Passport to Plastics: Cosmetic Surgery Tourism, Medical Malpractice, and the Automatic Establishment of Personal Jurisdiction by Way of the Joint Commission International

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The Dangers of Humanitarian Intervention and the Responsibility to Protect Doctrine, and a Partial Solution

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INTRODUCTION

When the United Nations (UN) was formed, one of its most important goals was to render war obsolete. The UN Charter states as a goal the hope to “save succeeding generations from the scourge of war.”¹ When President Franklin D. Roosevelt first described his vision for a post-World War II international organization, he envisioned an organization that would promote and facilitate “international cooperation . . . to consider and deal with the problem of world relations.”² He also wanted a council that would “concern itself with peaceful settlement of international disputes.”³ The UN Charter itself took the then-unprecedented step of outlawing war, stating that “all Members shall settle their international disputes by peaceful means,” and that “all Members shall refrain . . . from the threat or use of force against the territorial integrity or political independence of any state.”⁴ However, the UN Charter does not address the important potential exception of humanitarian intervention. This lack of clarity has led to a robust debate that continues to this day—can a state legitimately use

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force for humanitarian purposes? Today, many countries have embraced the "responsibility to protect" doctrine, which allows countries to intervene in a humanitarian crisis if five criteria are met. One is that of reasonable prospects which asks, is "there a reasonable chance of the military action being successful in meeting the threat in question, and are the consequences of action not likely to be worse than the consequences of inaction?" Unfortunately, this level of scrutiny needs to be revised; instead, it should be more rigorous to account for world leaders' consistent inability to estimate the effects of their intervention. Additionally, cultural disruption should be considered as one of the negative effects in this balancing test to address concerns about the use of humanitarian intervention as a pretext for colonialism.

In this article, I intend to offer a potential solution to address these concerns. In Part I, I will examine the development of the doctrine of humanitarian intervention and its transformation into the Responsibility to Protect. In Part II, I will discuss two of the potential problems with the Responsibility to Protect doctrine. The first problem is countries using humanitarian excuses as a pretext to advance national aims. The second problem is countries not accurately assessing the consequences of intervention. In Part III, I will discuss my potential solution to address these problems - heightening the balance of consequences test. This will be used to determine whether humanitarian intervention should be attempted and requiring countries to consider the desires and culture of the country that is the object of the intervention before intervening.

**PART I: THE HUMANITARIAN INTERVENTION DOCTRINE AND THE RESPONSIBILITY TO PROTECT**

The United Nations Charter seems to forbid intervention in the domestic affairs of other states. The Charter states that nothing in its contents "shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state," but the Genocide Convention of 1948 quickly created an agreed upon exception. The Convention states that "[a]ny Contracting Party may call upon the competent organs of the United Nations to take such action . . . as they consider appropriate for the prevention and

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6. Id. at 711.
suppression of acts of genocide."\(^9\) However, none of the Charter nations acted on the Convention during the Cold War. Gareth Evans, in a piece in the Wisconsin Law Journal, argues that the large number of states joining the UN during the Cold War discouraged humanitarian intervention. States saw the norm of non-intervention as one of the few protections against more powerful international actors.\(^{10}\) Indeed, the general consensus in the twentieth century was that unilateral humanitarian intervention was illegal. The UN Charter doesn't exempt humanitarian intervention from the prohibition against the use of force, and the International Court of Justice ruled in *Nicaragua v. United States* that custom doesn't permit unilateral humanitarian intervention.\(^{11}\)

This status quo changed with the end of the Cold War, as a new era of cooperation between new world powers emerged. Countries began to intervene in the domestic affairs of other countries.\(^{12}\) One particular example is the American-led intervention when Iraq invaded Kuwait.\(^{13}\) In his address to the American people, President George H.W. Bush explained his decision to intervene in terms of humanitarian intervention. Bush said that Iraq, led by Saddam Hussein, had invaded a "helpless neighbor," and "crushed" and "brutalized" that neighbor's people.\(^{14}\) "Our objectives are clear," the President continued, "the government of Kuwait will be restored to its rightful place, and Kuwait will once again be free."\(^{15}\)

President H.W. Bush later used even more explicit humanitarian reasoning to justify an intervention in Somalia. At the time, a "coalition of warlords" had overthrown the dictator, Mohamed Siad Barre.\(^{16}\) When two warlords started to fight between themselves, the conflict destroyed the country's agriculture and resulted in nationwide famine.\(^{17}\) The United Nations eventually sent in peacekeeping forces, and President H.W. Bush supplemented the UN's peacekeepers with American

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15. Id.
17. Id.
In his address to the American people, Bush described the United States’ actions as “a mission that can ease suffering and save lives.” According to Bush, the purpose of the United States’ involvement was to allow food to reach starving Somali citizens, nothing more and nothing less.

The United States was not the only country to intervene in struggles for humanitarian purposes. When a conflict between ethnic Albanians and Serbs broke out in Yugoslavia, the police, paramilitary forces, and the Yugoslavian army retaliated with violence. Several Western powers, including the United States and Great Britain, “demanded a cease-fire, . . . the return of refugees, and unlimited access for international monitors.” When these demands were not met, the North Atlantic Treaty Organization (NATO) “began air strikes against Serbian military targets,” until Yugoslavia agreed to the return of displaced ethnic Albanians. Together, the American intervention in Somalia and NATO’s intervention in Yugoslavia indicated to many commentators that an “exception to the [use of force] . . . [was] gaining acceptance.”

Despite the increased use of humanitarian intervention, a fierce debate still raged over when a “right to intervene” should trump national sovereignty. The Independent International Commission on Kosovo recommended that the UN adopt a “principled framework for humanitarian intervention which could be used to guide future responses to imminent humanitarian catastrophes.” The UN’s Secretary General eventually delegated the task to the International Commission on Intervention and State Sovereignty. The Commission “invent[ed] a new way of talking about humanitarian intervention,” as

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18. Id.
22. Id.
23. Id.
24. Goodman, supra note 11, at 112.
26. Id. at 707 (quoting INDEP. INT’L COMM’N ON KOSOVO, THE KOSOVO REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSONS LEARNED 10 (2000)).
27. Id.
well as clearly and specifically stated when humanitarian intervention was appropriate. According to the Commission, humanitarian intervention was a responsibility, not a right—all countries had a responsibility to protect their own citizens. If a country failed in that duty, it might become the responsibility of another country or countries to step in. To determine when a humanitarian intervention was appropriate, the Commission developed a five-factor test for countries. First, countries should consider the factor of just cause, which looks at whether there is "irreparable harm occurring to human beings." Second, they should consider intent, and whether "the primary purpose of the proposed military action [is] to halt or avert human suffering." Third, countries should weigh whether "every non-military option . . . [has] been explored." Fourth, intervening countries must also make sure to use proportional means. Fifth, the intervening countries must determine the balance of consequences, which weighs the "reasonable chance of the military action being successful in meeting the threat in question, and are the consequences of action not likely to be worse than the consequences of inaction."

Many situations have triggered the Responsibility to Protect since it was created. From December 2007 to February 2008, a wave of ethnic violence swept Kenya due to a disputed presidential election, causing more than 1,000 deaths and driving 500,000 civilians from their homes. The violence moved the French European and Foreign Affairs Minister to call for the United Nations to act under the Responsibility to Protect. Eventually, the United Nations brokered a diplomatic solution to the crisis—a solution that was hailed as "a model of diplomatic action under the Responsibility to Protect." A similar situation arose in Côte d'Ivoire, as violence broke out when the

28. Id. at 708-11.
29. Id. at 708.
30. Id. at 709.
31. Id. at 710.
32. Id.
33. Id.
34. Id.
35. Id. at 711.
36. Id.
38. Id.
"incumbent [president] . . . refused to honor the election results that declared [his opponent] the winner." This time, however, the UN opted for military intervention, declaring in a statement that the Responsibility to Protect included the prevention of mass atrocity crimes and informing the public of the potential for genocide and humanitarian crimes. The United Nations Security Council first permitted a military intervention citing the Responsibility to Protect in Libya. In response to civilian attacks by the ruling regime, the Security Council adopted a resolution directly asserting the Responsibility to Protect. The Council imposed a series of international sanctions, citing the Libyan government's "responsibility to protect its population." Thus, the Responsibility to Protect has become an important part of the conversation surrounding international politics today. Humanitarian intervention and the Responsibility to Protect have important potential for good. However, there are serious concerns about whether this doctrine can be abused.

PART II. SELF INTEREST AND ACCURATELY PREDICTING THE OUTCOME OF INTERVENTION

The Responsibility to Protect doctrine undoubtedly has noble intentions and is arguably a necessary doctrine. As Former Secretary General Kofi Annan stated, "I believe we must embrace the [R]esponsibility to [P]rotect, and, when necessary, we must act on it." However, the doctrine raises two particular concerns. First, Western countries in particular have an unfortunate history of using humanitarian pretexts for more self-centered purposes. Second, intervenors have often done a poor job of predicting the outcome of

41. Id.
43. Id.
44. Id. (quoting S.C. Res. 1970, at 2 (Feb. 26, 2011)).
intervening in a foreign country. The practice of using humanitarian intervention to advance a state's own interest has a long and ugly history.

The United States has often used the language of humanitarianism to justify its colonial ambitions. When the United States intervened in Cuba's war for independence, many congressmen "used inflammatory rhetoric to describe injustices committed against Cuban women by the Spanish in order to promote military intervention in Cuba's war," while others "reported of Cuban women who were doomed to a grinding struggle for existence." One particular speech by Senator Redfield Proctor proved influential in swaying public opinion, and it made heavy use of humanitarian language. Proctor claimed that Cuba was in a state of "desolation and distress, misery and starvation." He also described how the Cuban people had been "driven into these fortified towns . . . [that were] virtual prison yards," and left to "subsist as they can." Similarly, during the United States' 1899 campaign in the Philippines, propaganda portrayed Filipina women as victims of "barbaric Filipinos" who were "ineffective heads of households." Americans believe they introduced civilization to the Filipino population. Many missionaries were excited to convert the Filipino population to Christianity and felt that abandoning the islands' population would be sacrilegious. When the United States invaded Haiti, American propaganda depicted Haitians in a paternalistic manner and portrayed the invasion as "necessary to govern unruly Haitian women." Thus, mixed with the racist rhetoric used to justify imperialism, American leaders also held the paternalistic view that they were undertaking military expansion for the good of the people whose countries they occupied.

47. Id. at 294.
48. Id. at 267-73.
49. See id.
50. Id. at 268-69 (quoting Frederic M. Noa, The Condition of Women in Cuba, Outlook, 1911, at 643).
52. Id.
53. Id.
54. Weissman, supra note 46, at 269.
55. Id.
57. Weissman, supra note 46, at 270.
58. See id. at 273-78.
Of course, these benevolent justifications for American intervention were often far from the truth. The United States' decision to intervene in Haiti was partially motivated by concern over a loss of the country's investment, as the United States had loaned a significant amount of money to the impoverished country. The United States also wanted to secure the area around the newly built Panama Canal. Secretary of State Elihu Root expressed that with the development of the Panama Canal, the United States was pressured to monitor and secure the area. The United States also had a great deal of self-interested reasons to intervene in Cuba. As Theodore Roosevelt candidly admitted in his autobiography, “[o]ur own direct interests were great, because of the Cuban tobacco and sugar, and especially because of Cuba’s relation to the projected [Panama] canal.” The United States also had strategic reasons to occupy the Philippines. “Imperialists, such as Theodore Roosevelt and Senator Albert Beveridge” wanted to keep the Philippines, not to help the natives, but rather to make “the United States a European-style world power complete with overseas territories.”

The United States was not, of course, the only country to use the rhetoric of humanitarianism to justify colonial expansion. European countries frequently used humanitarian language to justify their colonial expansion. The British partially explained their rule in India by claiming they were trying to “outlaw . . . practices . . . [such as] female infanticide, forced marriages, and sati.” A common theme of colonial rhetoric consisted of European countries claiming they had not only a right, but a duty to spread Western civilization to what Europeans considered less advanced races. This belief in European

60. Id.
61. Id.
63. Id.
64. See Van Ells, supra note 56, at 613.
65. Id.
66. See, e.g., Weissman, supra note 46, at 268 (providing an example of colonial powers justifying their colonization as preventing sexual assault).
67. Id.
superiority arose as a result of popular interpretation of Charles Darwin's work—"Social Darwinism." The most famous example is Rudyard Kipling's poem "The White Man's Burden," where the British poet exhorts his fellow white men to "bind your sons to exile / To serve your [captor's] need," in order to bring said captors "toward the light."

Hitler frequently utilized humanitarian language during his pre-World War II expansion. For example, during the invasion of Austria, he appealed to Germans' right to self-determination. Hitler wrote a letter to British Prime Minister Neville Chamberlain that consists of language strikingly similar to modern humanitarian language. Hitler stated that Germans were mistreated and abused, resulting in the displacement of over 120,000 refugees. Hitler's real motivations, of course, did not match these altruistic statements. The use of humanitarian pretexts is not only a bygone problem of the twentieth century; countries in the late twentieth and twenty-first centuries routinely cited humanitarian reasons to justify their interventions in foreign countries. Although the George W. Bush Administration claimed the invasion of Iraq was justified by Saddam Hussein's "possession . . . of weapons of mass destruction" and links with terrorists, the administration also used humanitarian language to justify the occupation. When President Bush discussed the "axis of evil" (Iran, Iraq, and North Korea) in his State of the Union address in 2002, he said that America must "defend[] liberty and justice because}

71. Goodman, supra note 11, at 113.
72. Id.
73. Id.
74. Id.
they are right and true and unchanging for all people everywhere [emphasis added]." When President Bush announced the start of Operation Iraqi Freedom, he said the United States' only goals were to remove a threat and "restore control of that country to its own people." In reality, the invasion of Iraq was part of the United States' global war on terror. This invasion was primarily to rid Iraq of its weapons of mass destruction because of the country's association with terrorist groups like Al-Qaeda. Some more skeptical observers have also suggested that the United States stood to benefit economically by having direct control over Iraq's oil fields.

An additional potential problem with humanitarian intervention is well-intentioned world leaders severely miscalculating the results of intervention. One excellent example is the American intervention in Somalia in 1992. American leaders were optimistic that intervention would yield positive results without an overly extensive commitment by the United States. The operation, known as the Unified Task Force (UNITAF), was initially intended to be a "strictly humanitarian and short-term operation" that was "[o]riginally intended to last only six weeks" and supposed to pave the way for a takeover by UN peacekeeping forces in short order. After the Battle of Mogadishu, President Clinton assured the American people that "if we stay a short while longer, and do the right things, we've got a reasonable chance" of restoring order and allowing other nations to take America's place. Clinton also promised that he would complete the withdrawal of American forces soon.

81. Iraq War, supra note 77.
82. Tom Rockmore, *Can War Transform Iraq into a Democracy?*, 103 *Theoria* 15, 17 (2004).
83. See generally JAMES DOBBINS ET. AL., AMERICA'S ROLE IN NATION-BUILDING: FROM GERMANY TO IRAQ 55-70 (2003) (describing the U.S.'s unsuccessful intervention in Somalia and providing several reasons for the intervention's ultimate failure).
85. Id.
87. Id.
Optimistic American expectations proved to be far from reality. Initially, the humanitarian mission was a success, and the United States began drawing down its forces for a UN takeover. But the extremist activity of Somalia's then-leader Mohamed Aidid necessitated a recommitment of U.S. forces, as President Clinton ordered the U.S. Army Rangers deployed to help hunt down Aidid. The search for Aidid culminated in the "ill-fated raid" of Aidid's Mogadishu residence. In response, the United States was forced to mobilize additional forces, and President Clinton ordered 1,700 additional troops to Somalia. Not only did the operation require more time and resources than the U.S. government had hoped, the operation did not end positively for Somalia's people. The disastrous attempt at central government had convinced Somalia's citizens to turn to the traditional clans for protection and basic needs, leaving the state fractured. The protection payments made to the warlords by the UN and U.S. forces simply solidified their power. Ultimately, intervention did not have a significantly positive effect. As one observer noted, "[f]or all the extraordinary amounts of financial and diplomatic resources expended by [the United Nations Assistance Mission in Somalia (UNOSOM)], its legacy is surprisingly small." The United States and UN had thus badly miscalculated the effects of intervention.

Somalia is hardly the only example of a disastrous miscalculation on the part of an intervening nation. The Iraq War is another dramatic example of the United States miscalculating the humanitarian effects its occupation of the country could have. Although the main focus of the war was removing a regime with supposed links to Al-Qaeda, the United States made it clear that it had another goal in mind. President Bush said that "[a] liberated Iraq can show the power of

88. LAKE, supra note 84, at 165.
89. Id. at 169.
90. Id.
91. U.N. Intervention in Somalia, supra note 86.
92. See Debora Valentina Malito, Neutral in Favour of Whom? The UN Intervention in Somalia and the Somaliland Peace Process, 24 INT'L PEACEKEEPING 280, 297 (2017) (arguing that UN intervention hindered the peace process by becoming an "instrument of division").
93. LAKE, supra note 84, at 171-72.
94. Id. at 172.
freedom to transform that vital region." In a speech to the United Nations, Bush laid out a hopeful vision for a democratic Iraq, saying the Iraqi people could shake off captivity and "join a democratic Afghanistan and a democratic Palestine, inspiring reforms throughout the Muslim world." The United States government certainly did not expect the Iraq War to become the protracted, messy affair it is today. The attempts to turn Iraq into a democracy have had mixed results. Iraq is having elections, but only at tremendous costs to the United States. Furthermore, "the elections may have exacerbated... [Iraq's] sectarian divide."

Additionally, American intervention may have made the country less safe, both for American forces and native Iraqis. In 2005, the CIA’s internal think tank, the National Intelligence Council, determined that Iraq had become a preeminent training ground for a new generation of terrorists, attracting international terrorists. Warfare with the United States gave terrorists a chance to "learn[] how explosives are made, how to identify sympathizers with their cause, the utility of the internet, and weak points in the U.S. military." This new knowledge and an increased terrorist presence would make life less safe for the people the United States was supposedly trying to help.
The American intervention in Iraq continues to have adverse effects on the Iraqi people in the long term. The current menace that is the Islamic State had its origins in the chaos of occupied Iraq. The Islamic State of Iraq “originated as one of many Sunni insurgent forces operating” in the wake of the American invasion. The Sunnis, who had “ultimately lost” their long-standing political control, “came to form the core of an insurgency” in the invasion’s resultant power void. Political groups like the Islamic State took advantage of Sunni “dispossession to mobilize large portions of the Sunni population” against the new government. The Islamic State, or Al-Qaeda in Iraq (AQI), emerged as “the most capable and ruthless militant group operating in Iraq.” Their leader, Abu Musab Al-Zarqawi, directed a “bloody campaign” through tactics like “attacks on military, government, and tribal leaders who worked with coalition forces,” and through using “high-profile spectacular attacks.” As a result, the AQI could “graft[] . . . [itself] to the rising Sunni insurgency” and thus the chaos of U.S. occupation buoyed the Islamic State’s rise. Thus, there are at least two serious problems with the doctrine of humanitarian intervention and the Responsibility to Protect: (1) the use of humanitarianism as pretext and (2) the persistent failure to correctly predict the consequences of intervention for the area’s inhabitants.

PART III: A POSSIBLE SOLUTION: MODIFYING THE BALANCE OF CONSEQUENCES STANDARD

A possible solution to the above two problems is a modification to the test used to determine when a humanitarian military intervention is appropriate. The current “balance of consequences” standard states that the effect of the intervening country’s action must be “not likely to be worse than the consequences of inaction.” This standard ought to be modified in two important ways. First, countries should only intervene if they are certain that the consequences of action are likely to be better than the consequences of inaction. This modification would

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106. See id. at 11.
107. Id.
108. Id. at 13.
109. Id.
110. Id. at 15.
111. Id.
112. Id.
113. Evans, supra note 5, at 711.
create a margin of error when a state is determining whether to intervene abroad for humanitarian reasons. Further, states would be encouraged to listen to contrarian voices suggesting that intervention would adversely affect the people it intended to help. Second, intervening countries should have to consider what the people of the intervened country desire and listen to the voices suggesting that intervention would be unwise. In many cases of intervention gone awry, such as the Iraq War, public figures suggested that intervention would be a poor idea from the outset.\textsuperscript{114} Former President Bill Clinton warned about the possible adverse effects of an invasion.\textsuperscript{115} Clinton stated that “a preemptive action today, however well-justified, may come back with unwelcome consequences in the future” and that “innocent people will die.”\textsuperscript{116} Clinton was not the only prominent American warning that an intervention in Iraq might not have positive consequences. Senator Jim Webb warned in a report that everyone who was supporting the war was aware that there was no plan set for intervention withdrawal.\textsuperscript{117} Eric Shinseki, the top general of the U.S. Army at the time, warned that the remaining occupation after the war must be powerful enough to protect from potential conflicts due to sectarian controversies.\textsuperscript{118} This force, as Shinseki suggested, needed to be large to be effective, requiring hundreds of thousands of soldiers.\textsuperscript{119} The Foreign Minister of France—United States ally—warned that “military intervention would be the worst solution.”\textsuperscript{120} The Minister warned about the difficulty of having “a united Iraq” and wondered “[w]hat frustrations and feelings of


\textsuperscript{115} \textit{House Passes Resolution Authorizing Use of Force in Iraq; New Jersey Supreme Court Hears Argument for, Against New Democrat on Ballot}, \textsc{CNN} (Oct. 2, 2002, 4:00 PM), http://transcripts.cnn.com/TRANSCRIPTS/0210/02/ip.00.html.

\textsuperscript{116} Id.


\textsuperscript{119} Id.

injustice would be fuelled.” The United States might have given these objections more weight and ultimately decided not to occupy Iraq, if it had to consider the standard proposed above.

Iraq is not the only instance of intervention where greater attention to objecting voices might have staved off disaster—Somalia is another such instance. When President George H.W. Bush initially committed U.S. troops to Iraq, the commitment seemed quite rushed. George H.W. Bush “propose[d] to the United Nations that American combat troops be sent to Somalia to protect aid workers” as his administration came to a close. The initial intervention had a very short timetable, as troops began arriving in December 1992. Additionally, both the George H.W. Bush and Clinton Administrations were so dominated by Colin Powell’s doctrine of “overwhelming force and limited objectives” that arguably “no other vision . . . [for Somalia] could be enunciated.” In his announcement of U.S. operations in Somalia, President Bush stated that he consulted with “advisors, with world leaders, and the Congressional leadership.” While Bush certainly made an effort to discuss the situation with people outside the Administration, he could have consulted more widely. Bush might have obtained a more complete picture of the situation had he consulted with experts from independent think tanks or native Somali citizens who had recent experience of the conditions on the ground. A higher standard, requiring a country to be sure its actions would have a positive effect before intervening, might have encouraged such consultation. Instead, the United States committed troops with a plan ill-suited to the actual situation in Somalia.

A counterexample to this phenomenon is actually a previous military action carried out by the first Bush Administration: the first Persian Gulf War. The War stemmed from Iraq’s intervention in Kuwait, “with the apparent aim of acquiring that nation’s large oil

121. Id.
123. Somalia Intervention, supra note 16.
124. Id.
reserves." On November 29, 1990, the UN Security Council "authorized the use of force against Iraq if it did not withdraw from Kuwait by January 15, 1991," thus giving coalition forces more time to prepare and Iraq time to back down and withdraw. Rather than acting unilaterally, the elder Bush worked with countries throughout the world, including the Soviet Union, to craft the resolution condemning Iraq. When forming a coalition to take military action, Bush made "economic, political, and military promises to many other countries." This careful, consensus-building approach produced quick and decisive results. The Allied forces began their invasion on February 24, 1991 and by February 28, Iraq's Republican Guard was essentially defeated and the "Iraqi resistance had completely collapsed." The resulting peace brokered by the coalition mandated "that Iraq recognize Kuwait's sovereignty," thus fulfilling the coalition's humanitarian goals. A careful approach seeking consensus yielded a positive outcome. A heightened standard for determining the balance of consequences might encourage states to take a more cautious approach to determine a strategy to optimize relatively positive results, like the First Persian Gulf War.

The major problem of humanitarianism as pretext is that the intervening country is putting its own interests ahead of those of the country that it is supposedly helping. Unfortunately, preventing a country from using humanitarian intervention to pursue its own ends will be difficult to do—a country can always be dishonest about its true intentions. However, the balance of consequences test should be altered to require an intervening country to consider what the people of the intervened-in country being intervened hold as "good." In particular, intervenors should consider goals such as maintaining a country's cultural integrity in the balance of consequences rationale. This way, even if a country is motivated by selfish purposes, it will at least be constrained by forced focus on the native country's desires and preferences.

One of the common characteristics of the use of pretext is the intervenor's refusal to consider the desires and culture of the intervened-in country's residents. When the United States decided to occupy the Philippines, the "wishes of the [Filipinos] ... were seldom considered;" instead, Americans projected their own racist viewpoints

128. Id.
130. Id.
132. Id.
onto Filipinos. The United States showed no desire to respect or maintain Filipino culture, and instead eagerly sought an opportunity to impose its own cultural norms on the country. Many Filipinos were Roman Catholic, as the islands had been under Catholic Spain's control. The predominantly Protestant United States was eager to introduce Christianity to these Catholics. Not only were Americans eager to change Filipino culture, they went far beyond humanitarian actions and worked to deprive Filipinos of their autonomy, refusing to grant them suffrage or citizenship. Needless to say, a humanitarian intervention that results in the intervening country treating the members of the intervened-in country like children should not be deemed a success. Had a modified balance of consequences test existed at the time, the United States would have been forced to take Filipino culture and values seriously—and essentially finally treating Filipinos as adults.

The United States was not the only country that failed to consider a country's native culture to be worth preserving. Colonial ventures, despite their humanitarian claims, consistently failed to respect their subjects' cultures, and indeed, saw it as a right and duty to eradicate those cultures. One prominent example is Britain's determination to eradicate practices such as veiling and polygamy in India. Again, if the British had been forced to consider the preservation of local cultures and customs as part of a balance of consequences test, the cultural destruction that occurred in India (and other colonies) might have been entirely different. Since many countries in the colonial age were driven by a belief that they had a divine right to spread Western culture throughout the world, requiring a concern for local culture in the

133. Van Ells, supra note 56, at 613.
134. See, e.g., id. (explaining American Protestants' attempts to introduce Christianity to Catholic Filipinos).
135. See id.
136. Id.
137. Id. at 614.
139. Weissman, supra note 46, at 268.
140. See, e.g., Cameron Addis, The Whitman Massacre: Religion and Manifest Destiny on the Columbia Plateau, 1809-1858, 25 J. EARLY REPUBLIC 221, 231 (2005) ("New England Protestants believed that Northwest Indians encouraged them to come west to propagate their faith."). But see Ian Copland, Christianity as an Arm of Empire: The Ambiguous Case of India Under the Company, c. 1813-1858, 49 HIST. J. 1025, 1030
balance of consequences test might have sapped colonialism of its driving force.

A failure to appreciate the culture and desires of native people also characterized the United States’ 2003 occupation of Iraq. President Bush was determined to bring democracy to Iraq, which proved to be insensitive to the deep cultural divisions that pervaded Iraq. The United States attempted to establish “an Iraqi interim governing council comprised of . . . [thirteen] Shias, [five] Kurds, [five] Sunni Arabs, [one] Assyrian Christian, and [one Turkman].” The divisions in Iraq immediately asserted themselves, as the council was “unable to agree on a single leader,” and “proved unable to exercise . . . [its] limited duties . . . including drafting a constitution.” The United States also proved aggressive in purging Saddam’s Ba’athist party. The De-Ba’athification of Iraqi Society Order “excluded the top four levels of the party membership”—about one percent of Ba’athists—“from public employment.” Additionally, the Order “stated that the top three layers of management in every national government ministry, affiliated corporation, and government institution would be reviewed for possible connections to the Ba’ath party.” Full members of the party were forced to resign from their government-related posts.

It is understandable, of course, that the United States wanted to keep the followers of Iraq’s former dictator away from the levers of power. However, the United States failed to consider that providing the

141. See, e.g., Aeed Dawisha, The Unraveling of Iraq: Ethnosectarian Preferences and State Performance in Historical Perspective, 62 MIDDLE EAST J. 219, 221-22 (2008) (showing how the Coalition Provisional Authority failed to understand the need to balance “ethnosectarianism . . . with a national project”).


144. Id.

145. See Amit R. Paley & Joshua Partlow, Iraq’s New Law on Ex-Baathists Could Bring Another Purge, HUFFPOST (Mar. 28, 2008, 2:45 AM), https://www.huffpost.com/entry/iraqs-new-law-on-exbaathin_82839?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAGGQv8-WFl3mJhxMgI-K77fRluWtcwig114cni2J19kJlIWMGT224REnrZ0YmRqs7QrW68fcelxXsQBYkwe8HcUvPKp-43aDjCCDURdLkMO19m5Lw0yt11hJcVRPPUsJAlAsApPj3BHPa1oTCjJtDXe3E2B5uIPTu1KXQs1j.

146. AFTER THE WAR: NATION-BUILDING FROM FDR TO GEORGE W. BUSH, supra note 143, at 119.

147. Id.

148. Id.
“Kurdish minority . . . an increased role in the political process,” essentially allowed for the marginalization and frustration of Iraq’s Sunnis.149 Needless to say, it is never good when one portion of the population exercises control over another, as Hussein’s Sunni followers were doing to the Shia Muslims in Iraq.150 However, the United States failed to give proper attention to the delicate political situation in Iraq, and its decisions served to alienate and radicalize Sunni Iraqis.151 Indeed, the United States seemed more intent on punishing Sunnis for violating American values than creating a situation where Iraqis could enjoy any sort of peace. The United States might have been forced to implement a more workable political solution in Iraq had it been forced to consider the wishes of Iraqi people and view preserving traditional culture and political arrangements as something that, preferably, ought to be maintained.

It is difficult to envision a way to prevent countries from considering their own interests when they are deciding whether to launch a humanitarian intervention. The

Responsibility to Protect doctrine could be modified so that countries must also consider the desires of the country in which they are intervening. If countries are mandated to consider these desires, they can be forced to respect the interests of the intervened-in country, even when pursuing their own interests, as the international community can hold them accountable. When countries fail to respect the culture and wishes of the intervened-in country, the international community can hold them accountable. Furthermore, the difficulty of balancing selfish interests with the desires of the native country may make countries less likely to intervene if they are not motivated by a genuine desire to provide help.

PART IV. CONCLUSION

The U.N. Charter’s prohibition against the use of force is well reasoned. Even when countries undertake military actions with the best of intentions, many factors will cause these actions to go wrong. Intervenors can enter another country with a profound misunderstanding of the current political situation or the realistic

149. JOHNSTON, supra note 105, at 13.
difficulty of an intervention. Whatever happens, many people will likely
die at the hands of military action, and many or most of the deceased
are likely to be citizens of the country the intervenor is supposedly
trying to help. Furthermore, many countries avoid honesty when
claiming to launch military actions for humanitarian purposes—an easy
way to garner goodwill from one's own populace, as well as from the
international community. Thus, many countries appeal under the guise
of humanitarian principles when the true intents are selfish pursuits.

The proposed solution—requiring a balancing test—will not solve all
the problems stemming from the doctrines of humanitarian intervention
and the Responsibility to Protect, but it will temper or improve these
reoccurring issues. No country will ever perfectly predict how difficult a
humanitarian operation will be or the intervention's eventual results.
Furthermore, it is impossible to know for certain whether a country is
motivated by self-interest, with little likelihood that the leaders will
volunteer the information when prompted.

Although we can only divine a country's true purpose, the
international community can hold countries accountable if no
consideration is given for the desires and culture of the people of the
intervened-in country. A heightened balance of consequences test may
encourage countries to engage in a more careful decision-making
process and plan the intervention more thoroughly. This may cause
some countries to decide against undertaking an ill-conceived
intervention.

Humanitarian interventions are ultimately necessary in the modern
world. It is intolerable to suggest that other countries should be
prevented from stopping atrocities such as the Rwandan Genocide and the actions by Pol Pot in Cambodia. However, humanitarian
intervention must be closely regulated, or more harm than good will
come to the countries in need of such intervention. My suggested
modifications for the balance of consequences test would help regulate
the doctrine of humanitarian intervention, hopefully allowing the
document to make the world safer and more just, as it was intended to do.