

HUMANITARIAN INTERVENTION IN A MULTIPOLAR WORLD

INTRODUCTION

Humanitarian intervention is at a crossroads. In theory, humanitarian intervention has made significant advances in recent years; the “Responsibility to Protect” doctrine (or R2P) has achieved widespread adoption within a relatively short period of time. But in practice, humanitarian intervention appears to have reached a nadir. For Western nations, especially the United States, humanitarian goals have largely given way to security imperatives in the post-9/11 age. Since 2001, global instability has also risen, multiplying the list of possible candidates for humanitarian intervention. Yet in 2015, many conflicts exist around the world where humanitarian intervention has not yet been seriously discussed, let alone attempted. A growing acknowledgment of the failures of prior Western-backed military actions—both for humanitarian purposes (as in Rwanda, Somalia, and Libya) as well as for regime change (as in Iraq and Afghanistan)—has placed the burden of proof upon those favoring interventions to justify their positions as well as to set forth a clear “exit strategy.” For reasons of economy and policy, isolationism across both the left and the right of the political spectrum in the U.S. and Europe has also risen to levels not seen in decades.¹ In the face of these pressures, the international community will need to adopt a new framework in order for humanitarian intervention not to become moribund.

To function in a multipolar world, humanitarian intervention must promote the formation of robust coalitions of intervening nations. Forming these coalitions will require a renewed reservoir of political will on the domestic front, as well as improved international relations, especially among the “great powers” of the United States, Russia, China, and the European Union. In the twenty-first century, the international community collectively possesses more resources than ever to prevent and to end mass atrocity crimes, but forging a political consensus to accomplish this end, in a competitive multipolar world, will likely prove to be a much more difficult task.

1. Max Fisher, *American Isolationism Just Hit a 50-Year High. Why That Matters*, WASH. POST, Dec. 3, 2013, available at <https://www.washingtonpost.com/news/worldviews/wp/2013/12/04/american-isolationism-just-hit-a-50-year-high-why-that-matters/>.

Part I of this Note will trace the history of humanitarian intervention from the 1980s to present day, focusing on how geopolitics has continually shaped humanitarian intervention. Part II will discuss the challenges of forming coalitions in favor of intervention within the emerging multipolar geopolitical world, whether through the U.N. or regional organizations. Part III summarizes and concludes with a prediction on the future of humanitarian intervention.

I. TOWARDS A NEW FRAMEWORK—FROM THE 1980S TO TODAY

Humanitarian intervention is often thought of as a relatively new practice, but its roots are ancient.² As recently as the 1980s, the primary

2. Humanitarian intervention, broadly defined, is the devotion of resources in response to a humanitarian crisis in another country—this includes forcible as well as non-forcible methods. David J. Scheffer, *Towards a Modern Doctrine of Humanitarian Intervention*, 23 U. TOL. L. REV. 253–74 (1992). Under this broad definition, a humanitarian intervention may be undertaken mostly or entirely by non-governmental organizations (NGOs), need not consist of armed force, and may have the consent or encouragement of the sovereign nation subject to intervention. The international community's responses to natural disasters, such as the Indonesian tsunami in 2004 and the Haitian earthquake in 2010, provide examples of "benign" humanitarian intervention. With few exceptions, "benign" humanitarian intervention enjoys broad support across the international community, but this is not the focus of this article. Except as otherwise noted, this article uses the term "humanitarian intervention" in a more limited sense to refer to the use of armed force by one nation in response to a humanitarian crisis in another nation, *against* the will of the nation subject to intervention. This type of "hostile" humanitarian intervention is much more controversial. The use of armed force by an outside power for the ostensible benefit of another nation has a long history. Humanitarianism has been a major *jus ad bellum* for many hegemonic powers in particular. For example, the civilization/barbarism dichotomy formed the basis of the Roman Empire's justification of its own expansion. Neil Faulkner, *The Official Truth: Propaganda in the Roman Empire*, BBC HISTORY, Oct. 15, 2010, http://www.bbc.co.uk/history/ancient/romans/romanpropaganda_article_01.shtml. Chinese dynasties throughout the imperial period exercised various degrees of control over neighboring peoples for their ostensible benefit. FENG ZHANG, CHINESE HEGEMONY: GRAND STRATEGY AND INTERNATIONAL INSTITUTIONS IN EAST ASIAN HISTORY 138 (2015). Chinese learning and culture was viewed by Chinese as superior, as was the wisdom of the Chinese Emperor, the ruler of the earth. DAVID C. KANG, EAST ASIA BEFORE THE WEST: FIVE CENTURIES OF TRADE AND TRIBUTE 54–56 (2010). Beginning in the 16th century, Spanish conquistadores, though primarily interested in gold, trade, and advancing the interests of the Spanish crown, also viewed their conquests in the New World as beneficial to Native Americans. Ronald W. Batchelder & Nicolas Sanchez, *The Encomienda and the Optimizing Imperialist: An Interpretation of Spanish Imperialism in the Americas*, 156 PUB. CHOICE 45 (2013). Missionaries afforded natives the opportunity to convert to Catholicism and thus achieve eternal salvation; to this end, the Catholic Church was even viewed as the "protector of the Indians." *Id.* In the 19th century, the British Empire's control over much of the globe was sometimes justified in terms of humanitarian benefit to indigenous populations who had not yet formed self-governing nations. JOHN STUART MILL, *A Few Words on Non-Intervention*, in 21 ESSAYS ON EQUALITY, LAW, AND EDUCATION 109–24 (John M. Robson ed., 1984), available at http://oll.libertyfund.org/titles/255#lf0223-21_head_040. A great irony that the "second wave" of colonialism was situated within a larger framework of Westphalian rivalry, which depended upon respect for the sovereign authority of other European nations even as it denied the same recognition to established tribal and other indigenous forms of government. The British did, however, in many places establish a practice of

impetus for interventions by the world's two superpowers—the United States and the Soviet Union—was not humanitarianism, but rather realpolitik and core national interests such as trade and security.³ In the

“indirect rule” which allowed colonial authority to be channeled through local rulers. See Michael Crowder, *Indirect Rule: French and British Style*, 34 J. INT'L AFRICAN INST. 197, 197–98 (July 1964), available at <http://sites.middlebury.edu/psci0321s14/files/2014/02/Michael-Crowder-1964-French-vs.-British-Indirect-Rule.pdf>. From today's vantage point, however, it is not so difficult to sense that transparent self-interest rather than altruism underlay such humanitarian justifications of Roman, Chinese, Spanish, and British imperial rule. Indeed, developing countries have been loudest in their condemnation of humanitarian interventions, which they view as merely a continuation of old imperialist ways. By the 1990s, however, humanitarian intervention had arguably achieved a new and different character. Humanitarian intervention, rather than a unilateral undertaking by one hegemon, was, at least in theory, a responsibility which fell upon the entire international community. Support for this new theory of humanitarian intervention may be found in international law as codified in the Genocide Convention, the Geneva Conventions, and, most recently, the U.N.'s adoption of the Responsibility to Protect doctrine in 2005. See *Convention on the Prevention and Punishment of the Crime of Genocide*, ICRC (Dec. 9, 1948), <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=1507EE9200C58C5EC12563F6005FB3E5&action=openDocument>; See *The Geneva Conventions of 1949 and their Additional Protocols*, ICRC, <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>; See *Outcome Document of the 2005 United Nations World Summit*, ¶¶ 138–40, A/RES/60/1 (2005), UN.ORG, <http://www.un.org/en/preventgenocide/adviser/pdf/World%20Summit%20Outcome%20Document.pdf#page=30>. In spite of the new liberal internationalist conception of humanitarian intervention, this note posits that in the twenty-first century, a sovereign self-interested impulse continues to underlie the decision to intervene. U.N. peacekeeping forces notwithstanding, the primary repository of humanitarian force continues to be deployed by sovereign nations, especially the United States. To the extent this remains the case, the motivations for such interventions to remain unchanged from the more familiar self-interested motivations, which have animated sovereign nations' decisions to intervene throughout history.

3. The Cold War period was a bipolar geopolitical order dominated by two superpowers, the U.S. and the USSR. Within this bipolar configuration, states alternately associated with the U.S. or the USSR for various benefits, including economic ties, technological progress, and national security. Developing close ties with one superpower or the other could be essential since the only force strong enough to deter or resist incursions by one superpower was the other superpower. “Pivoting” between the two axes of power was not unheard of, however, and could prove to be a beneficial course of action for a state. See, e.g., Lisa Reynolds Wolfe, *Egypt Transfers Loyalty from the USSR to the US in the Middle of the Cold War*, COLD WAR STUDIES, June 10, 2010, available at <http://www.coldwarstudies.com/2010/06/10/egypt-transfers-loyalty-from-the-ussr-to-the-us-in-the-middle-of-the-cold-war/>. Most significantly, China's rapprochement with the U.S. following President Nixon's visit to China in 1972 gave China additional strategic flexibility in the face of pressure from the Soviet Union, euphemistically termed the “polar bear” in discussions. ALISTAIR HORNE, *KISSINGER: 1973, THE CRUCIAL YEAR* 136–37 (2009). Such deft diplomatic maneuvering, however, was not without its dangers, especially for smaller states located in the immediate neighborhood of the hostile superpower. Throughout the Cold War the United States [refer to United States consistently as U.S. or United States] remained keen as ever on exercising its influence in Latin America, an area of the world the U.S. has long regarded as its own backyard since at least the Monroe Doctrine. *U.S. Stand Against Reds in Cuba Has Its Roots in Monroe Doctrine*, N.Y. TIMES, Apr. 19, 1961, <http://www.latinamericanstudies.org/bay-of-pigs/NYT-4-19-61b.htm>. For instance, the United States regarded the island nation of Grenada, a former British colony, as a hostile nation following a bloodless pro-Cuban coup in 1979. *The U.S. Invasion of Grenada*, UNITED STATES HISTORY, <http://www.u-s-history.com/pages/h2047.html> (last visited Oct. 18, 2015). A breakdown in civil order in Grenada in 1982 provoked a U.S. intervention termed Operation Urgent Fury, which resulted in a democratically

1980s, interventions were unilateral and, as a result, more often than not generated considerable international controversy. For instance, the usual attitude adopted by the United Nations (hereinafter the “U.N.”) toward unilateral interventions by the two superpowers during the Cold War period was disapproval. For example, during the 1980s, the U.N. General Assembly considered resolutions condemning the Soviet intervention in Afghanistan and American interventions in Grenada and Panama.⁴ The disapproval of international opinion as expressed through the General Assembly, however, proved insufficient to succeed in passing such

elected, pro-U.S. government and the removal of Cuban influence from Grenada. *See Operation Urgent Fury*, GLOBALSECURITY.COM, May 7, 2011, http://www.globalsecurity.org/military/ops/urgent_fury.htm. The breakdown in civil order in Grenada and the ostensible threat to the lives of U.S. citizens provided the immediate impetus and rationale for the intervention. Operation Urgent Fury was by no means a primarily humanitarian intervention however. The U.S. decision to intervene in this small Caribbean island makes most sense in light of external geopolitical factors, especially U.S.-Cuban hostility. As another example, the U.S. intervention in Panama in 1989, termed Operation Just Cause, was undertaken against a different geopolitical backdrop: the “rapid decline of the Soviet Union.” Ronald Cole, *Grenada, Panama, and Haiti: Joint Operational Reform*, 20 JOINT FORCE Q. 67–75 (1999), available at <http://www.dtic.mil/dtic/tr/fulltext/u2/a422959.pdf>. In the case of Panama, the recent decline of Soviet power and prestige across the globe gave the U.S. additional strategic freedom to pressure Manuel Noriega, the military dictator of Panama who was *not* communist-aligned. *Id.* As in Grenada, a security breakdown and the desire to “restore democracy” provided the impetus and rationale for U.S. intervention. Most commentators, however, explain the U.S.’s decision to intervene in Panama with reference to more fundamental U.S. national interests: the drug trade and, especially, the Panama Canal’s vital role as a transit point for the U.S. Navy. Scott Rosenberg, *Panama and Noriega: ‘Our S.O.B.’*, 42 NAT’L REV. 14 (1990), available at <http://history.emory.edu/home/assets/documents/endeavors/volume1/Scotts.pdf>. The Soviet Union too engaged in armed intervention in its geographical “backyard” for its own political interests, most recently in a prolonged campaign in Afghanistan which lasted from 1979 to 1989. *The Afghan War*, THE COLD WAR MUSEUM, http://www.coldwar.org/articles/70s/afghan_war.asp. In the Afghan War, the Soviet Union intervened with the hopes of supporting a newly-established pro-Soviet regime, but encountered stiff resistance from mujahedeen rebels who were armed and supported by numerous anti-Soviet states, including the U.S., China, and Pakistan. *Afghanistan 1979–1992*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/intell/ops/afghanistan.htm> (last visited Oct. 18, 2015). Much like the U.S. in the Vietnam War, the Soviet Union resorted to brutal scorched-earth tactics in an attempt to quell this insurgency. M. HASSAN KAKAR, *AFGHANISTAN: THE SOVIET INVASION AND THE AFGHAN RESPONSE* (1995), available at <http://bactra.org/reviews/kakar-soviet-invasion/>. It is estimated that over a million civilians died in the Afghan war as well as tens of thousands of Afghan and Soviet combatants, with over five million Afghans displaced from their homes. *Id.*

4. Richard Bernstein, *U.S. Vetoes U.N. Resolution ‘Deploring’ Grenada Invasion*, N.Y. TIMES, Oct. 29, 1983, <http://www.nytimes.com/1983/10/29/world/us-vetoes-un-resolution-deploring-grenada-invasion.html>. The U.N. Security Council considered a resolution condemning the U.S. invasion of Grenada, but a resolution of condemnation was vetoed by the United States. The U.N. Security Council also attempted to condemn the U.S. invasion of Panama, with similar results. See Paul Lewis, *Fighting in Panama: United Nations; Security Council Condemnation of Invasion Vetoed*, N.Y. TIMES, Dec. 24, 1989, <http://www.nytimes.com/1989/12/24/world/fighting-panama-united-nations-security-council-condemnation-invasion-vetoed.html>. Finally, the U.N. Security Council considered a resolution condemning the Soviet invasion of Afghanistan, but this resolution was blocked by a Soviet veto. DIEGO CORDOVEZ ET AL., *OUT OF AFGHANISTAN: THE INSIDE STORY OF THE SOVIET WITHDRAWAL* 74 (Oxford University Press, 1995).

resolutions. The two superpowers were each themselves veto-wielding permanent members of the U.N. Security Council, so either one could block any resolution against it.⁵ Thus, while a relatively robust international consensus opposed the use of force in developing nations, the intervention situation during the Cold War was effectively one of impunity. Only the counterbalancing force of the other superpower, as well as domestic political opposition, held in check the ability of either superpower to intervene in any part of the world.

The collapse of the Soviet Union in 1991, however, ushered in a new period in the history of intervention. The end of the Cold War, famously heralded by Francis Fukuyama as the “End of History,” eliminated the fierce bipolar rivalry for geopolitical supremacy that had been the main impetus behind unilateral superpower interventions.⁶ Instead, humanitarian concerns—especially preventing genocide, ethnic cleansing, war crimes, and crimes against humanity—moved to the forefront as guideposts for international peacekeeping.⁷

5. The U.S. and USSR (prior to its dissolution 1991) were both permanent members of the Security Council and thus held veto power over any Security Council resolution. See *United Nations Security Council*, ENCYCLOPEDIA BRITANNICA, available at <http://www.britannica.com/topic/United-Nations-Security-Council>.

6. Francis Fukuyama, *The End of History?*, THE NAT'L INTEREST (Summer 1989), available at <http://www.wesjones.com/eoh.htm>. Francis Fukuyama's famous and controversial “End of History” argument was that the collapse of Soviet communism marked the demise of the only real alternative to Western democratic liberalism. *Id.* As such, no barriers remained to prevent liberal democracy from eventually taking root in all countries. Despite the speedy and noteworthy replacement of many authoritarian regimes by liberal democracies in the early 1990s, especially in the post-Soviet bloc, subsequent events in the 2000s and 2010s have called Fukuyama's thesis into doubt. Authoritarian models of governance have persisted in many countries, most notably Russia, Iran, and China, the rise of radical Islam, and the fragility of states in Africa and the Middle East that have attempted but failed to transition to democracy. In the face of such challenges, it appears that history is by no means finished. In a partial retreat from post-Cold War triumphalism, Fukuyama has since expounded upon this basic thesis by describing significant barriers to state-building and socioeconomic progress that arise from challenges within liberal democracy, as well as the danger of “decay” of advanced liberal societies. See Sheri Berman, *Francis Fukuyama's 'Political Order and Political Decay'*, N.Y. TIMES, Sept. 11, 2014, at 3*, http://www.nytimes.com/2014/09/14/books/review/francis-fukuyamas-political-order-and-political-decay.html?_r=0.

7. The Holocaust has served as a catalyst for the international movement to codify, detect and prevent the crime of genocide. Edward Kissi, *The Holocaust as a Guidepost for Genocide Detection and Prevention in Africa*, THE HOLOCAUST AND THE UNITED NATIONS OUTREACH PROGRAMME, available at <http://www.un.org/en/holocaustremembrance/docs/paper5.shtml> The crime of “genocide” was first legally defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide as the targeting of a “national, racial, ethnic, or religious group” by a list of enumerated actions, which included but was not limited to “killing” and “causing serious bodily or mental harm.” Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 1021 (1948). The USSR successfully lobbied for the removal of proposed language defining the state targeting of political groups as genocide. David Shea Bettwy, *The Genocide Convention and Unprotected Groups: Is the Scope of Protection Expanding Under Customary International Law?*, NOTRE DAME J. INT'L & COMP. L. 167, 175–76 (2011).

The post-Cold War period heralded another fundamental change: multilateralism displaced unilateralism as the primary means to achieve these humanitarian ends.⁸ This transition from unilateral to multilateral interventions comports with the values asserted to be protected by humanitarian intervention. Humanitarian interventions may therefore be conceptualized, not as implicating narrow *national* interests, but as upholding a common *international* interest. For its part, the U.N. in its

Interestingly, the definition for “genocide” did not yet exist at the time of the Nuremberg Trials. Instead, ex-Nazi officials were prosecuted for “crimes against peace,” “war crimes,” and “crimes against humanity,” as elaborated in the 1945 London Charter of the International Military Tribunal (popularly known as “the Nuremberg Charter”). See *Charter of the International Military Tribunal, in Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis*, Aug. 8, 1945, 58 Stat. 1544, 82 U.N.T.S. 279. War crimes were also notably elaborated in Article 147 of the Fourth Geneva Convention. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 147, Aug. 12, 1949, 6 U.S.T. 3316, 73 U.N.T.S. 973. These early definitions of atrocity crimes were reaffirmed in 1995 via the establishment of the International Criminal Court (ICC), the first permanent international court established to prosecute such atrocity crimes. Rome Statute of the International Criminal Court, Art. 6-7, U.N. Doc. A/CONF. 183/9 (July 17, 1998).

8. The humanitarian interventions of the 1990s were uniformly undertaken by multilateral coalitions, marking a change from the unilateral interventions previously discussed (Grenada, Panama, and Afghanistan) at the close of the Cold War. Saban Kardas, *Humanitarian Intervention: The Evolution of the Idea and Practice*, 6 J. INT’L AFFAIRS 2 (June–July 2001), available at <http://sam.gov.tr/wp-content/uploads/2012/02/SabanKardas2.pdf>. See, e.g., *Operation Provide Comfort*, GLOBAL SECURITY.ORG, http://www.globalsecurity.org/military/ops/provide_comfort.htm (last updated May 7, 2011). Operations Provide Comfort and Provide Comfort II, undertaken to protect the Kurds in Northern Iraq from retaliation by the Hussein regime following the First Gulf War in 1991, was undertaken by a coalition of the U.S., Great Britain, France, Turkey, and other nations. See *Operation Provide Comfort II*, GLOBAL SECURITY.ORG, http://www.globalsecurity.org/military/ops/provide_comfort_2.htm (last visited Oct. 18, 2015). Unified Task Force (UNITAF) and Operation Restore Hope, operations to secure delivery of humanitarian aid to Somali refugees in response to famine and civil war in 1992–1993, was led primarily by the U.S. but also consisted of a 24 member nation coalition. *Somalia—UNOSOM II Background*, U.N. PEACEKEEPING, <http://www.un.org/en/peacekeeping/missions/past/unosom2backgr1.html> (Last visited Oct. 18, 2015). Similarly, Operation Restore Democracy, a U.S.-led intervention in Haiti, which succeeded in its twin aims of regime change (restoring the democratically-elected presidency of Jean-Manuel Aristide against the usurpation of a military coup) and humanitarian goals (stemming a crisis of Haitian refugees fleeing to the U.S. to escape deteriorating conditions), was carried out by a Multinational Force (MNF). *Operation Uphold Democracy*, GLOBAL SECURITY.ORG, http://www.globalsecurity.org/military/ops/uphold_democracy.htm (last updated May 7, 2011). Marking a break from the pattern of U.S. leadership in humanitarian missions, the U.N. response to the humanitarian crisis in Rwanda in 1993, UNAMIR, was neither led, nor even participated in, by the United States. Nonetheless, under UNAMIR a multilateral coalition was assembled, and the contributions of the participating nations were redoubled in 1994 after the tragic scope of the Rwanda genocide became apparent. See *Composition of Unamir*, RWANDAFILE, <http://www.rwandafile.com/other/unamircomposition.html> (last visited Oct. 18, 2015). Despite these efforts, the U.N.’s response under UNAMIR is regarded as a failure due to the failure of this mission to prevent or substantially hinder the genocide. *Ignoring Genocide*, HUMAN RIGHTS WATCH, <https://www.hrw.org/reports/1999/rwanda/Geno15-8-01.htm> (last visited Oct. 18, 2015). Instead, the Rwandan genocide was only successfully ended by the military campaign of Tutsi exiles forming the Rwandan Patriotic Front. *The Rwandan Patriotic Front*, HUMAN RIGHTS WATCH (June 26, 2015, 5:29 PM), <http://www.hrw.org/reports/1999/rwanda/Geno15-8-03.htm>.

capacity as the formal trustee of this international interest, found itself, in an ironic reversal, increasingly on the pro-intervention side of the debate.

Post-1991, the U.N. has assumed an active role both in the authorization and in the prosecution of humanitarian interventions. For instance, the U.N. Security Council's approval was at least sought—and, more often than not, obtained—in every instance of humanitarian intervention in the 1990s.⁹ However, this consensus began to fracture, for several reasons. First, the importance of national security and counterterrorism moved to the forefront of Western foreign policy after 9/11, especially in the United States. Second, assertions of the primacy of nation-state sovereignty—which had been continually voiced by great powers such as China throughout the 1990s—gained in traction as their backers gained in relative global influence. Third, political and scholarly re-evaluations of the effectiveness of humanitarian interventions undertaken during the 1990s and 2000s have called their effectiveness into question.

9. U.N. Security Council Resolution 688 condemned Iraqi aggression against Kurds and called for the international community to provide appropriate humanitarian efforts to the Kurds. *See* S.C. Res. 688, Apr. 5, 1991, *available at* <http://i.cfr.org/content/publications/attachments/SC688.pdf>. This resulted in Operation Provide Comfort I and II, waged primarily via allied aerial sorties. Daniel L. Haulman, *Crisis in Iraq: Operating Provide Comfort*, SHORT OF WAR, <http://www.afhso.af.mil/shared/media/document/AFD-120823-031.pdf> (last visited Oct. 20, 2015). Although the text of the U.N. resolution itself included no language providing for a no-fly zone, this omission, and the lack of protest at the coalition's subsequent actions, suggests that the precise method of prosecuting humanitarian interventions may occasionally be left up to the intervener's discretion. S.C. Res. 688 (Apr. 5 1991). U.N. Security Council Resolution 940 authorized the U.S.-led humanitarian mission in Haiti, Operation Restore Democracy. S.C. Res. 940, ¶¶ 14–15 (July 31, 1994). A series of resolutions, including U.N. Security Council Resolution 819 and 824, condemned the ethnic cleansing of the Bosnian government in 1993, called for humanitarian aid, established “safe zones” for civilians, and implicitly authorized the later use of armed force to achieve those ends. S.C. Res. 819, ¶¶ 9–10, 18 (Apr. 16, 1993), *available at* <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3b00f2bc28>; *See also* S.C. Res. 824 (May 6, 1993). The notable exception to the trend of U.N. ratification of humanitarian interventions in the 1990s is the NATO intervention in Kosovo; U.N. Resolution 1199, which called on Kosovo and Yugoslavia to achieve a ceasefire, was passed by the U.N. Security Council with no vetoes and only one abstention (by China). S.C. Res. 1199, ¶ 17 (Sept. 23, 1998). Due to the veto threat of Russia, a permanent member of the U.N. Security Council and an ally of Yugoslavia, no U.N. resolutions were passed authorizing the use of outside force as part of a humanitarian intervention. The subsequent success of the NATO bombing campaign in forcing Slobodan Milosevic to sign a ceasefire agreement with the Kosovars has led to a consensus among commentators that the Kosovo intervention was “illegal but legitimate.” THE KOSOVO REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSONS, LEARNED 4–5 (2000). This view is reflected in the subsequent adoption of U.N. Resolution 1244 by the U.N. Security Council, ratifying the terms of the ceasefire procured through the NATO intervention, with no vetoes and one abstention (by China). S.C. Res. 1244, ¶¶ 31–44 (June 10, 1999).

A. Critiques and Challenges

Criticism of the practice of humanitarian intervention comes from various angles. The first may be termed the “liberal-internationalist” critique. This point of view argues for the legality of humanitarian intervention and holds that humanitarian interventions have either been successful (East Timor is a commonly cited example) or, when unsuccessful, were unsuccessful because of lack of resources or political will¹⁰ In order to uphold this post-Nuremburg promise, liberal internationalists propose some combination of re-tasking Western militaries away from damaging distractions (such as regime change),

10. For a liberal-internationalist assessment of the efficacy of recent humanitarian interventions, see Santiago Delgado Calderon, *The Need for Intervention: A Counterfactual Approach to Challenging War Theories*, available at <http://blogs.cornell.edu/policyreview/2012/03/15/the-need-for-intervention-a-counterfactual-approach-to-challenging-war-theories/>. The genocide in Rwanda is perhaps the most commonly cited example of the failure of the international community to act to halt atrocity crimes. It is estimated that the actions of the UNAMIR mission succeeded in saving the lives of several thousand Rwandans. Gilbert M. Kadiagala, *Intervention in Internal Conflict: The Case of Rwanda*, in MILITARY INTERVENTION: CASES IN CONTEXT FOR THE TWENTY-FIRST CENTURY 67, 86 (William J. Lahneman ed., 2012). However, given that the final death toll in the Rwandan genocide numbered over one million, it is not at all clear what measures, if any, by the international community could have prevented the broader genocide. *Could Rwanda's 1994 Genocide Have Been Prevented?*, VOICE OF AMERICA NEWS, Oct. 30, 2009, <http://www.voanews.com/content/a-13-a-2002-03-02-2-could-67562967/388143.html>. The ongoing failed status of the state of Somalia is another example. Joint Task Force, the multilateral humanitarian effort to provide relief from the ongoing civil war in Somalia, was all but abandoned after the Battle of Mogadishu, or the “Black Hawk Down incident.” *What a Downed Black Hawk in Somalia Taught America*, NATIONAL PUBLIC RADIO, Oct. 5, 2013, <http://www.npr.org/2013/10/05/229561805/what-a-downed-black-hawk-in-somalia-taught-america>. The complete withdrawal of all U.S. and U.N. troops from Somalia occurred the following year, and the civil war in Somalia rages to this day with no end in sight. *One Man, No Vote*, THE ECONOMIST, Sept. 26, 2015, <http://www.economist.com/news/middle-east-and-africa/21665950-somalia-has-been-attempting-build-government-2007-it-proving-impossible-hold-fully>. Moreover, humanitarian crises in other areas of the world have been completely passed over by humanitarian intervention. The civil war in the Congo has caused the deaths of nearly 5.4 million people from 1998 to 2008, mainly from disease and starvation, making it the deadliest conflict since World War II. Joe Bavier, *Congo War-Driven Crisis Kills 45,000 a Month: Study*, REUTERS, Jan. 22, 2008, <http://www.reuters.com/article/2008/01/22/us-congo-democratic-death-idUSL2280201220080122>. For a summary of the U.N.'s response to the unrest in the Democratic Republic of the Congo since 1994 see *Crisis in the Democratic Republic of Congo*, INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-drc> (last visited Oct. 20 2015). No humanitarian intervention has materialized in response to the crisis in the Darfur region of Sudan from 2003 to the present day, despite the crisis in Darfur having received significant international attention, at least in its initial years, and having prompted an intense debate over whether Darfur atrocities constitute “genocide.” *Darfur May Change the Way We Understand Genocide*, CENTER ON L. AND GLOBALIZATION, Sept. 1, 2015, https://clg.portalmx.com/library/keytext.cfm?keytext_id=172. A civil war in South Sudan, a new state in North-East Africa formed by secession from Sudan in 2011, continues as of this writing, abated by minimal U.N. humanitarian resources. See generally Daniel Howden, *South Sudan: The State that Fell Apart in a Week*, THE GUARDIAN, Dec. 23, 2013, available at <http://www.theguardian.com/world/2013/dec/23/south-sudan-state-that-fell-apart-in-a-week>.

redoubling of resources toward the end of humanitarian intervention, and perhaps institutional reform.

The second point of view may be termed a “state-sovereigntist” critique. Most notably expounded in the early twenty-first century by China and Russia, this view holds that any intervention in the internal affairs of another sovereign nation is unjustifiable and illegal under international law for the simple reason that it constitutes a war of aggression, the original “crime against peace.”¹¹ Humanitarian catastrophes are a result of a failure in a country’s political system that outside powers can only succeed in complicating, not rectifying. Even more sinisterly, in this view, humanitarian intervention may amount to little more than a pretext for regime change. The best solution, for state-sovereigntists, is to simply allow domestic political crises to play themselves out, no matter the humanitarian costs. Some room remains for outside powers to influence events, for example by attempting to broker a peace treaty. This sovereignty-based critique clashes directly with the recently adopted doctrine of humanitarian intervention known as the Responsibility to Protect (“R2P”).¹²

11. The state-sovereigntist argument that a humanitarian intervention can, in and of itself, constitute a “war of aggression” or a “crime against peace” might have some ironic appeal, since it would mean any intervening nations would have to violate international law in order to halt violations of international law. See *Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, 1950*, ICRC, <https://www.icrc.org/ihl/WebART/390-550006?OpenDocument> (last visited Oct. 14, 2015). “Crimes against peace,” defined as “the planning, preparation, initiation or waging of a war of aggression” is the first crime listed under Nuremberg Principle IV, before both “war crimes” and “crimes against humanity.” This ordering suggests that “crimes against peace” may constitute an even more serious violation of international law than either war crimes or crimes against humanity; the initiation of an aggressive war, after all, may cause precisely the social disruption and political instability which allows both war crimes and crimes against humanity to take place. One counter to this charge is that the mission of humanitarian intervention is not to conquer or to exploit, but rather to save lives, and in most cases the intervening nations indeed intend to end the mission as quickly as possible and bring the troops home. Indeed, a major concern is that intervening countries will withdraw force before the humanitarian mission is completely fulfilled. See Stephen Wertheim, *A Solution From Hell: The United States and the Rise of Humanitarian Interventionism, 1991–2003*, 12 J. GENOCIDE RES. 149, 149–72 (2010).

12. Formally endorsed by the U.N. General Assembly in 2005, this theory came to be known as the “Responsibility to Protect,” or “R2P” for short. See G.A. Res. 60/1, ¶¶ 138–40 (Oct. 24, 2005), available at <http://www.un.org/en/preventgenocide/adviser/pdf/World%20Summit%20Outcome%20Document.pdf#page=30>. This “Responsibility” consists of “three pillars” which perform two major functions. In the first pillar, R2P re-conceptualized state sovereignty, traditionally understood as an absolute right of sovereign states, into a privilege contingent upon the state’s ability to “protect its populations.” *Id.* ¶ 138. Protection was owed to citizens, in particular, from the four elucidated crimes of genocide, ethnic cleansing, war crimes, and crimes against humanity. See generally *The Responsibility to Protect*, UNITED NATIONS, available at <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml> (last visited Sept. 19, 2015). In the second pillar, R2P announces the role of the “international community” in preventing atrocities, turning what was formerly understood as a “right” of states to intervene into a “responsibility,” entrusted to the international community at large,

A third perspective may be termed “realist” and is somewhat of a midway point between the two viewpoints just described. Realists would agree with liberal-internationalists that humanitarian goals are both legitimate and worthwhile and that they may be legal under international law if certain conditions are met. Many realists would also agree with state-sovereignists, however, that intervention can often prove to be an ineffective means of shaping political dynamics on the ground to truly achieve humanitarian outcomes.¹³ If the conditions abroad are not

to “encourage and assist States in fulfilling this responsibility [to protect].” *Id.* In the event that such encouraging and preventive measures prove insufficient, becomes, in the Third Pillar, a “responsibility” to “use appropriate diplomatic, humanitarian, and other means to protect populations from these crimes.” *Id.* While R2P thus articulated emphasizes peaceful methods of crisis solving, its reference to “other means” presumably also includes the use of military force.

R2P thus sets forth a new “framework” for conceptualizing and justifying humanitarian intervention. However, many important aspects are left undefined in the application of R2P. One of these is the vagueness of the actors to whom the responsibility to protect is entrusted. In the theory of R2P, if a sovereign state fails to uphold its responsibility to protect its citizens from one of the four elucidated crimes (genocide, ethnic cleansing, war crimes, or crimes against humanity), then this responsibility to protect reverts to “the international community.” *Id.* Of course, in practice, not every single country in the international community will commit soldiers, equipment, or financial support to the cause of intervention. In Libya, the only case thus far in which R2P was evoked, the coalition of intervening countries was relatively small—a select group of NATO members plus some members of the Arab League. Palash Ghosh, *Almost Half of All NATO Members Not Offering Any Military Support to Campaign*, INT. BUS. TIMES, Apr. 11, 2011, available at <http://www.ibtimes.com/almost-half-nato-members-not-offering-any-military-support-libya-campaign-280199>. Should R2P be raised again as a justification for armed humanitarian intervention, getting all coalition members to contribute their fair share of military resources will likely again be at issue. Despite human rights abuses within Russia and China, it is highly doubtful that any humanitarian or R2P-style intervention would ever be attempted within these great powers, equipped as they are with a nuclear deterrent. Nevertheless, the R2P doctrine sits uncomfortably with Russia and China. Michael Ignatieff, “How Syria Divides the World,” NEW YORK REVIEW OF BOOKS, July 11, 2012, available at <http://www.nybooks.com/blogs/nyrblog/2012/jul/11/syria-proxy-war-russia-china/>. To understand why, consider how the R2P doctrine jeopardizes a repressive regime facing an armed rebellion. If the regime responds too forcefully to the rebellion, then it may be accused of committing atrocity crimes. However, if the regime does *not* respond forcefully enough to the rebellion, then the conflict can simmer, exposing the regime’s failure to “protect its population.” Either way, the R2P framework subjects the regime to additional international scrutiny, even if outside intervention is not a realistic option. The threat which R2P poses to non-nuclear armed regimes is even starker. If the R2P doctrine becomes sufficiently robust, rebel groups themselves can stage assaults designed to provoke retaliation by the regime, with the expectation that the regime’s crackdown will be punished by the international community’s timely intervention. Alan J. Kuperman, *Mitigating the Moral Hazard of Humanitarian Intervention: Lessons from Economics*, 14 GLOBAL GOVERNANCE 219, 221 (2008). This threat of outside intervention constrains the political power not so much of China and Russia themselves, but of Russia and China’s authoritarian allies in unstable parts of the world in which Russia and China maintain significant economic ties. In addition, the Russian intervention in response to the Maidan (“square”) protests in Ukraine and China’s tacit pro-Russian stance in the Ukraine crisis suggest that the post-Cold War “triumph of democracy” is far from certain. Gangzheng She, “An unexpected harvest: China, Ukraine and the west,” OPENDEMOCRACY.ORG, Aug. 4, 2014, available at <https://www.opendemocracy.net/gangzheng-she/unexpected-harvest-china-ukraine-and-west>.

13. For a discussion of the similarities of realism and liberal-internationalism, see *Realism, Liberalism and Humanitarian Intervention: Is There a Middle Ground?*, London School of Economics

favorable—and if the political will at home is lacking—then realists would say that it is best not to try intervention at all. The realist perspective thus separates the moral imperative to prevent atrocities from the ability to do so in a way that upsets liberal-internationalist assumptions but which may also be better tailored to a framework designed for the twenty-first century geopolitical system and socio-political milieu.

Geopolitics helps explain why the 1990s were the high-water mark for humanitarian intervention. The end of the Cold War had generated a sense of optimism for a world characterized by fewer conflicts, increased great-power cooperation, and the apparently inevitable progress and eventual triumph of liberal democracy.¹⁴ The luxury of pursuing humanitarian goals in other countries through military means was a unique product of this “unipolar moment.”¹⁵ A budget-conscious American government implemented a modest drawdown in military spending throughout the

and Political Science, available at http://iars.org.uk/sites/default/files/2007_Research%20Essay_%20Humanitarian%20Intervention.pdf. Steven E. Meyer, *Security Council Resolution 1244—Everyone’s Favorite Crutch*, TRANSCONFLICT (Sept. 11, 2015, 10:04 AM), available at <http://www.transconflict.com/2013/03/security-council-resolution-1244-everyones-favorite-crutch-113/>. Fifteen years after the NATO intervention in Kosovo, a lasting political settlement between Serbia and Kosovo remains elusive.

14. In a speech before a joint session of Congress shortly prior to the Persian Gulf War, George H.W. Bush proclaimed the hope for a “New World Order” wherein America would pursue its national interests within a framework of cooperation with the international community. President Bush’s words are worth quoting at length:

We stand today at a unique and extraordinary moment. The crisis in the Persian Gulf, as grave as it is, also offers a rare opportunity to move toward an historic period of cooperation. Out of these troubled times, our fifth objective—a new world order—can emerge: a new era—freer from the threat of terror, stronger in the pursuit of justice, and more secure in the quest for peace. An era in which the nations of the world, East and West, North and South, can prosper and live in harmony. A hundred generations have searched for this elusive path to peace, while a thousand wars raged across the span of human endeavor. Today that new world is struggling to be born, a world quite different from the one we’ve known. A world where the rule of law supplants the rule of the jungle. A world in which nations recognize the shared responsibility for freedom and justice. A world where the strong respect the rights of the weak. This is the vision that I shared with President Gorbachev in Helsinki. He and other leaders from Europe, the Gulf, and around the world understand that how we manage this crisis today could shape the future for generations to come.

George H.W. Bush, President, United States of America, Address before a Joint Session of the Congress on the Persian Gulf Crisis and the Federal Budget Deficit (Sept. 11, 1990), available at http://bushlibrary.tamu.edu/research/public_papers.php?id=2217&year=1990&month=9.

15. Charles Krauthammer, *The Unipolar Moment*, 70 FOREIGN AFFAIRS 23, 26 (1990), available at <http://www.jstor.org/stable/20044692?seq=4>. The disintegration of the USSR, the United States’ primary geopolitical adversary, caused the well-trained and well-funded American military to suddenly find itself, like the proverbial bachelor, all dressed up, with nowhere to go. Yet signs of the coming loss of America’s unipolar freedom were apparent even from the beginning. In the run-up to the Persian Gulf War, arguably the height of the “unipolar moment,” American secretaries could still be found crisscrossing the globe “rattling tin cups” to fund American intervention abroad. *Id.*

1990s;¹⁶ nevertheless, in this period the U.S. still enjoyed overwhelming military might, as it no longer faced the rivalry of the USSR. Meanwhile, in the 1990s serious ethnic conflicts manifested around the world. One motivation for the abnormally high number of U.S. interventions during this decade may have been a desire among some policymakers to turn this unprecedented freedom in American military commitments into a force for good, or even to see a return for the investment.¹⁷

Geopolitics also explains why the appetite for humanitarian intervention has since receded. The rise of terrorism as a national security threat since 9/11, dismay over the costs of nation-building in Iraq and Afghanistan, and the relative decline in the power of the U.S. have all combined to produce a reluctance among NATO members to intervene in foreign conflicts.¹⁸ The chaotic denouement of the Libyan intervention, a limited military action against a long-maligned dictator involving no Western ground presence,¹⁹ was in some ways the final straw. Now, it is difficult to imagine the United States and its allies summoning the appetite for intervention for any goals not directly related to their own national (especially security) interests. Indeed, the U.S. very publicly declined to pursue a norm-enforcement action in Syria in 2013 when faced with

16. Dinah Walker, "Trends in U.S. Military Spending," COUNCIL ON FOREIGN RELATIONS, July 15, 2014, <http://www.cfr.org/defense-budget/trends-us-military-spending/p28855>.

17. Ann Markusen, *How We Lost the Peace Dividend*, THE AM. PROSPECT, Dec. 19, 2001, available at <http://prospect.org/article/how-we-lost-peace-dividend>. President George H.W. Bush and Prime Minister Margaret Thatcher spoke of a "peace dividend," a concept related to the guns-and-butter economic theory. RITCHIE OVENDALE, BRITISH DEFENCE POLICY SINCE 1945, 15 (1994). Less money spent on "guns" (i.e. military) would equal more money for "butter," or projects to improve human well-being (i.e. infrastructure, health care, education, etc.). See *Guns and Butter Curve*, INVESTOPEDIA, <http://www.investopedia.com/terms/g/gunsandbutter.asp> (last visited Oct. 15, 2015). Military spending in the United States over the 1990s was reduced, albeit at a very slow rate, declining to only 85% of the Cold War average by 2001, when the 9/11 terrorist attacks once again fueled military spending. See Markusen, *supra* 14. For a non-scholarly treatment of the "peace dividend" from the perspective of the isolationist thinking now on the ascendancy in America and elsewhere, see Patrick Foy, *How We Squandered the Peace Dividend*, TAKI'S MAGAZINE, May 6, 2011, available at http://takimag.com/article/how_we_squandered_the_peace_dividend/print#axzz3IR41DCpj.

18. Josh Rogin, "NATO chief: Intervention just won't work in Syria," FOREIGN AFFAIRS (Feb. 29, 2009), <http://foreignpolicy.com/2012/02/29/nato-chief-intervention-just-wont-work-in-syria/>. In addition, rising powers such as China and Brazil have had to reckon with NATO's newfound reluctance to intervene. Kerry Brown, *Why China Misses the Unipolar Moment*, THE DIPLOMAT (Sept. 17, 2013), available at <http://thediplomat.com/2013/09/why-china-misses-the-unipolar-moment-2/>. The recent rise in NATO reluctance to pursue humanitarian intervention has, in turn, foisted upon other global powers the undesirable onuses of responsibility, action, and criticism that comes with the territory of global leadership.

19. Thom Shankar & Eric Schmidt, *Seeing Limits to 'New' Kind of War in Syria*, N.Y. TIMES, Oct. 21, 2011, http://www.nytimes.com/2011/10/22/world/africa/nato-war-in-libya-shows-united-states-was-vital-to-toppling-qaddafi.html?_r=0.

revelations concerning the Assad regime's use of chemical weapons on civilians.²⁰

Even the once-sacrosanct justification of national security for intervention is increasingly being viewed with a jaundiced eye by a skeptical public. For example, President Obama's current "half-hearted fight" against the Islamic State in Iraq and Syria (ISIS), a brutal terrorist group which beheaded two American journalists in widely publicized propaganda videos, arguably demonstrates the United States' drift toward non-interventionism even in the face of direct provocations.²¹ If the United States is reluctant to intervene to protect even its own citizens abroad, then what hope do foreign nationals have of eliciting humanitarian intervention?

B. Humanitarian Intervention in a Multipolar World?

The 'unipolar moment' of the 1990s has passed, and the high frequency of humanitarian intervention during that decade, juxtaposed with the infrequency of such missions today, suggests that decade was a temporary deviation from the norm rather than a new permanent state.²² Beginning in the 2000s, other priorities, chiefly terrorism and global security, have assumed center stage.²³ This development has come dismayingly for those

20. See Glenn Kessler, *President Obama and the 'red line' on Syria's Chemical Weapons*, WASH. POST, Sept. 3, 2013, available at <https://www.washingtonpost.com/blogs/fact-checker/wp/2013/09/06/president-obama-and-the-red-line-on-syrias-chemical-weapons/>.

21. *Mr. Obama's Half-Hearted Fight Against the Islamic State*, WASH. POST, Oct. 25, 2014, available at http://www.washingtonpost.com/opinions/mr-obamas-half-hearted-fight-against-the-islamic-state/2014/10/24/77d7a74c-5b8f-11e4-b812-38518ae74c67_story.html.

22. Krauthammer, *supra* note 15.

23. Decades of Western "meddling" in the Middle East may or may not have been the root cause of all that region's current instability. *Jeremy Corbyn: ISIL Is Result of Western Meddling in the Middle East*, SPUTNIK NEWS, Sept. 27, 2015, available at <http://sputniknews.com/world/20150927/1027598994.html>. Regardless of this argument's empirical truth, its potent appeal to Western liberals cannot be denied. *Bin Laden's 'Letter to America'*, THE GUARDIAN, Nov. 24, 2002, available at <http://www.theguardian.com/world/2002/nov/24/theobserver>. Western intervention's close association with inspiring further terrorism against the West—especially 9/11—mitigates against the U.S. pursuing all but the most essential military actions in the Middle East. Becoming the unwitting instigator of further instability in Islamic world is certainly not a U.S. goal, and if the U.S. is presented with a choice between a repressive regime and chaos, the choice is clear, even for presidents concerned with human rights. For example, when presented with the opportunity to intervene against the Assad regime in Syria in 2013, Obama demurred, despite his strong interest in halting atrocity crimes in Syria, especially those involving the use of chemical weapons, which Obama had previously described as a "red line." Patrice Taddonio, *"The President Blinked": Why Obama Changed Course on the "Red Line" in Syria*, FRONTLINE, May 25, 2015, available at <http://www.pbs.org/wgbh/pages/frontline/foreign-affairs-defense/obama-at-war/the-president-blinked-why-obama-changed-course-on-the-red-line-in-syria/>. The subsequent rise of ISIS as a major faction in Syria in 2014 has perhaps

who have held out hope for humanitarian intervention to assist many parts of the world in the transition towards liberal democracy.²⁴ Understanding the stubborn persistence of repressive regimes, and the chaos that so often follows their downfalls, presents new challenges to political scientists and advocates of humanitarianism.

In a speech on the eve of Operation Desert Storm, American president George H.W. Bush set forth his concept of a “New World Order,” wherein the United States would enjoy a hegemonic position but simultaneously work with other nations to cooperate to pursue peace and other mutual interests. This speech was very much a product of its time, and Bush’s optimistic vision has not come to pass. Instead, as the United States’ relative power has declined, the world order has increasingly veered toward a more cutthroat and competitive contest for global influence not unlike the familiar Westphalian rivalries of the 18th and 19th centuries.²⁵

vindicated Obama’s much-maligned decision not to retaliate against the Assad regime for its war crimes; but at the same time, the decision to stand aside did nothing to halt the rise of ISIS.

24. At a minimum, humanitarian intervention must bring about some degree of protection and stability to the affected populations in order for the mission to be regarded as a success. Unqualified success is elusive, and recently examples of even mixed success are also difficult to identify. In addition, achievement of short-term goals is not necessarily indicative of long-term success. As an example, consider the NATO-led intervention in Libya in 2011, the first humanitarian intervention to be explicitly justified in terms of R2P. *The Crisis in Libya*, INT’L. COALITION FOR THE RESPONSIBILITY TO PROTECT, available at <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya>. The timely use of NATO force succeeded in achieving President Obama’s most immediate humanitarian aim, preventing the government troops of the Libyan strongman Col. Muammar Gaddafi from entering Benghazi and massacring his own people. *Remarks by the President in Address to the Nation on Libya*, THE WHITE HOUSE OFFICE OF THE PRESS SECRETARY, Mar. 28 2011, available at <https://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>. The Libyan dictator himself had brashly threatened atrocity crimes, calling protesters “cockroaches” and threatening to “cleanse Libya house by house,” language reminiscent of the anti-Tutsi rhetoric preceding the Rwandan genocide. John Leyne, *Libya Protests: Defiant Gaddafi refuses to quit*, BBC NEWS, Feb. 22, 2011, available at <http://www.bbc.com/news/world-middle-east-12544624>. In the long-term, however, the Libyan intervention failed to achieve lasting stability. Likely informed by recent negative experiences in Iraq and Afghanistan, the NATO coalition made little attempt at nation building in Libya. As of this writing, Libya is divided between two rival governments stationed in the east and west and smaller groups of armed tribal factions, a chaotic situation not unlike Somalia. Rebecca Murray, *Libya Anniversary: ‘The Situation is Just Terrible’*, AL-JAZEERA, Feb. 16, 2015, available at <http://www.aljazeera.com/news/2015/02/libya-anniversary-situation-terrible-150216082028555.html>. It is difficult to say whether life for average Libyans is better than it would have been if Gaddafi had been allowed to remain in power.

25. In support of this note’s contention that an increasingly multipolar world will witness the return of Westphalian rivalries among nation-states, note the generally low level of trust between nations in multilateral contexts. Despite some recent progress, the Doha round at the WTO remains stalled on the main issue of agriculture. *Doha Delivers*, THE ECONOMIST, Dec. 9, 2013, <http://www.economist.com/blogs/freeexchange/2013/12/world-trade-organisation>. Multilateral efforts to combat climate change continue, but have run aground before, and are complicated by recent revelations concerning China’s increased consumption of coal. Chris Buckley, *China Burns Much More Coal Than Reported, Complicating Climate Talks*, N.Y. TIMES, Nov. 3, 2015,

The return of national-interest calculations under this more competitive global arrangement threatens to push humanitarian concerns to the side once again, as was the case during the Cold War. At worst, nation-states may return to the Cold War practice of intervention for narrow geopolitical reasons, and the multilateral (as opposed to bilateral) character of the twenty-first-century world order would complicate matters further. To preserve humanitarian goals in the coming multipolar world, liberal internationalists will need to devise a new framework for equitably shouldering the costs of humanitarian missions. No less important would be forging a consensus among nations with a stake in the world order to equitably share the credit (and the blame) for the outcomes of those missions.

II. WHO SHALL INTERVENE? DEFINING THE “INTERNATIONAL COMMUNITY” IN A MULTIPOLAR WORLD

Recent history has not been kind to the concept of intervention. Most notably, the costly and prolonged occupations of Iraq and Afghanistan have helped contributed to an increase in isolationism.²⁶ Good intentions do not appear to matter; Western nations, the United States included, are more reluctant than ever to engage in intervention for *any* reason. Neither the Iraq nor Afghanistan Wars were, strictly speaking, humanitarian interventions, but they were billed as “liberating operations” for the local

<http://www.nytimes.com/2015/11/04/world/asia/china-burns-much-more-coal-than-reported-complicating-climate-talks.html>. Nuclear proliferation remains a major challenge, especially in South Asia. The Editorial Board, *The Pakistan Nuclear Nightmare*, N.Y. TIMES, Nov. 7, 2015, <http://www.nytimes.com/2015/11/08/opinion/sunday/the-pakistan-nuclear-nightmare.html>. What all these failures share in common is an unwillingness of states to agree to accept limitations on their own sovereignty and perceived national interests in order to obtain a global public good. These failures can be characterized as a prisoner’s dilemma writ large, where countries pursue a temporarily self-interested, but ultimately self-defeating, strategy of continually ratting on one another. Examples of recent multilateral successes, such as the recent agreement on the Trans-Pacific Partnership (or TPP), arguably have deeper roots in regional rivalries. Adrian Hearn and Margaret Myers, *China and the TPP: Asia-Pacific Integration or Disintegration?*, THE DIALOGUE.ORG, July 2015, <http://www.thedialogue.org/wp-content/uploads/2015/07/CLA-TPP-Report-final-web.pdf>. According to U.S. officials, deepening ties within the trade bloc would assist in presenting an effective counterweight to China’s regional pull within East Asia, an argument which has caused consternation in China. Min Ye, *China Liked TPP—Until U.S. Officials Opened Their Mouths*, FOREIGN POLICY, May 15, 2015, available at <http://foreignpolicy.com/2015/05/15/china-liked-trans-pacific-partnership-until-u-s-officials-opened-their-mouths-trade-agreement-rhetoric-fail/>.

26. Max Fisher, *American Isolationism Just Hit a 50-year Record High. Why That Matters*, WASH. POST, Dec. 4, 2013, available at <https://www.washingtonpost.com/news/worldviews/wp/2013/12/04/american-isolationism-just-hit-a-50-year-high-why-that-matters/>.

population, in addition to being essential for U.S. national security.²⁷ The repressive human rights record of the Taliban regime in Afghanistan—as well as the eagerness of the Bush Administration to justify the Iraq War as humanitarianism in the face of withering criticism over faulty pre-war intelligence concerning WMDs—has confused this distinction between humanitarian and non-humanitarian intervention for many.²⁸

Perhaps even more damaging to the reputation of humanitarian intervention than the Iraq or Afghanistan Wars was the 2011 Libyan intervention. Unlike the Bush Administration's post-hoc use of humanitarianism to justify the Iraq and Afghanistan Wars, which both retained an independent national security justification, the Obama Administration justified the 2011 Libyan intervention from day one solely as a humanitarian exercise pursuant to R2P.²⁹ This intervention, while undoubtedly effective in the short-term at saving lives from the Gaddafi regime, over the long-term shattered any semblance of Libyan governance and by most accounts has left the country “in tatters.”³⁰ The upshot of these interventions is that the United States, while still militarily supreme, has become much less confident in its own ability to achieve favorable political outcomes through the use of force. The Bush and Blair Administrations' confused and misguided use of humanitarian rhetoric to separately justify the Afghanistan and Iraq Wars has also tarnished American legitimacy. The project of preserving and promoting liberal democracy—a cornerstone of American foreign policy since at least World War I—saw impressive gains in the twentieth century, but twenty-first century experience with the democratizing project has so far been mostly negative.³¹ The United States remains a top military power committed to democracy and human rights, and will likely be a major player in any future humanitarian interventions, but the supposed excesses of American unilateral action is hardly the concern anymore. Rather, the

27. Editorial, *Liberating the Women of Afghanistan*, N.Y. TIMES, Nov. 24, 2001, available at <http://www.nytimes.com/2001/11/24/opinion/liberating-the-women-of-afghanistan.html>.

28. A.M. Johannessen, *Humanitarian Intervention and the 'Responsibility to Protect' after September 11*, WIKIDOT, July 3, 2008, available at <http://amjohannes.wikidot.com/humanitarian-intervention-and-the-responsibility-to-protect>.

29. Chris Keeler, *The End of the Responsibility to Protect?*, FOREIGN POL'Y J., Oct. 12, 2011, available at <http://www.foreignpolicyjournal.com/2011/10/12/the-end-of-the-responsibility-to-protect/>.

30. Mohamed Ali Harissi, *Libya in tatters after bloody year of rival governments*, YAHOO! NEWS, Aug. 25, 2015, available at <http://news.yahoo.com/libya-tatters-bloody-rival-governments-102408784.html>.

31. Michael Mandelbaum, *Civics Class: A Report Card on This Country's Efforts to Teach Other Countries About Democracy*, N.Y. TIMES, Dec. 12, 1999, available at <https://www.nytimes.com/books/99/12/12/reviews/991212.12mandelt.html>.

focus must shift to building a new “international community” in support of humanitarian intervention, one that includes other actors.

Post-Nuremberg, the “international community” entrusted with pursuing humanitarian interventions is formally the whole community of nations as embodied in the U.N. In practice, however, and certainly since the end of the Cold War, the “international community” has served as a euphemism for the United States, NATO, and other closely aligned nations such as Australia.³² The United States and its allies, however, have tried their role as the “world’s policeman” and are quickly losing the appetite to intervene in humanitarian crises that have no direct bearing on their direct national interests or security.³³ This “international community” in favor of humanitarian intervention has fractured, but a new one may yet be born.

In an increasingly multipolar world, it is conceivable that more nations may join to form a more inclusive international community. Many nations are increasing in relative power, both economically and militarily, including the BRIC countries.³⁴ The European Union, catalyzed by Russian aggression in Ukraine, may also move towards a more unified foreign policy with goals that may diverge from those of the NATO alliance.³⁵ So the “rise of the rest”³⁶ will witness the gradual leveling of American power with that of other great powers. Each new bloc of power

32. Australia and New Zealand have led humanitarian interventions in the Pacific Islands region, including notably in East Timor. Alan A. Lachica, *Humanitarian Intervention in East Timor: An Analysis of Australia’s Leadership Role*, PEACE & CONFLICT REV. Vol. 5, 2 (Spring 2011).

33. See generally Barbara Conroy, *U.S. Global Leadership: A Euphemism for World Policeman*, CATO INSTITUTE, Feb. 5, 1997, available at <http://www.cato.org/pubs/pas/pa-267.html>.

34. The “BRIC” grouping of four countries (Brazil, Russia, India, and China) will soon become wealthier than most of the current economic powers. Once heralded as the future of the twenty-first century global economy, these countries’ growth rates began to slow in 2013 and Brazil, Russia, and China all experienced major economic shocks in 2014 and 2015. *Emerging Economies: When Giants Slow Down*, THE ECONOMIST, July 27, 2013, available at <http://www.economist.com/news/briefing/21582257-most-dramatic-and-disruptive-period-emerging-market-growth-world-has-ever-seen>.

35. *European Parliament Urges United Front on Russia*, EURASIANET.ORG, June 10, 2015, available at <http://www.eurasianet.org/node/73811>.

36. Zakaria, Fareed. *The Rise of the Rest*, NEWSWEEK, May 12, 2008, available at <http://fareedzakaria.com/2008/05/12/the-rise-of-the-rest/>. The E.U.’s role will depend on whether and how European Union integration progresses, a question which, now more than ever, has no easily ascertainable answer. The prolonged Euro crisis, as well as the recent electoral successes of Eurosceptic parties in the European Parliament both suggest that the E.U. may be incapable of operating a coherent foreign policy for the foreseeable future. Björn Fägersten, *The Ukraine Crisis has Highlighted the Flaws in the EU’s Technocratic Approach to Foreign Policy*, May 8, 2014, available at <http://blogs.lse.ac.uk/europpblog/2014/05/08/the-ukraine-crisis-has-highlighted-the-flaws-in-the-eus-technocratic-approach-to-foreign-policy/>. European nations that remain capable of participating in their sovereign capacity as major partners in humanitarian intervention would be Britain, France, and Germany. Minor European nations would still be capable of contributing modest troop levels, logistical support, and of course helping bestow the all-important quality of international legitimacy upon any military action.

represents potential rivals for geopolitical influence with the United States. Yet each potential rival is also a potential partner, and there are powerful reasons to cooperate. Globalization has deepened the incentives for nations to have good bilateral relations, especially regarding trade and national security. The global implications of climate change have anchored much discussion on multilateral cooperation in the twenty-first century, even if solutions have not yet materialized. Even the barbarity of Jihadism, as embodied in ISIS, has the potential to bring former rivals closer together, especially Iran and the United States.³⁷ Humanitarian intervention is another area that would benefit from a global conception of responsibility. In a best-case scenario (a “cooperative world”), humanitarian intervention may become regarded as another ‘global good’ that is the proper responsibility of all nations with a stake in the international order.³⁸

In a worst-case scenario (a “competitive world”), however, intervention—whether or not coupled with the rhetoric of humanitarianism—may return to become another tool for the world’s strongest states to advance their own narrow national interests, as was the case during the Cold War.³⁹ In the competition for the world’s attention, there will be “winners” and “losers.” Sub-Saharan Africa, where few nations outside the African continent have vital interests, would be a “loser,” and conflicts there would likely slip further from view as nations choose to conserve their military resources and political capital rather than invest them in an attempt to resolve the humanitarian crisis.⁴⁰

37. Benny Avni, *Iran Says It’s Willing to Fight ISIS, for a Price*, NEWSWEEK, Sept. 29, 2014, <http://www.newsweek.com/iran-says-its-willing-fight-isis-price-273939>.

38. A “global public good” has no easy definition, but generally means any good available on a worldwide, non-excludable basis; this includes efforts to address climate change, improve global public health, eradicate infectious diseases, and distribute beneficial technologies such as cellphones on a wider basis. Shaffer, Gregory, *International Law and Public Goods in a Legal Pluralist World*, 23 EUROPEAN J. INT’L L. 3, 669–93 (2012), available at <http://ejil.oxfordjournals.org/content/23/3/669>. To the extent that humanitarian intervention often specifically seeks to develop these areas, as well as others such as democracy and institution-building, humanitarian intervention could also be considered a global public good. *Id.*

39. The Five Permanent members of the U.N. Security Council consist of the United States, China, Russia, the United Kingdom, and France. *Current Members*, UNITED NATIONS SECURITY COUNCIL, available at <http://www.un.org/en/sc/members/>. These countries were the victors of World War II (with the exception of Russia, which inherited the seat formerly held by the USSR). One criticism of the U.N. Security Council is that this collection of nations has become outdated. Editorial, *Reforming the UN Security Council: Manana, Manana*, THE GUARDIAN, May 6, 2013, available at <http://www.theguardian.com/commentisfree/2013/may/06/un-security-council>.

40. For an assessment of post-Cold War U.S. interests in Africa, see Dan Henk, *US National Interests in Sub-Saharan Africa*, Parameters, Winter 1997–98, 92–107, available at <http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/97winter/henk.htm>. Henk suggests that U.S. responses to humanitarian crises in Africa are “hasty” and poorly thought-through because humanitarianism is low on the list of U.S. national security priorities.

Yet, in a competitive world, the fate of the “winners” could be even worse. Conflicts in more geo-strategically significant areas, such as Eastern Europe or the Middle East, would assume greater significance, but also, paradoxically, become even more difficult to address, at least under the current system. It is already extremely difficult to obtain a consensus from all five permanent members of the U.N. Security Council in favor of intervention, and this would become even more difficult if any of the five permanent members decide to use their veto powers to block humanitarian interventions aimed against friendly regimes.⁴¹ A version of this process is already underway. For example, the Syrian regime’s loudly-voiced importance to Russia, and Russia’s recent intervention therein, seem to have scuttled any possibility of a U.N.-approved humanitarian intervention in the Syrian civil war.⁴² The alternative, multilateral diplomacy, has not yet produced an acceptable solution in Syria, and the humanitarian situation there has since gone from bad to worse.⁴³ Shockingly, the Assad regime has somehow managed to successfully bill itself as the sane man in the room compared to the rebel groups, especially ISIS. From a Western perspective, it is not even clear what policies a Syrian intervention would be designed to achieve; no other global conflict more vexingly pits humanitarianism against national security.

A. R2P—International Law versus Application

Humanitarian intervention is conceptually grounded in international law deriving from the Nuremberg Tribunals. Genocide, war crimes, crimes against humanity, and ethnic cleansing are considered such serious transgressions that all options, ranging from economic sanctions to

41. Russian and Chinese U.N. Security Council vetoes succeeded in blocking proposed U.N. actions to address the Syrian conflict, including the decision to refer Syria to the International Criminal Court. Ian Black, *Russia and China Veto UN Move to Refer Syria to International Criminal Court*, THE GUARDIAN, May 22, 2014, available at <http://www.theguardian.com/world/2014/may/22/russia-china-veto-un-draft-resolution-refer-syria-international-criminal-court>. Individual nations or, more likely, regional security organizations such as NATO may, of course, for better or worse, choose to launch humanitarian interventions in spite of a veto by a permanent member of the U.N. Security Council, as was the case in Kosovo in 1999. Jack Goldsmith, *More on the UN Charter, Syria, and “Illegal but Legitimate,”* LAWFARE, Sept. 5, 2013, <https://www.lawfareblog.com/more-un-charter-syria-and-illegal-legitimate> The legitimacy of the U.N. Security Council as a tool for authorizing humanitarian intervention would be damaged in such an event.

42. Jon Schuppe, *Russian Aggression Complicates Obama’s Options in Syria*, BUSINESS INSIDER, Oct. 9, 2015, available at <http://www.nbcnews.com/storyline/isis-terror/russian-aggression-complicates-obamas-options-syria-n441061>.

43. *Syria Crisis: Echo Factsheet*, EUROPEAN COMMISSION, Sept. 14, 2015, available at http://ec.europa.eu/echo/files/aid/countries/factsheets/syria_en.pdf.

military intervention, should be considered to prevent them from occurring. The recent advent of the Responsibility to Protect doctrine (R2P) has explicitly conditioned a state's sovereignty upon the state's responsibilities to protect its own citizens from such crimes, and this evolving doctrine provides guidance in determining when military intervention may be appropriate.⁴⁴ The decision to intervene in any particular case can never be entirely separated from political concerns, including a country's diplomatic ties to the regime.⁴⁵ But even when the decision to intervene is made, pursuing humanitarian intervention is not as clear-cut as enforcing other international obligations, as, for example, an International Court of Justice judgment. First, states who are targets of humanitarian intervention often have little incentive to cooperate, especially when the regime itself is implicated in the humanitarian crisis. Second, enforcement in this context also requires expending significant monetary and military costs. Finally, the domestic political situation must be favorable for intervention, and, when coalition-building is involved, an effort must be made to accommodate foreign policy perspectives among the world's major powers that differ fundamentally.

Even if all of the aforementioned considerations can be addressed, a curious paradox remains. The intervening nation (or coalition of nations) often wields superior force, but this is no guarantee of the mission's ultimate success.⁴⁶ It seems clear that humanitarian interventions can save lives, but for how long? No country will volunteer to police a foreign conflict indefinitely, especially one that does not directly impact its core

44. See generally INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT, <http://www.responsibilitytoprotect.org/>.

45. For discussion of the practical limitations of Responsibility to Protect, see generally Lou Pigenot and Wolfgang Obenland, *In Whose Name?: A Critical View on the Responsibility to Protect*. GLOBAL POLICY FORUM, May 2014, available at https://www.globalpolicy.org/images/pdfs/images/pdfs/In_whose_name_web.pdf.

46. Generally speaking, humanitarian interventions involve a great mismatch of military strength in favor of the intervening nation or nations. However, when the intervening countries are democratically ruled (as is generally the case), military force alone is not enough. In the democratic West, the issue of whether to use force in foreign nations is one of the most salient and controversial issues of foreign policy. So if a humanitarian intervention lasts more than one election cycle, then the electorate must continue to support the intervention, or it may elect a government opposed to the intervention. In particular, public opinion in support of humanitarian intervention can wane over the course of a prolonged occupation or even shift dramatically after a single military defeat. Benjamin Valentino, *The Perils of Limited Humanitarian Intervention: Lessons from the 1990s*, 24 WIS. L.J. 3, 723, at 731 (2006), available at <http://hosted.law.wisc.edu/wordpress/wilj/files/2012/02/valentino.pdf>. For example, polls indicated that 73 to 81 percent of Americans supported the humanitarian intervention in Somalia prior to the Battle of Mogadishu, but after eighteen American soldiers died in that battle, 60 percent of Americans agreed with the statement that further involvement in Somalia was not "worth the death of even one more soldier." *Id.*

national interests. The risk that a humanitarian intervention will not quickly achieve the optimal outcome—peace that will endure after the withdrawal of the intervening force—is surely a factor in world leaders’ reluctance to risk their own political capital on humanitarian interventions. Any new framework must squarely address this problem.

Intervening nations, perhaps, should be compensated in some way for assuming these risks and expenditures. One way in which such a payback may be effective is by allowing nations to pursue national interests in tandem with humanitarian objectives. For many nations of the “global south,” such accommodation would likely be a non-starter; although charges of neo-imperialism are generally overstated, some skepticism regarding intervening nations’ true motives is warranted in light of the colonial histories of Western nations’ involvement in Africa and the Middle East.⁴⁷ Such skepticism merits a response, and concerns that humanitarian intervention may pose as a front for neo-colonialism can perhaps be met with some version of the following argument. Rather than abandoning all responsibility, former colonial powers owe a particular duty to mitigate the bad consequences of their colonial legacies, because often, instability is a legacy of colonialism.⁴⁸

Explicitly ratifying the pursuit of national self-interest would also run afoul of principles of Christian just-war theory that are sometimes advanced in support of humanitarian intervention.⁴⁹ The post-Nuremburg moral and philosophical underpinnings of international humanitarian law gesture toward universal values and make no attempt to accommodate national interests. While victory over Nazi Germany and Imperial Japan

47. *The Crisis of Humanitarian Intervention*, FOCUS ON THE GLOBAL SOUTH, available at <http://focusweb.org/content/crisis-humanitarian-intervention> (last accessed Oct. 13, 2015).

48. Stelios Michalopoulos and Elias Papaioannou, *The Long-Run Effects of the Scramble for Africa*, Working Paper No. 17620, NATIONAL BUREAU OF ECONOMIC RESEARCH (Nov. 2011), available at <http://www.freakonomics.com/media/Africa%20paper.pdf>. Examples of adverse colonial legacies include the practice of artificial border-drawing, exacerbating ethnic tensions, coupled as well as the failure to leave behind strong democratic and inclusive political institutions in the wake of decolonization. Although all governments ultimately bear a responsibility to foster tolerance and pluralism, former colonial powers should be partially responsible to the extent that they failed to cultivate such traditions in the countries they created and then left behind.

49. David Mednicoff, *Humane wars? International Law, Just War Theory and Contemporary Armed Humanitarian Intervention*, 2 LAW, CULTURE, AND THE HUMANITIES 373 (2006), available at <https://people.umass.edu/mednic/justwarfinal06.pdf>. Christian just-war theory provides a philosophical backbone to the modern doctrine of humanitarian intervention, or “Responsibility to Protect.” Notably, the International Commission on Intervention and State Sovereignty (ICISS) in its 2001 report reiterated the importance to humanitarian intervention of the following four elements derived from just-war theory: right intention, last resort, proportional means, and reasonable prospects of success. Int’l Comm’n on Intervention and State Sovereignty [ICISS], *The Responsibility to Protect*, Dec. 2001, available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf>.

occasioned the Nuremburg and Tokyo Trials, as well as the establishment of the U.N., the allied powers fought World War II for their own reasons, ranging from the protection of their own system of government to sheer national survival. These reasons were unrelated to the plight of Europe's Jews; indeed, the horrors of the Holocaust were neither fully known nor fully believed until the war's conclusion.⁵⁰ It may be postulated that, even if the extent of the Holocaust were fully known to the allied powers at an earlier date, this knowledge would not have provided a sufficient condition for war in the absence of other Nazi provocations, such as the invasion of Poland in 1939 and the USSR itself in 1941.

From a practical standpoint, then, intervening nations' pursuit of such national interests should not necessarily be rejected out-of-hand as incompatible with the humanitarian goals of intervention. Rather, where possible, national interest calculations should be effectively integrated into the international law on humanitarian intervention and also used to bolster pro-interventionist arguments. Of course, two countries' conceptions of their own national interests in a country where conflict rages may differ greatly. In such a case, nations interested in humanitarianism would need to strike a delicate balance between the desirability of consensus and the dangers of compromise. But if national interests cannot be effectively accommodated, then in an increasingly competitive multipolar world, it will be more challenging to find *any* nation willing to volunteer to pursue humanitarian intervention.

B. The Role of the U.N. in a Multipolar World

We have examined the role of nation-states in humanitarian intervention; the United Nation's role is somewhat different. The U.N. may choose to dispatch peacekeeping missions to address conflicts. As of this writing, there are 16 such peacekeeping missions ongoing,⁵¹ although this figure is perhaps best understood more as a measure of the intractability of certain conflicts than the U.N. peacekeeping missions' own effectiveness. U.N. peacekeeping missions may help marginally improve the humanitarian situation on the ground, but they are generally not designed or equipped to alter the fundamental strategic situation, let

50. K.C. Gleason, *The 'Holocaust' and the Failure of Allied and Jewish Responses: The Logic of Disbelief*, 5 J. HIST. REV. 215 (Winter 1984), available at http://www.ihr.org/jhr/v05/v05p215_Gleason.html.

51. *Current Peacekeeping Operations*, UNITED NATIONS PEACEKEEPING, available at <http://www.un.org/en/peacekeeping/operations/current.shtml>.

alone end conflicts. To this end, the U.N.'s most important role is as a tool for authorizing the use of force by nation-states to pursue humanitarian intervention. In a multipolar world, the U.N.'s role in this respect will continue to be key.

The U.N. is important as a formal repository of the world's collective opinion and a fount of legitimacy. The 1990s reaffirmed the U.N.'s central role in humanitarian intervention. Fresh off the heels of a Cold War victory, the United States in the 1990s enjoyed relatively high global esteem, and the freedom to pursue any policy it desired, but the United States still took care to achieve the U.N.'s backing before pursuing humanitarian intervention (with the notable exception of Kosovo).⁵² Much of America's international goodwill has since been lost in the wake of the Iraq War; even though the United States assembled a sizeable "coalition of the willing" in support of the invasion of Iraq in 2003, the United States still received criticism for not obtaining the proper U.N. authorization (and, in the eyes of some, actively attempting to deceive the U.N. Security Council).⁵³ The subsequent troubled occupation of Iraq has helped justify these grievances. As such, in a multipolar world, the U.N. will likely be even more important to formalizing and legitimizing humanitarian interventions.

As the institutional embodiment of the community of nations, the U.N. has always been committed to multilateralism. The General Assembly, the nearest thing to a world legislature, was designed as a council of co-equal sovereigns, each nation formally vested with the same rights as all others.⁵⁴ As such, the U.N. is keen on recognizing and respecting cultural and political differences among nations and avoiding favoritism or at least the appearance of favoritism.⁵⁵ With regard to humanitarian intervention in particular, the U.N. has generally proven highly skeptical of unilateral action.⁵⁶

52. David Wippman, *Kosovo and the Limits of International Law*, 25 *FORDHAM INT'L L.J.* 129 (2001).

53. See generally Schwarz, Jonathan, *Lie After Lie After Lie: What Colin Powell Knew Ten Years Ago Today And What He Said*, *HUFFINGTON POST*, Feb. 5, 2013, available at http://www.huffingtonpost.com/jonathan-schwarz/colin-powell-wmd-iraq-war_b_2624620.html.

54. U.N. Charter Art. 2, §1.

55. The U.N. has generally recognized the principle of non-interference in the political affairs of other nations, a proposition in tension with humanitarian intervention generally and the Responsibility to Protect in particular. See G.A. Res. 50/172, U.N. Doc. A/RES/50/172 (Dec. 22, 1995), available at <http://www.un.org/documents/ga/res/50/ares50-172.htm>.

56. Witness the U.N. General Assembly's condemnations of the interventions of the U.S. and USSR in the 1980s, *supra* note 3.

The ascendancy of multilateral humanitarian interventions during the 1990s allowed the U.N. to realign itself as a supporter of humanitarian interventions. Ironically, the unrivaled military force of the U.S. during the 1990s made possible—perhaps even necessitated—the U.N.’s shift to endorsement of multilateral interventions in order to preserve their relevance. That period of “Pax Americana” has since passed, which presents the U.N. with both an opportunity and a challenge to redefine its attitude toward humanitarian intervention. If the U.N. wishes to preserve its commitment to humanitarian intervention in a multipolar world, it must squarely address the political and geopolitical factors which motivate nation-states’ decisions to pursue humanitarian intervention.

Owing to its structure, membership, and history, however, the U.N. is unlikely to be accommodating to such considerations. First, the U.N. Security Council, designed as a kind of world executive branch, has become increasingly dysfunctional on the issue of humanitarian intervention as the foreign policies of the five permanent members—especially Russia and China—have become ever more difficult to reconcile with one another and with the desirability of humanitarian intervention at all.⁵⁷ With such profound disagreement, the P-5 are unlikely to agree to any reforms which would revise the unanimity requirement for the authorization of force to a more flexible system, such as a majority vote, which would make it easier for nations to pursue their national interests through humanitarian intervention.

Second, the vast majority of U.N. member-states are not permanent members of the U.N. Security Council, and many have voiced disagreement with this unequal system. A multipolar world will necessarily increase the plausibility of the claim by certain rising powers, such as Brazil,⁵⁸ to permanent seats on the Security Council, and more permanent members will make obtaining unanimity more difficult. So far, the P-5 have been unwilling to extend membership to this exclusive club, and until this happens obtaining buy-in from the rising powers in a reform of the current system of authorizing humanitarian interventions may prove difficult.

57. Julian Borger & Basiten Inzaurrealde, *US: Russia is Making the UN Security Council Dysfunctional*, BUSINESS INSIDER, Sept. 23, 2015, available at <http://www.businessinsider.com/us-russia-is-making-the-un-security-council-dysfunctional-2015-9>.

58. Oliver Stuenkel, *Brazil and UN Security Council Reform: Is It Time for Another Big Push?*, POST-WESTERN WORLD, June 30, 2015, available at <http://www.postwesternworld.com/2013/06/30/brazil-and-un-security-council-reform-is-it-time-for-another-big-push/>.

Third, non-permanent members are also likely to reject any revision of the rules that would give the Permanent Members and their close allies, the most likely proponents of humanitarian intervention, even more power over the process. If the U.N. were to revisit this issue and revise the governing framework of humanitarian intervention, the U.N. would be more likely to favor stringent rules to prevent those who engage in humanitarian intervention from advancing their own national interests while doing so.

Failing to reform the system, however, would be counterproductive from the United Nations' perspective. This is because, unlike during the Cold War era, in today's world, the U.N. appears more concerned about a *lack* of willingness in the international community to conduct humanitarian interventions, rather than nations intervening overzealously.⁵⁹ In a multipolar world, a dearth of incentives for humanitarian intervention will lead to fewer interventions overall. Recognizing this dynamic is the first step toward a new U.N. policy of humanitarian intervention that can accommodate intervening nations' interests rather than reflexively viewing them with skepticism.

One creative proposal to address the political difficulties of authorizing humanitarian intervention is the creation of a new institution to authorize such interventions, a "Court of Human Security."⁶⁰ Such an international court—comprised of tenured, independent judges hailing from many countries—would have advantages, especially avoiding the inherent difficulties of the current system of authorizing humanitarian interventions, such as the vetoes of the Permanent Members of the U.N.

59. The doctrine of humanitarian intervention has become increasingly sophisticated in recent years, as evidenced in the development and widespread adoption of the notion of the Responsibility to Protect. However, humanitarian intervention has continued to suffer from a lack of resources and political will. For example, the international humanitarian intervention in the Rwandan genocide in 1994 has been widely criticized as inadequate. Lindsey Hilsum, *What On Earth Were They Doing?*, NEW INTERNATIONALIST MAGAZINE, Dec. 1994, <http://newint.org/features/1994/12/05/doing/>. Many deadly conflicts in Africa since then have received little or no response, notably the crisis in Darfur which has raged from the early 2000s to today. The Black Commentator, *Africa Action: The Tale of Two Genocides: The Failed U.S. Response to Rwanda and Darfur*, TRUTH-OUT.ORG, Aug. 11, 2006, <http://www.truth-out.org/archive/item/65561:africa-action-the-tale-of-two-genocides-the-failed-us-response-to-rwanda-and-darfur>. The early-2010s have seen a further rise in global instability. At the time of this writing in 2015, many conflicts around the world are good candidates for humanitarian intervention. The international community's failure to intervene is not doctrinal, but stems from the difficulty of the politics surrounding humanitarian intervention.

60. Fernando R. Teson, *The Vexing Problem of Authority in Humanitarian Intervention: A Proposal*, 24 WIS. INT'L L.J. 761, 771–72 (2006). The proposal of an international court to authorize the use of force for humanitarian intervention is conceded by its author to be "utopian," though perhaps no less utopian than the idea of an International Court of Justice when it was first proposed. *See id.*

Security Council. However, the principle benefit of such a Court—political independence—could turn to political irrelevance if the countries expected to provide humanitarian support distrust the Court’s processes or disagree with its judgments. Even more worryingly, nation-states would likely balk at any Court’s infringement upon the nation’s decision to wage war, one of the most essential capacities of a sovereign state. The objection is almost too easy: we refuse to send our sons and daughters into battle by decree of an international panel of unelected judges. Such skepticism is only likely to increase further in the uncertainty of a multipolar world.

C. Fiscal and Military Constraints in an Age of Austerity

As has been argued in Part I, the newfound enthusiasm of Western nations for humanitarian intervention during the 1990s was both made possible and encouraged by the end of the old Cold War bipolar order. Another uniquely favorable aspect undergirding the pro-intervention consensus of the 1990s is that decade’s healthy economic growth. Economic growth in many Western nations, coupled with broad-based reductions in overall military spending, made the fiscal costs of humanitarian intervention seem less prohibitive. The general prosperity of the 1990s had become an aberration, however, by the time of the 2001 downturn, and certainly by the even more severe 2008/2009 financial crisis. This has been especially true in Europe, where the Euro crisis has forced the political class to grapple with questions of inter-European integration rather than the world beyond Europe, even as that world has also grown increasingly unstable. We now live in an “age of austerity” where all parts of the budget in Western nations, especially European nations, are being closely examined.⁶¹ Due to a public perception—

61. In response to the Euro crisis, and in an attempt to reduce levels of sovereign debt, various governments in Europe have implemented a programme of fiscal cutbacks which have been termed “austerity.” Alberto Alesina, et al. *Europe’s Fiscal Crisis Revealed: An In-Depth Analysis of Spending, Austerity, and Growth*, HERITAGE FOUNDATION, June 6, 2014, <http://www.heritage.org/research/reports/2014/06/europes-fiscal-crisis-revealed-an-in-depth-analysis-of-spending-austerity-and-growth#chapter1>. Discontent with this attempted fix has resulted in the formation of a continental political movement against austerity. *Thomas Piketty: Strong Anti-Austerity Parties Are Just What Europe Needs*, COMMONDREAMS.ORG, Jan. 15, 2015, available at <http://www.commondreams.org/news/2015/01/12/thomas-piketty-strong-anti-austerity-parties-are-just-what-europe-needs>. This movement reflects anxiety about cuts to public sector spending, including healthcare and pensions. Sarah Leonard, *How Greece Put an Anti-Austerity, Anti-Capitalist Party in Power*, THE NATION, Feb. 18, 2015, available at <http://www.thenation.com/article/how-greece-put-anti-austerity-anti-capitalist-party-power/>. The movement tends to view military spending as unnecessary or even wasteful, and in Greece, both anti-austerity officials and the creditors have reached a rare consensus in identifying military outlays as an

deserved or not—that most Westerners now live in an era largely devoid of major conventional threats, the military budget can be the first to receive the axe.⁶² Voters in western nations, whether liberal or conservative, have become more likely to vote for “nation-building at home” than for projects of risky, often thankless nation-building abroad.⁶³

Assuming fiscally-constrained Western nations continue to prove unable or unwilling to contribute the necessary resources toward humanitarian intervention, then the U.N. may again prove valuable. As was previously noted, the U.N., apart from authorizing the use of force, can also assist by providing direct support for humanitarian interventions through the use of its own peacekeeping forces. This approach brings several advantages. The U.N., as the formal embodiment of the international community, has a special mantle of legitimacy to pursue humanitarian intervention. No one can accuse the U.N. of intervening in another nation on behalf of its own narrow national interests, because the U.N. by definition is composed of all nations. This avoids the appearance of favoritism.

The U.N. is funded through contributions from its constituent nations, out of necessity, and as such the resources for intervention, both fiscal and military, will still have to come from the world community at large. The age of austerity, thus, is still likely to prove a roadblock in any campaign

area to cut in order to restore fiscal balance. *The New Sticking Points*, THE ECONOMIST, June 25, 2015, available at <http://www.economist.com/blogs/freeexchange/2015/06/greek-bail-out-negotiations>. Many countries in Europe barely spend enough on the military to credibly protect their own sovereignty, and as such it may be folly to expect them to contribute significant resources to humanitarian interventions perceived as inessential for their own national security. The anti-austerity debates have revealed that citizens in most Western nations generally feel relatively secure from foreign threats, but more insecure about their own financial futures. In an age of austerity, public opinion may still be rallied against direct threats to national security, but in this political climate, allocating scarce fiscal resources toward humanitarian interventions will likely prove more difficult than ever. The intensifying migrant crisis in Europe, however, may provide an opportunity for Europeans to reflect on how failure to address humanitarian crises in faraway lands can hit closer to home. Philip Sherwell & Nick Squires, *'Migrant Crisis is a Security Crisis' Says EU Foreign Policy Chief*, THE TELEGRAPH, May 11, 2015, available at <http://www.telegraph.co.uk/news/worldnews/europe/eu/11597651/Migrant-crisis-is-a-security-crisis-says-EU-foreign-policy-chief.html>.

62. For an analysis of Greece's recent cutbacks in military spending, see Daniel Marans, *Lovable Austerity: Greeks Say Cutting Military Spending Further 'Is A Pleasure For Us'*, HUFFINGTON POST, June 16, 2015, available at http://www.huffingtonpost.com/2015/06/16/greek-austerity-military-spending_n_7597896.html.

63. Stephen Sestanovich, *Obama's Focus is on Nation-Building at Home*, N.Y. TIMES, Mar. 11, 2014, available at <http://www.nytimes.com/roomfordebate/2014/03/11/weakness-or-realism-in-foreign-policy/obamas-focus-is-on-nation-building-at-home>. “Nation-building here at home” has been a frequently-repeated rhetorical phrase of President Obama, both during his election campaigns and during his term in office. The phrase contrasts Obama's restrained foreign policy with the activist neo-conservative foreign policy of Obama's predecessor President Bush.

to convince countries to contribute more resources toward increasing the U.N.'s military role on the world stage. Unfortunately, national interest calculations still appear inescapable: nations lose control once assigning military or financial resources to the U.N., which then can use these resources to, potentially, frustrate the contributing nations' own national interests in conflict areas. To safeguard against this possibility, the nations that contribute the most resources to the U.N. would likely demand more control over the military activities of the U.N. The U.N. would then be open to the charge that it abandoned its original mission and became a rubber-stamp for the world's most powerful nations. This would undermine the chief advantage of the U.N., which is the legitimacy derived from being an international organization composed of co-equal sovereigns.

Without a marked increase in contributions from its member nations, however, the U.N. will be incapable of providing the necessary manpower and equipment for humanitarian interventions on its own. In terms of its military personnel, the U.N. is already "desperately overstretched," while uniformed U.N. personnel numbers over 100,000 in total, they are spread so thin across the world that the U.N. cannot hope to shape the fundamental situation in any single conflict.⁶⁴ In a multipolar world, the U.N. will likely continue to function as a peacekeeper in certain conflict areas. In order to expand the U.N.'s role in prosecuting humanitarian interventions to more areas, however, a greater commitment to the size and budget of the U.N.'s forces would need to be effected. But even leaving concerns of encroachment on sovereignty aside, procuring significantly increased funding or manpower for the U.N. seems unlikely in an age of austerity.

64. RICHARD H. COOPER & JULIETTE KOHLER EDS *RESPONSIBILITY TO PROTECT: THE GLOBAL MORAL COMPACT FOR THE 21ST CENTURY* 25 (2009). In 2009, the UN had approximately 80,000 military personnel and 15,000 civilian personnel deployed worldwide. This compares with a worldwide total of 20 million men and women in uniform employed in armed services falling under the direct control of sovereign nations. The ratio of uniformed personnel under sovereign control versus those under U.N. control is thus approximately 200:1. It seems clear that fundamental change in the service of humanitarian intervention will require a greater buy-in from sovereign nations. See generally Gladstone, Rick, *Top American Commander Warns U.N. That Too Few Carry Efforts For Peace*, N.Y. TIMES, July 28, 2015, available at http://www.nytimes.com/2015/07/29/world/top-american-commander-warns-un-that-too-few-carry-efforts-for-peace.html?_r=0. As of June 30, 2015, there were 105,394 U.N. personnel in uniform. See PEACEKEEPING FACTSHEET, <http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml> (last accessed Aug. 16, 2015).

D. Regional Organizations

A multipolar world might, however, yield a more robust role for regional organizations to conduct humanitarian interventions in their own regions.⁶⁵ Many of these regional organizations have a history of cooperation in other areas of international law, especially on matters of trade and the economy.⁶⁶ Some even work on human rights, which can serve as a reservoir of expertise in a transition toward humanitarian intervention.⁶⁷ Yet the challenges of conducting human rights investigations still differ fundamentally from those of humanitarian interventions, which often involve active military operations. Nevertheless, if such organizations could assume the role of a humanitarian police force, they could provide a happy medium between the unilateral and international (U.N.) approaches to humanitarian intervention.

There are certain advantages to pursuing humanitarian intervention at the regional level. Regional organizations may possess superior cultural and historical knowledge of the region of concern, be less vulnerable to the charge of neo-imperialism, be less likely to be viewed with suspicion by local populations, and perhaps, also be less vulnerable to geopolitical pressures when compared to a worldwide body such as the U.N.

65. Such regional organizations include the African Union (AU), the European Union (EU), the Organization of American States (OAS), and the Association of Southeast Asian Nations (ASEAN). Of these, the African Union has been most active in committing resources toward humanitarian intervention. Stephanie Hanson, *The African Union*, COUNCIL ON FOREIGN RELATIONS, Sept. 1, 2009, available at <http://www.cfr.org/africa-sub-saharan/african-union/p11616>. This can be explained as a logical outcome of the frequency and severity of humanitarian crises in Africa. However, the African Union has also come under criticism for being slow to react to humanitarian crises. Julius Agbor and Tatah Mentan, *After 50 Years of the OAU,-AU: Time to Strengthen the Conflict Intervention Framework*, BROOKINGS INSTITUTION, May 13, 2013, available at <http://www.brookings.edu/blogs/up-front/posts/2013/05/22-africa-conflict-intervention-agbor>. African leaders also express a principle of non-interference in the affairs of their fellow African nations. *Id.* There is also a growing perception that the workings of international humanitarian law (especially the International Criminal Court) unfairly single out the African continent. Adam Taylor, *Why So Many African Leaders Hate the International Criminal Court*, WASH. POST, June 15, 2015, available at <https://www.washingtonpost.com/news/worldviews/wp/2015/06/15/why-so-many-african-leaders-hate-the-international-criminal-court/>. Of the Western powers, France has been most active in intervening in West and Central Africa, a former colonial region. Vincent Darraq, *France in Central Africa: The Reluctant Interventionist*, AL-AL-JAZEERA, Feb. 11, 2014, available at <http://www.aljazeera.com/indepth/opinion/2014/02/france-central-africa-reluctant--20142975859862140.html>.

66. The proliferation of regional trade organizations indicates a willingness to cooperate on matters of trade, the environment, and other issues which have always had a transnational component. However, regional integration on matters of security and foreign policy—quintessential sovereign prerogatives—may prove more difficult.

67. The Inter-American Commission on Human Rights (IACHR), a division of the Organization of American States (OAS), is one such example.

If more authority over humanitarian intervention were delegated to regional organizations, then there would also be more congruity between the nations tasked with approving interventions and those expected to carry them out. At the U.N. level, there is somewhat of a misalignment between those nations who can approve humanitarian intervention and the nations who must bear its costs. Whether at the U.N. or regional level, a new framework for humanitarian intervention must be designed to share the significant fiscal and military costs of intervention as equitably as possible in order for the concept to work in a multipolar world.

CONCLUSION—THE FUTURE OF HUMANITARIAN INTERVENTION

In the early twenty-first century, the theory of humanitarian intervention has become increasingly sophisticated, as evidenced through the adoption of the Responsibility to Protect (R2P) principle. However, over the same period, the practice of humanitarian intervention has declined along with the relative power of the United States. The focus must now shift to shaping the rules governing humanitarian intervention in a multipolar world. Those most likely to further humanitarian goals would openly accept the pursuit of national interests and also task more authority to regional organizations to provide global citizens with security from impunity.

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