

NOTE

IS THERE A RIGHT TO UNILATERAL HUMANITARIAN INTERVENTION AND, IF NOT, DO CATHOLIC SOCIAL PRINCIPLES DEMAND ONE?

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INTRODUCTION

In 1999, then-Secretary General of the United Nations Kofi Annan addressed the General Assembly and heralded in a new doctrine of humanitarian intervention.¹ According to Annan's vision, state sovereignty would no longer be an obstacle to interventions aimed at safeguarding "individual sovereignty," which he defined as "the human rights and fundamental freedoms of each and every individual."² Annan's address both recognized the "developing international norm"³ of humanitarian intervention and acknowledged the United Nations' two recent failures in this area. In Kosovo and Rwanda, the organization failed to react appropriately to instances of human rights

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¹ Annan explained that the mission of the United Nations continues in a world transformed by geo-political, economic, technological and environmental changes whose lasting significance still eludes us. As we seek new ways to combat the ancient enemies of war and poverty, we will succeed only if we all adapt our Organization to a world with new actors, new responsibilities, and new possibilities for peace and progress. Kofi A. Annan, Sec'y-Gen., United Nations, Annual Report to the General Assembly (Sept. 20, 1999) [hereinafter 1999 Annual Report], available at http://www.un.org/News/ossg/sg/stories/statments_search_full.asp?statID=28. One commentator characterized the speech as a "critical turn" in the debate over the organization's role in an increasingly globalized world. He noted that "the world's top diplomat also wants to be the world's policeman." James P. Pinkerton, *No One Escapes the New World Order*, NEWSDAY, Sept. 23, 1999, at A55.

² 1999 Annual Report, *supra* note 1.

³ *Id.*

violations.⁴ In Rwanda, the organization's inaction enabled mass murder,⁵ and in Kosovo, NATO forces fought to stop ethnic cleansing while the United Nations debated. Annan lamented his organization's deadlock, explaining "[t]he inability . . . to reconcile . . . two equally compelling interests—universal legitimacy and effectiveness in defence of human rights—can only be viewed as a tragedy."⁶

Realizing that a change to the international understanding of state sovereignty would be unwelcome by many,⁷ Annan nevertheless elaborated on the competing points of view that tore at the United Nations while NATO deployed to Kosovo:

To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might ask—not in the context of Kosovo—but in the context of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?

To those for whom the Kosovo action heralded a new era when States and groups of States can take military action outside the established mechanisms for enforcing international law, one might ask: Is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the Second World War, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents, and in what circumstances?⁸

⁴ *Id.*

⁵ *Id.*; see also Editorial, *Talking Darfur to Death*, N.Y. TIMES, Mar. 31, 2007, at A14 [hereinafter Editorial, *Talking Darfur to Death*] (noting that the United Nations' failure in Rwanda is similar to its present-day failure in Darfur); *infra* Part I.

⁶ 1999 Annual Report, *supra* note 1.

⁷ See *id.* ("Any such evolution in our understanding of State sovereignty and individual sovereignty will, in some quarters, be met with distrust, scepticism, even hostility.")

⁸ *Id.* In 2000, President Clinton also noted the tension between state sovereignty and protecting human rights when he spoke at the United Nations Millennium Summit that year. Discussing whether the United Nations should intervene in ethnic and religious conflicts, he asked: "Are they part of the scourge the U.N. was established to prevent? If so, we must respect sovereignty and territorial integrity, but still find a way to protect people as well as borders." David E. Sanger, *Clinton Warns U.N. of a New Age of Civil Wars*, N.Y. TIMES, Sept. 7, 2000, at A1.

Annan's remarks underscore a dilemma in international law: whether states are free to undertake humanitarian interventions without authorization from the Security Council and, if not, whether they ought to be.⁹ This Note undertakes a secular legal analysis to answer the first question, and concludes that all signatories to the United Nations Charter are legally prohibited from deploying troops unilaterally, except in specific circumstances that do not encompass humanitarian missions. This Note examines the second question through the lens of Catholic social principles and the Just War Theory's requirement of proper authorization.

These are relevant issues today because answers to these questions help inform the debate over foreign policy in the United States. In the years after the first Gulf War, President Clinton and the candidates vying to succeed him in 2000 articulated a variety of ideas about what American foreign policy should be.¹⁰ On one end, there are those who would see humanitarian intervention used to cure any injustice, worldwide.¹¹ On the other end of the spectrum are minimalists—modern-day isolationists—who would see the United States commit to battle only when its vital interests are at stake.¹² In between are thinkers who would support American intervention for limited causes in limited circumstances. Even assuming policymakers can formulate a consistent doctrine for when to use force, there is further debate about how the United States should implement its doctrine. Clinton espoused multinational cooperation to achieve humanitarian goals, but—along with some Republicans—he was willing to see the United States pursue a

⁹ There are different ways for one nation to leverage its power against another. For the purposes of this Note, however, "humanitarian intervention" means the use of military force by one nation within the borders of another, aimed at stopping flagrant human rights abuses.

¹⁰ See Doyle McManus, *U.S. Casts About for Anchor in Waters of Post-Cold War World*, L.A. TIMES, Mar. 27, 2000, at A6.

¹¹ The "Clinton Doctrine" is an example of this type of thinking. See *id.* (explaining that the Clinton Doctrine "declares the United States ready to undertake humanitarian intervention all over the world"). For an argument in favor of democratic republics pursuing a policy of international intervention, see Paul W. Kaufman, *Green Berets, Blue Berets . . . White Berets? How & When Republics Participate in Humanitarian Military Intervention*, 14 CARDOZO J. INT'L & COMP. L. 81 (2006).

¹² See McManus, *supra* note 10.

unilateral course.¹³ Post-September 11th, President Bush has similarly advocated a unilateral position. This Note helps advance the debate over unilateral action by examining whether it is legal and, if not, whether it is morally acceptable nevertheless.

Two regrettable themes permeate this discussion. First, the analysis is almost entirely normative rather than practical. The United Nations is an organization predicated on the participation of sovereign nations; in many respects, its human rights failures can be traced back to the shortcomings of its members. Moreover, a unilateral right of intervention is useless without nations that are actually willing to intervene unilaterally. Since the United Nations reduces the collective action problem by dispersing both the human and financial cost of interventions, unilateral interventions are unlikely to move forward in situations where the United Nations routinely fails. On the other hand, some of the organization's failures can be blamed on procedural obstacles that Security Council members can exploit to stall United Nations action. Given this, some nations might act outside the parameters of the United Nations if they had the legal authority to do so.¹⁴

The second theme that runs throughout this Note is the failure of the international community to come to a consensus about what human rights are and at what level they should be protected. The conclusion this Note reaches—that there ought to be a right to unilateral humanitarian intervention under international law—opens the door to military deployments restrained only by an understanding of what a human rights violation looks like. The analysis in Part IV largely takes for granted that the global community will one day reach such a consensus and discusses its ramifications.¹⁵

Part I discusses the genocide in Rwanda to illustrate the great need for solutions to these questions presented. Part II discusses individual states' rights and responsibilities under the United Nations Charter (the "Charter") and concludes that, in the absence of a Security Council mandate, sovereign nations may not legally deploy troops internationally. Part III considers the Just War tradition, particularly its requirements of just

¹³ *Id.*

¹⁴ See *infra* note 160.

¹⁵ For further discussion of this point, see *infra* Part III.B.

cause and proper authority, and looks at whether the concept of proper authorization must be recalculated in light of the constraints the Charter places on sovereign states. Finally, Part IV examines whether Catholic social principles demand the kind of right of unilateral intervention that does not currently exist under international law.

I. THE GENOCIDE IN RWANDA

To understand fully the importance of these issues, it is helpful to examine an example. Over thirteen weeks in the spring of 1994, half a million people were slaughtered in the Rwandan genocide.¹⁶ The Hutu-run government sponsored the systematic elimination of the minority Tutsi tribe; according to one estimate, three-quarters of its population fell victim to the killing.¹⁷ Additionally, thousands of Hutu perished for opposing the brutal campaign.¹⁸ The Human Rights Watch detailed the evolution of the genocidal tactics:

In the first days of killing in Kigali, assailants sought out and murdered targeted individuals and also went systematically from house to house in certain neighborhoods, killing Tutsi and Hutu opposed to Habyarimana. Administrative officials, like the prefect of the city of Kigali, ordered local people to establish barriers to catch Tutsi trying to flee and to organize search patrols to discover those trying to hide.

By the middle of the first week of the genocide, organizers began implementing a different strategy: driving Tutsi out of their homes to government offices [sic], churches, schools or other public sites, where they would subsequently be massacred in large-scale operations.

Towards the end of April, authorities declared a campaign of “pacification,” which meant not an end to killing, but greater control over killing. Sensitive to criticism from abroad—muted though it was—authorities ended most large-scale massacres. . . . They ordered militia and other citizens to bring suspects to officials for investigation and then murder instead of simply killing them where they found them. Authorities used “pacification” also as a tactic to lure Tutsi out of hiding to be killed.

¹⁶ ALISON DES FORGES, *LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA* 1 (1999).

¹⁷ *Id.*

¹⁸ *Id.*

By mid-May, the authorities ordered the final phase, that of tracking down the last surviving Tutsi. They sought to exterminate both those who had hidden successfully and those who had been spared thus far—like women and children—or protected by their status in the community, like priests and medical workers. As the RPF advanced through the country, assailants also hurried to eliminate any survivors who might be able to testify about the slaughter.

Throughout the genocide, Tutsi women were often raped, tortured and mutilated before they were murdered.¹⁹

Throughout this brutality, the international community—particularly the United Nations—responded inadequately. The Human Rights Watch characterized the organization's response as both "slow" and "stingy."²⁰ As the United Nations weighed its response options, one in-house expert predicted nearly 8,000 ground troops would be needed for an effective peacekeeping mission. The United Nations' commander on the ground requested 4,500 soldiers. Nevertheless, when the Security Council finally authorized a military response, its force numbered only 2,548.²¹ The United Nations has been harshly criticized for its failures in the years since the full story of what happened in Rwanda came to light, and even Kofi Annan acknowledged that the organization's response to the crisis was a disaster.²² The United Nations' experience in Rwanda underscores the point Annan was making when he posed those critical questions to the General Assembly in 1999.²³

II. THE U.N. CHARTER PROHIBITS UNILATERAL HUMANITARIAN INTERVENTION

A secular analysis of a unilateral right of intervention must begin with the United Nations Charter.²⁴ Signed by virtually

¹⁹ *Id.* at 9–10.

²⁰ *Id.* at 131.

²¹ *Id.* at 132. The United States advocated for a much smaller number of ground troops. *See id.* This is a piece in the pattern of resistance to United Nations goals by superpowers, which is discussed in the Introduction, *supra*.

²² Kofi A. Annan, Sec'y-Gen., United Nations, Speech at the Time Warner Center (Dec. 8, 2006), *available at* http://www.un.org/News/ossg/sg/stories/statments_full.asp?statID=39.

²³ *See supra* note 8 and accompanying text.

²⁴ Aside from *jus cogens*, the U.N. Charter is the paramount expression of international law. The agreement itself explicitly states that it receives priority in all situations where its provisions conflict with other forms of international law.

every state,²⁵ the Charter governs a wide range of international conduct.²⁶ Its most important provision, Article 2(4), expressly prohibits “the threat or use of force against the territorial integrity or political independence of any state.”²⁷ This rule, read in accordance with the international norms of treaty interpretation, proscribes the type of intervention contemplated by this Note.²⁸ The 1969 Vienna Convention on the Law of Treaties includes the following rule: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.”²⁹ Read plainly, Article 2(4) prohibits states from using force outside their borders. This is in keeping with the Charter’s object and purpose, which was “a global effort to prohibit unilateral determinations of the just war by vesting sole authority for the non-defensive use of force in the Security Council.”³⁰ Thus, at the outset, there is no room for individual states to undertake humanitarian missions abroad without violating this major tenet of the Charter.

The Charter provides two exceptions to its rule against military intervention. First, recognizing the “inherent right of individual or collective” self-defense, the Charter permits the use of force to counteract military aggression by others.³¹ This

U.N. Charter art. 103.

²⁵ Michael Byers & Simon Chesterman, *Changing the Rules About Rules? Unilateral Humanitarian Intervention and the Future of International Law*, in HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS 177, 180 (J. L. Holzgrefe & Robert O. Keohane eds., 2003).

²⁶ See generally U.N. Charter.

²⁷ U.N. Charter art. 2, para. 4.

²⁸ See *supra* note 9.

²⁹ Vienna Convention on the Law of Treaties art. 31, para. 1, opened for signature on May 23, 1969, 1155 U.N.T.S. 331. The Convention was not ratified by the United States. Nevertheless, even states that are not parties to the agreement view the norms contained therein as representative of current customary international law. Byers & Chesterman, *supra* note 25. Customary international law is derived from an assessment of widespread state practice, where that practice is done out of a sense of legal obligation. Customary international law is considered binding on all states which have not affirmatively objected to the general practice. See *id.* at 179.

³⁰ Byers & Chesterman, *supra* note 25, at 181.

³¹ U.N. Charter art. 51. It provides:

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, until the Security Council has taken measures necessary to maintain international peace and security.

provision is not a blank check for counterforce. Member nations must immediately report any action taken to the Security Council and, crucially, the Charter only recognizes a right to unilateral self-defense until such a time as the Security Council can consider and implement an appropriate international response.³²

The second exception to the prohibition of force stems from the Security Council's authority under Chapter VII of the Charter to authorize military action it deems necessary to "maintain or restore international peace and security."³³ The Security Council has a range of options it can use to deter bad behavior by international actors, including economic sanctions or the severing of diplomatic relations.³⁴ Where it deems these measures inadequate, it can resort to force,³⁵ and it has done so in sixty peacekeeping missions since 1948.³⁶ The Security Council's Chapter VII mandate is broad, and it can include humanitarian motives as a justification for invoking its authority. The significance of this section of the Charter,

Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Id.

³² *See id.*

³³ U.N. Charter art. 42. It reads:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Id.

³⁴ *See* U.N. Charter art. 41. Economic sanctions enjoy mixed success, but they can work. They persuaded Libya's Muammar el-Qaddafi to turn over two men charged with the Pan Am 103 bombing. On the other hand, severe economic sanctions did not deter Saddam Hussein from remaining secretive about his weapons of mass destruction programs. *See* Judith Miller, *The World: Checkered Flags; Sovereignty Isn't so Sacred Anymore*, N.Y. TIMES, Apr. 18, 1999, § 4, at 4.

³⁵ *See* U.N. Charter art. 42. Sanctions can also harm the people they are designed to help, when leaders of sanctioned nations make the most vulnerable within their borders bear the economic burdens, or where embargos prevent the import of dual-use goods that might be used for health and safety needs. *See* Editorial, *A Success Worth Noting in Iraq*, N.Y. TIMES, Feb. 8, 2004, § 4, at 14.

³⁶ *See* United Nations, U.N. Security Council: Structure, http://www.un.org/Docs/sc/unsc_structure.html (last visited July 12, 2007).

however, lies not with the justifications for force but rather that, when this section is coupled with the general prohibition of the use of force in Article 2(4), the Security Council is the sole arbiter of the legitimate use of military force.

This is the most persuasive analysis of the Charter, but it is not the only one. There is a wide range of opinions about what Article 2(4) actually forbids.³⁷ There is no serious disagreement that the exceptions detailed above—defensive force and force authorized by the Security Council pursuant its Chapter VII power—permit deployments that fall within these categories.³⁸ Scholars disagree, however, about the treatment human rights-oriented missions should receive under the Charter. Some are opposed to humanitarian intervention in any form, some oppose unilateral intervention but concede United Nations-authorized intervention, and others argue for a unilateral right of intervention based, in part, on the purposes of the United Nations.³⁹ One author, responding to the idea that the organization was founded principally to prevent wars between states, argues that “[t]he promotion of human rights is as important a purpose in the Charter as is the control of international conflict.”⁴⁰

There is little doubt that the protection of human rights was and remains today an important purpose of the United Nations,⁴¹ but the founders of the organization provided for the possibility of international human rights intervention when they drafted Chapter VII.⁴² Under the Charter, the United Nations is perfectly able to use force to protect human rights; it demands only that the organization authorize each mission. That the

³⁷ See FERNANDO R. TESÓN, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY 147 (1997).

³⁸ *Id.* at 146.

³⁹ *Id.* at 147. Recall that, pursuant to the Vienna Convention on the Law of Treaties, provisions must be interpreted in light of the agreement’s purpose. See *supra* note 29 and accompanying text.

⁴⁰ TESÓN, *supra* note 37, at 151.

⁴¹ See, e.g., U.N. Charter art. 1. One of the enumerated purposes of the United Nations is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.” *Id.*

⁴² One commentator argues that, since Chapter VII authority is only implicated when there is a threat to international peace and security, permitting force in only these situations “shields from intervention cases of gross human rights violations that do not produce transboundary effects.” TESÓN, *supra* note 37, at 153.

United Nations sought to act as a clearinghouse for international conflict is supported with evidence from the Charter and the historical backdrop against which the organization was created. The Charter lists maintaining “international peace and security”⁴³ and the “adjustment or settlement of international disputes”⁴⁴ first among the organization’s purposes. Additionally, the historical context in which the United Nations was founded—the aftermath of World War II—lends credence to the idea that preventing interstate conflict, the likes of which were raw in many memories, weighed heavily on the minds of its creators.⁴⁵ Accordingly, the Charter is more accurately interpreted by recognizing the United Nations’ monopoly over the legitimate use of international force.⁴⁶

The Catholic Church agrees that the Charter must be interpreted to ban all military interventions not authorized by the United Nations. In his Message for the 2004 World Day of Peace, Pope John Paul II told the world:

The task of watching over global peace and security and with encouraging the efforts of States to preserve and guarantee these fundamental goods of humanity was entrusted by Governments to an organization established for this purpose—the *United Nations Organization*—with a *Security Council* invested with broad discretionary power. Pivotal to the system was *the prohibition of the use of force*. This prohibition, according to the well-known Chapter VII of the *United Nations Charter*, makes provision for only two exceptions.⁴⁷

⁴³ U.N. Charter art. 1, para. 1.

⁴⁴ *Id.*

⁴⁵ See, e.g., Stephen Schlesinger, *U.N. Revival*, DAILY REV. (Haward, Cal.), Sept. 28, 2003 (characterizing the traditional role of the U.N. as that of a “peacemaker and security guarantor”). The author explained that two of its key founders, Presidents Roosevelt and Truman, “[h]aving endured the most calamitous war in history . . . extracted from the human propensity for devastation the right lesson for our time.” *Id.*; see also U.N. Charter pmbl. (“We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind . . .”).

⁴⁶ See, e.g., Milton J. Esman & Shibley Telhami, *Introduction*, in INTERNATIONAL ORGANIZATIONS AND ETHNIC CONFLICT 1, 1 (Milton J. Esman & Shibley Telhami eds., 1995) (explaining that “state system values” usually trump “human rights values” at the U.N.); MOHAMMAD TAGHI KAROUBI, JUST OR UNJUST WAR?: INTERNATIONAL LAW AND UNILATERAL USE OF ARMED FORCE BY STATES AT THE TURN OF THE 20TH CENTURY 1 (2004) (noting that use of force is “monopolised” by the United Nations).

⁴⁷ JOHN PAUL II, MESSAGE 2004 WORLD DAY OF PEACE ¶ 6 (2004).

NATO's 1999 intervention in Kosovo demonstrates that the legal prohibitions of the Charter do not always achieve the organization's goal of managing global conflict through international consensus. In this instance, force was used by a group of individual states outside the sanction of the United Nations to stop ethnic cleansing.⁴⁸ This raises the question Annan posed to the General Assembly in 1999: "If, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act . . . but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?"⁴⁹ In other words, where the United Nations fails to safeguard human rights, as it has done in the past, should there be a unilateral right to intervene? The Just War tradition and Catholic Social Principles provide a guide for this analysis.

III. A UNILATERAL RIGHT OF INTERVENTION VIEWED THROUGH THE JUST WAR TRADITION

A. Overview

Over the years, the Just War tradition has seen a variety of permutations.⁵⁰ St. Augustine believed there were five prerequisites to just war.⁵¹ St. Thomas Aquinas listed three requirements that made the use of force proper.⁵² Contemporary

⁴⁸ A multinational alliance like NATO is treated differently in this analysis than an international body like the United Nations. The distinction turns on whether the organization is designed primarily to regulate conduct between members of the organization and outsiders, like NATO, or between members themselves, like the United Nations. Esman & Telhami, *supra* note 46, at 2–3. Recall that Article 103 of the U.N. Charter provides that, in case of a conflict between the Charter and any other agreement to which a member is a party, the U.N. Charter prevails. *See supra* note 24.

⁴⁹ 1999 Annual Report, *supra* note 1.

⁵⁰ Just War theorists are concerned with two issues: the morality of going to war in the first place (the *jus ad bellum*), and the morality of how wars are fought once they are begun (the *jus in bello*). *See* John F. Coverdale, *An Introduction to the Just War Tradition*, 16 PACE INT'L L. REV. 221, 223 (2004). To understand the legitimacy of humanitarian intervention, it is necessary to assess the *jus ad bellum* to determine when, if ever, states are morally justified in resorting to force.

⁵¹ St. Augustine's prerequisites were: legitimate authority, just cause, proportionality, last resort, and the goal of achieving peace. Bruce Duncan, *What the Just War Tradition Has to Offer Today*, COMPASS: REV. TOPICAL THEOLOGY, Winter 2003, <http://compassreview.org/winter03/7.html>.

⁵² St. Thomas Aquinas' requirements were: proper authority, just cause, and

authors list different requirements, but the themes identified by these early scholars remain largely intact.⁵³ Two requirements—just cause and proper authority—have persevered through the ages.⁵⁴ They are linked with one another,⁵⁵ and this analysis will consider both in an attempt to understand when states are morally justified to go to war for humanitarian purposes. Some requirements, like proportionality and the use of force only as a last resort,⁵⁶ are fact-intensive inquiries that are properly made after the other requirements are deemed satisfied. The just cause and proper authority requirements, however, implicate questions of morality, and they are the starting point for this discussion.

B. The Protection of Human Rights as a Just Cause for Force

In subsequent sections, this Note assumes for the purpose of argument that humanitarian intervention may be a just cause for using force.⁵⁷ To some theorists, humanitarian intervention is troublesome, because it offends the notion of sovereignty that underlies the international system.⁵⁸ Nevertheless, theorists justify intervention in extreme cases by recognizing a universal quality to human rights that predates sovereignty's place as the bedrock of international law.⁵⁹

right intention. ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, pt. II-II, Q. 40, art. 1, at 165 (2d ed., Hackett Publ'g Co. 2002) (1266–1273) [hereinafter *SUMMA THEOLOGIAE*].

⁵³ See, e.g., Coverdale, *supra* note 50, at 229. Coverdale identifies four requirements: just cause, lawful authority, proportionality, and last resort. *Id.*; see also KAROUBI, *supra* note 46, at 77. Citing J.T. Johnson, *The Just War Tradition and the American Military, Just War and the Gulf War*, in ETHICS AND PUBLIC POLICY CENTER (1991), Karoubi discusses seven criteria: just cause, proper authority, right intention, goal of restoring peace, proportionality, reasonable chance for success, and last resort.

⁵⁴ Clement of Alexandria (circa 150–215 A.D.), one of the first Just War thinkers, incorporated these requirements in his thinking. Following Clement, St. Ambrose also demanded just cause and lawful authority. Duncan, *supra* note 51.

⁵⁵ Coverdale, *supra* note 50, at 250.

⁵⁶ These non-violent measures are contemplated by the U.N. Charter's Chapter VII, which vests with the Security Council the power to authorize use of force, but only where it deems non-violent measures inadequate. U.N. Charter art. 42.

⁵⁷ See, e.g., Coverdale, *supra* note 50, at 238 (explaining that contemporary theorists include humanitarian motives among those that might justify going to war).

⁵⁸ *Id.* at 239; see also 1999 Annual Report, *supra* note 1.

⁵⁹ See Coverdale, *supra* note 50, at 239–40.

Thomas Aquinas characterized “just cause” as one in which “the enemy deserve[s] to have war waged against it because of some wrong it has inflicted.”⁶⁰ Aquinas spoke in a time before the Peace of Westphalia gave rise to an international order premised on state sovereignty and is therefore not an answer to those who are concerned that humanitarian intervention violates that sovereignty.

His third requirement—that just warriors have a “right intention”—suggests that the wrongs he contemplated in his just cause analysis extended beyond the traditional interstate conflict. He quotes Gratian—though he incorrectly attributes the statement to Augustine: “[W]ars waged with zeal for peace and not out of desire for gain or out of cruelty, wars waged to restrain the wicked and assist the good, are also conducive of peace.”⁶¹ This definition would certainly apply to a humanitarian mission aimed at restoring peace in a region torn by ethnic killing or kept hungry by manipulative warlords—modern-day examples of deployments undertaken to “restrain the wicked.” Further, he quotes *Psalms* 82:4: “Rescue the poor and free the needy from the hands of sinners.”⁶²

In the modern sense, Aquinas’ formulation is too broad to be particularly helpful. It lacks specificity, and its plain language undoubtedly encompasses more grounds for intervention than many nations would be comfortable supporting today. Scholars disagree about the extent to which human rights motives can be used to justify armed intervention. One writer suggests the following criteria for determining whether humanitarian intervention is justified: (1) the intervention must be aimed at governments, (2) the “collateral non-humanitarian motives” must “not impair or reduce the first paramount human rights objective,” and (3) “the means used must always be rights-inspired.”⁶³ Another scholar argues that armed humanitarian intervention can be justified in theory, but because it necessarily involves taking lives by force, it is seldom justified in practice.⁶⁴

⁶⁰ *SUMMA THEOLOGIAE*, *supra* note 52.

⁶¹ *Id.* (quoting GRATIAN, *DECRETUM II*, causa 23, Q. 1, c. 6).

⁶² *Id.*

⁶³ TESÓN, *supra* note 37, at 121.

⁶⁴ See Anthony Ellis, *War, Revolution, and Humanitarian Intervention*, in *HUMANITARIAN INTERVENTION: MORAL AND PHILOSOPHICAL ISSUES* 17, 31 (Aleksandar Jokic ed., 2003).

This type of disagreement leaves a very difficult question. If scholars through the ages—from Aquinas’ time to the present—agree that humanitarian motives can be enough to justify force, the issue becomes whether nations recognize a threshold degree of violation that consistently justifies intervention. One commentator points out that the answer turns on the “complex” question of “whether or not there are any truly universal values in the world.”⁶⁵ Recent history clearly indicates that the international community has not yet come to a consensus about what types of behavior constitute intervention-worthy rights violations.⁶⁶ The analysis in subsequent sections of this Note adopts, for the sake of argument, the idea that there might one day be a global understanding about what human rights are and what remedies are appropriate in the face of rights violations. The next section assumes a situation in which human rights violations have surpassed this as-yet-undefined universal threshold level and considers from where lawful authority is conferred in an age marked by increasing global cooperation.⁶⁷

C. *Who Is the Proper Authority?*

When Aquinas wrote that “it belongs to no private citizen to initiate war,” but “[r]ather, since the care of the commonweal has been committed to rulers, it belongs to them to protect the commonweal of the city or kingdom or province subject to them,”⁶⁸ he recognized the need for a pragmatic requirement aimed at deterring minor nobles from waging wars of private aggression.⁶⁹ The requirement also reflected the idea that moral authority for making war rested with kings, not citizens.⁷⁰ In the centuries that followed, this requirement was obviated by the increased importance of state sovereignty in the international

⁶⁵ Jovan Babic, *Foreign Armed Intervention: Between Justified Aid and Illegal Violence*, in HUMANITARIAN INTERVENTION: MORAL AND PHILOSOPHICAL ISSUES, *supra* note 64, at 45, 46.

⁶⁶ Compare the international responses to Kosovo and Rwanda. Both were failures from the United Nations’ perspective, but for different reasons. In Kosovo, NATO recognized actionable human rights violations where the United Nations did not, and in Rwanda, the United Nations recognized violations but acted too weakly to halt them.

⁶⁷ See, e.g., *infra* notes 73–74 and accompanying text.

⁶⁸ *SUMMA THEOLOGIAE*, *supra* note 52.

⁶⁹ See Coverdale, *supra* note 50, at 248.

⁷⁰ See *id.* at 248–49. The moral authority rationale was eventually subsumed into the notion of state sovereignty. *Id.* at 249.

calculus.⁷¹ Unlike Aquinas, theorists and policymakers in the age of traditional state sovereignty could “take for granted the public monopoly on the use of force.”⁷² Today, the international legal structure is moving from a system predicated on traditional sovereignty to one increasingly based on a supranational model.⁷³ International cooperation, particularly in the area of human rights, is on the rise. This is evidenced by, among other things, the increased use of international criminal tribunals to prosecute leaders of genocide, such as in Yugoslavia and Rwanda.⁷⁴ Indeed, Kofi Annan understood that a doctrine valuing humanitarian intervention over state sovereignty was really the “embracing [of] an ‘evolving’ international norm.”⁷⁵ The question that remains is whether the United Nations should be—as its Charter demands—the only authority that can legitimately authorize humanitarian intervention.

Aquinas’ historical rationale for the legitimate authority prong cannot be readily applied to the argument that the United Nations should be the only body that can properly declare war. International human rights-oriented aid has been undertaken only by democracies with a level of resources sufficient to enable them to expend these resources abroad in exchange for little, if any, return in their national interests.⁷⁶ These democratic powers have demonstrated their ability to retain the monopoly of legitimate force. For example, the American military has a proud tradition of a tightly-ordered chain of command, topped by civilian, democratically-elected leadership. Nations that deploy their forces for humanitarian goals are not plagued by private civil wars. On the other hand, fighting does still happen, and to

⁷¹ See *id.* As the notion of state sovereignty developed, “[a]uthors working within the just war tradition mentioned the requirement of just authority, but gave it little importance.” *Id.*

⁷² See *id.* at 250.

⁷³ See, e.g., Laura Cruz et al., *Policy Point-Counterpoint: Is Westphalia History?*, 80 INT’L SOC. SCI. REV. 151, 153 (2005) (“Multinational corporations and globalism in general appear to be on the brink of superceding the state as the basis of international affairs.”); John C. Yoo, *UN Wars, US War Powers*, 1 CHI. J. INT’L L. 355, 361 (2000) (noting a “recent rise in [American] cooperation with international organizations”).

⁷⁴ See Miller, *supra* note 34.

⁷⁵ *Id.*

⁷⁶ The legitimate authority requirement would be relevant to a discussion of the just war tradition as applied to extra-national militants, an interesting topic that is outside the scope of this Note.

the extent that it is the United Nations' ambition to promote peace and deter conflict, arguably Aquinas' fears of rogue nobles laying perpetual waste to each other's armies can be transposed to the modern context. Viewed from this perspective, individual states that wage war without Security Council authorization are really just an updated version of Aquinas' rogues.

Kofi Annan eloquently identified the tension between protecting human rights on one hand and the inherent value in a stable international system ordered by the positivist law of treaties like the Charter, on the other.⁷⁷ These competing ideas must be weighed against each other to assess whether there ought to be a right to unilateral humanitarian intervention. For guidance, this Note turns to the principles of Catholic social teaching.

IV. CATHOLIC SOCIAL PRINCIPLES DEMAND A RIGHT OF UNILATERAL HUMANITARIAN INTERVENTION IN CONTRAVENTION OF THE U.N. CHARTER

A. Overview

This section addresses whether—the Charter's prohibition notwithstanding—Catholic social teaching demands a right of unilateral intervention. To start, it is important to note that Catholic teaching is especially relevant to this area because of the emphasis it places on both human rights and the idea of an international community.⁷⁸ Catholic social principles teach

⁷⁷ See *supra* notes 1–9 and accompanying text.

⁷⁸ Professor Stephen J. Pope explained why Catholic teachings on natural law, and John Courtney Murray's "tradition of reason," are helpful in analyzing the moral questions with which civil authorities are confronted, using the just war tradition as an example:

The development of the just war theory provides a helpful example of how this approach to natural law functions. It provides criteria for interpreting and analyzing the morality of aggression, noncombatant immunity, treatment of prisoners of war, targeting policies, and the like. Though the origin of the just war theory lay in antiquity and medieval theology, its principles were further developed by international law in the seventeenth and eighteenth centuries, and refined by lawyers, secular moral philosophers, and political theorists in the twentieth century. It continues to be subject to further examination and application in light of evolving concerns about humanitarian intervention, preemptive strikes against terrorists, and uses of weapons of mass destruction. The danger that it will be used to rationalize decisions made on nonmoral grounds is as real today as it was in the eighteenth century, but the "tradition of reason" at least

respect for the common good, as measured in terms of the dignity of each person. Civil authorities derive their power not only from positivist law, but also from the extent to which political leaders strive toward morally-sound judgments.⁷⁹ Obedience to civil authorities is really obedience to God.⁸⁰ The Church recognizes that the United Nations makes valuable contributions to the protection of human dignity, which gives it some measure of moral authority. Obedience to the Charter, therefore, can coincide with Catholic teaching. This moral legitimacy ceases, however, when the organization fails to protect human dignity and is no longer a force for the common good.

B. Catholic Social Principles Place Paramount Importance on Human Dignity and the Common Good

Catholic social teaching, particularly since the papacy of John XXIII, has been firmly anchored by the principle of human dignity.⁸¹ As Professor Stephen J. Pope explained, John XXIII “was the first pope . . . to treat human rights as the standard against which every social order is evaluated.”⁸² *Pacem in Terris*, one of John XXIII’s major encyclicals, held as a “key principle”⁸³ the idea “that each individual man is truly a person.”⁸⁴ The document has many references to the dignity of the individual person.⁸⁵

offers some rational criteria for engaging in public debate over where to draw the ethical line between what is ethically permissible and what is not. Stephen J. Pope, *Natural Law in Catholic Social Teachings*, in MODERN CATHOLIC SOCIAL TEACHING 41, 53 (Kenneth R. Himes ed., 2005).

⁷⁹ See, e.g., JOHN XXIII, ENCYCLICAL LETTER *PACEM IN TERRIS* ¶ 98 (1963) [hereinafter *PACEM IN TERRIS*].

⁸⁰ Pope John XXIII wrote:

[Citizens’] obedience to civil authorities is never an obedience paid to them as men. It is in reality an act of homage paid to God, the provident Creator of the universe, who has decreed that men’s dealings with one another be regulated in accordance with that order which He Himself has established.

Id. ¶ 50.

⁸¹ See Pope, *supra* note 78; see also David J. O’Brien & Thomas A. Shannon, *Introduction to Second Vatican Council, Vatican II and Post-Conciliar Catholic Social Teaching*, in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 163, 163 (David J. O’Brien & Thomas A. Shannon eds., 1992) (“[N]ew stress of human liberties and human rights occupied a central place with Pope John XXIII and Pope Paul VI.”).

⁸² Pope, *supra* note 78.

⁸³ *Id.*

⁸⁴ *PACEM IN TERRIS*, *supra* note 79, ¶ 9.

⁸⁵ See, e.g., *id.* ¶ 27; see also *id.* ¶ 139 (“The common good of individual States is

A call for legal protection for human rights flows easily from the concept of human dignity. *Pacem in Terris* links the two ideas. At paragraph twenty-seven, the document recognizes the role of civil authority in the sphere of human dignity: The human person “is entitled to the legal protection of his rights, and such protection must be effective, unbiased, and strictly just.”⁸⁶

Legal norms instituted to ensure the protection of human dignity are inextricably linked to the principle of the common good. This is a major theme of *Pacem in Terris*. “[T]he common good is best safeguarded when personal rights and duties are guaranteed. The chief concern of civil authorities must therefore be to ensure that these rights are recognized, respected, coordinated, defended and promoted, and that each individual is enabled to perform his duties more easily.”⁸⁷ Without legal protection crafted by civil authorities, inequity among the world’s population flourishes, and human rights are thus “rendered totally ineffective.”⁸⁸

Global inequality raises special concerns for the Church, whose teaching acknowledges that “in defining the scope of a just freedom within which individual citizens may live lives worthy of human dignity, the rulers of some nations have been far too restrictive.”⁸⁹ John XXIII addresses this issue by reminding the faithful that the “common good” extends beyond borders: “We must bear in mind that of its very nature civil authority exists, not to confine men within the frontiers of their own nations, but primarily to protect the common good of the State, which certainly cannot be divorced from the common good of the entire human family.”⁹⁰ The *Compendium of Catholic Social Thought* also speaks to the need of international law to safeguard human

something that cannot be determined without reference to the human person Hence the public authority of the world community must likewise have as its special aim the recognition, respect, safeguarding and promotion of the rights of the human person.”); *id.* ¶¶ 143–44 (noting that the U.N.’s Universal Declaration of Human Rights acknowledged the dignity of the human person).

⁸⁶ *Id.* ¶ 27. John XXIII quotes Pius XII’s 1942 Christmas Eve Radio Message: “In consequence of that juridical order willed by God, man has his own inalienable right to juridical security. To him is assigned a certain, well-defined sphere of law, immune from arbitrary attack.” *Id.*

⁸⁷ *Id.* ¶ 60.

⁸⁸ *See id.* ¶ 63.

⁸⁹ *Id.* ¶ 104.

⁹⁰ *Id.* ¶ 98.

rights everywhere. A “true international community”⁹¹ must be structured to maximize the common good, “aware that the common good of a nation cannot be separated from the good of the entire human family.”⁹²

C. The United Nations Plays an Important Role in Protecting Human Dignity

“Peace is not merely the absence of war.”⁹³ Church teaching suggests that there is a role for organizations like the United Nations. In many ways, the United Nations promotes the social principles emphasized by the Church by striving toward the Catholic idea of peace.⁹⁴ The Church’s conceptualization of peace encompasses both an international order predicated on stability, security, and justice,⁹⁵ and one based on the preservation of human dignity.⁹⁶ In the international context, the human dignity aspect of peace is threatened where “truth and justice” are absent from interstate dialogue,⁹⁷ or where “excessive economic or social inequalities” abound.⁹⁸ The United Nations embodies Catholic principles by working toward these goals.

The United Nations lists the promotion of stability and security first among its declared purposes,⁹⁹ and it sets about this

⁹¹ PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Compendium of the Social Doctrine of the Church* ¶ 433 (2004) [hereinafter *Compendium*] (emphasis omitted).

⁹² *Id.* ¶ 434.

⁹³ PAUL VI, PASTORAL CONSTITUTION *GAUDIUM ET SPES* ¶ 78 (1965).

⁹⁴ *See, e.g.*, U.N. Charter pmb., art. I. Moreover, the preamble states that the organization is “[d]etermined . . . to reaffirm faith in fundamental human rights, [and] in the dignity and worth of the human person.” U.N. Charter pmb.

⁹⁵ *See* CATECHISM OF THE CATHOLIC CHURCH ¶ 1909 (2d ed. 1997) [hereinafter *CATECHISM*] (“[T]he common good requires peace, that is, the stability and security of a just order. It presupposes that authority should ensure by morally acceptable means the security of society and its members. It is the basis for the right to legitimate personal and collective defence.”); *see also id.* ¶ 2304 (“Peace is the tranquility of order. Peace is the work of justice and the effect of charity.” (internal quotation marks omitted)).

⁹⁶ *See id.* ¶ 2304 (“Peace is not merely the absence of war, and it is not limited to maintaining a balance of powers between adversaries. Peace cannot be attained on earth without safeguarding the goods of persons, free communication among men, respect for the dignity of persons and peoples, and the assiduous practice of fraternity.”).

⁹⁷ *PACEM IN TERRIS*, *supra* note 79.

⁹⁸ *CATECHISM*, *supra* note 95, ¶ 2317.

⁹⁹ U.N. Charter art. 1, para. 1, states that one purpose of the United Nations is [t]o maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to

task in a wide variety of ways.¹⁰⁰ The Charter that governs the organization and binds its signatories is structured in a way to promote stability and security. It bans altogether the use of aggressive force,¹⁰¹ and it substantially curtails member states' ability to use force in other instances, as well.¹⁰² This comports with the Church's position on war. The Church calls on all nations "to reject definitively the idea that justice can be sought through recourse to war."¹⁰³ The Second Vatican Council recognized the need for a provision like the Charter's Article 2(4) in international law, explaining that "[i]t is our clear duty, therefore, to strain every muscle in working for the time when all war can be completely outlawed by international consent."¹⁰⁴ Further, it called on a "universal public authority"—like the United Nations—to accomplish this goal.¹⁰⁵

The United Nations' bureaucratic organization promotes stability, also. The Security Council encourages disagreeing nations to reach peaceful settlements, and can mediate the dispute itself.¹⁰⁶ Further, the work in the disarmament area answers John XXIII's call in *Pacem in Terris* for a change in the way nations view one another: "[T]he fundamental principles upon which peace is based in today's world [must] be replaced by an altogether different one, namely, the realization that true and lasting peace among nations cannot consist in the possession of an equal supply of armaments but only in mutual trust."¹⁰⁷ The organization works across borders to reduce nuclear arsenals,

the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace

Id.

¹⁰⁰ See generally United Nations, Peace and Security Resources in the United Nations System, <http://www.un.org/issues/m-peace.html> (last visited July 12, 2008) (listing the departments and system offices of the United Nations assigned with the task of promoting peace and stability).

¹⁰¹ U.N. Charter art. 2, para. 4; see also *supra* Part II.

¹⁰² See *supra* Part II.

¹⁰³ *Compendium*, *supra* note 91, ¶ 438 (emphasis omitted).

¹⁰⁴ *GAUDIUM ET SPES*, *supra* note 93, ¶ 81.

¹⁰⁵ *Id.*

¹⁰⁶ See United Nations, U.N. Security Council: Background, http://www.un.org/Docs/sc/unsc_background.html (last visited July 12, 2007).

¹⁰⁷ *PACEM IN TERRIS*, *supra* note 79, ¶ 113.

restrict illegal nuclear trafficking, and promote a nuclear test-ban treaty.¹⁰⁸

The United Nations also strives toward achieving Catholic teaching's notion of justice through organs such as international courts. The International Court of Justice in The Hague peacefully resolves disputes between nations by applying recognized international law.¹⁰⁹ Through the Security Council, the United Nations also administers international criminal tribunals for the former Yugoslavia and Rwanda. These bodies, unlike the International Court of Justice, bring accountability to individual wrongdoers.¹¹⁰ The International Criminal Court, an entity separate from the United Nations, can nevertheless hear disputes referred to it by the Security Council.¹¹¹

The United Nations stresses human dignity by protecting human rights and addressing social and economic inequalities.¹¹² In the preamble to the Charter, the founders explained that the organization would work for equal rights and human dignity, as well as "social progress and better standards of life in larger freedom."¹¹³ Toward that end, the founders declared that the organization would work toward "promotion of the economic and social advancement of all peoples,"¹¹⁴ a goal echoed in *Pacem in Terris*, which calls on governments to give "considerable care and thought to the question of social as well as economic progress" of the citizens.¹¹⁵ The organization's Secretariat has put human rights protection at the forefront of its agenda in recent years.¹¹⁶

¹⁰⁸ See United Nations, Disarmament Issues, <http://disarmament.un.org/issue.htm> (last visited July 11, 2008).

¹⁰⁹ See United Nations, The International Court of Justice, <http://www.icj-cij.org> (follow "English" hyperlink; then follow "The Court" hyperlink) (last visited July 11, 2008).

¹¹⁰ The International Court of Justice hears matters between states and gives advisory opinions to other international bodies. *Id.*

¹¹¹ See International Criminal Court, How the Court Works, <http://www.icc-cpi.int/about/ataglance/works.html> (last visited July 9, 2008).

¹¹² Pope Paul VI said: "The present solidarity of mankind also calls for a revival of greater international cooperation in the economic field." *GAUDIUM ET SPES*, *supra* note 93, ¶ 85; see also *id.* ¶ 86 ("It is the role of the international community to coordinate and promote development, but in such a way that the resources earmarked for this purpose will be allocated as effectively as possible, and with complete equity.").

¹¹³ U.N. Charter pmb1.

¹¹⁴ *Id.*

¹¹⁵ *PACEM IN TERRIS*, *supra* note 79, ¶ 64.

¹¹⁶ See Kofi A. Annan, Sec'y-Gen., United Nations, Address to Mark International Human Rights Day (Dec. 8, 2006), http://hrw.org/un/pdfs/annan_

The organization devotes significant resources in a variety of areas to promote these goals. Two examples are the Office of the High Commissioner for Human Rights, which works to protect human rights internationally,¹¹⁷ and the Economic and Social Council, which studies policies geared toward raising social and economic conditions around the globe.¹¹⁸

The Church recognizes the contributions the United Nations makes in securing human dignity worldwide, and addresses them directly in some of its teaching. In *Pacem in Terris*, John XXIII called the goal of the organization's Universal Declaration of Human Rights one "to be sought by all peoples and all nations."¹¹⁹ It is the Church's "earnest wish," he wrote, "that the United Nations Organization may be able progressively to adapt its structure and methods of operation to the magnitude and nobility of its tasks."¹²⁰ In the United States, Catholic Bishops believe the United Nations is an important tool for social change.¹²¹ Through American diplomats, the United States Conference of Catholic Bishops has attempted to engage the organization on issues like global poverty, HIV/AIDS, and debt relief.¹²²

There is ample support that the United Nations achieves some of its laudable goals.¹²³ According to a study by the Human Security Centre, armed conflict has drastically declined since the end of the Cold War.¹²⁴ Moreover, since that time, conflicts that

address120806.pdf. Annan explained that "[o]ne of my priorities as Secretary-General has been to try and restore that hope, by making human rights central to all the UN's work." *Id.*

¹¹⁷ See Office of the High Commissioner for Human Rights, Mandate, <http://www.ohchr.org/EN/AboutUs/Pages/Mandate.aspx> (last visited July 11, 2008).

¹¹⁸ See United Nations Economic & Social Council, Background, http://www.un.org/docs/ecosoc/ecosoc_background.html (last visited July 11, 2008).

¹¹⁹ See *PACEM IN TERRIS*, *supra* note 79, ¶ 143.

¹²⁰ *Id.* ¶ 145.

¹²¹ Letter from John H. Ricard, S.S.J., Most Reverend, U.S. Conference of Catholic Bishops, to Condoleezza Rice, Sec'y of State, U.S. Dep't of State (Sept. 7, 2005), http://hrw.org/un/pdfs/annan_address120806.pdf (calling the 2005 annual meeting of the organization an "unparalleled opportunity" to address global human rights issues).

¹²² See, e.g., *id.*

¹²³ The United Nations has significant shortcomings, also. See *infra* Part IV.D. The organization is partly to blame for its inability to tout its successes in an effort to overcome the detail its failures receive in the media. See Grace Wise, Letter to the Editor, *U.N. Peacekeeping Is a Quiet Success*, N.Y. TIMES, Apr. 3, 1996, at A14.

¹²⁴ Philip Stephens, *The Paradox of Being Insecure in a Far More Peaceful World*, FIN. TIMES (London), Sept. 15, 2006, at 17.

have arisen have been far less deadly than in times past.¹²⁵ After World War II, each war claimed, on average, 38,000 people.¹²⁶ By the start of the twenty-first century, that figure had fallen to 600.¹²⁷

Arguably, the United Nations' successes in these areas have been "countless."¹²⁸ Sanctions have proven effective in encouraging aberrant nations to comply with international law. In Libya, sanctions motivated Colonel Muammar el-Qaddafi to hand over suspects in the Pan Am 103 bombing to an international tribunal.¹²⁹ Sanctions, coupled with arms inspections, also apparently worked in deterring Saddam Hussein from pursuing a weapons program.¹³⁰ The United Nations has also succeeded where sanctions failed and troops were needed on the ground. For example, its 2001 peacekeeping mission to institute a buffer zone between Ethiopia and Eritrea was hailed as a success.¹³¹ The organization was also praised for its efforts to foster peaceful, democratic elections in Angola.¹³²

Finally, in general terms, international organizations like the United Nations have value that extends beyond their specific initiatives because they address the collective action problem that plagues international affairs and paralyzes many states from taking action. The information-sharing aspect of the Security Council helps address this problem. Additionally, the peer pressure that international norms put on individual states encourages compliance with basic obligations,¹³³ and efforts to engage otherwise recalcitrant nations benefit every state.¹³⁴

¹²⁵ *See id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *See supra* note 34.

¹³⁰ Editorial, *A Success Worth Noting in Iraq*, *supra* note 35, § 4, at 14 (noting that the combination of embargoes, arms inspections, and American military deterrence "look far more effective than once thought"); *see also* Robert Wright, Op-Ed., *Making the U.N. Look Good*, N.Y. TIMES, Apr. 10, 2007, at A21.

¹³¹ *Ethiopia Begins Withdrawing Army from Eritrea*, N.Y. TIMES, Feb. 13, 2001, at A3 ("The deployment is seen as a success story in the making for the United Nations after a string of troubled peacekeeping missions in Africa.").

¹³² *See* Julian Ozanne, *Civil War Overhang Threatens Angola Poll*, FIN. TIMES (London), Sept. 25, 1992, at 6 ("Much of the credit for the success of the transition also goes to the United Nations . . .").

¹³³ *See* Yoo, *supra* note 73.

¹³⁴ *See, e.g.*, Warren Hoge, *On Mideast Trip, U.N. Chief Sought to Expand New Role*, N.Y. TIMES, Apr. 3, 2007, at A10 (reporting that on a recent international trip,

D. *The Value of the United Nations Is Only as Great as Its Ability To Protect Human Dignity*

The United Nations has many noble goals that fit nicely within the teachings of the Catholic Church. For all its success in the human rights area, however, it seems to have had just as many failures.¹³⁵ The organization has acted inadequately—or not at all—in the face of a series of human rights atrocities.¹³⁶ In these instances, the critical issue has been whether individual nations should sit outraged on the sidelines, prohibited from action by the United Nations Charter. The final section of this Note answers this question in the negative. Catholic social principles teach that the United Nations is only as valuable as its ability to defend human dignity.¹³⁷ Where it fails—or worse, obstructs—it should be pushed aside by states willing to act unilaterally to protect mankind.

Pacem in Terris makes reference to this dilemma. On one hand, “[t]here can be no doubt that State juridical system which conforms to the principles of justice and rightness, and corresponds to the degree of civic maturity evinced by the State in question, is highly conducive to the attainment of the common good.”¹³⁸ Yet, “the relations between public authorities of the same State[] are sometimes seen to be of so ambiguous and explosive a nature, that they are not susceptible of being regulated by any hard and fast system of laws.”¹³⁹ Part IV.C argued that the United Nations, with the Charter as its constitutive document, is valuable to the world, especially in the context of human dignity.¹⁴⁰ The Charter’s absolute prohibition on unilateral humanitarian intervention is a stark example of a “hard and fast” law that should give way to the more important ideal of protecting human dignity.

From the Catholic perspective, such an inflexible provision must give way when it obstructs the preservation of human dignity. As *Pacem in Terris* explains, “laws and decrees passed

new Secretary General Ban Ki-moon reached out to leaders in Saudi Arabia, Iran, and Lebanon—nations that “make a habit of snubbing the United Nations”).

¹³⁵ A Google search on April 12, 2007 for “‘United Nations’ and ‘Failure’” returned about 2.2 million results.

¹³⁶ Rwanda and Kosovo are two examples.

¹³⁷ See, e.g., *Compendium*, *supra* note 91, ¶ 441.

¹³⁸ *PACEM IN TERRIS*, *supra* note 79, ¶ 70.

¹³⁹ *Id.* ¶ 72.

¹⁴⁰ See *supra* Part IV.C.

in contravention of the moral order, and hence of the divine will, can have no binding force in conscience, since 'it is right to obey God rather than men.'¹⁴¹ In this way, "[a]uthority is before all else a moral force."¹⁴² That moral force is eroded completely when the organization fails in times of great need, and at the same time its Charter prohibits unilateral action aimed at the greater good.¹⁴³

Sadly, recent history is replete with stark failures by the United Nations. In Rwanda, hundreds of thousands people died in a little over three months; what little presence the United Nations had in the region to begin with was erased when its forces withdrew during the slaughter.¹⁴⁴ The organization did not even officially recognize this was genocide until after the killing was over.¹⁴⁵ In Darfur, the United Nations was again plagued by obstacles that prevented a swift response to the bloody ethnic conflict.¹⁴⁶ In an editorial, the *New York Times* slammed the organization for its failure in Darfur: "The United Nations has repeatedly disgraced itself by its halfhearted and inadequate response to the gravest human rights challenge it has faced since it failed the same genocide test in Rwanda more than a decade ago."¹⁴⁷

The United Nations' moral force is also eroded by practical limitations that hinder its credibility by making effective responses to human rights crises difficult to achieve, and thus rare. This broad concern is recognized in *Pacem in Terris*. It explains that

[i]n the past rulers of States seem to have been able to make sufficient provision for the universal common good through the

¹⁴¹ *PACEM IN TERRIS*, *supra* note 79, ¶ 51 (quoting *Acts* 5:29).

¹⁴² *Id.* ¶ 48. The *Compendium of the Social Doctrine of the Church* explains that the United Nations is not an infallible solution to the world's ills. While the Church "views positively the role of intergovernmental organizations, . . . it has reservations when they address problems incorrectly." *Compendium*, *supra* note 91, ¶ 440.

¹⁴³ In arguing that the Charter's prohibition against unilateral intervention is immoral, it need not address whether there were nations waiting to intervene but did not because of the plain language of the document. The Charter's immorality transcends issues of but for causation.

¹⁴⁴ See *The Real Hero of Hotel Rwanda*, U.S. CATHOLIC, Feb. 2006, at 18, 18.

¹⁴⁵ See *id.* at 19.

¹⁴⁶ See generally Michael Petrou, *Genocide in Slow Motion*, MACLEAN'S, Dec. 11, 2006, at 35 (discussing the unfolding tragedy in Darfur).

¹⁴⁷ Editorial, *Talking Darfur to Death*, *supra* note 5.

normal diplomatic channels, or by top-level meetings and discussions, treaties and agreements; by using, that is, the ways and means suggested by the natural law, the law of nations, or international law.¹⁴⁸

The Charter is precisely such an example of international law. *Pacem in Terris* cautions, however, that failure in this area is not due to world leaders' lack of "sincerity and enterprise" but because "their authority is not sufficiently influential."¹⁴⁹

The United Nations lacks adequate authority for a variety of reasons which will be addressed in turn. At the outset, part of the body's ineffectual nature stems from the consensual basis of its existence; acting on a consensus basis always makes forward progress difficult.¹⁵⁰ Member states were not forced to join the organization; each nation affirmatively ratified the Charter. In the larger General Assembly, where approval from more delegations is required than in the Security Council, resolutions that pass can be so watered-down as to be ineffectual.¹⁵¹

The United Nations reflects this lack of adequate authority in its structure, particularly the system of single veto deliberation in the Security Council.¹⁵² This procedural hurdle is particularly difficult to overcome when human rights are the subject of the debate, thanks to China's foreign policy. For any meaningful resolution to be issued,¹⁵³ China, as a permanent member of the Council, must agree or at least abstain from disagreeing. It is reluctant to acquiesce, lest a precedent be set for dealing with human rights abuses it commits against its own people.¹⁵⁴ One of the strongest advocates of protecting the

¹⁴⁸ *PACEM IN TERRIS*, *supra* note 79, ¶ 133.

¹⁴⁹ *Id.* ¶ 134.

¹⁵⁰ See *The Real Hero of Hotel Rwanda*, *supra* note 144, at 19. Paul Rusesabagina, the hero portrayed in the recent film "Hotel Rwanda," characterized the U.N.'s flaws as being largely procedural: "The way this gets decided is on a consensus basis. They call people, they sit down, they discuss. But at the end of the day, the week, the month, there is no decision. And by the time a decision comes, it is diluted because of political or economic interests." *Id.*

¹⁵¹ See Sanger, *supra* note 8 ("[L]anguage is so watered down that discerning its specific meaning is difficult at best.").

¹⁵² U.N. Charter Article 27 requires Security Council Resolutions to be passed with affirmative votes from nine of the fifteen members, including concurring votes from the five permanent members—the United States, the United Kingdom, France, Russia, and China. U.N. Charter art. 27, paras. 1–3.

¹⁵³ Recall that the Security Council is the only U.N. organ that can authorize force under Chapter VII of the Charter. See *supra* Part II.

¹⁵⁴ See, e.g., Sanger, *supra* note 8 (noting China's unwillingness to intervene in

concept of state sovereignty at the expense of human rights, China was responsible for delaying Security Council authorization for a peacekeeping force in Darfur.¹⁵⁵ Moreover, the resolution that was eventually passed contained a provision that required the Sudanese government—the human rights perpetrators—to acquiesce to the international force.¹⁵⁶ China does not block every effort to protect human rights, and it pressured the Sudanese government to welcome peacekeepers, but it will obstruct United Nations action where it fears that the world may find a correlation to its activities in Tibet and Taiwan.¹⁵⁷

Similar structural flaws exist in other United Nations organs, as well. When the United Nations Human Rights Council condemned the violations in Darfur in March 2007, it failed to assign responsibility for the atrocities to the Sudanese government, despite the council's own investigation that pointed that way.¹⁵⁸ That the condemnation "was made possible by the welcome willingness of several African countries to set aside their usual reluctance to talk about their continent's human rights problems,"¹⁵⁹ should not excuse its failure to place blame where it belongs.

Other practical limitations on the organization include lack of financial and military support for its efforts.¹⁶⁰ Many fear the

Kosovo or East Timor for fear of subsequent intervention in Taiwan or Tibet).

¹⁵⁵ See James Traub, *The World According to China*, N.Y. TIMES, Sept. 3, 2006, (Magazine), at 24, 27 (discussing China's impact on the United Nations, including analysis of its role in addressing the Darfur conflict).

¹⁵⁶ See, e.g., Editorial, *Talking Darfur to Death*, *supra* note 5 (blaming China for obstructing the U.N.'s ability to insert the peacekeeping force that the Security Council authorized into the Sudan).

¹⁵⁷ See Miller, *supra* note 34 (quoting Kenneth Roth, executive director of the Human Rights Watch). The United Nations eventually was able to pass a Security Council resolution authorizing a peacekeeping mission in Darfur, but only on the condition that the Sudanese government acquiesce to an international force. After much pressure, the government dropped its objections. See Rob Crilly, *Sudanese Want Darfur Action*, CHRISTIAN SCI. MONITOR, Apr. 24, 2007, at 4, 4. According to one estimate, approximately 300,000 people have died so far in the tragedy. *The Bear Facts*, ECONOMIST (London), Dec. 8, 2007, at 64, 64.

¹⁵⁸ See Editorial, *Talking Darfur to Death*, *supra* note 5.

¹⁵⁹ *Id.*

¹⁶⁰ Arguably, the U.N.'s logistical problems should be of little consequence in a debate about whether there should be a unilateral right to intervention, because if there existed enough nations committed to protecting human rights unilaterally, these same nations would not have difficulty supporting the United Nations. See, e.g., Paul Lewis, *U.N. Chief Says Abandoning Aid Force for Zaire Was a Mistake*,

United Nations is overmatched because its resources are inadequate to care for an estimated “40 million refugees and displaced people.”¹⁶¹ The United Nations has no standing military, and must rely on contributions from member-states to fill its peacekeeping ranks.¹⁶² According to one estimate, a successful peacekeeping mission in the Sudan would require “hundreds of thousands” of soldiers, more than the amount the United States has committed to stabilizing Iraq.¹⁶³ Not just soldiers are needed; the United Nations also needs police officers to help keep the peace and train local forces. Recruiting officers to go protect and serve abroad is not easy. The organization’s recent attempts to recruit New York City officers does not look promising inasmuch as the city has a hard enough time filling its own ranks.¹⁶⁴

Finally, the United Nations loses moral authority when it appears selective about the people it helps. Critics charge that the organization’s recent history shows a bias against problems in Africa. The organization quickly followed up NATO’s efforts in Kosovo by sending a stabilizing force after the fighting was over, but it withdrew in the midst of suffering in Somalia and Rwanda, and there are grave doubts about whether the organization will be able to stem the bloodshed in Darfur.¹⁶⁵

N.Y. TIMES, Feb. 14, 1997, at A5 (pointing out that the United States owed one billion dollars in dues). The debate, however, is really about whether a per se bar to unilateral intervention is immoral where the U.N. fails in the face of human rights abuses. In any case, Kosovo provides a good example of a group of states acting without U.N. sanction to stop ethnic cleansing. See generally Barton Gellman, *The Path to Crisis: How the United States and Its Allies Went to War*, WASH. POST, July 21, 1999, at A1 (discussing the diplomatic events leading up to the conflict in Kosovo).

¹⁶¹ See Miller, *supra* note 34.

¹⁶² See, e.g., Bradley Graham, *Pentagon Faults U.N. in Kosovo*, WASH. POST, July 21, 1999, at A17 (noting that the United Nations must fill the ranks of its police force in Kosovo with recruits from member nations).

¹⁶³ See Petrou, *supra* note 146.

¹⁶⁴ See Associated Press, *U.N. Wants NYC Cops for Peacekeeping*, BREITBART.COM, Apr. 11, 2007, http://www.breitbart.com/article.php?id=D8OEPQ1G0&show_article=1.

¹⁶⁵ See Miller, *supra* note 34 (citing concerns of a close advisor to then-Secretary General Kofi Annan that Kosovo and Rwanda were two vastly different portraits of the U.N.’s capabilities); see also *Peacekeepers into the Fray*, ECONOMIST, Mar. 15, 2008, at 58, 58 (expressing doubt that the large U.N. force deploying to the region now will be able to quell the fighting). To be fair, the United Nations faces daunting challenges on the ground in Darfur. The conflict is a complex one, *id.*, and forging peace among at least fourteen rebel factions will not be easy. See *Darfur Bleeds as*

CONCLUSION

In legal terms, the answer to Kofi Annan's question about whether, when the United Nations fails to act, individual nations must stand aside in the face of human rights violations is a regrettable yes. Any honest interpretation of the United Nations Charter compels this conclusion. Catholic social teaching, however, demands a right of unilateral humanitarian intervention because it emphasizes the critical place the protection of human dignity should have among the concerns of civil authorities worldwide. The United Nations is the foremost international organization, and its programs put to practice many of the Catholic teachings. Nevertheless, its value is only as great as its commitment to protecting human dignity. Therefore, to the extent that the Charter's prohibition on interventions made without Security Council authorization stands in the way of safeguarding human rights, this provision should have no force.