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Punitive Military Strikes on Syria Risk an Inhumane Intervention

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Punitive military strikes on Syria risk an inhumane intervention

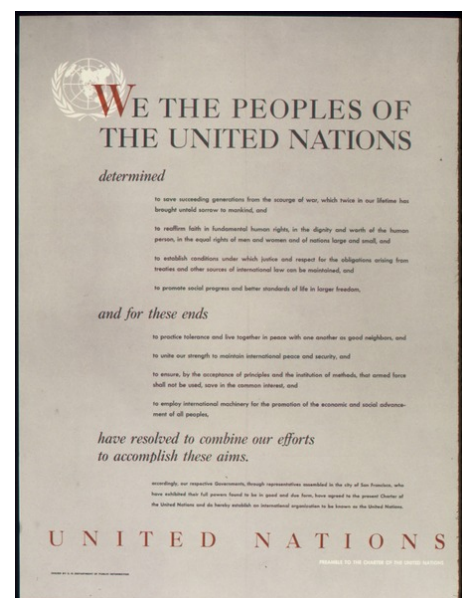
By Jennifer Moore

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The 1949 Geneva Conventions do not justify US missile strikes in Syria in response to chemical weapons attacks on the civilian population. The humanitarian principle of distinction prohibits the targeting of civilians, but does not sanction the decision to launch a military campaign responding to such attacks. International humanitarian law thus governs the conduct of war but not its initiation. Rules governing the initiation of war occur against a backdrop of international law favoring the peaceful resolution of conflict and the provision of life-saving forms of assistance to civilian victims of war.

To determine if international law permits the launching of US military strikes in Syria, it is the UN Charter, and not the Geneva Conventions, which must guide the US government and the American people. Use of force rules, originating in customary international law, and partially codified in the UN Charter, establish the lawful framework for the initiation of military activities by a government, with or without a formal declaration of war. Whether US military intervention is unilateral or multilateral, short-term or sustained, surgical or full court press, sea or air-based, utilizing Tomahawk missiles or Predator drones, the UN Charter is our framework and our guide.

Article 2, clause 4 of the UN Charter is the source of the general prohibition against the use of force, one of the cardinal principles of international law since 1945, given pride of place in a treaty dedicated to ending the “scourge of war.” But the Charter is not starry-eyed about the prospects of outlawing war, and contemplates two very pragmatic exceptions to the general prohibition. The first, explicitly codifying a long-standing customary norm, is the use of force by a state or states in self-defense, as defined by Article 51. The second permits certain military interventions when authorized by the Security Council under Chapter VII of the Charter. Until the United States has been attacked or the Security Council acts, Article 51 and Chapter VII do not give a green light to US strikes or other military campaigns.



There is one additional although controversial exception to the general prohibition against military force, and that is a so-called humanitarian intervention, or a military campaign calculated to stop widespread attacks on a civilian population, including acts of genocide, other crimes against humanity, and war crimes. The norm of humanitarian intervention is contested in part because it is not defined in the UN Charter, although many scholars and activists would claim it is supported by the Charter's central objective to defend human rights and fundamental freedoms. Its more contemporary iteration, the [Responsibility to Protect \(R2P\)](#), was championed by UN member states at [the 2005 World Summit](#). While invoked by the Security Council and General Assembly in subsequent resolutions, R2P is an emerging standard that has yet to be codified in treaty form.

As defined by Secretary General Ban Ki-moon in 2009, [R2P starts with life-saving humanitarian relief](#) for the threatened population, and only contemplates military force as a last resort. R2P is fundamentally a call for non-lethal forms of assistance, including rescue, safe passage, shelter, medicine, food and clean water for war-affected individuals and populations. It impoverishes R2P to define it exclusively in military terms, and yet in common parlance R2P is code for armed intervention.

Both humanitarian intervention and R2P remain controversial because of the historical tendency for military interventions motivated by the protection of civilians to result in further and protracted suffering by civilians. Without the backing of the Security Council, humanitarian intervention is a potential rationale for military strikes by the United States in Syria. But R2P is a very thin reed on which to base a short-term military campaign by the US in response to the killing of Syrian civilians by chemical gas attack. This is so for one important reason. A militarized humanitarian intervention must be calculated to protect the civilian population that is being victimized. It can only be justified if it is both motivated to stop attacks on the civilian population and likely in practical terms to have that effect. A military intervention that raises the level of civilian risk violates R2P.

R2P is not a form of punishment or a rhetorical device. It does not sanction military retaliation against a state for attacking its own civilians, nor does it justify violence as a symbolic gesture for expressing solidarity with that oppressed population. If the United States launches "punitive," "surgical," or "symbolic" military strikes in Syria and we stop while the civilian population remains at risk, our responsibility to protect will be unmet. But if a US military campaign results in greater suffering by the civilian population we will have engaged in an inhumane intervention. In order to fulfill the United States' Responsibility to Protect in Syria, we must commit ourselves to non-lethal and life-saving forms of humanitarian assistance for the Syrian people.

Jennifer Moore is on the faculty of the University of New Mexico School of Law. She is the author of [Humanitarian Law in Action within Africa](#) (Oxford University Press 2012).

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