

## **The Contingent Legitimacy of Multilateralism**

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Multilateralism can be defined in two different ways. The definition that is more consistent with ordinary usage conceives of multilateralism as institutionalized collective action by an inclusively determined set of independent states. Truly multilateral organizations are open to all states meeting specified criteria. The rules of multilateral organizations are publicly known and persist over a substantial period of time. This definition, defining multilateralism in strictly institutional rather than normative terms, makes it possible meaningfully to ask causal questions about whether multilateral institutions promote norms such as those of diffuse reciprocity. Such a definition also facilitates inquiry into whether strictly institutional forms are normatively legitimate. Since the question of the legitimacy of contemporary multilateral institutions is the central issue addressed by this chapter, I use this definition of multilateralism.

Another definition, due principally to John Ruggie, limits multilateralism to action among three or more states “on the basis of generalized principles of conduct,” such as diffuse reciprocity.<sup>1</sup> Ruggie’s definition is most valuable for studying possible transformations in world politics. Most multilateralism has been accompanied by discrimination among states, according to power, status, wealth or other characteristics. Whenever multilateralism as defined by Ruggie is found, by contrast, we are in the presence of behavior – action according to “generalized principles of conduct” – that was almost unknown before the middle of the 20<sup>th</sup> century. As Fritz Kratochwil’s chapter for this volume suggests, forms of multilateralism in the most general sense were facilitated by the institution of sovereignty and through the Concert of Europe. But these forms of multilateralism discriminate among states, notably between Great Powers and others.

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Multilateral institutions by no means supersede states as the most important actors in world politics. On the contrary, they are created by states, and states dominate their decision-making. It is now well-established that institutions such as the World Trade Organization (WTO) and the United Nations perform valuable functions for states. They reduce the costs of making and enforcing agreements, they help to provide information about other states' policies, and they increase the costs of renegeing on commitments, thereby increasing the credibility of promises.<sup>2</sup>

Were states the ultimate actors in world politics, this story might be sufficient: organizations that are useful for states would persist. But the contemporary world is one of socially mobilized populations – whether political systems are democratic or not. For state policies to be solidly established and effective, they need to generate at least passive support from the people whom they affect. State policies need, that is, to be publicly *legitimate* to mass audiences.

Broadly speaking, we can think of legitimacy as a normative or as a sociological concept. Normatively, an institution is legitimate when its practices meet a set of standards that have been stated and defended. For instance, on the theory of judicial review in American constitutional law, it is legitimate for the Supreme Court to rule actions of the Executive, or of Congress, unconstitutional. On a strictly majoritarian democratic theory, or a plebiscitary theory, such edicts by the Court would not be legitimate.

In the sociological sense, legitimacy is a matter of fact. An institution is legitimate when it is accepted as appropriate, and worthy of being obeyed, by relevant audiences. When the relevant audiences believe in a particular normative theory, normative legitimacy tends to coincide with sociological legitimacy. For instance, since there is almost universal acceptance in the United States of the legitimacy of judicial review by the Supreme Court, such review is both normatively legitimate (on the basis of a theory of constitutional government) and sociologically legitimate. Often, however, legitimacy is contested, either because people hold different normative theories of it or because they evaluate the facts differently.

Inis L. Claude argued almost 40 years ago that the United Nations provides “collective legitimation” for state policies.<sup>3</sup> Such legitimation is most evident with respect to coercive acts

by states, involving the use of military force. Except in situations of self-defense, the UN Charter declares unilateral military actions by states to be illegitimate. Only the UN can provide a globally-based endorsement for action – which Secretary General Kofi Annan refers to as the “unique legitimacy” of the United Nations. In this view, actions such as armed intervention against a state, which would otherwise be subject to condemnation, become legitimate when authorized by members of an organization of states, such as the UN Security Council or the WTO. The presumption is that if there is sufficient consensus by states, acting collectively according to established supermajority rules, legitimacy follows.

In this paper I will question this presumption. I view it as a social construction of the 20<sup>th</sup> century, which is becoming increasingly problematic. The view that agreement by states, according to institutionalized rules, guarantees legitimacy relies on a deeply statist normative theory. Such an argument has always been at odds with normative democratic theory. The general acceptance of statist views until the last quarter of the 20<sup>th</sup> century, however, implied the general acceptance of a statist theory of legitimacy. But as democracy has become more widely accepted as the best form of government domestically, its international analogues have also made inroads. Demands for multilateral organizations to become more accountable to “civil society” rather than simply to states have proliferated. Insofar as these views become widespread, the sociological legitimacy of statism will decline and multilateral organizations will need to find new bases for their claims of legitimacy in the 21<sup>st</sup> century.

### *The 20<sup>th</sup> Century Theory of Multilateral Legitimacy*

The sources of organizational legitimacy are conventionally divided into “output” and “input” legitimacy.<sup>4</sup> Outputs refer to the achievement of the substantive purposes of the organization, such as security and welfare. Inputs refer to the processes by which decisions are reached – whether they have certain attributes regarded as important by the audience. In the contemporary world, it is typically crucial for the legitimacy of state policy that it be made and implemented by nationals of one’s state, not by foreigners. In thoroughly democratic societies, publics demand that governments act according to democratic principles, and courts have the authority to constrain the actions of executives, even on issues of national security.

Claims about the “unique legitimacy of the United Nations” or of multilateralism rely to some extent on output legitimacy. They begin with the premise that under conditions of interdependence coordinated policies are essential to avoid dysfunctional uncertainty and conflict, with negative results for all participants. These arguments also draw on a recognition that since the world is politically decentralized and heterogeneous, no single state or bloc can effectively dictate policies. Hence, it is argued that in general, policies that are developed through multilateral institutions have better prospects of general acceptance and widespread compliance than efforts to make policy unilaterally by a small number of states.

Yet advocates of multilateralism have difficulty claiming that the United Nations or other multilateral organizations are more efficient than states. Indeed, there is a long line of reports on the United Nations, and other literature, describing the bureaucratic weaknesses of the UN. The dependence of the organization on states for financial and other means of support means that the UN needs to negotiate with states for resources when crises arise, ensuring that it will respond slowly and often partially to rapidly changing events. Governments sometimes interfere in UN administrative processes for their own purposes, or introduce their own corrupt practices into it, as illustrated by the Iraqi oil-for-food program of the 1990s. When peacekeeping operations have required decisive action based on complex logistics, the United Nations has had to rely on states or coalitions of states – NATO in Bosnia, Australia in East Timor, the United States around the world.

Indeed, one of the most striking features of effective multilateralism in the 20<sup>th</sup> century is that it has often been precipitated by *unilateral* actions by powerful states. For example, the Bretton Woods monetary system was anchored by a unilateral commitment by the United States until 1971 to exchange dollars for gold at \$35 per ounce. The Organization for European Economic Cooperation (the OEEC) and its successor, the Organization for Economic Cooperation and Development (the OECD) grew out of an American initiative, the Marshall Plan. Effective UN operations in Bosnia and Kosovo depended on military actions by the United States (in 1995 in Bosnia) or by NATO (in 1999 in Kosovo), which were only authorized after the fact by the UN. Finally, the creation of the World Trade Organization in 1995 was made possible by the desire on the part of other countries to limit American trade unilateralism.

Since multilateral institutions are not notably efficient organizations, if they are to be effective their processes of decision-making must be legitimate. That is, for multilateral institutions, output legitimacy depends on input legitimacy. To generate compliance, the political processes that generate resolutions by an organization such as the United Nations must be more acceptable, on issues that affect people in a wide variety of countries, than national political processes combined with coalitional diplomacy. On what basis could such a conclusion be reached?

The fundamental argument for the input legitimacy of multilateral organizations is that of diversity of representation and inclusiveness. The scope of interests involved in decision-making is much broader than for any state, voluntary coalition of states, or regional organization. If all voices are heard, more objections will be expressed, deliberation may be enhanced and decisions more widely accepted. As a result, according to this argument, policy outcomes are likely to be superior to those resulting from the truncated discourse within countries or coalitions of states with similar interests and outlooks.

This ideal vision, however, is tarnished by a contradiction between the nominal state-egalitarianism of multilateral organizations and the realities of power politics. In most forums of the United Nations (the Security Council is a notable exception), each state, regardless of its size or power, has an equal vote. Weak states collectively can outvote the strong. But inequalities of power intrude on the expression of preferences by states. Even if weak states have the nominal ability to thwart the will of the strong in international organizations, they may be unable to analyze complex issues or make their voices heard. They may also be unwilling to defy their powerful neighbors, creditors, and trade partners. As a result, the apparent diversity of interests in a global organization can be only nominal.

Defenders of multilateral institutions have to recognize this intrusion of power politics as an imperfection, and a potential threat to the legitimacy of their decisions. But this is hardly a new problem. The creators and defenders of these organizations in the 20<sup>th</sup> century were not unaware of power politics. On the contrary, they conceived of these organizations as ways to *reduce* the impact of unequal military and economic resources on policy. Public debate and voting – “open covenants openly arrived at” in Woodrow Wilson’s phrase – were designed to enhance the

impact of principled argument and to increase the reputational costs to governments of cravenly bowing to pressure from the rich and powerful. Hence even if the apparent diversity and egalitarianism of multilateral organizations were tarnished by power politics, they remained greater than that of a world characterized by unilateral state action.

The structure of the UN Security Council makes this defense of multilateralism more problematic. First, its permanent membership does not reflect any principled set of criteria for representation, but rather the power politics of 1945, as negotiated at San Francisco. The five permanent members are not differentiated from other states by any consistent set of contemporary criteria, only by historical circumstance. Britain and France are of only middling size. China is clearly undemocratic and Russia does not meet substantive standards of democracy. Among non-members, India is the world's largest democracy, with a population more than eight times as large as those of Britain and France combined; Japan, with double the population of either Britain or France, has the world's second largest national economy.

Second, giving five arbitrarily selected states absolute vetoes over action cannot be justified on the basis of principles of either democracy or elementary fairness and reciprocity. The result of the veto, combined with the diverse political systems and interests of the permanent members, has often been deadlock. Inaction – with respect to military interventions by superpowers during the Cold War, ethnic cleansing in the Balkans during the 1990s and genocide in Africa in the 1990s in Rwanda and in 2004 in Sudan – has been more typical than precipitous collective action. Neither of the proposals for Security Council reform by the Secretary-General's High-Level Panel, in December 2004, would have alleviated the problem of deadlock, since both proposals retained the veto for the five permanent members while adding other members without the veto.<sup>5</sup>

It is true that the veto does help to protect the United Nations against destruction by angered great powers; and in any case, it cannot be altered without creating a new organization from scratch, which would surely be an impossible task. Yet critics may well ask: If the United Nations is ineffective against elementary abuses of human rights, how valuable is the Organization? It is fair to point out that the existence of the United Nations somewhat

ameliorates what otherwise would be a world of great power dominance unconstrained by UN-related rules. But it is also fair to point out the huge gap between the ideals nominally pursued by the United Nations, on the one hand, and the structures and activities of the Organization, on the other.

By democratic standards, or even on principles of elementary fairness and proportionality, the 20<sup>th</sup> century model of multilateralism is highly deficient. But during the 20<sup>th</sup> century these deficiencies were not debilitating, since multilateral regimes constituted a supplement to traditional interstate relations, not a substitute for them. The effects of the actions of multilateral organizations were limited, by and large, to the relations between states. They did not penetrate deeply into domestic political systems. Sovereignty remained a core principle of the United Nations Charter, as inscribed in Article 2 (7). Deadlock on security issues meant that states would often rely on alliances and on *ad hoc* coalitions, as the United States and Soviet Union did throughout the Cold War. Multilateralism in security was an “add-on.” In those relatively rare circumstances where there was sufficient agreement for the Security Council to authorize strong actions, it provided a way to confer legitimacy on a single set of policies. When the Security Council could not act, nothing was lost: political maneuvers were pursued largely outside of the UN, with the UN simply a forum for the rhetorical echoes of these struggles. 20<sup>th</sup> century multilateralism was only acceptable – hence legitimate – because it was designed as a limited system.

On trade issues, GATT likewise provided a way to specify, and legitimize, policies to be pursued by all members. When agreement could not be reached, the default option was always national regulation. Until the Uruguay Round and the creation of the WTO in 1994, GATT rules by and large did not intrude within the political economy of states. They pertained to external barriers to trade, not to national regulation. Furthermore, it was not essential to economic development that one accept the rules. Mexico, for instance, was not a member of GATT until 1986.

This 20<sup>th</sup> century model is one of limited cooperation – mutual adjustment of policy – rather than of governance. No one pretended that multilateralism constituted a new mode of governance – its scope was too partial and fragmentary for this. It was recognized as imperfect, but

nevertheless as an improvement over the “anarchy” of independent state action. If it failed, the basic state-centric structure of world politics remained, as a fallback position.

The legitimacy demands on such a system of limited cooperation were quite modest. States could refuse to join the GATT yet participate fairly actively in world trade. During the Cold War states that were not diplomatically isolated could usually be assured that one Permanent Member or another would block effective Security Council action against them. Multilateral institutions were useful to states at the margin, without being threatening. There was no need to rethink issues of legitimacy, only to ask whether a given set of multilateral actions would be improvements over strategic interaction uncoordinated by institutions. If the answer was in the affirmative, states would support multilateralism; if it was negative, they could probably block it or otherwise opt out.

#### *Threats to Legitimacy: the Democratic Contradiction*

Both on security and on trade issues, this situation changed quite fundamentally in the 1990s. On security issues, the end of the Cold War meant that the Security Council could suddenly act on a wide variety of issues, much less constrained by the veto. Almost as many peacekeeping operations were inaugurated during less than three years between 1991 and 1993 (15) than in the entire previous forty-six years of the United Nations (17). 93 percent of all Security Council resolutions adopted between 1946 and 2002 under Chapter VII, authorizing Security Council mandatory directives to states, were adopted after the end of the Cold War.<sup>6</sup> For the first time, democratization became part of the UN’s operating creed. Standards of protection for human rights were raised, and the United Nations began authorizing humanitarian interventions, in countries where governments had abused their own populations. The system centered on the Security Council was transformed from one designed to help resolve certain conflicts between states, when interests sufficiently overlapped, to a system also intended to prevent extensive abuses of state power – at least where the states abusing power were weak – over their own populations.

No longer was the United Nations viewed simply as an incremental tool for improvement of security at the margin, but as responsible for protecting human rights even when states failed or refused to do so. Increasingly, it was held responsible for inaction as well as action – as in Rwanda. By contrast, during the Cold War, inaction had been the norm and sometimes issues were kept away from the Security Council to avoid futile and bitter argument that everyone knew would not lead to effective action. An indicator of the growing role of the Security Council in continuous governance is that inaction became as culpable as action.

These fundamental changes in the international organization of security politics (which were accompanied by parallel changes in trade politics that I do not have space to discuss) signaled the beginning of the replacement of patchwork cooperation with incipient governance systems. The architecture of multilateralism was becoming both more comprehensive and more intrusive. There were no longer any guarantees that the UN would be prevented from intervening in the internal affairs of weak countries whose governments were seen as guilty of human rights abuses. Although powerful states could still expect to block actions that they strongly opposed, weaker states had no such assurance.

The evolution of cooperative regimes into incipient governance systems quite naturally called into question the legitimacy of the organizations at the center of these systems. Governance implies the possibility of coercion, which requires justification. Furthermore, rather than being supplementary to domestic governance, true international governance would to some extent replace it, both with respect to treatment of minorities and regulation of trade. On what basis could such international governance be legitimate?

In a democratic era, the obvious answer would be: “on the basis of democratic procedures.” But there is no prospect of democracy on a global basis. Even if all other conditions were favorable, organizing a democracy of over six billion people would be extremely difficult. And other conditions are not favorable. National states are still the basic units of political organization in the world, to which the loyalties of most people flow. The diversity of values as well as interests in the world is immense. Relatively few countries have a long history of democratic practices, entailing the active involvement in politics of even a substantial minority of their citizens. There

is no global public: that is, no representative, globally distributed set of people who identify with the world as a whole, as a political unit, and communicate freely with each other on the basis of common institutions and practices.

The debates about “globalization and democratic governance” reflect a disconnect between the normative basis for legitimacy, in the contemporary world, and the realities of multilateralism. The advocates of multilateralism emphasize what I have referred to as output legitimacy: in a globalized world, failure to coordinate policies can often lead to uncertainty and conflict, with negative results for all participants. But with respect to input legitimacy, the critics, from both Left and Right, occupy the high ground of democracy. As we have noted, multilateral organizations are not organized democratically – with equal votes for each individual – but on a statist basis. If democratic practices alone could provide legitimacy for institutions that exercise coercion, multilateral organizations would not be legitimate tools of governance.

From this perspective, the conclusion might seem to follow that the scope or level of international governance should be restricted. From the perspective of the American Right, the danger is that social democratic and quasi-pacifist European beliefs and practices will come to be viewed as mandated, by customary international law or by the actions of multilateral organizations. The movements to ban the death penalty or to prevent unilateral military action are examples of the danger perceived from this angle. From the perspective of the Left, the danger is that powerful corporations will control the policies of powerful states, which will then impose them on weak states – as the WTO is thought to have done. To governing elites outside the United States, the danger is that American dominance, combined with the decline of sovereignty norms, will expose them to unconstrained uses of American power with a patina of multilateral legitimacy – in effect, incorporating them within an informal American empire. To all three sets of critics, part of the answer is to re-invigorate and re-emphasize national sovereignty.

Faced with criticism from all sides, the defenders of multilateral organizations are thrown back on anachronistic 20<sup>th</sup> century conceptions to defend their input legitimacy. In this 20<sup>th</sup> century conception, societies, whether democratically governed or not, determine their own preferences

through their own political institutions. Their governments then express these preferences in international forums. If the preferences of various governments coincide sufficiently, consensus follows. Legitimacy results from the inclusiveness of the multilateral institutions and the consequent diversity of their memberships. Actions taken in accord with decisions in multilateral organizations are legitimate because of the characteristics of the multilateral organizations themselves.

Yet this argument is undermined by the spread of democracy, since the conventional theory of sovereignty assumes that states, no matter how constituted internally, are entitled to represent and express the preferences of their people. Ironically, the “progressive” supporters of multilateralism rest their claim for the legitimacy of decisions made by multilateral institutions on a doctrine of sovereignty that has profoundly anti-democratic origins.

There is an interesting parallel between what we observe in the 21<sup>st</sup> century and the events of the 17<sup>th</sup> century. In both periods abstract morality was at odds with the fragmentation of power and values in world politics. Then the morality at issue was theological: ideologues sought to spread their brand of Christianity across Europe, generating warfare. Now the morality is more secular: democracy is to be instituted worldwide. The decline in religious fervor in the 17<sup>th</sup> century made it possible to organize the world on the basis of sovereignty and nonintervention. The revival and global extension of ideologies of democratic governance are making it harder to organize the world on the basis of sovereignty. This raises difficulties for organizations such as the United Nations and the WTO, founded on principles not of democracy but of sovereign equality.

The key point is that the normative basis for contemporary multilateralism rests on a fundamental contradiction. Intervention in the domestic affairs of states, undermining sovereignty, is justified on the basis of democratic principles, including the defense of human rights. But the organization of multilateralism itself is profoundly undemocratic.

### *Reconstructing the case for Normative Legitimacy*

How, then, is a basis for the legitimacy of multilateral governance to be reconstructed? Democracy is infeasible at the global level, but democratic principles undercut the old justification of international legal sovereignty.

The remainder of this paper will focus on this question. In doing so, I will assume the validity of a cosmopolitan approach to ethics, in which individuals have rights to be treated fairly, without respect to their country of origin or other irrelevant ascriptive characteristics. Second, I will assume both the normative validity of democratic theory for groups of people who identify themselves as a people and have the capacity to communicate with one another in a public space. Third, I will take as given the output legitimacy justification for multilateral institutions. In a world of high interdependence (economic and security), international cooperation is essential to avoid disastrous conflict, and systematic international cooperation is greatly facilitated by multilateral institutions with established rules and practices.

Taken together, these assumptions frame the dilemma on which I wish to focus. It is in principle desirable to achieve three objectives: 1) to ensure that the human rights of individuals are respected regardless of their residency or citizenship; 2) to maximize the extent to which democratic processes determine decisions; and 3) to manage international and transnational cooperation in ways that promote security and welfare. This trilogy of objectives can be summarized as human rights, democracy, and cooperation.

The problem is that these objectives are extremely difficult to achieve together. One could imagine rigorous rules, enforced by a world government, that protected human rights; but such a system would, in the present state of the world, be undemocratic and would surely generate intense and violent conflict over the rules. One could also imagine achieving the democracy objective by breaking the world up into thousands of democratic mini-states; but in that case there would surely be very large, morally unjustifiable inequalities as well as unregulated international conflict. Finally, emphasis could be placed on efforts by multilateral institutions to promote security and welfare through cooperation. Yet these efforts will necessarily be biased

toward the rich and powerful, and are unlikely to achieve the goals either of global human rights or democracy.

Discussing this set of dilemmas should at least put the problem of legitimacy for multilateral organizations in perspective. The question is not whether one could design a perfect system of multilateralism that would actually work. In the current state of the world, this is impossible. The relevant question is whether, *in light of feasible alternatives*, existing or attainable forms of multilateralism are legitimate *relative to these alternatives*.

As noted above, if multilateralism is to be considered more legitimate than uncoordinated and unilateral state action, it will have to be superior on grounds of input legitimacy – the acceptability of the processes by which institutions make decisions. Since I am assuming the widespread acceptance of cosmopolitan ethical theory, I will confine my investigation to applying it to the actual situation of multilateralism. Elsewhere I have considered the WTO, but due to space limitations I limit myself here to an analysis of the United Nations.<sup>7</sup> Can the decision-making processes of the UN be considered *comparatively legitimate*, in the light of actual conditions in world politics and democratic theory? What changes could increase their legitimacy?

### **Criteria for comparative legitimacy**

One possible line of argument would rely on compromise as a positive value. In this view, the most important danger is that powerful states will behave in arbitrary or despotic ways. Even if deadlock ensues from multilateralism, it is better than precipitous action. When all interests are taken into account, and agreement by a supermajority or by consensus is necessary, the dangers of the multilateral organization acting in harmful ways are reduced. Hence multilateralism *per se* – institutionalized decision-making by an inclusive organization of states from around the world – confers legitimacy because it ensures that actions will be generally acceptable.

This line of argument has two fatal problems. First, it is too conservative: it assumes that the *status quo* is sufficiently acceptable that deadlock will not generate disaster. In a world of

weapons of mass destruction, actively sought by governments and potential terrorist groups, this assumption is not realistic. It is based not on the world as we know it, but on a more benign, imaginary world. Compromise for its own sake is not a positive good – especially when the compromise is with forces of evil. Sometimes resolute action is necessary.

The second problem with the compromise-restraint argument is related. When powerful states believe that they face fundamental threats to their security or welfare, they will respond unilaterally, if unable to do so through multilateral institutions. Even if they were abstractly to accept the input legitimacy argument for the superiority of compromise, it would be trumped by output illegitimacy: the ineffectiveness of multilateralism in responding to threats to vital interests. The more important the issue, the less satisfactory will be compromise *per se* as a source of legitimacy.

A more plausible line of argument takes the diversity of interests represented in multilateral organizations as a necessary but not sufficient condition for legitimacy. Organizations, from hegemonic states to “coalitions of the willing” or alliances, that exclude large numbers of people from representation, cannot be legitimate on a global basis. No claim that a given state or organization has superior morality or superior knowledge (for instance, because of its political history or religious faith) can provide a valid basis for people who do not share such beliefs to accept their authority.

But diversity is not a sufficient basis for legitimacy. Compromise with evil is not superior to resolute action against it. Serious problems of collective action that are ignored, do not simply go away harmlessly. Hence the legitimacy of a set of multilateral institutions requires that the institutions respond forthrightly and decisively to present and potential threats to security and welfare. No matter how diverse it was, a multilateral institution that ignored genocide or an epidemic such as AIDs would not be normatively legitimate. And a multilateral institution that *blocked* action on such issues would be positively injurious, hence illegitimate. So the second condition for the legitimacy of a multilateral organization is the capacity to act decisively in response to threats of severe global harm, and the existence of a back-up procedure to ensure that if it cannot act decisively, it does not prevent others from doing so.

A legitimate organization not only needs to be able to act; it must act in ways that are consistent with the best available knowledge of factual realities and causal relationships, as well as with ethical imperatives. At any rate, legitimate institutions should be at least as capable of acting intelligently as the alternatives. What this means is that in addition to being inclusive, multilateral institutions must meet an *epistemic* standard.<sup>8</sup> An institution is *epistemically legitimate* insofar as it has the capacity to generate and properly use new information that can generate new policy responses, reduce bias in standards and implementation, and reduce the risk of opportunistic interventions. According to this view, it is important that institutions promote discussions in which all valid interests are represented, and it is equally important that there be provisions for critical re-evaluation, promoted by diversity. But the process must be knowledge-based and have the capacity for improvement over time. There is little moral justification for simply compromising between positions that are well-founded empirically and morally and those that are not.

I contend that an institution has a valid claim to make legitimate policy on a global basis only if it meets all three standards: of *inclusiveness*, *decisiveness*, and *epistemic reliability*. It may also have to meet other standards, but it would require more space than I have here to elaborate them.

With respect to *inclusiveness*, all valid interests – interests that are based on the welfare of a substantial number of people as they perceive them, rather than on hatred or an urge for dominance – must be represented effectively. These interests must be ascertained by a process that shows respect to individuals, preferably by enabling them, through fair and reasonably frequently elections, to select their representatives. And the political entities included in the global institution must be represented by agents with the capacity to represent them.

*Decisiveness* ideally means that the multilateral organization could take effective action, even against the opposition of its strongest member state. That is, there would be no veto, either in the organization or, effectively, by one state or a small coalition withholding material support from the organization as it pursued a policy that had been agreed on by a large majority. Conversely, this criterion would also require that there be incentives within the organization to encourage

states that would otherwise be passive to support vigorous action. The natural condition of multilateral organizations, without leadership, is entropy.

The obvious problem is that in the contemporary world, multilateral institutions lack the capacity either to override the wishes of the most powerful state in the system, the United States, or to overcome the collective action problems that lead other states to hide from danger, or fail to make contributions to a joint cause. The implication of these facts is that the legitimacy of any global multilateral organization will be tarnished by its weakness. On a strict standard of absolute legitimacy, multilateral organizations will fail. They can only be defended on the basis of *comparative legitimacy*: the normative superiority of partial reliance on them for authorization of action, over other feasible processes.

The third criterion of legitimacy is *epistemic reliability*. Epistemic reliability implies that the decision-making process must be sufficiently transparent that it is open to criticism from outsiders as well as insiders. In particular, there must be provisions for accountability and for revising the rules and practices in light of experience. Accountability implies clear standards for behavior by agents in authority, the widespread availability of information, to publics, about these agents' performance, and the availability of sanctions when the performance does not meet the standards.<sup>9</sup> Revisability requires that the rules do not unduly favor the status quo: when opinion shifts, there must be an open pathway (not necessarily immediately or by a bare majority) for institutional change.

These provisions for revision should be open-ended. It is impossible now to build multilateral institutions on the basis of democratic principles, but it would be wrong to close off the possibility of a democratic governance system eventually developing, on a global level. Now there are national publics – groups of people who identify with one another and live within common boundaries. They are the relevant collective entities that can be said to have preferences. Aggregation of individual preferences takes place within countries, facilitated by the common means of communication and discourse developed within each of them. At the global level there are only small, fragmented publics of elites with common interests in particular issues such as human rights or the environment. But increases in transnational ties among

peoples may someday invalidate the assumption that preferences can only be aggregated on a national basis. A legitimate system for global governance would have an open pathway for the progressive involvement of these fragmented publics – now to be found principally in NGOs and networks of activists – in decision-making.

### **Implications for the United Nations**

How well does the United Nations meet the criteria of inclusiveness, decisiveness, and epistemic reliability? And what changes would need to be made to improve its legitimacy?

The UN is an inclusive organization, open to virtually any state. No state has ever been expelled from the United Nations, despite the fact that many states have engaged in behavior threatening to peace, the preservation of which is the essential purpose of the organization. The importance of the UN and of the security issues that it deals with ensure that on critical issues, states belonging to it will be represented by their most effective advocates. With respect to inclusiveness, the most glaring deficiency of the UN relates not to states but to individuals and minorities. Many of the countries in the United Nations are either undemocratic or only partially democratic. We should not expect that the policies they enunciate will be in the interests of their publics, rather than simply of an unaccountable elite. The UN is therefore too inclusive of states, and not inclusive enough of the views of individuals and potential groups within authoritarian states.

If the UN has a mixed record with respect to inclusiveness, it does poorly on decisiveness. The veto makes it impossible for the UN to authorize military action against the wishes of any of the five Permanent Members, creating the problem of deadlock that was discussed above. Members of the UN, and its agencies, often have strong incentives to avoid or downplay emerging threats. The Report of the High-Level Panel upholds the conventional view that the Security Council, acting with the veto, must approve any military action except under conditions of actual or imminent attack. It therefore does not address the issue of decisiveness.<sup>10</sup>

The third major condition for the UN's input legitimacy is epistemic: its ability to use information, to make decisions on the basis of knowledge, and to revise its practices in light of

experience. With respect to these epistemic criteria, its performance is somewhat mixed. Three attributes of the United Nations fall on the positive side of the ledger. The first one is familiar: inclusiveness. The fact that many points of view are represented guards against parochialism and self-deception. The refusal of the UN to endorse the US plan to attack Iraq in 2003 reflects this strength: the Security Council would never have accepted the naïve and, for the US, self-serving view that Iraqis would welcome American conquerors as liberators. The second positive factor for the UN is that the rules of the Organization give space for independent statements of views by representatives of states. Protests and demands for policy change by states can be expressed, although non-state voices are not so readily heard. Third, the Office of the Secretary-General provides a potential for epistemic reliability, although the Oil-for-Food scandal has thrown considerable doubt on the Secretariat's ability to fulfill this potential. Since the office of Secretary-General has very little power except the power of persuasion, he is more dependent, for effectiveness, on a good epistemic reputation than are leaders of powerful states.

On the negative side of the epistemic ledger, state policies at the UN are driven by interests. Strategic bargaining, incentives not to reveal preferences or information, and even deception outweigh any objective searches for knowledge. Technical expertise plays a subordinate role to political calculation. Second, some of the supermajoritarian features of the UN make it hard to revise policies. In particular, the Security Council veto ensures that it will be very difficult to reverse decisions, once they have been made. Sanctions against Iraq, for instance, continued for years in the 1990s despite lack of majority support for them in the Security Council. Once in place, they could not be removed even after new information was received about the suffering of Iraqi civilians, due to the threat of American and British vetoes. Third, like any bureaucracy the UN Secretariat can be self-serving and even potentially corrupt, as the Oil-for-Food scandal demonstrates.

### Improving the accountability of the United Nations Security Council

The UN's potential for epistemic legitimacy is undermined by the absence, in the Security Council, of a system of accountability to evaluate actions taken under its auspices, to impose sanctions on violators, and to revise procedures in light of experience. To enhance the chances

for multilateralism on security issues, the United Nations should be reformed to create such an accountability system.<sup>11</sup>

Currently, the UN Security Council is in the position, when it authorizes military action, analogous to that of someone writing a blank check. Not only does the Security Council not direct the use of the military forces whose use it authorizes, it has difficulty holding the great powers that use them accountable for their actions. There are no systematic procedures for monitoring military activities authorized by the United Nations. There are no systematic procedures for the Security Council to interrogate leaders of the states employing force, or for modifying authorizations in light of such questioning. And the Security Council has no ability to punish powerful member states – which themselves have veto powers – for exceeding the limits of UN authorization.

As a result, it is very difficult to agree on UN authorization for the use of force even when a strong case for action can be made. There are dangers of deception: the potential interveners know more about the situation than governments whose states are represented in the Security Council. Even if the representatives of the potential interveners are believed, there may be reasonable doubts whether the policies they announce will be implemented. Will the interveners respect just war principles to minimize the damage that war would bring to civilians? In occupying the country, will they pursue purposes agreed to by the United Nations, or rather pursue their own interests?

One way to solve this problem of credibility would be for the leader of a coalition, such as the United States, to enter into an explicit agreement with the Security Council before military action occurred. Under such an agreement, the coalition leader would specify the threats to world order that it was acting to combat – such as, in the Iraqi case, the production and storage of weapons of mass destruction. It would specify the political objectives – disarmament or regime change? – of its projected military campaign. It would then agree with the Security Council on benchmarks that it – as the occupying power immediately after the war – would have to meet. These could include:

- Immediate post-war access to the whole country for UN inspectors;
- Acceptance of responsibility, including monetary damages, for actions that violated the laws of war or the principles of just war theory;
- Acceptance of United Nations authority, after a very short time, over the economic resources of the conquered country;
- Acceptance of a rapid transition to a United Nations administration, with civil authority over the country, leading rapidly to a transition to rule by citizens of the country involved;
- Guarantees of support for these regimes for as long as necessary by military forces from the occupying powers.

These measures seem to be costly for the coalition leader. Why should the United States, for instance, accept these constraints if it is to bear the principal costs of military action? The answer is that only by accepting constraints, *ex ante*, could the coalition leader make its own promises credible. Credible promises, in turn, are essential to induce other members of the Security Council to grant authorization to the coalition leader to use force on behalf of world society, thus providing the legitimation that it may sorely need.

For the UN to be fully legitimate as a provider of security, it will have to be able to act decisively, generating output legitimacy, and to operate in a transparent way that holds powerful agents accountable, generating input legitimacy. Although the Security Council may now be more legitimate than the alternatives, it falls far short of what could reasonably be demanded on both the input and the output sides. The “unique legitimacy of the United Nations” could be enhanced by a reform of its accountability system.

One potentially feasible supplement to the United Nations would be a league of democracies. Professor Allen Buchanan and I have elsewhere discussed the attractiveness of instituting a league of democratic states as supplementary to the UN Security Council. Such a league of democracies would not replace the Security Council, to which potential intervenors would have to appeal first for authorization. But if Security Council action were blocked only by a veto or vetoes, those calling for intervention could seek authorization from a supermajority (perhaps 2/3)

of democratic states. Such authorization would be in some ways more legitimate than Security Council authorization, because more reflective of democratic opinion; and the presence of this option could provide an incentive for states to refrain from abusing their veto privilege in the Security Council. No Charter amendment would be required.<sup>12</sup> [12]

A net judgment on legitimacy rests on a comparison with feasible alternatives. Reliance on individual great powers is inferior on the grounds both of inclusiveness and epistemic reliability. A closed process such as was evident within the United States – and even within the Central Intelligence Agency – before the war against Iraq, creates a situation in which “groupthink” can thrive. Absent the diversity of views that inclusiveness generates, critical questions can be discouraged and flaws in the analysis overlooked.

For the time being, UN-based multilateralism on security affairs through the United Nations, whatever its flaws, retains a potential for input legitimacy that is superior to the currently available alternative of unilateralism and *ad hoc* coalition-building. But it should not be beyond our capability to design superior multilateral institutions to protect the security of the world’s people.

## **Conclusions**

20<sup>th</sup> century multilateralism provided for institutionalized collective action, where consensus existed, to deal with issues such as interstate military conflict and trade discrimination. The legitimacy demands on this form of multilateralism were modest. If the supermajority or consensus requirements of a multilateral organization were met, it meant that multilateralism was acceptable to states – the units that counted. If these requirements were not met, the situation reverted to the default option of unilateralism or coalition-building among states with similar interests. Multilateralism was a tool of policy for states, useful at least at the margin.

21<sup>st</sup> century multilateralism, however, involves much more intrusive intervention in what have traditionally been considered the domestic affairs of states – notably including both how minorities are treated by governments and the regulation of the economy. For standards of

human rights or economic liberalism to be upheld, multilateral action is often advocated to substitute for ineffective or injurious domestic policy, rather than merely to complement domestic measures. Furthermore, preventing weapons of mass destruction falling into the hands of state or non-state actors willing to use them against civilian populations, and not in self defense, may well require pro-active policies, involving potential violations of sovereignty. Both types of situation involve coercion imposed by powerful states, legitimated (it could be claimed) by the resolutions of multilateral organizations.

When rules made non-democratically in multilateral organizations are promulgated as substitutes for rules made democratically by states, questions of legitimacy insistently arise. Leaders of multilateral organizations typically claim that the scope, diversity, and inclusiveness of their organizations' membership provide legitimacy for their actions, as compared to those of states or less inclusive coalitions of states. But in a democratic era, inclusiveness alone is not a sufficient basis for legitimacy. In democratic theory, individuals, not states, are the subjects of political and moral concern. Inclusiveness of states is not an unalloyed virtue if it means that non-democracies can express preferences that are not desired by, or in the interests of, most people residing within their territories.

Ironically, defenses of the legitimacy of contemporary multilateral organizations often seems to rely on the political theory of sovereignty, whose origins lie in monarchy not democracy. As sovereignty is increasingly called into question, relying on it for the legitimacy of multilateralism entails a fundamental contradiction.

A defense of the legitimacy of multilateralism begins with an acknowledgement that existing multilateral institutions are seriously deficient. The criteria for the input legitimacy of multilateral institutions include inclusiveness, decisiveness, and epistemic reliability. The United Nations earns mixed marks on the basis of these standards. Its output legitimacy is threatened at the same time by its frequent ineffectiveness. The September 2005 World Summit Outcome reflects no progress toward greater input legitimacy and only modest progress – notably, in the acceptance of the Responsibility to Protect – in output legitimacy.

In the contemporary world, global democracy is infeasible. But the world is infused with democratic norms, and to bolster its legitimacy, multilateralism needs to be more consistent with those norms. Multilateralists need to recognize how certain aspects of democracy, such as transparency, accountability, and provisions to limit the role of direct coercion, could be incorporated into multilateral institutions, making them more robust against charges of illegitimacy. The UN Security Council needs an explicit system of institutionalized accountability for the use of force.

However, perfection – or even a close approximation thereto – is elusive in world politics. The issue is not whether multilateral institutions meet ideal standards – they do not – but whether they are superior to the alternative of unregulated state competition. For the moment, the legitimacy of multilateral institutions is protected less by their own merits than by the lack of attractive alternatives. In the absence of an effective coalition of democracies, the alternative to the UN Security Council is unilateralism and “coalitions of the willing,” which epitomize the absence of effective institutional constraints on the exercise of power.

I conclude that contemporary multilateral institutions such as the United Nations are *contingently legitimate*, relative to the currently available alternatives, which are quite unattractive. But their advocates, and their leaders, should begin to reconstruct their legitimacy on a 21<sup>st</sup> century basis – with more emphasis on democratic principles and less on sovereignty. Otherwise, multilateral institutions will be in danger of losing legitimacy to a revival of democratic nationalism, or to new forms of transnational organization that are designed to bypass sovereignty, and that will be in many ways problematic for those of us who believe in the accountability of power-wielders to ordinary people.

## Notes

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<sup>1</sup> John Gerard Ruggie, "Multilateralism: the Anatomy of an Institutional Form." In Ruggie, *Multilateralism Matters: the Theory and Praxis of an Institutional Form*, New York, NY: Columbia University Press, 1993, p. 11.

<sup>2</sup> Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton, NJ: Princeton University Press, 1984. 20<sup>th</sup> anniversary edition, 2005.

<sup>3</sup> Inis L. Claude, *Power and International Relations*, New York: Random House, 1962. See also Inis L. Claude, "Collective Legitimation as a Political Function of the United Nations", *International Organization* 20 (3), 1966, pp. 367-379.

<sup>4</sup> Fritz Scharpf, *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press, 1999.

<sup>5</sup> *A More Secure World: Our Shared Responsibility*. Report of the High-Level Panel on Threats, Challenges, and Change. United Nations General Assembly A/59/565, 29 November 2004.

<sup>6</sup> David M. Malone, ed., *The UN Security Council: from the Cold War to the 21<sup>st</sup> Century*, Boulder, Colorado: Lynne Rienner, 2004, p. 6. See especially Peter Wallensteen and Patrik Johansson, "Security Council Decisions in Perspective," in *ibid.*, pp. 17-33.

<sup>7</sup> For a discussion of the WTO and problems of accountability, see Robert O. Keohane and Joseph S. Nye, Jr., "Redefining accountability for global governance", in Miles Kahler and David Lake, eds., *Governance in a Global Economy: Political Authority in Transition*, Princeton: Princeton University Press, pp. 387-411.

<sup>8</sup> Allen Buchanan, "Political Liberalism and Social Epistemology," *Philosophy and Public Affairs* 32 (2), 2004, pp. 95-130.

<sup>9</sup> Ruth Grant and Robert O. Keohane, "Accountability and Abuses of Power in World Politics," *American Political Science Review* 99 (1), 2005, pp. 1-15.

<sup>10</sup> *More Secure World*, cited (note 4), pp. 50-51.

<sup>11</sup> See Allen Buchanan and Robert O. Keohane, "The Preventive Use of Force: a Cosmopolitan Institutional Proposal," *Ethics and International Affairs* 18 (2), 2004, pp. 1-22.

<sup>12</sup> See Buchanan and Keohane, "The Preventive Use of Force" (endnote 9) for details.