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Defending Humanity: When Force Is Justified and Why, George P. Fletcher and Jens David Ohlin (New York: Oxford University Press, 2008), 288 pp., $28 cloth.

Defending Humanity is a stimulating and provocative book, deserving a wide readership and a central place in debates about the role of military force in international affairs. While this review will focus on the book's central argument concerning the moral and legal status of humanitarian intervention, it should be noted that philosophers, political scientists, and scholars of international law will also find much of interest in the authors' thorough and subtle discussions of such topics as the distinction between preemptive and preventive uses of force, self-defense in different traditions of domestic law, the collective dimension of war, and the distinction between excuses and justifications.

Fletcher and Ohlin develop a two-stage argument for the legality of humanitarian intervention. "Legality" is a leitmotif throughout *Defending Humanity*, for unlike

many contributors to the current debate, the authors seek a legal foundation for humanitarian intervention without Security Council authorization squarely within the UN Charter's Article 51, which grants to members of the UN an "inherent right of individual or collective self-defense" in response to armed attack. On the orthodox interpretation, this clause authorizes member states to repel armed attacks either against themselves or against fellow members of mutual defense alliances, such as NATO or the Collective Security Treaty Organization. Other modes of military action are not illegal per se, but must await specific Security Council authorization. On this interpretation, the Kosovo intervention in 1999, for instance, was clearly illegal. Supporters of the intervention might still argue that the intervention was legitimate, but they would have to concede that the source of its legitimacy is not to be found in law—or, at any rate, not in the legal framework of the Charter.

Fletcher and Ohlin seek to challenge this orthodoxy by pointing, first, to the fact that the French version of the Charter, no less authoritative than the English, operates with a notion of "droit naturel de légitime défense" (natural right of legitimate defense) whereas the English version refers to the "inherent right of self-defense." *Légitime défense* is understood in the continental tradition of jurisprudence as a significantly broader notion than self-defense is in the Anglophone tradition. Specifically, *légitime défense* includes defense of others, and not just others with whom one is joined in a mutual defense alliance. Therefore, there may be no need to go beyond Article 51 in order to find the moral or legal foundation for humanitarian intervention without Security Council authorization, a move which would jeopardize the standing of the entire UN legal framework.

In the second stage of their argument, the authors claim that such *légitime défense* can be launched not just on behalf of nation-states but also on behalf of non-state nations ("peoples" is another term in current vogue). This allows bystander nations to come to the defense of national minorities threatened by their own governments (such as the Albanian Kosovars in 1999) as much as on behalf of territorially sovereign states attacked by neighbors (such as Kuwait in 1990). Fletcher and Ohlin note, of course, that Article 51 makes specific mention only of "member states." However, the right it affirms is recognized as an "inherent right" (a "droit naturel" in the French), and thus to argue that the right of self-defense is restricted to member states would lack legal credibility. By recognizing the right of self-defense as "inherent" or "natural," the Charter recognizes that this right "extends not just to the modern system of the UN Charter, but indeed extends to the very foundations of the international social contract" (p. 146). At that foundation, presumably, we find nations or peoples, not states.

Concerns may be raised about both stages of this argument. As to the first stage, one might certainly challenge the legal relevance of the concept of *légitime défense* as it occurs in the French version of the Charter. As Fletcher and Ohlin recount the Charter's history, the French representatives argued throughout the negotiations for the recognition of a broader set of powers in Article 51, but without success. However, since French legal terminology has no term that perfectly matches the English term "self-defense," the French were ultimately able to slip that concession into the French version of the

Charter by opting for the term that was closest in meaning.

Strikingly, Fletcher and Ohlin make no attempt to disguise the fact that *légitime defénse* appears in the French version only because "insufficient attention was placed on the translation process" (p. 72). Against this background, one may wonder why the French version of Article 51 should merit the same normative authority as the English. The authority of the Charter is, one would think, a product of the agreement of the signatories, and the signatories clearly understood themselves to agree to the narrower notion of self-defense, not to the broader notion of *légitime défense*. More puzzling still, the authors go on to note that in spite of the occurrence of the broader notion in the French version of the Charter, "even French scholars of international law fail to realize the significance of the distinction" (p. 78) and, as a result, "do not make full use of the concept" (p. 84). It seems, in other words, that even French jurisprudence understands *légitime défense* (in the context of Article 51) as being coextensive with the English term, thereby lending little support to Fletcher and Ohlin's interpretation. What Fletcher and Ohlin have found, then, is best understood as an inconsistency within the Charter itself. This is hardly a compelling premise for a legal or moral doctrine of humanitarian intervention.

The second stage of the argument—ascribing legal status to nonstate nations—succeeds in touching on more fundamental questions. While their discussion contains several points of interest, the reader will wish that Fletcher and Ohlin had elaborated further both on the source of this legal status and on our resources for determining nationhood. Moreover, it must be noted that their approach will limit the legal permissibility of intervention to cases approaching genocide or, at minimum, to attacks specifically motivated by a nation's ethnic, religious, or cultural identity.

This leaves us with nothing to say about the permissibility of humanitarian intervention in cases of systematic and sustained human rights violations more generally. While this limitation is consistent with the general emphasis of the book, it is likely to temper the enthusiasm of many who would otherwise be inclined to support the argument, such as cosmopolitans who hold that international law should seek to protect not just collective entities such as states or nations but also individual human beings.

None of these concerns, however, will detract from the fact that *Defending Humanity* is an excellent, thought-provoking, and, not least, timely book. Its main line of argument concerning the defensive use of military force draws on notions of self-defense found in several traditions of domestic law, and does so in original and insightful ways. The result is a much more fine-grained notion of self-defense in international law than what figures in most current debates. Of particular importance is its observation of the distinction between justifications and excuses. In a stimulating discussion, Fletcher and Ohlin argue that the question of whether a particular employment of force was justified depends on the actual facts, not on what the agent might have reasonably believed on the basis of available evidence. Thus, for instance, the 2003 invasion of Iraq was not justified, since the conditions that would supply the justification did not in fact obtain. This, however, does not mean that the invasion could not be excusable: it would be excusable if it had been based on a reasonable belief that it was justified. (This belief would *not* be reasonable if the United States was negligent in its intelligence gathering.) However, an excusable

attack, unlike a justified one, can be justly repelled by the invaded country as a matter of legitimate self-defense (pp. 172–73). Reciprocity requires nothing less.

This emphasis on the requirement of reciprocity is a central theme of the book and also appears in an important chapter on the distinction between preemptive and preventive strikes. *If* preemptive strikes are justified, Fletcher and Ohlin argue, then they are reciprocally justified. This marks a crucial contrast with preventive strikes, where one side has already committed an aggression. Fletcher and Ohlin fully appreciate the difficulties involved in drawing a clear line between prevention and preemption, but offer several nuanced and useful recommendations on the matter. Legitimate preventive strikes must be based on publicly available evidence of an imminent attack. We are never justified in using military force to preempt shifts in the balance of power, as this would violate the requirement of reciprocity.

—Endre Begby

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