U.S. INTERVENTION IN SYRIA: A LEGAL RESPONSIBILITY TO PROTECT?

DANIELA ABRATT†

ABSTRACT

In August 2013, the Syrian government fired roughly fifteen rockets with a deadly chemical agent onto its streets, killing hundreds and wounding thousands. After the United States threatened to intervene militarily in Syria, the Syrian government agreed to sign the Chemical Weapons Convention and destroy its chemical weapons stockpiles. But Syria violated the terms of the Convention on April 4, 2017, when it launched another deadly chemical attack on its people. In response, the United States fired fifty-nine rockets at a Syrian airbase to warn Syria that its use of chemical weapons would not be tolerated. When the United Nations Security Council is either deadlocked by a veto or simply unwilling to intervene, what actions can an individual country take to halt gross violations of human rights? This Article asserts that under the emerging “Responsibility to Protect” doctrine, the United States’ missile strike was legal—and morally required—under international law.

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† Daniela Abratt currently serves as a judicial law clerk at the United States Court of Appeals for the Eleventh Circuit. After graduating cum laude from Florida International University College of Law in 2015, Daniela worked in private practice representing plaintiffs in various civil actions, including those arising under the Civil Rights Act. Sincerest gratitude to Professor Charles C. Jalloh, Ph.D. for his tremendous guidance. Many thanks to Professor J. Janewa Osei-Tutu for her encouragement and to my family for their unwavering love and support. This is for Mike.
INTRODUCTION

It was April 4, 2017, and the war in Syria raged on. The sleepy, rubble-ridden streets of the city of Khan Sheikhoun awoke to face another day with the hope that maybe, somehow, today would be different. And it was. As the sun peaked over the bomb-blasted skyline of her rebel-held hometown, a fourteen-year-old girl walked to school and felt her eyes sting as she saw a “yellow mushroom cloud” erupting from the blast a few dozen yards away. She saw people rush out of their cars to help the wounded, but they collapsed almost immediately. They convulsed, gasped for their last breaths, and died. Nearby, a young father clutched his twin toddlers in his arms and kissed their lifeless bodies goodbye.

It was April 4, 2017—almost four years after the Syrian government released its first major chemical weapons attack on its people—and again, accusations of the dropping of a toxic chemical agent spread. Shortly after the first rockets hit, a hospital in the region treating the victims was also bombed. The Organisation for the Prohibition of Chemical Weapons (OPCW) began collecting samples and evidence to determine whether chemical weapons were in fact used, and if so, what specific agent was utilized. The World Health Organization and Doctors Without Borders, two prominent organizations that have been working on the ground for several years now, stated that the attack likely involved a

2. See id.
3. See id.
chemical agent, such as sarin, based on the symptoms exhibited by the victims: choking, paralysis, foaming at the mouth, no external injuries, and pupils as small as a pinpoint. It is estimated that at least 92 people were killed, including 30 children, while hundreds were injured.

The international community immediately pointed the finger at Syrian President Bashar Al-Assad for the attack and blamed his Russian ally for protecting him. British Foreign Secretary Boris Johnson stated that the attack “bears all the hallmarks” of the Assad regime and that Britain “will continue to lead international efforts to hold perpetrators to account.” Britain appealed to “the Security Council members who have previously used their vetoes to defend the indefensible” and urged Russia and China not to block any actions sought against the Assad government. U.S. Secretary of State Rex Tillerson said that President Assad operates “with brutal, unabashed barbarism.” He also criticized Russia for being either “complicit” or “incompetent” in ensuring the removal of chemical weapons from Syria.

Both Syria and Russia shirked responsibility. Russia blamed an air-strike on a rebel-held storage facility allegedly housing the chemical weapons, but rebel leaders maintained that they lacked the capability and capacity to produce nerve agents. At an emergency United Nations Security Council meeting on April 5, 2017, the Syrian representative to the United Nations asserted that the Syrian government was not responsible and had complied with all of its obligations under the Chemical

9. Sarin is a nerve agent that blocks the “proper operation of an enzyme that acts as the body’s ‘off switch’ for glands and muscles. Without an ‘off switch,’ the glands and muscles are constantly being stimulated. Exposed people may become tired and no longer be able to keep breathing.” *Sarin (GB)*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://emergency.cdc.gov/agent/sarin/basics/facts.asp (last updated Nov. 18, 2015). It is the “most volatile” of all nerve agents because it is colorless, odorless, and “can easily and quickly evaporate from a liquid into a vapor and spread into the environment.” *Id.*


12. Down to Assad, supra note 6.


15. Id.


Weapons Convention (CWC).\textsuperscript{19} Britain, France, and the United States put forward a resolution condemning the attack and calling for an investigation, but Russia vetoed the resolution as “unacceptable.”\textsuperscript{20} U.S. Ambassador to the United Nations Nikki Haley took a firm stance against Russia’s repeated protection of Syria and issued the following warning: “When the United Nations consistently fails in its duty to act collectively, there are times in the life of states that we are compelled to take our own action. For the sake of the victims, I hope that the rest of the Council is finally willing to do the same.”\textsuperscript{21}

Two days after the attack, the United States launched a missile attack that sent fifty-nine rockets to the air base in Syria from which the United States claimed the chemical weapons were fired.\textsuperscript{22} Ambassador Haley justified the strike at the U.N., stating: “The moral stain of the Assad regime could no longer go unanswered. His crimes against humanity could no longer be met with empty words. It was time to say ‘enough’—but not only say it. It was time to act.”\textsuperscript{23} The United States was praised by its allies, including Germany, Britain, and France,\textsuperscript{24} but the Syrian government decried the attack as “reckless, irresponsible behavior” and stated that the United States was “naively dragged in by a false propaganda campaign.”\textsuperscript{25} Russia, as well as other non-permanent members of the Security Council such as Bolivia, sharply criticized the attack, calling it a violation of Syria’s sovereignty, “an act of aggression against a sovereign state delivered in violation of international law under a far-fetched pretext” and suspending the “deconfliction channel” that was created to prevent unintentional encounters between U.S. and Russian forces operating within Syria.\textsuperscript{26} Russian and Syrian officials alleged that nine civilians, including four children, as well as six servicemen were killed in the U.S. missile strike and that only twenty-three of the fifty-nine rockets hit their targets and destroyed six planes.\textsuperscript{27}

\begin{thebibliography}{99}
\bibitem{26} Chappell, supra note 23.
\bibitem{27} Alexander, Boyle & Henderson, supra note 25.
\end{thebibliography}
To what extent was this use of force permitted under international law? When the world fails to act collectively, how far can an individual state go to fight against such brutality? These same questions were posed in August 2013, when the Syrian government under President Assad released rounds of the chemical agent sarin on its people.\textsuperscript{28} Hundreds of civilians, including children, died and thousands were injured.\textsuperscript{29} The Syrian government denied responsibility,\textsuperscript{30} and the U.N. Security Council was incapable of acting because China and Russia vetoed every resolution.\textsuperscript{31} The United States then threatened to act on its own and conduct a targeted military strike to render Syria incapable of using chemical weapons, but when Syria agreed to sign the CWC and rid the country of its chemical stockpiles, it appeared that such a military strike was unnecessary.\textsuperscript{32}

In 2013, if Syria had not acceded to the CWC, would the United States have been able to conduct its military strike legally under international law? Four years later, because Syria ostensibly violated multiple provisions of the CWC, particularly Article I (prohibiting the development, stockpiling, and use of chemical weapons and requiring their destruction) and Articles IV and V, and committed a crime against humanity, did the United States act legally when it took military action against Syria without the approval of the United Nations? The U.N. Charter, developed in response to the horrors of World War II, enables a state to use force against another only with the Security Council’s approval or if the attacking nation is acting in self-defense.\textsuperscript{33} These requirements uphold the ideals of a country’s sovereignty. But in the face of gross humanitarian violations, what happens when the Security Council is deadlocked and fails to act? The U.N. Charter does not provide any other means by which a country, whether alone or in a group,\textsuperscript{34} can take mil-
tary action without Security Council approval, and no Article in the Charter specifically mentions humanitarian intervention.35

In the U.N. report on the investigation of the 2013 alleged chemical weapons use in Syria, former Secretary-General Ban Ki-moon stated: “The international community has a moral responsibility to hold accountable those responsible and for ensuring that chemical weapons can never re-emerge as an instrument of warfare.”36 From the lessons learned through Kosovo, Somalia, Bosnia, and Rwanda, is there a “responsibility to protect” norm that now permits a country or the international community to act unilaterally—without U.N. authorization—to halt human rights violations? This Article utilizes the United States’ attempt to intervene in Syria as an example to demonstrate how, under the emerging “responsibility to protect” doctrine, the United States, or any individual state, may be permitted to use military force against Syria in response to its use of chemical weapons.

Humanitarian intervention is defined simply as the threat or use of coercive action for the purpose of protecting or assisting people at risk.37 Another classic definition is the “threat or use of armed force by a state, a belligerent community, or an international organization, with the object of protecting human rights.”38

This Article will analyze humanitarian intervention through the framework developed by the International Commission on Intervention and State Sovereignty (ICISS), which was created in 2000 in response to


38. Ian Brownlie, Humanitarian Intervention, in LAW AND CIVIL WAR IN THE MODERN WORLD 217, 217 (John Norton Moore ed., 1974). “Humanitarian Intervention” has been defined in similar ways. For example, one definition is “the justifiable use of force for the purpose of protecting the inhabitants of another state from treatment so arbitrary and persistently abusive as to exceed the limits within which the sovereign is presumed to act with reason and justice.” Ocran, supra note 35, at 8 (quoting E. STOWELL, INTERNATIONAL LAW 349 (1931)); Jean-Pierre Fonteyne, The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter, 4 CAL. W. INT’L L.J. 203, 204 (1974). Although this type of intervention is thought of primarily as military, it may also include material assistance (providing food, medical supplies, etc.) and economic sanctions. Ocran, supra note 35, at 8. Another, broader definition is limited to the instances when a state “unilaterally uses military force to intervene in the territory of another state for the purpose of protecting a sizable group of indigenous people from life-threatening or otherwise unconscionable infractions of their human rights that the national government inflicts or in which it acquiesces.” David J. Scheffer, Toward a Modern Doctrine of Humanitarian Intervention, 23 U. TOR. L. REV. 253, 264 (1992).
former U.N. Secretary-General Kofi Annan’s plea to the international community to develop responses to grave human rights violations. The Canadian government initiated the Commission, comprised of representatives from Australia, Algeria, Russia, South Africa, Germany, Philippines, Switzerland, Guatemala, India, and the United States.

Part I of this paper will provide a brief history of the use of chemical weapons in Syria. Part II will examine the details of the broader Syrian conflict and the state’s human rights responsibilities under international law. Part III will then discuss the United States’ inability to act through collective action under the U.N. Charter. Part IV will analyze the self-defense claim as another mechanism for attack. Finally, Part V will explore the United States’ responsibility to protect through the three-prong doctrine laid out by ICISS: responsibility to prevent, responsibility to react, and responsibility to rebuild. Under this doctrine, the United States was permitted to launch a limited military strike in Syria without Security Council approval to halt the gross violations of human rights. Hindsight is twenty-twenty, but the world can learn from the past to prevent tragedy in the future. When the world has witnessed a blatant recurrence of human rights violations, it must act to prevent history from repeating itself.

I. HISTORY OF CHEMICAL WEAPONS USE IN SYRIA

On August 21, 2013, at least fifteen rockets exploded on the streets of Syria. Videos showed dozens of bodies with no external injuries lying lifeless in the streets, in clinics, and in mosques. Adults and children convulsed and gasped for air, choking on their own saliva as their mouths foamed and fluids ran from their eyes and noses. Based on the size and trajectory of the rockets’ remnants, the United States and Human Rights Watch accused the Syrian government of launching the attack and using the chemical agent sarin on innocent civilians.

Syrian President Assad denied responsibility: “How is it possible that any country would use chemical weapons, or any weapons of mass

39. ICISS, supra note 37, app. b at 81.
40. Id. app. a at 77–79.
41. Syria Chemical Attack: What We Know, supra note 29.
42. Id.
43. Id.; Barnard & Gordon, supra, note 1.
44. Human Rights Watch is an independent organization that focuses on researching and advocating against various human rights violations. It monitors conditions in eighty countries and publishes its findings in numerous reports and news releases. See Frequently Asked Questions, HUM. RTS. WATCH, http://www.hrw.org/node/75138#3 (last visited Sept. 16, 2017).
destruction, in an area where its own forces are located? . . . This is preposterous! These accusations are completely politicized. . . . ”

Instead, the Syrian government, along with its Russian ally, blamed rebel forces for the attack and for attempting to spur a U.S.-led invasion. The United Nations led an independent investigation on site, conducting numerous interviews with survivors and medical personnel, obtaining medical and environmental samples, and documenting ammunitions. It then released a report confirming that, chemical weapons, including sarin, had been used between the parties in Syria.

Britain introduced a draft proposal to the U.N. Security Council seeking authorization for military action against Syria under Chapter VII of the U.N. Charter, which authorizes collective action measures that could include military intervention under the Security Council’s guidance. The five permanent members held an informal, closed-door meeting, but the parties could not come to an agreement. Russia and China left the meeting after one hour; France, the United States, and the United Kingdom remained for another hour. The draft resolution went back to each local government for consultation but never resurfaced, presumably


49. The investigation was focused in Moadamiyah in West Ghouta and Ein Tarma and Zamalka in East Ghouta. *Id.* ¶ 15.

50. The Mission interviewed thirty-six survivors who displayed severe symptoms. They underwent a clinical assessment, including a brief health history and a physical examination. The main symptoms consisted of “loss of consciousness (78%), shortness of breath (61%), blurred vision (42%), eye irritation/inflammation (22%), excessive salivation (22%), vomiting (22%), and convulsions/seizures (19%).” *Id.* ¶ 25, app. 4.

51. Clinicians who treated people in the field or at the hospital were asked questions regarding the symptoms they observed, treatments provided, and whether there was secondary contamination. *Id.* app. 4.

52. Sarin was present in 91% of 34 blood samples drawn. Out of 15 urine samples taken, 93% tested positive for sarin. *Id.*

53. Environmental samples included soil samples acquired near rocket warheads, clothing, pieces of fabric from beds and carpets, rubble, and rocket fragments. *Id.* app. 6.

54. The munitions research included collecting rocket heads, examining craters and other damage, obtaining rocket motors, and measuring all warheads. The Mission determined the trajectories and types of rockets used, some as variants of M14 artillery rockets that launched from a single, multi-barrel launcher and others as 330 mm caliber artillery rockets. See *id.* app. 5.

55. *Id.* at 8. President Assad told the Russian newspaper Izvestia that he feared the U.N. investigation results would be interpreted unfairly: “We are all aware that instead of being interpreted in an objective manner, these results could easily be interpreted according to the requirements and agendas of certain major countries.” McDonnell, *supra* note 46.


57. U.N. Charter ch. 7.


59. *Id.*
because China and Russia would block the resolution if it were up for voting.\textsuperscript{60} Russia, one of Syria’s closest allies,\textsuperscript{61} and China have previously vetoed other proposals regarding action against Syria.\textsuperscript{62}

After failed peace talks with Russia and Syria, former President Barack Obama decided that, if Congress approved, a targeted military strike aimed at Syria’s chemical weapons units, artillery, and aircraft, would send a message to President Assad and to other dictators that the international community would not tolerate the use of chemical weapons.\textsuperscript{63} But the threat of military intervention seemed to be enough, for Russia agreed to help the United States forge an agreement with President Assad to give up the chemical weapons.\textsuperscript{64} The plan entailed destroying all of Syria’s stockpiles and chemical weapons facilities by June 30, 2014, and Russia would oversee the removal.\textsuperscript{65} Syria acceded to the CWC on September 14, 2013, entering into force on October 14, 2013.\textsuperscript{66}

The U.N. Security Council then adopted a resolution on September 27, 2013, condemning Syria’s use of chemical weapons.\textsuperscript{67}

Since Syria acceded to the CWC, progress had been made in the destruction of Syria’s chemical weapons production facilities, with twenty-four of twenty-seven destroyed as of November 2015.\textsuperscript{68} But the goal of ridding the country of all of its stockpiles was grossly unmet, with only eleven percent of the stockpiles removed by the deadline imposed by the OPCW.\textsuperscript{69} However, the use of various chemical agents has consistently

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\textsuperscript{61} With regards to the potential of a biased interpretation of the U.N. results, President Assad stated, “Certainly, we expect Russia to block any interpretation that aims to serve American and western policies.” McDonnell, \textit{supra} note 46.

\textsuperscript{62} \textit{See}, e.g., S.C. Res. 77, (Feb. 4, 2012); S.C. Res. 612, (Oct. 4, 2011).

\textsuperscript{63} Statement by the President on Syria, \textit{supra} note 32. Former Legal Adviser to President Obama and Yale Law Professor Harold H. Koh argued that Congressional approval was not required to take limited military action because it did not rise to the level of “war” such that it would trigger the Declaration of War clause of the U.S. Constitution. Rather, he argued that President Obama’s appeal to Congress was “politically prudent.” See Harold Hongju Koh, \textit{Syria and the Law of Humanitarian Intervention (Part I: Political Miscalcues and U.S. Law)}, \textit{JUST SECURITY} (Sept. 26, 2013, 4:30 AM), https://www.justsecurity.org/1158/koh-syria.

\textsuperscript{64} Address to the Nation on the Situation in Syria, 2013 \textit{DAILY COMP. PRES. DOC.} 615, at 3 (Sept. 10, 2013).


\textsuperscript{67} S.C. Res. 2118, (Sept. 27, 2013).


been documented since Syria signed the CWC.\textsuperscript{70} The United Nations concluded from results of an independent investigation that the Syrian government had dropped chlorine gas bombs on its people on at least three separate occasions in 2014 and 2015.\textsuperscript{71}

In response, the U.N. Security Council unanimously adopted Resolution 2235 to identify those responsible for the use of these weapons, also stating that it would impose certain measures if violations of the use of chemical weapons occurred.\textsuperscript{72} The OPCW reported that blood samples taken from victims of an attack in January 2016 indicated the presence of the agent sarin or a sarin-like substance.\textsuperscript{73} Human Rights Watch reported at least eight instances of chlorine gas bombs being dropped between November and December 2016.\textsuperscript{74} Then, on April 4, 2017, the Syrian government launched its biggest chemical weapons attack since 2013.\textsuperscript{75}

II. SYRIA’S CRISIS AND ITS OBLIGATIONS UNDER INTERNATIONAL LAW

The overarching conflict in Syria began in 2011 when groups opposing President Assad’s rule began protesting and demanding his resignation.\textsuperscript{76} Rallies spread across the country as the people demanded a functioning democracy, and violence erupted as the government began using tanks, rockets, and bombs to try quell the opposition.\textsuperscript{77} Since the uprisings, roughly 400,000 people have been killed,\textsuperscript{78} thousands of whom are children.\textsuperscript{79} The conflict has led to one of the greatest refugee crises in modern history, with over five million registered refugees having fled the country seeking shelter in Lebanon, Jordan, Turkey, Egypt,
and Iraq. As of March 2017, another 6.3 million were internally displaced, and over 13.5 million were in need of humanitarian aid.

The U.N. confirmed that chemical weapons were used in Syria on August 21, 2013, and the Secretary-General called the act a “war crime” and “grave violation” of the 1925 Geneva Protocol and other customary international law. Syria has been a member of the U.N. since 1945. As such, it is obligated to uphold the human rights values set forth in the Charter of the United Nations and in the subsequent Universal Declaration of Human Rights (UDHR), which is now largely considered to be binding under customary international law.

For example, Article 3 of the UDHR states that everyone has the right to life. Article 28 elaborates that people have the right to a social and international order in which that right to life can be realized. Article 30 further prohibits all states from engaging in any act that would destroy this right.

Similarly, the International Covenant on Civil and Political Rights (ICCPR), an optional U.N. treaty to which Syria became a party in 1969, protects parallel rights. Article 6 states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” This right to life has been considered the “supreme human right” because without guarantees to it, all other rights would lack any real meaning. This right has also been considered jus cogens under international law, meaning that it is an overriding, fundamental principle of international law from which no state may deviate. In fact, states must take active measures to uphold this right. States have a supreme duty to prevent acts of mass violence that cause

81. Syrian Arab Republic, supra note 80.
82. Id.
83. Note by the Secretary-General, supra note 36, ¶ 1.
85. See ICISS, supra note 37, at 6, 14.
87. Id. art. 28.
88. Id. art. 30.
89. See G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights, art. 1 ¶ 1, art. 5 ¶ 2, art. 6 ¶ 1 (Dec. 16, 1966).
90. The use of the term “arbitrarily” was criticized as being too vague. The Human Rights Committee justified its use because the word encompasses both intentional and unintentional killings. See MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS CCPR COMMENTARY 127–28 (2d rev. ed. 2005).
91. G.A. Res. 2200 (XXI) A, supra note 89, at art. 6 ¶ 1.
92. NOWAK, supra note 90, at 121.
93. Id. at 122.
94. Jus cogens “is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331.
95. NOWAK, supra note 90, at 122.
arbitrary loss of life. The International Court of Justice (ICJ) stated that this inherent right exists in times of both war and peace and explained that whether loss of life from specific weaponry violates Article 6 is determined by examining the laws governing the use of that weapon.

The use of chemical weapons violates the right to life as set forth in the UDHR and ICCPR. In its General Comment to Article 6 of the ICCPR, the Human Rights Committee expressed its growing concern regarding the development and proliferation of “awesome weapons of mass destruction,” citing nuclear weapons as among the greatest threats to the right to life. Chemical weapons, though not specifically mentioned in the comment, create this same threat of mass annihilation. The U.N. recognized the extreme danger they pose because a single attack can inflict mass casualties. Though the death toll from the chemical weapons attack was difficult to establish, Doctors Without Borders estimated that 3,600 people had been injured, of which 355 died. The Syrian Observatory for Human Rights confirmed at least 502 deaths.

Syria is a signatory to the 1925 Geneva Protocol, which is the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. The Protocol prohibits the use of chemical and biological weapons in war but does not restrict a country from producing or possessing them. It states that the

96. Id. at 125.
99. Id. ¶ 3; see also NOWAK, supra note 90, at 126.
102. Syria Chemical Attack: What We Know, supra note 29.
105. See Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571 [hereinafter Gene-
use of these weapons in war has been condemned by the civilized world and that the prohibition shall be universally binding as international law.\textsuperscript{106}

In 1993, the OPCW developed the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, commonly called the CWC.\textsuperscript{107} Article 1 prohibits each state party from developing, producing, acquiring, stockpiling, retaining, transferring, and using chemical weapons.\textsuperscript{108}

Syria was not a party to the CWC at the time of its chemical weapons use,\textsuperscript{109} so it was not technically beholden to the Convention’s provisions. However, Syria still had an obligation not to use chemical weapons because the nonuse of chemical weapons is almost universally accepted and is becoming an international norm.\textsuperscript{110} As of November 2013, 190 countries were parties to the Convention,\textsuperscript{111} representing about ninety-eight percent of the global population and landmass.\textsuperscript{112} As depositary of the Convention, the Secretary-General has long called for its universality and stated that “any use of chemical weapons by anyone under any circumstances is a grave violation of international law,” referring to the Convention, the 1925 Geneva Protocol, and customary international law.\textsuperscript{113}

Additionally, both the U.N. General Assembly and the Security Council have adopted a number of resolutions affirming the importance of the CWC.\textsuperscript{114} One General Assembly resolution from 2001, adopted without a vote,\textsuperscript{115} emphasized the necessity of universal adherence to the Convention and called upon states not party to the Convention to become parties immediately.\textsuperscript{116} In a separate section of that same resolution, the

\begin{footnotes}
\footnotetext[106]{Geneva Protocol, supra note 105.}
\footnotetext[108]{Id. art. I.}
\footnotetext[110]{See Note by the Secretary-General, supra note 36, ¶¶ 1, 4.}
\footnotetext[113]{Note by the Secretary General, supra note 36, ¶¶ 1, 3–4.}
\footnotetext[114]{See, e.g., G.A. Res. 55/33, at 13 (Jan. 12, 2001); S.C. Res. 2118, at 1 (Sept. 27, 2013).}
\footnotetext[115]{This resolution has multiple sections, and the General Assembly voted for each section separately. The section referred to in this Note is Section H, which the First Committee adopted without a vote and the General Assembly followed suit.}
\footnotetext[116]{G.A. Res. 55/33, at 13 (Jan. 12, 2001).}
\end{footnotes}
Assembly renewed its call to all states to “observe strictly” the principles of the 1925 Geneva Protocol. This section was adopted by 163 votes and five abstentions, including the United States. Another resolution signed in December 2012 expressed the same message of the “long-standing determination of the international community to achieve the effective prohibition” of the stockpiling and use of chemical weapons and to uphold the 1925 Geneva Protocol. This resolution was adopted by 181 votes with four abstentions, including the United States. These aforementioned statements suggest that the non-use of chemical weapons is considered binding universal law, or if not, increasingly moving towards that direction.

Three months before the 2013 chemical weapons attack, the General Assembly adopted a resolution specific to the ongoing violence in Syria. The resolution demanded that the Syrian government “strictly observe their obligations under international law with respect to chemical and biological weapons,” including the 1925 Geneva Protocol and Security Council resolution 1540 adopted in 2004. This Security Council resolution affirmed that the proliferation of chemical weapons is a threat to international peace and security and required that all states “take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery.” It also expressed concern about the trafficking of these weapons and the risk that non-state actors will acquire them. Acting under Chapter VII of the U.N. Charter, the Security Council decided that all states must make and enforce domestic measures to prevent the proliferation of such weapons and must promote the universal adoption and fulfillment of all treaties related to chemical weapons.

These resolutions demonstrate that the U.N. expected Syria to follow the international norms created by the 1925 Geneva Protocol and the Convention, even though it was not a party to the latter. Article 25 of the Charter binds all states, by their membership in the United Nations, to accept and carry out the Security Council’s decisions, regardless of

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117. Id. at 16.
121. G.A. Res. 67/262 (June 4, 2013).
122. Id. ¶ 11.
124. The resolution defines a “Non-State actor” as an “individual or entity, not acting under the lawful authority of any State in conducting activities which come within the scope of this resolution.” Id. at 1.
125. Id. at 2.
126. Id. at 2–3.
127. See Member State - Syria, supra note 109.
whether they agree. Syria thus had an obligation under international law not to make and use chemical weapons in both wartime and in peacetime. Consequently, it can be argued that Syria violated international law and could be held accountable for its actions.

III. COLLECTIVE ACTION

The primary way for a country to attack another is through collective action and authorization by the U.N. Security Council. If that does not work, a country can ask the General Assembly, which has the secondary responsibility to maintain international peace after the Security Council, to vote to put pressure on the Security Council, or it can seek assistance from a regional international organization. The responsibility to protect doctrine arises when these options have failed and a state wants to act unilaterally.

The U.N. Charter expressly states that the United Nations is built upon the idea of sovereignty for all its members. Two Articles specifically illustrate the foundational principle of nonintervention: Articles 2(4) and 2(7). First, Article 2(4) prohibits U.N. members from threatening or using force against the “territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” This prohibition is a cornerstone of the Charter. Article 2(4) does not define “use of force.” But the word “force” is used to mean “armed force,” as evidenced by Paragraph 7 of the Preamble to the Charter, which states that a goal of the United Nations is to prevent armed force; Article 44 of the Charter, which explains how the Security Council can use armed forces; and the travaux préparatoires of the Charter, which illustrate that military force is the primary concern of the prohibition against the use of force. Moreover, if “force” could include political and economic force, countries would be left with no other means to pressure states that violate international law. Article 2(4) also applies to the “threat” of force. But threats are often tolerated and not violative of the Article unless they directly threaten force to

128. U.N. Charter art. 25 (“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”).
129. See id. art. 1, ¶ 1, art. 39.
130. ICISS, supra note 37, ¶ 6.29.
131. Ocran, supra note 35, at 48.
133. U.N. Charter art. 2, ¶ 4; see Ocran, supra note 35 at 16.
134. Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶ 148 (Dec. 19). The ICJ also reinforced the idea that a state cannot intervene in a country in order to support an internal opposition within the state. It held that Uganda’s interference was of such great magnitude and duration to gravely violate Article 2(4)’s prohibition against the use of force. Id. ¶ 165.
135. Id. at 209.
136. Id. at 209.
compel a state to give up territory or remove political leadership. In the instant situation, the United States threatened force for neither of those reasons.

This prohibition on the use of force is considered customary law and *jus cogens* and is a core value accepted by the international community. Thus, to use unilateral force against a sovereign state, the intervening country must justify its use on an exception to the general rule. Two such exceptions are self-defense, discussed below in Part V, and humanitarian intervention, discussed below in Part VI.

Additionally, Article 2(7) prohibits the United Nations as an organization from interfering in those matters of a sovereign state that fall within its “domestic jurisdiction,” with exceptions for threats and breaches of peace and acts of aggression. Sovereign states have exclusive jurisdiction over their territory, and other states have a duty not to intervene in another country’s internal affairs, or its “domestic jurisdiction.” If that duty is violated, the victim state can retaliate in self-defense. But ideas of sovereignty and domestic jurisdiction are evolving as new international actors and issues emerge, including human rights violations. As stated by the Permanent Court of International Justice, “The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends on the development of international relations.” More specifically, it depends on whether the matter is governed by international law in certain respects. Furthermore, as international treaties and organizations become more numerous, a state’s international obligations penetrate into its domestic law all while affecting other states as well. For example, ethnic groups striving for self-determination, displacement of refugees fleeing from war and other natural and manmade disasters, and multinational organizations working in and among a host of countries all underscore the idea that certain domestic issues have an international impact.

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137. *Id.* at 218.
142. ICISS, *supra* note 37, ¶ 6.2.
143. *Id.* ¶ 6.4.
There is growing acceptance that matters of life and death are no longer reserved for the country at issue but are of concern for the greater international community. The Charter itself recognizes respect for human rights as one of the main purposes of the United Nations: “To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion . . .” This language demonstrates that instances of human rights violations that occur within a sovereign state are of international concern and not only within the state’s domestic jurisdiction. For instance, in the 1960s, South Africa claimed that the U.N. General Assembly’s statements against the apartheid violated Article 2(7) because the apartheid was a domestic issue. But the United Nations determined that anti-apartheid actions were beyond the scope of domestic jurisdiction, even though they involved domestic issues, and called upon all states to conform their laws to the Charter’s observance of human rights. Professor Bruno Simma suggests that, although “domestic jurisdiction” is not obsolete, systematic and widespread violations of human rights do not need to be alleged to overcome Article 2(7).

Additionally, in response to the atrocities committed in Uganda by dictator Idi Amin, Ugandan President Museveni attacked the specific issue with the sovereignty argument:

Over a period of 20 years three quarters of a million Ugandans perished at the hands of governments that should have protected their lives . . . I must state that Ugandans . . . felt a deep sense of betrayal that most of Africa kept silent . . . the reason for not condemning such massive crimes had supposedly been a desire not to interfere in the internal affairs of a Member State, in accordance with the Charters of the OAU and the United Nations. We do not accept this reasoning because in the same organs there are explicit laws that enunciate the sanctity and inviolability of human life.
This statement demonstrates the inherent conflict with the U.N. Charter in that it professes the fundamentality of human rights and yet has no express provisions to uphold those human rights. The U.N. Charter still generally requires a country to secure authorization from the Security Council before taking action within another state.\textsuperscript{157} Article 1(1) of the Charter states that one purpose of the United Nations is to “maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace . . . .\textsuperscript{158} This collective action refers to the joining of multiple states, including the use of regional organizations, to end acts of violence.\textsuperscript{159} However, obtaining approval for collective action is difficult, if not impossible, in certain instances. Failure of the Security Council to authorize such collective action under circumstances of gross human rights violations may enable a single state to act unilaterally, provided it has met the other requirements of the ICISS framework, discussed in Part VI.

Article 24(1) of the U.N. Charter confers on the Security Council the “primary responsibility” for maintaining this international peace and security.\textsuperscript{160} The Security Council has the power to authorize collective action when peaceful measures fail; “In other words, forceful action to prevent mass atrocity crimes is reserved to the Security Council.”\textsuperscript{161} Such responsibility involves a political, moral, and legal requirement to act.\textsuperscript{162} It also includes the responsibility to protect its member states,\textsuperscript{163} a residual responsibility that falls upon the international community when the state at issue cannot meet its primary responsibility.\textsuperscript{164} But as Secretary-General Ban Ki-moon stated in 2009, “Within the Security Council, the five permanent members bear particular responsibility because of the privileges of tenure and the veto power . . . .\textsuperscript{165}"

The veto has become the primary obstacle that prevents the mitigation or termination of a grave humanitarian crisis.\textsuperscript{166} ICISS expressed

\begin{itemize}
\item \textsuperscript{157}U.N. Charter art. 1, ¶ 1, art. 24.
\item \textsuperscript{158}Id. art. 1, ¶ 1 (emphasis added).
\item \textsuperscript{159}ICISS, supra note 37, ¶¶ 6.5, 6.31.
\item \textsuperscript{160}U.N. Charter art. 24, ¶ 1.
\item \textsuperscript{162}See \textit{THE CHARTER OF THE UNITED NATIONS: A COMMENTARY, supra note 135, at 766.}
\item \textsuperscript{163}This legal responsibility, however, lacks a legal remedy if the Security Council fails to act. “It is however, perfectly envisageable that the Council’s responsibility will harden into a legal obligation of conduct which can be violated by the Council’s complete passivity or its obviously inadequate reaction in the face of massive atrocity.” Id. at 775.
\item \textsuperscript{164}See id. at 775–76. Some commentators disagree that the Security Council’s responsibility is to the U.N. members but argue rather that it is to the organization itself. See id.
\item \textsuperscript{165}Id. at 767; see also U.N. Secretary-General, \textit{Implementing the Responsibility to Protect, ¶ 14, U.N. Doc. A/63/677 (Jan. 12, 2009) (indicating that the sovereign state has the primary responsibility to protect the human rights of its people).}
\item \textsuperscript{166}ICISS, supra note 37, ¶ 6.20.
\end{itemize}
concern that, despite the need to intervene in such a situation, a permanent member would use the veto power to advance its own national interests, not because of a genuine disagreement about the proposal. ICISS offered a solution, a “code of conduct” whereby the permanent members would agree not to use the veto to obstruct a majority resolution in matters in which their vital national interests were not involved. But this is unlikely to be successful because many issues can be tied to a vital national interest.

The veto power often deadlocks the Security Council, and ultimately it renders no assistance. Countries that want to take action are then faced with a dilemma: do nothing and watch the atrocities occur, or take action without the Security Council’s authorization and potentially face reprimand later or seek ex post facto approval. For example, NATO did not seek prior Security Council permission to enter Kosovo for fear that Russia would veto the proposal; Russia later, in fact, proposed a resolution to declare the act unlawful. But NATO faced the above dilemma. Then-U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor, Harold H. Koh, stated that most, if not all, of the NATO states relied on some form of humanitarian intervention as the legal justification for action. The United States did not claim the NATO action was legal but rather that it was “justified and necessary to stop the violence and prevent an even greater humanitarian disaster.” The UK claimed that “as an exceptional measure on grounds of overwhelming humanitarian necessity, military intervention is legally justifiable.” The Netherlands did not give a clear legal reason for its opinion other than that NATO action was “more than adequate.”

167. Id.
168. Id. ¶ 6.21.
169. Id. ¶ 6.20.
170. See id. ¶¶ 6.35–36; Harold Hongju Koh, Syria and the Law of Humanitarian Intervention (Part II: International Law and the Way Forward), JUST SECURITY, (Oct. 2, 2013, 9:00 AM), https://www.justsecurity.org/1506/koh-syria-part2 (“By treating the veto alone as dispositive, the per se position denies any nation, no matter how well-meaning, any lawful way to use even limited and multilateral force to prevent Assad from intentionally gassing a million Syrian children tomorrow. In the name of fidelity to the U.N. and this rigid conception of international law, leaders would either have to accept civilian slaughter or break the law, because international law offers no lawful alternative to prevent the slaughter.”).
174. Id.
175. Id.
Those opposing NATO action relied on the ideas of sovereignty and the nonuse of force in Article 2(4). 176

Critics, like Professor Simma, maintain that without Security Council authorization, any unilateral military action violates the Charter:

[I]f the Security Council determines that massive violations of human rights occurring within a country constitute a threat to the peace, and then calls for or authorizes an enforcement action to put an end to these violations, a “humanitarian intervention” by military means is permissible. In the absence of such authorization, military coercion . . . constitutes a breach of Article 2(4) of the Charter. Further, as long as humanitarian crises do not transcend borders . . . and lead to armed attacks against other states, recourse to Article 51 [self-defense] is not available. 177

At least 133 countries agree and oppose alteration of the standard in the Charter. 178

NATO’s actions in Kosovo perhaps were illegal, as Professor Simma suggests, but ultimately, its actions protected human rights and elevated humanitarian law. 179 “Undoubtedly, the UN Charter has taken a hit, but perhaps not a very major one. Even an illegal action, if instrumental in bringing about results widely desired by a community, will not seriously undermine a resilient legal system, one with the elasticity to make allowances for mitigating circumstances.” 180 Interestingly, NATO did not use humanitarian intervention as the legal justification for bombing Yugoslavia. 181 Rather, it provided no legal reasoning at all and instead used humanitarian intervention as the moral and political justification for entering the state. 182 This humanitarian intervention is certainly an exception to the rule, not an attempt to reconfigure or upend the rules. 183

Many small, militarily weak states oppose the idea of humanitarian intervention because they believe their sovereignty depends on the strict interpretation of Article 2(4). 184 For example, Yugoslavia sued the United States for illegal use of force and violating the state’s sovereignty in Kosovo, but the ICJ never ruled on the issue because it said it lacked

176. Id.

177. See Franck, supra note 144, at 858 (alterations in original) (quoting Bruno Simma, NATO, the UN and the Use of Force: Legal Aspects, 10 EUR. J. INT’L L. 1, 5 (1999)).


179. Franck, supra note 144, at 859.

180. Id.

181. Brown, supra note 147, at 1685.

182. Id.

183. Franck, supra note 144, at 859.

184. See Brown, supra note 147, at 1702.
jurisdiction. The situation is even trickier when the country desiring to act is a powerful, permanent member of the Security Council claiming to be entitled to act outside the Charter’s framework.

Such is the case here. In 2013, the United States determined that a targeted military strike would be the best method to ensure that Syria could not use chemical weapons again. But despite its attempts to comply with the U.N. Charter, it could not get authorization from the Security Council. The United Kingdom introduced a draft proposal to the Security Council seeking authorization for military action, but Russia and China blocked it. Russia in the past has vetoed seven Security Council resolutions condemning President Assad’s government, requiring a cessation of violence, and threatening it with sanctions. Thus, the United States was faced with the aforementioned dilemma: be a bystander to a human atrocity, or take action without U.N. support.

In a statement to the American people, President Obama decided: “I’m comfortable going forward without the approval of a United Nations Security Council that, so far, has been completely paralyzed and unwilling to hold [President] A[s]sad accountable.”

Fast forward to 2017, and the United States under the Trump Administration chose the latter. President Trump remarked: “There can be no dispute that Syria used banned chemical weapons, violated its obligations under the Chemical Weapons Convention and ignored the urging of the UN Security Council. Years of previous attempts at changing Assad’s behavior have all failed and failed very dramatically.” Russia yet again vetoed a Security Council Resolution condemning the chemical attack, bringing Russia’s total vetoes of Syria-related Resolutions to eight. U.S. Ambassador Haley remarked that with its veto,

Russia said no to accountability, Russia said no to cooperating with the UN investigation, Russia said no to helping keep peace in Syria, Russia chose to side with (Syrian President Bashar al-) Assad, even

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186. ICISS, supra note 37, ¶ 6.20.
188. See CBS NEWS, supra note 31.
189. Fassihi, Nicholas & Winning, supra note 60.
191. The United States’ motives for taking action are discussed in further depth supra Part VI.
194. Id.
as rest of the world, even the Arab world, comes together to condemn the murderous regime.  

Once again, the veto has been used to deadlock the Security Council. History serves as a keen indicator that no action will come from the U.N. Security Council; accordingly, collective action will fail.

IV. SELF-DEFENSE

The second main way a country can justify an armed attack another is through the self-defense doctrine. Article 51 of the U.N. Charter acknowledges “the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations,” though requiring that the measures taken be reported immediately to the Security Council. This self-defense can be undertaken only in response to an armed attack. Such attacks include invasions by armed forces, the sending of armed groups on behalf of the intervening state, bombardment, blockades, attacks on military warships and aircraft, and large-scale, cross-border use of weapons. Occupation and annexation typically are not considered armed attacks, even though they generally include the use of military force. Article 51 also allows for collective self-defense, where the attacked state can request the help of other countries in its retaliation.

A more contentious justification is that of preemptory self-defense. No international consensus exists as to when in time a country can launch a retaliatory attack. The debate reemerged in 2002 when the United States proclaimed the “Bush Doctrine” and invaded Iraq as a preemptive attack on terrorists. The government argued the United States was “defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders.”

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201. Id. at 1410.
202. Id. at 1420–21.
203. Id. at 1421.
204. See generally THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (2002).
206. THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA, supra note 204, at 6.
such a right arises only if the “threatened attack is imminent, no other means would deflect it and the action is proportionate.”

In justifying the threat of force or actual use of force in Syria, President Obama did not explicitly use the Bush Doctrine to justify an armed attack in Syria, but he did focus on the threat of Syria’s chemical weapons use to national security. Although not a direct threat to U.S. borders, he argued chemical weapons could be transferred to terrorist groups that later could harm the American people. Moreover, inaction would cause other tyrants to acquire and use chemical weapons on the battlefield, potentially harming American soldiers. Another danger is the risk to U.S. allies nearby, including Turkey, Jordan, and Israel. Regional stability is threatened when these “internal” events lead to refugee migrations, armed conflicts that spill over borders, scarcity of regional resources, and transnational environmental and health problems. Similarly, President Trump, while stating that the chemical weapons attack was a “disgrace to humanity,” also used national security as a justification for the missile attack, stating: “It is in this vital national security of the United States to prevent and deter the spread and use of deadly chemical weapons. . . . As a result, the refugee crisis continues to deepen, and the region continues to destabilize, threatening the United States and its allies.”

The type of self-defense the United States alleged could perhaps be found valid, but it is not the type of self-defense referred to in the U.N. Charter that grants a state the right to attack. Article 51 applies to a country’s retaliation from a direct attack, whereas President Trump’s use of self-defense is preemptive. Perhaps the United States could have met the second and third prong required by the Secretary-General (no alterna-

207. High Level Panel, supra note 100, ¶ 188. The Secretary-General maintained, however, that if a state has objective evidence of an anticipated attack, it must still seek approval from the Security Council because allowing one state to conduct a unilateral preemptive attack allows for more illegal uses of force. See id. ¶¶ 190–91. Two criteria—necessity and proportionality—for the use of preemptive military force arose in the infamous Caroline case. In 1837, when Canada was under British rule, the British burned a U.S. ship that was providing assistance to anti-British, Canadian rebels, claiming that it was acting in self-defense. See Anthony Clark Arend, International Law and the Preemptive Use of Military Force, 26 WASH. Q. 89, 90–91 (2003).


209. Id.

210. Address to the Nation on the Situation in Syria, supra note 64, at 2.

211. Id.

212. Scheffer, supra note 38, at 287.


215. See Akande, supra note 160.
tive means and proportionate action), but it is unlikely that the United States could justify an anticipatory attack because a threat to U.S. borders was not imminent. Nor does the Article allow retaliation as self-defense when an ally is attacked. Thus, to strike Syria, the United States could not do so legally under Article 51. Accordingly, an attack on Syria could not be justified under collection action or self-defense. All that remains then as a legal doctrine is the responsibility to protect.

V. HUMANITARIAN INTERVENTION AND THE RESPONSIBILITY TO PROTECT

In 2013, President Obama addressed the American people regarding his proposed military strike and stated:

What message will we send if a dictator can gas hundreds of children to death in plain sight and pay no price? What’s the purpose of the international system that we’ve built if a prohibition on the use of chemical weapons . . . is not enforced? . . . Out of the ashes of world war, we built an international order and enforced the rules that gave it meaning. And we did so because we believe that the rights of individuals to live in peace and dignity depends on the responsibilities of nations.216

This statement reflects the idea behind humanitarian intervention. In the face of gross human rights violations, the international community has a responsibility to protect the victims and to prevent further abuses of power.217 As such, a country may be permitted to act without authorization from the Security Council and not in self-defense under the emerging exception to the nonintervention doctrine from Articles 2(4)218 and 2(7) of the U.N. Charter.219 The exception holds weight in that the intervention is directed neither toward the “territorial integrity” nor “political independence” of the targeted state,220 the two main reasons why the use of force is prohibited. The debate centers on whether humanitarian inter-

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217. ICISS, supra note 37, at VIII.
218. See Koh, supra note 170. Professor Koh suggests that the “use of the word ‘other’ leaves open whether Article 2(4) would permit a threat or use of force against the territorial integrity of a state, in a case where that threat or action was critical or essential to effectuate the U.N.’s purposes.” Id. (citing U.N. Charter art. 2(4) which states that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”) (emphasis added).
219. ICISS, supra note 37, at VIII.
220. The Charter of the United Nations: A Commentary, supra note 135, at 222. Professor Simma objects to this theory because it contradicts the purpose of Article 2(4): to prevent armed force. See id. He discusses the prevailing legal view that forcible humanitarian intervention cannot be justified under the U.N. Charter because the validity of the Articles is not conditioned on the effectiveness of collective action to protect against humanitarian atrocities. Id. at 222–23.
vention intrudes on the political independence of the state, or whether human rights are matters beyond a state’s domestic jurisdiction.\textsuperscript{221}

ICISS defined the responsibility to protect as “the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe—from mass murder and rape, from starvation—but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”\textsuperscript{222} It explained that this responsibility overrides nonintervention when a population is suffering serious harm—from civil war, repression, or state failure—and the home state is either unwilling or unable to end that harm.\textsuperscript{223} In other words, a state abrogates its right to sovereignty when it fails to protect its people.\textsuperscript{224} “When a State refuses to accept international prevention and protection assistance, commits egregious crimes and violations relating to the responsibility to protect and fails to respond to less coercive measures, it is, in effect, challenging the international community to live up to its own responsibilities . . .”\textsuperscript{225} By becoming a signatory of the United Nations, the state “accepts the responsibilities of membership flowing from that signature. There is no transfer or dilution of state sovereignty. But there is a necessary re-characterization involved: from sovereignty as control to sovereignty as responsibility in both internal functions and external duties.”\textsuperscript{226}

To be clear, the responsibility to protect is not a catchall doctrine that permits a state to invade another for no reason. The doctrine may be invoked only as a last resort where collective action cannot be obtained and for those types of suffering that are fundamentally against well-established human rights norms.\textsuperscript{227} The United Nations recognized this principle, explaining that states do not have a “right to intervene” but rather a “responsibility to protect” individuals whose state cannot or will not protect them.\textsuperscript{228} Furthermore, the doctrine’s use is narrowed by the ICISS framework.

The doctrine of humanitarian intervention has early philosophical roots. Dutch jurist Hugo Grotius, one of the founders of international law, believed the law should include an exception for humanitarian intervention.\textsuperscript{229} He wrote:

\begin{itemize}
\item \textsuperscript{221} Ocran, supra note 35, at 15.
\item \textsuperscript{222} ICISS, supra note 37, at VIII.
\item \textsuperscript{223} Id. at XI.
\item \textsuperscript{225} U.N. Secretary-General, supra note 164, ¶ 56.
\item \textsuperscript{226} ICISS, supra note 37, at 13 (emphasis omitted).
\item \textsuperscript{227} Ocran, supra note 35, at 25–26.
\item \textsuperscript{228} High Level Panel, supra note 100, ¶ 201.
\item \textsuperscript{229} Ocran, supra note 35, at 12.
\end{itemize}
Certainly it is undoubted that ever since civil societies were formed, the ruler of each claimed some especial right over his subjects . . . but if a tyrant . . . practices atrocities towards his subjects which no just man can approve, the right of human social connection is not cut off in such case.\textsuperscript{230}

E.R.N. Arntz echoed that idea, stating:

When a government, even acting within the limits of its right of sovereignty, violates the rights of humanity, either by measures contrary to the interests of other states, or by excessive injustice or brutality, which seriously injure our morals or civilization, the right of intervention is legitimate. For, however worthy of respect the rights of sovereignty and independence of states may be, there is something even more worthy of respect, namely the law of humanity or of human society that must not be violated.\textsuperscript{231}

The African Union (AU) is the only regional organization that has enshrined this doctrine within its founding charter. Article 4(h) of the Constitutive Act of the African Union specifically provides for “[t]he right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity . . . .”\textsuperscript{232} The AU later adopted the Protocol on Amendments to the Constitutive Act, which amended Article 4(h) by adding to the end of the Article “as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council.”\textsuperscript{233} The AU inserted a right to intervene into its charter after the failures of the region to respond to various genocides and atrocities in Africa, such as the genocide under Idi Amin in Uganda in the 1970s and in Rwanda in 1994.\textsuperscript{234} There was growing criticism that surrounding countries had watched idly as gross human rights violations occurred and chose not to intervene based on the principles of sovereignty.\textsuperscript{235}

\textsuperscript{230} Id. (alterations in original) (quoting HUGONIS GROTII, DE JURE BELLI ET PACIS LIBRI TRES 439–40 (William Whewell trans. 1853)).

\textsuperscript{231} Id. (alteration in original) (quoting Ronin-Jaquemyns, Note Sur La Theorie du Droit d’Intervention, 8 REVUE DE DROIT INTERNATIONAL ET DE LEGISLATION COMPAREE 675 (1876)); see also DAVIDE RODOGNO, AGAINST MASSACRE: HUMANITARIAN INTERVENTIONS IN THE OTTOMAN EMPIRE, 1815–1914, at 55 (2011).

\textsuperscript{232} Constitutive Act of the African Union, art. 4(h), July 11, 2000, 2158 U.N.T.S. 3, 37.

\textsuperscript{233} Ben Kioko, The Right of Intervention Under the African Union’s Constitutive Act: From Non-Interference to Non-Intervention, 85 INT’L REV. RED CROSS 807, 807 (2003). Mr. Kioko, a legal adviser to the African Union, explained in his article that this provision to the Constitutive Act was added in order to give the AU the “necessary flexibility in deciding on intervention” after many delegations pointed out that the threshold for intervention was too high and excluded too many situations that threatened national and regional peace and security. Id. at 812.

\textsuperscript{234} Id. at 812.

\textsuperscript{235} Id. at 812–13.
The AU is technically required to seek permission from the United Nations to intervene under Article 53 of the U.N. Charter.\textsuperscript{236} However, the AU has shown on prior occasions that it is willing to defy the United Nations and forgo the “legal niceties such as the authorization of the Security Council.”\textsuperscript{237} Based on this law, the Eastern African Region countries intervened without Security Council approval in Burundi in 1996 where the AU imposed trade and economic sanctions on the country after a coup d’état that assassinated the democratically elected president.\textsuperscript{238}

The actions of the AU and explicit adoption of the doctrine indicate a clear emerging practice of the use of humanitarian intervention, or “non-indifference,”\textsuperscript{239} where core international crimes against humanity have occurred.

The doctrine is perhaps becoming more widely accepted as more instances occur over time that require this type of intervention.\textsuperscript{240} NATO invaded Kosovo without Security Council permission to end the conflict between the Serbian military and Kosovar Albanian forces, using humanitarian necessity to prevent genocide as the primary rationale.\textsuperscript{241} Other examples include Vietnam’s invasion of Cambodia, which forced out communist Pol Pot’s Khmer Rouge regime from power in Phnom Penh,\textsuperscript{242} and Tanzania’s invasion of Uganda in 1979 to overthrow dictator Idi Amin, whose reign led to the deaths of over 300,000 people.\textsuperscript{243}

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\footnotesize
\textsuperscript{236} Id. at 820; U.N. Charter art. 53.
\textsuperscript{237} Kioko, supra note 233, at 821. Kioko adds that the AU will likely have to call upon the U.N. and request its assistance because it will be unable to meet the massive financial, logistical, and military demands of an intervention. Id. at 822.
\textsuperscript{238} Id. at 821, 821 n.38.
\textsuperscript{239} Id. at 819.
\textsuperscript{240} Yassin El-Ayouty, \textit{International Action on the Doctrine of Humanitarian Intervention: The Case of Southern Iraq (1991-1992)}, N.Y. St. B.J., Aug. 1996, at 12, 17 (1996); see also \textit{THE CHARTER OF THE UNITED NATIONS: A COMMENTARY}, supra note 134, at 226. Professor Simma suggests that a rule of customary international law may develop over time as more instances occur whereby countries intervene in situations of gross humanitarian violations without Security Council approval. But he argues that if that occurs, the Security Council should extend its Chapter VII practice to such human rights violations, rather than creating a completely new customary law. Id.
\textsuperscript{241} \textit{ICISS}, supra note 34, ¶ 2.25; \textit{NATO’s Role in Relation to the Conflict in Kosovo}, NATO, http://www.nato.int/kosovo/history.htm (last updated July 15, 1999); Adam Roberts, \textit{NATO’s ‘Humanitarian War’ Over Kosovo}, SURVIVAL, Autumn 1999, at 102, 102. At the time, National Security Advisor Sandy Berger identified three criteria that enabled the U.S. to enter Kosovo: (1) presence of genocide or ethnic cleansing, (2) U.S. must have the capacity to act, and (3) U.S. must have a national interest at stake. Brown, supra note 147, at 1692. But professor Jack Goldsmith argues that Kosovo should not even be used as precedent because the U.S. had not accepted humanitarian intervention as the justification for the invasion. Jack Goldsmith, \textit{The Kosovo Precedent for Syria Isn’t Much of a Precedent}, LAWFARE (Aug. 24, 2013, 8:02 AM), http://www.lawfareblog.com/2013/08/the-kosovo-precedent-for-syria-isnt-much-of-a-precedent.
\textsuperscript{242} \textit{STEPHEN J. MORRIS, WHY VIETNAM INVADED CAMBODIA} 5, 219–20 (1999); Ocran, supra note 35, at 2.
\end{flushleft}
The United States also used the doctrine to explain its invasion into Iraq in 1990 in the aftermath of the Iraq-Kuwait crisis.244 Additionally, the Economic Community of West African States (ECOWAS)245 used the doctrine to justify intervention in Liberia and Sierra Leone.246 The situation in Liberia involved the bloody clash between six ethnic groups that escalated into a massive civil war causing 200,000 casualties, 800,000 refugees, and about a million internally displaced residents.247 After the United Nations failed to take any action, ECOWAS decided to intervene without Security Council approval for the following reasons: (1) the extent of the violence affected Liberians and other nationals from ECOWAS countries; (2) neighboring states were bearing the huge burden of taking in the largest group of refugees in West Africa; and (3) ECOWAS “shared a collective responsibility of ensuring that peace and stability is maintained within the sub-region and in the African Continent as a whole, for ECOWAS believes that the tragic situation in Liberia poses a threat to international peace and security.”248 The United States supported this intervention and drafted Security Council Resolution 788 that declared the deteriorating situation in Liberia “a threat to international peace and security” and welcomed “the continued commitment of the Economic Community of West African States (ECOWAS) to and the efforts towards a peaceful resolution of the Liberian conflict[,]”249 Resolution 788 further recognized the requests from ECOWAS to dispatch U.N. groups to observe “the encampment and disarmament of warring parties” and “to verify and monitor the electoral process” and commended and encouraged ECOWAS “to continue its efforts to assist in the peaceful implementation of this Accord[,]”250 The Security Council adopted this Resolution, among others, thereby legitimizing the legality of ECOWAS’ actions, including ECOWAS’ petroleum and arms embargoes against Liberia.251

Libya is another example in which the responsibility to protect was used to justify a military invasion and was actually the first use of force with this rationale endorsed by the Security Council. Inspired by the uprisings in the Arab Spring, Libyan civilians began protesting the regime of Colonel Muammar Gaddafi, who used force and violence against his

244. Ocran, supra note 35, at 2.
246. ICISS, supra note 37, ¶ 2.25.
248. Id. at 135 (quoting ECOWAS Standing Mediation Committee, Final Communiqué of the First Session, Doc. 54 (Aug. 7, 1990)).
opposition. The protests, which began in small spurts in February 2011, escalated quickly and led to the deaths of an estimated 30,000 people, the wounding of 50,000, and the disappearance of over 4,000. The United States and Russia denounced Gaddafi, but politicians in each country expressed concern over intervening because of the long-term stakes in the oil-rich region. On February 25, 2011, the United States froze Libyan assets. The next day, with backing from the Arab League, the Security Council adopted a resolution demanding an end to the violence in Libya and imposing sanctions. When Gaddafi failed to heed these demands, the Security Council adopted another resolution on March 17, 2011, imposing a no-fly zone over Libya and authorizing U.N. members to take “all necessary measures . . . to protect civilians” and halt violence.

This was the first time in history the Security Council endorsed military action under the “responsibility to protect” doctrine. The United States and NATO used this authorization to launch a bombing campaign over the country, eventually leading to the assassination of Gaddafi by rebels and the end of the intervention in October 2011. Because Gaddafi was ousted, this bombing campaign was highly criticized as a means to enforce a regime change, a purpose prohibited by ICISS. This criticism is discussed further in the “Responsibility to React” Section below, but the framework ICISS has created should prevent these types of military interventions for a regime change and not for a “just cause.”

Over time, as the Security Council begins to endorse further actions under the responsibility to protect doctrine, the doctrine may perhaps
become part of customary international law.\textsuperscript{261} But a few hurdles remain before it can assume that label, namely that customary law usually does not override treaty law.\textsuperscript{262} Accepting the idea that the responsibility to protect is international customary law necessitates accepting the premise that it has overridden other established international laws, including Article 53 of the Vienna Convention, which states that a rule of \textit{jus cogens}, like the nonuse of force, can be modified only by another rule of \textit{jus cogens}, and Article 103 of the U.N. Charter, stating that Charter prevails over other treaty obligations.\textsuperscript{263} Once the doctrine becomes customary law, it can more easily navigate around the provisions in the U.N. Charter. But the journey to that point is still far away.

The dilemma surrounding humanitarian intervention is complex. If an outside state takes no action, then it becomes a complicit bystander.\textsuperscript{264} But if a state intervenes, it may not be successful in mitigating the offenses.\textsuperscript{265} Furthermore, intervening could mean taking a side in a civil conflict, which could cause further state fragmentation.\textsuperscript{266} For example,

Interventions in the Balkans did manage to reduce the civilian death toll, but it has yet to produce a stable state order in the region. As both the Kosovo and Bosnian interventions show, even when the goal of international action is, as it should be, protecting ordinary human beings from gross and systematic abuse, it can be difficult to avoid doing rather more harm than good.\textsuperscript{267}

However, the doctrine has been criticized as highly susceptible to abuse.\textsuperscript{268} States would, the argument goes, use humanitarianism as a guise to intervene for nonaltruistic purposes, such as expansionism or overthrow of government.\textsuperscript{269} Nothing would prevent states from using force against another for an easy-to-fabricate reason.\textsuperscript{270} For example, in 1938, Adolf Hitler justified the use of force in Czechoslovakia as humanitarian intervention to protect the German nationals living there from being

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\textsuperscript{261} In order to become a "custom," two elements need to be met: state practice (usus) and a belief that such practice is required (opinion juris sive necessitatis). Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, 1985 I.C.J. 13, ¶ 27 (June 3) ("It is of course axiomatic that the material of customary international law is to be looked for primarily in the actual practice and opinio juris of States . . . .”).

\textsuperscript{262} See Akande, supra note 161.

\textsuperscript{263} Id.

\textsuperscript{264} ICISS, supra note 37, ¶ 1.22.

\textsuperscript{265} Id.

\textsuperscript{266} Id.

\textsuperscript{267} Id.

\textsuperscript{268} Ocran, supra note 35, at 13.


\textsuperscript{270} Id. at 1021 (citing Louis Henkin, Remarks on Biafra, Bengal, and Beyond: International Responsibility and Genocidal Conflict, 66 Proc. Am. Soc’y Int’l L. 95, 96 (1972)).
\end{flushright}
maltreated in the unworthiest manner, tortured, . . . [and denied] the right of nations to self-determination,” that “[i]n a few weeks the number of refugees who have been driven out has risen to over 120,000,” that “the security of more than 3,000,000 human beings” was in jeopardy, and that the German government was “determined by one means or another to terminate these attempts . . . to deny by dilatory methods the legal claims of oppressed peoples.”

But countries trying to do real good should not be prevented from doing so just because of the possibility that a different country could use the doctrine for an improper purpose. Judge Rosalyn Higgins, the first female judge and former president of the International Court of Justice, likens this idea to that of self-defense:

Many writers do argue against the lawfulness of humanitarian intervention today. They make much of the fact that in the past the right has been abused. It undoubtedly has. But then so have there been countless abusive claims to the right to self-defense. That does not lead us to say that there should be no right of self-defense today. We must face the reality that we live in a decentralized international legal order, where claims may be made either in good faith or abusively. We delude ourselves if we think that the role of norms is to remove the possibility of abusive claims ever being made.

A balance must be struck between the sovereignty of states and the imperatives of humanitarianism. Achieving this balance and ensuring the lack of abuse is not a simple or easy endeavor and will be discussed further below in the “Right Intention” Section under the “Responsibility to React.”

Another argument is that intervention will drastically affect the domestic country’s political process and organization of the state. And another pits humanitarian intervention against state sovereignty. But as the former Secretary-General has suggested, sovereignty goes hand-in-hand with the responsibility to protect. In his 2009 report “Implementing the Responsibility to Protect,” he explained that respect for human rights is an essential part of being a responsible sovereign and that

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271. Goodman, supra note 178, at 113 (alterations in original) (quoting Letter from Reich Chancellor Hitler to Prime Minister Chamberlain (Sept. 23,1938), in THE CRISIS IN CZECHOSLOVAKIA, APRIL 24-OCTOBER 31, 1938, 19 INT’L CONCILIATION 433 (1938)); Kritsiotis, supra note 269, at 1021 (citing Thomas M. Franck & Nigel S. Rodley, After Bangladesh: The Law of Humanitarian Intervention By Military Force, 67 AM. J. INT’L L. 275, 284 (1973)). However, a state’s use of force to protect its own nationals is often justified under self-defense because the doctrine is much clearer; for example, Israel used self-defense to explain its raid of the Entebbe airport in Uganda to rescue Israeli and Jewish hostages. Brown, supra note 147, at 1703–04.


275. U.N. Secretary-General, supra note 164, ¶ 16.

276. Id.
sovereignty itself is a responsibility.\textsuperscript{277} By helping States to meet their core protection responsibilities, the responsibility to protect seeks to strengthen sovereignty, not weaken it. It seeks to help States to succeed, not just to react when they fail . . . .\textsuperscript{278} The ICJ in \textit{Nicaragua v. United States} stated that “[t]he principle of non-intervention involves the right of every sovereign state to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the court considers that it is \textit{part and parcel of customary international law}.\textsuperscript{279}

The Secretary-General suggested a three-pillar, interrelated analysis of the responsibility to protect: “[t]he protection responsibilities of the [s]tate,” “[i]nternational assistance and capacity building,” and “[t]imely and decisive response.”\textsuperscript{280} This analysis, however, does not provide specific guidance for a state wanting to take unilateral action against another state whose own leadership is responsible for the human rights violation.\textsuperscript{281} ICISS came up with a framework to analyze the humanitarian intervention doctrine so that it could be effectively used only for the correct purposes.\textsuperscript{282} This framework also includes some of the elements discussed in the three-pillar analysis. As framed by ICISS, the responsibility to protect includes the responsibility to prevent, to react, and to rebuild.\textsuperscript{283} Stated differently, the responsibility to protect includes peacemaking, peace enforcement, and postconflict peacebuilding.\textsuperscript{284} The next Sections of this Article will consider each of these criteria in turn.

\textbf{A. Responsibility to Prevent}

ICISS defined the responsibility to prevent as “address[ing] both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.”\textsuperscript{285} This responsibility lies primarily with the sovereign state and with the organizations within it.\textsuperscript{286} International support then serves to bolster this prevention through development

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\textsuperscript{277} Id. ¶ 10(a).
\textsuperscript{278} Id.
\textsuperscript{279} Ocran, supra note 35, at 14–15 (alteration in original) (quoting Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 202 (June 27)).
\textsuperscript{280} U.N. Secretary-General, supra note 164, ¶ 11(a)–(c).
\textsuperscript{281} If the political leadership of the State is determined to commit crimes and violations relating to the responsibility to protect, then assistance measures under pillar two would be of little use and the international community would be better advised to begin assembling the capacity and will for a “timely and decisive” response.
\textsuperscript{282} ICISS, supra note 37, at VIII.
\textsuperscript{283} Id. ¶ 2.32.
\textsuperscript{284} Ocran, supra note 35, at 4.
\textsuperscript{285} ICISS, supra note 37, at XI.
\textsuperscript{286} Id. ¶ 3.2.
\end{flushleft}
assistance, local initiatives, mediation, and efforts to promote reconciliation.\textsuperscript{287}

Prevention efforts must be exhausted before contemplating intervention.\textsuperscript{288} The main idea is as follows:

[T]he earlier the root causes of a potential conflict are identified and effectively addressed, the more likely it is that the parties to a conflict will be ready to engage in a constructive dialogue, address the actual grievances that lie at the root of the potential conflict and refrain from the use of force to achieve their aims.\textsuperscript{289}

These efforts must include both short- and long-term measures involving the political, diplomatic, humanitarian, and institutional spheres of the sovereign, regional, and international actors.\textsuperscript{290}

Conflict prevention is one of the United Nations’ primary responsibilities.\textsuperscript{291} Article 1(1) of the U.N. Charter specifically mandates that the United Nations “take effective collective measures for the prevention and removal of threats to the peace . . .”\textsuperscript{292} In the 2001 U.N. Report on Prevention of Armed Conflict, the Secretary-General stated, “[C]ollective security should imply an obligation for all of us to strive to address tensions, grievances, inequality, injustice, intolerance and hostilities at the earliest stage possible, before peace and security are endangered.”\textsuperscript{293}

The United Nations has recognized the importance of prevention methods. In 2000, it published the Report of the Panel on United Nations Peace Operations, in which it laid out suggestions for better long-term peace operations that prevent conflicts.\textsuperscript{294} The report stated that U.N. peace operations addressed only one-third of the conflicts in the 1990s.\textsuperscript{295} Most of the funds were used for intervention and postintervention assistance; according to the Carnegie Commission on Preventing Deadly Conflict, about $200 billion was spent on conflict interventions in Bosnia and Herzegovina, Somalia, Rwanda, Haiti, the Persian Gulf, Cambodia and El Salvador, when the United Nations could have saved $130 billion if it took effective preventative steps.\textsuperscript{296}

ICISS puts forth three essential conditions that must be met to achieve effective prevention. First is “early warning,” knowledge of a

\begin{itemize}
\item \textsuperscript{287} Id. ¶ 3.3.
\item \textsuperscript{288} Id. ¶ 3.4.
\item \textsuperscript{290} Id. at 2.
\item \textsuperscript{291} Id.
\item \textsuperscript{292} U.N. Charter art. 1, ¶ 1.
\item \textsuperscript{293} U.N. Secretary General, \textit{supra} note 289, ¶ 19.
\item \textsuperscript{295} Id. ¶ 29.
\item \textsuperscript{296} ICISS, \textit{supra} note 37, ¶ 3.7.
\end{itemize}
dangerous situation, its fragility, and its risks.\textsuperscript{297} Investigating these crimes through on-site missions is just one way of discovering the degree of harm or potential harm.\textsuperscript{296} Second is the “preventive toolbox,” comprehensive understanding of all the policy measures that can be taken to diffuse the situation.\textsuperscript{299} Finally, the “political will” actually to apply those measures must be present.\textsuperscript{300}

Here, all three elements existed that could have effectuated preventative measures before Syria used chemical weapons. The United Nations certainly had “early warning” as to the fragile situation developing in Syria. The Syrian conflict began in 2011, and the amount of violence and number of deaths continued to increase as time went by. This understanding is expressed in the two resolutions the Security Council adopted in April 2012, condemning the violence and noting that Syria had begun to implement its commitments to cease fire.\textsuperscript{301} Moreover, the United Nations deployed a mission to investigate allegations of the small-scale use of chemical weapons prior to and after the 2013 chemical weapons attack.\textsuperscript{302}

But as the hostility intensified, those resolutions meant nothing, and further action needed to be taken to curb the violence. Multiple countries, including the United States, repeatedly submitted proposals to the Security Council to stop the ensuing violence before it escalated even further, but they were all vetoed.\textsuperscript{303} These proposals included measures that constituted the “preventive toolbox” and that would be implemented by the Security Council and various U.N. bodies and regional organizations.

One such proposal from October 2011 led by France, Germany, and the United Kingdom condemned the violence and urged Syria to halt its assault on civilians.\textsuperscript{304} The proposal also demanded that Syria comply with its international law obligations and called for an inclusive political process that addressed the public’s concerns.\textsuperscript{305} But Russia and China vetoed the resolution.\textsuperscript{306} Another proposal from the United States in February 2012 condemned the Syrian government’s gross human rights violations and its use of force against civilians.\textsuperscript{307} It demanded an end to the violence and called for Syria’s cooperation with regional organizations to promote peace and stability in the region.\textsuperscript{308} But once again, Russia and

\textsuperscript{297}. Id. ¶ 3.9.
\textsuperscript{298}. U.N. Secretary-General, supra note 164, ¶ 53.
\textsuperscript{299}. ICISS, supra note 37, ¶ 3.9.
\textsuperscript{300}. Id.
\textsuperscript{302}. See U.N. Mission Report, supra note 28, ¶¶ 6, 15.
\textsuperscript{303}. See Security Council - Veto List, supra note 190.
\textsuperscript{304}. S.C. Res. 612, ¶¶ 1, 4 (Oct. 4, 2011).
\textsuperscript{305}. Id. ¶¶ 4–5.
\textsuperscript{306}. Security Council - Veto List, supra note 190.
\textsuperscript{307}. S.C. Res. 77, ¶¶ 1, 3 (Feb. 4, 2012).
\textsuperscript{308}. Id. ¶ 5, 9.
China vetoed it. In July 2012, the United Kingdom and United States again proposed a resolution to the Security Council, expressing grave concern about the escalating violence and death toll and condemning Syria’s use of heavy weaponry, including tanks and helicopters indiscriminately to shell civilian populations. The resolution also included a six-point plan to facilitate the political transition and ease humanitarian violations. This proposal was, yet again, vetoed by Russia and China. These proposals led or cosponsored by the United States indicate that it had the “political will” to carry out measures against Syria.

With the Security Council deadlocked, the General Assembly adopted a resolution in May 2013, three months before Syria’s use of chemical weapons, encouraging the Security Council to take effective measures to stop the violence in the Syria. The resolution also demanded that Syria strictly observe its international law obligations not to use or transfer chemical weapons. This is the most blatant evidence of the United Nations’ understanding of the possibility of chemical weapons use.

ICISS stated that collective, international preventative measures must be exhausted before intervention—especially through military force—may be undertaken. That is exactly what happened here. Former National Security Advisor Susan Rice stated that the overall U.S. policy for Syria (not the military strike itself) involves this peace-making agenda: “[T]o end the underlying conflict through a negotiated, political transition in which Assad leaves power. The best way to achieve this is to keep the country and its institutions intact, but all parties have to be willing to negotiate.” The United States and other states tried to take preventative action through the Security Council, but their efforts were blocked. President Obama addressed this very point in his statement to the American people about his plan for Syria: “Over the last two years, my administration has tried diplomacy and sanctions, warning and negotiations—but chemical weapons were still used by the Assad regime.” President Trump said that repeated pleas with the United Nations had failed.

311. Id. ¶ 3; see also S.C. Res. 2042 annex (Apr. 14, 2012).
314. Id. ¶ 11.
315. ICISS, supra note 37, ¶ 3.1.
317. Fassihi, Nicholas & Winning, supra note 60; CBS NEWS, supra note 31.
318. Remarks by the President, supra note 32.
The United States attempted to fulfill its responsibility to prevent. Because every preventative measure was attempted and blocked, it could do no more and could enter the “responsibility to react” phase outside of the U.N. framework. The United States, as a world economic power, has the capacity to enter and fulfill the next phase.\textsuperscript{320}

\textbf{B. Responsibility to React}

ICISS described the responsibility to react as the responsibility “to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.”\textsuperscript{321} The Commission stated that countries must first seek Security Council authorization prior to carrying out any military intervention.\textsuperscript{322} This is in part because nonintervention is always the starting point, for sovereign states must be allowed the opportunity to resolve the issues within their domestic sphere.\textsuperscript{323} But, as discussed in Part III above, it is difficult to get this authorization because of the permanent members’ veto power. Consequently, as Professor David Scheffer suggests, when the Security Council is deadlocked, a state or group of states must act outside of the U.N. Charter and be guided by the ICISS framework for humanitarian intervention.\textsuperscript{324}

When a state is either unable or unwilling to address the harm, and when international prevention efforts have failed, humanitarian intervention may be required.\textsuperscript{325} The General Assembly reiterated this notion through its resolution in the 2005 World Summit Outcome, stating that force may be used “should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”\textsuperscript{326} Humanitarian intervention is the exception to nonintervention, an exception that exists for circumstances where domestic disputes spill over into the international realm, causing disruption to the region, and also where gross human rights violations are occurring.\textsuperscript{327}

Military action is allowed, but only in extreme and grave cases.\textsuperscript{328} These cases of violence must “so genuinely ‘shock the conscience of
“mankind”’’ or present a profoundly “clear and present danger to international security” to permit the use of military force.\textsuperscript{329} Such cases arise when broken-down states and civil conflicts become so violent and repressive that citizens are faced with actual or potential large-scale genocide, massacre, or ethnic cleansing.\textsuperscript{330} ICISS further elaborates on how this level is measured in the “just cause” analysis below. These types of interventions have occurred in the past, primarily due to the Security Council’s failure to act where gross humanitarian violations are present and the need for assistance is overwhelming.\textsuperscript{331} “[I]n the face of a conscience shocking situation but inaction by the Council, it is not a stretch of legal reasoning to say that the responsibility to protect admits of a narrowly tailored right of ad hoc action for a proper purpose.”\textsuperscript{332}

To ensure that these military interventions are not abused, ICISS created a narrow framework that ought to be followed in assessing whether a country can lawfully use military force against another. There are six elements for intervention: (1) right authority, (2) just cause, (3) right intention, (4) last resort, (5) proportional means, and (6) reasonable prospects.\textsuperscript{333}

1. Right Authority

ICISS stated that Security Council authorization must first be sought prior to any military intervention.\textsuperscript{334} It also stated that the permanent members should agree not to use their veto in matters that do not affect their national interests, but where the intervention would greatly ease the violations.\textsuperscript{335} But practically speaking, even if the permanent members did make this agreement, it is highly unlikely to prevent the veto from being used. Here, Russia is one of Syria’s strongest allies, even providing the country with Russian weaponry.\textsuperscript{336} Russia could assert that a resolution taken against Syria would also hurt its own domestic interests and therefore it can rightfully veto the proposal. In an op-ed to the \textit{New York Times}, Russian President Vladimir Putin asserted that any action taken without Security Council approval would plainly violate the U.N. Charter, stating, “We are not protecting the Syrian government, but international law. . . . It is alarming that military intervention in in-

\begin{itemize}
\item \textsuperscript{329} Id. ¶ 4.13.
\item \textsuperscript{330} Id.
\item \textsuperscript{331} Scheffer, supra note 38, at 290.
\item \textsuperscript{332} Bethlehem, supra note 172.
\item \textsuperscript{333} ICISS, supra note 37, ¶ 4.16.
\item \textsuperscript{334} Id. ¶ 6.15.
\item \textsuperscript{335} Id. ¶ 6.21.
\end{itemize}
ternal conflicts in foreign countries has become commonplace for the United States. Is it in America’s long-term interest? I doubt it.  

ICISS partly recognized the veto problem and suggested that a country seeking to intervene should look to the General Assembly and then to regional organizations for assistance. In the case of Libya, the African Union, Arab League, Gulf Cooperation Council, and Organization of the Islamic Conference all supported the condemnation of Gaddafi. The regional support certainly helps, but it also takes time. These situations often require immediate action, and acquiring approval from these other large organizations could waste precious time. ICISS also warned the Security Council that if it fails to take action, states wishing to intervene may do so on their own, an action which would affect the credibility of the United Nations as a peace-keeping organization. That is why, as a practical matter, if the Security Council is unwilling to authorize military intervention, a state may do so without its approval if all the other elements for intervention are present.

Moreover, instances have occurred in which action has been taken legally without Chapter VII authorization. For example, the forcible policing of no-fly zones in Iraq in 1999 by the United States, United Kingdom, and France lacked Security Council approval under Chapter VII. Though the Security Council did pass resolution 688 to condemn the suffering of Iraqi civilians, the resolution was not passed under Chapter VII. Thus, the Security Council did not authorize the policing actions under the Charter but rather under a humanitarian intervention principle.

Regarding Syria, the United Kingdom proposed a resolution to the U.N. Security Council in 2013 seeking its authorization for military action, but the members could not agree to its terms. Because the proposal failed, no official record exists of whether the United States co-sponsored it. But it is reasonable to assume that the United States supported the U.K.’s proposal based on their allied relationship.

337. Putin, supra note 47.
340. ICISS, supra note 37, ¶ 6.40; see also U.N. Secretary-General, supra note 164, ¶ 60 (“[T]he international community’s failure to stem the mass violence and displacements in Darfur, as well as in the Democratic Republic of the Congo and Somalia, has undermined public confidence in the United Nations and our collective espousal of the principles relating to the responsibility to protect.”).
341. Scheffer, supra note 38, at 290–91.
342. See Bethlehem, supra note 172.
343. Id.
344. Id.
345. See Fassihi, Nicholas & Winning, supra note 60.
346. See, e.g., CBS NEWS, supra note 31.
countries then came together again in condemning the attacks in April 2017 and urging Russia not to block any U.N. actions.\textsuperscript{347} Under the ICISS framework, this is enough to satisfy the element of right authority.

2. Just Cause

Military intervention can be justified only if the circumstances in the sovereign state so grossly violate human rights and cause “serious and irreparable harm” to human beings.\textsuperscript{348} Professor Scheffer identifies a number of elements as requiring intervention: “(1) [t]o rescue or protect citizens abroad . . . whose lives are at risk[,] (2) [t]o protect religious or ethnic minorities from genocide or violent oppression[,] (3) to [stop] internal . . . human rights atrocities[,] (4) [t]o contain mass migration,” assist internally displaced people, and to improve life-threatening conditions for refugees; (5) to curtail gross human suffering from “man-made or natural disasters”; and (6) to aid oppressed rebels in their fight for self-determination against tyrants who grossly violate human rights.\textsuperscript{349}

ICISS stated that this harm must be either (1) “large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation,” or (2) “large scale ‘ethnic cleansing,’ actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.”\textsuperscript{350} Such loss includes crimes against humanity and war violations as defined by the Geneva Conventions and other international laws.\textsuperscript{351}

ICISS did not define “large scale” in numbers but stated that intervention can be anticipatory when clear evidence exists of the likelihood of mass killing.\textsuperscript{352} If countries could not act on this likelihood, they would have to wait until a human rights violation rose to the level of mass genocide.\textsuperscript{353} Even so, some extreme humanitarian violations to a smaller population may warrant the same intervention.\textsuperscript{354}

The Commission listed a number of circumstances that would not meet the “just cause” requirement for military intervention: systematic racial discrimination, systematic imprisonment, repression of political opponents, overthrow of government, rescuing own nationals on foreign

\textsuperscript{347} Down to Assad, supra note 6; The Latest, supra note 14.

\textsuperscript{348} ICISS, supra note 37, ¶ 4.18; see also Scheffer, supra note 38, at 291.

\textsuperscript{349} Scheffer, supra note 38, at 265. But Professor Scheffer notes the problem with this list: all purposes are difficult to justify under a traditional reading of the U.N. Charter. These purposes, he argues, can be addressed using non-consensual, non-forcible methods, which include the work of non-governmental organizations that provide aid, rather than military force. See id. at 266.

\textsuperscript{350} ICISS, supra note 37, ¶ 4.19 (emphasis omitted).

\textsuperscript{351} Id. ¶ 4.20.

\textsuperscript{352} Id. ¶ 4.21.

\textsuperscript{353} Id.

\textsuperscript{354} Ocran, supra note 35, at 45.
soil (covered by U.N. Charter Article 51), and responding to terrorist attacks (also covered by Article 51).\footnote{Syria’s use of chemical weapons clearly fits the just cause requirement because the attack caused large scale loss of life to adults and children. The U.N. Secretary-General’s High Level Panel on Threats, Challenges, and Change in 2004 specifically stated that chemical weapons are similar to nuclear weapons in that they pose a serious threat for their ability to indiscriminately kill masses with one shot.\footnote{The Secretary-General’s report on the U.N.’s chemical weapons investigation even stated that “chemical weapons were used on a \textit{relatively large scale}, resulting in numerous casualties . . . .”\footnote{The Syrian Observatory for Human Rights confirmed at least 502 deaths and thousands more injured in 2013.\footnote{The April 2017 attacks killed about 100 and left hundreds more injured.\footnote{Furthermore, because Syria had huge stockpiles of the weapons,\footnote{the intervention could be further justified as anticipating more deaths.}}}}}

3. Right Intention

“The primary purpose of the intervention,” whatever other motives intervening states may have, “must be to halt or avert human suffering.”\footnote{It cannot be, for example, to help a rebel group overthrow a government or to change international borders.\footnote{It may be difficult to ascertain what the true motivation is, but the intention is better affirmed when multiple states intend to intervene, or when one state has backing from regional organizations and support from the victims themselves.}} While ideally this should not be so, a state must be able to justify to its own people the reason for expending the country’s resources and

\begin{thebibliography}{99}
\footnote{ICISS, supra note 37, ¶ 4.25–27.}
\footnote{High Level Panel, \textit{supra} note 100, ¶ 114.}
\footnote{U.N. Mission Report, \textit{supra} note 28, ¶ 1 (emphasis added).}
\footnote{\textit{Syria Chemical Attack: What We Know}, \textit{supra} note 29.}
\footnote{Report of the OPCW, \textit{supra} note 68.}
\footnote{ICISS, \textit{supra} note 37, ¶ 4.33.}
\footnote{Id. ¶ 4.34; see also Scheffer, \textit{supra} note 38, at 291.}
\footnote{Ocran, \textit{supra} note 35, at 44; Kioko, \textit{supra} note 233, at 823 (areas of interest could include a desire to prevent cross-border refugee flow or strategic and economic interests in establishing order in the target state); Amy E. Eckert, \textit{The Responsibility to Protect in the Anarchical Society: Power, Interest, and the Protection of Civilians in Libya and Syria}, 41 \textit{DENV. J. INT’L L. & POL’Y} 87, 91 (2012).}
taxpayers’ money and for taking the risk to intervene. Though domestic approval is separate and apart from international obligations, leadership will be held accountable domestically for its actions abroad. Therefore, it is natural to have some state interest, other than just a moral one. These interests, in fact, serve as a check on prolonged interventions and a compass that keeps the alleged purpose for intervention on the humanitarian path because the intervening state is using its own resources to intervene. Moreover, because of international interdependence, “international citizenship is a matter of national self-interest.” The question here is not how many intentions the intervening country has but rather what the primary reason is.

This prong in the analysis is perhaps the highest hurdle to overcome because it is the most susceptible to abuse. How do we know when a country is being disingenuous? And how do we prevent countries from taking advantage of the doctrine and using it as a pretext to wage war? Many leading scholars reject unilateral humanitarian intervention for just this reason. For example, Richard Bilder argues that “historically, claims of humanitarian intervention have typically served simply as a pretext for what are, in fact, selfish assertions of national interest, power, and greed . . . .” Similarly, Jane Stromseth, who believes in a gradual acceptance of the doctrine, asserts that it should not be codified because that “would provide another theory under which states determined to use force can seek to justify their actions.”

Such was the case in Libya. Only France referred to the responsibility to protect during deliberations about the resolutions, but the doctrine’s ideals were discussed subsequent to the adoption of the resolutions. The AU, while it condemned Gaddafi, actually opposed the resolutions, arguing that intervention in Libya—particularly without AU approval—would make the situation worse and was not necessary because the situation did not involve genocide; further, the AU believed that if a regime change were to occur, the Libyan people must make that decision, not external forces. After the NATO bombings, Human

365. ICISS, supra note 37, ¶ 4.35.
367. ICISS, supra note 37, ¶ 4.36; see also Franck, supra note 143, at 857.
368. See Brown, supra note 146, at 1727; Goodman, supra note 177, at 113; Kritsiotis, supra note 268, at 1020–23.
369. See Goodman, supra note 177, at 108–09.
372. See supra, note 258.
373. African Leaders Oppose NATO Over Gaddafi, supra note 260; see also 2011 Libya Civil War Fast Facts, supra note 255; see supra note 258. The AU’s opposition is particularly important given the fact that Article 4(h) of the AU’s founding charter specifically delineates the right to intervene in “grave circumstances” like war crimes and genocide. Constitutive Act of the African
Rights Watch called for an investigation of the campaign, asserting that the act was illegal and caused far too much collateral damage. Since then, during the ten publicly recorded meetings regarding the situation in Libya between February 2011 and May 2013, express references to the responsibility to protect were made by the United States, France, Germany, Colombia, France, Lebanon and Rwanda.

President Obama mentioned a number of reasons why he wanted to strike Syria for its chemical weapons use. He discussed the potential harm to U.S. allies, the disruption of regional peace from refugee migrations, the spilling of violence across border lines, and national security—the potential harm that could occur from Syria providing chemical weapons to terrorist groups and other tyrants who could then use the weapons against U.S. soldiers on the battlefield. Clearly, the United States had many self-interests to intervene. But President Obama also discussed the attack as “an assault on human dignity” and his primary purpose to “hold the Assad regime accountable for their use of chemical weapons, deter this kind of behavior, and degrade their capacity to carry it out.” Former President Bill Clinton gave a similar reasoning for the U.S. invasion of Macedonia in 1999. Ms. Rice explained that the strikes on Syria would not be an attempt to topple President Assad or to effect a change in regime because that would require a much more extensive military campaign. While the overarching U.S. plan for Syria did include a peaceful change in government, the narrowness of the strikes indicates that the action would not likely result in such a change. In Libya, NATO claimed humanitarian intervention as its justification for action.
The bombing campaign did in fact lead to a regime change, though Gaddafi was killed by rebel forces, not NATO forces. But NATO’s strike lasted seven months; the strike on Syria would be much shorter, making it much more difficult to achieve such a change in government had that been the underlying intention. President Trump also cited national security as a reason for using military force; however, he emphasized that Assad’s use of chemical weapons was “egregious” and had to be stopped: “It was a slow and brutal death for so many. . . . Even beautiful babies were cruelly murdered at this very barbaric attack. No child of God should ever suffer such horror.”

4. Last Resort

A country can use military force to intervene only when every other preventative option for diplomatic resolution of the crisis has been explored. This does not mean that each and every one must have been tried and failed, but it does mean that each conceivable option would have likely been unsuccessful. Moreover, if the intervention does not have Security Council approval and it is undertaken by a single state, the country must have made efforts to create a multinational force.

After the first large scale attack in 2013, Ms. Rice reiterated President Obama’s plan, explaining the multiple attempts to resolve the Syrian crisis before a mass use of chemical weapons. She stated that the United States had consistently supported the U.N. diplomatic process to talk to Syria and the formation of the United Nations Commission of Inquiry to document the violence in Syria. She asserted that the United States also publicly admonished Syria when it started using chemical weapons on a very small scale a few months before the main attack and provided evidence of the use to Congress and the United Nations. Moreover, the United States provided non-lethal assistance to the civil opposition and pushed for over six months for a U.N. team to visit Syria to investigate the chemical weapons situation.

383. See id.
386. ICISS, supra note 37, ¶ 4.37; see also U.N. Secretary-General, supra note 164, ¶ 40.
387. ICISS, supra note 37, ¶ 4.37.
388. Scheffer, supra note 38, at 291.
389. Susan E. Rice, supra note 316.
390. Id.
391. Id.
392. Id.
Three times the Security Council took up resolutions to condemn lesser violence by the Syrian regime. Three times we negotiated for weeks over the most watered-down language imaginable. And three times, Russia and China doubled vetoed almost meaningless resolutions. Similarly, in the past two months, Russia has blocked two resolutions condemning the use of chemical weapons that did not even ascribe blame to any party. Russia opposed two mere press statements expressing concern about their use. A week after the August 21 [2013] gas attack, the United Kingdom presented a resolution that included a referral of war crimes in Syria to the International Criminal Court, but again the Russians opposed it, as they have every form of accountability in Syria.\footnote{393}

When Syria acceded to the CWC, Russia assumed the role to oversee its ally’s compliance and destruction or removal of its chemical weapons stockpiles.\footnote{394} By agreeing to permit Russia to serve as Syria’s supervisor, the United States made an accommodation to Syria as a compromise for not using force. When Syria launched its April 2017 attack, Secretary Tillerson accused Russia of being either “complicit” or “incompetent” in carrying out its duties to ensure Syria’s adherence to the CWC.\footnote{395} Before launching a military strike, the United States could have threatened to sanction Russia for its role in the attack and to pressure Russia to compel Syria to halt its use of chemical weapons. The United States also could have used economic sanctions to pressure President Assad directly to give up the chemical weapons stockpile. The United States currently maintains sanctions against Syria for its support of terrorism and weapons of mass destruction,\footnote{396} but neither former President Obama nor President Trump made any efforts to sanction Syria specifically for its use of chemical weapons. It can be argued, however, that such sanctions against Russia or Syria would have had no real effect because history shows a lack of compliance and because the sanctions could not literally destroy the stockpiles like a military strike would.

Under the ICISS theory explained above, evidence of the likelihood of failure would be sufficient to rule out all conceivable options that were

\footnote{393}{Id.}\footnote{394}{See David Filipov & Anne Gearan, Russia Condemns U.S. Missile Strike on Syria, Suspends Key Air Agreement, WASH. POST (Apr. 7, 2017), https://www.washingtonpost.com/world/europe/russia-condemns-us-missile-strike-on-syria/2017/04/07/c81ea12a-1b4e-11e7-8003-f55b4e1cfae2_story.html.}\footnote{395}{See Williams, supra note 17.}\footnote{396}{The U.S. has placed sanctions on Syria but not any directly related to its use of chemical weapons in August 2013. The sanctions include the Syria Accountability Act of 2004, which imposes sanctions on Syria for its support of terrorism, weapons of mass destruction programs, and its role in Iraq. Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Pub. L. No. 108-175, §§ 8(4)–(5), 20(–22), 26(–34), 117 Stat. 2482 (2003). Another sanction is imposed against the Commercial Bank of Syria (CBS) and prohibits U.S. banks from maintaining accounts with CBS. The final sanction is imposed on Syrian individuals and entities for their association with al Qaida, the Taliban, or Osama bin Laden, involvement in the proliferation of weapons of mass destruction, or receipt of any benefit from public corruption. See SYRIA SANCTIONS PROGRAM, OFFICE OF FOREIGN ASSETS CONTROL 4 (2013).}
not attempted. As a result, a U.S. military strike would be the last resort. For years, the Obama Administration tried peace talks with Syria and attempted to have U.N. resolutions passed. Though Syria ultimately agreed to give up its chemical weapons stock, it did so only under this U.S. threat of force. Moreover, the United States attempted to gain support and create a multinational force, as ICISS requires. British Prime Minister David Cameron backed President Obama’s plan, but the British Parliament voted not to intervene,\footnote{Syria Crisis: Cameron Loses Commons Vote on Syria Action, BBC (Aug. 30, 2013), http://www.bbc.co.uk/news/uk-politics-23892783.} based not on the legality of humanitarian intervention but rather on the wisdom of such a mission.\footnote{See Bethlehem, supra note 172.} Given this history, Ambassador Haley warned that the United States would take action given the consistent failure of the United Nations to act.\footnote{Read Nikki Haley’s Remarks About Syria at the U.N., TIME (Apr. 5, 2017), http://time.com/4727499/nikki-haley-unsc-transcript-syria.} Accordingly, President Trump’s strike was a last resort.

5. Proportional Means

Any military intervention undertaken should be the minimum necessary to achieve the desired result of halting violence and protecting people from suffering.\footnote{ICISS, supra note 37, ¶¶ 4.39–40.} The scale, duration, and intensity should be commensurate with the original provocation.\footnote{Id. ¶ 4.39; see also Ocran, supra note 35, at 45.} Any effect on the political system and structure of the targeted country must be limited to only that intervention necessary.\footnote{Ocran, supra note 35, at 45.} For example, in 1914, two German officers and one German official were killed at an outpost in Portuguese-controlled Angola.\footnote{Brown, supra note 147, at 1729 (citing Naulilaa Arbitration (Port. v. F.R.G.), 2 R.I.A.A. 1011, 1028 (1949)).} The Germans retaliated by destroying several Portuguese outposts.\footnote{Id.} The case’s arbitrators found that the German retaliation was greatly disproportionate to the instigation.\footnote{Id.}

Another example is the NATO bombing campaign in Kosovo. Scholar John Janzekovic criticized NATO’s seventy-eight-day air campaign as disproportionate to fight the decade-long slaughter of Kosovars by the Serbs because it did not halt the killing.\footnote{John Janzekovic, The Use of Force in Humanitarian Intervention: Moralities and Practicalities 52–55 (2006).} In fact, he argued, once the air attacks began, the Serbs began a massive killing campaign of Kosovars.\footnote{Id. at 53–54.} About 100,000 Kosovars and only 8,000 Serbs were killed as a result of the air campaign.\footnote{Id.} He asserted that NATO’s strikes should have been aimed at Serb forces instead of command and communications
systems, water and power supplies, and army and police barracks. Accordingly, the attack was not proportionate to achieve the intended result.

Here, the Senate bill approving President Obama’s plan stipulated that the strike is for the “limited and specified” use of the armed forces in Syria only to respond to the use of chemical weapons, deter Syria’s use of the weapons to protect the interests of the United States and its allies, degrade Syria’s capacity to use chemical weapons in the future, and prevent the transfer of the weapons to terrorist organizations. Section III of the bill explicitly limited the intervention: “[T]he authority granted . . . does not authorize U. S. Armed Forces ground combat operations in Syria.”

President Obama explained that the military intervention would have been very narrow. No soldiers would have been placed on the ground, and it would have targeted the chemical weapons stockpiles to deter their use generally and prevent Syria from using them again. The strike would have been deliberately limited in time and scope, and it would target the chemical weapons in a range of ways that would debilitate Syria’s ability to manage, deliver, and develop chemical weapons.

President Trump’s missile launch was highly limited as it was aimed at hangars, planes, fuel tank ammunition, storage, and air defense systems. The strike was not intended to overthrow the Assad regime. Secretary Rex Tillerson stated: “The process by which Assad would leave is something that I think requires an international community effort.”

6. Reasonable Prospects

A proposed military intervention must have some reasonable chance of success without inflicting more harm than good. An intervening state has a duty not to make the situation worse.

\[\text{Id. at 54.}\]
\[\text{Id. at 54.}\]
\[\text{Id. at 54–55.}\]
\[\text{An Official Joint Resolution to Authorize Limited and Specified Use of the United States Armed Forces Against Syria, S.J. Res. 21, 113th Cong. § 2 (2013).}\]
\[\text{Statement by the President on Syria, supra note 32.}\]
\[\text{Scheffer, supra note 38, at 291.}\]
\[\text{Brown, supra note 147, at 1735. For example, the International Criminal Tribunal for the former Yugoslavia launched a pre-investigation into NATO’s intervention in Kosovo after allegations that its bombing campaign caused hundreds of deaths and great damage to the environment. The Tribunal ultimately found that an in-depth investigation of the bombings was not necessary because it was unlikely to find enough evidence to substantiate claims of human rights violations.}\]
domestic law imposes no duty upon a passer-by to intervene and provide aid to someone in need.\textsuperscript{421} If the bystander chooses to intervene and inflicts more harm, however, that person may be held civilly liable. Humanitarian intervention imposes a similar burden.\textsuperscript{422} If a state chooses to intervene and does more damage, it has a duty to fix what it has done.\textsuperscript{423} This type of responsibility acts as a deterrent to providing necessary aid.\textsuperscript{424}

Here, military action would be used as a deterrent, not to stop current fighting, so it would have to have a reasonable chance of success of destroying the weaponry and deterring further use. President Obama’s plan was to destroy Syria’s capacity to use chemical weapons in the future and deter other dictators from employing them as well.\textsuperscript{425} President Trump specifically fired at artillery and aircraft to destroy Syria’s capability to spread these chemical gases.\textsuperscript{426} Eliminating the stockpile and their modes of dissemination would have a reasonable chance of success in achieving the stated goals because it would literally destroy the weaponry and make it impossible for President Assad to use those weapons again. Of course, the strike would not eliminate the intellectual property and human resources required to develop the weapons, but it is a start. And it still sends a message to President Assad and other tyrants that the international community will not tolerate their attempts to use these weapons.

A chance exists, however, that a strike could do some harm.\textsuperscript{427} It could potentially kill innocent civilians located in the vicinity of the stockpiles, damage unrelated infrastructure, and perhaps even ignite some chemical gases.\textsuperscript{428} These types of harms are not minor, and they must be prevented or minimized. But the question is not whether the strike would cause any amount of harm; rather, the question is whether the act would make the country’s situation worse and inflict more harm than good. While some harm is a possibility, based on the targeted nature of the military strike, inadvertent damage was not great. Furthermore, steps were taken to ensure that minimal damage was done.\textsuperscript{429} Prior to


\textsuperscript{421} See, e.g., FLA. STAT. § 768.13(2)(a) (2017).

\textsuperscript{422} Brown, supra note 147, at 1736.

\textsuperscript{423} Id. at 1737.

\textsuperscript{424} Id.

\textsuperscript{425} Statement by the President on Syria, supra note 32.

\textsuperscript{426} Capaccio, Arkhipov & Foroochar, supra note 214.


\textsuperscript{428} In President Trump’s airstrike, nine civilians, including four children, as well as six servicemen were allegedly killed, and six planes were destroyed. Alexander, Boyle & Henderson, supra note 25.

\textsuperscript{429} Capaccio, Arkhipov & Foroochar, supra note 214.
President Trump’s launch, the Pentagon informed Russia and also took various measures to minimize the risk to Russian planes or personnel in the airfield.\textsuperscript{430} This damage would pale in comparison to the benefit of ridding the world of a large stockpile of chemical weapons.

\textbf{C. Responsibility to Rebuild}

ICISS defined the responsibility to rebuild as the obligation “to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.”\textsuperscript{431} Without such assistance, countries are often left to deal with the underlying causes that initiated the conflict originally.\textsuperscript{432} Rebuilding involves committing additional funds and resources and may require the intervening country to stay much longer than intended or desired.\textsuperscript{433}

The most successful reconciliation processes do not necessarily occur at high level political dialogue tables, or in judicial-style processes (though we well understand the positive role that truth and reconciliation commissions can play in certain post-conflict environments). True reconciliation is best generated by ground level reconstruction efforts, when former armed adversaries join hands in rebuilding their community or creating reasonable living and job conditions at new settlements. True and lasting reconciliation occurs with sustained daily efforts at repairing infrastructure, at rebuilding housing, at planting and harvesting, and cooperating in other productive activities.\textsuperscript{434}

In the 1998 U.N. report on the promotion of peace in Africa, the Secretary-General described postconflict relief as follows: “Peace-building may involve the creation or strengthening of national institutions, monitoring elections, promoting human rights, providing for reintegration and rehabilitation programmes, and creating conditions for resumed development.”\textsuperscript{435}

ICISS lists three major areas during the rebuilding stage that require attention: (1) security, (2) justice, and (3) economic development.\textsuperscript{436} First, security involves the protection of all nationals to prevent “reverse ethnic cleansing” of victims against oppressors.\textsuperscript{437} Security also involves

\begin{thebibliography}{99}
\item 431. ICISS, supra note 37, at XI.
\item 432. Id. ¶ 5.2.
\item 433. Id.
\item 434. Id. ¶ 5.4.
\item 436. ICISS, supra note 37, ¶ 5.7.
\item 437. Id. ¶ 5.8.
\end{thebibliography}
the reintegration of local police forces and disarmament of demobilized soldiers. Second, measures ought to be taken to install or rehabilitate a properly functioning justice system so that human rights violators can be tried and punished. These courts are the “first line of defence against impunity” and are necessary to help citizens regain and protect rights, such as property rights, that may have been unlawfully or physically destroyed. Third, the intervening state should try to encourage economic development and market growth. This includes helping eliminate any economic sanctions that may have been imposed on the state during the conflict.

This rebuilding requirement is less of a legally imposed duty but rather a morally imposed one based on the basic premise of keeping promises. In the case of Kosovo, former British Prime Minister Tony Blair recognized this responsibility when he stated at a press conference after the NATO bombings, “[W]e said all the way through that we would help them to reconstruct the Balkans, to make the Balkans a place of peace and security. . . . Our job is to make sure that the promises that we made to them during the course of the conflict we now honor post-conflict.” Further, in Libya, the Security Council adopted a resolution in September 2011 creating a U.N. support mission to help restore public security, promote national reconciliation, and initiate economic recovery.

If the United States had intervened in Syria in 2013, it likely would have provided rebuilding assistance as it has done in the past. Since the United States invaded Libya, it has committed $170 million in aid and has provided assistance to strengthen the election systems, justice sectors, and various nongovernmental organizations’ efforts. Further, the United States has provided over $1 billion to Kosovo since 1999 and continues to provide assistance to develop the electoral system, agriculture and energy markets, and relationships between the Serbian majority and the Government of Kosovo. In this case, Secretary of State John

438. Id. ¶ 5.9.
439. Id. ¶ 5.13.
440. U.N. Secretary-General, supra note 164, ¶ 19.
441. ICISS, supra note 37, ¶ 5.15.
442. Id. ¶ 5.19.
443. Id.
444. Brown, supra note 147, at 1738.
445. Remarks Prior to Discussions with Prime Minister Tony Blair of the United Kingdom and an Exchange with Reporters in Cologne, 35 WEEKLY COMP. PRES. DOC. 1132, 1134 (June 18, 1999).
Kerry announced on January 15, 2014, that the United States would provide an additional $380 million in humanitarian aid to the Syrian people, bringing the total U.S. funding for humanitarian assistance to the Syrian people to nearly $1.7 billion since the crisis began.\footnote{450} The aid included food, clean water, shelter, medical care, and relief supplies to over 4.2 million people inside Syria and to more than 2 million refugees across the region.\footnote{451} President Obama also stated that the United States will provide Jordan with $1 billion in loans to alleviate the strain of over 600,000 Syrian refugees.\footnote{452}

President Trump has stated that more aid would be provided to countries like Jordan that are carrying the brunt of the refugees seeking escape from Syria.\footnote{453} As of this writing, however, he has not made any statements regarding specific plans for Syria, and thus it is unclear whether President Trump will maintain the amount of aid President Obama promised. If history is any indicator, however, it is likely that a large amount of aid will still be provided, and thus the rebuilding prong should be met.

**CONCLUSION**

Syria’s use of chemical weapons against its own people is undeniably a violation of international law. As a member of the United Nations, Syria was bound to uphold the values of the Universal Declaration of Human Rights, and as a signatory to the 1925 Geneva Protocol, Syria was prohibited from using chemical weapons. Moreover, the Chemical Weapons Convention is almost universally agreed to, so Syria was bound to those terms under customary international law.

The principles of nonintervention in the U.N. Charter should be preserved to maintain social and political order. But the terms of the Charter also constrain nations that truly want to make a difference when human rights atrocities occur. The doctrine of humanitarian intervention and the responsibility to protect allow very narrow flexibility from the confines of the Charter. While still developing, this emerging doctrine is a path-


\footnote{451}{Id.}


\footnote{453}{While President Trump has promised monetary support to assist refugees abroad, he has been clear that he will not permit the entry of thousands of refugees into the United States, arguing that he seeks to prevent entry of terrorists masquerading as refugees. Such a policy flouts U.S. obligations under international refugee law, but that issue is beyond the scope of this article. President Trump’s overall policy regarding Syria is not clear as of this writing. For example, his administration has issued conflicting statements regarding his position on the overthrow of Syrian President Assad.}
way to help ensure the safety and protection of innocent lives against tyranny.

The United States, not only as a permanent member of the Security Council but also as one of the most powerful nations in the world, is poised to intervene when gross human rights violations occur. Though the United States has not taken action in every instance of such violations, Syria provides a unique situation because the gravity of the crime has massive implications for the security of the entire globe. Thus, the United States and other nations should be able to intervene and fulfill their responsibility to protect when acts, like the use of chemical weapons, show extreme disregard for and brutality against the innocent and may be easily perpetrated across borders. As former President Obama said:

[T]he moral thing to do is not to stand by and do nothing. I would much rather spend my time talking about how every 3- and 4-year-old gets a good education than I would spending time thinking about how I can prevent 3- and 4-year-olds from being subjected to chemical weapons and nerve gas. . . . I can’t avoid those questions, because as much as we are criticized, when bad stuff happens around the world, the first question is, what is the United States going to do about it?  

President Trump called “on all civilized nations to join us in seeking to end the slaughter and bloodshed in Syria . . . . [W]e hope that as long as America stands for justice, that peace and harmony will, in the end, prevail.” Too many times in history, the United Nations has ignored blaring warning signs about human rights violations. It did so in Rwanda, Cambodia, and the Balkans because of ambivalence or political agendas. “The United Nations and its Member States remain under-prepared to meet their most fundamental prevention and protection responsibilities. We can, and must, do better. Humanity expects it and history demands it.”

456. U.N. Secretary-General, supra note 164, ¶ 54.
457. Id. ¶ 6.
458. Id.