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## Justifying Violence: Communicative Ethics and the Use of Force in Kosovo

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NAOMI HEAD, JUN 21 2013

The question when is it legitimate to use force for humanitarian purposes remains one of the most contested in international politics. Ongoing debates regarding the intense levels of violence against civilians in Syria and what constitutes an appropriate international response, justifications for the use of force by NATO against Libya, and the recent French military intervention in Mali all attest to the continuing urgency of this issue. *Justifying Violence: communicative ethics and the use of force in Kosovo* contributes to this debate through its exploration of the problems of legitimacy and justification that arise when actors have recourse to the use of force in international politics. While debates regarding substantive restraints on the use of force are widespread in international law, politics and philosophy, the book focuses instead on the manner in which claims to the legitimate use of force are voiced and articulated by those who wield instruments of violence in the context of humanitarian crisis.

NATO's intervention in Kosovo represented a moral and political dilemma for states that were caught between the normative power of human rights and the legal principles and norms of state sovereignty and non-intervention. Conducted without an explicit mandate from the UN Security Council, NATO's armed intervention in March 1999 was justified by the need to 'avert a humanitarian catastrophe' (Blair, 1999). The moral dilemma posed by humanitarian intervention is often translated into a binary dichotomy for action: either states intervene militarily, or they do nothing. Neither response is a satisfactory one, and both provoke considerable controversy. All too often, the moral imperative to 'do something' serves to erase questions regarding how the situation came about. Intervention does not take place on a blank canvas and focusing only on the moment of crisis has a tendency to sever our actions from a consideration of the historical context and the prior engagement by powerful states in these countries. Revisiting the broader temporal and historical narrative of the Kosovo conflict creates space for a more critical examination of the limited engagement by the international community prior to 1998 and casts doubt on the claim of last resort used to justify the strategic shift to military intervention.

State and non-state actors alike recognize the need to justify their actions to both domestic and international audiences in the public sphere; the dominant justification offered for the use of force in the case of Kosovo was one familiar to the discourse of just war: that of 'last resort'. However, such an appeal cannot obscure the murky waters of the political process through which the decision as to *when* last resort has been reached is made; the difficulties in reaching consensus over Kosovo within the Security Council attest to this. Investigating the quality of the justificatory process and the character of the communicative practices[i], which shape the decision-making process, enables an evaluation of the claims to legitimacy for the use of force articulated by actors in the public sphere.

It is common in much of the discussion in IR around Kosovo to find legitimacy closely linked with particular substantive moral and legal principles. The tangle of morality and legality was captured by the Independent International Commission on Kosovo's verdict that the intervention was 'illegal but legitimate'. The tension between, on the one hand, the UN Charter's restrictions on the use of force and, on the other, the importance granted to human rights has led to a proliferation of debates on 'good international citizenship', the 'Responsibility to Protect', the boundaries of our political and moral obligations, global citizenship, and the role of international institutions. Legitimacy, I argue, not only embraces the moral, legal, and constitutional justifications (Clark, 2007) on which attention is usually focused, but also has at its core a critical *communicative* dimension. Legitimacy should not be

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conflated solely with morality or legality. *How* we make and evaluate arguments – an ethic of communication – has a considerable bearing on the degree of legitimacy secured for the use of force.

The 'communicative turn' in social and political theory counters the oft-encountered perception in IR that it is material power which governs international politics. Language, as is argued by constructivists and critical theorists alike, is constitutive of our social and political world. Interpreting Jürgen Habermas's model of discourse as a principle of legitimacy rather than a concrete institutional blueprint, communicative ethics allows us to observe that political dialogue takes place under a range of conditions and constraints. Applying communicative ethics to justifications for the use of force enables the identification of such constraints and offers criteria for participants and observers alike to decide which may be legitimate and which may not.

A communicative ethics framework casts light in two ways on the limitations of the predominantly just war-informed debates over the rights and wrongs of humanitarian intervention. First, criteria such as those contained within the *Responsibility to Protect* doctrine articulate standards for intervention but do not address the need for the prior legitimacy of the communicative process through which consensus on these substantive principles was reached. The danger is that legitimacy becomes conflated with morality and legality. Second, whether or not threshold and precautionary criteria (such as last resort) have been met in particular cases remains a question of justification – reason-giving and argumentation – and political judgement. Substantive criteria for intervention do not, by themselves, overcome the problem of multiple (and potentially equally valid) interpretations. By shifting the focus from the substantive claim to the conditions which enable it to be voiced and validated, a communicative dimension to legitimacy reveals the operation of particular power relations.

While Habermas's discourse ethics is a procedural model of communication, his roots in critical theory ensure that its intention is emancipatory. Thus, a communicative ethics framework should not only be able to critique and evaluate the process by which decisions are made, but should also be able to offer room for reflection and action by the actors themselves. In other words, the interpretive power of communicative ethics is such that we can understand the dynamics both within and external to the Security Council to demonstrate the presence of a range of constraints on communication. Such constraints include the exclusion or marginalization of particular actors; the excessive agency of some actors and the lack of social power of others which affects relative capacity to contribute to agenda-setting processes; material and non-material coercion, and the expectations governing acceptable forms of public speech. Even in public spheres such as the Security Council which recognize (if they are not always governed by) democratic norms and equality, communicative ethics offers insight into relations of power and suggests signposts for the forms of reflection intrinsic to the recognition and removal of such constraints by actors themselves.

Recognising such constraints enables a critical engagement with the decision-making process over Kosovo regarding the negotiation process in the Security Council, at Rambouillet and by the Contact Group. Ultimately, an interrogation of both the decision-making process and the broader policies towards Kosovo in the 1990s through the lens of Habermasian communicative ethics reveals critical shortcomings around questions of inclusion, coercion and reflexivity, as well as missed opportunities for constructive dialogic engagement by the international community. As such, this not only raises the question whether all diplomatic alternatives had indeed been exhausted and calls into question the legitimate nature of NATO's intervention, but it recognizes the need for the development of alternative, emancipatory forms of communicative and non-violent practices in conflict transformation. Communicative ethics is not so much concerned with passing moral judgement on the decision to use force for humanitarian purposes in Kosovo, but rather of demonstrating the shortcomings in terms of legitimacy through identifying relevant constraints on communicative practices.

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## Works cited

# **Justifying Violence: Communicative Ethics and the Use of Force in Kosovo**

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Blair, Tony. Statement to the House of Commons, 23 March 1999.

Clark, Ian. *International Legitimacy and World Society*, (Oxford: Oxford University Press, 2007).

[i] Defined as specific moments of communicative interactions, notably the offering of justifications

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## **About the author:**

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