

FPC Briefing: The vote was not British isolationism. It was about the legitimacy of international action.

Jason Ralph

It was the possibility that the UK might have contributed to an illegitimate military strike against Syria that led the Labour Party to oppose the government motion last week. This was driven not by a dogmatic commitment to a narrow interpretation of the United Nations (UN) Charter. Ed Miliband has stated his view that the unreasonable veto of a permanent Security Council member can in certain circumstances be by-passed.¹ Rather the Labour Party's stance was driven by the principle that the UN has a crucial role to play in scrutinizing the evidence that states are putting forward to justify military action.

This kind of 'hard-headed multilateralism' is often underpinned by two important points. The first is what Woodrow Wilson called the 'wisdom of common counsel' or the idea that the right thing to do emerges from public deliberation. This view was occasionally aired by those reflecting on the 2003 Iraq Crisis. If only the US had listened to the UN they argued it would not have gotten itself into the mess it did.² There is something in this. The argument demands that those proposing military action should pause in order to marshal the evidence that convinces right-minded states. Of course it is not necessarily the case that a Security Council vote reflects the outcome of a rational decision-making process. To expect that wrongly assumes that states are right-minded, i.e. that they are fully committed to a process that accepts the better argument. It is also unrealistic to expect that states will always formulate their own interests in ways that serve the outcome of such deliberations. Yet the multilateral process does force states to make their case to a difficult audience, which in turn helps them, and those they represent, make a better judgment on the most appropriate course of action.

The second aspect of the UN's role is that it can speak for 'the international society' better than any single state. Now this too might sound naive. The Security Council in particular is often criticised for being unrepresentative and anachronistic. The permanent status of the post-1945 powers and the fact that each can veto a resolution that is supported by a majority of states (including those that are elected to the Council by the General Assembly) obviously makes this an undemocratic body. The question that should be asked, however, is what alternatives are there to the United Nations. What is often proposed is that the United States can unilaterally speak for 'international society' because it is the most powerful state and because it supports democracy.³ As International Relations theorists like Christian Reus-Smit have noted, however, this merging of 'might and right' is the antithesis of the liberal democratic idea.⁴ And while the US may claim to represent those who cannot speak because of the repressive character of their governments that does not necessarily translate into an authority to act unilaterally and without check or balance. National differences surely mean that global democracy would deliver different outcomes to American democracy. For all its faults, the UN is the only forum we have through which 'international society' can speak. The policy implication of this is that progressives should seek to reform UN procedures not to ignore them.⁵

Ultimately the government accepted this. A key passage in its motion addressed the role of the UN:

¹ Ed Miliband, 'I believe Britain can still make a difference in Syria', *The Guardian* 30 August 2013 at <http://www.theguardian.com/comments/free/2013/aug/30/britain-still-difference-syria>

² Anne-Marie Slaughter, *The Crisis in American Diplomacy. Wilsonianism in the Twenty-First Century*. Speech to Carnegie Council, 21 January 2009 at <http://www.carnegiecouncil.org/studio/multimedia/20090121/index.html>

³ Michael Reisman called this the 'custodian role', which the US plays in guaranteeing international order. Michael Reisman, 'The United States and International Institutions', *Survival* 41 (4) 1999-2000, 62-80.

⁴ Christian Reus-Smit, 'Liberal hierarchy and the license to use force', *Review of International Studies* 31 (special issue) 2005, 71-92.

⁵ Andrew Linklater, 'The good international citizen and the crisis in Kosovo', in Albrecht Schnabel and Ramesh Thakur (eds.) *Kosovo and the Challenge of Humanitarian Intervention. Selective Indignation, Collective Action, and International Citizenship* (Tokyo, New York, Paris: United Nations University Press, 2000) 490.



a United Nations process must be followed as far as possible to ensure the maximum legitimacy for any such action ...[and] every effort should be made to secure a Security Council Resolution backing military action before any such action is taken. Before any direct British involvement in such action a further vote of the House of Commons will take place.⁶

There was however an important difference in Labour's amendment. It was much more specific on what was meant by 'a United Nations process'. This included time for the weapons inspectors to report; and, crucially, the UK would only commit to the use of force *after a vote* at the Security Council. Its amendment addressed the role of the UN in these terms:

This House ... agrees with the UN Secretary General that the UN weapons inspectors must be able to report to the UN Security Council and that the Security Council must live up to its responsibilities to protect civilians; supports steps to provide humanitarian protection to the people of Syria but will only support military action involving UK forces if and when the following conditions have been met: - The UN weapons inspectors, upon the conclusion of their mission in the Eastern Ghutah, being given the necessary opportunity to make a report to the Security Council on the evidence and their findings, and confirmation by them that chemical weapons have been used in Syria.- The production of compelling evidence that the Syrian regime was responsible for the use of these weapons;- The UN Security Council having considered and voted on this matter in the light of the reports of the weapons inspectors and the evidence submitted⁷

This is crucial because the vote of the Security Council (and possibly the General Assembly) can be an important source of legitimacy.⁸ The legitimacy of the Kosovo intervention for instance was grounded not only on the claim that NATO was acting to prevent a humanitarian emergency, it existed in the fact that twelve states on the Security Council supported it (either explicitly or tacitly) by voting against the Russian resolution condemning the use of force.⁹ It is also the reason why the invasion of Iraq lacked international legitimacy. The reason there was no vote on the so-called second resolution was because the UK could not muster a majority. In these circumstances France would not have been using its veto because it would have been voting with the majority to oppose the war.¹⁰

Labour it seems recognised this crucial aspect of the legitimising process where the government's position was vague and thus open to interpretation. For instance, supporters of the Iraq War had insisted in 2003 that the UN process had been 'followed as far as possible' despite there not being a vote on the so-called 'second resolution'. To show a valuable lesson from the Iraq War had been learned and to avoid a repeat of this scenario the UK decision had to be informed by a Security Council vote. This is not to say that absolute legitimacy is found either in a majority vote at the UN or even a resolution passed by all 15 members. As noted, some might complain that the Security Council is unrepresentative. What is more, *liberal* democracies know well that majorities can

⁶ The government's motion on Syria and Labour's amendment, *The Spectator* at <http://blogs.spectator.co.uk/coffeehouse/2013/08/the-governments-motion-on-syria-and-labours-amendment/>

⁷ *Ibid.* Emphasis added.

⁸ On the possibility that procedural legitimacy might be bestowed on an intervention through a "Uniting for Peace Resolution", which allows for the General Assembly to call an emergency session to take up matters related to international peace and security when the Security Council is deadlocked due to a disagreement between its permanent members, see Louis Charbonneau, 'Analysis: U.S. could look beyond U.N. Security Council in any Syria strike', Reuters, 27 August 2013 at <http://www.reuters.com/article/2013/08/27/us-usa-syria-un-analysis-idUSBRE97Q03Q20130827>

⁹ Nicholas J. Wheeler, *Saving Strangers. Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000) 275-81. See also Tim Dunne, 'Syria and the Laws of War? Permission Accomplished?' *The Interpreter. Lowy Institute for International Policy* 27 August at <http://www.lowyinterpreter.org/post/2013/08/27/Syria-and-the-law-of-war-Permission-accomplished.aspx>

¹⁰ See the evidence of Jeremy Greenstock and Jack Straw to the Iraq Inquiry as discussed in Jason Ralph, 'After Chilcot: The 'Doctrine of International Community' and the UK Decision to Invade Iraq', *British Journal of Politics and International Relations* 13 (3) 304-25.



sometimes vote in ways that are wrong as judged by substantive (e.g. moral) criteria that exist independent of political processes. Norman Geras reminds us for instance ‘that not every democratic decision is just, and neither is every existing *de facto* law’.¹¹

This last point brings us to the issue that has caused this particular crisis, the alleged use of chemical weapons by the Assad regime. There is no doubt that the use of chemical weapons is wrong and that this has been recognised by international society. But stating that does not easily authorize the use of force as a response. There are now other options for punishing a war crime or a crime against humanity, such as the referral of the situation to the International Criminal Court. I’m not arguing here that this is the most appropriate course of action in this case and that the use of force is inappropriate. My argument is that there are many ways of responding to universal crimes and that throws open the question of how to respond and that in turn leads to the question of who should decide how to respond.¹² I have argued above that the UN plays a crucial procedural role in legitimising the course of action that is chosen. As such there are legitimacy costs to bypassing the UN. However, I can accept the possibility that military action taken in opposition to the will of the Security Council may be legitimate. One can make a strong case for the hypothetical argument that a military intervention to stop the Rwandan genocide would have been legitimate even if it went against the expressed will of the Security Council. The point here, however, is that there was no need for the UK government to act as if this was the scenario because it was not. We did not know last week if the Security Council would reject the use of force. If we knew there was not the chance of securing a Security Council resolution (because of the Russian veto) we also knew there was still the possibility of maximising legitimacy by securing a majority vote for action. The Chinese for instance were persuaded to abstain on the vote to authorise force in Libya because that intervention had the support of a regional organisation.¹³

This was the fundamental miscalculation on Cameron’s part. The crisis, according to Michael Clarke, ‘played to his vanity as well as his instincts as a political gambler’.¹⁴ In what appears to be an eagerness to be alongside the US he cited legal arguments – such as the doctrine of humanitarian intervention – that were convenient but weak. Key thinkers on both sides of the Atlantic expressed doubt about this and the argument aired by some that the doctrine of the Responsibility to Protect (R2P) authorised the use of force without a UN resolution is a fundamental misreading of the 2005 World Summit Outcome Document.¹⁵ The weakness of the legal argument for bypassing the Security Council compounded MPs doubts. After all they were being asked to support in principle the use of force before the UN process had been concluded and before the US had decided what level of action would be used. Their vote against the government was in this respect understandable but what makes this a tragic miscalculation is that it could be, following the completion of the international process, that using force against the Assad regime *is* the right thing to do. The international process had not been completed last week, but by forcing MPs to vote at that stage Cameron needlessly

¹¹ Norman Geras, ‘Intervention in Syria and UN authorization’, 1 September 2013 at <http://normblog.typepad.com/>

¹² On the wide range of non-coercive ways to fulfil the Responsibility to Protect by a under Chapters VI and VIII of the UN Charter see Secretary General Ban Ki-Moon’s Report, *Implementing the Responsibility to Protect* 12 January 2009 at http://globalsolutions.org/files/public/documents/CivPro_R2PUNReport.pdf I am grateful to Adrian Gallagher for this point.

¹³ Claire Bolderson, ‘Why UN acted over Libya and Ivory Coast - but not Syria’, BBC News 16 May 2011 at <http://www.bbc.co.uk/news/world-africa-13389470>

¹⁴ Michael Clarke, ‘No 10’s shifty and rushed battle plan’, *The Sunday Times* 1 September 2013, p.14.

¹⁵ On the strength of the legal argument see Jack Goldsmith, ‘UK legal position on humanitarian intervention in Syria’, 29 August 2013 at <http://www.lawfareblog.com/2013/08/uk-legal-position-on-humanitarian-intervention-in-syria/>; John Bellinger, ‘UK legal position on humanitarian intervention in Syria: Kosovo Redux’ 29 August 2013 at <http://www.lawfareblog.com/2013/08/the-uk-legal-position-on-humanitarian-intervention-in-syria-kosovo-redux/>; Robert Booth, ‘Syria: legal doubt cast on British government’s case for intervention’, *The Guardian* 29 August 2013 at <http://www.theguardian.com/world/2013/aug/29/syria-legal-doubt-british-intervention>. On R2P and the incorrect conflation with humanitarian intervention see Heather Hurlburt and Homa Hassan ‘Syria and the Limits of Responsibility to Protect’ 27 August 2013 *International Coalition for the Responsibility to Protect* at <http://responsibilitytoprotect.org/index.php/component/content/article/136-latest-news/4980-syria-and-the-limits-of-responsibility-to-protect>



engineered a situation where the responsible thing to do was to opt out that process.¹⁶ It might well be that the UN evidence helps the US and France to convince the majority on the Security Council that the Russian veto is unreasonable and to vote for the use of force. The use of force on these grounds would not be legal by a narrow interpretation of the UN Charter but it would arguably be more legitimate and more convincing than what was being advanced last week. If Cameron had let the international process take its course rather than pre-empting it and if he had delivered to the Commons a specific military plan rather than arguing vaguely about force in principle the UK probably would not have found itself in this position.¹⁷

Again Ed Miliband appears to recognise this and has responded to last week's events by setting out how UK foreign policy can be rescued from Cameron's miscalculation.¹⁸ The point should not however be about a party's competence to manage UK foreign policy. Nor should we conclude from last week's events that the UK is about to retreat into isolationism. The leadership of both major parties were arguing about the terms by which the UK's brand of liberal internationalism should be conducted and the UK public is not isolationist.¹⁹ One might argue that parliament rejected both the government's motion and Labour's amendment, but there are various reasons why this might have been the case. And neither should we conclude that this is the death of the special relationship. In fact, it would appear that by acting as a check on the executive the UK has reminded the US of its own republican values. It is no coincidence that President Obama decided to give Congress its say on the matter after Parliament had so forcefully expressed its view.²⁰ To not do so would have emphasised the difference between the UK's checks and balances and the almost monarchical status of the President when it comes to war powers. In this sense, this crisis does not spell the death of the special relationship, nor does it ruin Ed Miliband's chances of forming a positive relationship with the Democrats. Rather it suggests a realignment of the relationship along more progressive lines.

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¹⁶ Clarke for instance notes the 'uncanny' resemblance to the 2003 atmosphere. 'No 10's shifty and rushed battle plan'.

¹⁷ On the 'lack of clear strategic intent' and the unanswered concern about mission creep, see Clarke, 'No 10's shifty and rushed battle plan'.

¹⁸ Ed Miliband, 'I believe Britain can still make a difference in Syria', *The Guardian* 30 August 2013 at <http://www.theguardian.com/commentisfree/2013/aug/30/britain-still-difference-syria>

¹⁹ See YouGov poll for *The Sunday Times* 1 September 2013, p.13.

²⁰ White House correspondent Chuck Todd reported on NBC's *Meet The Press* 1 September 2013 that Cameron's defeat had a strong impact on Obama' at http://www.nbcnews.com/id/52898657/ns/meet_the_press-transcripts/