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International Legal Mechanism for Legitimizing the Military Operation of the United States and its Allies in Syria: Implications for Russia's International Legal Policy

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Abstract. Given the increasingly adversarial character of states' international legal positions, a detailed case study of the development and implementation of mechanisms used by foreign states (primarily the United States) to legitimize armed incursions into foreign territory appears timely and warranted. Such an inquiry is relevant both for enriching Russian legal scholarship and for stimulating the development of innovative approaches aimed at improving the quality of Russia's international legal policy, including the international legal support of the special military operation in Ukraine. Analyzing the practice of other states makes it possible to identify patterns that may facilitate the prediction of their future international legal maneuvers and to reveal weaknesses and inconsistencies that should be avoided domestically and, where appropriate, used strategically to influence the currently prevailing pro-Western international legal consciousness. The purpose of this article is to identify and reconstruct the content of the international legal mechanism used to legitimize the military operation conducted by the United States and its allies in Syria. The research materials consist of international and national documents, international legal literature, and relevant media sources. Methodologically, the study employs an integrative approach, drawing on methods of legal construction, analogy, institutional analysis, and legal modeling. The analysis suggests that, since 2014, the United States has relied on three principal sets of arguments to defend the lawfulness of the use of force in Syria, elaborated at different stages of the conflict: (1) humanitarian intervention and the associated “responsibility to protect” (R2P) discourse; (2) the right to (collective) self-defense; and (3) “anticipatory (preemptive) humanitarian intervention”. The development and refinement of these argument clusters have been underpinned by a large range of inventive international legal constructs, including “preemptive self-defense”, “imminent threat”, “rogue states”, “national self-defense against an imminent or continuing threat”, “the unwilling or unable test”, “protection of US citizens abroad”, and “the accumulation of events” theory. Taken together, this extensive and heterogeneous body of legal reasoning tends to obscure the absence of any UN Security Council decision formulating a policy of armed intervention to resolve the Syrian crisis or a determination that the crisis could only be addressed through the use of force.

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Key words: intervention in Syria, international legal legitimation, humanitarian intervention, responsibility to protect (R2P), collective self-defense; preemptive self-defense, anticipatory humanitarian intervention, “unwilling or unable” test, “imminent threat” doctrine

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Международно-правовой механизм легитимации военной операции США и их союзников в Сирии: для учёта в международно-правовой политике России

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Аннотация. С учётом повышения состязательности международно-правовых позиций государств внимательное изучение конкретных случаев разработки и воплощения зарубежными странами (прежде всего США) механизма легитимации вооружённых вторжений на территории иностранных государств является актуальным для обогащения отечественной науки и стимулирования разработки собственных новаторских идей в целях повышения качества международно-правовой политики России, в том числе международно-правового сопровождения СВО на Украине. Анализ опыта других стран позволяет выявить закономерности, способные облегчить прогнозирование дальнейших международно-правовых манёвров этих государств, обнаружить слабые места, противоречия, которые, во-первых, следует избегать самим, а, во-вторых, стратегически использовать для оказания надлежащего воздействия на преобладающее на данный момент прозападное международное правосознание. Цель исследования – выявить содержание международно-правового механизма легитимации военной операции США и их союзников в Сирии. Материалы исследования – документы международного и национального характера, международно-правовая литература, материалы СМИ. Применён интегративный подход с использованием методов юридического толкования, аналогии, институционального анализа, правового моделирования. В результате исследования предложено выделять три блока используемых США аргументов в пользу правомерности применения силы в Сирии начиная с 2014 г., развивавшихся ими на различных этапах развития конфликта: гуманитарная интервенция/терминология концепции «обязанности защищать» (R2P); право на (коллективную) самооборону; «предвосхищающая (упреждающая) гуманитарная интервенция». Развитие этих доводов подпитывается изобретательными международно-правовыми концепциями: «упреждающей самообороны», «неминуемой

угрозы», «односторонних военных действий против государств, угрожающих международной безопасности», «национальной самообороны против неминуемой или постоянной угрозы», «критерием нежелания или неспособности», теориями «защиты граждан США за рубежом», «накопления событий». Таким образом, столь обширная и разнородная юридическая аргументация затмевает отсутствие формулирования Советом Безопасности ООН политики по урегулированию кризиса путём вооружённого вмешательства и вывода о том, что он может быть урегулирован только посредством применения силы.

Ключевые слова: интервенция в Сирию, международно-правовая легитимация, гуманитарная интервенция, концепция «обязанности защищать», коллективная самооборона, упреждающая самооборона, превосходящая гуманитарная интервенция, «критерий нежелания или неспособности», доктрина «неминуемой угрозы»

Заявление о доступности данных. Все данные, полученные в ходе этого исследования, включены в опубликованную статью.

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Introduction

As the former legal adviser of the U.S. Department of State, now a professor of international law at Yale Law School, Harold H. Koh, put it, “it is not our lawyerly responsibility simply to repeat that ‘a rule is a rule is a rule’, particularly when the so-called ‘rule’ is not nearly as black and white as some may admit”, and it is therefore necessary to “look harder for a better legal answer”¹ to legitimize the state’s conduct and its international legal position².

In this regard, it should be acknowledged that, compared with the interventions in Iraq in 2003 and Libya in 2011, American international lawyers demonstrated increased ingenuity in designing a mechanism of international legal legitimation for the 2014 intervention in Syria (Vylegzhanin & Korzhenyak, 2025a; Vylegzhanin & Korzhenyak, 2025b; Korzhenyak, 2025a; Korzhenyak, 2025b). The decision to use force in Syria required an “innovative doctrinal justification”, driven in part by resistance of Russia and China to further use of “the responsibility to protect” (R2P) concept³ as a basis for regime change (Hughes, 2019:922).

¹ Koh H. H. Syria and the Law of Humanitarian Intervention (Part III – A Reply). Blog of the European Journal of International Law (October 12, 2013). Available at: <https://www.ejiltalk.org/syria-and-the-law-of-humanitarian-intervention-part-iii-a-reply/> (accessed: 12.07.2024).

² For a more detailed discussion of the interpretation and application of the concept of “international legal legitimation”, see Korzhenyak, 2024:162–183.

³ Letter dated 26 July 2002 from the Permanent Representative of Canada to the United Nations addressed to the Secretary-General, transmitting the Report of the International Commission on Intervention and State Sovereignty entitled “The Responsibility to Protect” (December 2001). A/57/303. Available at: <https://digitallibrary.un.org/record/474192?ln=fr&v=pdf> (accessed: 16.09.2023); Resolution of the UN

Several factors that help explain why the reaction of the United Nations Security Council (UNSC) to the Syrian crisis differed so markedly from its response to Libya. First, the level of regional support was different: the swift condemnation by the League of Arab States of Libyan President Muammar Gaddafi's actions, and its call for a no-fly zone, contrasted with the League's initially cautious approach to the situation in Syria, where Lebanon – then the only Arab League member of the UNSC – pressed for action against Libya but initially defended the Syrian government. The Arab League only began to assume a leading role in the Syrian crisis in the second half of 2011. Second, while many senior Libyan officials defected from the regime (including the leadership of the Libyan permanent mission to the United Nations), the Syrian authorities retained the formal loyalty of most high-ranking officials during the early months of the crisis. Third, Libya's status as a "rogue state" without powerful allies stood in contrast to Syria's close relationships with Russia and Iran. Fourth, Gaddafi's public statements about "cleansing" the country of "cockroaches" were widely interpreted as incitement to crimes against humanity, whereas President Bashar al-Assad emphasized that the Syrian army targeted "terrorists" rather than civilians. Finally, some UNSC members were reluctant to become embroiled in another armed intervention following the Libyan experience (Momani & Hakak, 2016:897).

Against this background, the present article examines how the United States sought to characterize the relevant facts in legal terms and which international legal arguments in favor of the legitimacy of the armed intervention in Syria were developed by the lawyers of the U.S. Department of State at different stages of the conflict.

International legal assessments of the facts proposed by the United States

Washington actively promotes its own reading of events in Syria, both in diplomatic fora and in the media, and puts forward corresponding international legal assessments of the relevant factual circumstances. It asserts that since March 2011, the Syrian Government and opposition groups have been in an armed conflict and that the protracted crisis began with President Bashar al-Assad's allegedly "brutal suppression" of protests in 2011, which quickly escalated into an international armed conflict across the country marked by "massive atrocity crimes, including the use of chemical weapons"⁴. According to these accounts, "arbitrary arrests, torture, enforced disappearances, and deaths in custody systematically occur in Government-controlled areas; in areas previously held by the opposition, the Government imposes arbitrary restrictions on freedom of movement and deprives people of their property"⁵. Since 2011, more than 130,000 cases of arbitrary detention, abduction or disappearance have been documented, in most instances "attributed to the Government".

General Assembly (hereinafter – UNGA) dated September 16, 2005 No. 60/1 "2005 World Summit Outcome". Available at: <https://docs.un.org/A/RES/60/1> (accessed: 03.05.2024).

⁴ How Syria was accused of using chemical weapons. TASS, April 9, 2018. Available at: <https://tass.ru/info/5108148> (accessed: 03.06.2024).

⁵ The Commission of Inquiry into the situation in Syria: There are no participants in this conflict with dirty hands. United Nations, 15.09.2020. Available at: <https://news.un.org/ru/story/2020/09/1385802> (accessed: 03.06.2024).

During the conflict, “Syrian government forces were reinforced by the Russian Aerospace Forces”, whose airstrikes began in September 2015. Since the onset of hostilities, at least 580,000 people have been killed, including more than 306,000 civilians, according to estimates cited from the Office of the United Nations High Commissioner for Human Rights (OHCHR). Almost 13 million people have been displaced, including 6.7 million Syrian refugees⁶.

From the perspective advanced by U.S. officials and like-minded actors, the dire situation in Syria is “a consequence of the failure of the UN Security Council to bring those responsible to justice”. Although the Security Council has adopted dozens of resolutions on Syria since 2013, “none of them has been fully implemented, and the Syrian government has directly violated many of them”. Russia and China are said to have jointly vetoed ten draft resolutions on Syria, with the Russian Federation casting a further eight vetoes on its own, thereby “systematically shielding Syria from international responsibility”⁷. As United States Permanent Representative to the United Nations Susan Rice stated following one such veto, the vote showed that “two permanent members of the UN Security Council are prepared to defend Assad to the bitter end”⁸.

It is argued that with each “failure of the UN Security Council” to hold the Syrian government to account, “the forces of President Bashar al-Assad resorted to increasingly harsh armed measures”. As a result, Syria has been described as “the world’s worst case of ongoing mass atrocities, civilian displacement and humanitarian catastrophe” (Adams, 2015:5).

This mode of presenting and interpreting the facts has continued to the present day. For example, a recent OHCHR report states that “violations and abuses” have been documented, including those attributed to the Syrian Government, such as “arbitrary detention, torture and ill-treatment, sexual and gender-based violence, enforced disappearances and abductions”⁹. Particular emphasis is placed on the allegation that, notwithstanding the provisional measures order rendered by the International Court of Justice (ICJ)¹⁰ on November 16, 2023 in the case concerning the Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), which requires Syria, in accordance with its obligations under the 1984 Convention, to take all measures within

⁶ Syria. Global Centre for the Responsibility to Protect. Ralph Bunche Institute for International Studies, New York, 31.05.2024. Available at: <https://www.globalr2p.org/countries/syria/> (accessed: 03.06.2024).

⁷ Remarks at a UN General Assembly Meeting, Ambassador Richard Mills, Deputy U.S. Representative to the United Nations “Following Russia’s Veto of a UN Security Council Resolution on the Syria Cross-Border Humanitarian Mechanism” (21.07.2022). Available at: <https://sy.usembassy.gov/remarks-at-a-un-general-assembly-meeting-following-russias-veto-of-a-un-security-council-resolution-on-the-syria-cross-border-humanitarian-mechanism/> (accessed: 15.03.2024).

⁸ Gladstone R. Friction at the U.N. as Russia and China Veto Another Resolution on Syria Sanctions. The New York Times, 19.07.2012. Available at: <https://www.nytimes.com/2012/07/20/world/middleeast/russia-and-china-veto-un-sanctions-against-syria.html> (Accessed: 15.03.2024).

⁹ See, e.g.: Report by the UN Human Rights Office “The Dire Human Rights Situation Facing Syrian Returnees” (February 2024). Available at: <https://www.ohchr.org/sites/default/files/documents/countries/syria/20240209-report-syrian-returnees.docx> (accessed: 15.03.2024).

¹⁰ Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), Order of 16.11. 2023. ICJ. Available at: <https://www.icj-cij.org/sites/default/files/case-related/188/188-20231116-ord-01-00-en.pdf> (accessed: 07.08.2024).

its power to prevent such acts, the Syrian government has continued to commit them, including “deliberately hindering the efforts of families to learn about the fate and whereabouts of their relatives”¹¹.

A particularly effective rhetorical device in this narrative is the persistent “naming and shaming” of the Syrian authorities for “gross violations of international law” allegedly committed “for more than a decade”, reflected in “countless attacks on civilians and civilian infrastructure”, as well as in “war crimes and crimes against humanity” for which they are said to remain unpunished. “Murder, torture, and sexual violence” are portrayed as instruments of “state policy”¹².

In what follows, as the international legal arguments advanced by the United States to legitimize the armed intervention in Syria are examined, further examples will be provided of pragmatic fact-construction that both supports those arguments and is interwoven with them.

The international legal arguments advanced by the United States for the armed intervention in Syria

In the international legal literature, the Syrian conflict has been divided into three phases: (1) “the civilian uprising and the armed rebellion” (2011–2013); (2) the involvement of Hezbollah and chemical attacks (2013–2014); (3) the rise of the “Islamic State*” (hereinafter also IS*; prior to June 29, 2014, ISIL*) and the holding of presidential elections (from 2014 onward) (Momani & Hakak, 2016). Following the fall of the Assad regime on December 8, 2024, after opposition forces seized Damascus¹³, a fourth phase of the crisis may be identified. The international legal justifications advanced for the permissibility of the use of force were adapted to these evolving factual circumstances, which were further complicated by the involvement of new actors.

Development of U.S. legal argumentation

I. Humanitarian intervention and R2P

Following an unsuccessful attempt to rely once again on the “responsibility to protect” (R2P) concept, previously “successfully” invoked in relation to Libya (Korzhenyak, 2025a; Korzhenyak, 2025b), that concept – its components and guiding principles – formally continued to serve as the principal argument for the lawfulness of the use of force in Syria during the first and second phases of the crisis, in order to obtain the UNSC authorization. In substance, this meant advancing a humanitarian intervention claim, namely states may use force abroad *to prevent a humanitarian catastrophe or to halt widespread and grave violations of human rights* (of foreign citizens)¹⁴.

* By the decision of the Supreme Court of the Russian Federation No. АКПИ14-1424C dated December 29, 2014, its activities are prohibited on the territory of the Russian Federation.

¹¹ Syria. Op. cit. (May 31, 2024).

¹² Ibid.

¹³ CNN. December 8, 2024: Syria civil war news. Available at: <https://edition.cnn.com/world/live-news/syria-civil-war-12-08-2024/index.html> (accessed: 09.12.2024).

¹⁴ See: Williams P. R., Ulbrick J. T., Worboys J. P. Preventing Atrocity Crimes in Syria: The Responsibility to Protect. *New Atlanticist*, September 10, 2012. Available at: <https://www.atlanticcouncil.org/blogs/new-atlanticist/preventing-atrocity-crimes-in-syria-the-responsibility-to-protect/> (accessed: 16.09.2023).

It should be noted, however, that the White House has deliberately refrained from using the term “humanitarian intervention” explicitly (in light of anticipated opposition in the UN Security Council, particularly after the setback associated with R2P), while evidently continuing to rely on the distinctive features and justificatory logic of these related doctrines, including by seeking to shape general international legal consciousness through other forums, such as the UN General Assembly and the Human Rights Council (HRC). In promoting a more “flexible” reading of Article 2 (4) of the UN Charter, the strategy has been to combine humanitarian intervention arguments with other purported legal grounds for the use of force, including the protection of nationals abroad and the exercise of the right to collective self-defense, inter alia within the framework of regional security treaties.

– An important element of this line of justification is the existence of prior UN Security Council decisions characterizing the situation as a “serious crisis threatening international peace and security”¹⁵. Thus, Resolution No. 2042 of April 14, 2012¹⁶ endorses Kofi Annan’s “six-point plan,” aimed at “immediately ending the violence and human rights violations”, “ensuring humanitarian access,” and facilitating a “political transition to a democratic, pluralistic political system”; Resolution No. 2043 of April 21, 2012 established the United Nations Supervision Mission in Syria (UNSMIS); Resolution No. 2118 of September 27, 2013 condemns the “killing of civilians” through the use of chemical weapons and affirms that “the use of chemical weapons is a serious violation of international law”; Resolution No. 2139 of February 22, 2014 expresses “grave alarm at the significant and rapid deterioration of the humanitarian situation in Syria, in particular the dire situation of hundreds of thousands of civilians trapped in besieged areas, most of whom are besieged by the Syrian armed forces”; Resolution No. 2165 of July 14, 2014 condemns “the ongoing widespread violations of human rights and international humanitarian law by the Syrian authorities”; and in a similar vein, Resolutions No. 2170 of August 15, 2014, No. 2178 of September 24, 2014 and subsequent documents were adopted.

– The humanitarian intervention argument gains its persuasive force from an expansive reading of Article 2 (4) of the UN Charter: protection of human rights is framed as an implied exception to the general prohibition on the use of force, on the ground that such protection accords with the purposes of the United Nations under Article 1 (3) of the Charter. On this view, the clause “in a manner inconsistent with the Purposes of the United Nations” in Article 2 (4) is treated as a substantive condition of unlawfulness, so that forcible measures taken in pursuit of UN purposes – such as halting mass atrocities – are presented as falling outside the scope of the prohibition.

It is noteworthy that this line of argument is not new: at least since the NATO intervention in Yugoslavia, similar claims have been advanced. Former International Court of Justice judge Christopher Greenwood (United Kingdom) argued that a “strict approach

¹⁵ An important refinement introduced by British international lawyers into the doctrine of humanitarian intervention is the requirement of a prior assessment by the UN Security Council of the seriousness of the situation, developed in the course of articulating the legal justification for the NATO’s 1999 intervention in Yugoslavia (Lowe, 2000:937–939).

¹⁶ Here and below, UN documents are cited as presented on the Security Council Report website (UN Documents for Syria). Available at: <https://www.securitycouncilreport.org/un-documents/syria/> (accessed: 05.05.2023).

to international law” that treats it as prohibiting the use of force in general, and humanitarian intervention in particular, overlooks the fact that international law and the UN Charter “are not based solely on the principles of non-interference and respect for State sovereignty”. In his view, “the values on which the international legal system is founded also include respect for human rights and the dignity and worth of the human person”, “the protection of these rights is one of the purposes of the United Nations and of international law”, and “international law does not require that respect for the sovereignty and integrity of a State must in all cases take precedence over the protection of human rights and human life”¹⁷.

– Accusing the Syrian Government of violating the principles and rules of international law, “exposing” it of “gross violations of international law”, in particular, violations of *human rights* (especially of women and children), as well as the use of *chemical weapons* (hereinafter also referred to as CW)¹⁸ against its own population, in particular in August 2013¹⁹, which resulted in the presence or approach of an “imminent humanitarian catastrophe”²⁰.

– One element is the continued use of the R2P terminology. In documents prepared by the Global Centre for the Responsibility to Protect at the Ralph Bunche Institute for International Studies in New York, the “responsibility to protect” is described as an “international rule”²¹, unanimously endorsed by heads of states and governments at the 2005 World Summit²² and aimed at “preventing and ending genocide, war crimes, ethnic cleansing and crimes against humanity”. The Syrian Government is said to have “failed to uphold this responsibility” toward its population; its commission of “atrocities crimes” (that is, genocide, crimes against humanity, and war crimes)²³ is treated as a breach of a *jus cogens* norm. On this reading, the R2P framework confers on the international community the right to intervene to stop or prevent such crimes, and, because it is presented as reflecting a peremptory norm of general international law, it is invoked by some commentators as capable of justifying action “in the absence of authorization from the UN Security Council”²⁴.

¹⁷ Memorandum submitted by Christopher Greenwood QC, November 22, 1999, para 14. Available at: <https://publications.parliament.uk/pa/cm199900/cmselect/cmfaif/28/0020802.htm> (accessed: 03.05.2024).

¹⁸ Barack Obama warns Syria chemical arms a ‘game changer’. BBC News, 26 April 2013. Available at: <https://www.bbc.com/news/world-middle-east-22318749> (accessed: 03.05.2024).

¹⁹ See UNSC Resolution No. 2118 of September 27, 2013; Report of the UN Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013. S/2013/553. 13 September 2013. Available at: <https://digitallibrary.un.org/record/756814?v=pdf> (accessed: 03.05.2024).

²⁰ Report of the Secretary-General on the implementation of Security Council resolution 2139 (2014). 22 May 2014. S/2014/365. Available at: <https://docs.un.org/S/2014/365> (accessed: 05.05.2024).

²¹ Global Centre for the Responsibility to Protect. R2P Monitor, Issue 69, 1 June 2024. Ralph Bunche Institute for International Studies, New York. Available at: <https://www.globalr2p.org/publications/r2p-monitor-issue-69-1-june-2024/> (accessed: 06.06.2024).

²² UNGA Resolution No. 60/1, paras. 138–140.

²³ Letter dated January 22, 2016 from the Secretary-General of the United Nations addressed to the President of the General Assembly and the President of the Security Council. Annex “Framework of Analysis for Atrocity Crimes,” A/70/741–S/2016/71. February 16, 2016. Available at: <https://docs.un.org/A/70/741> (accessed: 16.03.2024).

²⁴ Williams P. R., Ulbrick J. T., Worboys J. P. Op. cit.

Although the United States has sought to avoid explicit reliance on the R2P label in the Syrian context, it continues to draw on the criteria and justificatory logic associated with that concept. In particular, it makes use of “the unwilling or unable test”, which, in effect, functions as one of the core principles of R2P²⁵ (the *first mode* of applying “the unwilling or unable test” in relation to the Syrian Government). Moreover, this test is further developed and adapted to changing circumstances and comes to play a significant role in subsequent stages of legitimization strategy, not as a benchmark for humanitarian intervention and R2P, but as part of a distinct argumentative framework centered on the threat posed by terrorism.

– The foregoing contention that the Syrian Government has committed internationally wrongful acts is reinforced by the argument that the resulting mass outflow of refugees to neighboring states²⁶, in particular Jordan and Lebanon, poses “a threat to international peace and security” by generating severe economic and political strains in those countries.

– A further strand of the justification invokes intervention on the basis of the “consent of the legitimate government”. The “Syrian National Council” (opposition) was politically recognized by the United States on December 12, 2012 as the sole “legitimate representative” of the Syrian people, following a similar step taken by the United Kingdom on November 20, 2012 and by a number of other states²⁷.

After such recognition, the United States could have secured the UN Security Council’s authorization to use force against Bashar al-Assad (and his chemical weapons). However, this would have required a significant number of states to withhold recognition of Assad’s government as the sole legitimate representative of the Syrian people, with such non-recognition extending beyond the political into the legal realm. An alternative approach would have entailed recognizing the opposition not merely as the “legitimate representative” of the Syrian people (while still classifying it as a non-state armed group), but as Syria’s *de facto* government. Assistance could then have been reclassified as support for the Syrian government²⁸.

It has also been argued that the prohibition on aiding opposition groups does not apply when foreign states support a government embroiled in civil war. This view stems from the tension between bolstering a government losing territorial control and upholding the principle of self-determination. Yet assistance during civil war is permissible only in cases of “counter-intervention,” where a foreign state has already intervened on the other

²⁵ UN General Assembly Resolution No. 60/1, para. 139.

²⁶ Potential Cross-Border Assistance from Turkey to Syria. Syria Needs Analysis Project, April 2014. 11 pp.

²⁷ Obama Recognizes Syrian Opposition Group. ABC News, December 12, 2012. Available at: <https://abcnews.go.com/Politics/OTUS/exclusive-president-obama-recognizes-syrian-opposition-group/story?id=17936599> (Accessed: 03.05.2024); Syria conflict: UK Recognises Opposition, Says William Hague. BBC News, November 20, 2012. Available at: <https://www.bbc.com/news/uk-politics-20406562> (accessed: 03.05.2024).

²⁸ Akande D. Self Determination and the Syrian Conflict – Recognition of Syrian Opposition as Sole Legitimate Representative of the Syrian People: What Does this Mean and What Implications Does it Have? Blog of the European Journal of International Law (December 6, 2012). Available at: <https://www.ejiltalk.org/self-determination-and-the-syrian-conflict-recognition-of-syrian-opposition-as-sole-legitimate-representative-of-the-syrian-people-what-does-this-mean-and-what-implications-does-it-have/> (Accessed: 03.05.2024); Akande D. Would It Be Lawful for European (or other) States to Provide Arms to the Syrian Opposition? Blog of the European Journal of International Law (January 17, 2013). Available at: <https://www.ejiltalk.org/would-it-be-lawful-for-european-or-other-states-to-provide-arms-to-the-syrian-opposition/> (accessed: 03.05.2024).

opposing side. Thus, Russia's anticipated intervention in support of the Syrian government could have justified counter-intervention in support of the opposition²⁹. Conversely, this logic could equally validate aid to a government facing foreign-backed rebels, thereby reinforcing that state's sovereignty and territorial integrity.

– The relevance of self-determination is affirmed in paragraph 15 of UN Security Council Resolution No. 2139 (22 February 2014).

First, international law permits states to support groups fighting for self-determination, including through arms supplies. This practice emerged in the 1960s–1970s during decolonization and was endorsed by multiple UN General Assembly resolutions, which authorized weapons and military aid to national liberation movements opposing colonial or racist regimes. Proponents argue that self-determination extends beyond decolonization to all relevant cases. In Syria, where the people were “striving to exercise their right to self-determination”, it would thus be lawful to assist their legitimate representatives, including with weapons³⁰.

Second, if Syria's opposition represents portions of the people denied *internal* self-determination via political means, *external* self-determination may be pursued through other channels³¹ – potentially including armed struggle as a protective measure³².

Additional arguments

– Military force in Syria must satisfy *necessity and proportionality*, the standard limits on any use of force.

– The NATO intervention in Kosovo sets a precedent for “critical, well-justified” uses of force, even absent explicit UN Charter authorization – though such cases remain exceptional. The U.S. could reasonably anticipate that it will not be criticized for striking to halt a dictator's “imminent use of chemical weapons against his own citizens,” notwithstanding formal legal constraints (Simma, 1999:1, 22; Franck, 2002; Schachter, 1991:126)³³.

²⁹ Akande D. Self Determination and the Syrian Conflict – Recognition of Syrian Opposition as Sole Legitimate Representative of the Syrian People: What Does this Mean and What Implications Does it Have? Blog of the European Journal of International Law (December 6, 2012). Available at: <https://www.ejiltalk.org/self-determination-and-the-syrian-conflict-recognition-of-syrian-opposition-as-sole-legitimate-representative-of-the-syrian-people-what-does-this-mean-and-what-implications-does-it-have/> (Accessed: 03.05.2024); Akande D. Would It Be Lawful for European (or other) States to Provide Arms to the Syrian Opposition? Blog of the European Journal of International Law (January 17, 2013). Available at: <https://www.ejiltalk.org/would-it-be-lawful-for-european-or-other-states-to-provide-arms-to-the-syrian-opposition/> (accessed: 03.05.2024).

³⁰ Akande D. Self Determination and the Syrian Conflict – Recognition of Syrian Opposition as Sole Legitimate Representative of the Syrian People: What Does this Mean and What Implications Does it Have? Blog of the European Journal of International Law (December 6, 2012). Available at: <https://www.ejiltalk.org/self-determination-and-the-syrian-conflict-recognition-of-syrian-opposition-as-sole-legitimate-representative-of-the-syrian-people-what-does-this-mean-and-what-implications-does-it-have/> (accessed: 03.05.2024).

³¹ Supreme Court of Canada. Reference re Secession of Quebec, [1998] 2 S.C.R. 217. Available at: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1643/index.do> (accessed: 04.06.2024).

³² Akande D. Op. cit. (December 6, 2012).

³³ Deeks A. Syria, Chemical Weapons, and Possible U.S. Military Action. *Lawfare*, December 10, 2012. Available at: <https://www.lawfaremedia.org/article/syria-chemical-weapons-and-possible-us-military-action> (Accessed: 03.05.2024); Akande D. The Legality of Military Action in Syria: Humanitarian Intervention and Responsibility to Protect. Blog of the European Journal of International Law (August 28, 2013). Available at:

– It is also argued that “there is no practical alternative to the use of force” given the blockade of the UN Security Council³⁴. After more than a year of “futile diplomatic efforts”, the international community appears to have “run out of options”. Various peace plans – such as the Kofi Annan initiative – along with special envoys and sanctions seem to have had no discernible impact on the Assad regime’s conduct”. The UN Security Council has therefore “once again become stalemated and ineffective”, as Russia and China have vetoed resolutions aimed at compelling the regime to cease its attacks on civilians³⁵.

Within the framework of this first set of arguments, the *humanitarian intervention* can be understood as serving three interconnected tasks:

1. *Humanitarian protection (narrow task)*: to prevent further chemical weapons attacks against Syrian civilians.

2. *Deterrence (wide task)*: to deter and weaken the regime’s capacity to use chemical weapons again. Some U.S. statements openly discuss two levels of deterrence. The first seeks to punish the Assad regime for using chemical weapons, thereby discouraging their repeated use and sending a warning to future leaders. The second aims to deter humanitarian violations “in future conflicts overall”³⁶ – a claim that is regarded as controversial even within U.S. political and academic circles³⁷.

3. *Regime change as a broader humanitarian objective (large-scale task)*: to overthrow the Assad regime. This implies demonstrating a “better alternative” or at least a credible plan for creating one, to justify “regime change” as an acceptable humanitarian goal, for example by reference to the 1994 Rwandan genocide. If the government is deemed willing to use chemical weapons, removing it may be presented as the only way to prevent their further use, echoing arguments advanced in support of 2003 invasion of Iraq and the 2011 intervention in Libya.

Former Legal Adviser to the British Foreign and Commonwealth Office, Sir Daniel Bethlehem, argued that, given the thousands killed and injured in Syria, the millions of refugees and internally displaced persons, and the real prospect of a further sharp increase in their numbers in the event of chemical weapons use, “there would seem to be a strong basis for a reasonable assertion of a humanitarian intervention rationale for any action”. While authorization by the UN Security Council under Chapter VII of the UN Charter

<https://www.ejiltalk.org/humanitarian-intervention-responsibility-to-protect-and-the-legality-of-military-action-in-syria/> (accessed: 03.06.2024).

³⁴ This situation may be compared to the Kosovo case. It is particularly evident in the UK’s international legal position, although the author of the present article argues that, with certain assumptions, the logic can also be aligned with the U.S. stance. See: Prime Minister’s Office. *Policy paper*. Syria Action: UK Government Legal Position (April 14, 2018), para (ii). Available at: <https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position> (accessed: 03.05.2024).

³⁵ Williams P. R., Ulbrick J. T., Worboys J. P. Op. cit.

³⁶ See: S.J.Res.21 (introduced September 6, 2013), Joint Resolution to Authorize the Limited and Specified Use of the United States Armed Forces against Syria, Section 2(4)(a). Available at: <https://www.congress.gov/bill/113th-congress/senate-joint-resolution/21/text> (accessed: 15.07.2023).

³⁷ Verdirame G. The Law and Strategy of Humanitarian Intervention. Blog of the European Journal of International Law (August 30, 2013). Available at: <https://www.ejiltalk.org/the-law-and-strategy-of-humanitarian-intervention/> (accessed: 03.05.2024).

would be preferable, he maintains that it is “not the only available legal framework for actions to address a real and substantial threat of the use of chemical weapons”³⁸.

In fact, the UK is attempting to reshape existing international law by publicly articulating its legal position and then awaiting the reaction of other subjects of international law. Those states may accept the position explicitly, tacitly, or through expressions of solidarity³⁹, thereby contributing to the formation of a new custom that can later be invoked as an *ex post facto* justification (Crawford & Viles, 1994; Lowe, 2000:934). By issuing a statement that appears to “contradict” the prevailing understanding of international law, the UK is paradoxically acting within the framework of that very system – insisting that its interpretation has already crystallized as customary law and hoping that other states will eventually come to share this view⁴⁰.

II. Use of chemical weapons as an “internationally wrongful act” and the self-defense argument

The argument that the government of Bashar al-Assad committed an internationally wrongful act through the “use of chemical weapons” was initially developed as a basis for humanitarian intervention. In the language of Responsibility to Protect (R2P) framework, this is often framed as the Syrian government’s commission of a “war crime against its own population”. This line of reasoning was later expanded to serve as a potential basis for the exercise of the right to (collective) self-defense⁴¹, alongside the more traditional humanitarian intervention rationale.

In this context, two related aspects were advanced:

1. *The threat to the Syrian population*: the use of chemical weapons as a grave humanitarian harm to civilians within Syria.

2. The presentation of a *direct threat to the national security of the United States and neighboring countries*. This second aspect was articulated as follows:

- The use of chemical weapons by Syria could affect neighboring (and friendly) states, such as Jordan, Turkey, and Israel. Depending on the location of the attack and the atmospheric conditions, poisonous substance might cross state borders, a scenario that could be construed as an “armed attack on a neighboring state” and thus trigger the right of self-defense;

- Neighboring states might take into account the Syrian regime’s demonstrated willingness to use chemical weapons when assessing whether future Syrian military

³⁸ Bethlehem D. A Brief Reply on the Legal Bases for Intervention in Syria. *Opinio Juris* (in association with the International Commission of Jurists, December 08, 2012). Available at: <http://opiniojuris.org/2012/12/08/a-brief-reply-on-the-legal-bases-for-intervention-in-syria/> (accessed: 03.05.2024).

³⁹ Milanovic M. Breaking: UK Government Discloses Legal Rationale for Syria Intervention. Blog of the European Journal of International Law (August 30, 2013). Available at: <https://www.ejiltalk.org/breaking-uk-government-discloses-legal-rationale-for-syria-intervention/> (accessed: 03.05.2024).

⁴⁰ Akande D. The Legality of Military Action in Syria: Humanitarian Intervention and Responsibility to Protect. Blog of the European Journal of International Law (August 28, 2013). Available at: <https://www.ejiltalk.org/humanitarian-intervention-responsibility-to-protect-and-the-legality-of-military-action-in-syria/> (accessed: 03.06.2024).

⁴¹ The White House. Letter from the President – War Powers Resolution Regarding Syria. September 23, 2014. Available at: <https://obamawhitehouse.archives.gov/the-press-office/2014/09/23/letter-president-war-powers-resolution-regarding-syria> (Accessed: 03.05.2024); Deeks A., Daskal J., Goodman R. Strikes in Syria: The International Law Framework. *Lawfare*, September 24, 2014. Available at: <https://www.lawfaremedia.org/article/strikes-syria-international-law-framework> (accessed: 03.05.2024).

movements near their borders pose an “immediate threat of armed attack” (for example, if chemical agents could spread beyond the Syrian territory). This logic could, in turn, be used to justify *preemptive self-defense* – understood as a legitimate form of *anticipatory self-defense* – in certain circumstances.

– From the perspective of U.S. *national interests*, it is said to be necessary to: (1) uphold and promote non-proliferation of weapons of mass destruction (WMD); and (2) protect allies (neighboring and friendly states) and American bases in the region⁴². These objectives, proponents argue, could in principle be pursued through the doctrine of *anticipatory collective self-defense*, particularly where the relevant neighboring states have already requested the military intervention of the United States on their behalf to address the threat posed by Syria’s chemical weapons capabilities⁴³.

In parallel with the allegations that the Syrian government “mistreated its own population, is unable or unwilling to protect it”, and that its use of chemical weapons could amount to an armed attack on a neighboring state, Washington has begun to advance a more potent argument: the existence of a *terrorist threat* (the third aspect). This line of reasoning combines to the humanitarian-protection and self-defense rationales into a more comprehensive and qualitatively new international legal justification for the crisis under study.

In this context, the United States has been preparing, in legal terms, for three main scenarios:

1. *Syria preparing to use chemical weapons against its own citizens* – a scenario that supports justification by humanitarian intervention under the logic of Responsibility to Protect (R2P);

2. The potential qualification of Syria’s use of chemical weapons as an *armed attack on a neighboring state(s)* – providing a basis for collective self-defense, or as a *direct threat of an armed attack* justifying preemptive collective self-defense;

3. *Syria’s chemical weapons falling into the hands of terrorists and extremist groups*, such as Hezbollah⁴⁴ – a scenario that can be invoked to justify *collective self-defense* or *preemptive self-defense*.

Together, these three scenarios constitute the three aspects of the argument for using the threat or use of chemical weapons in Syria as a legal ground for the use of force (see Figure 1).

⁴² Deeks A. Chemical Weapons in Syria: Enough to Justify the Use of Force? *Lawfare*, April 26, 2013. Available at: <https://www.lawfaremedia.org/article/chemical-weapons-syria-enough-justify-use-force> (Accessed: 03.05.2024); *Idem*. Chemical Weapons, and Possible U.S. Military Action. *Lawfare* (December 10, 2012). Available at: <https://www.lawfaremedia.org/article/syria-chemical-weapons-and-possible-us-military-action> (accessed: 03.05.2024).

⁴³ Turkey’s request within the NATO framework <...> for the deployment of Patriot air defense systems to guard against the risk of Syria’s use of chemical weapons, which is often invoked to support the idea of collective self-defense as a possible legal basis for intervention. See: *Bethlehem D.* Op. cit. (December 08, 2012).

⁴⁴ Hezbollah was one of Bashar al-Assad’s allies.

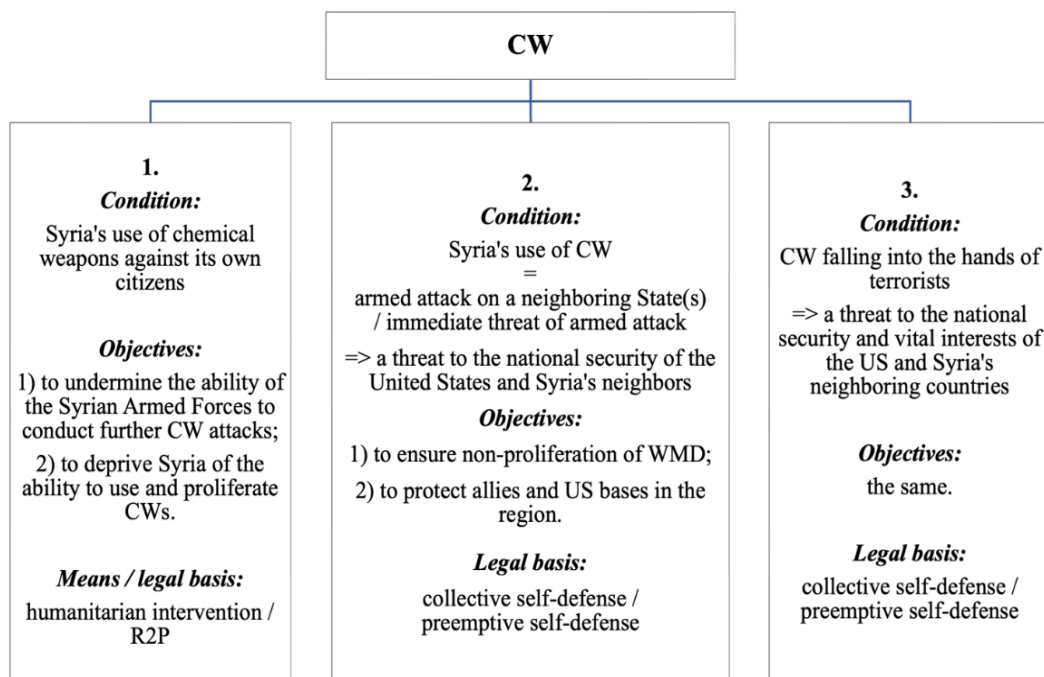


Figure 1. Three aspects of the chemical weapons argument justifying the use of force (based on predictive scenarios)

Source: The Figure devised and created by Anastasia M. Korzhenyak.

The third aspect of the argument – *the terrorist-threat rationale* – became particularly prominent during the second and third stages of the crisis, as Hezbollah became more deeply involved and the Islamic State* intensified its activities. Since 2014, justification for the use of force has increasingly been reinforced by the perceived need to combat both *the Islamic State** and the *Wilayat Khorasan*** group, which reportedly includes al-Qaeda*** fighters⁴⁵. In this context, the right to *collective self-defense* has emerged as a central international legal basis for the use of force.

– The counter-terrorism argument has also served to broaden international support for military action. U.S. officials have stressed that the United States is acting as part of an *international coalition*, rather than unilaterally noting that:

* By the decision of the Supreme Court of the Russian Federation No. АКПИ14-1424C dated December 29, 2014, its activities are prohibited on the territory of the Russian Federation.

** A structural unit of an organization recognized as a terrorist organization by the decision of the Supreme Court of the Russian Federation dated December 29, 2014, No. АКПИ14-1424S.

*** Recognized as a terrorist organization. Decision of the Supreme Court of the Russian Federation: dated February 14, 2003, No. ГКПИ 03-116.

⁴⁵ U.S. Suspects More Direct Threats Beyond ISIS. The New York Times, September 20, 2014. Available at: <https://www.nytimes.com/2014/09/21/world/middleeast/us-sees-other-more-direct-threats-beyond-isis-.html?hp&action=click&pgtype=Homepage&version=HpHeadline&module=b-lede-package-region®ion=top-news&WT.nav=top-news> (Accessed: 03.05.2024).

“Our friends and partners, Saudi Arabia, the UAE, Jordan, Bahrain, and Qatar, have joined us”, “America is not fighting alone”, and “more than 40 countries have offered their assistance in this comprehensive effort to counter the terrorist threat”⁴⁶.

– In addition to the *opposition’s consent and support*⁴⁷, the Syrian government also “*did not object* to the US-led coalition’s strikes against IS”⁴⁸.

The development of this “third aspect” of the argument is reinforced by several sophisticated international legal concepts. First, the *concept of “preemptive self-defense”* is invoked, as reflected in the so-called “*Bush doctrine*”, under which the United States reserves the right – without waiting for an armed attack – to “preemptively attack any country that, in its view, poses a significant threat to its national security”⁴⁹.

Secondly, emphasis is placed on the “*imminent threat*” doctrine, sometimes referred to as the “*Obama doctrine*”, which underpins the concept of “preemptive self-defense” (Chesterman, 2011:282–284). It is widely argued that the requirement of imminence makes “*preemptive*” *self-defense* compatible with international law, in contrast to “*preventive*” *self-defense*, which does not require an immediate threat (Shiryaev, 2008:82–83; Brown, 2003:2–8). In the context of hostilities involving terrorist organizations, the criterion of imminence and inevitability entails considering appropriate opportunities for action, assessing the possible harm that failing to act could cause to the civilian population, and evaluating the likelihood of preventing future catastrophic attacks against the United States⁵⁰.

In this context, two key conceptual claims are advanced: first, if Hezbollah were to acquire a stockpile of chemical weapons, the United States would treat this as an *imminent threat*, given Hezbollah’s prior attacks against U.S. interests. Second, the United States characterizes the risk of an armed attack by the Islamic State as an *imminent threat* as well, and thus maintains that it must employ force *before these attacks occur*⁵¹. As is evident, the criterion of “imminence” is being progressively stretched in order to legitimize “preventive” action while presenting it as preemptive, and therefore as lawful.

* By the decision of the Supreme Court of the Russian Federation No. АКПИ14-1424C dated December 29, 2014, its activities are prohibited on the territory of the Russian Federation.

⁴⁶ The White House, *Statement by the President on Airstrikes in Syria*. (South Lawn. September 23, 2014). Available at: <https://obamawhitehouse.archives.gov/the-press-office/2014/09/23/statement-president-airstrikes-syria> (accessed: 03.05.2024).

⁴⁷ National Coalition of Syrian Revolution and Opposition Forces, Press Release “Airstrikes Against ISIS Positions Inside Syria” (September 23, 2014). Available at: <http://en.etilaf.org/press/airstrikes-against-isis-positions-inside-syria> (accessed: 03.05.2024).

⁴⁸ Identical letters dated 25 May 2015 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council. A/69/912–S/2015/371. Available at: <https://digitallibrary.un.org/record/794514?ln=ru&v=pdf> (accessed: 03.05.2024); (Bannelier-Christakis, 2016:750–751).

⁴⁹ Speech of G. Bush given at the United States Military Academy West Point, New York, June 1, 2002. Available at: <http://www.nytimes.com/2002/06/01/international/02PTEX-WEB.html> (accessed: 03.12.2022).

⁵⁰ Remarks of John O. Brennan “Strengthening our Security by Adhering to our Values and Laws”. Harvard Law School, September 16, 2011. Available at: <https://obamawhitehouse.archives.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an> (accessed: 03.05.2024).

⁵¹ Deeks A. U.S. Airstrikes Against ISIS in Syria? Possible International Legal Theories. *Lawfare*, August 23, 2014. Available at: <https://www.lawfaremedia.org/article/us-airstrikes-against-isis-syria-possible-international-legal-theories> (accessed: 03.05.2024).

Thirdly, U.S. officials continue to promote the *concept of “unilateral military actions against states deemed to be threatening international security”* (so called “*rogue states*”). This is framed as a continuation and more narrowly targeted application of the concept of “*anticipatory self-defense*”, coupled with the argument that “some norms of international law are not fully applicable to modern challenges”, notably those posed by terrorist organizations and by governments that seriously violate the human rights of their own populations⁵². Here we can see a skillful return to the first aspect identified earlier, namely the doctrine of “*humanitarian intervention*” and the R2P concept.

Fourth, Ashley Deeks (a member of the Advisory Committee on International Law of the U.S. Department of State and former Deputy Legal Adviser to the National Security Council in 2021-2022) brings these three concepts together in developing a *theory of “national self-defense against an imminent or continuing threat”*⁵³ as a particular form of the exercise of the right to individual self-defense.

Fifth, the promotion of “*the unwilling or unable test*”, one of the core operational principles associated with R2P, continues. According to this standard, states may use force against non-state armed groups that pose a threat and have carried out attacks against another state’s territory when the territorial state is *unwilling or unable to prevent the use of its territory*” by those groups⁵⁴. The United Kingdom and France have also endorsed this line of justification (Bethlehem, 2012)⁵⁵.

– Since the operation was now framed primarily as a campaign against the Islamic State, it extended not only over Syrian territory but also over Iraq and later Libya. Washington therefore incorporated into its legitimation mechanism the claim that the “*Iraqi government had requested assistance in combating IS*”, so that the use of force on Iraqi territory was justified as having been undertaken “*with the consent and at the request of Iraq*”⁵⁶.

On this basis, a new legal theory was constructed by combining the “*unwilling or unable test*” with the exercise of the right to *collective self-defense* pursuant to the consent and request of the Iraqi government (the *second mode* of applying “the unwilling or unable test” in relation to the Syrian government). According to this theory, the United States is assisting Iraq in responding to the “*direct and persistent threat*” posed by IS*, which launches attacks in Iraq from “safe havens in Syria”⁵⁷. Consequently, the United States

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⁵² Prepared Statement of John B. Bellinger III “The Use of Force: Strategic, Political, and Legal Considerations”. Council on Foreign Relations, 2017. P. 6. Available at: <https://www.jstor.org/stable/resrep29901> (accessed: 03.12.2022).

⁵³ Deeks A. UK Air Strike in Syria (with France and Australia Not Far Behind). *Lawfare*, September 9, 2015. Available at: <https://www.lawfaremedia.org/article/uk-air-strike-syria-france-and-australia-not-far-behind> (accessed: 03.05.2024).

⁵⁴ Letter to the Speaker of the House and President pro tempore of the Senate Consistent with the War Powers Resolution, February 27, 2021. Available at: <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/02/27/a-letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution/> (accessed: 03.05.2024).

⁵⁵ See also: Deeks A. Op. cit. (September 9, 2015).

⁵⁶ Letter dated 25 June 2014 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General. S/2014/440. Available at: <https://digitallibrary.un.org/record/773863?v=pdf> (accessed: 03.05.2024).

⁵⁷ See UNSC Resolutions No. 2170 (15 August 2014), No. 2178 (24 September 2014).

argues that it does not require the consent of the Syrian government to conduct airstrikes in Syria, since that government “cannot or does not want” to confront IS* effectively on its territory. These airstrikes have been carried out in areas “no longer under the effective control of the Syrian government” and are directed against extremist groups that “pose an immediate threat to international peace and security”⁵⁸.

Sixth, the *theory of “protecting U.S. citizens”* in Iraq is invoked as an additional ground for the use of force against IS*. Although this justification is less persuasive in legal terms – despite some development of the concept in international law (Shiryaev, 2008:86–87) – it is noteworthy that it is omitted from the final version of the U.S. letter submitted to the United Nations⁵⁹.

Seventh, the so-called “*needle-prick theory*” / “*pin-prick doctrine*” (German: “*Nadelstichtaktik*”), also referred to as the “*accumulation of events theory*”, further strengthens the persuasiveness of the argument. According to this doctrine, each individual terrorist act, although not amounting to an armed attack on its own, may – when assessed cumulatively – be equated to an armed attack, thereby giving the victim state the right to respond with armed force (Shiryaev, 2008:95)⁶⁰. In this sense, it is claimed that the military action is undertaken not in response to a *single attack*, but to an *ongoing series of attacks*, and that such action is necessary in order to “prevent and deter such attacks”⁶¹.

III. “Anticipatory (preemptive) humanitarian intervention”

The most interesting development is the combination of the two preceding sets of arguments into a claim that, in effect, posits a new type of humanitarian intervention: “*anticipatory (preemptive) humanitarian intervention*”⁶². On the one hand, this is situated in the context of genocide, war crimes or crimes against humanity (which may encompass the use of chemical weapons), particularly where there is an imminent risk of such use of chemical weapons or weapons of mass destruction more generally. On the other hand, if reliable information indicates that IS* or the Wilayat Khorasan** group are planning direct attacks against the United States, then strikes against these groups may be justified within the framework of *preemptive self-defense*, combined with an argument that the *unwilling or unable test* applies to Syria.

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** A structural unit of an organization recognized as a terrorist organization by the decision of the Supreme Court of the Russian Federation dated December 29, 2014, No. АКПИ14-1424S.

⁵⁸ Ban Ki-moon. Remarks at the Climate Summit press conference (including comments on Syria). September 23, 2014. Available at: <https://www.un.org/sg/en/content/sg/speeches/2014-09-23/remarks-climate-summit-press-conference-including-comments-syria> (accessed: 03.05.2024).

⁵⁹ Deeks A., Daskal J., Goodman R. Op. cit.

⁶⁰ See also: McLaughlin M. Detering the Next Invasion: Applying the Accumulation of Events Theory to Cyberspace. *Opinio Juris*, March 2, 2023. Available at: <http://opiniojuris.org/2023/03/02/detering-the-next-invasion-applying-the-accumulation-of-events-theory-to-cyberspace/> (accessed: 28.02.2024).

⁶¹ Engel S. A. Memorandum Opinion for the Counsel to the President “April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities” (May 31, 2018). U.S. Department of Justice, *Opinions of the Office of Legal Counsel in Volume 42*, pp. 1-22. Available at: <https://www.justice.gov/olc/opinion/file/1067551/dl> (accessed: 03.05.2024).

⁶² Deeks A. Op. cit. (December 10, 2012); Bethlehem D. Op. cit. (December 08, 2012).

Conclusion

The sheer number of legal arguments advanced to justify the 2014 armed intervention in Syria by the United States and its allies tends to obscure two fundamental absences: first, the lack of any UN Security Council articulation of such a policy as the appropriate means of resolving the crisis, to be implemented or supported through armed force; and second, the absence of a clear finding that an imminent humanitarian catastrophe could be averted by the use of force, and only by the use of force.

In this article, three clusters of arguments that evolved at different stages of the conflict were identified as three key justifications for the use of force: (I) humanitarian intervention / Responsibility to Protect (R2P) language (protection of the Syrian population); (II) the right to (collective) self-defense; and (III) “anticipatory (preemptive) humanitarian intervention”.

The first cluster (I) comprises the following elements:

(1) a preliminary assessment by the UN Security Council of the gravity of the situation;

(2) an extensive reading of Article 2 (4) of the UN Charter, grounded in appeals to consistency with the purposes of the United Nations;

(3) allegations that the Syrian government committed “gross violations of international law”, in particular serious human rights violations and the use of chemical weapons against its own population (the *first aspect* of the chemical weapons argument as a danger to Syrians);

(4) the continued deployment of R2P language, including development of a *first modality* for applying “the unwilling or unable test” to the Syrian government;

(5) the claim that large-scale refugee flows into neighboring states constitute a “threat to international peace and security”;

(6) the assertion that intervention rests on “the consent of the legitimate government”, based on recognition of the opposition (the Syrian National Council) as the sole “legitimate representative” of the Syrian people, with the potential to be recognized as a *de facto* government;

(7) invocation of the right to self-determination to justify assistance to the opposition.

Additional reinforcing arguments include: (1) compliance with the requirements of necessity and proportionality; (2) reliance on the so-called “Kosovo precedent”; and (3) the assertion that no other practicable alternative to the use of force remained because the UN Security Council’s action was “blocked” and other means had been exhausted.

The second cluster (II) comprises the following arguments: (1) Syria’s use of chemical weapons may be qualified as an “armed attack on a neighboring state”, thereby permitting *collective self-defense*, or as an “*immediate* threat of armed attack”, thereby justifying *preemptive self-defense* (as one of the legitimate varieties of anticipatory self-defense), particularly where neighboring states have already requested U.S. intervention on their behalf (the *second aspect* of the chemical weapons argument, framed as an “immediate threat to the national security and national interests of the United States and Syria’s neighboring states”); (2) the use of force is justified as part of the fight

against IS* and other terrorist groups (the *third aspect* of the chemical weapons argument, framed as a terrorist threat).

The second argument within this cluster is further bolstered by additional claims: (1) the existence of an “international coalition”, (2) the presence of consent and support from the Syrian opposition; (3) the absence of formal protest or objection by the Syrian government, and (4) the existence of a request from the Iraqi government for assistance in the fight against IS*. On this basis, it is argued that the consent of the Syrian government is not required, because it “cannot or does not want” to act effectively against IS* on its territory – constituting the *second mode* of applying “the unwilling or unable test” to the Syrian government.

It is noteworthy that the combination of all three aspects of the chemical weapons argument in the Syrian crisis has produced a qualitatively new form of international legal justification. The development of the third aspect in particular has been driven by a cluster of inventive international legal concepts: (1) the concept of “preemptive self-defense”, associated with the so-called “Bush doctrine”; (2) the “imminent threat” doctrine, which underpins the concept of “preemptive self-defense” and is sometimes also referred to as the “Obama doctrine”; 3) the concept of “unilateral military actions against states deemed to be threatening international security (‘rogue states’)”; (4) the theory of “national self-defense against an imminent or continuing threat”; (5) the “unwilling or unable test” (including its combination with collective self-defense based on the consent and request of the Iraqi government); (6) the theory of “protecting U.S. citizens abroad”; and (7) the “needle-prick theory” / “pin-prick doctrine”, also known as the “accumulation of events theory”.

The most striking development is the fusion of the first two clusters of arguments into the third (III) cluster, framed as, in effect, a new type of humanitarian intervention: “anticipatory (preemptive) humanitarian intervention”. A dense network of UNSC and UNGA resolutions, Human Rights Council documents, sustained influence on international legal consciousness in the United States and its partner states has reinforced this legitimating effect. The continued deployment of R2P language – which, despite occasional denials, permeates almost all relevant UN documents and U.S. justifications – has had a particularly powerful legitimizing effect.

In this light, a detailed examination of how foreign states (above all, the United States) have developed and operationalized international legal mechanisms to legitimize armed interventions abroad can both enrich Russian scholarship in international law and serve as a stimulus for formulating our own innovative approaches to enhancing the quality of Russia’s international legal policy, including in the context of the special military operation in Ukraine. Ultimately, analyzing other states’ practice is aimed at identifying patterns that enable us to anticipate their future legal maneuvers, as well as to detect flaws, weaknesses, and contradictions that should be taken into account and, where appropriate, used strategically.

* By the decision of the Supreme Court of the Russian Federation No. АКПИ14-1424С dated December 29, 2014, its activities are prohibited on the territory of the Russian Federation.

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