
Applying the Extra-Legal Measures Model to Humanitarian Interventions: A Reply to Devon Whittle

Oren Gross*

Abstract

In 'The Limits of Legality and the United Nations Security Council: Applying the Extra-Legal Measures Model to Chapter VII Action', Devon Whittle analogizes the United Nations Security Council's Chapter VII powers to domestic emergency powers. He then seeks to apply the extra-legal measures (ELM) model of emergency powers, which I developed some 20 years ago, to exercise by the Council of its Chapter VII powers. This brief comment seeks to expand the discussion of ELM in international affairs beyond the collective security system by exploring the application of ELM in the setting of unilateral humanitarian intervention.

No state shall forcibly interfere in the constitution and government of another state.¹

It isn't too much of an exaggeration to say that the greatest danger most people face in the world today comes from their own states, and the chief dilemma of international politics is whether people in danger should be rescued by military forces from outside.²

In his carefully argued article 'The Limits of Legality and the United Nations Security Council: Applying the Extra-Legal Measures Model to Chapter VII Action', Devon Whittle analogizes the United Nations Security Council's (UNSC) Chapter VII powers to domestic emergency powers. He then seeks to apply the extra-legal measures (ELM) model of emergency powers, to exercise by the Council of its Chapter VII powers. Having been asked to comment on the article, I thought that it would be of greatest interest to expand the scope of inquiry and suggest additional perspectives for utilizing ELM to consider and frame questions on the international plane. I am sympathetic (of course) to Whittle's attempt to apply ELM to the extraordinary actions by the UNSC

* Irving Younger Professor of Law, University of Minnesota Law School, Minneapolis, United States. Email: gross084@umn.edu.

¹ I. Kant, 'Perpetual Peace', in H.S. Reiss (ed.), *Kant: Political Writings* (2nd edn, 1991) 93, at 96.

² M. Walzer, *Just and Unjust Wars* (4th edn, 2006), at xi.