HUMANITARIAN INTERVENTION IN SYRIA: IS CRISIS RESPONSE AND LIMITED CONTINGENCY OPERATIONS THE SOLUTION?

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> *[I]f humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?*[1]

I. Introduction

On August 21, 2013, Syrian military forces loyal to President Bashar Assad allegedly launched a poisonous "gas attack" on thousands of civilians outside Damascus.[2] In the days that followed, the United Nations Security Council (UNSC) debated potential responses, including use of force measures to prevent further blatant violations of international law. Meanwhile, the British government announced on August 29, 2013, that Syria's use of chemical weapons was a "serious crime of international concern," declaring it "a breach of customary

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[1] Kofi A. Annan, U. N. Sec'y–Gen, *We the Peoples, The Role of the United Nations in the 21st Century*, 48, U.N. Sales No. E.00.I.16 (2000), http://www.unmillenniumproject.org/documents/wethepeople.pdf.

[2] Abdulrahaman al–Masri & Louise Osborne, *Syria Opposition Claims Hundreds Dead in "Gas" Attack*, USA TODAY (Aug. 21, 2013, 6:07 PM), http://www.usatoday.com/story/news/world/2013/08/21/syria-poisonous-gas-attack/2680089.

international law" that amounted to "a war crime" against humanity.[3] The British Prime Minister outlined his legal position justifying the use of military force, arguing that "the aim is to relieve humanitarian suffering by deterring or disrupting the further use of chemical weapons."[4] Britain also announced that if the UNSC failed to approve the use of force pursuant to Chapter VII of the Charter of the United Nations (UN Charter), "the [United Kingdom] would still be permitted under international law to take exceptional measures in order to alleviate the scale of the overwhelming humanitarian catastrophe in Syria . . . under the doctrine of humanitarian intervention."[5] The United States advanced a similar argument without specifically identifying humanitarian intervention as a legal basis for the use of force. President Barack Obama, noting the need to protect innocent civilians, declared in an address to the American public that it was "in the national security interest of the United States to respond to the Assad regime's use of chemical weapons through a targeted military strike."[6]

Ultimately, the UNSC stalemated on the issue of the use of force,[7] Parliament voted against it,[8] and a diplomatic settlement was reached,[9] ending the controversy before Congress considered the President's strike proposal.[10] But what if the diplomatic resolution had failed, and the Syrian government again resorted to employing chemical weapons against its own citizens? What if the international community then failed to agree on an appropriate response and did not act collectively in order to prevent further atrocities? The doctrine of humanitarian intervention represents a possible exception to the prohibition on the use of force found in Chapter 2(4) of the UN Charter, but current United States military doctrine is inadequate in the event of such a mission. Nevertheless, judge advocates should extract relevant elements from existing crisis response and limited contingency operations doctrine in order to craft a responsive legal

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[3] PRIME MINISTER'S OFFICE, *Chemical Weapon Use by Syrian Regime: UK Government Legal Position* (Aug. 29, 2013), https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version.

[4] *Id.*

[5] *Id.*

[6] *Id*.

[7] *Syria Resolution Authorizing Military Force Fails in U.N. Security Council*, CBS NEWS (Aug. 28, 2013, 4:48 PM), http://www.cbsnews.com/news/syria-resolution-authorizing-military-force-fails-in-un-security-council.

[8] *Syria Crisis: Cameron Loses Commons on Vote on Syria*, BBC (Aug. 30, 2013, 6:13 PM), http://www.bbc.co.uk/news/uk-politics-23892783.

[9] Laura Smith–Spark & Tom Cohen, *U.S., Russia Agree to Framework on Syria Chemical Weapons*, CNN (Sep. 15, 2013, 10:25 AM), http://www.cnn.com/2013/09/14/politics/us-syria.

[10] *Obama Asks Congress to Delay Vote on Use of Force in Syria*, ALJAZEERA AMERICA (Sep. 10, 2013, 6:58 PM), http://america.aljazeera.com/articles/2013/9/10/president-obama-sayssomethingaboutsyria.html.

framework that addresses the legal issues arising in humanitarian intervention missions.

Humanitarian intervention is not a new concept. Hugo Grotius wrote in *De Jure Belli est Pacis*, "If a tyrant . . . practices atrocities towards his subjects, which no just man can approve, the right of human social connexion [sic] is not cut off in such a case . . . . It would not follow that others may not take up arms for them."[11] However, the role of humanitarian intervention in modern international relations is far from settled. Part I of this article examines what humanitarian intervention is, what triggers it, and its legal application in U.S. crisis response and limited contingency operations. Part II introduces key elements of the doctrine of humanitarian intervention, including the responsibility to protect doctrine and its application in international law. Part III analyzes the current U.S. doctrine of crisis response and limited contingency operations, identifies the challenges humanitarian intervention presents to that doctrine, and recommends a possible solution that addresses these challenges.

II. Humanitarian Intervention Within the United Nations Framework

A. The Charter of the United Nations

It is important to first understand several key provisions of the UN Charter and how they relate to the legal doctrine of humanitarian intervention before examining the doctrine itself. The first of these key provisions, Article 2(1), recognizes the right of state sovereignty. It states, "The organization is based on the principle of sovereign equality of all its Members."[12] Article 2(7) reinforces the principle of sovereignty, noting that "[n]othing contained in the present Charter shall authorize the United Nations (UN) to intervene in matters which are essentially within the domestic jurisdiction of any state . . . ."[13] Thus, sovereignty is recognized as the bedrock principle governing the international relations of states. Further, "the modern international system is founded on the principle that sovereign states have a right to non–intervention; to be free from unwanted external involvement in their affairs." [14] The doctrine of humanitarian intervention challenges this traditional view by elevating human rights violations above the state's claim to sovereignty.

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[11] NICHOLAS J. WHEELER, SAVING STRANGERS: HUMANITARIAN INTERVENTION IN INTERNATIONAL SOCIETY 45 (2000); *and* F. KOFI ABIEW, THE EVOLUTION OF THE DOCTRINE AND PRACTICE OF HUMANITARIAN INTERVENTION 35 (1999) (citing GROTIUS, DE JURE BELLI EST PACIS (Amsterdam 1631)).

[12] UN Charter art. 2, para.1.

[13] *Id.* para. 7.

[14] TAYLOR B. SEYBOLT, HUMANITARIAN MILITARY INTERVENTION: THE CONDITIONS FOR SUCCESS AND FAILURE 1 (2007).

However, while it is generally accepted that certain forms of interfering in a state's internal affairs in response to human rights violations and abuses is permissible, disagreement persists as to the legality of such an intervention in the absence of consent of the state or the United Nations. Proponents of humanitarian intervention suggest that Article 2(1)'s recognition of sovereignty is not an absolute bar to intervention if the underlying intent of the intervention is to prevent human atrocities because the human rights violation "raises moral concerns and questions about the very legitimacy of that sovereignty."[15] Respect for human rights becomes paramount for the international community recognizing that state's claim to sovereignty.[16] Syria's decision to employ chemical weapons against its own citizens represents a gross human rights violation that challenges its claim to sovereignty. However, Syria uses sovereignty as a shield to prevent intervention in its internal affairs, even when internal affairs justify an international response.

While not as important as the sovereignty principle, Article 1 of the UN Charter is another key provision. This provision addresses the purpose of the UN Charter and provides guidelines for international relations. Article 1(1) directs the UN to "maintain peace and security" by taking "collective measures for the prevention and removal of all threats to the peace . . . ."[17] Article 1(3) states that another purpose of the UN is to "achieve international cooperation in solving problems of a . . . humanitarian character and in promoting and encouraging respect for fundamental freedoms . . . ."[18] The obligation to maintain peace and security lies with the UNSC, as it has both the legal authority and the responsibility to undertake measures to stop and prevent large–scale violations of human rights.[19] This authority includes authorizing military enforcement measures pursuant to Chapter VII to restore the peace.[20]

However, humanitarian intervention carves out an exception to the UN Charter's general prohibition against the use of force by creating a legal obligation for members of the international community to act, even in, and perhaps especially in, those cases where the UNSC fails to do so.[21] As such, a legal

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[15] Jonah Eaton, *Note, An Emerging Norm? Determining the Meaning and Legal Status of the Responsibility to Protect*, 32 MICH. J. INT'L L. 765, 770–71 (2011).

[16] Lieutenant Commander Tahmika Ruth Jackson, *Bullets for Beans: Humanitarian Intervention and the Responsibility to Protect in Natural Disasters*, 59 NAVAL L. REV. 1, 4 (2010).

[17] UN Charter art.1, para. 1.

[18] *Id.* at para. 3.

[19] TERRY D. GILL & DIETER FLECK, THE HANDBOOK OF THE INTERNATIONAL LAW OF MILITARY OPERATIONS 221 (2010).

[20] *Id.*

[21] Harold Koh, *Syria and the Law of Humanitarian Intervention (Part II: International Law and the Way Forward)*, JUST SECURITY (Oct. 2, 2013, 9:00 AM), http://justsecurity.org/2013/10/02/koh-syria-part2/ ("The [United States] and its allies could treat Syria as an avenue for lawmaking to crystallize a limited concept of humanitarian intervention,

question arises as to the legality of employing force in the absence of UNSC approval. In Syria, once the UNSC failed to authorize the use of force, the legal issue became whether a state may legally use force to prevent further human rights violations. A strict reading of the UN Charter renders such intervention illegal, but proponents of humanitarian intervention disagree.

The final consideration in this argument arises in the third set of key UN Charter provisions. Of these three sets of provisions, the use of force remains the most controversial aspect of the humanitarian intervention discussion. Article 2(4) of the UN Charter specifically states, "All 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 UN."[22] This provision combines all three of the key provisions discussed above—respect for sovereignty, conduct of international relations, and the use of force.

However, Article 2(4) also introduces a preference for peaceful resolution of disputes among or between member states. This preference for peaceful dispute resolution arises in other articles—members agree that armed force is not to be used[23] and that members will settle their disputes peacefully.[24] But Article 2 contemplates that the UN and the UN Charter are the principal references in judging member states' behavior toward one another, especially in terms of internal affairs, such as territorial integrity and political independence. Humanitarian intervention's viability as legal doctrine rests on its ability to maintain a human rights focus, and prevent ulterior political motives (i.e., a regime change) that states may have in pursuing a mandate from the UN and the UNSC.

Although these three key provisions are at the forefront of the UN Charter, one critical element to the humanitarian intervention debate—human rights—is not. While the preamble reaffirms "faith in fundamental human rights" and seeks to promote "social progress and better standards of life,"[25] it is not until Article 55 that considerable attention is directed toward enabling human rights.[26] In Article 56, UN members agree to take action to achieve the intent of Article 55.[27]

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capable of breaking a veto stranglehold in extreme circumstances, such as to prevent the deliberate use of forbidden weapons to kill civilians.").

[22] UN Charter art. 2, para. 4.

[23] *Id.* at Pmbl.

[24] *Id.* at art. 2, para. 3.

[25] *Id.* at Pmbl.

[26] *Id.* at art. 55, para. c. This article states that the United Nations (UN) "shall promote universal respect for, and observance of, human rights and fundamental freedoms for all . . . ." *Id.*

[27] *Id.* at art. 56 ("All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.").

The importance of these two provisions pales in comparison to the provisions prohibiting the use of force. Simon Chesterman analyzes those provisions and notes protection of human rights appears to be less important than the concept of state sovereignty, stating,

> The tension between sovereignty and human rights in the international legal order established after the Second World War is manifest in the opening words of the UN Charter. War is to be renounced as an instrument of national policy. Human rights are to be affirmed. But in its substantive provisions, the Charter clearly privileges peace over dignity: the threat or use of force is prohibited in Article 2(4); protection of human rights is limited to the more or less hortatory provisions of Articles 55 and 56.[28]

Proponents of humanitarian intervention counter, however, that human rights violations are a justifiable basis for using force even without UN approval, as "international protection and promotion of human rights" prevents future atrocities.[29] However, this argument fails when applied to the actual text of the UN Charter as outlined previously. The UN Charter's preference for sovereignty and collective action in the absence of peaceful resolution of disputes weighs against this unwritten basis for unilateral action in the internal affairs of a state. When applying this latter preference for sovereignty to the situation in Syria, the strict reading and application of the UN Charter prevented outside interference in what was considered an internal affair. Having described the UN Charter framework, understanding the legal doctrine of humanitarian intervention is the next step.

B. Humanitarian Intervention

The concept of humanitarian intervention arises where the text of the UN Charter and international human rights law[30] collide. Although several scholars

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[28] SIMON CHERSTERMAN, JUST WAR AND JUST PEACE: HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW 45 (2001).

[29] ABIEW, *supra* note 11, at 75.

[30] The essential components of international human rights law are easily identified. They exists in two forms: treaty law and customary international law. RESTATEMENT (THIRD) OF THE FOREIGN REL. LAW OF THE U.S. § 701 (1987). With treaty law, one must look to those treaties which were signed and ratified by the United States to determine their legal effect. Customary international law presents a larger problem. The United States views certain fundamental human rights as customary international law and finds that a "State violates international law when[,] as a matter of policy[,] it practices, encourages, or condones a violation" of these rights. *Id.* at § 702. The acceptance of certain human rights as customary international law has significant operational implications for U.S. military force as customary international law is considered part of the law of the United States. *Id*.

have attempted to define humanitarian intervention, reaching consensus for a universal definition has proven difficult. For example, the doctrine of humanitarian intervention is defined as the responsibility imposed on the international community "to protect nationals of another state from inhuman and cruel treatment within their state."[31] A second proposed definition focused on what it is meant to achieve: "[I]n brief, humanitarian intervention is meant to protect fundamental human rights in extreme circumstances; it is not meant directly to protect or promote civil and political rights."[32]

Yet another scholar proposed defining humanitarian intervention as "the use of armed force by a state (or states) to protect citizens of the target state from large–scale human rights violations there."[33] Nevertheless, applying any of the proposed definitions alone fails to address the heart of the issue: whether humanitarian intervention is a proper legal basis for the use of force when human rights violations are so egregious that they arguably justify another state intervening in the state's internal affairs to prevent further abuses.[34] Further, the lack of a "consensus definition" frustrates attempts by the international community to reach an agreement on the legality of intervening in the internal affairs of a sovereign state in order to prevent human rights abuses.

Despite the lack of a "consensus definition," two clearly defined sides mark the humanitarian intervention debate. The majority view finds that humanitarian intervention conflicts with the prohibition on the use of force found in Article 2(4) of the UN Charter, but it can be "morally and/or politically justified and condoned

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at § 111, § 701. It is difficult, however, to determine which human rights the United States considers fundamental human rights, such that they are considered customary international law. *Id.* at § 702.

> The Restatement gives the following examples of human rights that fall within the category of Customary International Law (CIL): prohibitions on genocide, slavery or slave trade, murder or causing the disappearance of individuals, torture or other cruel, inhuman, or degrading treatment or punishment, prolonged arbitrary detention, systematic racial discrimination, and consistent patterns of gross violations of internationally recognized human rights.

Id.

[31] ANTHONY CLARK AREND & ROBERT J. BECK, INTERNATIONAL LAW AND THE USE OF FORCE: BEYOND THE UN CHARTER PARADIGM 114 (1993).

[32] SEYBOLT, *supra* note 14, at 6.

[33] AREND & BECK, *supra* note 31, at 113.

[34] WHEELER, *supra* note 11, at 28. "Humanitarian intervention exposes the conflict between order and justice at its starkest, and it is the archetypal case where it might be expected that international society would carve out an explicit exception to its rules. After all, what is the point of upholding these if governments are free to slaughter their citizens with impunity?" *Id.*

or excused from a legal perspective . . . ."[35] The minority view holds that humanitarian intervention does not violate Article 2(4) of the Charter.[36] Both sides agree that the issue of humanitarian intervention "arises in cases where a government has turned the machinery of the state against its own people, or where the state has collapsed into lawlessness."[37] In Syria, the doctrine of humanitarian intervention clearly applied. Nevertheless, the international community reached a stalemate when deciding whether the use of force was appropriate. The UNSC's failure to agree resulted in a diplomatic solution that did not involve the use of force, even though proponents argue that humanitarian intervention justified the use of force. Applying a strict interpretation of Article 2(4) of the UN Charter, the international community reverted to other means to resolve the issue even though a variant of humanitarian intervention—responsibility to protect—was created to address this very situation.

C. The Responsibility to Protect

The final element of the academic analysis of humanitarian intervention requires a discussion of the doctrine of responsibility to protect (R2P). Arguably, the R2P doctrine arose from the failures of humanitarian intervention to respond to several egregious human rights atrocities. The international community's inability to meaningfully and collectively resolve significant humanitarian atrocities in places like Kosovo, Rwanda, Bosnia, and Somalia so concerned then–Secretary General Kofi Annan that in his address to the 54th session of the UN General Assembly, he challenged member states to find a way to respond to future crises.[38] He called on member states to "find common ground in upholding the

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[35] GILL & FLECK, *supra* note 19, at 224-25.

[36] *Id. See also* ABIEW, *supra* note 11, at 95.

> It is argued that provided conditions and limits set out under international law are met, there would be no violation of the territorial integrity or political independence of the state. Since humanitarian intervention does not seek to challenge attributes of sovereignty, territorial integrity or political independence of a state, it will not fall within the scope of the Article 2(4) prohibition of force norm. *As to Article 2(7)*, it is now increasingly accepted that human rights issues are no longer strictly within the domestic purview of states. It is a matter of concern for the whole world community. Consequently, human rights abuses prompting humanitarian action are no longer "matters within the domestic jurisdiction of a state," and so will not amount to a violation of the non–intervention principle.

Id. at 99 (emphasis added).

[37] WHEELER, *supra* note 11, at 27.

[38] *Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect* 2 (Dec. 2001), http://responsibilitytoprotect.org/ICISS%20Report.pdf, [hereinafter ICISS Report].

principles of the Charter, and act in defense of our common humanity."[39] He issued a similar challenge a year later in his Millennium Report to the General Assembly stating, "[I]f humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?"[40]

Canada responded to this challenge in September 2000, by establishing the International Commission on Intervention and State Sovereignty (ICISS) to identify a legal basis justifying intervention for human protection.[41] The ICISS represents a significant milestone in the evolution of humanitarian intervention because it sought to define humanitarian intervention in terms of, and consistent with, the UN Charter provisions, rather than argue that it was an exception to the Charter.

In December 2001, the ICISS released its report.[42] The report reframed the humanitarian intervention issue by shifting the debate from state sovereignty to a state's responsibility to protect its citizens.[43] Critical to the report's recommendations was the belief that states must act in accordance with accepted international norms to claim sovereignty. Specifically, the report proposed that state sovereignty includes "a responsibility for states to protect their national citizenry from crimes against humanity."[44] The report argues that when states fail to protect their own populations, it is permissible for other states to act in order to prevent violence against innocent civilians.[45] The ICISS's logic rested on the belief that

> exceptional circumstances exist in which the very interest that all states have in maintaining a stable international order requires them to react when all order within a state has broken down or when civil conflict and repression are so violent that civilians are threatened with massacre, genocide, or ethnic cleansing on a large scale.[46]

If a state fails to respect the human rights of its citizens and engages in conduct towards its own population that causes widespread death of its own people, the state forfeits its claim of sovereignty.

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[39] *Id*.
[40] Annan, *supra* note 1.
[41] ICISS Report, *supra* note 38.
[42] *Id.*
[43] Sari Bernstein, *The Responsibility to Protect After Libya: Humanitarian Prevention as Customary International Law*, 38 BROOK. J. INT'L L. 305, 314 (2012).
[44] *Id.*
[45] *Id.* at 305, 314.
[46] ICISS Report, *supra* note 38.

Following the ICISS Report, the 60th session of the UN General Assembly unanimously endorsed the concept of R2P.[47] With that endorsement, states were no longer able to rely on a claim of sovereignty in order to prohibit other states from interfering in their internal affairs in response to a humanitarian crisis. Syria presented the perfect opportunity for application of the R2P doctrine as it met the criteria justifying intervention.

To understand why the R2P failed to gain traction in Syria, one must understand that the concept of responsibility, as applied by the R2P, is two–fold. It includes both the responsibility of a state to protect its citizens from massive human rights abuses, as well as the responsibility of the international community to prevent massive human rights abuses.[48] Pursuant to the R2P, "intervention within a state that fails to protect its citizens from massive human rights violations does not constitute an intrusion into that state's sovereignty, but rather appears as the realization of a responsibility which is shared by the state and by the international community."[49] As such, the international community has a greater responsibility to prevent humanitarian atrocities than it does to prevent breaches of state sovereignty.

Following this logic, a state may not rely on its claim to sovereignty as a shield to prevent against outside intervention. Further, human rights violations become a sufficient legal basis for the international community to act in order to prevent humanitarian atrocities, even in the absence of the host state's approval. In Syria, the state failed to protect its citizens when it launched a chemical attack against them; however, the international community did not agree that it had a responsibility to use force to intervene and prevent further atrocities. In the case of Syria, the R2P could not overcome the perceived prohibition on the use of force to intervene in the internal affairs of a state.

Ultimately, the focus of the humanitarian intervention debate returns to the authority of the UN and the UNSC to act. The development of the R2P doctrine

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[47] 2005 World Summit Outcome, G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Sept. 16, 2005).

> [W]e are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case–by–case basis and in cooperation with relevant regional organizations as appropriate, 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.

Id.

[48] Mehrdad Payandeh, *With Great Power Comes Great Responsibility? The Concept of the Responsibility to Protect Within the Process of International Lawmaking*, 35 YALE J. INT'L L. 469, 470–71 (2010).

[49] *Id.*

may have reinforced the UNSC and the international community's "responsibility to undertake and support measures of protection, including . . . military enforcement measures . . . in response to large–scale and systematic human rights violations . . . ."[50] However, "there is no guarantee that the Council will invariably be able to come to a decision to undertake measures that are likely to end such violations."[51] Therefore, the R2P doctrine remains flawed. As identified by one author, "any understanding of 'responsibility to protect' as a very broad–based doctrine, which would open up at least the possibility of military action in a whole variety of policy contexts, is bound to give the concept a bad name."[52] Two recent historical examples illustrate this unintended effect, discussed next.

D. Humanitarian Intervention and Contemporary Military Operations

Interventions in Kosovo and Libya illustrate the evolution of humanitarian intervention and the R2P in international relations. Their outcomes had a direct effect on the decisions of members of the international community regarding whether or not to use force in Syria. Kosovo was a multilateral operation undertaken in 1999 by the North Atlantic Treaty Organization (NATO) after the UN failed to authorize the use of force.[53] The permanent members of the UNSC failed to agree on a collective response (i.e., authorizing an intervening force) to the ethnic cleansing taking place, despite the fact that twelve of the fifteen UNSC members supported the use of force to prevent further atrocities.[54] Further complicating the Kosovo morass was the fact that none of the proponents for the use of force could agree on a legal basis to intervene.[55] Of the four factors the United States relied upon, two resembled humanitarian intervention—the humanitarian catastrophe in Srebrenica and the serious violations of international human rights law that occurred in Kosovo.[56] However, the United States did not assert humanitarian intervention as a legal basis for intervention at that time.[57] Despite the fact that it was not explicitly asserted, humanitarian intervention dominated the post–Kosovo conflict discussion.

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[50] GILL & FLECK, *supra* note 19, at 222.
[51] *Id.* at 222–23.
[52] Gareth Evans, *The Responsibility to Protect in Environmental Emergencies*, 103 AM. SOC'Y INT'L L. PROC. 27, 29 (2009).
[53] Lieutenant Colonel Michael E. Smith, *North Atlantic Treaty Organization (NATO), the Kosovo Liberation Army, and the War for an Independent Kosovo: Unlawful Aggression or Legitimate Exercise of Self-Determination?*, ARMY LAW., Feb. 2001, at 1 (providing an excellent discussion of the events and circumstances leading to the NATO intervention in Kosovo); *See also* James P. Terry, *Rethinking Humanitarian Intervention After Kosovo: Legal Reality and Political Pragmatism*, ARMY LAW., Aug. 2004, at 4.
[54] Terry, *supra* note 53, at 4.
[55] JAMES E. BAKER, IN THE COMMON DEFENSE 211 (2007) (suggesting "Nineteen NATO allies found nineteen different paths to lawfully justify NATO air operations").
[56] *Id*.
[57] *Id.*

Following the conclusion of hostilities, Kosovo led many scholars to re–examine humanitarian intervention. For many, Kosovo presented a contradiction as it related to "UN Charter values on the one hand, and required UN procedures on the other."[58] One scholar writes, "When the UN Security Council is unable to act because of a potential veto, humanitarian intervention by a group of concerned states, as in Kosovo, thus it becomes critical to upholding the UN Charter principles."[59] In the end, multilateral action was undertaken in Kosovo to prevent further humanitarian violations that were a threat to international peace and security—not to challenge Yugoslavia's political independence or territorial integrity.[60] The intent of the intervention remained humanitarian and not political. This intent was significantly different than the intent of proposed intervention in Syria.[61] Before fully examining the situation in Syria, the recent operations in Libya merit examination.

While Kosovo represented progress in humanitarian intervention's evolution as a viable legal basis for the use of force, recent intervention in Libya in 2011 resulted in a step backward. The decision by the UN to intervene in Libya was in response to a civil war wherein rebels sought to overthrow the regime of Muammar Gaddafi.[62] While a humanitarian intervention in name, the purpose for intervention in Libya appeared to shift from humanitarian intervention to regime change as it progressed. This shift in purpose helps explain Russia's reluctance to authorize the use of force in Syria. To understand why, the analysis must start with the UNSC Resolution authorizing the use of force in Libya.

On March 17, 2011, the UNSC issued Resolution 1973 (UNSCR 1973), which demanded a "complete end to violence and all attacks against, and abuses, of civilians."[63] Further, this resolution authorized "all necessary measures" to protect civilians, in addition to enforcement of a no–fly zone and an arms embargo.[64] The resolution served a humanitarian purpose, as it noted the "heavy

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[58] Terry, *supra* note 53, at 36, 45 (arguing that Kosovo "is especially appropriate for consideration since it presumably met all the requirements for humanitarian intervention under pre–UN Charter law". While not the purpose of this article, Terry's argument is significant as the debate on humanitarian intervention and responsibility to protect evolves.

[59] *Id.* at 36, 38.

[60] *Id.* at 36, 45. *See also* S.C. Res. 1239, U.N. Doc. S/RES/1239 (May 14, 1999); S.C. Res. 1203, U.N. Doc. S/RES/1203 (Oct. 24, 1998); S.C. Res. 1160, U.N. Doc. S/RES/1160 (Mar. 31, 1998); S.C. Res. 1199, U.N. Doc. S/RES/1199 (Sept. 23, 1998).

[61] Michael Pearson, Elise Labott & Saad Adebine, *Syria Defiant at Conference; Kerry Rules out al–Assad*, CNN (Jan. 22, 2014), http://www.cnn.com/2014/01/22/world/europe/syria-geneva-talks/ 2/21/2014. Many in the international community continued to demand a regime change in Syria as a pretext to ending the conflict. *Id.*

[62] *See Libya Profile-Timeline*, BBC, http://www.bbc.co.uk/news/world-africa-13755445 (last visited Nov. 23, 2015).

[63] S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

[64] *Id.*

civilian casualties, condemned the "gross and systematic violation of human rights," and labeled certain "widespread and systematic attacks" against civilians as "crimes against humanity."[65] Clearly, the UNSCR contemplated humanitarian intervention as the legal basis to authorize use of force.[66] However, what began as a humanitarian mission to protect civilians "quickly morphed into close–air support for the Libyan rebels and the bombing of no less than forty static targets throughout the country."[67] Having shifted from a humanitarian mission to a political one (regime change), the Libya intervention lost its humanitarian intent as defined in the UNSCR.

Closer examination of the UNSCR's passage explains that the military intervention in Libya was not the result of a unanimous agreement in the UNSC. Russia and China abstained from UNSCR 1973.[68] As NATO's bombing campaign progressed, Russia and China both objected, stating that NATO was exceeding the UNSCR's humanitarian mandate and subsequently pursuing an unauthorized regime change.[69] This belief that the mandate had been exceeded appears to have caused Russia and China to rethink their position on humanitarian intervention, and its application in future crises such as the Syria conflict. Regarding Syria, China specifically stated that it "regretted" its "abstention" on the Libya UNSCR and "pledged not to permit UN measures that could lead to similar action[s] . . . ."[70] Ultimately, Russia and China's veto of the use of force in Syria signaled their frustration with the UNSC's use of humanitarian intervention to interfere in the internal matters of other states.[71] As such, the lasting impact of the Kosovo and Libya interventions on the humanitarian intervention debate remains that an intervention's intent must fulfill a legitimate humanitarian purpose and not a political or military one. Otherwise, humanitarian intervention in places like Syria will remain an aspiration, rather than a realistic option.

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[65] *Id.*

[66] Jamie Herron, *Responsibility to Protect: Moral Triumph or Gateway to Allowing Powerful States to Invade Weaker States in Violation of the U.N. Charter?*, 26 TEMP. INT'L & COMP. L.J. 367, 368 (2012) (citing Vivienne Walt, *Why Syria Won't Get the Libya Treatment from the West*, TIME (Mar. 18, 2012), http://www.time.com/time/world/article/0,8599,2109372,00.html.).

[67] *Id.* at 367, 379–80.

[68] C.J. Chivers & Eric Schmitt, *Libya's Civilian Toll, Denied by NATO*, N.Y. TIMES A-1 (Dec. 18, 2011), http://fib.se/utrikes/item/835-libya's-civilian-toll-from-strikes-denied-by-nato?tmpl=component&print=1; *see also* CNN Wire Staff, *NATO Ends Libya Mission*, CNN (Nov. 5, 2012), http://www.cnn.com/2011/10/31/world/africa/libya-nato-mission/index.html.

[69] *China Says It Was Forced to Veto UN Measure on Syria*, FOXNEWS.COM (Feb. 6, 2012), http://www.foxnews.com/world/2012/02/06/china-defends-its-veto-un-measure-on-syria/.

[70] *Id.*

[71] Major Matthew E. Dunham, *Sacrificing the Law of Armed Conflict in the Name of Peace: A Problem of Politics*, 69 A.F. L. REV. 155, 163–64 (2013). This is an excellent law review article for those seeking additional information on Libya and the ramifications of NATO's actions on later decisions made in response to Syria.

III. Crisis Response and Limited Contingency Operations

Having explored what humanitarian intervention is and what triggers it, the attention of this article now shifts to humanitarian intervention's legal application within existing United States military doctrine. As discussed, the doctrines of humanitarian intervention and responsibility to protect [72] are legitimate possibilities as legal bases for multilateral and unilateral military intervention to remedy widespread humanitarian abuses such as those that occurred in Syria. United States military doctrine contains three distinct types of operations that comprise the range of military operations.[73] Of these three types of operations, Crisis Response and Limited Contingency (CRLC) operations is the doctrine best–suited for application to humanitarian intervention operations as both CRLC and humanitarian intervention share the desired end state of protecting the civilian population.

Whereas humanitarian intervention recognizes the need for the international community to use force to prevent human rights violations that are a threat to international peace and security,[74] CRLC operations provide a force protection capability to address those instances where human rights violations are a threat to U.S. interests. In terms of humanitarian intervention and U.S. CRLC operations, the human rights violations must represent a significant concern to both the United States and to the international community. From a doctrinal standpoint, this is important because CRLC achieves a legitimate humanitarian purpose while avoiding potential political ramifications that may arise in Major Operations and Campaigns, and Military Engagement, Security Cooperation and Deterrence operations.

Another important characteristic of CRLC operations is their size and duration. They are "small–scale, limited–duration operations such as strikes, raids, and peace enforcement, which might include combat depending on the circumstances."[75] They are employed with limited strategic and operational objectives, such as to "protect U.S. interests and/or prevent surprise attack or

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[72] In the interest of brevity and so as not to confuse the two, this article refers to both humanitarian intervention and responsibility to protect doctrines as humanitarian intervention.

[73] JOINT CHIEFS OF STAFF, JOINT PUB. 3-0, JOINT OPERATIONS I-5 (11 Aug. 2011) [hereinafter JP 3-0]. The three distinct types of military operations that make up the range of military operations are: Major Operations and Campaigns; Crisis Response and Limited Contingency Operations; Military Engagement, Security Cooperation, and Deterrence. *Id.*

[74] ABIEW, *supra* note 11, at 82. It is important to remember that humanitarian intervention requires the "gross systematic violations" of human rights that are a "concern to the whole international community." *Id.*

[75] JP 3-0, *supra* note 73, at I-5.

further conflict."[76] Typical CRLC operations include non–combatant evacuation operations (NEOs), foreign humanitarian assistance (FHA), and peace operations.[77] Extracting and then combining applicable elements from these three CRLC operations provides a responsive framework for a humanitarian intervention mission.

A. Noncombatant Evacuation Operations

Noncombatant Evacuation Operations (NEO) evacuate noncombatants "from foreign countries when their lives are endangered by war, civil unrest, or natural disasters to safe havens as designated by the Department of State."[78] Thus, NEOs alone do not qualify as a comprehensive U.S. response mechanism to humanitarian rights violations, such as the use of chemical weapons on civilians in Syria. But, consistent with humanitarian intervention, current NEO doctrine contemplates the need to evacuate noncombatants under conditions that "range from civil disorder, to terrorist action, to full scale combat."[79] Further, the expected operational environment for these missions may include areas where the host nation may or may not be receptive to a NEO.[80] As an additional key consideration, NEO doctrine permits the evacuation of non–citizens from threatening situations using military force.[81]

All these elements were present in Syria. However, although NEOs appear to apply to the situation in Syria, most NEOs are limited in capability by the transportation resources available. As the number of noncombatants requiring evacuation increases, the demand for limited transportation assets increases. In Syria, the availability of U.S. transportation assets is a significant limitation on a NEO mission's capability to effectively respond to the crisis.

Despite their inherent limitations, NEOs have proven to be an effective part of small–scale humanitarian intervention–type operations. For example, in Somalia in 1991, U.S. military forces rescued 281 people from thirty different countries in approximately twenty–four hours during Operation Eastern Exit.[82] Based on the success of Operation Eastern Exit, larger–scale NEO missions are supportable under the right circumstances. Significantly, the discussion of rules

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[76] *Id.* at I-5 and V-20.
[77] *Id.* at V-20 to V-29.
[78] JOINT CHIEFS OF STAFF, JOINT PUBLICATION 3-68, NONCOMBATANT EVACUATION OPERATIONS GL-8 (23 Dec. 2010) [hereinafter JP 3-68].
[79] *Id.* at I-4.
[80] *Id.*
[81] U.S. MARINE CORPS, MCDP 1-0, MARINE CORPS OPERATIONS 5-5 (Aug. 9, 2011) [hereinafter MCDP 1-0); U.S. DEP'T OF ARMY, FIELD MANUAL 3-0, OPERATIONS 2-7 (Feb. 2008) [hereinafter FM 3-0].
[82] JP 3-0, *supra* note 73, at V-21.

of engagement found in current NEO doctrine provides a potential starting point for planning humanitarian intervention missions.

Joint Publication 3–0, *Joint Operations*, provides specific guidance regarding rules of engagement addressing operational concerns, starting with receipt of the warning order, [83] and includes a discussion about non–lethal weapons employment.[84] However, much of the rules of engagement discussion remains a pro forma recounting of the four principles of the law of armed conflict and provides few specifics. Despite its shortcomings, the rules of engagement (ROE) appendix[85] is an excellent starting point for developing mission–specific rules of engagement because it provides key elements for consideration by the staff preparing for a mission such as Syria. From these key elements, judge advocates can develop responsive rules of engagement to meet the specific nuances of the humanitarian intervention mission.

B. Foreign Humanitarian Assistance

In addition to NEOs, a second type of CRLC operations, Foreign Humanitarian Assistance (FHA) operations, provides a significant capability to protect civilians. The function of FHA operations is to "relieve or reduce human suffering, disease, hunger, or privation."[86] They often occur on short notice and provide aid and assistance in a specific crisis "rather than as more deliberate programs to promote long term stability." Foreign Humanitarian Assistance efforts can supplement or complement efforts of other entities, to include the efforts of the host nation and non–governmental organizations, which have the primary responsibility of providing aid.[87] The larger concern arises when the host nation is the source of the need for the humanitarian intervention, as was the case in Syria. The inability of the host government to provide aid or assistance complicates the application of FHA operations, doctrinally.

While current U.S. FHA doctrine considers host state failure as a possibility, it is more of an afterthought. For example, the Marine Corps specifically identifies three "basic types of foreign humanitarian assistance operations" that may require U.S. military forces—"UN–led, United States action in concert with

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[83] JP 3-68, *supra* note 78, at A-1 to A-3.
[84] *Id.* at A-2.
[85] JOINT CHIEFS OF STAFF, JOINT PUB. 3-29, FOREIGN HUMANITARIAN ASSISTANCE IV-15 (17 Mar. 2009) [hereinafter JP 3-29].
[86] JOINT CHIEFS OF STAFF, JOINT PUB. 3-07, STABILITY OPERATIONS I-4 (29 Sept. 2011) [hereinafter JP 3-07]; *see also* MCDP 1-0, *supra* note 81, at 5-4; U.S. DEP'T OF ARMY, FIELD MANUAL 3-07, STABILITY OPERATIONS Appendix E-1 (Oct. 2008) [hereinafter FM 3-07].
[87] JP 3-0, *supra* note 73, at V-25. *See also* MCDP 1-0, *supra* note 81, at 5-4; FM 3-07, *supra* note 86, at E-1.

other multinational forces, and United States unilateral action."[88] The remainder of the doctrinal publication focuses on the two former possibilities rather than the latter. Significantly, current joint doctrine describes FHA missions as limited in scope and in duration and viable only in those cases where the assistance needed is in excess of that which can be provided by the host nation or the normal relief agencies.[89] The Army publication contemplates a higher degree of UN involvement and does not mention the possibility of unilateral action.[90] As such, FHA doctrine would not apply in places like Syria where the government is prohibiting any form of assistance.

Despite this apparent shortcoming, FHA doctrine addresses ROE more fully than NEO doctrine. Joint Publication 3-29 (JP 3-29), *Foreign Humanitarian Assistance*, discusses ROE in two sections and includes a sample ROE card. The first section discusses its development and application to both U.S. forces and multi–national partners.[91] The ROE card provides a valuable template that a judge advocate could modify in order to meet the requirements of a humanitarian intervention mission. In addition, Appendix A, JP 3-29 identifies several other concerns regarding humanitarian intervention missions such as civilian criminal conduct, fires, riot control agents, and the need for the rules to evolve as the mission evolves.[92] All of these elements of existing joint doctrine provide valuable considerations and application for situations like that found in Syria, especially when combined with NEO and Peace Operations.

C. Peace Operations

Peace enforcement operations provide the best doctrinal framework for conducting military operations pursuant to a humanitarian intervention justification, of the aforementioned three elements of CRLC doctrines. When combined with key elements of the two other CRLC operations discussed above, a viable doctrinal framework can be applied to humanitarian intervention missions. Joint Publication 3-07, *Stability Operations*, explains that peace operations

> [e]ncompass multiagency and multinational crisis response and limited contingency operations involving all instruments of national power with military missions to contain conflict, redress the peace, and shape the environment to support

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88 JP 3-0, *supra* note 73, at V-25; MCDP 1-0, *supra* note 81, at 5-4.
89 MCDP 1-0, *supra* note 81, at 5-4.
90 FM 3-07, *supra* note 86, at Appendix E-1.
91 JP 3-29, *supra* note 85.
92 *Id.* at A-7 to A-8.

> reconciliation and rebuilding and facilitate the transition to legitimate governance.[93]

Current peace operations such as peacekeeping,[94] peace enforcement,[95] and peace building[96] involve the use of military force to enforce peace agreements and prevent further conflict.[97] Peace operations require the consent of all parties to the dispute and are typically authorized pursuant to Chapter VI of the UN Charter.[98] In Syria, the Syrian government withheld consent to peacekeeping measures, frustrating international efforts to assist victims of chemical attack.

However, as discussed in Part I, consent is no longer an issue because humanitarian intervention focuses on those instances when the subject state fails to protect its citizens, thus justifying a need for the international community to act in the absence of consent. Of greater importance, peace enforcement operations serve the primary purpose of maintaining peace and restoring order pursuant to a mandate.[99] While humanitarian intervention contemplates a mandate from the UN, it does not preclude the possibility of a unilateral U.S. mandate as long as its primary purpose is to maintain or restore peace.

Assuming a unilateral U.S. mandate to intervene in Syria is authorized, the analysis then shifts to the potential actions to support the mandate. Doctrinally, the permissible actions in furtherance of peace enforcement operations include "enforcement of exclusion zones, protection of personnel providing foreign humanitarian assistance, restoration of order, and forcible separation of belligerent parties."[100] As with any humanitarian intervention, the intent of the unilateral action must be to seek peace, and the actions taken in furtherance of peace must remain within the mandate authorizing the use of military force. At present, this possibility fails in Syria because one of the United States' stated policy goals remains regime change.[101] However, removing this condition in

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[93] JP 3-07, *supra* note 86, at VIII.

[94] MCDP 1-0, *supra* note 81, at 5-8. Peacekeeping operations "monitor and facilitate implementation of an agreement, such as cease fire or truce, and support diplomatic efforts to reach a long term political settlement." *Id. See also* FM 3-0, note 81, at 2-8.

[95] MCDP 1-0, *supra* note 81, at 5-8. Peace enforcement operations employ military forces to maintain or restore peace and order as contemplated in resolutions or through sanctions. *Id. See also* FM 3-0, *supra* note 81, at 2-9.

[96] MCDP 1-0, *supra* note 81, at 5-9. Peace building operations are diplomatic and economic efforts to strengthen governments, in order to prevent a return to conflict. *Id. See also* FM 3-0, *supra* note 81, at 2-9.

[97] JOINT CHIEFS OF STAFF, JOINT PUB. 3-07.3, PEACE OPERATIONS 3-1 (1 Aug. 2012) [hereinafter JP 3-07.3]. *See also* MCDP 1-0, *supra* note 81, at 5-8; FM 3-0, *supra* note 81, at 2-8.

[98] JP 3-07.3, *supra* note 97.

[99] *Id.*

[100] *Id.*

[101] *Kerry Calls for Regime Change*, PRESSTV (Mar. 13, 2014, 2:45 PM), http://www.

furtherance of purely peaceful intentions would alleviate this issue, and therefore peace operations remain a viable option.

Unlike NEO and FHA doctrinal publications, peace operations doctrine contains little in the way of express rules of engagement; however, JP 3-07 contains sections on detainee handling procedures, interaction with the International Committee of the Red Cross,[102] and an excellent commentary on detention standards as well as the need for a well–trained guard force.[103] These sections on detention operations are relatively substantial and help to lay a useful doctrinal framework; judge advocates should incorporate this portion of the doctrine because it offers a relatively solid foundation for responding to detention operations in a humanitarian intervention mission.

IV. Conclusion

The potential for military operations with a humanitarian intervention legal basis challenges current U.S. military doctrine because it does not explicitly address humanitarian intervention. Nevertheless, judge advocates should combine elements of existing CRLC operations doctrine to create a viable legal framework should such a mission arise. Within the evolving threat environment, CRLC operations provide the most responsive doctrine for overcoming the challenge of responding to humanitarian crises.

As demonstrated in Syria, innocent people continue to suffer and die at the hands of their government. In these humanitarian intervention situations, the decision to act becomes the focal point of the debate.[104] The events in Syria have solidified humanitarian intervention as a new legal basis to act, which in turn presents unique possibilities for judge advocates. While U.S. humanitarian intervention doctrine is currently inadequate to fully address humanitarian intervention, the basics of military operations remain the same and judge advocates must find confidence in their similarities and solutions where they differ.

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presstv.com/detail/2014/ 01/22/347096/kerry-calls-for-regime-change-in-syria.

[102] JP 3-07, *supra* note 86, at E-3, 5.

[103] *Id.*

[104] ANNE ORFORD, READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW 15 (2003).