S
ince September 11 fears of terrorism and weapons of mass destruction have fueled a vigorous worldwide debate about the preventive use of force. Preventive use of force may be defined as the initiation of military action in anticipation of harmful actions that are neither presently occurring nor imminent. ¹

This essay explores the permissibility of preventive war from a cosmopolitan normative perspective, one that recognizes the basic human rights of all persons, not just citizens of a particular country or countries. We argue that within an appropriate rule-governed, institutional framework that is designed to help protect vulnerable countries against unjustified interventions without creating unacceptable risks of the costs of inaction, decisions to employ preventive force can be justified.

In our proposal, states proposing preventive war would have to enter into a contract with a diverse body of states as a condition for authorization of their actions. Both proponents of action and those opposing it would be held accountable, after the fact, for the accuracy of their prior statements and the proportionality of their actions. This institutional arrangement is designed to improve the quality of decisions on the preventive use of force. It does so by insisting that these decisions take place under rules that create incentives for honest revelation of information and responsible conduct, and that they be made by agents that are comparatively morally reliable.

The key to ensuring the fairness of rules governing the preventive use of force is accountability. Our proposed scheme promotes accountability through a combination of ex ante and ex post mechanisms. Prior to taking preventive action, states will be required to enter into a contingent contract that imposes two requirements. First, they must make an evidence-based case for preventive force to the UN Security Council. Second, they must agree in advance to submit themselves to an evaluation by an impartial body after the preventive action occurred.

¹ The notion of an “imminent” attack is somewhat vague but is usually understood to include not only situations in which missiles or warplanes have been launched but have not yet struck their targets, but also situations in which forces have been mobilized with apparently aggressive intent.
This body will be charged with determining whether the empirical claims that were employed to justify the preventive action were true. If the \textit{ex post} evaluation undermines the intervening states’ justification for acting, the contract would provide for sanctions against them. If the \textit{ex post} evaluation vindicates the recourse to preventive force, then the contract would impose sanctions on those members of the Council who opposed the proposed action. If preventive action were blocked by a majority vote of the Security Council or a veto by one of the permanent members, those seeking to engage in preventive action could then make their case in a different body—a coalition of democratic states—with its own institutionalized mechanisms for accountability. Although our goal is to develop an institutional framework for decisions concerning the preventive use of force, we believe that our general approach can also be used to develop a framework for making decisions concerning humanitarian military intervention to stop presently occurring massive violations of basic human rights. We focus more narrowly on preventive force for two reasons: the preventive use of force involves special risks and is thus more difficult to justify; and the Bush administration’s recent claims that the right of self-defense includes the permission to engage in the preventive use of force have made this an issue of urgent practical importance.

\textbf{FOUR VIEWS ON THE PREVENTIVE USE OF FORCE}

Four distinct positions in the current debate on preventive force have emerged: the Just War Blanket Prohibition; the Legal Status Quo; the National Interest; and the Expanded Right of Self-Defense. Clarifying these views and identifying their shortcomings helps to illuminate the distinctive features of our proposal.

\textit{The Just War Blanket Prohibition.} The dominant view in the just war tradition has been that preventive force is strictly forbidden. Force may sometimes be justified in cases in which an attack has not already occurred but is imminent—when, for example, an enemy is mobilizing his forces with clear aggressive intent or when missiles or warplanes have already been launched but yet not struck their targets—but there is generally thought to be a \textit{blanket prohibition} on preventive action.\textsuperscript{2}

\textit{The Legal Status Quo.} States’ preventive use of force is generally regarded as prohibited in contemporary international law unless they have received collective authorization by the UN Security Council. Article 2(4) of the UN Charter requires “all states” to refrain “from the threat or use of force against the territorial integrity or political independence of any state,” unless authorized by the Security Council (Articles 39, 42, 48) or in self-defense against an armed attack (Article 51). According to the Legal Status Quo view, this highly constrained stance on preventive force ought to be maintained. Preventive force should be used only with Security Council authorization.\textsuperscript{3}

\textsuperscript{3} In the absence of authoritative judicial determination, international law is subject to a variety of interpretations. Some might hold that under current international law preventive action can be legitimate because the Genocide Convention obligates states/parties to take action to prevent genocide. However, this claim is contestable because, according to Article 103 of the UN Charter, the prohibition against preventive use of force trumps all other treaties, including the Genocide Convention. It might also be held, on the contrary, that preventive force is not permissible under international law even with Security Council authorization, except in order to respond to a “threat to international peace and security.” For our purposes, it is not necessary to take a stand on these legal questions. We merely follow most authorities in treating the legal status quo as prohibiting preventive use of force without Security Council authorization, but permitting it if such authorization has been provided.

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The National Interest. Realists hold that states may do whatever their leaders deem necessary to serve the best interests of the state. According to this view, leaders of states may disregard universal moral principles when they conflict with the national interest. More specifically, they may employ force, including preventively, if they deem it necessary for the pursuit of state interests.¹

The Expanded Right of Self-Defense. The Bush administration’s “National Security Strategy” articulates a fourth position. It expands the definition of self-defense to include preventive action: “While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country” (emphasis added).² The Bush administration’s “National Security Strategy” asserts that states possess a right of self-defense that enables them to take preventive action.

None of these four views provides an adequate model for governing the preventive use of force. Adherence to the Just War Blanket Prohibition is too risky, given the widespread capacity and occasional willingness of states and nonstate actors to deploy weapons of mass destruction covertly and suddenly against civilian populations. In addition, this view requires states to refrain from acting even when they could prevent massive human rights violations at little cost.³ The National Interest view is also unacceptable. Indeed, it repudiates all progress that has been made in constraining the international use of force. The problem is not simply that the national interest is a malleable concept that its invocation is likely to provide a rationale for aggression and a recipe for destructive international instability, but that by reducing the grounds for the preventive use of force to self-defense, this view conceives of the potential aims of preventive action too narrowly. It fails even to consider the possibility that there are circumstances in which the preventive use of force would be justified to protect the rights of persons other than one’s fellow citizens.

The Expanded Right of Self-Defense view must also be rejected. Allowing states to use force on the basis of their own estimate that they may be attacked in the future, without provision for checks on the reliability and sincerity of that judgment, would make the use of force too subject to abuse and error. Like the National Interest view, it also focuses only on the welfare of those within one’s own state, thereby providing no basis for the preventive use of force on behalf of others.

The Legal Status Quo view is quite attractive when compared to the three views described above, since it allows preventive action, including its use to protect persons beyond one’s borders, while also providing checks on the judgment of any particular state or group of states seeking to use it. But when compared to a fifth alternative—the Cosmopolitan Institutional view—the Legal Status Quo view appears far less com-

4 For the classic statement, see Hans J. Morgenthau, Politics among Nations: The Struggle for Power and Peace, 6th ed., revised by Kenneth W. Thompson (New York: Knopf, 1985), p. 12. Advocates of the National Interest view need not be moral skeptics; instead they may hold that state leaders have one supreme moral obligation—to serve the national interest—and that this obligation overrides all other principles of morality. Those who espouse the National Interest view may disagree among themselves, of course, as to whether a policy of recourse to preventive force, or any particular decision to use preventive force, is in fact likely to serve the national interest or be detrimental to it.


6 We explore the flaws of the Just War Blanket Prohibition in more detail below.
pelling. The normative foundation of the Cosmopolitan Institutional view is cosmopolitan in the sense that it takes the human rights of all persons seriously. By basic human rights we mean the most widely acknowledged rights that are already recognized in the major human rights conventions. These include the right to physical security of the person, including the right against torture, and rights against at least the more damaging forms of discrimination on grounds of religion, gender, race, or ethnicity, as well as rights against slavery, servitude or forced labor, and the right to the means of subsistence. A commitment to protecting and preventing massive violations of human rights provides a prima facie justification for preventive force as a last resort.

These commitments of the cosmopolitan perspective are far from novel. Indeed, they are central to the just war tradition and the current international legal order’s allowing human rights to limit state sovereignty. The distinctiveness of the Cosmopolitan Institutional view lies in how it incorporates these normative commitments with an effective accountability regime for responsible decision-making concerning the preventive use of force.

A cosmopolitan accountability regime involves both substantive standards and processes. The substantive standards include traditional just war principles, including competent authority, proportionality, noncombatant immunity, realistic likelihood of success, and avoidance of excessive force against enemy combatants. Unfortunately, the chief deficiency of just war theory lies not in its principles but in the failure of the just war theorists to take seriously the need for institutionalizing them in a way that provides incentives for agents to apply them impartially and on the basis of good information. Current international law does institutionalize the important just war principle of competent authority: the requirement that the use of force must be authorized by the Security Council, except in cases of self-defense (when there is no time to consult the Council). And in this sense, the Legal Status Quo view can be seen as an important advance from an anarchic situation in which states unilaterally decide whether to use force. But this way of institutionalizing the use of force is seriously inadequate, at least when it comes to the preventive use of force.

**THE COSMOPOLITAN JUSTIFICATION FOR PREVENTIVE WAR**

We begin with the assumption that it can be morally permissible to use force to stop presently occurring massive violations of basic human rights. We then argue from this assumption that there is at least a prima facie case for the moral permissibility of

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7 The position we endorse is sometimes called Moderate Cosmopolitanism, which allows one to give a limited priority to the interests of one’s own nation and does not require strict impartiality. It is a liberal form of cosmopolitanism, since it emphasizes the basic human rights of all persons. One could imagine other kinds of cosmopolitanism, such as Marxism, that forbid discrimination on grounds of nationality, but do not focus on human rights. For a philosophical justification for the assumption that there are human rights, see Allen Buchanan, “Human Rights,” in *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (forthcoming, Oxford: Oxford University Press, 2003).

8 The humanitarian law of war can be seen as an imperfect institutionalization of some of the most important *jus in bello* principles of just war theory. However, given the distinctive risks of the preventive use of force, special institutional arrangements are required for responsible decisions to use force preventively, over and above better compliance with rules of humane warfare that are designed to apply to all uses of force.
using force to *prevent* massive violations of basic human rights. The core justification for using force to stop rights violations as they are occurring—the need to protect basic human rights—can also justify the use of force to prevent rights violations.

Reflection on two scenarios will help to flesh out the prima facie case for this proposition. In the first case, a group is *already* in the process of releasing a weaponized, extremely virulent, lethal virus into the heart of a major city. Surely, it would be justifiable to intervene forcibly to stop it from releasing more of the deadly concoction. In the second scenario, the intelligence agencies of a state have consistent information from many reliable sources that a group that has deliberately killed civilians in the past has in its possession a weaponized, extremely virulent, lethal virus and plans to use it against a civilian population. Suppose further that the current location of the virus is known but the city at which it is targeted is not, and that once the virus leaves its present location it will be very difficult to track. Let us also stipulate that the current location of the virus is in the remote stronghold of the group and that a preventive strike can destroy the virus without killing any persons who do not belong to the group. Under these circumstances, the need to protect basic human rights supports preventive action, regardless of whether the rights endangered are those of our fellow citizens or foreigners. Reflection on such examples supports the conclusion that preventive action can be ethically permissible.

It is crucial to emphasize that this prima facie justification for the preventive use of force does not apply to all cases where harm may be prevented but only to situations in which there is a significant risk of sudden and very serious harms on a massive scale. Such a risk is inherent in weapons of mass destruction but not exclusive to them. Genocides may also erupt suddenly.

In situations characterized by incrementally increasing violence, such as in the former Yugoslavia, however, the case for preventive war is much less compelling. Action to respond to aggression or acts of ethnic violence can feasibly be taken in such contexts with far less uncertainty regarding the need to act after the first human rights violations have already occurred. Thus the force of the prima facie argument is limited and focused. It does not purport to show that force may be used whenever it is likely to stop massive violations of basic human rights.

What the Cosmopolitan Institutional view and the Legal Status Quo view have in common is the assertion that there are some cases in which preventive action ought to be permitted. The prima facie argument for prevention sketched above provides a needed moral foundation for both of these positions.

A Critique of the Just War Blanket Prohibition Argument

Those who endorse the blanket prohibition characteristic of the just war tradition could point out that the prima facie argument

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9 The prima facie argument seems to imply that preventive action to protect basic human rights is not only permissible but also obligatory. However, since we seek to advance a feasible proposal, our discussion of institutional arrangements does not assume such an obligation. The successful implementation of the accountability regime we propose might be an important step toward the more ambitious goal of institutionalizing an obligation to prevent massive violations of basic human rights.

10 By beginning with the assumption that the use of force is sometimes permissible to stop massive violations of basic human rights already under way, we are of course implicitly rejecting the absolute pacifist view that the use of military force is never justified because it inevitably involves harm to innocent persons. We share this assumption with the four perspectives that we criticize.
ignores a crucial point about preventive force: it is directed toward someone who has not committed a wrong. Thus preventive action violates the rights of its target. Unless this moral objection can be met, both the Cosmopolitan Institutional view and the Legal Status Quo view must be rejected.

This objection is unconvincing, since it rests on a false assumption about the right not to be attacked. There is, trivially, a right not to be attacked *unjustly*. But to assume that this includes the right not to be attacked unless one has already committed, or begun to commit, a wrongful harm is to beg the question at issue—namely, whether preventive force can ever be morally justified.

Reflection on the right of self-defense suggests that preventive action need not violate the rights of the target. At common law, an individual may use deadly force in self-defense if a reasonable person in his circumstances would judge that he is in danger of death or serious bodily injury. Of course, other conditions must be fulfilled as well, including the avoidance of excessive force. The point, however, is that there are circumstances in which it is justifiable to use lethal force even if the target against which it is applied has not yet caused harm. If this is the case, then it may also be permissible to use lethal force in cases where a reasonable actor would judge that the behavior of another person or persons pose a serious threat of death or serious bodily harm even if an attack has not yet begun.

In the case of individuals, there is much to be said for restricting the legal right of self-defense so as to require the reasonable belief, by the agent exercising the right of self-defense, that an attack is already under way. This restriction is reasonable in contexts in which there are a well-functioning police force and legal system that serve to reduce the risk that individuals will be attacked by their fellow citizens. In the international arena there is nothing comparable to an effective police force, and the stakes are often much higher, since millions of people may be killed by a sudden deployment of weapons of mass destruction. Under these circumstances the restrictive interpretation of the right of self-defense seems inadequate. It seems much more plausible to assert that the use of force to prevent great harm can be justified, even if that harm is neither presently occurring nor imminent.

In the second scenario described above, the terrorist group has not yet launched an attack, and the harm it seeks to inflict is not literally imminent. Yet it is incorrect to say that the group has done nothing. It has *wrongfully imposed an especially high risk of serious harm on others*, through its past actions, its current planning to carry out a lethal attack, and its expression of a willingness to kill noncombatants. The group’s actions, plans, and avowed intentions have put innocent people at risk for great harms.

Reflection on the law of conspiracy suggests that using force against someone who has not yet committed a wrongful harm need not violate his rights. The elements of conspiracy include a “specific intention” to do wrongful harm and an “agreed plan of action” to produce the harm.\(^{11}\) The “specific intention” requirement rules out mere unfocused malevolence as a trigger for criminal liability, while the requirement of an “agreed plan of action” satisfies the condition that a crime must include an act, not merely a guilty mind. There is nothing morally repugnant about the idea of using force against conspirators simply because they have not

yet performed the act they have planned. We can dismiss the simplistic allegation that it cannot be right to use force against him because “he hasn’t done anything” once we acknowledge that the conspirator has indeed done something by agreeing to a plan to produce wrongful harm.

One plausible explanation of why it can be justifiable to use force against someone who has a “specific intention” and an “agreed plan of action” to do wrongful harm is that he has wrongfully imposed a risk of serious harm on others. It is a wrongful imposition of risk if those put at risk have neither voluntarily accepted the risk nor deserve to be subjected to it. The crucial point is that when someone has wrongfully imposed a risk, it can become morally permissible to do things to alleviate the risk that would otherwise be impermissible. This is not to say that one may do whatever is necessary to alleviate the risk. As with the use of force generally, the principles of proportionality, avoidance of excessive force, and demonstration of proper regard for the rights of innocent persons must be observed. Whether the preventive use of force is justified in such cases will depend, as with self-defense against an imminent attack, upon whether it is reasonable to conclude that the target of prevention has wrongfully imposed a dire risk on others.

The analogy with the law of conspiracy and of self-defense takes us only so far, however, since it shows only that if similar conditions were satisfied in the case of a state or a terrorist group, it would be justifiable to use force to arrest and punish them. Whether it can be justifiable to use deadly force against them depends on the additional assumption that the wrongful act they plan to commit will be sudden and will cause massive violations of human rights. In such cases, the use of military force will often be necessary to alleviate these threats.

One might object that the idea of alleviating an unjustly imposed risk through preventive action justifies inflicting harm only on the one who has imposed the risk, whereas preventive action will inevitably involve a risk of harm to others. As we have already acknowledged, preventive military action (unlike ordinary acts of law enforcement) will almost invariably risk harm to the innocent. This is equally true, however, of intervention to stop a presently occurring genocide and of interdiction, and even of the least controversial cases of self-defense against an aggressive attack. Unless one is willing to embrace an absolute pacifist position that rules out the use of military force in self-defense, the fact that a preventive response to the wrongful imposition of dire risk may involve harm to innocent persons does not necessarily render it morally illegitimate.

Given that military action typically involves much greater risk of harm to innocent persons than ordinary police action against conspirators, the threshold of expected harm needed to justify preventive military action should be high. From a cosmopolitan perspective, an appropriate threshold is the occurrence of massive violations of basic human rights. As noted earlier, by “basic human rights” we mean the most widely acknowledged rights that are already recognized in the major human rights conventions. The requirement of massive violations of basic human rights sets a very high threshold for preventive action.

Advocates of a blanket prohibition on preventive force have one last arrow in their quiver. They can argue that prevention carries special risks that are not present in the case of armed responses to actually occurring attacks. The appeal to hypothetical examples such as that of the sudden release of a deadly virus, it might therefore be argued, glosses over an important distinc-
tion between the justification of a particular action and the justification of a rule allowing that type of action. Even if preventive action would be morally justified when certain highly ideal conditions are satisfied, it does not follow that we should replace current restrictions on preventive force with a more permissive rule.

The prima facie moral argument for preventive action asserts that preventive action may be undertaken to remove or mitigate a wrongfully imposed dire risk. However, for a dire risk to lead to severe harms, a long causal series of events must typically be completed. Even if the probability of each event in the causal series is high, the probability of the harm will be much lower, since it is the product of all the probabilities of the events in the series. Thus suppose that the causal series anticipated by the potential preventer consists of events A, B, C, and D and that each event has a probability of 0.8. The anticipated harm (the massive violation of basic human rights) will occur only if the whole series of events occurs; but the probability of this is the product of the probabilities of each of the members of the series: \(0.8 \times 0.8 \times 0.8 \times 0.8 = 0.4096\). If the probability of individual events is lower, the joint probability is dramatically reduced. Furthermore, if events are uncertain— that is, probabilities are unknown—it is impossible to calculate precise probabilities.

It is not enough to show, the objector would conclude, that there are some circumstances in which preventive action would be morally justified. If these cases are few—and if there is a significant risk that those contemplating preventive action may err in determining whether those circumstances obtain—then perhaps preventive action should be prohibited altogether, as traditional just war theory holds. \(^{12}\)

This argument from the special risks of prevention to a blanket prohibition is fatally incomplete. It overlooks the fact that acceptable risk reduction can be achieved not only by a blanket prohibition but also by a more permissive rule embedded in an appropriate institutional framework. Indeed, a blanket prohibition comes at a high cost, since it rules out action to prevent massive violations of basic human rights even when the costs of prevention are very low and the likelihood of its success is very high.

A blanket prohibition rule also tends to reduce the effectiveness of coercive diplomacy, which may often be the most promising means of preventing terrible harm as a result of foreseeable future aggression. Coercive diplomacy can be defined as “bargaining accompanied by threats designed to induce fear sufficient to change behavior.” \(^{13}\) It includes deterrence but is more comprehensive, since it also incorporates what Thomas Schelling once called “compellance”—inducing an adversary not merely to refrain from some action but to engage in an action that it would not otherwise undertake. \(^{14}\) For most states, most of the time, illegality is viewed as a cost, if only because of damage to reputation. If preventive force is illegal, states will be less likely to use it and efforts at coercive diplomacy through the threat of preventive force will be less credible.

\(^{12}\) In one sense, this objection points out the obvious: that tradeoffs exist in policy between timely action and certainty about the necessity of action. The longer one waits, the more information one is likely to gain; but by the same token, one’s ability to affect the situation may be reduced. Britain and France had better reason in 1939 than in 1936 to regard Germany as a threat to their security, but the cost of averting the threat was higher in 1939.


A Critique of the Legal Status Quo View
The Legal Status Quo (Security Council authorization) view and the Cosmopolitan Institutional view both reject the blanket prohibition. Each holds that we can effectively mitigate the special risks of prevention by creating institutional safeguards. Although reliance on Security Council authorization is superior to a blanket prohibition, it is not the best institutional alternative.

The first and most obvious moral flaw of the legal status quo is the moral arbitrariness of the permanent member veto. From a cosmopolitan standpoint, there is no justification for this radically unequal distribution of decision-making authority. The veto seriously impugns the legitimacy of the legal status quo.

Second, the use and anticipated use of the veto can block preventive actions that we have morally compelling reasons to undertake. As the Independent International Commission on Kosovo argues, and as the secretary-general of the UN acknowledged at the time, the case for military action to prevent (further) ethnic cleansing of Albanians in Kosovo was very strong, but no resolution to intervene was proposed in the Security Council because it was known that Russia (and perhaps China as well) would veto it.¹⁵

Third, the legal status quo lacks provisions for holding the decision-makers who propose preventive force (and those members of the Council who must approve it) accountable for their actions. There is subsequently very little assurance that only morally defensible interventions will be authorized. Without standards for when preventive action is justified and without accountability mechanisms to increase the probability that those standards are met, authorization is likely to be unprincipled rather than guided by a proper concern for human rights.

These flaws constitute a strong prima facie case for rejecting the Legal Status Quo view—but only if a superior alternative is feasible. We have seen that none of the three conventional alternatives—the Just War Blanket Prohibition, National Interest, and Expanded Right of Self-Defense views—is adequate. If the current legal status quo ought to be abandoned, it must be for a new arrangement that provides more, not less, accountability.

The Risks of Preventive Action
Even though preventive military action is sometimes justified, it creates a number of serious risks, two of which are of special concern with respect to preventive action, even if they are not unique to it. The first is that self-interest masquerading as concern for the common good may lead to decisions that are unjustifiable. The second is that preventive action will undermine existing beneficial institutional norms constraining the use of force. Each of these risks is particularly worrisome since predictions that violence may occur are generally more subject to error and bias than observations that it is already occurring.

These risks indicate the need for institutional safeguards to make decision-making regarding the preventive use of force more responsible. The more effective these safeguards are, the more the probability of abuse will be reduced, and the more justified it will be to undertake preventive action to cope with massive violations of basic human rights. By reducing the risks of abuse, institutional safeguards can make preventive action more feasible on a greater range of issues, promoting basic human rights.

Institutional safeguards therefore take the sting out of the fact that there is no unique, nonarbitrary threshold of probability of harm needed to justify prevention. We cannot reduce the risk of unjustified preventive action to zero, but we can lower it sufficiently so that preventive action can become a more useful tool of policy. Our institutional analysis in the next section is designed to show that this can be achieved.

COSMOPOLITAN INSTITUTIONS FOR ACCOUNTABILITY

We advocate three principles for designing institutions to govern the preventive use of force. The first is effectiveness: the institution should effectively promote the responsible use of force to prevent massive violations of basic human rights, regardless of whose rights are threatened. One way to achieve this is to design institutions governing the preventive use of force in which decisions to use force preventively are made by agents who are, comparatively speaking, morally reliable, and who are provided incentives to make these decisions responsibly.

Only those states that have decent records regarding the protection of basic human rights should be allowed to participate in institutional processes for controlling the preventive use of force. Those who have demonstrated respect for human rights over a considerable period of time are generally more reliable decision-makers regarding the use of force for protecting human rights than those who have not. We call this the comparative moral reliability criterion.

Yet even agents that are morally reliable, comparatively speaking, may act unreliably unless they are provided with incentives that induce them to make decisions on the basis of the best available information, and to take actions that are consistent with cosmopolitan principles. In particular, incentives are needed to counter the tendency of those proposing the preventive use of force to overestimate the risk to be averted and the tendency of others to shirk responsibilities to protect basic human rights.

Our second design principle also flows from a core commitment of the cosmopolitan ethical perspective: mutual respect for all persons. Being willing to help protect the basic human rights of all persons is one important way in which we show respect. Showing respect also entails being willing to justify one’s actions to others. Arrogant dismissal of others’ views without providing reasons and evidence is inconsistent with this principle.

Within democratic societies, this principle of mutual respect means that people wielding power and the means of coercion must respond to queries about their use from those who ultimately must authorize these actions—members of the society in question. Those who wield power must also offer justifications of their actions to those who are affected by them, including those who are not members of their societies. In the words of the Declaration of Independence, they must show “a decent respect to the opinions of Mankind.”

Our third principle of institutional design, inclusiveness, reflects the values of both effectiveness and mutual respect. Effectiveness in world politics depends on the independent actions of many states. Therefore, the principle of effectiveness suggests at least a presumption in favor of maximal inclusiveness, unless countervailing considerations intervene. In addition, the principle of mutual respect implies that institutions should be as inclusive as is feasible, given their goals, since all are entitled to equal regard.

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In many cases effectiveness, mutual respect, and inclusiveness will point in the same direction. But it is worth noting that there can be a conflict between promoting effectiveness by selecting agents that possess comparative moral reliability, and inclusiveness. Inclusiveness argues for giving all states access to participation in institutional processes for controlling the preventive use of force, whereas the need to enlist agents who have a sincere commitment to and a sound understanding of human rights favors restricting participation. How the tradeoffs between inclusiveness and comparative moral reliability are made is of crucial importance for institutional design, as indicated by our discussion below of possible arrangements for a democratic coalition to supplement the authorization processes of the Security Council.

The Concept of Accountability and the Preventive Use of Force

No single state can be counted upon fully to take into proper account the interests of others, particularly when considering the use of military force. Therefore, processes by which states, or nonstate actors, can hold states accountable are essential if the parochial concerns of the most powerful states are not to be allowed to prevail over broader interests and shared values.

Standard definitions of accountability emphasize both information and sanctions. “A is accountable to B when A is obliged to inform B about A’s (past or future) actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct.” Accountability operates both ex ante and ex post. Those states that propose to use force preventively must, under cosmopolitan principles, consult with other states and make their intentions known to international society more generally before using force. Having used force, they must provide information, answer questions, and subject themselves to sanctions according to rules that have been established in advance.

Inclusion of sanctions (including punishments) is crucial, since there will be little incentive to comply with the requirement to answer questions and provide justifications unless those to whom the action is to be justified can sanction those in power. In addition, accountable institutions require specification of the standards to which agents are to be held accountable, those to whom they are to be accountable, and a willingness on the part of agents to provide information and answer questions about their behavior.

For a cosmopolitan view, the most fundamental standard of accountability is that states must act in ways that are designed to respect and protect the human rights of all persons. They are only to use force or to authorize its use for the sake of preventing violations of human rights. In addition, justified preventive action must include standards for how preventive force is to be applied so that it reflects the cosmopolitan commitment to basic human rights.

Prominent among the substantive standards for determining the way in which preventive action may be conducted will be the traditional jus in bello principles—that harm to innocents should be minimized, force must be proportional to the end to be achieved, excessive force is to be avoided,

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16 Andreas Schedler, “Conceptualizing Accountability,” in Andreas Schedler, Larry Diamond, and Marc F. Plattner, eds., The Self-Restraining State: Power and Accountability in New Democracies (Boulder, Colo.: Lynne Rienner, 1999), p. 17. The word “punishment” could be interpreted in too formal and restrictive a way. We accept this definition only with the proviso that it refers more broadly to a penalty.
and unnecessary suffering should not be inflicted on enemy combatants. To institutionalize adequately these standards requires mechanisms that help to ensure that they are applied correctly and that there are effective sanctions to increase compliance with them.

To determine whether these standards are met, information is required. Thus the second component of a defensible accountability system is provision for the sharing of information. A state proposing to use force must share its information about the risks of large-scale human rights violations that would result from inaction as well as the risks of action, especially regarding harm to innocent persons. The information that it provides must be comprehensive enough for other states to make independent judgments on the costs and benefits of the preventive use of force.

Procedures that ensure information sharing are necessary for providing the appropriate incentives for action. Without such procedures, states could pretend to be using preventive force to protect human rights while in fact acting to preserve their hegemony in a region, to protect weak regimes with which they are allied, or to gain economic advantages. The requirement of information sharing is designed, therefore, not only to correct false beliefs but also to reduce opportunistic use of force. Information sharing is therefore required by the design principle of effectiveness. It is also required by the principle of mutual respect, since mutual respect is evidenced by a willingness to share information with equals rather than to demand deference from those regarded as inferior in the capacity to understand issues and make decisions.

Introducing sanctions for the violation of standards is the third element of an accountability system. It is also the most difficult to institutionalize. Different societies hold different values, and states are likely to privilege their own interests, so it is infeasible to rely on voluntary compliance. World politics is often seen as a “self-help” system in which each state is responsible for its own security. Without sanctions, rules for the regulation of the preventive use of force would almost certainly be ineffective. Unless there are sanctions for violations of the requirement to share information, some states will misrepresent the facts, exaggerating the probability of the harm that they propose to prevent. Unless there are sanctions against those who use excessive force, states are likely to discount the harm their forceful actions will inflict on others. Without effective sanctions, the institutions will be ineffective, since in the absence of sanctions, “the strong do what they can and the weak suffer what they must.”

Standards, information, and sanctions are all crucial to accountability, but they leave open the question, To whom should agents who are considering wielding military force be held accountable? We have already suggested that a cosmopolitan view entails a presumption in favor of inclusiveness. In addition, the design principle of mutual respect creates a presumption that participation in institutional processes for the use of force to protect the human rights of all should be open to all. This presumption could be rebutted, however, if the effectiveness of the accountability regime requires restricting participation to those agents that are comparatively morally reliable.

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Ex Ante Accountability
With respect to a state’s proposal to engage in the preventive use of force, ex ante accountability requires that all of the issues and options (including nonmilitary options) be discussed, and that states that question the necessity of the intervention have the opportunity to interrogate those who propose it. Consistent with the principle of mutual respect, rational persuasion must be employed. Reliance on principled rational persuasion also means that parties speaking in favor of or against preventive military action must acknowledge that their decisions will have precedential value for future decisions. Both the party contemplating intervention and those who must ratify its decision must therefore acknowledge at least a prima facie obligation, on future occasions, to follow the principles that they have invoked to defend their actions, regardless of the identities of the intervener and the target of intervention. In this sense, the expectation that current decisions will have precedential value for future decisions serves as a kind of veil of ignorance, making the procedure conducive to fairness and therefore to mutual respect. Even if a very powerful state may not expect to be a target of future preventive action, it may worry that the principles it employs to justify or to oppose preventive action will be used by other powerful states to justify their own preventive uses of force.

Mutual respect also requires that all participants in the process of deciding on the preventive use of force must have equal standing to pose questions to the potential intervener and offer arguments against intervention. In addition, there is at least a strong presumption against according weighted votes or veto power.

Finally, the process of deliberation ex ante must involve the participation of a group of states with diverse interests. Too much uniformity of interests among the participants would run the risk of bias, perhaps even turning the regime for accountability into a tool for domination. Protection of the human rights of all requires diversity of perspectives.

Ex Post Accountability
It is quite possible that what is discovered after even a successful military attack will not justify the actions that were taken. Ex ante accountability is therefore not sufficient; provisions for ex post accountability are also essential. The attacking states must come back with a full report to the body that authorized their actions. They must also allow an impartial commission appointed by that body to have free and timely access to all places in the country controlled by the attacking states in the course of the preventive action. That is, they must facilitate the generation and publicizing of the best available impartial information about the actual effects of preventive use of military force.

Evaluation of the results of the preventive military action would focus on the consistency of the acting states’ behavior with the statements they made in the ex ante accountability process. Two issues are particularly important:

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20 In the World Trade Organization states behave in this way. They are reluctant to put forward legal arguments to defend their own practices that could be used in the future by other states to justify protectionist measures.
Was the information gained *ex post* about the risk-imposing actions of the target consistent with the statements made by the states proposing action *ex ante*?

Were the military actions of the attacking states consistent with their assurances *ex ante* that their actions would be proportional to the objectives being attained? The justification of military action on the basis of risk only justifies action necessary to remove or significantly reduce the risk. It should ultimately be up to the authorizing body, not to the attacking states, to decide how far military action needs to go to attain the agreed objectives.

With respect to the justification of an attack, two contrasting inferences might be drawn from information gathered after the war: one, on the whole, the *ex post* investigations support the assessments of risk made before the attack; or two, on the whole, the *ex post* investigations fail to corroborate those assessments. Of course, there would be gradations of judgment between these two poles.

If the situation corresponds more closely to situation one, the attacking states would indeed have performed a public service for the world by eliminating or reducing the threat that weapons of mass destruction would be used or that large-scale violations of basic human rights would be inflicted by some other means. These positive contributions would be counted against their financial obligations. Indeed, it would be presumed that those states that had not shouldered the risk of preventive military action would bear special responsibility for financial support in rebuilding the target country should the preventive use of force have caused extensive damage. Insofar as feasible, they would also bear responsibility for peace enforcement. That is, under these conditions those states that had not supported preventive military action would be sanctioned as “free riders,” who were informed about the threat but refused to act in a timely manner. Although the economic obligations of such free riders would be limited by their economic capabilities—poor and weak states would not be unduly burdened in any case—they would, in this situation, be greater than those imposed on states with comparable resources that supported the military action.\(^1\)

However, if the *ex post* review concludes that the preventive action was unjustified, the attacking states and their supporters would be held accountable. They would have to face sanctions for their actions in much the same way that states participating in the international trade regime are liable for their infringements of its rules. They would be required to compensate those who suffered harm from the preventive action and to provide full financial support for operations that restore the country’s infrastructure and enable it to govern itself effectively. Furthermore, the intervening parties would not be allowed to control the political situation in the conquered country, or to determine the allocation of aid or the awarding of contracts to firms offering services for the reconstruction effort. If states know *ex ante* that these rules are in place, incentives for opportunistic interventions aimed at domination rather than protection of human rights will be diminished.\(^2\)

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\(^1\) The analogy of conscientious objection may be helpful. Conscientious objectors may avoid military service but are expected to subject themselves to at least equivalent burdens and risks as those who do carry arms, by serving as medics, for example.

\(^2\) The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, and other provisions of international law specify the obligations of occupying powers. These include ensuring respect for basic human rights, including restoration and maintenance of law and order and provision of food and medical care to the population. Under our proposal these obligations would not be diminished, but occupying powers whose actions had been judged by the *ex post* review to be unjustified would have their ability to make decisions severely constrained.
A crucial component of our proposal is an impartial independent commission, appointed by the authorizing body (such as the Security Council). This commission would have prompt access to the conquered country and would determine the magnitude of reconstruction aid needed. It would also determine the allocation of responsibilities to provide the necessary funds.

One particularly attractive feature of the *ex post* accountability requirement is that it provides the intervening state with a powerful incentive to comply with the just war principle of using the minimum of force sufficient to achieve the goal of prevention. This requirement places the burden of evidence on the intervening state: it must be able to show that its *ex ante* judgments in support of preventive action were valid, and this requires that evidence to substantiate those judgments be available for all to see *ex post*. Were the intervener to use excessive force, this could destroy the needed evidence. *Ex post* accountability thus institutionalizes an important just war principle in such a way as to create incentives for compliance with it.

Similarly, the knowledge that its actions will be subject to an impartial review would give the intervening state an incentive to minimize harm to noncombatants, especially if significant penalties would follow upon a finding that the harm to noncombatants was excessive. These would primarily consist of compensation to those harmed or their families, but might include other sanctions as well.

The key to this mechanism of accountability is a *contingent contract* that applies both to states seeking to use force preventively and to states opposing the preventive use of force. States would agree that after the conflict they would abide by the judgments of the authorizing body on the validity of their *ex ante* arguments. They would also agree that, should this judgment go against them and the independent commission determine a level of compensation, they would pay such compensation (subject perhaps to an appeals procedure). It should be emphasized that states opposing preventive action would also be liable to pay compensation if *ex post* discoveries confirmed the claims made *ex ante* by the states advocating preventive action and disconfirmed their own *ex ante* objections. In other words, the contract is double-sided and does not discriminate against potential interveners.23

Such a contractual arrangement would decrease the incentives for dishonesty on the part of both proponents and opponents of preventive action in their *ex ante* presentation of evidence. A major problem facing all but the most powerful states, and all publics, is that they do not have access to privileged intelligence information, particularly with respect to closed societies and dictatorships such as North Korea and Iraq. They are therefore subject to being deceived about the real state of affairs. And since they are aware that they do not have access to much information, they may become unreasonably skeptical of proposed interventions.24

Another advantage of this contractual arrangement is that it would limit abuses of victory in a preventive war. When interven-
tions result in large-scale damage, decisions about how to reconstruct the country, including those relating to its political-economic system and control of its resources, must be made in consultation with the authorizing body. When the states engaged in preventive military action have succeeded in their objective—the elimination of the risks for which they claimed to go to war—they must subject their plans for postwar reconstruction and prevention of recurrence of the risks to the authorizing body.

All states could stand to gain from the implementation of the accountability safeguards that we have described. States not expecting to use preventive military force would gain more reliable information before having to make decisions on its authorization by a collective body such as the United Nations. States expecting to use preventive force could hope to gain credibility for their claims, and therefore be likely to generate broader support for preventive military actions that are justified. And all could benefit from the combination of inducements to avoid dysfunctional deadlock and abuses of authority.

ALTERNATIVE INSTITUTIONAL MODELS FOR ACCOUNTABILITY

In this section we discuss three alternative arrangements that might reasonably satisfy the requirements of cosmopolitan accountability. None of these arrangements may be politically feasible at present, even though we have sought to design them in a way that takes a nonideal world of primarily self-interested states as a given. We hope that people of goodwill and sophistication may be interested in refining and implementing them, or institutions inspired by them. These suggestions therefore fall somewhere between mere thought experiments and proposals that could be implemented under current conditions.

Institutional Model 1: Accountability without the Veto

The first model relies exclusively on the Security Council but creates mechanisms for *ex ante* and *ex post* accountability and removes decisions about preventive force from the scope of the Council’s permanent member veto. The veto could still be exercised in other Council deliberations, but it would be abolished in the case of decisions whether to use preventive force.

On this model, the provisions for *ex ante* accountability described above would structure the Council’s deliberations, if time permitted. If nine members of the Council voted in favor, a proposed preventive action would go forward, subject to an impartial *ex post* review as described. The requirement of a supermajority of nine votes appears reasonable, since it ensures that a diverse group of states would have to agree to the action.

If a state or group of states uses preventive force prior to Council authorization on the grounds that there was no time to seek it, then it would also be subject to an impartial *ex post* review. Such a review would also determine whether it had been reasonable to go forward without prior approval by the Council. Should the review determine that they were not justified in attacking without prior approval, they would be subject to sanctions at least as severe as those imposed on attackers who received authorization under false pretenses.

There are three major arguments in favor of dropping the veto for these decisions. First, it has no ethical standing, since it is a political artifact of the era in which the United Nations was founded, and offends against the presumption of equality implied by the design principle of mutual respect by giving disproportionate power to some states. Second, removing the veto reduces the inertia in the present system, making it more likely that force could be used preventively when its use would be morally compelling. Third, abolish-
ing the veto would encourage states that resist the use of preventive force to propose constructive alternatives. The lack of a veto would make it necessary for states to persuade others that the preventive use of force is not necessary. In some cases this would require that they present alternatives to its use. At present, those who wield the veto need not persuade, they can simply dictate the outcome.

Despite these attractions, any proposal that includes abolishing the permanent member veto will meet insuperable political resistance to its implementation in the foreseeable future. States that now possess the veto are unlikely to relinquish it, and no one else can make the proposed change. Moreover, it is especially unlikely that they would relinquish the veto over something as important and controversial as the preventive use of force. Even if the permanent members saw some merit in the proposal to relinquish the veto only in decisions concerning preventive use of force, they might fear a slippery slope leading to the loss of the veto in other areas. Finally, there is a danger that removing the veto for states wielding significant force could create military conflict between the United Nations and a great power, which would be a disaster. This alternative for institutional reform, then, is the least feasible of the three alternatives.

**Institutional Model 2:**
**Accountability despite the Veto**

A less radical and correspondingly more feasible model would create mechanisms for *ex ante* and *ex post* accountability as in model 1 but leave the permanent member veto in place. On this second model, the Security Council would have to approve military action by the procedures currently in the Charter. The Council would appoint an impartial body to determine whether the intervenor’s *ex ante* justification for preventive action is confirmed *ex post*.

Such an arrangement might reduce the likelihood that vetoes would be used, since those states reluctant to endorse preventive action would at least be assured that the results would be impartially reported, with provisions for penalties in the case of malfeasance. In other words, they would not be issuing a “blank check” to those initiating force preventively. To that extent, the second model’s provisions for accountability would alleviate the problems that the veto poses. However, it should be emphasized that for *ex post* accountability to work, it would also be necessary for the Council to create suitable penalties to be applied in the case of a negative *ex post* evaluation.\(^27\)

Model 2, like

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26 Article 51 of the UN Charter states that Members of the United Nations that respond with force to an armed attack shall “immediately” report their actions to the Security Council. Our institutional model 2 goes significantly beyond Article 51 in three ways: it expands the scope of a reporting requirement beyond the case of self-defense against an actual armed attack to cover preventive force; it specifies that the report must be made by an impartial body and must explicitly address issues of fact and of reasonableness in the justification of the use of force; and it attaches penalties in the case of an unfavorable report.

Article 51, in contrast, allows the party using force to report on itself, specifies no criteria of evaluation for the report, and mentions no consequences of an unfavorable report.\(^51\) This necessity raises the problem of an *ex post* veto by the intervening state or states of the findings of the impartial commission or penalties implied by those findings. This problem could be solved by adapting a suggestion recently made by Thomas Franck, who points out that Article 51 provides that “decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.” That is, on procedural matters, the veto is inapplicable. *Ex ante* the Council could decide that votes on the composition and report of the impartial commission, and on any recommendations for penalties, would be considered procedural. (Professor Franck’s proposal concerns specification of what constitutes a “material breach” regarding UN resolutions concerning Iraq. See his “Inspections and Their Enforcement: A Modest Proposal,” *American Journal of International Law* 96 (October 2002), pp. 899–900.)
model 1, builds on the existing UN structure, but is more feasible than model 1, since it does not require those with the veto to relinquish it.

Nevertheless, even the measures proposed in model 2 might seem to be too costly for the leader of a coalition for prevention. Why should the coalition leader 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 credible its justification for preventive force and its own promises regarding its conduct during and after the conflict.²⁸ And credible promises are essential to induce other members of the Security Council to grant authorization for the use of preventive force. Furthermore, securing a broad coalition *ex ante* can provide valuable insurance for the interveners, since they could otherwise be stuck with bearing the full cost of reconstruction if political conditions in the occupied territories worsen after a successful military operation. States that do not consent to the use of force in the first place are likely to demand a high price for being involved in the post-conflict reconstruction.²⁹

Although superior to model 1, model 2 is also unsatisfactory. It avoids the impracticality of model 1, but keeping the permanent member veto comes at a high price, because the veto is both morally arbitrary and facilitates a lack of accountability. The veto gives those who wield it little incentive to persuade others by principled argument or to offer constructive alternatives to the use of force. So long as the decision whether to use preventive force rests exclusively with the Security Council as currently constituted, there will be no recourse against deadlock produced by arbitrary and self-interested use of the veto.

**Institutional Model 3: A Role for a Democratic Coalition**

The third and most defensible institutional alternative is to implement the Security Council–based accountability mechanisms described in model 2 but supplement them with a supporting role for a coalition of reasonably democratic states. By democratic states we mean those with constitutional, representative governments, competition for elected positions through reasonably fair elections, and entrenched basic civil and political rights. A fairly wide range of political institutions and cultures can meet these minimal requirements. There is no suggestion that democratic states include only U.S. or Western European–style democracies. The point is simply to exclude states that are unambiguous violators of human rights.

Of course there is disagreement as to precisely how these elements of democracy are to be understood. For our purposes, however, there is no need to enter into that debate. Our proposal is to begin with a core group of states whose democratic credentials are uncontroversial, such as the members of the European Union plus states such

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²⁸ When the United States invaded Iraq in 2003 without Security Council authorization, the Bush administration’s chief justification for doing so was to destroy weapons of mass destruction, which it said were present in that country. It can be argued that as of nine months after the invasion began, the United States has failed to show either that there were weapons of mass destruction in Iraq at the time of the invasion or that there was good reason to believe that they were present. If this still appears to be the case after all the evidence is in, the problem of achieving credibility for the preventive use of force will be even greater in the future. The case for the *ex ante* and *ex post* accountability mechanisms we propose will be all the stronger.

²⁹ The United States gained Security Council approval for the first Gulf War in 1991, but not for the invasion of Iraq in 2003. Other countries paid approximately 80 percent of the cost of the former conflict; so far, the United States is paying over 80 percent of the costs of the latter.
as Australia, Canada, Chile, Costa Rica, Japan, South Africa, and South Korea. Unlike NATO, the coalition that intervened in Kosovo in 1999, such a coalition would be open to states from all regions of the world. Indeed, we expect that most of its members would not be from Europe or North America. The initial members would be authorized to admit additional countries through a transparent process utilizing publicly stated criteria for membership. Consistent with our overall argument, the democratic coalition would itself need institutionalized procedures for accountability, both with respect to admission to membership and for substantive decisions.

From a principled standpoint, creating a democratic coalition is attractive because it would reinforce the role of states that meet our standard for comparative moral reliability. This is not to say that we believe that democracies always, or even typically, act in ways that are consistent with cosmopolitan morality. Indeed, a key premise of our institutional proposals is that all states often behave in parochial and self-interested ways. We believe, however, that when democracies violate cosmopolitan principles, they are more likely to be criticized by their citizens for doing so, and will be more likely to rectify their behavior in response. They may not be morally reliable agents, but comparatively they are more reliable than autocracies.

The third model is feasible, since formal UN action would not be necessary to implement it. Indeed, if a large and diverse cluster of democracies proposed it, no single state could easily block it. The democratic coalition would be based on agreements among its members—not necessarily through a formal treaty. Over time, its practices could become part of customary international law. Furthermore, recent experience with respect to the Anglo-American war against Iraq suggests that democratic countries are capable of making independent judgments about the proposals of a superpower, even when faced with the prospect of bilateral sanctions. Chile and Mexico, for instance, refused to support the resolution authorizing war against Iraq put forward by the United States and United Kingdom in February and March of 2003.

In international law, recognition of new states is awarded by existing states, acting individually or through institutions such as the United Nations. Those entities that are indisputably sovereign states have the authority to determine which other entities will be treated as sovereign. Likewise, the initial core of the democratic coalition would be self-designated states whose credentials as stable democracies are unassailable. They would then develop membership criteria that would determine which other states would be eligible. These criteria would be public, developed and applied through transparent, accountable processes. An additional advantage of a democratic coalition is that accountability is much more institutionalized within democratic societies than in authoritarian ones.

The incentives for joining the democratic coalition would be substantial. Submitting to the coalition’s deliberations could enable states proposing the use of military force to gain legitimacy for their actions without Security Council authorization. Furthermore, the accountability arrangements of the coalition would increase the credibility of its arguments, thereby enabling it to gain allies who would share the costs of military action and reconstruction. And other members would receive valuable recognition as democratic states that are regarded as sufficiently trustworthy to participate in important decisions regarding the use of force. More important, they would gain decision-
making authority, both with respect to legitimizing the preventive use of force and for determining which other states should be allowed to join. There would also be a powerful incentive to help initiate the coalition or, if others initiated it, to join early, since the original members would have more say in determining the rules under which the coalition would operate.

The principle of mutual respect implies that the rich members of the democratic coalitions would have to offer poorer democracies better treatment than is now the case with respect to both trade and aid. Members of the democratic coalition would extend trade privileges to one another, beyond the requirements of the World Trade Organization, and the richer members would offer particularly generous aid to the poorer ones.30

The democratic coalition would not replace the Security Council. Instead, if a state or group of states proposed preventive action to the Council and was unable to gain its authorization, it could then present its case to the democratic coalition. The democratic coalition would have its own ex ante and ex post accountability processes that might differ in detail from those of the Security Council under model 2, but that would likewise be designed to approximate as closely as feasible the design principles for a cosmopolitan accountability regime.

Model 3, then, includes two parts. The first is the existing Security Council arrangement, including the permanent member veto, but importantly modified to include ex ante and ex post accountability mechanisms. The second is a distinct body for decisions concerning the preventive use of force, consisting of a coalition of democratic states, geographically unrestricted in membership, and designed to go into operation only in the event of deadlock in the Security Council.

The most obvious advantage of model 3 is that it provides for the possibility of responsible decisions to use force when the Security Council fails to do so. But another, equally important advantage is that the possibility that a decision will go to the democratic coalition provides an incentive for the Security Council to act more responsibly.

Model 3, then, remedies the chief deficiency of model 2 without requiring the impracticality of abolishing the permanent veto as in model 1. If model 3 were adopted, permanent members of the Council would be more reluctant to veto proposals for preventive action without good reasons and substantial support, if doing so would transfer decision-making authority to an arena in which they did not enjoy veto power—and in which they might perhaps not be represented at all.

Conversely, the continued operation of the Security Council, with strengthened institutions for accountability of the sort we recommend, could make the idea of a democratic coalition more attractive. It would reduce the likelihood that resort to the democratic coalition would be overused, creating a schism between the democracies and the other members of the UN.

The third institutional model creates healthy competition with the UN system without bypassing it altogether. More specifically, the democratic coalition provides an incentive for the permanent members to use the veto more responsibly and for all members of the Council to realize that they no longer enjoy an absolute monopoly on the legitimate authorization of preventive use of force.

None of these schemes could function effectively without prior agreement on a

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30 We are indebted to Michael Doyle for the suggestion that led to this proposal.

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threshold criterion for predicted harm to be prevented. We have argued that a starting point for such a threshold is the idea of massive violations of basic human rights. To create a workable criterion would require gaining agreement among the participants in these institutions on a minimal list of basic human rights. The problem of specifying when “massive” violations of basic human rights have occurred would be more difficult. There would, however, be clear cases—for example, where the threatened harm is the detonation of a nuclear bomb in a densely populated area. A solution to this problem would presumably involve a combination of prior agreement on levels of risk sufficient for triggering serious consideration of preventive action and a developing case law that would provide further specificity over time.

The concept of accountability is crucial in thinking about more adequate institutional procedures for decisions concerning the use of force. States advocating preventive war should be subjected both to ex ante and ex post accountability. Ex ante, they must be able to persuade other states of the merits of their case for military action. Ex post, their actions must be subjected to scrutiny and potential sanctions.

Our view might be seen as unduly constraining to states that might otherwise engage in justified preventive intervention. This is indeed a possibility, but it must be emphasized that our argument is comparative. Our system for cosmopolitan accountability is less constraining than what we take to be the most plausible of the competing views, the Legal Status Quo view, since our proposal merely envisages a democratic coalition as an additional channel for authorization.

Even the most powerful states wish others to view their actions as legitimate. They need allies when undertaking military action and supporters to provide policing assistance, civilian infrastructure, and financial support in the aftermath of war. By meeting the requirements of the cosmopolitan accountability regime, a state proposing preventive military action would gain legitimacy by submitting to the rule of law, and credibility by allaying the suspicions of other states that the justification given for prevention was not sound or that prevention was a pretext for conquest. The cosmopolitan accountability regime should be attractive, then, not only to those wishing to constrain states bent on preventive action but also to those seeking to engage in it.

This is not to say that we regard our proposal as feasible in the short run. There is, as Machiavelli noted, “nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things.” Considerable discussion and refinement would be necessary for our accountability regime to be accepted by states. Countries in the global South will have to be reassured that the rich countries are really following cosmopolitan principles of mutual respect. Potential interveners will have to come to recognize that the advantages of accountability outweigh constraints on their freedom of action.

Even the process of discussing accountability in this way would be an advance, by focusing attention on the problem of eliciting accurate information in situations of potential military conflict. Such discussions could themselves enhance the reputational and credibility costs of ex ante dissimulation. Over time, we hope that our proposal could provide an intellectual

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31 Niccolo Machiavelli, The Prince (1532), ch. VI.
32 We are indebted to Jeremy Waldron for this point.
resource for reformers seeking to promote effective multilateral action, with safeguards against its abuse. Establishing an institutionalized system of accountability for preventive war would constitute a progressive step in international governance.