UN Authority and the Morality of Force

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The widening access by non-state actors to more powerful weapons, the rise of humanitarian military intervention in failing states, and the respect accorded to supranational institutions, notably the UN, are challenging the international political system and the traditional notions of legitimate authority on which it is based. Over the past decade there has been a growing tendency to argue that a state’s use of force internationally is only lawful when sanctioned by the UN. Exceptions are made for self-defence, but such a principle, if stringently applied, would mean that, for example, the NATO intervention in Kosovo in 1999 was illegal. Likewise, the actions of any ‘coalition of the willing’ that might have formed to intervene in Rwanda in 1994 would also have been seen as illegal if they lacked UN sanction.

Events such as the US-led invasion of Iraq in 2003 and the recent ‘non-war’ fought by outside actors in the skies over Libya especially challenge Just War understandings of legitimacy. In 2003 many claimed that only the UN had the legitimate authority to declare war in the twenty-first century, and thus the coalition’s activities in Iraq were illegal (not to mention immoral) in the absence of a ‘second UN resolution’. In the Libyan case, in order to avoid similar criticisms, Washington and London have been at pains to argue that the actions of their militaries, including air-strikes, do not constitute a war, but merely a humanitarian intervention sanctioned by the UN.

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Such arguments are novel. They imply that states are no longer ultimately responsible for international security, but rather that such authority resides solely with the UN. This is not simply a practical political argument; it is one with moral content. The idea that a supranational entity should be the guarantor of world peace is not new (plans for ‘perpetual peace’ and world government have been mooted before), but the current debate has gone farther than has historically been the case, foreshadowing a radical shift in sovereignty and moral responsibility away from states towards centralised governance. In light of this shift, a closer examination of the basis of the UN’s authority to legitimise war, as well as a clear assessment of the theoretical challenge that such a shift poses to Just War thinking, is needed.

Authority and moral responsibility
For nearly 2,000 years, the Just War tradition has provided answers to two critical questions: where does the authority to go to war come from, and what ethical responsibilities accompany the decision to go to war? According to Just War thinking, ‘legitimate authorities’ have a moral responsibility (‘just cause’) to defend and promote the security of those entrusted to their care. Augustine of Hippo, a Roman theologian living in North Africa in 354–430 CE, wrote: ‘true religion looks upon as peaceful those wars that are waged not for motives of aggrandizement, or cruelty, but with the object of securing peace, of punishing evil-doers, and of uplifting the good’. Theologian Oliver O’Donovan comments that Augustine’s analysis suggests ‘defensive, reparative, and punitive objectives’ of the decision to go to war. For Augustine, self-defence, punishment and the righting of wrongs were manifestations of caritas, or love of one’s neighbour. Modern Just War scholars continue to operate from such principles. For example, Jean Bethke Elshtain’s concept of ‘equal regard’ for other human beings as a justification for humanitarian intervention clearly has strong roots in the caritas tradition.

Thomas Aquinas (1225–1274 CE), the great Scholastic expositor of Augustine’s views, provided a more detailed account by arguing that a war was just when it met three requirements: sovereign authority, just cause and right intent. It is noteworthy that sovereign authority was Aquinas’s primary concern in assessing the nature of a war, reflecting his view that
most violence was criminal and lawless and that the fundamental purpose of the state was to provide a counterpoise to lawlessness. Thus, force could only be legitimately exercised by the rightful authorities in order to promote security.

In the centuries that followed Aquinas, the way in which political authorities fought their wars (jus in bello) became a major focus, resulting in the more precise articulation of the principles of discrimination (non-combatant immunity) and proportionality.\(^5\) This was an important development because it cemented the moral nature of political authorities’ responsibilities: their ethical obligation to restrain violence and to champion international security. Eventually, Just War theory came to be considered part of customary international law and was integrated into many legal texts. The principles of proportionality and discrimination are now internationally recognised as moral imperatives for all states and are enshrined in covenants such as the Hague and Geneva Conventions.\(^6\)

One of the greatest strengths of Just War thinking is that it has proved sufficiently flexible to continuously evolve and thereby remain influential, despite changes in international politics. Augustine applied it to the fall of the Roman Empire; Vitoria and Suarez used it to evaluate the Spanish conquest of the New World; and Michael Walzer drew from it in his critique of the Vietnam War.\(^7\) Although the primary political actor being evaluated in each of these cases was different (a global empire, an absolute monarchy and a democratic republic, respectively), the fundamental principle of legitimate authorities acting to ensure the security of their populace did not change.

**Violent conflict and legitimate authority**

The UN charter, signed just weeks after VE Day in 1945, and nearly two months before the end of the war in the Pacific, states in its preamble that the UN is a collection of state parties.\(^8\) More specifically, Article 4 declares membership ‘open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations’. Chapter VI (Articles 33–38) requires the pacific settlement of disputes between states, calling
upon the Security Council to assist and make recommendations for resolving such disputes. It goes on to say, in Article 37, that, ‘if the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.’ It is from Chapter VI that the mechanism for deploying UN peacekeepers proceeds.

A few points about the UN charter stand out. Firstly, it is clear that the raison d’être of the UN is ‘to unite [states’] strength to maintain international peace and security’. Secondly, the Security Council, made up of five permanent and ten rotating state parties, is the central mechanism by which collaboration in the interest of peace and security occurs, and is the focal point for decision-making with regard to employing force on behalf of collective security. Thirdly, the military forces of the UN are on loan from member states, once again for ‘the purpose of maintaining international peace and security’ (Article 42). Ultimately, it is up to the Security Council to respond on behalf of the wider United Nations to the outbreak of conflict and to make a decision about what course of action it will take, if any. Moreover, in theory, the Security Council has little or no say over actions that are clearly in self-defence.

Within the wider debate about the modern challenge to Just War notions of legitimate authority, the UN is a particularly interesting case, because it is not a politico-military alliance like NATO or the Warsaw Pact. Rather, it is an agency at the mercy of the states from which its authority derives. At the same time, the UN can be said to be more than the sum of its parts. It has established supranational programmes, such as UNICEF and UNESCO, with thousands of employees spread around the world operating outside the traditional realm of states. It has also avoided the fate of other attempts at supranational government, such as the League of Nations, which have traditionally been disbanded soon after their establishment. Instead, it has begun to take on a life of its own, with increasing responsibility over the legitimate sanction of the use of violence.
A growing number of observers now regard any legitimate decision to employ military force as belonging solely to the UN, with consequences for the legitimacy of the NATO-led intervention in Kosovo and the US-led intervention in Iraq. Regardless of whether one considers these wars as just, it is necessary to assess the claims of many influential critics that they were illegal and, therefore, illegitimate, solely because the coalitions involved failed to achieve UN backing. For example, although Thomas Franck’s 1999 article in *Foreign Affairs* largely defended NATO’s actions in Kosovo, he felt compelled to begin this defence by acknowledging the ‘illegality’ of the use of force because it was not ‘UN sanctioned’.9 Similarly, Nebojsa Malic spoke for many when in 2005 he asserted that ‘there is absolutely no question that the NATO attack in March 1999 was illegal’.10 To justify this position, he quoted Article 2, Section 4 of the UN charter:

> 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.

If this portion of the charter is taken to mean that the UN has power above and beyond that bestowed upon it at any given time by its member states, then it seems clear that NATO’s actions in Kosovo were illegal. Certainly, it is possible to interpret the phrase ‘inconsistent with the purposes of the UN’ as meaning that the UN must sanction every use of force for it to be legal and legitimate (rather than meaning that force can be employed, even without specific UN sanction, for the general goals of the UN).

The American-led invasion of Iraq in 2003 has been subject to similar criticisms. Many have argued that, despite UN Resolution 1441, a second UN resolution was needed to make the war a legal one. Indeed, UN Secretary-General Kofi Annan told BBC interviewers that US actions were illegal because they contravened the UN charter.11 According to Annan, the UN charter prohibits unilateral declarations of war by states, meaning that America’s actions were inherently illegal, regardless of any defence Washington might offer. After years of debate, an independent inquiry was
launched by the Dutch government in 2009, led by Netherlands Supreme Court Judge Willibrord Davids. The Davids Commission concluded that the war had contravened the UN charter and therefore that it was undoubtedly illegal. Furthermore, the commission argued that wars for regime change had no basis within international law, and that UN Resolution 1441 did not sanction the use of force.12

It is notable that the commission, along with other critics of the war, chose to criticise the actions of US and Coalition forces not, primarily, on moral or prudential grounds, but rather on the grounds that their actions contravened the UN charter and were therefore illegal. Such criticism highlights the growing belief that states possess little legitimate recourse to violence without UN sanction, a belief that appears to undermine the Westphalian system.

Contradictions of authority

Ideas are clearly shifting in some quarters as to what constitutes the legitimate recourse to violence in international affairs and from where such legitimacy can be derived. Little analysis, however, has been conducted with regard to the costs of this shift. Can the UN really step up and assume the role that many are now ascribing to it? Others have recognised the dilemma the UN faces when it comes to the issues of sovereignty, authority, moral responsibility and the ethics of war. A decade ago, James Turner Johnson, professor of religion at Rutgers University, suggested that defects in the UN’s putative claim to ‘authority’ when it comes to conflict were inherent in its character as an international organisation and hence a fundamental limitation. He argued that the UN lacked the attributes necessary to make it capable of effectively fulfilling its role as stipulated in the charter because it lacked cohesion (that is, its policies and decisions had led to inconsistency in its dealings with the conflicts it had addressed); it lacked sovereignty (it was still dependent on agreements among its sovereign member states); and it lacked an effective chain of command for any military force it might place in the midst of an ongoing conflict, thus preventing it from being an effective arm of international statecraft.

Given that these features are all necessary for a state to function as a political institution, their absence from the UN highlights the limitations
of that organisation’s ability to replace states in the international system. The deficiencies noted are, first and foremost, defects in sovereign authority; without such authority, there is no entity competent to determine just cause and undertake military action on its behalf. Thus, the United Nations as an institution has a weak basis to wage war (*jus ad bellum*) in the Just War sense.\(^{13}\)

There are four primary legitimate-authority contradictions surrounding the UN which threaten its ability to be the sole source of such authority: the nature of international organisations’ authority and capacity; the distinction between international law and the ethics of military action; the question of political neutrality or political agency; and the question of moral accountability for *jus in bello* violations.

The proponents of supranational control over the decision to employ force argue that the UN charter and the evolution of international affairs locates primary authority for the use of force in the UN. This is a moral claim (‘the only ethical use of force is under UN sanction’) as well as a legal claim (‘other uses of force are generally illegal’). This formulation runs into a range of problems when examined carefully. The most obvious contradiction is that the UN derives its power from the very states it is supposed to regulate. While the UN charter embodies a commitment by states to compromise their authority for the greater good, the UN itself has not been, and in the foreseeable future will not become, a freestanding political entity. Its decisions about war and peace result from the consensus (or lack thereof) of its constituent states. In short, it is not a sovereign political authority.

Another, more practical limitation is the UN’s lack of capacity when it comes to conflict. There is no UN army. For the UN to intervene, military force must be drawn from individual states, even if they are subsequently given an international mandate. Recent UN-sponsored interventions demonstrate this problem. In Somalia, some peacekeepers arrived in theatre without proper kit or weapons because no individual state had taken responsibility to ensure they were provided with the necessary equipment.\(^{14}\) The UN/AU mission in Darfur is another case in point: for the first few years only one-third of the nearly 20,000 pledged peacekeepers actually arrived.
Moreover, many UN troops are from the world’s poorest countries, such as Malawi, Burundi, Mali, Gambia, Burkina Faso and Bangladesh, and are poorly equipped and often lack the requisite training to conduct their missions effectively. Such deficiencies reveal the inability of the UN to provide the support it mandates without the active support of the national governments of its member states.

Under the Westphalian system, in which states declare war and control the means of violence, Just War tenets can be relatively easily applied to assess a situation and determine, at least to some degree, the morality of the action and the legality of the use of force. If the UN is seen as the only legitimate authority, however, its political impotency, stemming from its lack of internal capacity and its accountability to the dictates of foreign capitals, will create an international environment in which it is almost impossible to assess the morality and legality of recourse to war.

The case of the 1994 genocide in Rwanda is an illuminating example of the problems that arise when authority concerning security and the use of force is ceded to the UN. In just over a month, as many as 800,000 people in Rwanda were killed, as the Hutu-dominated government encouraged the majority to eradicate the Tutsi minority. The multilateral organisation closest to the situation, the Organisation of African Unity, was united in claiming that it could not act without UN sanction. Yet the consensual nature of the UN also resulted in a failure to act, despite repeated requests by Canadian General Roméo Dallaire, commander of the UN peacekeeping mission in Rwanda, for an expanded mandate and more troops. Not only did the primary supranational body claiming responsibility for security and the legitimate use of force fail to prevent a horrific genocide, it even allowed itself to be influenced by the government responsible, by its failure to remove the Rwandan government from the Security Council during April 1994.

The Rwandan case illustrates the deficiency of both authority and capability within the UN. Firstly, the UN Security Council was significantly hampered by the presence of a single state, which prevented the UN from behaving as a unified, efficacious actor. Even if Rwanda had not been present, the Security Council is largely controlled by its five permanent members, and it is unrealistic to assume that they will sanction the use of force in areas
where they have no compelling state interest. The UN, moreover, has little capacity to act even in cases where it does function as a unitary moral agent: military capability is a prerequisite for being an effective international actor. Consequently, the UN is not well placed to assume responsibility for worldwide security. This is as true today as it was in 1994.

The second contradiction is the distinction between international law and the ethics of military action. There is a growing trend in the international community to conflate the ideas of morality and legality. This could, however, prevent the moral use of force in a case where the UN was unable or unwilling to sanction it. The Kosovo situation is a compelling case in point.

In 1990 Slobodan Milosevic revoked the historic autonomy that Kosovo and Vojvodina had enjoyed in Tito-ruled Yugoslavia. For several years Kosovo was subject to repressive policies, including draconian measures intended to curb the use of the regional language and restrict the freedom of the press and other civil liberties. Following the rise of an insurgent Kosovo Liberation Army (KLA), heavily armed with weapons looted from Albanian armouries when that country came close to disintegration in 1997, the Serbian government began sustained military operations against areas under the influence of the insurgency. In 1997–98 atrocities were committed against civilians on both sides, prompting NATO to intervene. Its first action, *Operation Determined Falcon*, involved aerial patrols of the border region between Yugoslavia and Albania. After Milosevic travelled to Moscow and negotiated a temporary agreement in which he promised to suspend punitive actions in Kosovo, efforts at robust UN intervention were derailed. Instead, the Kosovo Observer Diplomatic Mission (KODM) was established and NATO operations ended. The Serbs temporarily suspended their attacks, but by mid-summer military action had resumed. In January 1999 Serbian paramilitaries razed the Kosovar village of Racak; NATO and the UN declared the incident a massacre. NATO issued a statement saying that it would use military force to compel compliance with the demands of the international community to reach a peaceful settlement in the conflict. Most observers recognised all the
signs of renewed Balkan atrocities on the scale of the early 1990s: Milosevic still ran Serbia, Serbian military units and paramilitary groups were active in the region, the KLA was increasingly aggressive, and the turmoil threatened to destabilise neighbouring Bosnia and Macedonia.

With Russia threatening a veto, military intervention under UN auspices was impossible. In early 1999 both sides agreed to enter peace negotiations overseen by NATO Secretary-General Javier Solana at Château de Rambouillet outside Paris. However, by mid-March the talks ended with the Serbians refusing to sign the agreement. NATO began a bombing campaign against Serbian military targets on 24 March that lasted for just over two months. The stated NATO goal was to get the Serbs out of Kosovo and to install peacekeepers so that the refugees would feel it was safe to return home. The Serbs responded with concentrated ethnic-cleansing operations that resulted in an estimated 850,000 additional refugees.

The NATO attacks were not initially successful, but the Serbs eventually agreed, on 12 June, to withdraw, and NATO and Russian peacekeepers entered Kosovo. Despite the tension between the Russians and NATO forces, exacerbated by KLA attacks on Serb villages that created a new refugee crisis as ethnic Serbs fled Kosovo for Serbia, a tenuous peace was implemented. This fragile peace held for nine years, buttressed by investment and unprecedented NATO and UN security commitments, resulting finally in Kosovar independence in 2010.

From a Just War perspective, legitimate political authorities (states) acted on a just cause (saving human life in an area where there was known genocide, and generally buttressing regional order) with right intentions (no intent to take over territory or resources). Every attempt was made by NATO leaders to act in a way proportionate to Serb aggression and that would preserve civilian lives (discrimination). Moreover, NATO and its political counterparts (the United States and the European Union) poured billions of dollars into post-conflict Kosovo to secure an enduring peace. In sum, the cause was just (jus ad bellum), the war was fought in a morally restrained manner (jus in bello), and the West worked hard to create a just and durable peace (jus post bellum). Judged from this perspective, the NATO intervention was moral.
Even critics of the use of force by NATO generally acknowledge its moral nature. However, in so far as evolving international norms dictate that for armed intervention to be legal it requires UN sanction, this was not a legal conflict. The UN was in no position to sanction the use of force, even though that appeared to be the moral course of action. The clear desire of Russia to prevent external intervention in a region it considered within its sphere of influence effectively hamstrung the UN. In this case the moral course and the legal course were arguably different, a significant problem in terms of the increasing trend to conflate these two issues and locate the authority to make such decisions solely within the UN. It is also a further example of the problem of UN dependence on the states it comprises. When one of the permanent members of the Security Council does not agree to the use of force, moral or not, the UN cannot sanction it, and without such sanction, to many observers and international jurists, any use of force would be illegal.

The problem here is the notion that consensus at the UN automatically confers legality and morality and that lack of consensus removes both. Decisions about war and peace arrived at by international consensus at the UN are no guarantee that efforts will be taken to restrain belligerents, punish evildoers or halt aggression. Indeed, a characteristic shared by supranational bodies such as the European Union, the African Union and the UN is a tendency for inaction. The hallmark of such collectives is often dithering when responsible action is required, as in Darfur, Rwanda or Afghanistan. If there are to be morally driven international interventions, what is needed is a return to moral thinking in individual cases of insecurity and conflict rather than a reliance on a supranational institution such as the UN to rule on what is legal (thereby obviating any possibility for moral assessment). The UN is unable to make such individual judgements and, ultimately, will tend to inaction, while also preventing other states from acting because of a fear that such action, without UN sanction, would be illegal.

The third contradiction has to do with the political role of the UN in international affairs. On the one hand, the UN is a collection of state parties,
and can be deemed to be a neutral party that serves as a mediator and arbitrator in international disagreements. On the other hand, those who argue that military force can only be sanctioned by the UN are making a very different claim: that it is a political agent with the moral responsibility to judge where and when it is morally appropriate to engage military force.

The UN cannot be both politically neutral and the locus of responsibility for deciding the legality and morality of engaging military force. This contradiction (or, more aptly, this flaw) reflects a wider problem in the UN bureaucracy: the inability to make moral judgements on a host of issues, not just those related to the use of force. Indeed, a constitutive rule of the UN is that all member states are equal and, except in extreme cases, sovereignty and non-intervention are inviolable rights. This rule allows dictatorial regimes to sit on the UN Human Rights Commission while committing human-rights violations in their home countries. In short, at times the UN claims to be a morally non-judgemental and politically neutral institution. This confusion often results in a failure to make moral judgements in conflict situations, leading to inaction in the face of genocide or oppressive regimes. The UN consistently adopts a position of not taking sides in inter-state wars, negotiating rather with the ‘legitimate’ representatives of all sides. This effort to achieve neutral arbitration emasculates the UN as a real force for security and justice. Moreover, the statist nature of the UN often predisposes it to overvalue the legitimacy of the reigning government in intra-state conflicts, regardless of its actual legitimacy or the nature of its policies. If the UN does engage both sides in peace talks to end a long-term civil war, or deals with multiple governments in an inter-state war, the overall strategy is to deal with each equally, aiming not to cast blame or aspersions on any party.

This is not a criticism of the UN’s function as international mediator. What it cannot do, however, is claim a neutral-mediator role while also professing to be a guarantor of security and the upholder of morality and justice. Just War thinking emphasises the moral responsibility of states to protect their populaces first and then, secondly, to promote international security outside their borders. In contrast, supporters of the UN or other supranational organisations (or of world government) elevate the concept
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of international political security and order above individual state concerns. This view, while attractive to some, fails to understand the fundamental nature of political responsibility and the moral calculations necessary to pursue justice in international affairs. By elevating the concerns of international security, supranationalists sacrifice individual moral calculations and create an international environment that tends towards inaction rather than action. The UN is forced to elevate decisions arrived at via consensus to legal status, without any assessment of their morality and the impact they might have on individual state populaces. The UN cannot continue to have it both ways. It cannot claim to be a politically neutral arbitrator which can moderate all conflicts, while also possessing the sole ability to determine the legal, and by proxy legitimate (moral), use of force.

The final contradiction stems from the inability or lack of will to ensure that *jus in bello* concerns are upheld by UN troops and, moreover, that UN troops should, and can, be prosecuted when they act immorally or commit crimes. In July 1995, for example, when the Bosnian War was at its height, UN peacekeepers from the Netherlands were supposedly on hand outside the city of Srebrenica to protect civilian lives and property. As Bosnian Serb forces advanced, approximately 5,000 people crowded into the UN peacekeepers’ camp, seeking protection. In one of the most morally troubling situations of the war, the lightly armed UN peacekeepers, faced with overwhelming Serb forces, not only expelled nearly all of those seeking safe haven, but also failed to protect the civilian centre of Srebrenica. Serbian forces systematically slaughtered an estimated 8,000 men and boys, including some 300 who had been ejected from the camp; countless women and girls were raped or killed.

Bosnian Muslims have spent 16 years attempting to get the world community to accept responsibility for not protecting their people at Srebrenica. In a March 2010 ruling by a Dutch appeals court, the UN was found not to be liable for the deaths because of the immunity of its peacekeepers under international law. However, in a more surprising June 2011 ruling, the Dutch government was found liable for the deaths of three Muslim men who had
been ejected from the UN camp. The court ruled that the fall of Srebrenica
was an ‘extraordinary situation’, and that the Dutch military and political
leaders were in ‘effective control’ of their troops and were, therefore, liable
for their actions.\textsuperscript{18}

While the Srebrenica incident was a tragic case of UN peacekeepers
failing to protect human life (and then hiding behind their legal immunity),
it is by no means unique. Exactly the same happened in Rwanda when
UN peacekeepers failed to intervene in the 1994 genocide. Similarly, UN
peacekeepers in the Democratic Republic of the Congo (DRC) have failed to
intervene to stop systematic mass rape, as recently as 2010.

A second \textit{jus in bello} issue arises from the case of the UN troops in the
DRC. Not only have they, by their inaction, allowed war crimes to be com-
mittied, but there is considerable evidence that they have also personally
committed war crimes.\textsuperscript{19} These cases highlight the ethical issue of responsi-
ability for violations of the laws of armed conflict in battlefield conditions by
UN soldiers. In practice, individual states train troops and then loan them
to the UN, and it is under UN political authority that such troops engage
in overseas missions. The question that must be posed is whether the UN
is also morally accountable for their actions (and inactions) and therefore,
in these cases, their misdeeds. In practice, UN Secretariats are notorious for
dodging the question of responsibility for the actions of their troops. If the
UN cannot be expected to take political and moral responsibility for the
actions of its troops (\textit{jus in bello}), then surely it cannot be the sole determi-
nant of \textit{jus ad bellum} concerns. The UN cannot simultaneously be the sole
source of legitimate authority in the determination of just cause for interven-
tion and, at the same time, abdicate all responsibility for the conduct of its
soldiers during such missions. It cannot have moral agency to declare which
conflicts are legitimate and at the same time shield itself from actions taken
on the battlefield by those operating under its aegis. But this is precisely the
situation today, with few blue helmets ever censured for egregious viola-
tions by either the UN or their home governments.

Political agents are traditionally deemed morally culpable for their deci-
sions to go to war and the conduct of that war; the actions of foot soldiers
on the battlefield are seen as reflecting the policies of state governments,
and individual violations of the moral code are dealt with by the relevant government. For example, when individual US troops were found guilty of violating the rights of European women during the Second World War, they were court-martialled. (There are, to be sure, many cases where national governments have refused to prosecute their own soldiers, but the systems to do so are in place and the moral position of most states is that violations should be prosecuted.) Moreover, it is accepted that in the case of systematic violations of the laws of war the relevant governments or political authorities should be held to account (examples include the Nuremberg trials, recent international tribunals for Rwanda and the former Yugoslavia, and International Criminal Court indictments). However, in the Democratic Republic of the Congo and Srebrenica the UN did not accept responsibility for the actions of peacekeepers operating under its remit. The UN is not only morally suspect in its frequent failure to sanction action, but it also makes little or no attempt to prosecute soldiers accused of egregious actions committed when they are under its authority.

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US President Barack Obama argued that the intervention in Libya, despite air-strikes and hundreds of Libyan military deaths, was legal in part because it was UN sanctioned. The purpose of intervention, moreover, was to stop gross human-rights abuses, and there would not be any action not sanctioned by the UN. These two claims illustrate just how far the moral has been equated with the legal with regard to the use of force in international affairs, and that such legal status is often defined in terms of UN sanction. This is precisely the type of ethical confusion that resulted in the ‘illegality’ of the NATO-led Kosovo intervention (which Obama has cited as justified on humanitarian grounds) and the legal immunity of the UN for both the actions and inaction of its peacekeepers in Bosnia and the DRC.

The fundamental problem is that, in terms of Just War principles (determining legitimate authority and political responsibility in international life) the UN is simply not, nor can it be, a responsible moral agent. Moreover, an amoral institution cannot have the moral authority to make the fundamen-
tal decisions required of legitimate authorities in a moral universe. In sum, the role of the UN as the sole source of international legitimacy for issues of war and peace in the early twenty-first century is highly problematic from a Just War perspective. Scholars and jurists would be well served to reconsider the issues of moral accountability and agency when it comes to armed conflict, and the imperfect, yet necessary, role that state governments continue to play in this arena.

Notes

1 This famous quote from Augustine is referred to in Aquinas’ statement following Objection 4. *Summa Theologica*, Part II, II, Question 40 (New York: Benziger Brothers, 1947), p. 54, available at http://www.freecatholicbooks.com/books/summa2pt2.pdf. It is also noteworthy that Augustine brings to the table a third *jus ad bellum* principle: the right intent of leaders making the decision to go to war.


3 Jean Bethke Elshtain, *Just War Against Terror* (New York: Basic Books, 2004), p. 168. Elshtain defines equal regard as ‘the equal claim of all persons, whatever their political location or condition, to having coercive force deployed in their behalf if they are victims of one of the many horrors attendant upon radical political instability’.


13 Johnson, Morality and Contemporary Warfare, pp. 60–61.


17 See ibid., especially ch. 4.

