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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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1. U.N. Charter pmbl.

2. ROGER DANIELS, FRANKLIN D. ROOSEVELT: THE WAR YEARS, 1939-1945 407 (2016) (quoting Franklin D. Roosevelt, *Statement of the President on the Postwar Security Organization Program on June 15, 1994*, in THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 179 (Samuel I. Rosenman ed., 1950)).

3. *Id.* (quoting Franklin D. Roosevelt, *Statement of the President on the Postwar Security Organization Program on June 15, 1994*, in THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 179 (Samuel I. Rosenman ed., 1950)).

4. U.N. Charter art. 2, ¶ 3-4.

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.⁵ 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?”⁶ 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,”⁷ but the Genocide Convention of 1948 quickly created an agreed upon exception.⁸ 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

5. Gareth Evans, *From Humanitarian Intervention to the Responsibility to Protect*, 24 WIS. INT’L L.J. 703, 709-10 (2006).

6. *Id.* at 711.

7. U.N. Charter art. 2, ¶ 7.

8. Evans, *supra* note 5, at 705.

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

9. Convention on the Prevention and Punishment of the Crime of **Genocide** art. VIII, Dec. 9, 1948, 78 U.N.T.S. 277.

10. Evans, *supra* note 5, at 705.

11. Ryan Goodman, *Humanitarian Intervention and Pretexts for War*, 100 AM. J. INT’L. L. 107, 111 (2006).

12. See Evans, *supra* note 5, at 706.

13. *Persian Gulf War*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/event/Persian-Gulf-War> (last updated Mar. 7, 2019).

14. *Persian Gulf Air War Begins*, C-SPAN (Jan. 16, 1991), <https://www.c-span.org/video/?15723-1/president-bush-announces-beginning-persian-gulf-air-war>.

15. *Id.*

16. *Somalia Intervention*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/event/Somalia-intervention> (last updated Oct. 11, 2016).

17. *Id.*

forces.¹⁸ In his address to the American people, Bush described the United States' actions as "a mission that can ease suffering and save lives."¹⁹ According to Bush, the purpose of the United States' involvement was to allow food to reach starving Somali citizens, nothing more and nothing less.²⁰

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.²¹ Several Western powers, including the United States and Great Britain, "demanded a cease-fire, . . . the return of refugees, and unlimited access for international monitors."²² 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.²³ 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."²⁴

Despite the increased use of humanitarian intervention, a fierce debate still raged over when a "right to intervene" should trump national sovereignty.²⁵ 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."²⁶ The UN's Secretary General eventually delegated the task to the International Commission on Intervention and State Sovereignty.²⁷ The Commission "invent[ed] a new way of talking about humanitarian intervention," as

18. *Id.*

19. *December 4, 1992: Address on Somalia*, MILLER CTR. (Dec. 4, 1992), <https://millercenter.org/the-presidency/presidential-speeches/december-4-1992-address-somalia>.

20. Michael Wines, *Mission to Somalia; Bush Declares Goal in Somalia to 'Save Thousands'*, N.Y. TIMES (Dec. 5, 1995), <https://www.nytimes.com/1992/12/05/world/mission-to-somalia-bush-declares-goal-in-somalia-to-save-thousands.html>.

21. *Kosovo Conflict*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/event/Kosovo-conflict> (last updated Feb. 25, 2019).

22. *Id.*

23. *Id.*

24. Goodman, *supra* note 11, at 112.

25. Evans, *supra* note 5, at 706 (quoting Bernard Kouchner, *Establish a Right to Intervene Against War, Oppression*, L.A. TIMES (Oct. 18, 1999, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1999-oct-18-me-23681-story.html>).

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.²⁸ According to the Commission, humanitarian intervention was a responsibility, not a right—all countries had a responsibility to protect their own citizens.²⁹ If a country failed in that duty, it might become the responsibility of another country or countries to step in.³⁰ To determine when a humanitarian intervention was appropriate, the Commission developed a five-factor test for countries.³¹ First, countries should consider the factor of just cause, which looks at whether there is “irreparable harm occurring to human beings.”³² Second, they should consider intent, and whether “the primary purpose of the proposed military action [is] to halt or avert human suffering.”³³ Third, countries should weigh whether “every non-military option . . . [has] been explored.”³⁴ Fourth, intervening countries must also make sure to use proportional means.³⁵ 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?”³⁶

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.³⁷ The violence moved the French European and Foreign Affairs Minister to call for the United Nations to act under the Responsibility to Protect.³⁸ 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.”³⁹ 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.*

37. *The Crisis in Kenya*, INT’L COALITION FOR RESP. TO PROTECT, <http://responsibilitytoprotect.org/index.php/crises/crisis-in-kenya> [<https://web.archive.org/web/20190723151842/http://responsibilitytoprotect.org/index.php/crises/crisis-in-kenya>] (last visited Sept. 18, 2019).

38. *Id.*

39. *Id.* (quoting *The Response of International Actors: An Example of ‘The Responsibility to Protect’*, Human Rights Watch (Mar. 2008), <https://www.hrw.org/reports/2008/kenya0308/10.htm>).

“incumbent [president] . . . refused to honor the election results that declared [his opponent] the winner.”⁴⁰ 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.⁴¹ The United Nations Security Council first permitted a military intervention citing the Responsibility to Protect in Libya.⁴² In response to civilian attacks by the ruling regime, the Security Council adopted a resolution directly asserting the Responsibility to Protect.⁴³ The Council imposed a series of international sanctions, citing the Libyan government’s “responsibility to protect its population.”⁴⁴ 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.”⁴⁵ 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.⁴⁶ Second, intervenors have often done a poor job of predicting the outcome of

40. *The Crisis in Côte d'Ivoire*, INT'L COALITION FOR RESP. TO PROTECT, <http://responsibilitytoprotect.org/index.php/crises/crisis-in-ivory-coast> [<https://web.archive.org/web/20190723151829/http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-ivory-coast>] (last visited Sept. 18, 2019).

41. *Id.*

42. *Background Information on the Responsibility to Protect*, OUTREACH PROGRAMME ON RWANDA GENOCIDE & UNITED NATIONS, <https://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml>. [<https://web.archive.org/web/20190208025422/https://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml>] (last visited Sept. 18, 2019).

43. *Id.*

44. *Id.* (quoting S.C. Res. 1970, at 2 (Feb. 26, 2011)).

45. Evans, *supra* note 5, at 714 (quoting U.N. Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, ¶ 135, delivered to the General Assembly, U.N. Doc A/59/2005 (Mar. 21, 2005)).

46. Deborah M. Weissman, *The Human Rights Dilemma: Rethinking the Humanitarian Project*, 35 COLUM. HUM. RTS. L. REV. 259, 267 (2004).

intervening in a foreign country.⁴⁷ The practice of using humanitarian intervention to advance a state's own interest has a long and ugly history.⁴⁸

The United States has often used the language of humanitarianism to justify its colonial ambitions.⁴⁹ 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.'"⁵⁰ One particular speech by Senator Redfield Proctor proved influential in swaying public opinion, and it made heavy use of humanitarian language.⁵¹ Proctor claimed that Cuba was in a state of "desolation and distress, misery and starvation."⁵² 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."⁵³ 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."⁵⁴ Americans believe they introduced civilization to the Filipino population.⁵⁵ Many missionaries were excited to convert the Filipino population to Christianity and felt that abandoning the islands' population would be sacrilegious.⁵⁶ 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."⁵⁷ 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.⁵⁸

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).

51. *Speech by Senator Redfield Proctor (R-VT) on the Floor of the U.S. Senate on March 17, 1898 (After a Visit to Cuba)*, HISTORY ON NET, https://www.historyonthenet.com/authentichistory/1898-1913/4-imperialism/2-saw/1-prelude/Proctor_Speech.html (last updated July 12, 2012).

52. *Id.*

53. *Id.*

54. Weissman, *supra* note 46, at 269.

55. *Id.*

56. Mark D. Van Ells, *Assuming the White Man's Burden: The Seizure of the Philippines, 1898-1902*, 43 PHIL. STUD. 607, 613 (1995).

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.⁵⁹ The United States also wanted to secure the area around the newly built Panama Canal.⁶⁰ 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.⁶¹ The United States also had a great deal of self-interested reasons to intervene in Cuba.⁶² 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."⁶³ The United States also had strategic reasons to occupy the Philippines.⁶⁴ "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."⁶⁵

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.⁶⁶ The British partially explained their rule in India by claiming they were trying to "outlaw . . . practices . . . [such as] female infanticide, forced marriages, and *sati*."⁶⁷ 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.⁶⁸ This belief in European

59. See HANS SCHMIDT, *THE UNITED STATES OCCUPATION OF HAITI, 1915-1934*, 43 (1971).

60. *Id.*

61. *Id.*

62. See THEODORE ROOSEVELT, *AN AUTOBIOGRAPHY OF THEODORE ROOSEVELT* 197 (Stephen Brennan ed., Skyhorse Publ'g 2011) (1913).

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.*

68. See, e.g., Rutledge M. Dennis, *Social Darwinism, Scientific Racism, and the Metaphysics of Race*, 64 J. NEGRO EDUC. 243, 245 (1995) (describing the views of two racist Social Darwinists who saw colonialism as "important for bringing civilization to the unenlightened"); Matthew G. Stanard, *Interwar Pro-Empire Propaganda and European Colonial Culture: Toward a Comparative Research Agenda*, 44 J. CONTEMP. HIST. 27, 35 (2009) (depicting native exhibits as uncivilized and savage to justify imperialism).

superiority arose as a result of popular interpretation of Charles Darwin's work—"Social Darwinism."⁶⁹ 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."⁷⁰

Hitler frequently utilized humanitarian language during his pre-World War II expansion.⁷¹ For example, during the invasion of Austria, he appealed to Germans' right to self-determination.⁷² Hitler wrote a letter to British Prime Minister Neville Chamberlain that consists of language strikingly similar to modern humanitarian language.⁷³ Hitler stated that Germans were mistreated and abused, resulting in the displacement of over 120,000 refugees.⁷⁴ Hitler's real motivations, of course, did not match these altruistic statements.⁷⁵ 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.⁷⁶ 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.⁷⁷ 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

69. See Walter A. McDougall, *20th-Century International Relations*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/20th-century-international-relations-2085155> (last updated June 18, 2019).

70. RUDYARD KIPLING, *The White Man's Burden*, in *THE FIVE NATIONS* 79, 81 (Methuen & Co. 1903) (1903).

71. Goodman, *supra* note 11, at 113.

72. *Id.*

73. *Id.*

74. *Id.*

75. See BRIGITTE HAMANN, *HITLER'S VIENNA: A PORTRAIT OF THE TYRANT AS A YOUNG MAN* 107 (Tauris Parke Paperbacks 2010) (1999) (describing Hitler's previous desire to incorporate Austrian Germans into a greater German Empire).

76. See, e.g., Nicholas Kulish, *NATO Says It's Prepared to Keep Peace in Kosovo*, N.Y. TIMES (Dec. 9, 2007), <https://www.nytimes.com/2007/12/09/world/europe/09kosovo.html> (stating NATO intervened in Kosovo in 1999 to "end the violence that claimed as many as 10,000 ethnic Albanians"). See generally Alan J. Kuperman, *Obama's Libya Debacle: How a Well-Meaning Intervention Ended in Failure*, 94 FOREIGN AFF. 66 (2015) (describing Obama's initial intervention in Libya as an effort aimed at protecting peaceful supporters of democracy).

77. *Iraq War*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/event/Iraq-War> (last updated Nov. 28, 2018). See generally Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat.1498 (addressing Iraq's mistreatment of its citizens).

they are right and true and unchanging *for all people everywhere* [emphasis added].”⁷⁸ 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.”⁷⁹ In reality, the invasion of Iraq was part of the United States’ global war on terror.⁸⁰ 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.⁸¹ Some more skeptical observers have also suggested that the United States stood to benefit economically by having direct control over Iraq’s oil fields.⁸²

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 1992.⁸³ American leaders were optimistic that intervention would yield positive results without an overly extensive commitment by the United States.⁸⁴ 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.⁸⁵ 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.⁸⁶ Clinton also promised that he would complete the withdrawal of American forces soon.⁸⁷

78. Hurst Hannum, *Bellum Americanum*, 27 FLETCHER F. WORLD AFF. 29, 32 (2003) (quoting Office of the Press Sec’y, *President Delivers State of the Union Address*, WHITE HOUSE (Jan. 29, 2002), <https://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html>).

79. *Bush Announces War on Iraq*, C-SPAN (Mar. 19, 2003), <https://www.c-span.org/video/?c4523378/bush-announces-war-iraq>.

80. See generally JASON G. RALPH, *AMERICA’S WAR ON TERROR: THE STATE OF THE 9/11 EXCEPTION FROM BUSH TO OBAMA* (2013) (discussing military and legal aspects of the U.S.’s actions against terrorist organizations).

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).

84. DAVID A. LAKE, *THE STATEBUILDER’S DILEMMA: ON THE LIMITS OF FOREIGN INTERVENTION* 163 (2016).

85. *Id.*

86. *U.N. Intervention in Somalia*, C-SPAN (Oct. 7, 1993), <https://www.c-span.org/video/?51257-1/un-intervention-somalia>.

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.⁸⁸ 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.⁸⁹ The search for Aidid culminated in the "ill-fated raid" of Aidid's Mogadishu residence.⁹⁰ In response, the United States was forced to mobilize additional forces, and President Clinton ordered 1,700 additional troops to Somalia.⁹¹ 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.⁹² 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.⁹³ The protection payments made to the warlords by the UN and U.S. forces simply solidified their power.⁹⁴ 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."⁹⁵ 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.⁹⁶ 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.

95. John Prendergast, *When the Troops Go Home: Somalia After the Intervention*, 22 REV. AFR. POL. ECON. 268, 268 (1995).

96. See generally Richard W. Soudriette, *What Iraq's Elections Teach Us About Democracy Building*, 32 HUM. RTS. 22 (2005) (describing efforts by the United States government and non-governmental organizations to institute voting in Iraq).

freedom to transform that vital region.”⁹⁷ 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.”⁹⁸ 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 costs⁹⁹ to the United States.¹⁰⁰ Furthermore, “the elections may have exacerbated . . . [Iraq’s] sectarian divide.”¹⁰¹

Additionally, American intervention may have made the country less safe, both for American forces and native Iraqis.¹⁰² 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.¹⁰³ 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.”¹⁰⁴ This new knowledge and an increased terrorist presence would make life less safe for the people the United States was supposedly trying to help.

97. Office of Press Sec’y, *President Discusses the Future of Iraq*, WHITE HOUSE (Feb. 26, 2003), <http://georgewbush-whitehouse.archives.gov/news/releases/2003/02/20030226-11.html> [<https://web.archive.org/web/20190625025211/https://georgewbush-whitehouse.archives.gov/news/releases/2003/02/20030226-11.html>].

98. Jeremy Pressman, *Power Without Influence: The Bush Administration’s Foreign Policy Failure in the Middle East*, 33 INT’L SECURITY 149, 154 (2009).

99. See *U.S. CBO Estimates \$2.4 Trillion Long-Term War Costs*, REUTERS (Oct. 24, 2007, 1:13 PM), <https://www.reuters.com/article/us-iraq-usa-funding/u-s-cbo-estimates-2-4-trillion-long-term-war-costs-idUSN2450753720071024>.

100. See, e.g., Jonathan Steele, *Iraqis Flock to Polls as Insurgents Urge Sunnis to Vote*, GUARDIAN (Dec. 16, 2005, 10:35 AM), <https://www.theguardian.com/world/2005/dec/16/iraq.jonathansteele>; *Guide to Iraq’s Election*, BBC NEWS (Dec. 13, 2005, 4:14 PM), http://news.bbc.co.uk/2/hi/middle_east/4522060.stm. See generally CONG. RESEARCH SERVS., *IRAQ: POST SADDAM NATIONAL ELECTIONS* (2005) (authored by Kenneth Katzman, specialist in Middle Eastern Affairs) (providing overview of elections held in 2005).

101. Pressman, *supra* note 98, at 160.

102. See *Documented Civilian Deaths from Violence*, IRAQ BODY COUNT, <https://www.iraqbodycount.org/database/> (last visited Oct. 27, 2019) (estimating the total amount of civilian casualties in Iraq since the intervention began); *Iraq Fatalities*, ICASUALTIES, <http://icasualties.org/App/Fatalities> (last visited Oct. 27, 2019) (listing coalition casualties in Iraq).

103. Pressman, *supra* note 98, at 158.

104. *Id.*

The American intervention in Iraq continues to have adverse effects on the Iraqi people in the long term.¹⁰⁵ The current menace that is the Islamic State had its origins in the chaos of occupied Iraq.¹⁰⁶ The Islamic State of Iraq “originated as one of many Sunni insurgent forces operating” in the wake of the American invasion.¹⁰⁷ 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.¹⁰⁸ Political groups like the Islamic State took advantage of Sunni “dispossession to mobilize large portions of the Sunni population” against the new government.¹⁰⁹ The Islamic State, or Al-Qaeda in Iraq (AQI), emerged as “the most capable and ruthless militant group operating in Iraq.”¹¹⁰ 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.”¹¹¹ 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.¹¹² 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.”¹¹³ 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

105. See, e.g. PATRICK B. JOHNSTON ET. AL., FOUNDATIONS OF THE ISLAMIC STATE: MANAGEMENT, MONEY, AND TERROR IN IRAQ, 2005-2010 (2016) (describing the link between the rise of the Islamic State and U.S. intervention).

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.¹¹⁴ Former President Bill Clinton warned about the possible adverse effects of an invasion.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.”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.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.¹¹⁸ This force, as Shinseki suggested, needed to be large to be effective, requiring hundreds of thousands of soldiers.¹¹⁹ The Foreign Minister of France—United States ally—warned that “military intervention would be the worst solution.”¹²⁰ The Minister warned about the difficulty of having “a united Iraq” and wondered “[w]hat frustrations and feelings of

114. See, e.g., Frank Bruni, *THREATS AND RESPONSES: THE VATICAN; Pope Voices Opposition, His Strongest, to Iraq War*, N.Y. TIMES (Jan. 14, 2003), <https://www.nytimes.com/2003/01/14/world/threats-responses-vatican-pope-voices-opposition-his-strongest-iraq-war.html>; Kate Connolly, *I Am Not Convinced, Fischer Tells Rumsfeld*, TELEGRAPH (Feb. 10, 2003, 12:01 AM), <https://www.telegraph.co.uk/news/worldnews/europe/germany/1421634/I-am-not-convinced-Fischer-tells-Rumsfeld.html>; Jarrett Murphy, *Mandela Slams Bush on Iraq*, CBS NEWS (Jan. 30, 2003 1:34 PM), <https://www.cbsnews.com/news/mandela-slams-bush-on-iraq/>.

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

116. *Id.*

117. Danielle Knight, *Winning over the Senate with Frank Words and a Keen Mind*, U.S. NEWS (Dec. 7, 2007, 11:00 AM), <https://www.usnews.com/news/articles/2007/12/07/winning-over-the-senate-with-frank-words-and-a-keen-mind>.

118. John Althouse, *Army Chief: Force to Occupy Iraq Massive*, U.S.A. TODAY (Feb. 25, 2003, 2:25 PM), https://usatoday30.usatoday.com/news/world/iraq/2003-02-25-iraq-us_x.htm.

119. *Id.*

120. *France's Position on Iraq: Press Conference of Foreign Affairs Minister Dominique de Villepin (Excerpts)*, EMBASSY FR. U.S. (Jan. 20, 2003), <http://www.ambafrance-us.org/news/statmnts/2003/vilepin012003.asp> [[https://web.archive](https://web.archive.org)].

injustice would be fuelled.”¹²¹ 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.¹²² 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.¹²³ The initial intervention had a very short timetable, as troops began arriving in December 1992.¹²⁴ 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.”¹²⁵ In his announcement of U.S. operations in Somalia, President Bush stated that he consulted with “advisors, with world leaders, and the Congressional leadership.”¹²⁶ 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.*

122. See *CIA Whites Out Controversial Estimate on Iraq Weapons; Main Subject of Today’s Senate Intelligence Report Remains Largely Secret; Agency Censors Document Despite Public CIA Speeches, Testimony, Statements*, GEORGE WASH. U. (July 9, 2004), <https://web.archive.org/web/20090623070452/http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB129/index.htm>. The CIA’s first report of Iraq containing Weapons of Mass Destruction was delivered in October of 2002. *Id.* The U.S.-led coalition invasion of Iraq was launched on March 19, 2003, some five months later. *Operation Iraqi Freedom*, GLOBAL SECURITY, https://www.globalsecurity.org/military/ops/iraqi_freedom.htm (last updated Mar. 22, 2016, 8:13:30 PM).

123. *Somalia Intervention*, *supra* note 16.

124. *Id.*

125. Walter Clarke & Jeffrey Herbst, *Somalia and the Future of Humanitarian Intervention*, 75 FOREIGN AFF. 70, 75 (1996).

126. *December 4, 1992: Address on Somalia*, *supra* note 19.

reserves.”¹²⁷ 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.¹²⁸ Rather than acting unilaterally, the elder Bush worked with countries throughout the world, including the Soviet Union, to craft the resolution condemning Iraq.¹²⁹ When forming a coalition to take military action, Bush made “economic, political, and military promises to many other countries.”¹³⁰ 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.”¹³¹ The resulting peace brokered by the coalition mandated “that Iraq recognize Kuwait's sovereignty,” thus fulfilling the coalition's humanitarian goals.¹³² 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

127. *Persian Gulf War*, *supra* note 13.

128. *Id.*

129. See KATHLYN GAY & MARTIN GAY, *PERSIAN GULF WAR* 23-24 (1996).

130. *Id.*

131. *Persian Gulf War*, *supra* note 13.

132. *Id.*

onto Filipinos.¹³³ 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.¹³⁴ Many Filipinos were Roman Catholic, as the islands had been under Catholic Spain's control.¹³⁵ The predominantly Protestant United States was eager to introduce Christianity to these Catholics.¹³⁶ 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.¹³⁷ 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.¹³⁸ One prominent example is Britain's determination to eradicate practices such as veiling and polygamy in India.¹³⁹ 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,¹⁴⁰ 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.

138. See generally MATTHEW G. STANARD, *SELLING THE CONGO: A HISTORY OF EUROPEAN PRO-EMPIRE PROPAGANDA AND THE MAKING OF BELGIAN IMPERIALISM* (2011) (recounting how Belgium saw itself as civilizing its colony in the Congo); Anna Haebich, *Neoliberalism, Settler Colonialism and the History of Indigenous Child Removal in Australia*, 19 AUSTL. INDIGENOUS L. REV. 20 (2015/2016) (detailing how children of indigenous and white people were removed ostensibly for a better life).

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.¹⁴¹ President Bush was determined to bring democracy to Iraq, which proved to be insensitive to the deep cultural divisions that pervaded Iraq.¹⁴² 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]."¹⁴³ 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."¹⁴⁴ The United States also proved aggressive in purging Saddam's Ba'athist party.¹⁴⁵ 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."¹⁴⁶ 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."¹⁴⁷ Full members of the party were forced to resign from their government-related posts.¹⁴⁸

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

(arguing that church and state only grew close on the frontier due to shared beliefs and mutual self-interest).

141. See, e.g., Adeed 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").

142. Waleed Ibrahim, *Did U.S. Troops Bring Democracy? Iraqis Have Doubts*, REUTERS (Nov. 16, 2011, 3:58 AM), <https://www.reuters.com/article/us-iraq-usa-withdrawal/did-u-s-troops-bring-democracy-iraqis-have-doubts-idUSTRE7AF0MY20111116>.

143. See JAMES DOBBINS, ET AL., AFTER THE WAR: NATION-BUILDING FROM FDR TO GEORGE W. BUSH 121 (2008).

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-exbaathi_n_82839?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAGGQv8-WfL3mJhxMgl-K77iRiZuWtcwig114cmi2J19KjLIWMGT224RENrZoYmRQs7QrW68fcelxXsQBYkwe8HcUvPKp-43aDJCCDUrDLKMO19m5Lw0yt11hJcVRPPUsJA1sAPqPj3BHPaIlloTCJJtDXe3E2B5ulPTu1KXQs1j.

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. Intervenor can enter another country with a profound misunderstanding of the current political situation or the realistic

149. JOHNSTON, *supra* note 105, at 13.

150. See Zack Beauchamp, *The Conflict Between Iraqi Sunnis and Shias Sustains ISIS*, VOX (Nov. 17, 2015, 10:25 AM), <https://www.vox.com/2018/11/20/17995846/the-conflict-between-iraqi-sunnis-and-shias-sustains-isis>.

151. See David Zucchino, *As ISIS Is Driven from Iraq, Sunnis Remain Alienated*, N.Y. TIMES (Oct. 26, 2017), <https://www.nytimes.com/2017/10/26/world/middleeast/iraq-isis-sunni.html>.

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 Genocide¹⁵² and the actions by Pol Pot in Cambodia.¹⁵³ 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 doctrine to make the world safer and more just, as it was intended to do.

152. See generally TIM ANDERSON, *RWANDAN GENOCIDE* (2009) (detailing the events of the Rwandan genocide of 1994).

153. See generally BEN KIERNAN, *THE POL POT REGIME: RACE, POWER, AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE, 1975-79* (3d ed. 2008) (detailing the events of the Cambodian genocide).