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**THE SECURITY COUNCIL AND THE USE OF MILITARY FORCE:  
AN EXAMINATION OF FIVE BASIC CRITERIA OF LEGITIMACY**

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**Reports and Resolutions**

With the goal of promoting a rethinking of the ideal of collective security in the UN Charter, Kofi Annan commissioned (in September 2003) the High-level Panel on Threats, Challenges and Change (HPTCC). In the report of the HPTCC, *A More Secure World: Our Shared Responsibility* (December 2004), a wide range of kinds of threats to the security of states and human beings is discussed: poverty, infectious disease, environmental degradation, conflict between states, conflict within states, weapons of mass destruction, terrorism, and transnational organized crime. Significantly, the HPTCC report contains the proposal that, whenever the

Security Council deliberates about authorizing or endorsing the use of military force to counter a security threat, it ought to utilize "five basic criteria of legitimacy" (HPTCC 2004, par. 207).<sup>1</sup>

According to one of the members of the HPTCC, Gareth Evans, the "ultimate intellectual origins [of the five criteria] lie in the whole tradition, and vast literature, of 'just war' theory" (Evans 2004, 10).<sup>2</sup> Indeed, the legitimacy criteria resemble the just war principles of just cause, right intention, last resort, proportionality, and reasonable chance of success. For example, the legitimacy criterion of *last resort* resembles quite closely the just war principle of last resort: "Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?" (HPTCC 2004, par. 207).

Apparently, in accepting the legitimacy criteria, members of the HPTCC were influenced appreciably by the just war tradition.

Traditionally, however, just war principles have been applied to wars between states. By contrast, the legitimacy criteria are applicable to all forms of armed conflict: interstate wars, armed conflicts within states, armed humanitarian interventions, military campaigns against terrorists, military operations by UN peacekeeping missions, and so forth. For instance, the first of the legitimacy criteria, the criterion of *seriousness of threat*, resembles the most fundamental of the just war principles, the just cause principle: "Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force?" (HPTCC 2004, par. 207). Arguably, the traditional just cause principle only permits a war of self-defense. By contrast, the criterion of seriousness of threat is far more general. It permits the Security Council to authorize or endorse the use of military force to counter any such security threat that is sufficiently clear and serious. Conceivably, for example, in the event of a sufficiently

clear and serious threat of infectious disease, a rampant pandemic threatening millions, it might be interpreted as permitting the Security Council to authorize or endorse the use of military force to impose quarantines.<sup>3</sup>

Although traditionally applied to wars between states, just war principles have also been applied recently to armed humanitarian interventions (e.g., Coady 2002). Evidently, members of the HPTCC are proposing specifically that, whenever the Security Council deliberates about authorizing or endorsing armed humanitarian intervention, it ought to utilize the legitimacy criteria. For, after the quoted sentence stating the first legitimacy criterion, there is the following sentence: "In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?" (HPTCC 2004, par. 207).

Comparably, among the "principles for military intervention" in the report of the International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, there is a principle with quite similar wording, "the just cause threshold" (ICISS 2001, xii). Additionally, other principles for military intervention in the ICISS report resemble other just war principles. In particular, the principle of "right authority" in the ICISS report acknowledges the primacy of the Security Council. In effect, the HPTCC report both incorporates broadly the principles of military intervention in the ICISS report and extends or generalizes them to a wide range of kinds of security threats: poverty, infectious disease, environmental degradation, conflict between states, other forms of conflict within states, weapons of mass destruction, terrorism, and transnational organized crime. In short, the HPTCC report's shared responsibility expands greatly the ICISS report's responsibility to protect. Paralleling the acronym R2P (responsibility to

protect) for the ICISS report, I shall refer to the HPTCC report by the acronym R4S (responsibility for security).

In a subsequent report of the Secretary-General, *In Larger Freedom* (21 March 2005), Kofi Annan summarized the legitimacy criteria in the R4S and recommended "that the Security Council adopt a resolution setting out these principles and expressing its intention to be guided by them when deciding whether to authorize or mandate the use of force" (Annan 2005, par. 126).

Later, at the close of the United Nations 2005 World Summit, the General Assembly adopted an Outcome Document (16 September 2005), which contains an endorsement of armed humanitarian intervention: "[W]e are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the [UN] Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (Outcome Document 2005, 30).<sup>4</sup>

However, this Outcome Document does not contain an endorsement of the legitimacy criteria, even though in an earlier draft (10 August 2005) there was the following allusion to them: "We recognize the need to continue discussing principles for the use of force, including those identified by the Secretary-General."<sup>5</sup>

Moreover, the Security Council has not yet adopted a resolution of the sort envisaged by Kofi Annan. I shall argue that the Security Council ought to adopt such a resolution. The Security Council ought to be morally constrained by appropriately revised just war principles.<sup>6</sup> Drawing upon a suitable just war theory, I shall critically examine the proposed five basic criteria of

legitimacy. A main theme is that, although they are broadly acceptable, they need to be clarified and revised.

### **Universalism**

By signing the UN Charter, the 192 Member States of the United Nations have committed themselves to comply with it. In particular, according to Article 24, they "confer on the Security Council primary responsibility for the maintenance of international peace and security." The powers given by the UN Charter to the Security Council are comprehensive. In the words of Michael J. Matheson, in his book *Council Unbound*, the "Charter gives extraordinary power to the Council" (2006, 33). For instance, according to Article 39, the Security Council has the power to "determine the existence of any threat to the peace, breach of the peace, or act of aggression."

However, this power is not unlimited. In Plato's *Euthyphro*, Socrates asks Euthyphro whether the "holy is beloved by the gods because it is holy, or holy because it is beloved by the gods" (Plato 1892, 84). In answer to an analogous question about the power, I want to reject the view that a threat to the peace, breach of the peace, or act of aggression exists because the Security Council determines that it exists. The Security Council does not wear the mantle of Louis XIV. Instead, my view is that the Security Council ought to determine that a threat to the peace, breach of the peace, or act of aggression exists because it truly does exist. To make such a determination, there is need for apposite principles. There is need for objective and impartial standards for determining whether there truly is a threat to the peace, breach of the peace, or act of aggression.

Additionally, according to Article 39, the Security Council has the power to "decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." Specifically, according to Article 42, the Security Council has the power to decide to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security." To answer a related question about this last power, I also want to reject the view that the use of military force is necessary because the Security Council decides that it is necessary. Instead, my view is that the Security Council ought to decide that the use of military force is necessary because it truly is necessary. To make such a decision, there again is need for apposite principles. There is need for objective and impartial standards for deciding whether the use of military force truly is necessary.

In summary, to determine whether there is a threat to the peace, breach of the peace, or act of aggression, and then to decide whether the use of military force is necessary, the Security Council should utilize apposite principles. Echoing Kofi Annan's recommendation about the five basic criteria of legitimacy proposed in the R4S, I think that the Security Council ought to adopt a resolution setting out such principles and expressing its intention to be guided by them. The principles would not be right because the Security Council declares in the resolution that they are right. Instead, the Security Council ought to declare in the resolution that they are right because they truly are right. By means of a suitable just war theory, I shall investigate whether the legitimacy criteria truly are right.

In his article "Platonism, Adaptivism, and Illusion in UN Reform," Michael J. Glennon objects that the R4S "exhibits all the familiar shortcomings of old-style Platonic idealism, ignoring the real-world incentives and disincentives to which states actually respond" (Glennon 2006, 614).

In light of my appeal to Plato's *Euthyphro*, such an objection might be advanced against my assumption that there are principles about the use of military force that truly are right. But Socrates' question cannot be so cavalierly dismissed as old-fashioned, for it is archetypal of a controversial question that is debated more abstractly by ethical theorists today: Should an agent adhere to a moral principle because it truly is a moral principle, one that is universal; or is it only a moral principle for the agent, one that is only relative to the agent, because the agent adheres to it? An affirmative answer to the first part of this question may be termed *universalism* and an affirmative answer to the second part of this question may be termed *relativism*.

Glennon also objects that the R4S "evinces a view of a world governed by objective, universal morality rather than by competition for power and shifting national interests" (Glennon 2006, 614). More accurately, what the R4S displays is a view that, although the Member States of the United Nations actually are motivated all too often by competition for power and shifting national interests, they ought to adhere to universal moral principles. However, the philosophical question of universalism versus relativism is controversial, and I have no space here to enter into this controversy.<sup>7</sup> Instead, in opposition to relativism, I shall presuppose universalism. It is presupposed that there are universal moral principles to which agents ought to adhere.

Universalism is implicit in the UN Charter. Implicit in the Preamble are universalist ideas of human rights ("to reaffirm faith in fundamental human rights"), human equality ("to reaffirm faith [...] in the equal rights of men and women"), social and economic justice ("the promotion of the economic and social advancement of all peoples"), and so forth. Significantly, also implicit in the Preamble is a universalist idea of principles about the use of military force: "to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in

the common interest." That the peoples of the United Nations share a common interest is itself a universalist idea. The universalist idea that there should be moral principles governing the use of military force is implicit in the UN Charter.

Apparently, the legitimacy criteria proposed in the R4S stem from the just war tradition, and that tradition is universalist. However, it is important to recognize that, instead of a single just war theory, there have been various just war theories. Glennon calls the just war tradition a "pre-Enlightenment philosophic tradition" (2006, 618), but Enlightenment philosophers and post-Enlightenment philosophers have also espoused just war theories.<sup>8</sup> Glennon also holds that a just war theory has to be grounded on a theory of natural law (Glennon 2006, 616), but just war theories have been grounded on different universalist ethical theories (e.g., a Kantian ethics and a utilitarian ethics, and a social contract theory). It might be contended that, if one is to be a member of the just war tradition, one has to accept a historically evolving body of doctrines about just war principles. In this sense of a tradition, it should be recognized that there also can be just war theories that are not traditional. Admittedly, my just war theory might be construed as nontraditional. (Elsewhere, I have termed it a *just armed-conflict theory* [Lango 2007b].) Having presupposed generally that there are universal moral principles to which agents ought to adhere, I shall presuppose specifically that there are just war principles to which states and other relevant actors ought to adhere.

The presupposition of universalism does not terminate debate about moral questions. Among the different universalist ethical theories, which one is correct (e.g., a Kantian ethics or a utilitarian ethics)? Among the competing universal moral principles, which one is right (e.g., Kant's categorical imperative or Bentham's greatest happiness principle)? Answers to such

questions are debated by ethical theorists. Accordingly, it is essential to understand that the presupposition that there are just war principles does not terminate debate about them. Among the various just war theories, which one is correct? Among the different universalist ethical theories, which one best grounds a just war theory? Answers to such questions are debated by just war theorists. Ideally, this debate is dialectical; ideally, just war theorists share the goal of cooperatively clarifying and (when necessary) revising just war principles. The predicament of moral disagreement is not unique to just war theorists. For instance, the presupposition that there are universal human rights does not terminate debate about them. Which human rights are most basic? In addition to civil and political rights, are there social and economic rights? Answers to such questions are debated by human rights theorists.

Therefore, we must not think that the mere adoption by the Security Council of a resolution expressing its intention to be guided by the legitimacy criteria ought to terminate moral debate about them. In the R4S, it is asserted that the adoption of the legitimacy criteria by the Security Council "will not produce agreed conclusions with push-button predictability, but should significantly improve the chances of reaching international consensus on what have been in recent years deeply divisive issues" (HPTCC 2004, 61). Glennon is skeptical of this assertion -- "there is, alas, little reason to think so" -- but his skepticism is based on his assumption that members of the Security Council would have to be "in unison," that they would have to be of "one mind" (Glennon 2006, 616). By contrast, I am arguing that acceptance of the legitimacy criteria by members of the Security Council is compatible with their being of two or more minds about them. Instead of being in unison, they could be discordant. Indeed, we should hope that the chances of their reaching consensus on deeply divisive issues of collective security would be significantly

improved, but we should also expect spirited debate. Acceptance of universalism by the Security Council is compatible with principled moral debate.

### **A Moral Framework**

My view is, as I have said, that the legitimacy criteria need to be clarified and revised. With the aim of explicating them sufficiently, I shall interpret them by means of my understanding of just war principles. In his writing "Just-War Criteria," James F. Childress claims that just war principles "constitute a formal framework and structure for moral debates about the use of force" (1982, 90). Concurring with his claim, I think that the legitimacy criteria ought to be accepted by the Security Council as a moral framework for moral debates about the use of military force.

In addition to debating questions of theory, just war theorists debate questions of application. How should just war principles be applied to cases? With regard to a particular case, how should they be applied to it? Answers to such questions are debated by just war theorists. Consequently, if members of the Security Council were to accept the legitimacy criteria as a moral framework for moral debates, it would be reasonable for them to engage in debates about applications. How should the legitimacy criteria be applied to cases? With regard to a particular case, how should they be applied to it? For instance, concerning the current case of conflict in the Darfur region of the Sudan, how should the last resort criterion be applied to it?

Central to the conception of a moral debate is the requirement that a moral debate must be sufficiently reasonable. Each party to a moral debate must give cogent reasons to the other parties, not only reasons of fact (e.g., that genocide actually is occurring in a state) and reasons of

law (e.g., that genocide is prohibited by the Genocide Convention) but also moral reasons (e.g., that it is morally obligatory to stop genocide). Such a requirement is mentioned in a paragraph in the R4S introducing the legitimacy criteria: "The effectiveness of the global collective security system, as with any other legal order, depends ultimately not only on the legality of decisions but also on the common perception of their legitimacy -- their being made on solid evidentiary grounds, and for the right reasons, morally as well as legally" (HPTCC 2004, par. 204). To answer a question about this paragraph, one that is analogous to Socrates' question, a decision is not made for the right reasons because it is commonly perceived to be made for the right reasons. Instead, it should be commonly perceived to be made for the right reasons because it truly is made for the right reasons. A moral debate involves right moral reasons.

In such a moral debate about whether or not to use military force, a defense of the decision to use military force has to be an affirmative defense. A chief purpose of just war principles is to morally constrain states and other relevant actors from using military force unjustly. When such actors deliberate about whether to use military force, they should make the moral presumption that they must not. To override this presumption, they have the burden of proving that just war principles truly are satisfied. For instance, they have the burden of proving that there truly is a just cause for the use of military force, and they have the burden of proving that the use of military force truly is a last resort. Consequently, if the legitimacy criteria were accepted by the Security Council as a moral framework for moral debates, they should morally constrain it from unjustly authorizing or endorsing the use of military force. When members of the Security Council deliberate about whether to authorize or endorse the use military force, they should make the moral presumption that they must not. To override this presumption, they have

the burden of proving that the legitimacy criteria truly are satisfied. In a moral debate about whether or not to use military force, there is a burden of proving by the right moral (and legal and factual) reasons that the decision to use military force is justified.

Unfortunately, sometimes a moral debate could be radically inconclusive, for sometimes there could be profound moral disagreement among the parties about what the right moral reasons are. Justices of the U.S. Supreme Court often disagree about the reasons that are right legally. Analogously, sometimes the most principled of moralists could profoundly disagree about the reasons that are right morally. Especially when different parties adhere to different universal moral principles, moral debate among them could be radically inconclusive. (For example, perhaps the moral debate about abortion is thus radically inconclusive). Of course, sometimes a moral debate is only inconclusive contingently, in that the parties do not devote sufficient time or effort to it. By contrast, when a moral debate is inconclusive radically, it is at root inconclusive, in that there is no conjoint conclusion that each of the parties could obtain through her own moral reasons, no matter how much time or effort she devoted. Nevertheless, in the event of such radical inconclusiveness, sometimes it could be imperative for the parties to strive to obtain a truly moral compromise. Lamentably, however, sometimes a truly moral compromise is feasible, but sometimes it is not. (Perhaps a truly moral compromise about abortion is not feasible.) Also central to the conception of a moral debate is a requirement of principled compromise.

Therefore, we must not think that the mere acceptance of the legitimacy criteria by members of the Security Council ought to terminate profound moral disagreement among them. For example, sometimes moral debate among them about how to apply the legitimacy criteria to a particular case could be radically inconclusive. Nonetheless, in the event of such radical

inconclusiveness, sometimes it could be imperative for them to strive to obtain a truly moral compromise. Whereas U.S. Supreme Court justices can settle disagreement simply by a majority vote, Security Council members cannot. Especially because of the veto power possessed by each of the permanent members, it is crucial that morally disastrous paralysis be avoided through principled compromise.

### **A Moral Debate about the Case of Darfur**

By means of the case of Darfur (as of 1 September 2007), I shall illustrate how the legitimacy criteria could function as a moral framework for moral debates in the Security Council. In so doing, I shall illustrate particularly the requirement of principled compromise. For simplicity, let us suppose that the Security Council has adopted a resolution expressing its intention to be guided by the legitimacy criteria.

To begin with, let me suggest how the Security Council ought to apply the criterion of seriousness of threat to the case of Darfur. Hundreds of thousands of people have died in the Darfur region of the Sudan and millions have become refugees. Accordingly, my suggestion is that members of the Security Council ought to conclude that the threatened harm to human security in Darfur is of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force. (Eventually, I shall discuss this suggestion more fully.) In brief, in the case of Darfur, the conclusion ought to be that the criterion of seriousness of threat is satisfied.

However, as I understand just war principles, the use of military force cannot be justified by means of the just cause principle alone. Even when the just cause principle is satisfied, other

just war principles also have to be satisfied -- in particular, the principles of right intention, last resort, proportionality, and reasonable chance of success. (For brevity, the question of whether additional principles need to be added to this list has to be set aside.) A basic purpose of the just cause principle is to morally constrain states and other relevant actors from using military force unjustly, but that too is a basic purpose of the principles of right intention, last resort, proportionality, and reasonable chance of success. Even when there is a just cause for the use of military force, the use of military force is not justified if any one of the principles of right intention, last resort, proportionality, and reasonable chance of success is not satisfied. Such principles are termed *precautionary principles* in the R2P, but that term is potentially misleading. They are better termed *ancillary prohibitive principles*, since any of them could be invoked to prohibit the use of military force even in the presence of a just cause. For example, according to the last resort principle, the use of military force to counter a security threat is not justified if it is reasonable to think that the security threat can be countered effectively instead by some nonmilitary measure (e.g., negotiation).

Consequently, members of the Security Council should not justify the use of military force by means of the criterion of seriousness of threat alone. Even if that criterion is satisfied, the other legitimacy criteria also should be satisfied -- for instance, the criterion of last resort. Notice that, when the criterion of seriousness of threat is satisfied, the use of military force is only justified *prima facie*. The term "*prima facie*" expresses a qualification that can be understood in terms of the ideas of moral presumption and burden of proof. When members of the Security Council deliberate about whether to authorize or endorse the use of military force, they should make the moral presumption that they must not. To override this presumption, they have the burden of

proving that the legitimacy criteria are satisfied. Having proven that the criterion of seriousness of threat is satisfied -- thereby deciding that the use of military force is *prima facie* justified -- they still have the burden of proving that the other legitimacy criteria are satisfied.

Therefore, in the case of Darfur, even if members of the Security Council were to prove that the criterion of seriousness of threat is satisfied, they still would have the burden of proving that the other legitimacy criteria are satisfied. Interestingly, in an International Crisis Group (ICG) report, "Getting the UN into Darfur" (12 October 2006), the question of "whether at this stage the situation [in Darfur] is so grave as to justify [...] a major military 'humanitarian intervention'" is answered by means of the five basic criteria of legitimacy proposed in the R4S (ICG 2006, 16). Briefly, it is argued in this ICG report that the criterion of seriousness of threat is satisfied: "In the early stages of the Darfur conflict, this criterion was unquestionably satisfied; it is probably met again now and certainly would be if the African Union force were to leave and no UN force replace it" (ICG 2006, 16). But it also is argued there that the last resort criterion is not satisfied: "Much more still can and should be done by the international community before non-consensual military intervention is considered" (ICG 2006, 17).

As Childress observes, the just war principle of last resort does not require "that all possible measures have to be attempted and exhausted if there is no reasonable expectation that they will be successful" (Childress 1982, 75). The key term *reasonable* also occurs in the legitimacy criterion of last resort: "Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?" (HPTCC 2004, par. 207). In answer to a question about the last resort criterion, another question analogous to Socrates' question, I shall reject the view that grounds for believing

that nonmilitary measures will not succeed are reasonable because the Security Council decides that they are reasonable. Instead, my view is that the Security Council ought to decide that they are reasonable because they truly are reasonable. To make such a decision, there is need for objective and impartial standards of reasonableness, standards for deciding whether it truly is reasonable to believe that nonmilitary measures will not succeed (Lango 2006).

### **A Principled Compromise about the Case of Darfur**

In review, I am illustrating, by means of the case of Darfur, how the legitimacy criteria could function as a moral framework for moral debates in the Security Council. To illustrate particularly the requirement of principled compromise, let us suppose that, in debating the case of Darfur, members of the Security Council agree that the criterion of seriousness of threat is satisfied, but disagree about whether the last resort criterion is satisfied. Furthermore, it is supposed that they agree that the other legitimacy criteria are satisfied. For simplicity, it also is supposed that they are divided into two groups, one that supports armed humanitarian intervention in Darfur (termed the *interventionists*) and one that supports continued negotiations sponsored by the international community (termed the *negotiationists*).

Although members of the Security Council might clarify or even revise the last resort criterion by formulating and accepting reasonableness standards for it, let us suppose that they have not. (Eventually, however, I shall discuss how they could do this.) Accordingly, a moral debate about the case of Darfur between the interventionists and the negotiationists could proceed as follows. Based on their understanding of the last resort criterion, the interventionists could

maintain that there are no reasonable grounds for believing that nonmilitary measures will succeed; whereas the negotiationists could object that there are reasonable grounds for believing that further negotiations will succeed, based on their understanding of the last resort criterion. Conceivably, this moral debate could be radically inconclusive, for there could be profound moral disagreement between the interventionists and the negotiationists about how the last resort criterion should be understood. Especially if the interventionists were to adhere to different universal moral principles than the negotiationists, this moral debate between them could be radically inconclusive. Nonetheless, it still could be imperative for the interventionists and the negotiationists to strive to obtain a truly moral compromise.

Without attempting to develop an ethics of compromise, I shall outline tentatively some necessary conditions for one kind of principled compromise. First, the parties to a moral debate share a morally justified goal of averting a catastrophe. Second, they disagree about the morally justified means for achieving their common goal. Third, each party would have agreed that the means of each of the other parties is morally justified, had some morally relevant circumstances been different. Fourth, in the absence of compromise, the catastrophe will not be averted. Fifth, by means of a morally acceptable compromise, there is a reasonable chance that they will achieve their common goal. And, sixth, for the compromise to be morally acceptable, each party has to reconcile sufficiently the terms of the compromise with its moral principles.

Let me suggest how, in the case of Darfur, the interventionists and the negotiationists could strive to obtain a principled compromise of this kind. They share the morally justified goal of stopping the massive killings and other grievous violations of human rights in Darfur, but they disagree about the means. Presumably, were circumstances different, the interventionists could

agree to negotiate; and the negotiationists could agree to intervene, were circumstances different. And, presumably, if they fail to compromise, the massive killings and other grievous violations of human rights will continue unabated. What, then, might be the terms of a morally acceptable compromise between them, by means of which there is a reasonable chance that they will achieve their common goal?

To sketch one way of answering this question, I need to comment briefly on the history of Darfur peace negotiations. Negotiations sponsored by the African Union resulted in the signing of the Darfur Peace Agreement (5 May 2006), but the conflict in Darfur continued unabated. About a year later (30 April 2007), an ICG report on Darfur advocated "revitalising the moribund peace process" (ICG 2007, i). More recently (31 July 2007), in Resolution 1769 (2007), the Security Council reiterated "its belief in the basis provided by the Darfur Peace Agreement for a lasting political solution and sustained security in Darfur," called "for an immediate ceasefire," and welcomed "the commitment expressed by the Government of Sudan and some other parties to the conflict to enter into talks." However (as of 1 September 2007), the Sudanese Government has been dilatory, and there continues to be conflict in Darfur.

To heighten the effectiveness of Resolution 1769, the Sudanese Government, the Janjaweed, and rebel groups should be pressured to comply with it. It is essential to recognize that pressure can be exerted both by persuasion and by coercion. Indeed, an actor in a conflict might be persuaded to accept a peace agreement, e.g., by means of economic aid; but it also might be coerced to accept a peace agreement, e.g., by means of economic sanctions. In addition to such nonmilitary measures, it might be coerced to accept a peace agreement by means of a threat to use military force. Such a coercive military threat by an agent to a target is conditional: if the

target performs a specified action, then the agent will use specified military force against it. For example, in Resolution 1769, the Security Council demanded of the Sudanese Government "that there should be no aerial bombings". Such a demand might be enforced by roughly the following conditional military threat: if the Sudanese Government conducts aerial bombings, then the Security Council will call for military force to be used (e.g., by NATO) against Sudanese military aircraft and airfields. A main point is that there is a reasonable chance that the Sudanese Government, the Janjaweed, and rebel groups could be pressured effectively both to negotiate and to abide by a fair peace agreement by means of a credible threat of armed humanitarian intervention otherwise. A neglected form of pressure by the Security Council is the credible threat of armed humanitarian intervention.

To be credible, a conditional threat of armed humanitarian intervention need not be overt, but instead it might be implicit. In a Darfur Strategy Paper for the organization Enough (June 2007), John Prendergast and Colin Thomas-Jensen made the following policy recommendation: "As a back-up plan, the U.S. and France should work within NATO to develop credible plans for non-consensual military intervention if humanitarian operations collapse and violence escalates against civilians in Darfur" (Prendergast et. al. 2007, 4). If the Security Council were to call for such contingency planning by NATO, it would make an implicit threat of armed humanitarian intervention more credible.

Therefore, borrowing words from Resolution 1769, the Security Council could make roughly the following conditional military threat: if the Darfur Peace Agreement is not implemented sufficiently, if a ceasefire is not observed sufficiently, or if negotiations between the Sudanese Government and the other parties to the conflict are not successful sufficiently, then the

Security Council will call for armed humanitarian intervention.

Each of the three disjuncts in the antecedent of this conditional threat is qualified by the term *sufficiently*. Since we are supposing that the Security Council has not formulated and accepted reasonableness standards for the last resort criterion, let us suppose relatedly that there is profound moral disagreement between the interventionists and the negotiationists about what would be sufficient. Nevertheless, they still might obtain a morally acceptable compromise as follows. (For brevity, it is supposed that they can reconcile the terms of this compromise with their respective moral principles.) They could agree about a set of practical benchmarks in this particular case by means of which they would determine that the last resort principle is satisfied. Consequently, the interventionists could compromise, by agreeing that armed humanitarian intervention will not be authorized or endorsed, and that efforts to implement the Darfur Peace Agreement, to observe the ceasefire, and to succeed in negotiations will continue, so long as it is not determined by means of the practical benchmarks that the last resort principle is satisfied. And the negotiationists could compromise, by agreeing that -- even when they think that there ought to be further efforts to implement the Darfur Peace Agreement, to observe the ceasefire, or to succeed in negotiations -- armed humanitarian intervention will be authorized or endorsed, if it is determined by means of the practical benchmarks that the last resort principle is satisfied. If there were such a compromise, there is a reasonable chance, I submit, that the interventionists and the negotiationists could achieve their common goal.

As a coda, let me respond metaphorically to a pithy metaphorical objection by Glennon to the universalism of the R4S: "We are not yet singing from the same hymnal" (Glennon 2006, 617). Indeed, there are different musical traditions in the world, but musicians from the different

traditions still can concertize together. At the Damrosch Park Bandshell in Lincoln Center (New York), I listened to such a concert, entitled "Absolute Arabian Nights" (25 August 2007). A group of musicians trained in Western classical music, the Absolute Ensemble, concertized with a group of Arabic musicians, including Marcel Khalifé, a UNESCO Artist for Peace (2005). The peoples of the United Nations might not yet sing from the same hymnal, but they still might sing harmoniously together.

[This paper is incomplete. One or more sections will be added about how the Security Council should clarify and revise the legitimacy criteria.]

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## **Endnotes**

1. For some discussions of this report, see Glennon 2006, Sen 2006, and Thakur 2006. For some remarks in comparison of this report and the 2006 release of *The National Security Strategy of the United States of America*, see Lango 2007a.
2. Also, see Evans et. al. 2002.
3. Concerning the United Nations and the use of military force, see Blokker et. al. 2005, Frank 2002, Matheson 2006, Sarooshi 1999, Thakur 2006, and Voeten 2005.
4. Concerning the ICISS and the Outcome Document, see Bellamy 2006.
5. "Revised draft outcome document of the high-level plenary meeting of the General Assembly of

September 2005 submitted by the President of the General Assembly" (10 August 2005), A/59/HLPM/CRP.1/Rev.2, par. 56. Various drafts of and sets of proposed amendments to the Outcome Document are available at the website of the Global Policy Forum:

<http://globalpolicy.igc.org/msummit/millenni/m5outcomedocindex.htm>.

6. I discuss just war principles from the standpoint of the United Nations in Lango 2005, which was written before the R4S was released.

7. For example, compare Michael Smith, "Moral Realism" with Simon Blackburn, "Relativism," in LaFollette 2000.

8. For discussions of just war theory, see, for example, Caney 2006, Orend 2006, and Walzer 2006.