judged by others.[4] Mark Suchman provides a broader definition when he suggests legitimacy is:

> *'A generalized perception or assumption that the actions of an entity are*
> *desirable, proper, or appropriate within some socially constructed system of*
> *norms values, beliefs and definitions.'*[5]

The benefit of Suchman's definition is that stresses the socially constructed nature of legitimacy. As such, it is implied that states are prompted to act in what are seen as legitimate ways because they wish to avoid punitive censure by the members of the society they coexist in; states would wish to exist in some degree of order, acting in legitimate ways in what we might consider *international society*. This is the broad contention of the English School of International relations and it is characterised by Hedley Bull in his classic, *The Anarchical Society:*

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[1] Quoted in Ian Clark, *Legitimacy in International Society* (Oxford: Oxford University Press, 2005), 11.

[2] "Iraq inquiry: war 'not legitimate', Sir Jeremy Greenstock tells inquiry," *The Telegraph.* 27 November (2009).

[3] See Abraham D. Sofaer, "The Best Defense? Preventive Force and International Security." *Foreign Affairs,* no.89 (January / February 2010), 109- 118. Peter Lee, *Blair's Just War: Iraq and The Illusion of Morality* (London: Palgrave Macmillan, 2012), 18-30.

[4] Ian Clark. 207.

[5] Mark C. Suchman, "Managing Legitimacy: Strategic and Institutional Approaches," *Academy of Management Review* 20, no.3 (1995), 574.

> *'A society of states (or international society) exists when a group of states, conscious of certain common interests and common values, forms a society in the sense that they convince themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.'*[6]

Bull's theories, like those of classical- and neo-realists, accept that the international system is fundamentally anarchic (in that there is no higher authority than the state), but unlike the realists he believed state action was dictated more by social interactions and internationally accepted norms like the inviolability of sovereign states.[7]

Realists, on the other hand, assert that in the anarchic international system, state behaviour is governed by cynical, *ad hoc,* cost-benefit calculations of what is in their best interests; they do what they must in order to gain and maintain power and security irrespective of the opinions of other states. As such, there is little room for questions of legitimacy in the realist world. Robert Gelpi, for instance, characterises such a perspective, and is so bold (or perhaps so naïve) as to suggest, 'legitimacy has no place in the study of international politics'.[8] Fellow realist, Hans Morgenthau, takes a more nuanced view and accepts there is room for arguments regarding legitimacy in international relations. He suggests that these arguments and their attendant principles of non-intervention began to enter the discourse of international politics following the 1789 French Revolution and the birth of the nation-state.[9] To illustrate his point, Morgenthau recalls the French Constitution of 1793, which declared '[the French] do not interfere with the domestic affairs of other nations and will not tolerate interference by other nations in their affairs.'[10] However, despite the French Constitution providing a nascent legal codification of armed intervention's status as illegitimate, Morgenthau reminds us that 'for a century and half afterwards... statesmen have never ceased to pay lip service to it.'[11] As such, Morgenthau argues that although norms of non-intervention and inviolability of sovereign states were now part of the social discourse within international society, and indeed were accepted as legitimate, state behaviour, and particularly the use of force in other sovereign states, remained governed by

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[6] Hedley Bull, *The Anarchical Society* (London: Palgrave Macmillan, 2002), 13.

[7] Ibid, 51-73.

[8] Gelpi quoted in Ian Clark, 20. For a review of realist theory see John J. Mearsheimer, *The Tragedy Of Great Power Politics* (London: W.W. Norton & Co., 2001).

[9] Hans J. Morgenthau, "To Intervene Or Not To Intervene," *Foreign Affairs* 45, no.3, (1967), 425-436. Morgenthau identifies the French Revolution as a watershed in the growth of the nation-state and not the 1648 Treaty of Westphalia. Ian Clark corroborates this thesis suggesting that the treaty of Westphalia gave birth to concepts such as territorial rather than feudal sovereignty, but these were only really practiced as we might recognize them in the nation-state following 1789. See Ian Clark, 51-70.

[10] Morgenthau, 425.

[11] Ibid.

calculations of *realpolitik* rather than by any moral or legal compunction.[12]   We will return to Morgenthau's realist pessimism a little later, but for the moment his premise does prompt the critical question that asks why states should enter into a discourse regarding norms and legitimacy; why should they seek to create an international society, as Hedley Bull suggests, constraining their actions by adhering to moral and legal shackles when, if they are powerful enough, they can simply coerce the weak and secure their interests by force?

Ian Hurd provides an answer to this problem, providing a structural argument commending a rules-based international society governed by shared values and concepts of legitimate behaviour.[13] He does this by comparing the nature of state behaviours in theoretical international systems governed either by coercion, or through calculations of self-interest or finally through adherence to concepts of legitimacy. He concludes that systems based on overt coercion by the powerful to secure compliance by the weak become difficult to sustain because they become too costly: 'coercion involves an expenditure of limited social capital... and social orders based on coercion tend over time to collapse from their own instability.'[14] Consider as an example here the viability of the Warsaw Pact, where compliance and continued membership were largely based on the coercive might of the Soviet Union. When bankrupted, that coercive might fell away and the Pact disintegrated as quickly as the Soviet Union itself since the member states saw no intrinsic value in maintaining the system for their mutual benefit.

Hurd also believes that systems that rely on weaker states determining their behaviour through conscious calculations of whether compliance with rules will yield benefit or punishment are similarly unstable. Although such systems based on calculations of self-interest may be less costly than coercive systems, Hurd argues they would still be fragile because of the *ad hoc* nature of state calculations regarding their interest. By this, Hurd is providing an implicit critique of realist theories which suggest that there can be no intrinsic value in the system of rules itself, but only in the outcomes of compliance or non-compliance. Such realist logic supposes that compliance's only value comes when it yields selfish benefits to the state, and when compliance no longer yields any benefit then the fickle state will become noncompliant irrespective of the fact their action undermines the overarching system of rules. Hurd believes that, 'in such system the actors are ontologically inclined to revisionism rather than the status quo' and, as such, the system would tend towards unpredictable behaviours, chaos and eventual collapse.[15] To resolve such instability, Hurd echoes Thomas Hobbes by suggesting that states in an anarchic, unpredictable system will recognise the benefits of gaining order by subordinating themselves to a Leviathan, which in this case is the system of norms recognised as legitimate within international society. As such, state-

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[12] See James H. Wyllie's analysis of Morgenthau's concepts in *The Influence of British Arms* (London: George Alllen and Unwin, 1984), 20.

[13] Ian Hurd, "Legitimacy and Authority in International Politics," *International Organization* 53, no.2. (1999).

[14] Hurd, 385. Hurd is providing a clarification of Max Weber's earlier theoretical work on legitimacy-stability concepts in international relations.

[15] Ibid, 387.

interests are not merely serviced by adhering to individual rules within the system, but by states internalising and reciprocally socialising the benefits of the rules within the system. States must see their shared values as intrinsically legitimate and allow their behaviour to be governed as such rather than vacillating by continually recalculating what they can get out of compliance or non-compliance. Only by doing so can they create long-term predictability and stability.

Yet, Hurd provides more than just three theoretical models of international relations that sit in isolation to one another:

> '*each [model] is rarely found in anything like its pure, isolated form... they are related to each other in a patterned, systemic fashion, in that most social structures first emerge from relations of coercion or from individual self-interest; but once established they may come to develop supporting and independent bases of legitimacy.*'[16]

Here Hurd is suggesting that behaviours governed by coercion and calculations of interest can in fact go on to become habituated as socially accepted norms of behaviour, and upon doing so they provide the legitimate rules of the game for states to play by in a relatively predictable international system. This habituation of behaviours of state self-interest into socially accepted norms is a process scholars like Martha Finnemore have recently attempted to explain in terms of social constructivist approaches to international relations.[17]

Rather simply put, constructivist theories in this context assert that human behaviour (and therefore the behaviour of states governed by humans) is determined by socially constructed ideas and values and not by individual, rational calculations or material factors. Finnemore suggests that states and statesmen may purposefully attempt to socially habituate behaviours and ideas they see as serving self-interest in the hope they can construct new norms and therefore legitimise future behaviour. Finnemore terms this process 'strategic social construction' and she uses the example of Austrian statesman, Klemens von Metternich, to illustrate a conscious attempt to change norms in international society in 'the way [Metternich's] contemporaries understood legitimate uses of force.'[18]

Indeed, Metternich's diplomatic successes at the Congress of Vienna (1814-15) did appear contingent on his ability to inculcate a shared sense of justice and respect for sovereignty amongst the new states of Europe that were carved-out to create a balance of power in the aftermath of the French Revolutionary and Napoleonic wars. It seems that there was an almost universal belief that this new power balance was inherently unstable and would soon collapse unless the European Great Powers could restrain their expansionist ambitions – a tall order considering in the

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[16] Ibid, 389.

[17] See Martha Finnemore, *The Purpose of Intervention* (Ithaca, Cornell University Press, 2003).

[18] Ibid, 5.

circumstances of European history in 1814. The French delegate, Charles de Talleyrand pessimistically reflected on this potentially intractable situation that appeared to preclude peace in Europe:

> *'the actual situation admits solely of an equilibrium which is artificial and precarious and which can only last so long as certain large States are animated by a sense of moderation.'*[19]

Metternich's diplomatic skill, however, was to underpin the balance of power with an enduring sense of moral restraint from the Great Powers. He did this by appealing to the sense of legitimacy, which rulers at that time felt they had by divine right in order to rule in their own territories. In a sort of cyclical logic, the rulers of the Great Powers could prevent any external threat to their own legitimacy by preserving the basic structure of the new European balance of power, but in doing so they must reciprocally recognise the legitimacy of other sovereigns to rule. In essence, Metternich attempted to create a system glued together by the shared acceptance of legitimacy to rule – states threatening the system by intervening in other states were effectively forfeiting their own sovereign legitimacy and by implication were denuding their own right to rule. Vividly illustrative of Finnemore's concept of 'strategic social construction', Metternich did indeed look to consciously shift accepted norms of behaviour to attain his goal, in this case an enduring peace in Europe. Reflecting on whether he achieved this goal, we might remember the earlier scepticism from Hans Morgenthau regarding the flouting of the principle of non-intervention in Europe after the French Revolution, but we should perhaps concede that what Morgenthau sees as a realist failure of a system of legitimacy, falls far short of the destruction seen during the Napoleonic wars of territorial aggrandizement that had preceded the Congress of Vienna. As such, Henry Kissinger suggests that, although the Concert of Europe was not perfect in that sovereignty was not recognised with absolute inviolability, it was a marked improvement from the chaos that had preceded it:

> *'[Metternich and his colleagues] achieved what they had set out to do. After the Congress of Vienna, Europe experienced the longest period of peace it had ever known. No war at all took place among the Great Powers for forty years, and after the Crimean War of 1854, no general war for another sixty.'*[20]

This is not to say that all socially constructed ideas of legitimacy are conscious, altruistic efforts intent on creating international stability for the greater good. Indeed, Metternich's diplomatic strategy to create new norms of legitimacy in the international system had elements of *realpolitik* at

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[19] Quoted in Henry Kissinger, *Diplomacy* (New York: Simon and Schuster, 1994), 82.

[20] Ibid, 79.

heart. After the final demise of the Holy Roman Empire in 1806, Austria found itself in relative decline and confronted by a formidable and belligerent Prussia intent on asserting its dominance in the German states in central Europe. With the threat of a Junker-led Prussian challenge to Austria's historic dominance in the region, there is little wonder why Metternich felt the need to consolidate Austria's position in 1814 by generating stability and encouraging the s*tatus quo* in European international relations.

This conscious socialisation of ideas for pragmatic reasons of state-interest is a notion explored by another social constructivist, Alexander Wendt.[21] In his *Social Theory of International Relations,* Wendt goes so far as to that the creation and socialisation of ideas of legitimacy are in large part the very essence of state power:

> *'[...] meaningful power is constituted in important part through the distribution of interests...[but] only a small part of what constitutes interests is actually material. The rest is ideational: schemas and deliberations that are in turn constituted by shared ideas or culture.*[22]

Wendt's abstract theory suggests that power rests in the ability of a state to generate the norms and values that allow behaviours that state sees as conducive to its best interests. As such, power does not necessarily stem from the ownership of military materiel but from the ability to socialise and habituate acceptable ways in which that materiel can be used. State-interests therefore become less concrete notions of territory and military might, but more the ability to generate and then sustain shared concepts of what is right. Power and legitimacy therefore become inseparable. Realists may still argue that this is fanciful, that states use material power when they need to in order to secure their material interests, yet a deeper empirical analysis shows that Wendt's theories have significant bearing in truth.

A concluding examination of the character of the Suez Crisis in 1956, aptly illustrates how power cannot be divorced from legitimacy. The crisis itself was the culmination of an almost personalised acrimony that had developed between British Prime Minister, Anthony Eden, and the Egyptian President, Gamal Abdel Nasser. After coming to power, Nasser had attempted to destabilise Iraq and Jordan that were at the time both allies of Britain in championing the Baghdad pact as an equivalent to NATO to provide security for the Middle East. Nasser then proceeded with an act of a dangerous duplicity by courting aid from Britain, the United States *and* the Soviet Union to finance the building of the Aswan Dam. These Nascent signals of Nasser's intent to align with the Soviets were cemented in western eyes when he accepted a deal to modernise the Egyptian military with Czech-supplied Russian equipment.[23]

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[21] Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999).

[22] Ibid, 114-115.

[23] Robert Self, *British Foreign and Defence Policy Since 1954* (London: Palgrave Macmillan, 2010), 42.

Tit-for-tat diplomatic reprisals then saw the United States and Britain withdraw promises of finance for the Aswan Dam followed by Nasser's nationalisation of the Suez Canal Company. This was a cut to the heart of British interests in the region; 44 per cent of the company was owned by the British government and yielded the UK treasury some £30 million in profit per annum.[24] Moreover, 28.3 per cent of all tonnage passing through the canal at that time was British.[25] Nasser's action, therefore, was construed as a direct threat to valuable British trade routes to the Far East as well as British oil-supplies from the Persian Gulf. Eden identified Nasser actions as tantamount to territorial aggrandizement and he even went so far as to describe him as a 'Pocket Hitler' and 'Moslem Mussolini' – in Eden's mind, Nasser was a direct threat to British national interests and he had to go.[26]

Yet Eden and his French counterparts understood that any action to effect regime change in Cairo was likely to be interpreted internationally in pejorative terms. It would be seen as a post-colonial power flexing its muscles wholly in discordance with the sentiment of the UN charter, at that point only a little over a decade old. So, in order to avoid being seen as a colonial Great Power wielding disproportionate force for cynical economic motives, the British and the French created a pretext for invasion. They attempted to legitimise their military intervention by having the Israeli's attack Egypt first and then, claiming that international peace and security was at risk, deploying their own troops along the canal to separate the would-be belligerents. Having taken back the territory in the vicinity of the canal, the expectation was that Egyptian affront would precipitate the popular overthrow of an emasculated Nasser who would be replaced by a leader more amenable to western interests.[27] In Robert Self's words, however, 'it is difficult to believe that the participants in this plot seriously imagined that this pathetically transparent pretext would deceive anyone for a moment.'[28]

Indeed, few were deceived and the intervention received almost universal opprobrium. Crucially, the Truman administration in Washington formed part of this opposition and orchestrated an American refusal to authorise loans to Britain from the International Monetary Fund, which in turn precipitated a run on the pound and the British loss of some 15 per cent of its total gold and dollar reserves.[29] A failure by the British Government to secure legitimacy for their actions from their superpower ally effectively crippled the British economy and, as such, was instrumental in the British withdrawal from Suez.[30] With this example in mind, we are forced to conclude that creating legitimacy for intervention in terms of rightful conduct recognised by the international society clearly

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[24] Wyllie, 26.

[25] Ibid.

[26] Self, 53.

[27] Ibid, 54.

[28] Ibid.

[29] Ibid, 39.

[30] See Joseph Frankel, *British Foreign Policy 1945-1973* (London: Oxford University Press, 1975), 85.

does matter - without it, states will find their freedom of action to intervene severely bounded, and their use of force may lack political utility.

But there is a further conclusion we can draw from our study of Suez regarding the utility of legitimacy. To do so, consider the reasons why the Truman Administration failed to accept the British action in Suez as legitimate but instead condemned Anthony Eden's use of force. The rather mundane answer is that 1956 was an election year in the United States and Eisenhower's mandate for re-election was as a 'man-of-peace' - he could hardly be seen countenancing acts of aggression by declining colonial powers.[31] Moreover, Truman, sensing the burgeoning need to achieve a degree of détente with Soviet Union or else risk nuclear confrontation, felt that support for an intervention in a nascent Soviet proxy was not in the United States' best interests. As such, by its actions, America asserted that the invasion of Suez was illegitimate and punished the perpetrators, not because the intervention in Suez breached international principles of non-intervention, but because it went against the grain of American public opinion and threatened to destabilise Washington's relations with Moscow. Truman employed concepts of legitimacy (or in this case illegitimacy), which were accepted as norms amongst international society, not to uphold any sense of global order but to forward his own electoral agenda and American security interests, whilst Eden's failure to secure international legitimacy correspondingly reduced his power to act; even within the realist paradigm that stresses state interest, the idea of legitimacy does appear to be linked to harder concepts of power and interest.

The Suez case study, and indeed the wider argument detailed in chapter one, should allow the reader to conclude that legitimacy does matter in the international system. There are structural incentives for states to act in legitimate ways in order to generate stability and security for themselves. Moreover, by purposefully creating and then sustaining new norms of legitimacy states can either create freedom to act in ways beneficial to their own well-being or constrain the harmful behaviour of other states. In effect, legitimacy has become a tool of power. Hence, even within the realist paradigm of international relations, there is room to consider why states would wish to behave in legitimate ways; if they did not, they would rob themselves of a framework with which to purposefully influence the behaviours of others. The ways in which statesmen attempt to gain legitimacy and shift perceptions in others regarding what is deemed to be legitimate, particularly with regard to the use of military force, is the subject of chapter two,

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[31] Wyllie, 35.

2. The Generation of Legitimacy for the use of Force

'Legitimizing principles triumph by being taken for granted'

Henry Kissinger, *A World Restored.*[32]

Nowhere is the need for legitimacy more necessary than in the use of force by one state against another. Armed intervention is an explicit challenge to the notions of sovereignty and the identity of the state upon which legitimacy is based. A state intervening in the affairs of another by means of force is fundamentally undermining notions of what it is to be a legitimate sovereign authority, and is therefore unsticking the glue that prevents international society from disintegrating into chaos. No state, therefore, should entertain the illegitimate use of force lightly. Statesmen must work hard to present their use of force as legitimate to the international community. How do they do this? Ian Clark suggests that discourse regarding legitimacy to use force becomes a composite of socially constructed legal and moral norms.[33] As we shall see, this creates a problem for generating a coherent argument for the legitimate use of force, for, as Clark asserts, moral and legal compunctions 'often 'pull' normatively in incompatible directions...' making a legitimate case for war difficult to achieve.[34] On one hand we have the apparent overarching inviolability of sovereign states legally codified in the UN charter, whilst on the other hand, challenging the legal primacy of non-intervention, are the developing norms of humanitarian interventionism where the rights of the individual trump those of the state. First, however, it is necessary to examine the evolution of moral and legal components of the legitimate use of force in order to understand how statesmen construct their legitimizing arguments.

Legal arguments regarding the legitimacy of force are now generally codified in the various articles of the UN Charter, which serves to constrain military intervention by enshrining the concept of sovereignty in international law. Article 2(4) of the Charter states:

> *'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.'*[35]

Importantly, this most basic prohibition on the use of force is recognised under the Vienna Convention (Article 53) as *jus cogens,* making it 'recognised by the international community of States as a whole as a norm from which no derogation is permitted.'[36] As such, Article 2(4) is the contemporary manifestation of the absolute inviolability of sovereignty by armed force that

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[32] Quoted in Finnemore, 2003, 85.

[33] Ian Clark, 207.

[34] Ibid, 20.

[35] UN Charter, Chapter I, Article 2(4), http://www.un.org/en/documents/charter/chapter1.shtml, accessed 1 April 2012.

[36] *Vienna Convention on Treaties Article 53*. 1969, 18. http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

Metternich and other statesmen had earlier hoped to habituate as an international norm in order to generate stability in the international system.

There are, however, two critical qualifications to Article 2(4). First, Article 51 of the Charter articulates the right of self-defence by any state:

> *'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations.*[37]

This right to self-defence was invoked most recently by the United States in response to the terrorist attacks of 9/11 and was used as justification for the invasion of Afghanistan to remove Taliban support to Al Quaeda. .

The second qualification to Article 2(4) is invoked when the 15-member Security Council decides that a state has taken an action that threatens international stability. When such an occasion occurs the Security Council is empowered to impose economic, political and military coercion against the aggressor state, and ultimately, under Article 42 of the Charter, may 'take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.'[38] During the Cold War, achieving agreement in the Security Council on when precisely a state threatened international peace and security, or when force was required in response, was rendered largely impossible as the ideologically divided, veto-wielding permanent members rarely achieved a consensus. As a result, the system of collective security and the use of UN sanctioned force were left in a state of paralysis until after the end of the Cold War. Once those ideological divisions were removed, the Security Council quickly utilised this newfound freedom and was successful in passing a UN Resolution to forcefully remove invading Iraqi forces from Kuwait in 1991.

These qualifications to Article 2(4) should not, however, distract us from the overarching sentiment of the UN Charter which is to restrict the circumstances under which states might find themselves with what they considered a legal mandate for the use of force. The UN, after all, was created in the aftermath of the Second World War with the express aim of saving 'succeeding generations from the scourge of war.'[39] The Charter's emphasis, then, has always been on limiting the chances of a return to the destructive capacity of modern warfare and not of creating opportunities to use it. In this respect, there is clear continuity with the Charter's antecedent, the Just War tradition.

Described by Alex Bellamy as a 'two-thousand-year-old conversation about the legitimacy of war... primarily concerned with restraining war,' the Just War tradition evolved from classical Roman-

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[37] UN Charter Chapter VII, Article 51. http://www.un.org/en/documents/charter/chapter7.shtml accessed 1 April 2012.

[38] UN Charter, Chapter VII, Article 42, http://www.un.org/en/documents/charter/chapter7.shtml accessed 1 Aril 2012.

[39] UN Charter, Preamble, http://www.un.org/en/documents/charter/preamble.shtml accessed 1 April 2012,

Greco and then Christian thought and attempted to reconcile the inherent evil of violent conflict and the taking of human life with the reality of the need to wage war against the perpetrators of aggression in order to achieve an agreeable peace.[40] Jurists like St Augustine of Hippo in the fifth century and Thomas Aquinas in the thirteenth century set down a number of pragmatic criteria appealing to concepts of *natural law,* their aim to articulate a universal set of moral values delineating the boundaries where recourse to the use of force could be considered ethically right or wrong.[41] Today, these criteria fall under the *jus ad bellum* (lit. the law towards war) branch of the Just War tradition.[42] Of the *jus ad bellum* criteria, the concepts of *Just Cause* and *Right Intention* are of particular relevance to contemporary moral arguments statesmen use to legitimise their decisions to use force. In their treatise on *Just War*, Charles Guthrie and Michael Quinlan characterise *Just Cause* as:

> *'a proper reason for going to war, such as protecting the innocent, restoring rights wrongfully denied, or re-establishing just order. Revenge, punishment for its own sake, or upholding a ruler's prestige will not do.'*[43]

Whilst *Right Intention* is described as:

> *'[aiming] to create a better, more just and more lasting subsequent peace than there would have been had we not gone to war... justice requires that we seek results that will be fair overall – that is, taking account the interests of others, not excluding those of the adversary's people.'*[44]

Clearly, we see in this characterisation of *Just Cause* in the roots of the UN Charter, *re-establishing just order,* for instance, reflects the *ad bellum* use of force under Article 42 to restore international peace and stability by force. However, there are some critical discontinuities between the moral arguments of the Just War tradition and extant international law. Guthrie and Quinlan's characterisation of *Just Cause*, for example, suggests any cause that protects the innocent might be considered legitimate, yet the UN charter now makes no such accommodation. The reason for this rests with the rising primacy of the nation-state over individual human rights in the formative years of international law in the eighteenth century.

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[40] Alex J. Bellamy, *Just Wars: From Cicero to Iraq* (Cambridge: Polity Press, 2006), 2.

[41] *Natural Law* is best characterized as the underlying moral principles of humanity that are not necessarily codified. *Positive Law* on the other hand is the man-made structure of codified principles, many of which (but not all) have their origins in elements of natural law. See Bellamy, 77-79.

[42] For a full description and history of the Just War tradition, see Bellamy, 2006.

[43] Charles Guthrie and Michael Quinlan, *Just War* (London: Bloomsbury, 2007), 12.

[44] Ibid, 12, 25-26.

This shift in focus from the morally grounded Just War tradition and concepts of universal natural law to a very state-centric system of international law is commonly attributed to the Enlightenment writings of Emmerich de Vattel. In his *Le Droit des gens* (1758) Vattel argued that all sovereign states were equal and their relations with one another rested on the reciprocal respect of this sovereignty.[45] For Vattel, this recognition of state sovereignty meant there could be only three legal causes of war: claiming rightful property, i.e. reclaiming lost sovereign territory to an aggressor; punishing an aggressor for threatening sovereignty in the first place; and self-defence.[46] The use of force for any other motive, territorial aggrandizement for example, would therefore breach reciprocal respect of sovereign rights and be deemed illegal and subject to punishment.

Certainly, not all of Vattel's rationales for the legal use of force would stand up to close-scrutiny in the eyes of international law today; however, Vattel's emphasis on the legal primacy of the sovereign state over any moral imperative protecting individuals within a state has endured. In chapter one, we encountered the efforts of Klemens von Metternich, whose attempts to create a stable *Concert of Europe* in the early nineteenth century are clearly underpinned by the legal primacy of state sovereignty articulated by Vattel some fifty years earlier. Similarly, the non-violability of states, apparently at almost any cost and enshrined in the UN Charter's article 2(4), also has its roots in Vattel's legal positivism.

This shift away from moral principles of the Just War tradition determining the rightful use of force, to be replaced by legal structures emphasising the primacy of the state over the individual has, however, been subject to continued and considerable criticism. Of the contemporary Just War theorists, Michael Walzer is perhaps the most prominent of those arguing the case for a return to moral rather than legal principles determining when force might be considered legitimate. Walzer describes how the conduct and outcome of the Vietnam War forced him to consider how realist arguments emphasising the primacy of state interests over any moral considerations were deeply flawed.[47] Walzer makes a case for how US failure in Vietnam was a function of the lack of a sound moral basis for American involvement, reasoning that crucial support for the war from the US domestic population was left in tatters because of the lack of moral authority for the war compounded by the perceived immoral conduct of American forces against the Vietnamese. [48] Similarly, the support of the Vietnamese population – critical in isolating and defeating the growing Vietminh insurgency – was lost through the lack of American attention to waging a moral war.[49] Walzer concludes his critique of a lack of moral consideration in Vietnam by suggesting that, 'justice had become a military necessity.'[50]

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[45] See Bellamy, 2006, 79

[46] Ibid, 80.

[47] Michael Walzer, *Arguing About War* (New Haven: Yale University Press, 2004) 5-15.

[48] Ibid, 10.

[49] Ibid, 8.

[50] Ibid, 9

It was the subsequent moral introspection and a mistrust of the prevailing realist paradigm in the aftermath of the Vietnam War (as well as the rise of counterinsurgency operations where moral conduct to win hearts and minds became *de rigueur*) that Walzer suggests was responsible for renewed interest in the principles of the Just War tradition.[51] The outcome of this renewed interest saw the reintroduction of what Peter Lee describes as the 'language of morality' into the practice of international relations.[52] Walzer himself made a significant contribution to this rediscovered language and the contemporary relevance of the Just War tradition, basing his own Just War theories on 'a doctrine of human rights.'[53] Yet Walzer's arguments extend beyond articulating that war should only be waged for humanitarian motives rather than state interest. Instead, he stressed that individual human rights of life and liberty were accessible only through membership of a political community (the state), and war could be justified only when it is fought to preserve the identity and function of that political community. Conversely, wars that threaten the identity of another state, and therefore undermine the right of those individuals belonging to that state of a life free of external interference, could never be just.

As such, and contrary to some interpretations of Walzer's theories, his was not an implicit abandonment of the principles of inviolability of sovereign borders and the promotion of humanitarian interventionism whenever human rights were breached by a state. Indeed, given his emphasis on the maintenance of the integrity of the state as the source of an individual's sense of identity within a society, Walzer was somewhat circumspect regarding the morality of any military intervention at all.[54] Instead, Walzer was attempting to use Just War principles to provide a moral argument for the sanctity of sovereignty and rightful authority rather than having to rely on the cynical realist, legal precedents of international law. However, the genocides of the late 20th century forced Walzer to reconsider his position on the intervention. Writing in 2004 he conceded:

> *'Faced with the sheer number of recent horrors – with massacre and ethnic cleansing in Bosnia and Kosovo [etc.]... I have slowly become more willing to call for intervention. I haven't dropped the presumption against intervention that I defended in my book, but I have found it easier and easier to over-ride that presumption.'*[55]

Walzer's gradual acceptance that humanitarian intervention is morally acceptable is perhaps an inevitable extension of his earlier arguments. Whilst his initial theses rested on the fact that states should remain sovereign because they upheld the individual human rights of its population, Walzer evolved his argument in the aftermath of humanitarian disasters perpetrated by states against their

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[51] Ibid, 5-7

[52] Lee, 57.

[53] Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 2006), xxiv.

[54] See Lee, 61.

[55] Walzer, *Arguing About War,* xxi-xxii.

own people by suggesting that states no longer held sovereign status if they stopped upholding those human rights. What is more, when states failed to protect the human rights of their population then the international community had not only the right but also the moral obligation to intervene and take action to protect the population at risk. This moral imperative to intervene in states failing to meet their responsibilities is the foundation of a developing acceptance in the international community that intervention can be legitimate on ethical if not legal grounds. This notion has been given institutional identity through the concept of 'Responsibility to Protect' (R2P).[56]

Established in 2001 by a UN mandated International Commission on Intervention and State Sovereignty, the R2P concept echoes Walzer's thoughts where sovereignty entails a responsibility by the state to refrain from committing a 'large scale loss of life... or 'ethnic cleansing.'[57] Subsequently, the concept of R2P permeated the UN's lexicon, apparently loosening the legal constraints of the UN Charter's fundamental commitment to non-intervention. The 2005 *UN World Summit Report* going so far as to say:

> *'The international community, through the United Nations, also has the responsibility... to help protect populations.*

> *'We [the UN] are prepared to take collective action... should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.'[58]*

We should, however, be cautious in interpreting the rise of R2P as an enlightened act of new humanitarianism by the UN. Instead, it should be seen as a reaction to new norms of ethical conduct by states, which were in danger of outpacing the UN's antiquated emphasis on international law in determining the legitimacy of intervention. Statesmen in western liberal democracies were already beginning to cast aside the UN's legal constraints on the use of force and were busy building moral arguments for intervention in the name of humanitarianism before R2P was conceived of. Nowhere was this more apparent than in the incipient liberal interventionism of British Prime Minister, Tony Blair.

Blair first set out his interventionist doctrine in his speech to the Economic Club in Chicago in April 1999.[59] One month into NATO's campaign of aerial bombardment in Kosovo, waged in order to

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[56] See Aidan Hehir, 'The Responsibility to Protect: 'Sound and Fury Signifying Nothing'?" *International Relations* 24, no.2 (2010), 218-239.

[57] International Commission on the Intervention and State Sovereignty, *The Responsibility to Protect* (Ottowa: International Development Research Centre, 2001), 32.

[58] "2005 World Summit Outcome" *United Nations General Assembly, Sixtieth Session, items 48 and 121 of the provisional agenda,* A/60/L.1, para. 139.

coerce President Slobodon Milosovic into ending Serbian oppression of Kosovar Albanians, Blair made his case for humanitarian intervention, stressing how moral imperatives to act outweighed the constraints of international law:

> *'This is a just war, based not on territorial ambitions but values. We cannot let the evil of ethnic cleansing stand. We must not rest until it is reversed...*

> *'the principle of non-interference must be qualified in important respects... when regimes are based on minority rule they lose legitimacy.'*[60]

Clearly, Blair's argument for waging war in Kosovo appealed more to concepts of the Just War tradition than to international legal norms. Blair takes pains to stress that NATO's action had both *Just Cause* (standing up to ethnic cleansing) and *Right Intention* (the humanitarian values and not territorial aggrandizement) and relied on these arguments to circumvent principles of non-intervention and legitimise NATO's campaign which was waged without specific UN authorisation.[61]

Notably, Blair's moral case for intervention was not a lone voice in the wilderness. Germany's new SPD-Green government under Gerhard Schroeder promptly voiced agreement with Blair's moral stance, with foreign minister Günther Verheugen asserting that, 'if Russia... uses its Security Council veto one could say this was an abuse of the veto and argue the primacy of halting the slaughter is greater than formal respect of international law.'[62] A later Independent International Commission on Kosovo (IICK) also found itself convinced by Blair's Just War arguments, stating that the NATO's intervention should be considered 'illegal but legitimate.'[63] However, the IICK also noted, 'allowing this gap between legality and legitimacy to persist is not healthy.'[64] In other words, the IICK recognized the ascendency of moral imperatives in determining the legitimacy of the use of force and this fundamentally undermined the UN Charter and International law's principles of non-intervention.[65]

This conclusion provided two dilemmas for the UN and the international community. The first was wider acceptance that norms governing the use of force were shifting from the legal articles laid down by the UN, and moving towards the moral responsibilities detailed in reinvigorated

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[59] Tony Blair, *Doctrine of the International Community speech at the Economic Club.* Chicago, 24 April 1999. Full text at http://www.guardian.co.uk/politics/2004/mar/05/iraq.iraq accessed 13 April 2012.

[60] Ibid.

[61] A UN resolution formally sanctioning the NATO operation (UNSCR 1139 / 1203) was put to the vote in the Security Council but was defeated by Russian and Chinese vetoes, despite achieving a majority of twelve votes to three in favour of passing the resolution. See Nicholas J. Wheeler, *Saving Strangers* (Oxford: Oxford University Press, 2000), 279-280.

[62] Quoted in Wheeler, 277.

[63] Independent International Commission on Kosovo, *Kosovo Report* (Oxford: Oxford University Press, 2002), 4.

[64] Ibid, 186.

[65] Hehir, 219.

interpretations of the Just War tradition espoused by liberal interventionist statesmen. The second was concomitant to this, where the UN understood that its Charter and structure at the time were unable to accommodate these changing norms of legitimacy; either the UN had to change its approach to reflect new social norms governing the legitimate use of force or it would find itself out of touch with reality and impotent. The UN's fear was that the Security Council, constrained by Article 2(4) and the primacy of non-intervention at almost all costs, would continue to find humanitarian interventions like that in Kosovo illegal, only for liberal interventionist statesmen to ignore any UN legal judgement and use force regardless, legitimising their actions to the international community by ethical reasoning instead. In effect, the power of the UN to constrain the use of force by member states was ebbing away; it was in danger of losing what credibility it had to maintain international stability.

In an attempt to reconcile the gap between legitimacy and legality, which intervention in Kosovo had thrown into sharp focus, the UN established the International Commission on Intervention and State Sovereignty (ICISS), the body responsible for creating the concept of R2P.[66] This context in which the ICISS created R2P might suggest, therefore, that the UN's subsequent adoption of moral imperatives as legitimate motives for intervention was not a self-generated attempt by the UN to create new international norms but a reaction to what was already considered legitimate conduct in the international community. In effect, R2P was a somewhat desperate attempt by the UN to provide evidence of its contemporary relevance and its resolve to remain the final arbiter of legitimacy.

The rise of R2P and attempts to accommodate new norms of humanitarian intervention, might, therefore, be considered a process of social constructivism that we encountered in chapter one. One might even go so far as to say that Tony Blair engaged in a process of *strategic social construction,* using the language of the Just War tradition to create the normative space in the international arena for action under the New-Labour Government's defining 'ethical foreign policy,' with Britain acting once more as a 'force for good in the world'.[67] The so-called *doctrine of the international community* that Blair articulated in his Chicago speech would indeed become the template for his interventionist approach throughout his premiership.[68] For Blair, intervention would be legitimate not necessarily when the UN said so, but when five criteria, guided by the Just War tradition, could all be met:

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[66] See John Kampfner, *Blair's Wars* (London: The Free Press, 2004), 51.

[67] Both these quotes are directly attributed to the office of Robin Cook, Tony Blair's foreign Minister from 1997 to 2003. See Kampfner, 15.

[68] Kampfner, 52-53. Lee, 18, 21.

> *'are we sure of our case?... have we exhausted all diplomatic options?... are there military operations we can sensibly and prudently undertake?... are we prepared for the long term?... do we have national interests involved?'*[69]

It was, however, the subsequent misapplication of these criteria for legitimizing British military action in Iraq that first threw doubts on the ascendency of morality over legality in determining the legitimacy of force in the 21st century.

Summarising this chapter, we have traced out how the legitimacy to use force has, over time, been a shifting balance of legal and moral arguments. Indeed, the legal determinants of force's legitimacy today are descended from classical moral concepts of what is considered right and wrong and have their roots in the Just War tradition. Overtime, however, there has been a divergence in legal and moral dimensions of legitimacy. The rise in the primacy of the sovereign state has prioritised legal principles such as non-intervention, but this has often been at the cost of individual human rights and any moral imperative to wage war. However, in the late 20th century we have seen a reinvigoration of moral arguments legitimising force, even at the expense of once dominant legal norms preventing intervention.

With this in mind, we now see statesmen use language borrowed from classical Just War concepts to legitimise the use of force. Indeed we even see supranational structures like the UN adopt this new language of legitimate moral and ethical intervention as they attempt to keep pace with developing international norms of state behaviour.   In this sense, we have seen a vindication of chapter one's arguments where states attempt to shape concepts of legitimacy to create acceptance for their actions and foreign policy in the international community.

 However, as chapter three argues, this new humanitarian approach to legitimising force has its foibles. Not only do humanitarian arguments limit the character and extent of military force that statesmen seek to legitimise, but also, when used disingenuously to create a façade of morality to facilitate potentially illegal and immoral uses of force, then humanitarian arguments become treated increasingly with suspicion to a point where their legitimising power becomes null.

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[69] These criteria were given to the Blair government as guidance regarding the legitimacy of intervention, by Professor Lawrence Freedman of Kings College London. See Lee, 21-22.

3. Legitimizing Arguments –
Their Effect on the Use of Force

'Do not be deceived: God is not mocked, for whatever one sows, so shall he reap'

<div align="right">

Galations 6:7

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In chapter one, we concluded that states, even when exercising realist calculations of power, must still operate within a rule-governed system, and any application of power becomes a function of playing by these rules, or at least being seen to. This bridging between realist theories of states acting selfishly and with little regard for international norms, and an approach where power may be considered contingent on conformity to socially agreed norms is exactly that proposed by Lawrence Freeman, who advocates an approach to international relations that embraces the theories of social constructivism mentioned earlier:

> *'The constructivist position stresses the importance of the interaction between the way we describe the world and act within it. This can represent a real advance on the tendency within the realist tradition to think of power as a measurable resource.'*[1]

Crucially, Freedman's premise suggests that the way force is legitimised has a direct effect on how that force is eventually used, i.e. that there is a connection between how we portray a situation in order to validate the use of force, and then how we then actually go about wielding that force. Instructively, such a contention would be wholly consistent with the landmark political writings of Quentin Skinner, whose theories provide a framework for understanding the link between how the use of force is legitimised and the subsequent character of that force.[2]

Skinner's initial premise is to claim that, 'any course of action is inhibited from occurring if it cannot be legitimated.'[3] Skinner was not, however, so naïve to assume that when statesmen wishing to use force for selfish state interests find themselves bereft of any legitimising argument that they let the matter lie. Instead, they might look to embellish any legal or moral argument to legitimise their use of force. However, Skinner concludes by suggesting such embellishment actually constrains the statesman's freedom to use force, noting that:

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[1] Lawrence Freedman, "The Future of Strategic Studies" in John Baylis, James J. Wurtz and Colin S. Gray (eds.), *Strategy in the Contemporary World* (3rd ed.) (Oxford: Oxford University Press, 2010), 401.

[2] See Kari Palonen, *Quentin Skinner: History, Politics, Rhetoric* (Cambridge: Polity Press, 2003).

[3] Quentin Skinner, "Analysis of Political Thought and Action," in James Tully (ed.) *Meaning and Context: Quentin Skinner And his Critics* (Cambridge: Polity Press, 1988), 117.

'even if the agent is not in fact motivated by any of the principles he professes, he will nevertheless be obliged to behave in such a way that his actions remain compatible with the claim that these principles genuinely motivated him.'[4]

The earlier case study of the use of force in Kosovo in 1999 is apposite in illustrating Skinner's point. You will remember that British involvement in the air operation (Operation Allied Force) was largely premised on the humanitarian imperative to act, articulated by Prime Minister Tony Blair. The same was true of American involvement in the operation, President Clinton commenting on the eve of the first bombing missions that Milosevic had previously 'committed genocide in the heart of Europe' against the Muslims of Bosnia and that a repeat of such atrocities in Kosovo could not be allowed since 'it's about our values.'[5] Yet Nicholas Wheeler in his *Saving Strangers* implies that there were other self-serving, strategic interests at the heart of the intervention in Kosovo.[6] Indeed, some of these somewhat cynical drivers for action in Kosovo are tucked into the rhetoric of the speeches of statesmen attempting to legitimise NATO's actions in the run-up to the first bombing missions. Robin Cook, for example, hints that Operation Allied Force was as much a visible reinforcement of NATO's credibility and intent to enforce stability on the fringes of Europe, as it was about humanitarian relief:

> '*Our confidence in our peace and security depends on the credibility of NATO... What possible credibility would NATO have the next time our security is challenged..? The consequences of NATO inaction would be far worse than the result of NATO inaction.*'[7]

This underlying intent to show NATO's continued relevance and capability is corroborated by then US Secretary of State, Madeline Albright, who stated after the operation, 'it showed the validity of the new mission for NATO.'[8] The intended audience for NATO's muscle flexing in Kosovo would most likely have been the new-guard in the Kremlin, intent as they were in 1999 of opposing NATO's eastwards expansion, as well as asserting their own resurgence as a great power capable of challenging the US and NATO's regional dominance.[9]

However, irrespective of whether the use of force was intended as a signal to a revanchist Russia or not, those NATO states intent on using force found it difficult to legitimise their actions as anything other than humanitarian intervention. Alex Bellamy describes the deep-seated concerns in France, Italy and Greece regarding the dubious legality of any use of force without a UN

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[4] Skinner, *Analysis of Political Thought and Action*, 116.

[5] Quoted in Wheeler, 266.

[6] Wheeler, 257-281.

[7] Robin Cook, "Statement by the Foreign Secretary to the House of Commons," *Hansard,* 25 March 1999.

[8] Madeline Albright, Interview 25 March 2009, available at http://www.youtube.com/watch?v=Osd-JyzvJns accessed 17 April 2012.

[9] See Wheeler, 262-263.

mandate, their governments favouring continued diplomacy instead.[10] Only when the US special envoy, Richard Holbrooke, presented the North Atlantic Council with evidence of the 'immediate humanitarian crisis' in Kosovo were these reluctant allies prepared to support military action.[11] However, by stressing the humanitarian rather than the strategic imperative to act, it became difficult for member states to convince their domestic populations that the objective was worth putting the lives of their soldiers at risk for. Many NATO states recognised that there was little political capital to be had by risking the lives of their troops to save strangers in the Balkans for no tangible national-strategic benefit.[12] Indeed, President Clinton acknowledged that, having labelled the mission in Kosovo in altruistic, humanitarian terms, it would be untenable to put US servicemen in harm's way, stating form the outset 'I do not intend to put troops in Kosovo to fight a war.'[13] As a result, military intervention in Kosovo was limited to a relatively risk-free air campaign with NATO aircraft operating above 15,000 feet to avoid being shot-down.

It is, however, questionable whether such a limited use of military means could ever have served the humanitarian ends upon which the use of force was premised or the underlying strategic aims that western statesmen hoped to fulfil. Ken Booth accepts that the air operation played its part in eventually coercing Milosevic to accept NATO's terms, but only after the Serbs had intensified their violent repression of the Kosovar Albanians, NATO's bombing creating 'the cover of war for the ethnic cleansers... inflaming the latter's desire to extract revenge against the defenceless Albanians they despised.'[14] The discovery of freshly covered mass-graves by the NATO-led International Kosovo Force (KFOR) in June 1999 suggests that Booth was correct - air power had proved ineffective in averting the immediate humanitarian disaster, and may in fact have aggravated it.[15] The air operation proved remarkably indecisive and forced Milosevic to the negotiating table only after 78-days of bombing. Even then Serbian capitulation was achieved only once NATO had reversed its policy and made threats of a ground invasion, and once Moscow had withdrawn diplomatic support for Belgrade.[16]

In sum, the use of force in Kosovo was a failure on several levels. It proved to be ineffective as a signal of NATO's ability to enforce peace and security on its borders because, having labelled the mission as 'humanitarian', the force employed was both limited and indecisive. That NATO, with all its military power, was unable to coerce the relatively weak state of Serbia into capitulating until after Moscow withdrew its support, did little for NATO's credibility. Moreover, NATO's aversion to combat casualties and the consequent constraint of the force used meant that that NATO failed in averting the humanitarian disaster that was the legitimizing imperative to act in the first place. In

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[10] Bellamy, 216.

[11] Ibid.

[12] Wheeler, 284.

[13] Quoted in Bellamy, 217.

[14] Ken Booth, quoted in Wheeler, 269.

[15] Wheeler, 270.

[16] Ibid.

this respect, NATO found to their detriment that the words of Quentin Skinner mentioned earlier rang true: an actor may indeed be constrained by the principles used to legitimise an action, irrespective of any underlying motivations.

The use of humanitarian and moral arguments as a pretext to legitimise force for more selfish interests has, therefore a limiting effect on the use of force. But there are circumstances when statesmen use moral arguments to legitimise their use of force but then subsequently fail to limit that force to ways and means consistent with those original moral objectives. Arguably, Prime Minister Tony Blair stands accused of precisely this in his justification for the use of force in Iraq in 2003. In a damning critique of Blair's arguments for war in Iraq, Peter Lee argues that his underlying motivation was to support the United States at almost any cost, and this meant supporting the American strategic aim of effecting regime change even when the moral legitimacy and legality of such an action was fundamentally lacking.[17]

For President Bush and his coterie of neoconservative advisors, the legitimacy of military action in Iraq was largely uncontested. Even the merest hint of a link between Saddam Hussein's regime and Al Qaeda when viewed, as US Secretary for Defence Donald Rumsfeld put it, 'through the prism of our experience on September 11th' was sufficient to justify unilateral action with the explicit aim of removing Saddam from power.[18] Privately, Blair agreed, writing in memoirs afterwards that 'essentially I agreed with their [the US government's] basic thrust: Saddam was a threat... the world, not to say Iraq would be better off with him out of power.'[19] Yet publicly and certainly amongst Blair's cabinet and the electorate at large, blindly supporting the US and deposing Saddam without any substantiating evidence of the threat he posed was an insufficiently *just cause* to take the country to war.[20]

Blair was therefore left with a dilemma. As an ally, he wished to stand shoulder-to-shoulder with the United States, yet his commitment to the moral framework of Just War mentioned in chapter two, and the need to have a legitimate *casus belli* meant that he could not publicly adopt as policy the US intention of regime change. Blair's Attorney General had already advised him in July 2002 that regime change was wholly inconsistent with international law,[21] whilst contemporary Just War theorist Michael Walzer also stressed that regime change should be considered morally reprehensible.[22] It seems Blair accepted these moral and legal prescriptions on his case for war, stating in his memoirs that, 'I knew regime change could not be our policy.'[23] But still, his private commitment to depose Saddam apparently remained strong, only now, in order to wage a just and

[17] See Lee, 95-114.

[18] Donald Rumsfeld, speech to the United States Senate Armed Forces Committee, 9 July 2003.

[19] Tony Blair, *A Journey* (London: Hutchinson, 2010), 412.

[20] Lee, 110-111.

[21] See letter from Lord Goldsmith to Tony Blair advising on the illegality of regime change,12 February 2003. Submitted in evidence to the Iraq Inquiry, http://www.iraqinquiry.org.uk/media/46490/Goldsmith-draft-advice-12February2003.pdf, accessed 1 May 2012.

[22] Walzer, 2006, xiii.

[23] Blair, 2010, 400.

legitimate war, he would have to either demonstrate that Saddam's regime represented an imminent threat to UK interests and take action in self-defence under Article 51, or he would have to appeal to new concepts of R2P and demonstrate a humanitarian imperative to act, circumventing international law but providing sufficient cause to act just as he had in Kosovo. As such, Blair might privately retain the intention of deposing Saddam and supporting the US strategic goal, however, he would have to publicly present a quite different *casus belli* in order to generate legitimacy - there would have to be a pretext for war.

Initial efforts to legitimise action focussed on the threat from Iraqi WMD. If the existence and imminence of such a threat could be proven then Blair would have both moral and legal grounds for intervention under Articles 51 (Self Defence) and 39 (preservation of international peace and security) of the UN Charter. Unfortunately for Blair, his efforts to portray Iraq under Saddam as an imminent threat were implausible from the start.[24] In the summer of 2002, the British Security Service assessed the Iraqi WMD program as 'very limited and containable'[25] and led the Attorney General to conclude that there could be no legal case for preventive action in self-defence under Article 51.[26] The subsequent embellishment of the Iraqi threat in the infamous September 2002 dossier served only to undermine the credibility of the Blair government's attempt to legitimise intervention as a legal action taken in self-defence.[27]

As the weakness of the legal case became apparent and a UN resolution authorising force became increasingly unlikely, Blair refocused his legitimising argument on the humanitarian imperative to act, again as he had done in Kosovo. In December 2002, a timely Foreign Office document entitled 'Saddam Hussein: Crimes and Human Rights Abuses' was published, highlighting previous atrocities perpetrated against the Iraqi population by Saddam's regime.[28] In the introduction to the document, Blair explicitly makes the case for humanitarian intervention, arguing, 'We want the people to be free to live fulfilling lives without the oppression and terror of Saddam.'[29] Similarly, in his response to the anti-war demonstrations in London, Blair insisted, 'Ridding the world of Saddam would be an act of humanity. It is leaving him there that is in truth inhumane.'[30]

However, Blair's moral argument was perceived as little more than a manipulative attempt to bolster what was already a dubious case for war. Amnesty International, for example, were somewhat suspicious of Blair's humanitarian motives, believing the timely focus on what were

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[24] See Kampfner 191-220 and Lee 35-55 for a detailed narrative of how Blair attempted and failed to gain a second UN resolution explicitly authorizing force to counter any threat from Iraqi WMD.

[25] Elizabeth L. Manningham-Buller, (Deputy Director of MI5, 2003), evidence to the Iraq Inquiry, 20 July 2010.

[26] Peter Goldsmith (Attorney General, 2002-2007), evidence to the Iraq Inquiry, 27 January 2010.

[27] The September 2002 Dossier implied that Saddam was capable of launching an attack within 45 minutes' notice, using WMD, against western states and their allies in the Middle East. The intelligence that contributed to this assessment is now believed to have been uncorroborated and the implied threat embellished to appear more imminent and severe. See Lee, 35, and Richard Dearlove, evidence to the Hutton Inquiry, 15 September 2003.

[28] Foreign and Commonwealth Office, *Saddam Hussein: Crimes and Human Rights Abuses* (London: BfS, 2002).

[29] Ibid, 3.

[30] Quoted in Bellamy, 220.

long-standing abuses of human rights in Iraq to be little more than a cynical attempt to strengthen Blair's ethical argument.[31]   Similarly, government mandarins in Whitehall were circumspect of the Government's sudden moral stance in Iraq, one official describing the FCO's December document as a 'shoddy piece of work, reliant on old material'.[32]   Considering that a 1999 government report placed Iraq outside the top-ten human rights abusers, suspicion regarding the sudden need to act to avert a humanitarian disaster in Iraq is entirely understandable.[33]   Alex Bellamy agrees, concluding that, 'whatever else the Iraqi regime was guilty of, it was not guilty of mass killing and ethnic cleansing at the beginning of 2003.'[34]

By using a somewhat implausible legal and then moral pretext for war, Blair's attempts to portray military action in Iraq as legitimate were dealt a fatal blow. Irrespective of whether Blair's intentions were motivated by a deeper moral conviction that getting rid of Saddam was right, by embellishing details of the Iraqi threat and by using emotive moral arguments selectively to make a legitimate case for war, he found that he achieved quite the opposite. He found himself accused, as Peter Lee suggests, of using some form of 'moral sleight of hand... as he wove ideas into his justification for war when he could neither meet the strict demands of current just war doctrine or international law.'[35]

This desperation of Blair and his advisors to take the UK to war, and the transparency of the pretexts forwarded to justify their use of military force proved to be too much to bear for some in government. Foreign Secretary, Robin Cook, for example, found himself unable to support what he called Blair's 'military adventure'.[36] In his damning resignation speech Cook articulated many of the international political consequences incurred through the unpropitious use of moral arguments for war:

> *'Tonight the international partnerships most important to us are weakened: the European Union is divided; the Security Council is in stalemate. Those are heavy casualties of a war in which a shot has yet to be fired.*
>
> *'The reality is that Britain is being asked to embark on a war without agreement in any of the international bodies of which we are a leading partner – not NATO, not the European Union and, now, not the Security Council... To end up in such a diplomatic weakness is a serious reverse.'[37]*

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[31] Kampfner, 225.

[32] Quoted Ibid.

[33] "Another Horrific Year Ends Century of Blood," *The Observer,* 24 October 1999.

[34] Bellamy 221.

[35] Lee, 5.

[36] Robin Cook, "Resignation speech to the House of Commons," *Hansard,* 18 March 2003.

[37] Ibid.

As such, Cook suggested that the mendacious way in which the use of force in Iraq was legitimised engendered a degree of mistrust in the international community regarding the underlying motives of liberal interventionism.

The way in which the government apparently attempted to embellish the truth in order to justify the war also had consequences for Blair's domestic political standing. A YouGov poll in March 2003 showed that nearly 60 per cent of those questioned believed Blair had misled parliament, many of those believing he had done so deliberately. [38] This mistrust was undoubtedly amplified by the conduct of the intervention in Iraq and the chaotic aftermath; for all the legitimizing arguments that emphasised alleviating the Iraqi people of their humanitarian suffering, once the conflict had been embarked upon the focus appeared to have been solely on removing Saddam from power and little else beyond that. The desultory nature of the subsequent plan to provide a stable state for the people of Iraq after the fall of Saddam simply adds to the contention that the war was fought with only a thin veneer of moral justification to hide the *realpolitik* belligerency of regime change.

However, following the achievement of the war's principle aim - regime change - the realisation by western politicians that an *ad hoc* plan for the post-war reconstruction of Iraq would be required serves to demonstrate another consequence of the use of ethical arguments to justify war. By portraying the invasion of Iraq in terms of ethical liberal interventionism, the United States and the UK were committed to achieving the goals that such a liberal approach entails. By legitimising the use of force to first alleviate human suffering, and then to bring peace and stability to Iraq, Bush and Blair found themselves encumbered with the task of achieving these goals or being seen to fail. Irrespective of whether their only goal was regime change, they were required to stay the course and endure a long and costly rebuilding of the Iraqi state.

This contention is an adaptation of William Martel's thesis in his *Victory in War.* In this, Martel states that the public perception of victory in Iraq would be based not on any underlying strategic goal of regime change, but on how the outcome reconciled the stated purpose of waging the war in the first place.[39] Considering the words of President Bush, the bar for victory was set incredibly high:

> *'Victory is for Iraq to be a democracy that can sustain itself and govern itself and defend itself... a country that will serve as a powerful example of liberty and freedom in a part of the world that is desperate for liberty and freedom.'*[40]

As such, simply declaring victory and withdrawing after the fall of Saddam was not an option; the post-conflict moral obligations of liberal interventionism ensured that western forces could not be

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[38] www.yougov.co.uk/extranets/ygarchives/content /pdf/trackerIraqtrends_060403.pdf

[39] William C. Martel. *Victory in War* (New York: Cambridge University Press, 2007), 258-259.

[40] President George W. Bush, 1 February 2006, Quoted in Martell, 259.

seen to quit Iraq until the humanitarian situation there was returned to at least the level of that whilst Saddam was in charge and preferably much better.

Unfortunately, the various processes of *de-ba'athification,* combined with the influx of al-Qaeda and Shia extremists into Baghdad and Basra precipitated a bloody civil war that threatened the peace and security of the Iraqi population to a greater extent than during the last decade of Saddam's rule. As in Kosovo, what was proposed as an ethical intervention for the good of an oppressed population actually aggravated the humanitarian situation, this time leaving the liberal interventionists with the responsibility to leave Iraq a better place or be seen to fail. For the UK, that responsibility cost 179 servicemen their lives, left another 222 with debilitating injuries,[41] whilst the burden on the British exchequer amounted to some £8 billion.[42] As such, using the language of ethical, liberal interventionism may appear to be a convenient framework with which to justify force, but its usage comes at a heavy price.

In this chapter we have seen the limitations placed on the use of force when humanitarian motives are used to justify it. Moral imperatives to act, rather than realist motives of security and power, may be easier to justify today but they limit the degree and character of force employed by any intervening state. Recent *wars of choice* premised on ethical interventionism bear witness to how governments find themselves limited to the use of force consistent with those ethical aims irrespective of whether there are deeper strategic motives statesmen might otherwise hope to achieve. Alternatively, when statesmen are seen to embellish facts to make an ethical case for war but then use military ways and means for *realpolitik* ends of state self-interest, then any subsequent case for war made on humanitarian grounds becomes treated with suspicion in the international community.   It is this suspicion and its implication for the future use of force in interventionist foreign policies that the final chapter turns to.

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[41] www.casualty-monitor.org/p/iraq.html accessed 16 April 2012.

[42] Gordon Brown, evidence to the Iraq Inquiry, 5 March 2010.

4. Morality and Legality -
Legitimacy for the Use of Force in the Future

Reflecting on the apparent mendacity of statesmen making the case for war in 2003, Alex Bellamy concludes pessimistically that, the way the war in Iraq was justified 'is likely to make it harder in future to forge Security Council consensus about humanitarian intervention in all but the worst of cases because many states will be highly sceptical about humanitarian claims levelled by western governments.'[1]   Have subsequent interventions justified in humanitarian terms borne this scepticism out? Largely, yes.

Perhaps most instructive in this regard was the recent use of force by NATO in Libya. Consider the words of British Prime Minister, David Cameron, in his speech to Parliament setting out his justification for military intervention:

> *'Intervening in another country's affairs should not be undertaken save in quite exceptional circumstances. That is why we have always been clear that preparing for eventualities that might include force... would require three steps and three tests to be met: demonstrable need, regional support and a clear legal basis.'*[2]

Unlike Tony Blair's criteria for just liberal intervention, where legal principles could be circumvented by strong moral arguments, Cameron makes both legality *and* demonstrable moral necessity essential requirements for intervention in this case.

This higher burden of proof for legitimacy was met in the case of Libya.[3] Cameron and other western leaders were able to establish a demonstrable humanitarian need to intervene. In contrast to the humanitarian case for intervention in Iraq, the Libyan situation appeared to be an unconvertible humanitarian disaster unfolding on our television screens and in our newspapers.[4] Certainly the UN was convinced and used justification under the Responsibility to Protect as a legal mandate for force, UN Resolution 1973 reiterating 'the responsibility of the Libyan authorities to protect the Libyan population' and subsequently authorising 'Member states ... to take all necessary measures... to protect civilians and civilian populated areas under attack...'[5]

Additionally, Cameron went the extra mile and was transparent in seeking and then publishing the Attorney General's judgement, which stated, 'there is a clear and unequivocal legal basis for the

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[1] Bellamy, 221.

[2] David Cameron, "Report on UN Security Council (Libya) to the House of Commons," *Hansard,* 18 March 2011.

[3] Cameron's other criterion for intervention – regional support – was satisfied in the Libyan case by the Arab League's call for intervention. See Bruce D. Jones, "Libya and the Responsibilities of Power," *Survival* 53, no.5 (2011), 54.

[4] E.g. "Libya Crisis: UK in Talks over 'Dire Humanitarian Need'," *BBC,* 17 April 2011.

[5] UN Security Council Resolution 1973, S/RES/1973, 17 March 2011.

deployment of UK forces and military assets.'[6]   Clearly, Cameron appreciated that, as a consequence of mistakes made in justifying the war in Iraq, the bar had been set high for legitimising the use force in Libya. Cameron, therefore, was overt in his efforts not to repeat those same mistakes, and he was right to do so since international consensus in authorising force in Libya was by no means assured.

Despite the moral imperative to act quickly, there were those on the UN Security Council who remained nervous authorising a forceful intervention in Libya by powerful western states. Indeed, Resolution 1973 was passed with only ten votes in favour and five abstentions, and then only with significant lobbying to gain South Africa's support and achieve a bare majority. The difficulty in achieving support for Resolution 1973 illustrates that scepticism regarding the use of force for humanitarian intervention remains in the minds of statesmen today.[7] With such scepticism in mind, the conduct of the intervention in Libya would be under close scrutiny to ensure it stood up to its humanitarian credentials. It is doubtful, however, that it did.

The fundamental debate, once again rested on regime change. Nowhere in the case presented to Parliament by David Cameron was there any mention of deposing Libya's leader, Colonel Gaddafi. Indeed, in response to a question regarding his broader objectives for Libya, the Prime Minister emphasised the limited scope of the intervention, stressing that:

> *'...we have to be clear about our aims. The UN Security Council Resolution is absolutely clear that this is about saving lives and protecting people. It is not about choosing the Government of Libya...'*[8]

British military objectives initially seemed to reflect this. When questioned on the possibility that Gaddafi had been deliberately targeted in the early days of the campaign, British Chief of Defence Staff, General Sir David Richards, was adamant this was not the case, reminding journalists that, '[targeting Gaddafi] is not allowed under the UN resolution.'[9] Objectives quickly changed, however, and British Defence Secretary, Liam Fox, went on to countermand his Defence Chief, suggesting instead that targeting Gaddafi 'would potentially be a possibility.'[10]

It is unlikely that removing Gaddafi from power was the British objective from the start. The considered manner in which David Cameron helped bring about a legal mandate and created a sound humanitarian basis for the use of force suggest that he had indeed learned the lessons of Iraq in 2003. Entering into a war with the aim of effecting regime change under an ethical umbrella would have been inconsistent with Cameron's attempts to separate himself from Blair's clumsy

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[6] David Cameron, "Report on UN Security Council (Libya) to the House of Commons," *Hansard* 18 March 2011.

[7] Jones, 51.

[8] David Cameron, "Report on UN Security Council (Libya) to the House of Commons," *Hansard, 18* March 2011.

[9] "Libya: Ministers Contradict Chief of the Defence Staff over the legality of targeted strike on Col. Gaddafi," *The Telegraph,* 21 March 2011.

[10] "Liam Fox says targeting Gaddafi 'would potentially be a possibility'." *The BBC,* 21 March 2011.

misuse of force in 2003. Only when the opportunity to remove Gaddafi from power arose as the air and proxy ground campaign progressed did the objective of regime change tempt the British government.

Thereafter, despite British efforts to portray Gaddafi as a legitimate target, fears of regime change under a humanitarian pretext once again entered the minds of those doubters in the international community. The Secretary General of the Arab League gave voice to these concerns, saying that, 'What is happening in Libya differs from the aim of imposing a no-fly zone, and what we want is the protection of civilians...'[11] Perhaps more damning from a perspective of international legitimacy were the comments of the Russian Foreign Ministry Spokesman, Alexander Lukashevik, who described the shift from humanitarian objectives to the targeting of Gaddafi as an 'indiscriminate use of force' and called for an immediate end to the intervention.[12]

We might therefore describe the intervention in Libya as a lost opportunity. Had those states involved remained true in word and deed to the alleviation of what was a real humanitarian disaster then the legitimacy of the intervention would have remained intact. Indeed, the legal enforcement by force of the R2P concept appeared to signal that legal and moral norms had been brought into convergence in the international community; Libya could have been a paragon of legitimacy for ethical intervention in the 21st century. Instead, by using force in ways inconsistent with initial humanitarian arguments deployed to justify the intervention, the legitimate use of military intervention was put into crisis one again.

Nowhere was this crisis more in evidence than in Russian and Chinese intransigence blocking action to alleviate the humanitarian crisis in Syria. Having voiced concerns over the use of force in Libya and then only seeing fit to abstain in the vote to authorise the use of force, Russian and Chinese fears of western force being used to effect regime change in Libya were seen to come to fruition. As such, they would not repeat the mistake twice, choosing to veto the UN Resolution condemning Bashar al-Assad's violently oppressive regime.[13] Russian Foreign Minister, Sergei Lavrov, explained Moscow's fears, saying, 'hasty demands for regime change [are] risky recipes of geopolitical engineering.'[14] Perhaps Russia's failure to entertain any form of action in Syria is tainted by historical ties with the Syrian regime, as well as the need to protect its arms sales to Damascus, but China's opposition is a little more inexplicable and certainly less *realpolitik*. By stating that, 'China is against international interference in internal affairs in the name of humanitarianism...' China's ambassador to the UN, Li Baodong clearly articulated a renewed international suspicion in the legitimacy of humanitarian arguments as justification for the use of force.[15]

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[11] "Colonel Gaddafi a 'legitimate target' says Defence Secretary Liam Fox as bombers smash tyrant's forces," *The Mirror,* 21 March 2011.

[12] Ibid.

[13] "Anger after Russia, China block U.N. action on Syria," *Reuters,* 5 February 2012.

[14] "Russia and China block British attempts at UN to end Syria bloodshed," *The Telegraph,* 12 March 2012.

[15] Ibid.

This chapter has attempted to show how the credibility of moral arguments deployed to legitimise the use of force since Kosovo in 1999 has gradually eroded to the point where moral legitimacy in isolation is redundant. To legitimise intervention as a tool of foreign policy, states can no longer appeal to ethical concepts of humanitarianism alone because these concepts were misused to justify force in Iraq, Libya and elsewhere. Now, once again, states need make a legal case under the UN Charter for forceful intervention. The example of Syria, however, shows that the familiar Cold War intransigence of the Security Council to authorise force has returned, meaning that gaining legal consent for the use of force, even in desperate humanitarian situations, has seemingly become an almost impossible task.

Conclusion

The narrative theme that this dissertation has consistently held, explicitly in chapter one and then implicitly thereafter, is that legitimacy matters when it comes to the use of force as a tool of state policy. We saw in chapters one and two how processes of social construction have worked to produce a legal and moral framework determining the legitimate use of force in the international system. As such, the legitimacy of the use of force has been an evolutionary process where new norms have grown and gradually accepted as the rules governing state behaviour.

Two fundamental reasons why states should chose to be governed by the constraints of what it is to be legitimate were posited. Firstly, a structural argument suggested that states would wish to cohabit in an international system governed by rules and norms since such a system would tend towards stability and predictability, alleviating the security dilemma for any state irrespective of its relative power. Secondly, we developed a nuanced realist perspective where state interests and security are in fact bound-up in concepts of legitimacy. This perspective saw statesmen purposefully socialise and maintain norms and rules that best served their own state's interests rather than necessarily benefit the international system as a whole. In truth, the concept of legitimacy in the international system is probably governed by both processes working together; statesmen look to legitimise behaviours borne of an underlying selfishness, then overtime, assuming the strength of legitimising argument is strong enough, that behaviour becomes normalised and precipitates a degree of behavioural predictability in the system as a whole.

Regarding the use of force, we saw how legitimacy has shifted largely from moral arguments of the Just War tradition, through to legal positivism reflected in the primacy of inviolability of sovereign states, and then back again to the morality of liberal interventionism underpinned by a reinvigorated interpretation of the Just War tradition. This evolution has, however, created a normative discrepancy in the use of force. Towards the end of the 20th century we saw humanitarian situations develop in which intervention by force was simultaneously morally appropriate but technically illegal. International law and the principle of non-intervention (enshrined in the UN Charter to generate stability in the aftermath of the Second World War) had seemingly reached their limit and legitimacy became a product solely of ethical arguments for action.

But interventions like Kosovo revealed some important aspects for the use of force justified in humanitarian terms. Firstly, we saw that the use of force is generally more constrained in humanitarian interventions than that in more belligerent interventions aimed at serving selfish strategic interests. Committing national resources for an intervention that an electorate struggles to relate to national interests becomes difficult for statesmen to justify, hence humanitarian interventions do not often receive the levels of force required to be successful.

This in itself creates a dilemma for statesmen. We have seen that the belligerent use of force, beyond that required for either self-defence or to preserve international peace and security, is illegal under the UN Charter and remains likely to receive condemnation within the international community, yet states might still wish to employ such interventionist force for their own interests, just as Anthony Eden did in Suez. This being the case, statesmen have increasingly looked to justify their recourse to use force in humanitarian terms although they hoped to serve their state-interests in any eventual military intervention. But, as in Kosovo, there is a flaw in this logic. As we have previously mentioned, force used in humanitarian interventions is often limited and incapable of achieving humanitarian aims, let alone any grander motivations of state-interest. Statesmen can then either chose to limit their use of force and risk failing in their immediate strategic objectives, or chose to ignore their legitimising humanitarian argument and use force in a belligerent manner consistent with achieving underlying strategic goals.

The dissertation's contention is that this latter scenario was the situation in Iraq in 2003, and then subsequently in Libya in 2011. In both these cases, force was premised on a humanitarian necessity to act, only for the character of the conflict to shift away from the humanitarian objective to the strategic imperative of regime change. By doing this, the use of force underpinned by moral and ethical rationales to act has encountered a crisis of legitimacy. The mendacity of ethical pretexts used to justify the use of force that would otherwise be seen as illegitimate and illegal has created suspicion in the minds of the international community regarding the use of humanitarian motives to justify intervention in the future. Reluctance in the UN Security Council by the Chinese and others to entertain a Resolution condemning the actions of the al-Assad regime in Syria (let alone its forceful removal by military intervention) suggests that, even on the face of an impending humanitarian disaster, any attempt by an interventionist state to take action on moral grounds will be vetoed.

What the situation regarding the use of force is Syria also suggests is that the legitimizing force of humanitarianism simply is no longer sufficient to make the case for intervention, even if there is little or no dispute regarding any humanitarian imperative to act. It seems that the loss of face in Iraq served to ensure that military intervention, as a tool of foreign policy, would likely be wielded only with a UN mandate in the future. Libya vindicated this assertion as the statesmen involved strived for UN authorisation to legitimise their humanitarian case. Subsequently, however, the conduct of intervening forces in Libya tightened the legal strictures on the use of force even further. All this suggests that the West's brief experiment in ethical, liberal interventionism, heralded by the action in Kosovo, has seemingly been brought to an end. Instead, we will see a return to Cold War era intransigence in the UN and an overarching reluctance to authorise force without due legal process. As unethical and immoral as this may be, it is perhaps, a natural consequence of liberal interventionists' attempts to make the legitimate rules of the game up as they went, creating uncertainty in the international community as to 'who would be next' on the list of states 'selected' for humanitarian intervention.

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