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RESPONDING TO CHEMICAL WEAPONS USE IN SYRIA

*Michael P. Scharf**

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INTRODUCTION

Wouldn't it be ironic if Donald Trump were to go down in history as "the human rights president"? Given Amnesty International's conclusion that President Trump's policies mark a "new era of human rights regression,"¹ such a proposition may seem far-fetched. But this essay suggests that the April 14, 2018 airstrikes that he ordered on Syria, to prevent its use of chemical weapons, may have crystallized an emerging customary norm of humanitarian intervention, thereby representing a historic development in international human rights law.

Since 2011, Syria has been engulfed in a protracted civil war that began as part of the wave of Arab Spring protests against Middle East tyrants.² The Syrian conflict has seen the rise and fall of the

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1. *Amnesty International State of the World's Human Rights Annual Report 2017-2018*, AMNESTY INTERNATIONAL, <https://www.amnestyusa.org/reports/amnesty-international-state-of-the-worlds-human-rights-annual-report-2017-18/> [<https://perma.cc/E9F2-FKFD>] (last visited Oct. 8, 2018).
2. *See Timeline of Chemical Weapons Attacks in Syria*, YAHOO! (Apr. 10, 2018), <https://www.yahoo.com/news/timeline-chemical-weapons-attacks-syria-170615069.html> [<https://perma.cc/7U95-YL6N>] (detailing the timeline of events related to Syria's use of chemical weapons and the U.S., French, and U.K. airstrikes).

ISIS terrorist organization,³ the largest refugee migration since World War II,⁴ and the repeated use of chemical weapons against a civilian population.⁵ With all that, Syria has become a dynamic laboratory for the creation of new customary international law. Elsewhere, I have explored how the use of force by the United States and its allies against ISIS in Syria has fundamentally changed the international law of self-defense against non-state actors.⁶ This essay, in turn, examines whether the April 2018 airstrikes against Syria may have constituted a tipping point⁷ in the evolving customary international law⁸ of humanitarian intervention.

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3. See Michael P. Scharf, *How the War on ISIS Changed International Law*, 48 CASE W. RES. J. INT'L LAW 15 (2016) (discussing efforts of the U.S. and other Western and Arab countries to defeat ISIS within Syria).
 4. See UN Office for the Coordination of Humanitarian Affairs, 2018 Humanitarian Needs Overview: Syrian Arab Republic, RELIEFWEB (Nov. 21, 2017), <https://reliefweb.int/report/syrian-arab-republic/2018-humanitarian-needs-overview-syrian-arab-republic-enar> [<https://perma.cc/C9KT-DPVP>] (discussing the impact of the Syrian conflict, including the number of refugees); see also Laura Tavares, *Text to Text: Comparing Jewish Refugees of the 1930s With Syrian Refugees Today*, N.Y. TIMES (Jan. 4, 2017), <https://www.nytimes.com/2017/01/04/learning/lesson-plans/text-to-text-comparing-jewish-refugees-of-the-1930s-with-syrian-refugees-today.html> [<https://perma.cc/EH5R-ZXCL>] (comparing the current Syrian refugee crisis with the Jewish refugee crisis of World War II).
 5. See *Timeline of Chemical Weapons Attacks in Syria*, *supra* note 2 (outlining uses of chemical weapons on Syrian civilians).
 6. See Scharf, *supra* note 3.
 7. In my writings, I have described the tipping points and transformative events that fundamentally change customary international law as “Grotian Moments” -- a term named for Hugo Grotius, the 15th Century Dutch scholar and diplomat whose masterpiece *De Jure Belli ac Pacis* helped marshal in the modern system of international law. See generally, MICHAEL P. SCHARF, CUSTOMARY INTERNATIONAL LAW IN TIMES OF FUNDAMENTAL CHANGE: RECOGNIZING GROTIAN MOMENTS (2014) (discussing transformative events in international law). Grotius (1583–1645) is widely considered to have laid the intellectual architecture for the Peace of Westphalia, which launched the basic rules of modern international law. HUGO GROTIUS AND INTERNATIONAL RELATIONS 75-78 (Hedley Bull et al. eds., 1992). While the results of Westphalia may have been simplified by the lens of history, and Grotius’ role may have been exaggerated, Westphalia has unquestionably emerged as a symbolic marker and Grotius as an emblematic figure of changing historical thought. “Grotian Moment” is thus an apt label for transformational events in customary international law.
 8. Customary international law means “those rules of international law that derive from and reflect a general practice accepted as law.” Int’l Law Comm’n, Second Rep. on the Identification of Customary International Law, U.N. Doc. A/CN.4/672, 65 (May 22, 2014).

THE INTERNATIONAL LAW PROHIBITING UNAUTHORIZED
HUMANITARIAN INTERVENTION

In the 1986 *Nicaragua Case*, the International Court of Justice observed that “[r]eliance by a State on a novel right or an unprecedented exception to the principle [of non-intervention] might, if shared in principle by other States, tend toward a modification of customary international law.”⁹ In the years since the 1999 NATO airstrikes on Serbia to prevent the slaughter of the Kosovar Albanians,¹⁰ international law has been moving in fits and starts toward recognition of a limited right of humanitarian intervention.

Under the conventional view of international law, use of force against another State is legally justified only in three instances: (1) with permission of the territorial state, (2) with the authorization of the U.N. Security Council, or (3) when it constitutes self-defense in response to an armed attack.¹¹ Humanitarian Intervention without Security Council approval was not viewed as a valid justification.¹² However, the 1999 NATO intervention in Serbia saw a major application of armed force for humanitarian purposes without Security Council authorization, but with widespread support by the international community. According to one scholar, the NATO intervention was “a case that expanded, rather than breached, the law, similar to the Truman proclamation about the continental shelf.”¹³ Others have described the NATO intervention as “a watershed event” and “an important transition point in the shift from

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9. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 207 (June 27).
 10. Patrick T. Egan, *The Kosovo Intervention and Collective Self-Defense*, 8 INT’L PEACEKEEPING 39, 40 (2001).
 11. See Scharf, *supra* note 3, at 22.
 12. Prior to the 1999 NATO bombing campaign, there had been several cases where foreign intervention was employed to halt widespread atrocities without Security Council approval. Hence, India stopped the slaughter in East Pakistan in 1971, Tanzania ended Idi Amin’s mass killing in Uganda in 1979, and Vietnam’s intervention brought an end to Pol Pot’s killing fields in Cambodia in 1978. But unlike the 1999 Kosovo intervention, in these three cases self-defense, rather than humanitarian concern, was the primary justification asserted. The fact that the intervening States relied on self-defense, rather than asserting a right to humanitarian intervention, undermined arguments that the law had changed. Nicholas J. Wheeler, *Reflections on the Legality and Legitimacy of NATO’s Intervention in Kosovo*, in THE KOSOVO TRAGEDY: THE HUMAN RIGHTS DIMENSIONS 145, 150 (Ken Booth ed., 2001).
 13. Fernando R. Teson, *Kosovo: A Powerful Precedent for the Doctrine of Humanitarian Intervention*, 1 AMSTERDAM L. F. 42, 43 (2009).

one international order to the next.”¹⁴ Moreover, the NATO intervention led to the ICISS’s articulation of the Responsibility to Protect doctrine, a concept that has been described as the “most dramatic normative development of our time”¹⁵ and a “revolution in consciousness in international affairs.”¹⁶ The 2001 ICISS Report characterized the responsibility to protect as an emerging principle of customary international law,¹⁷ and the 2005 High-level Panel Report described it as an “emerging norm,”¹⁸ an assessment shared by the Secretary-General.¹⁹

Yet, a major roadblock prevented humanitarian intervention without Security Council authorization from ripening into a norm of customary international law on the basis of the 1999 NATO action: the participating NATO States were not comfortable with the idea that the bombing campaign would create a new rule of customary international law justifying a broad notion of unilateral humanitarian intervention that could be subject to abuse.²⁰ Thus, in July 1999, U.S. Secretary of State Madeleine Albright stressed that the air strikes were a “unique situation *sui generis* in the region of the Balkans,” concluding that it was important “not to overdraw the various lessons that come out of it.”²¹ And UK Prime Minister Tony Blair similarly

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14. Heiko Borchert & Mary N. Hampton, *The Lessons of Kosovo: Boon or Bust for Transatlantic Security?*, ORBIS 369 (2002).
 15. Ramesh Thakur & Thomas G. Weis, *R2P: From Idea to Norm – and Action?*, 1 GLOBAL RESP. TO PROTECT 22, 23 (2009).
 16. Jeremy Sarkin, *Is the Responsibility to Protect an Accepted Norm of International Law in the post-Libya Era?*, 1 GRONINGEN J. OF INT’L L. 11, 16 (2012) (quoting Tod Lindberg, Blog, *Protect the People*, TOD LINDBERG, (Sept. 27, 2005), <https://todlindberg.net/2005/09/27/protect-the-people/#more-415> [<https://perma.cc/RL3P-W36V>]).
 17. THE RESPONSIBILITY TO PROTECT, INT’L COMM’N ON INTERVENTION AND STATE SOVEREIGNTY [ICISS] ¶ 2.24, 6.17 (2001).
 18. U.N. Secretary-General, *A More Secure World: Our Shared Responsibility: Report of the High-Level Panel on Threats, Challenges and Change*, ¶ 203, U.N. Doc. A/59/565 (Dec. 2, 2004).
 19. *See generally* U.N. Secretary-General, *In Larger Freedom: Towards Development, Security, and Human Rights for All*, ¶ 135, U.N. Doc. A/59/2005/Add.3 (May 26, 2005) (affirming the U.N.’s responsibility to protect human rights around the world).
 20. Anne-Sophie Massa, *Does Humanitarian Intervention Serve Human Rights? The Case of Kosovo*, 1 AMSTERDAM L. F. 49, 58-59 (2009).
 21. Madeleine Albright, U.S. Secretary of State, U.S. Dep’t of State, Press Conference with Russian Foreign Minister Igor Ivanov, (July 26, 1999), available at <http://secretary.state.gov/www/statements/1999/990726b.html> [<https://perma.cc/HU66-BVL7>].

emphasized the exceptional nature of the Kosovo operation and the limited precedent it created.²²

The reason for the reluctance of the United States and United Kingdom to acknowledge a precedent that could ripen into customary international law was explained by Michael Matheson, the Acting Legal Adviser of the U.S. Department of State at the time of the intervention, in the following terms:

“About six months before the actual conflict, at the time when NATO was considering giving an order to threaten the use of force, the political community of NATO got together and had a discussion about what the basis of such threat of force would be. At the end of the discussion, it was clear that there was no common agreement on what might be the justification. There were some NATO members who were prepared to base it on a new doctrine of humanitarian intervention; but most members of the NATO Council were reluctant to adopt a relatively open-ended new doctrine. So at the end of that week, the NATO political community said, here is a list of all of the important reasons why it is necessary for us to threaten the use of force. And at the bottom, it said that under these unique circumstances, we think such actions would be legitimate. There was deliberate evasion of making a “legal” assertion.

And this same process occurred in the U.S. Government. There were some who wanted to articulate that humanitarian intervention is now the basis for U.S. action. There was another theory from the Department of Defense, which wanted to adopt sort of an expanded idea of self-defense based on the general interest of the United States in the region; but on reflection, nobody was really prepared to throw all the eggs into either of those baskets. So we ended up with a formulation similar to that of NATO, where we listed all of the reasons why we were taking action and, in the end, mumbled something about its being justifiable and legitimate but not a precedent. So in a sense, it was something less than a definitive legal rationale – although it probably was taken by large parts of the public community as something like that.”²³

When the principal State actors assert that their actions are *sui generis* and not intended to constitute precedent, this does not create

22. 330 Parl Deb HC (6th ser.) (1999) col. 30 (UK).

23. MICHAEL P. SCHARF & PAUL R. WILLIAMS, SHAPING FOREIGN POLICY IN TIMES OF CRISIS: THE ROLE OF INTERNATIONAL LAW AND THE STATE DEPARTMENT LEGAL ADVISER 124-125 (2010) (quoting remarks by Michael Matheson).

a favorable climate for the cultivation of a new rule of customary international law.²⁴

In the years since the 1999 NATO action, countries have used force for humanitarian purposes without Security Council authorization on several other occasions, including the U.S./U.K imposition of a no-fly zone over Iraq to protect the Marsh Arabs from Saddam Hussein's reprisals,²⁵ the Russian invasion of South Ossetia Georgia ostensibly to protect ethnic Russians living there from attack,²⁶ and the U.S. airstrikes against the ISIS terrorist group to save the besieged Yazidis on Mount Sinjar, Iraq.²⁷ But never before the April 14, 2018 airstrikes had humanitarian use of force been accompanied by a clear legal justification based on a right of humanitarian intervention. Two former State Department Legal Advisers, Harold Koh and John Bellinger, have criticized the United States' failure to articulate a legal argument for its past humanitarian interventions.²⁸ For customary international law to rapidly crystallize, norm pioneers must be consistent in their articulation of

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24. Bruno Simma, *NATO, the UN and the Use of Force: Legal Aspects*, 10 EUR. J. OF INT'L L. 1, 19-20 (1999).
 25. 363 Parl Deb HC (2001) col. 620 (UK).
 26. Brian Barbour & Brian Gorlick, *Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims*, 20 INT'L J. OF REFUGEE L. 533, 559 (2008).
 27. See Helene Cooper & Michael D. Shear, *Militants' Siege on Mountain in Iraq is Over, Pentagon Says*, N.Y. TIMES (Aug. 13, 2014), http://www.nytimes.com/2014/08/14/world/middleeast/iraq-yazidi-refugees.html?_r=0 [<https://perma.cc/3ZGC-NHW4>]; see also Helene Cooper et al., *Obama Allows Limited Airstrikes on ISIS*, N.Y. TIMES (Aug. 7, 2014), <https://www.nytimes.com/2014/08/08/world/middleeast/obama-weighs-military-strikes-to-aid-trapped-iraqis-officials-say.html> [<https://perma.cc/JNW4-2D82>].
 28. John Bellinger, *The Trump Administration Should Do More to Explain the Legal Basis for the Syrian Airstrikes*, LAWFARE: INTERNATIONAL LAW, (Apr. 14, 2018, 4:46 PM), <https://www.lawfareblog.com/trump-administration-should-do-more-explain-legal-basis-syrian-airstrikes> [<https://perma.cc/YAA6-RNM2>] (noting Bellinger's testimony before the Senate Foreign Relations Committee that "[w]hen the United States uses military force, especially under controversial circumstances, it should explain the legal basis for its actions. When the United States does not do so, it appears to act lawlessly and invites other countries to act without a legal basis or justification."); see also Harold Hongju Koh, *The Legal Adviser's Duty to Explain*, 41 YALE J. INT'L L. 189, 204 (2016); see also Harold Hongju Koh, *The War Powers and Humanitarian Intervention*, 53 HOUS. L. REV. 971, 977 (2016) ("I thought it outrageous that the U.S. government would fail to state a legal rationale to justify its use of force.").

the new rule, its contours, and its application.²⁹ The failure to do so not only makes it harder for customary international law to form, but at the same time it makes it easier for the precedent to be abused by other countries since its contours are left purposely ambiguous.

WHAT MADE THE 2018 AIRSTRIKES DIFFERENT?

In contrast to the prior cases, the countries participating in the April 2018 airstrikes on Syria embraced a common justification—humanitarian intervention—rather than cite only factual considerations that render use of force morally defensible as they had in the past. The United Kingdom was the most explicit of the three, telling the Security Council that its actions were legally justified on the basis of “humanitarian intervention” in the context of preventing use of chemical weapons.³⁰ It stated that “[a]ny State is permitted under international law, on an exceptional basis, to take measures in order to alleviate overwhelming humanitarian suffering.”³¹

The UK maintained that such humanitarian intervention is lawful when three conditions are met:

(1)“First, there must be convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief. ...

(2)Secondly, it must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved. ...

(3)Thirdly, the proposed use of force must be necessary and proportionate to the aim of relief of humanitarian suffering. It must be strictly limited in time and in scope to this aim.”³²

The United Kingdom then detailed why it reasonably considers that the airstrikes met these requirements, concluding “[t]here was no

29. SCHARF, *supra* note 7, at 1-5.

30. Theresa May, Prime Minister, Prime Minister’s Office, Syria action – UK government legal position, (April 14, 2018), *available at* <https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position> [<https://perma.cc/RK2D-XWNS>] (“The UK is permitted under international law, on an exceptional basis, to take measures in order to alleviate overwhelming humanitarian suffering. The legal basis for the use of force is humanitarian intervention...”).

31. U.N. SCOR, 73d Sess., 8233d mtg. at 6-7, U.N. Doc. S/PV.8233 (Apr. 14, 2018).

32. *Id.* at 7.

practicable alternative to the truly exceptional use of force to degrade the Syrian regime's chemical weapons capability and deter their further use by the Syrian regime in order to alleviate humanitarian suffering."³³ This clearly articulated legal rationale distinguishes the 2018 airstrikes from the NATO action in 1999. While the UK had first made public its views on humanitarian intervention in 2014,³⁴ this was the first time the rationale was tied to concrete action taken by armed UK forces.

Although the United States did not similarly articulate a detailed justification, it did tell the Security Council that "[t]he United States is deeply grateful to the United Kingdom and France for their part in the coalition to defend the prohibition of chemical weapons. We worked in lock step; *we were in complete agreement*."³⁵ As such, the United States can be held to have implicitly adopted the rationale of the United Kingdom.³⁶ This is particularly significant because the United States has never before recognized a right of humanitarian intervention under international law.³⁷

In contrast to its statements following the U.S. airstrikes on Syria's Shayrat airbase a year earlier, it is significant that in April 2018 the United States did not employ the language of armed reprisal, as such is considered unlawful under international law.³⁸ Thus, at the United Nations, the U.S. Ambassador stated, "[t]he United Kingdom, France, and the United States acted not in revenge, not in punishment and not in a symbolic show of force. We acted to deter

33. May, *supra* note 30.

34. *Further Supplementary Written Evidence from the Rt Hon Hugh Robertson, MP, Minister of State, Foreign and Commonwealth Office to the Foreign Affairs Committee on Humanitarian Intervention and the Responsibility to Protect*, January 14, 2014, available at www.publications.parliament.uk/pa/cm201415/cmselect/cmdfence/582/58205.htm [<https://perma.cc/X2PM-ERPF>].

35. U.N. SCOR, 73d Sess., 8233d mtg, *supra* note 31, at 6 (Emphasis added).

36. *See* Int'l Law Comm'n, Rep. of the International Law Commission on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 52-54 (2001) (citing international cases where a State's unequivocal acknowledgment and adoption of another's position will render the State retroactively responsible for it).

37. *See* Stephen Wertheim, *A Solution from Hell: the United States and the Rise of Humanitarian Interventionism, 1991-2003*, 12 J. OF GENOCIDE RES. 149, (2010) (discussing the United States initial reluctance to adopt humanitarian interventionism); *see also* Koh, *The War Powers and Humanitarian Intervention*, *supra* note 28.

38. *See* Mary Ellen O'Connell, *The Popular but Unlawful Armed Reprisal*, 44 OHIO N. U. L. REV. 325, 338-345 (2018) (discussing the illegality and background on the prohibition of armed reprisals).

the future use of chemical weapons by holding the Syrian regime responsible for its crimes against humanity.”³⁹

Importantly, the underlying humanitarian need in the case of the April 2018 airstrikes was to stop the use of chemical weapons against a civilian population – a *jus cogens* norm.⁴⁰ Rather than target infrastructure, airfields, or government buildings, as had been the case of past humanitarian interventions, the targets of the April 2018 strikes were chemical weapons production and storage facilities.⁴¹ While a wider principle of humanitarian intervention might be too much for the international community to buy into at this time, the large majority of States supported or declined to protest the April 2018 airstrikes out of concern with the Assad regime’s attempt to normalize the use of chemical weapons and Russia’s willingness to prevent the Security Council from taking action against Syria.⁴²

Finally, out of a total of seventy States that publicly commented at the United Nations or elsewhere, only a small handful of countries said they opposed the April 2018 airstrikes,⁴³ And only Russia, China,

39. U.N. SCOR, 73d Sess., 8233d mtg, *supra* note 31, at 5.

40. Charlie Dunlap, *Do the Syria Strikes Herald a New Norm of International Law?*, LAWFARE (Apr. 14, 2018), <https://sites.duke.edu/lawfire/2018/04/14/do-the-syria-strikes-herald-a-new-norm-of-international-law/> [<https://perma.cc/VK9N-8385>]. The term “*jus cogens*” designates a peremptory principle or norm from which no derogation is permitted. *Jus cogens* norms are recognized as being fundamental to the maintenance of the international legal order.

41. *Id.* The 1999 NATO airstrikes comprised a 78-day bombing campaign of Serbia’s infrastructure, military targets, and government buildings. *Serbia marks anniversary of start of NATO bombing*, B92 (Mar. 24, 2016), https://www.b92.net/eng/news/society.php?yyyy=2016&mm=03&dd=24&nav_id=97466 [<https://perma.cc/89RZ-EU84>]. The April 2017 airstrikes targeted an airbase in general use. Michael R. Gordon et al., *Dozens of U.S. Missiles Hit Air Base in Syria*, N.Y. TIMES (Apr. 6, 2017), <https://www.nytimes.com/2017/04/06/world/middleeast/us-said-to-weigh-military-responses-to-syrian-chemical-attack.html> [<https://perma.cc/B3EX-2CNP>].

42. Jan Lemnitzer, *Syria Strikes Violated International Law – Are the Rules of Foreign Intervention Changing?*, THE CONVERSATION (Apr. 18, 2018, 6:57 AM), <http://theconversation.com/syria-strikes-violated-international-law-are-the-rules-of-foreign-intervention-changing-95184> [<https://perma.cc/H2CE-23K8>].

43. Fifty-six separate states and NATO (consisting of 28 member States) – for a total of over seventy countries -- publicly expressed opinions about the April 14, 2018 airstrikes. Alonso Gurmendi Dunkelberg et al., *Mapping States Reactions to the Syria Strikes of April 2018*, JUST SECURITY (Apr. 22, 2018), <https://www.justsecurity.org/55157/mapping-states-reactions-syria-strikes-april-2018/> [<https://perma.cc/8QZD-3ZWQ>].

and Bolivia voted for the Security Council resolution condemning the attack.⁴⁴ Russia's opposition to the claim that the airstrikes were justified as humanitarian intervention was weakened by its argument that Syria's responsibility for the chemical attack had not been sufficiently proven,⁴⁵ and by the fact that it had itself invoked the right of humanitarian intervention just ten years earlier in the case of South Ossetia, Georgia.⁴⁶ Similarly China's position was weakened by its failure to object to the United States' airstrikes against the Syrian airfield in 2017, and the fact that its vote in April 2018 came at the height of a U.S.-China trade war.⁴⁷

Some commentators have argued that even if there was a newly emergent customary international law right to humanitarian intervention, customary international law simply cannot prevail over

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44. U.N. SCOR, *Russian Federation Draft Resolution*, UN Doc. S/2018/355 (Apr. 14, 2018). The draft resolution stated:

“The Security Council,

Appalled by the aggression against the Syrian Arab Republic by the US and its allies in violation of international law and the UN Charter,

Expressing grave concern that the aggression against the sovereign territory of the Syrian Arab Republic took place at the moment when the Organization for the Prohibition of Chemical Weapons Fact-Finding Mission team has just begun its work to collect evidence of the alleged use of chemical weapons in Douma and urging to provide all necessary conditions for the completion of this investigation,

1. Condemns the aggression against the Syrian Arab Republic by the US and its allies in violation of international law and the UN Charter,

2. Demands that the US and its allies immediately and without delay cease the aggression against the Syrian Arab Republic and demands also to refrain from any further use of force in violation of international law and the UN Charter,

3. Decides to remain further seized on this matter.”

45. U.N. SCOR, 73d Sess., 8233d mtg, *supra* note 31, at 3-5. Russia told the Security Council, “Just as it did a year ago, when it attacked Syria's Al-Shayrat airbase in Syria, the United States took a staged use of toxic substances against civilians as a pretext, this time in Douma, outside Damascus. Having visited the site of the alleged incident, Russian military experts found no traces of chlorine or any other toxic agent.” *Id.* at 3.
46. Barbour & Gorlick, *supra* note 26; *see also* RONALD D. ASMUS, *A LITTLE WAR THAT SHOOK THE WORLD: GEORGIA, RUSSIA, AND THE FUTURE OF THE WEST* 8 (2010) (introducing the conflict in South Ossetia).
47. *A Timeline of the U.S. and China Trade War*, BLOOMBERG NEWS (July 6, 2018), <https://www.digitalcommerce360.com/2018/07/06/timeline-of-the-trump-china-trade-war/> [<https://perma.cc/C2PB-G547>].

the U.N. Charter.⁴⁸ But as former State Department Legal Adviser Harold Koh points out, “[it] is not nearly so black and white as the absolutists claim, because textual ambiguity in Article 2(4), the broader structural purposes of the U.N. Charter, and some recent significant state practice give far more legal play in the joints than textual absolutists would concede.”⁴⁹ If the right of humanitarian intervention in response to use of chemical weapons now exists under customary international law, then such humanitarian intervention would not be in violation of Article 2(4) of the U.N. Charter because that provision only prohibits the use of force that is “against the territorial integrity or political independence of any state” and “inconsistent with the Purposes of the United Nations.”⁵⁰ Humanitarian intervention, in contrast, is consistent with the Charter’s Purposes and Principles, which include “maintain[ing] international peace and security,” “promoting and encouraging respect for human rights,” and “sav[ing] succeeding generations from the scourge of war.”⁵¹ Humanitarian intervention in response to the use of chemical weapons is not seeking to threaten the integrity of a State nor bring about political change, but only to save lives and enforce the global ban on chemical weapons.⁵²

CONCLUSION

Since the Security Council declined to condemn the April 2018 airstrikes on Syria, the question that this essay addresses—whether a limited customary international law right of humanitarian intervention has crystallized from the 2018 Syrian airstrikes—may not require a definitive answer at this time as there is no pending International Court of Justice or International Criminal Court case arguing that the strikes were an unlawful act of aggression. Nevertheless, a strong case can be made that the April 2018 airstrikes

48. See, e.g., Dapo Akande, *The Legality of the UK’s Air Strikes on the Assad Government in Syria* (Apr. 6, 2018), available at <https://www.scribd.com/document/3y76483861/Akande-Opinion-UK-Government-s-Legal-Position-on-Syria-Strike-April-2018> (opinion letter prepared for MP Tom Watson, Deputy Leader of the UK Labour Party).

49. Koh, *The War Powers and Humanitarian Intervention*, *supra* note 28, at 1017.

50. Richard Ware, *Briefing Paper: The Legal Basis for Air Strikes Against Syrian Government Targets*, House of Commons Library (Apr. 16, 2018), available at <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8287> [<https://perma.cc/5XEV-UJER>].

51. U.N. Charter art. 1 ¶ 1; U.N. Charter pmb1.

52. Ware, *supra* note 50.

constituted a tipping point for humanitarian intervention. Advocates of a right of humanitarian intervention should be careful, however, in reading this development too broadly, for there is unlikely to be widespread international approval at this time for its application outside the context of responding to repeated use of chemical weapons against civilians.