

RESEARCH ARTICLE

The Illegality of Humanitarian Intervention: The Case of the UK's Legal Position Concerning the 2018 Strikes in Syria

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The aim of the article is to examine the legal position presented by the UK after the 2018 airstrikes in Syria, both from the perspective of the legality of humanitarian intervention as well as the criteria employed with regard to a humanitarian intervention in the doctrine of international law. The thesis underlying this paper is that humanitarian intervention is illegal under contemporary international law, since neither the UN Charter nor customary norms allow for a humanitarian intervention, and the UK's legal position and the reaction thereto do not change this state of the law. The paper is divided into two parts. The first part examines the UK's 2018 legal position in the light of international law, while the second part analyses the humanitarian intervention as invoked by the UK from the standpoint of two criteria of humanitarian intervention presented in the legal doctrine, that is, the reason behind the intervention and its goals.

Keywords: use of force; humanitarian intervention; Syria; United Kingdom; chemical weapons

I. Introduction

On 7 April 2018 media and international organizations reported another case of the use of chemical weapons against the civilian population in Syria in the town of Douma.¹ It is estimated that 40 people were killed as a result of the attack. Non-governmental organizations, like the Violations Documentation Center, immediately informed that bombs with chlorine were dropped by the Syrian Air Forces.² In response to the attack, the USA, the UK and France launched airstrikes on 14 April against three targets in Syria, allegedly linked with the production of chemical weapons by the Syrian regime. All three States claimed that the reason behind the airstrikes was the use of banned chemical weapons against civilians by President Assad's forces. While the USA and France did not present any legal justification for the airstrikes, highlighting only that their goal was deterrence against the further use of chemical weapons, the UK issued its legal position, wherein it claimed that it acted on the basis of the doctrine of humanitarian intervention.

Even though humanitarian intervention is one of the most frequently discussed grounds of intervention in the literature, there is not only no legal definition of a humanitarian intervention, but this concept is understood very broadly even in the doctrine of international law. Thus, some authors define a humanitarian

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¹ 'Syria war: What we know about Douma "chemical attack"' (BBC News, 10 July 2018), <<https://www.bbc.com/news/world-middle-east-43697084>> accessed 1 July 2018 (Syria war: What we know about Douma "chemical attack").

² *ibid.* Likewise, on 14 April 2018 the French Government issued a 'National assessment: Chemical attack of 7 April 2018 (Douma, Eastern Ghouta, Syria). Syria's clandestine chemical weapons programme', available at <<https://static01.nyt.com/files/2018/world/Syrie-Synthe%CC%80se-Les%20faits%20-%20Version%20anglaise%20.pdf>> accessed 10 January 2019, wherein it claimed that the Syrian regime holds responsibility for the attack. On the other hand, OPCW does not provide information on who is responsible for the attack (OPCW, 'OPCW Issues Fact-Finding Mission Reports on Chemical Weapons Use Allegations in Douma, Syria in 2018 and in Al-Hamadaniya and Karm Al-Tarrab in 2016' (6 July 2018), available at <<https://www.opcw.org/media-centre/news/2018/07/opcw-issues-fact-finding-mission-reports-chemical-weapons-use-allegations-attack>> accessed 6 January 2019).

intervention as any interference in affairs of another State because of humanitarian reasons,³ while others perceive it only as the use of force by one State against the other.⁴ Given that the UK invoked the doctrine of humanitarian intervention in relation to its use of armed force, the present article will also adopt this understanding of the notion of humanitarian intervention.⁵

The aim of this article is to examine the legal position presented by the UK, both from the perspective of the legality of humanitarian intervention as well as the criteria employed with regard to a humanitarian intervention in the doctrine of international law. The thesis underlying this paper is that humanitarian intervention is illegal under contemporary international law, since neither the UN Charter nor customary norms allow for a humanitarian intervention, and the UK's legal position and the reaction thereto do not change this state of the law.

The paper is divided into two parts. The first part examines the UK's 2018 legal position in the light of international law, discussing the legality of the humanitarian intervention itself, the UK's previous legal positions, and the reaction of the international community to the 2018 intervention. It concludes that the humanitarian intervention was and remains illegal under international law, since other States did not support the UK's arguments. The second part analyses the humanitarian intervention as invoked by the UK from the standpoint of two criteria of humanitarian intervention presented in the legal doctrine, i.e. the reason behind the intervention and its goals. It highlights that the UK presented a very specific interpretation of these criteria, which finds no precedent in either the previous State practice nor in works of the doctrine of international law.

II. The UK's Legal Position and International Law

A. Humanitarian Intervention Under Current International Law

Since until 1945 only aggressive wars were prohibited, States could legally intervene on the grounds of a humanitarian intervention. Abuses of this argumentation were one of the reasons why the UN Charter drafters decided to establish an absolute prohibition of the use of force, allowing only two exceptions – the right to self-defence under Art. 51 and collective operations under Art. 42. Despite that, some authors still employ such an interpretation of the UN Charter which would allow for a humanitarian intervention; e.g. they claim that the humanitarian intervention is not directed against 'territorial integrity or political independence' of a State, so does not infringe Art. 2 (4); human rights are also protected under the UN Charter; as well as that the serious violations of human rights are not just the internal affair of one State, etc.⁶ However, all these arguments abuse the letter and spirit of the Charter: Article 2 (4) prohibits the use of force not only against 'territorial integrity or political independence of any state' but also 'in any other manner inconsistent with the Purposes of the United Nations'; States are not allowed to intervene in the internal affairs of others; and the only way that the use of force is possible for the protection of human rights is if the UN Security Council (UN SC) recognizes the violations of human rights as a threat to international peace and security and thus consents to a collective intervention under its auspices.⁷ Likewise, the humanitarian intervention is not legal on the grounds of the customary international law. Even though within last three decades there were some interventions labelled as 'humanitarian' ones, like the intervention of coalition of States in Iraq and the

³ Ann van Wynen Thomas and A J Thomas, Jr, *Non-Intervention. The Law and Its Import in the Americas* (Southern Methodist University Press 1956) 372. Likewise Allen Buchanan does not understand humanitarian intervention only as the use of force (Allen Buchanan, 'The Internal Legitimacy of Humanitarian Intervention' in James Pattison (ed), *Humanitarian Intervention*, vol. 3 (Sage 2014) 53).

⁴ See e.g. Ian Brownlie, *International Law and the Use of Force by States* (Oxford University Press 1963) 324; Richard Baxter in 'Part II: The Present' in Richard B Lillich (ed.), *Humanitarian Intervention and the United Nations* (University Press of Virginia 1973) 53; David Armstrong, Theo Farrell and Hélène Lambert, *International Law and International Relations* (Cambridge University Press 2012) 139; Davis Brown, 'Iraq and the 800-Pound Gorilla Revisited: Good and Bad Faith, and Humanitarian Intervention' (2004) 28 (1) *Hastings International and Comparative Law Review* 1, 7.

⁵ It should be further explained that by 'humanitarian intervention' the present author understands unilateral or collective armed interventions conducted outside the collective security system and thus unauthorized by the UN SC. Interventions carried out on the grounds of art. 42 of the UN Charter will not be named as 'humanitarian intervention' in this paper.

⁶ See eg Michael Reisman and Myres S McDougal, 'Humanitarian Intervention to Protect the Ibos' in Lillich (n 4) 172; Mohammad T Karoubi, 'Unilateral Use of Armed Force and the Challenge of Humanitarian Intervention in International Law' (2001–2002) 10 *Asian Year Book of International Law* 96, 112; van Wynen Thomas and Thomas, Jr (n 3) 377; Daniel Wolf, 'Humanitarian Intervention' (1988) 9 *Michigan Yearbook of International Legal Studies* 333, 360.

⁷ Just to name a few renowned authors who present such view: Peter Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force* (Het Spinhuis 1993) 31; Tarcisio Gazzini, *The changing rules on the use of force in international Law* (Manchester University Press 2005) 175; Yoram Dinstein, *War, Aggression and Self-Defence* (4th edn, Cambridge University Press 2005) 71–2; Brownlie (n 4) 324; Olivier Corten, *The Law against War. Prohibition on the Use of Force in Contemporary International Law* (Hart Publishing 2010) 497.

North Atlantic Treaty Organization (NATO) airstrikes in Serbia, neither intervening States nor the rest of the international community agreed that these interventions were unequivocally legal (and not only legitimate or morally justified) or produced practice and *opinio juris* necessary for the formation of a customary norm allowing for the intervention for humanitarian reasons without the UN SC authorization.

In fact, since 1945 only two intervening States, namely the UK and Belgium, have explicitly invoked the doctrine of humanitarian intervention as grounds for the use of force. When it comes to the UK, in 1991, after a coalition of States launched an intervention in Iraq to secure the safe return of the Kurdish refugees from Iran and Turkey, the UK claimed that the intervention was justified under international law due to the 'demonstrably overwhelming humanitarian need' or the 'extreme humanitarian need'.⁸ Although the UK government claimed that it did not wish to apply a 'formal set of criteria' in order to assess whether the 'level of suffering' justified an intervention, in the end it invoked four criteria justifying humanitarian intervention, i.e. that there was: 1) 'a compelling and urgent situation of extreme humanitarian distress which demanded immediate relief'; 2) a State unwilling or unable to cope with this distress; 3) 'no other practical alternative to intervening in order to relieve the stress'; and 4) that the action was limited in time and scope.⁹ Even though the UK admitted that no international institution 'laid down' the rules for such an intervention, it nevertheless argued that the 'practice of states does show over a long period that it is generally accepted that in extreme circumstances a state can intervene in another state for humanitarian reasons'.¹⁰ The UK next referred to a humanitarian intervention during the intervention by the NATO in Kosovo in 1999. Despite the fact that NATO itself did not indicate any legal basis for its intervention,¹¹ and that the action was severely criticized by some States, the UK government set four criteria which allowed for a humanitarian intervention: 1) that force must be used as a last resort; 2) 'the immediate responsibility for halting violence rests with the state in which it occurs'; 3) the government faced with an immediate and overwhelming humanitarian catastrophe has demonstrated itself to be unwilling or unable to prevent it; 4) that any use of force must be collective, proportional, and likely to achieve its objective; and that it must be carried out in accordance with international law.¹² Moreover, the UK explained the legality of the intervention by referring to the inaction on the part of the UN SC, since, as the UK Defence Secretary stated, 'the use of force (...) can be justified as an exceptional measure in support of purposes laid down by the UN Secretary, but without the Council's express authorization, where that is the only means to avert an immediate and overwhelming humanitarian catastrophe'.¹³ The UK statement is also reflected in the so-called 'Blair Doctrine', delivered by the UK Prime Minister Tony Blair before the Chicago Economic Club in April 1999. T. Blair referred to the NATO's intervention in Kosovo by claiming that the principle of non-interference is not absolute since '[a]cts of genocide can never be a purely internal matter', as well as that if the crimes committed in Balkans will go unchallenged, it may result only in greater bloodshed.¹⁴

On the other hand, in 1991 the Belgian Minister of Foreign Affairs, when considering the legal grounds for the humanitarian intervention in Iraq in support of the persecuted Kurdish population, said that if there were no legal grounds for the intervention, States should create them.¹⁵ Moreover, Belgian Minister also highlighted the potential significance of the fifth paragraph of the UN SC Resolution 688 as grounds for the use of force.¹⁶ Belgium later elaborated upon the possible grounds of a humanitarian intervention in 1999 when it explained its position with regard to the NATO intervention in Kosovo before the International Court of Justice (ICJ). The Belgium delegation claimed that 'NATO, and the Kingdom of Belgium in particular, felt obliged to intervene to forestall an ongoing humanitarian catastrophe, acknowledged in Security

⁸ Geoffrey Marston, 'United Kingdom Materials on International Law 1992' (1993) 63 (1) *The British Year Book of International Law* 822, 824.

⁹ *ibid.* 826, 828.

¹⁰ *ibid.* 827, 828.

¹¹ Javier Solana, the NATO Secretary General of that time, claimed that the aim of intervention was 'to prevent more human suffering and more repression and violence against the civilian population of Kosovo', as well as that NATO had 'a moral duty to do so' (NATO, 'Press Statement by Dr. Javier Solana, Secretary General of NATO' (23 March 1999) Press Release (1999) 040).

¹² Foreign Affairs Committee, *Foreign Affairs – Fourth Report* (HC 1999–2000) para 141 (Foreign Affairs – Fourth Report).

¹³ Quoted after *ibid.* para 134.

¹⁴ Global Policy Forum, *The Blair Doctrine* (22 April 1999) <<https://www.globalpolicy.org/component/content/article/154/26026.html>> accessed 18 October 2019.

¹⁵ Quoted in Alain Daemes, 'Absence de Base Juridique de l'Operation Provide Comfort et la Pratique Belge en Matiere d'Intervention Arme'e a But Humanitaire' (1992) 25 (1) *Revue Belge de Droit International* 264, 266.

¹⁶ 'Also requests the Secretary-General to use all the resources at his disposal, including those of the relevant United Nations agencies, to address urgently the critical needs of the refugees and displaced Iraqi population.' (SC Res 688, UN Doc S/RES/688 (1991), 5 April 1991).

Council resolutions'.¹⁷ Thus it posited that the aim of the intervention was to safeguard 'essential values which also rank as *jus cogens*', including right to life, physical integrity, and the prohibition of torture.¹⁸ This time Belgium claimed that there are three conditions for a lawful humanitarian intervention: 1) the existence of a humanitarian catastrophe, recognized by the UN SC; 2) the existence of an imminent danger, i.e., a situation constituting a threat to peace as observed in the UN SC resolutions; and 3) the existence of a power responsible for this catastrophe.¹⁹ However, Belgium did not claim that there is a customary norm which allows for humanitarian intervention, but rather that the intervention was grounded in the UN SC resolutions 1160 (1998), 1199 (1998) and 1203 (1998) (even though none of them authorized the use of force). In addition, Belgium referred alternatively to the state of necessity.²⁰

To sum up, the justifications offered by the UK and Belgium differed, since in contrast to Belgium the UK established the criteria of a lawful humanitarian intervention in isolation from the collective security system. Moreover, although in 1991 it claimed that the 'practice of states does show over a long period' that humanitarian intervention is 'generally accepted',²¹ it did not claim that a customary norm was formed out of this practice which would allow for a humanitarian intervention. On the other hand, Belgium sought legal justification for the humanitarian intervention in the UN SC resolutions, trying to prove both in 1991 and 1999 that the UN SC *de facto* authorized the interventions. However, in the end neither the UK nor Belgium sufficiently proved that the use of force in Iraq and in Kosovo was legal. Moreover, none of the other States ever referred to the legal argumentation presented by these two States, while at the same time both interventions were criticized by a number of States. Consequently, a customary norm allowing for humanitarian intervention cannot be deemed to have been formed.

To conclude this part, currently neither the UN Charter nor customary norms allow for humanitarian intervention, which makes it illegal under contemporary international law. Nevertheless, one needs to observe that despite such legal assessment, some commentators claim that although the intervention for humanitarian reasons is not in conformity with the prohibition of the use of force, it may be nevertheless legitimate, meaning that it fulfils certain moral standards that should guide the interpretation of international law. After the NATO intervention in Kosovo, Independent International Commission on Kosovo stated that the interpretation of the doctrine of humanitarian intervention 'is situated in a gray zone of ambiguity between an extension of international law and a proposal for an international moral consensus. In essence, this gray zone goes beyond strict ideas of legality to incorporate more flexible views of legitimacy';²² T. M. Franck summarized this conclusion by saying that the intervention was 'technically illegal but morally legitimate'.²³ Thus, apart from assessing the legality of the UK arguments and actions, one also has to check whether the intervention in Syria may be labelled as 'legitimate'.

B. The UK's Legal Position in 2013 and 2018

On 21 August 2013 President Assad's regime used chemical weapons against the civilian population in the city of Ghouta,²⁴ as a result of which it is estimated that 1,429 people were killed.²⁵ The UN Secretary-General called the attack 'the most significant confirmed use of chemical weapons against civilians since Saddam Hussein used them in Halabja in 1988 – and the worst use of weapons of mass destruction in the

¹⁷ *Legality of Use of Force (Serbia and Montenegro v. Belgium)* (Public sitting held on Monday 10 May 1999, at 3 p.m., at the Peace Palace, Vice-President Weeramantry, Acting President, presiding) [1999] ICJ (CR 1999/15) 11.

¹⁸ *ibid.*

¹⁹ *ibid.* 12.

²⁰ *Ibid.* 13.

²¹ However, it is noteworthy that only a few years earlier the UK presented a considerably different standpoint. In 1984 the Foreign and Commonwealth Office produced a document titled 'Is the intervention ever justified?', which was released to public in 1986. With reference to humanitarian intervention, the document claimed *inter alia* that 'The state practice to which advocates of the right of humanitarian intervention have appealed provides an uncertain basis on which to rest such a right' (Geoffrey Marston, 'United Kingdom Materials on International Law 1986' 57 (1) British Year Book of International Law 487, 618).

²² Independent International Commission on Kosovo, *The Kosovo Report* (Oxford University Press 2000) 164.

²³ Thomas M Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* (Cambridge University Press 2002) 170.

²⁴ In its report, Human Rights Watch observed that evidences strongly suggest that the attack was carried out by the government forces (Human Rights Watch, *Attacks on Ghouta: Analysis of the Alleged Use of Chemical Weapons in Syria* (September 2013) 20). The same conclusions were presented also by the White House (*Government Assessment of the Syrian Government's Use of Chemical Weapons on August 21, 2013*, <<https://obamawhitehouse.archives.gov/the-press-office/2013/08/30/government-assessment-syrian-government-s-use-chemical-weapons-august-21>> accessed 6 January 2019 (Government Assessment of the Syrian Government's Use of Chemical Weapons)).

²⁵ Government Assessment of the Syrian Government's Use of Chemical Weapons (n 17).

21st century'.²⁶ Right after the attack the UK government presented its legal position, wherein it claimed that 'under the doctrine of humanitarian intervention' a military operation would be justified, given that the following conditions were fulfilled:

- (i) there is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief;
- (ii) it must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and
- (iii) the proposed use of force must be necessary and proportionate to the aim of relief of the humanitarian need and must be strictly limited in time and scope to this aim (i.e. the minimum necessary to achieve that end and for no other purpose).²⁷

The UK's legal position consisted of two parts: the general conditions as stated above, and an explanation of how these conditions were met in the particular situation. It is not the aim of this paper to analyse this 2013 UK position in detail; it is sufficient to say that the coherence and legality of the UK's statement raised significant doubts.²⁸ Ultimately, the UK did not carry out a military operation in Syria in 2013, since the UK's parliament did not support the government's motion for the intervention, rejecting it by a vote of 285 to 272. The UK prime minister David Cameron accepted the result of the voting and stated that 'the government will act accordingly'.²⁹

The UK then referred to the same general conditions of a humanitarian intervention in 2018, when on 7 April 2018 chemical weapons were again used against the civilian population in the town of Douma. As previously, the UK's legal position consisted of two parts: general conditions (the same as stated above), and an explanation as to how these conditions were met in the current situation. The UK again claimed that the '[t]he legal basis for the use of force is humanitarian intervention'.³⁰

In the first part of its explanation of how the conditions were met (i), the UK government highlighted the previous cases of the use of chemical weapons against civilians by the Syrian regime, as well as indicated that 13 million people needed urgent assistance. It stated that the use of chemical weapon constitutes 'a war crime and a crime against humanity'. Moreover, 'it was highly likely that the regime would seek to use chemical weapons again, leading to further suffering and loss of civilian life as well as the continued displacement of the civilian population'. Secondly (ii), the UK mentioned the paralysis of the UN SC due to the Russian veto. It also claimed that all other solutions to the Syrian conflict, including diplomatic efforts, sanctions, as well as the USA airstrikes the previous year, turned out to be insufficient. Consequently, '[t]here was no 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'. Thirdly (iii), the UK posited that the strike was conducted in accordance with principles of necessity and proportionality, as well as that its only goal was to avert the humanitarian catastrophe.³¹

One should observe that even though the UK referred to the 'humanitarian intervention', it did not actually try to prove that a humanitarian intervention is legal under international law. The UK did not assert that the UN Charter or customary norm allow for humanitarian interventions, nor that the right to self-defence justified the use of force in Syria. This last justification, even if was easily contestable, could at least make sense – all the more so because both the USA and France claimed that the use of chemical weapons by the

²⁶ UN Secretary-General, *Secretary-General's press encounter on the Report of the Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic: Report on the incident of 21 August 2013 in the Ghouta area of Damascus* (16 September 2013) <<https://www.un.org/sg/en/content/sg/press-encounter/2013-09-16/secretary-generals-press-encounter-report-mission-investigate>> accessed 10 January 2019.

²⁷ Prime Minister's Office, *Chemical weapon use by Syrian regime: UK government legal position* (29 August 2013) <<https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>> accessed 10 January 2019.

²⁸ See Christian Henderson, 'The UK Government's Legal Opinion on Forcible Measures in Response to the Use of Chemical Weapons by the Syrian Government' (2015) 64 ICLQ 179, 182.

²⁹ 'Syria crisis: Cameron loses Commons vote on Syria action' (BBC News, 30 August 2013) <<https://www.bbc.com/news/uk-politics-23892783>> accessed 10 January 2019.

³⁰ 'Syria air strikes: The UK government's legal position in full' (BBC News, 14 April 2018) <<https://www.bbc.com/news/uk-43768145>> accessed 1 July 2018 (The UK government's legal position in full).

³¹ *ibid.*

Syrian regime threatens not only the Syrian civilians.³² Thus, if the UK referred to similar arguments, it could invoke, for instance, the right to preventive self-defence. Irrespective of the fact that such an argument would still not make the intervention legal, the UK would at least have referred to an argument grounded in international law. However, it chose not to do so. This gives rise to an observation that the UK's argument about humanitarian intervention is hanging in the vacuum of international law, and may be called a 'legal position outside international law'.

On the other hand however, if the UK referred to the right of self-defence, this would mean that it agreed to submit the operation to the scrutiny of the collective security system – of which self-defence is a part under the UN Charter – while at the same time arguing that this collective security system did not work effectively. Thus, perhaps in order to avoid such schizophrenic arguments it preferred to invoke an ungrounded humanitarian intervention just to avoid the accusation that it took part in an armed reprisal.³³

Moreover, in comparing the above position with the previous legal arguments presented by the UK, one may observe a change in the way the UK formulated the general conditions of a humanitarian intervention in 1991 and 1999, and again in 2013 and 2018. In both 1991 and 1999, the UK invoked four conditions for a humanitarian intervention which can be briefly summarized as follows: first, the existence of an immediate, extreme, overwhelming humanitarian distress; second, the territorial State is unwilling or unable to cope with the humanitarian situation; third, no practicable alternative to the use of force exists; and fourth, the action is limited in time and scope, in accordance with criteria of proportionality and necessity.

What is missing in both the UK's 2013 and 2018 legal position is the criterion of a territorial State being unwilling or unable to alleviate the humanitarian distress. Instead, the UK introduced a new criterion, i.e. of '(...) convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress (...)'. One can understand this change in two ways. Firstly, one can assume that the UK decided to strengthen its legal argumentation and shift the burden of assessment of the situation of 'humanitarian distress'. In the UK's previous legal positions, one can imply that it was the intervening State that had to discretionally assess the situation and determine that the government of the State where the humanitarian distress occurred was unwilling or unable to cope with the situation. Under the most recently presented criteria, the intervention is not taken on the grounds of a discretionary assessment of the intervening State, but on the basis of 'convincing evidence, generally accepted by the international community as a whole'. This shifts the responsibility of assessment of the situation from the individual State onto the 'international community as a whole'. Moreover, it also implies that the humanitarian intervention is taken on behalf of the international community, and not only by one State. This interpretation is also supported by the second (ii) criterion employed by the UK, i.e. that is 'it must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved', since even though previously the UK also claimed that the use of force must be *ultima ratio* it did not claim that it must be determined 'objectively'. Again, it seems that this criterion is an attempt to delegate the responsibility for the airstrikes from the UK itself to some imprecise collective which, allegedly independently from the UK, has assessed the situation. Secondly, one may interpret this change in the UK's legal argumentation also as broadening the criteria of a humanitarian intervention, since according to the UK's 2013 and 2018 legal positions an intervening State does not have to prove that the government of a State where intervention is about to take place is 'unwilling or unable' to help resolve the situation; it would be enough that the international community is convinced of the 'extreme humanitarian distress', no matter the attitude adopted by a State itself.

To sum up, the UK has further developed the legal criteria for a humanitarian intervention presented in its previous legal positions. Even though the earlier presented requirements of such an intervention were already quite vague and not grounded on norms of international law allowing for the use of force, the UK's legal positions in 2013 and 2018 have made these conditions even broader and more unclear. A detailed examination of these conditions is presented in the further part of this paper.

³² Présidence de la République française, *Communiqué de presse du Président de la République sur l'intervention des forces armées françaises en réponse à l'emploi d'armes chimiques en Syrie* (14 April 2018) <<http://www.elysee.fr/communiqués-de-presse/article/communiqué-de-presse-du-président-de-la-république-sur-l-intervention-des-forces-armées-françaises-en-reponse-a-l-emploi-d-armes-chimiques-en-syrie/>> accessed 10 January 2019 (Communiqué de presse du Président de la République); The White House, *Statement by President Trump on Syria* (13 April 2018) <<https://www.whitehouse.gov/briefings-statements/statement-president-trump-syria/>> accessed 10 January 2019 (Statement by President Trump on Syria).

³³ Marko Milanovic, 'The Syria Strikes: Still Clearly Illegal' (EJIL: *Talk*, 15 May 2018) <<https://www.ejiltalk.org/the-syria-strikes-still-clearly-illegal/>> accessed 10 January 2019.

C. The Positions of Other States

The 2018 intervention was conducted jointly by the USA, the UK and France. Even though the general public was not informed exactly what the role of each of these States was in the airstrikes, one can assume that all three States conducted synchronized attacks and the role of each of them was substantial. Even though these three States presented the same goal of the intervention, only the UK tried to explain the intervention in legal terms, differentiating its arguments from its allies' stand. Thus, on one hand both the USA, the UK and France stated that the goal of the intervention was to deter the further use of chemical weapon by the Assad regime; however neither the USA nor France attempted to explain the intervention referring to international law. Out of the three intervening States, only the UK presented a statement entitled 'legal position', invoking humanitarian intervention.³⁴

Moreover, it seems that the UK's legal position may have little impact on development of doctrine of humanitarian intervention, since the UK's legal position was not favoured not only by the USA and France, but also by other States within the UN SC. Poland, which explicitly supported the intervention, referred rather to the ban on the use of chemical weapons and deterrence against further attacks than to the humanitarian situation in Syria.³⁵ Sweden indicated the role of the UN SC and referred to the significance of the prohibition of the use of chemical weapons.³⁶ Similarly, Kuwait, Peru, and Côte d'Ivoire underscored the role of the UN SC, calling for an investigation into the use of chemical weapons in Syria while not expressly condemning the intervention.³⁷ The Netherlands referred jointly to the 'response by France, the United Kingdom and the United States' and called it 'understandable', highlighting the danger posed by the employment of chemical weapons.³⁸ Ethiopia spoke very generally about the situation in Syria.³⁹ Also neither China nor Kazakhstan openly criticized the intervention, but underlined the role of the UN SC.⁴⁰ Interestingly Russia, which condemned the intervention, did not refer to the UK's arguments but simply labelled collectively the USA, UK and France airstrikes as an act of aggression.⁴¹ Likewise, Bolivia referred only to the alleged use of chemical weapon and stated that the intervention in Syria constituted a violation of international law.⁴² Also Equatorial Guinea called the intervention a violation of international law, but it did not refer to the argumentation presented by any of the three States.⁴³

To sum up, the position of States, no matter whether they supported or criticized the intervention, focused on the prohibition of the use of chemical weapons rather than on the humanitarian situation in Syria. Moreover, one should also highlight that States which commented on the intervention did not differentiate between the UK position and the USA and France positions. This shows that the argument in favour of recognizing a humanitarian intervention was not recognized as valid to justify the airstrikes in Syria.

Quite the contrary, Michael P. Scharf claims that 'there were three particularly noteworthy aspects of the April 14, 2018 airstrikes that may have rendered the airstrikes a Grotian Moment', which prompted that 'international law has been moving in fits and starts toward recognition of a limited right of humanitarian intervention': firstly, the three States acted collectively; secondly, intervening States stated that they believed 'they had a right under international law in these circumstances to undertake the airstrikes'; and thirdly, the UK 'relied on the theory of "humanitarian intervention"'.⁴⁴ However, the vague positions of three States, lacking in fact legal

³⁴ Nevertheless, one should mention that in May 2018 the Office of Legal Counsel of the US Department of Justice issued an opinion which even though still did not present the justification for airstrikes on the grounds of international law, mentioned several times the humanitarian situation in Syria, including, *inter alia*, that 'prevention of a worsening of the region's humanitarian catastrophe' was one of the three main interests in support of the strikes identified by President Trump (The United States Department of Justice, *April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities*, 31 May 2018, <<https://www.justice.gov/olc/opinion/april-2018-airstrikes-against-syrian-chemical-weapons-facilities>> accessed 21 October 2019).

³⁵ UNSC Provisional Records (14 April 2018) UN Doc S/PV.8233, 11–12.

³⁶ *ibid.* 12–13.

³⁷ *ibid.* 15–16, 18–19.

³⁸ *ibid.* 13.

³⁹ *ibid.* 16.

⁴⁰ *ibid.* 9–11.

⁴¹ *ibid.* 3.

⁴² *ibid.* 13–15.

⁴³ *ibid.* 17.

⁴⁴ Michael P. Scharf, 'Striking a Grotian Moment: How the Syria Airstrikes Changed International Law Relating to Humanitarian Intervention' (2019) 19 (2) *Chicago Journal of International Law* 586, 605–607, 612. Also Marc Weller seems to suggest that the intervention fulfilled the criteria of humanitarian intervention and could be accepted as lawful (Marc Weller, 'Syria air strikes: Were they legal?' (*BBC News*, 14 April 2018) <<https://www.bbc.com/news/world-middle-east-43766556>> accessed 21 October 2019).

justification, cannot be considered as a milestone in recognizing the legality of the humanitarian intervention; likewise, the careful comments of the rest of the States are not the unambiguous indicator of legalization of such intervention. In addition, while it is true that the singular case could start the process of modification of a customary norm prohibiting the use of force, one needs to highlight that in case of the well-settled norms, like the prohibition of the use of force, 'a higher threshold of uniformity, consistency and volume of State practice' is required, which was certainly not reached in this case.⁴⁵ Thus, while the 2018 airstrikes, the conduct of intervening States and the reaction of the rest of the international community thereto should be taken into account as practice and *opinio juris* relevant from the standpoint of formation of customary law, let alone they do not have the power to introduce any change to the prohibition. Only if such practice and *opinio juris* repeat in the future, with the clear indication on the part of States that they recognize the humanitarian reasons as the wanted exception to the prohibition of the use of force, they could modify this norm.⁴⁶ Bearing that in mind, the 2018 airstrikes did not render the humanitarian intervention legal under international law.

III. The UK's Arguments in the Framework of the Doctrine of Humanitarian Intervention

A. The Reason Behind the Humanitarian Intervention

As mentioned above, there is no legal definition of a 'humanitarian intervention', and the definitions presented in the doctrine of international law vary considerably. Thus, the first controversial issue that needs to be determined is what factual circumstances would allow a State to conduct a humanitarian intervention. In describing the reasons which could give rise to such an intervention, the doctrine of international law uses notions such as 'gross human rights abuses',⁴⁷ 'gross and systematic violations of human rights',⁴⁸ 'violations of rights of humanity',⁴⁹ 'widespread violations of fundamental human rights on a large scale',⁵⁰ 'widespread loss of human life',⁵¹ 'grave and widespread violation of the most fundamental, first generation human rights of non-political character, or guarantees of international humanitarian law',⁵² 'severe human rights violations',⁵³ 'violations of fundamental human rights',⁵⁴ or 'massive human rights abuses'.⁵⁵ Thus these conditions vary, since some of them are focused on the scale of violations ('massive', 'large scale', 'widespread'); others on the character of the violated rights ('most fundamental', 'first generation human rights'), while others focus on the character of the violations ('gross', 'severe', 'permanent', 'systematic'). In general one may assume that most authors would agree on a definition which allows for humanitarian intervention in cases of widespread and gross violations of fundamental human rights, including especially the right to life.

On the other hand, despite the scarcity of State practice one can point out that during the NATO intervention in Kosovo, Belgium claimed that the reasons behind the intervention were the protection of 'fundamental values enshrined in the jus cogens'.⁵⁶ When it comes to the UK itself, in its 1991 intervention in Iraq it claimed that there was a 'demonstrably overwhelming humanitarian need' and 'extreme humanitarian need'.⁵⁷ Likewise, in 1999 it claimed that the NATO intervention in Kosovo was justified by an 'overwhelming humanitarian necessity',⁵⁸ while both in 2013 and in 2018 the UK stated that there should be 'extreme humanitarian distress on a large scale, requiring immediate and urgent relief' behind a humanitarian intervention. All this argumentation seemingly fits into the framework established in the doctrine of international law, even if the presented criteria remain very vague. However, the careful examination of the

⁴⁵ David J Bederman, 'Acquiescence, Objections and the Death of Customary International Law' (2010) 21 *Duke Journal of Comparative & International Law* 31, 38.

⁴⁶ See also Agata Kleczkowska, 'Changing Customary Law: The Shape of the Prohibition of the Use of Force after the 2017 and 2018 Airstrikes in Syria' (2019) 21 *International Community Law Review* 369, 376–381.

⁴⁷ Samuel K N Blay, *Territorial Integrity and Political Independence*, Max Planck Encyclopedia of Public International Law (March 2010) para 43 <<http://opil.ouplaw.com>> accessed 10 January 2019.

⁴⁸ Vaughan Lowe and Antonios Tzanakopoulos, *Humanitarian Intervention*, Max Planck Encyclopedia of Public International Law (May 2011) para 3 <<http://opil.ouplaw.com>>; Jack Donnelly, 'Human rights, humanitarian crisis, and humanitarian intervention' (1992–1993) 48 (4) *International Journal* 607, 611–2.

⁴⁹ van Wynen Thomas and Thomas, Jr (n 3) 373.

⁵⁰ Brown (n 4) 7.

⁵¹ Jonathan R Moore in 'Part II: The Present' in Lillich (n 4) 49.

⁵² Gábor Sulyok, 'The Legality of Unilateral Humanitarian Intervention Re-examined' (2003) 44 *Acta Juridica Hungarica* 199, 200.

⁵³ Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (7th edn, Routledge 1997) 221.

⁵⁴ Malanczuk (n 7) 30.

⁵⁵ Armstrong, Farrell and Lambert (n 4) 139.

⁵⁶ Public sitting (n 14).

⁵⁷ Marston (n 8) 822–3.

⁵⁸ Foreign Affairs – Fourth Report (n 10) para 124.

conditions of a humanitarian intervention applied recently by the UK demonstrates that the UK substantially changed its interpretation of the reasons that allow for the humanitarian intervention.

1. 'Extreme humanitarian distress'

Given the circumstances of both the 1991 intervention in Iraq and 1999 intervention in Kosovo, there can be no doubt that the situations the UK was referring to as 'extreme humanitarian need' and 'overwhelming humanitarian necessity' took place on a large scale, affected masses of people, and violated the most fundamental human rights, as well as political, social, and economic rights. However, in 2013 and in 2018 the UK used this criterion to refer to the use of chemical weapons against groups of the civilian population. Moreover, while in 2013 the UK government was referring to a humanitarian intervention with regard to the chemical attack in Ghouta, where hundreds of people were killed,⁵⁹ in 2018 it invoked the doctrine of 'humanitarian intervention' due to a chemical weapons attack where several people died.⁶⁰ While obviously any case of the use of chemical weapons against civilians is a great tragedy, regardless of the number of fatalities and its scope, it is noteworthy that the UK changed its interpretation of the criterion of 'extreme humanitarian distress on a large scale' from one where a humanitarian intervention was justified only when the fundamental rights of thousands of people were violated for a significant period of time, to an interpretation that allows for a humanitarian intervention after the use of chemical weapons on a significantly smaller scale.

Thus, when compared to its previous positions the UK was both broadening and narrowing the criteria justifying a humanitarian intervention. They are narrowing the interpretation of these criteria since the applied interpretation of the 'extreme humanitarian distress on a large scale' means that only the use of chemical weapons may constitute the sufficient grounds to start the humanitarian intervention. And they are broadening the same criteria because – despite the unspeakable human tragedy that affected the civilians in each of the referred cases of the use of chemical weapons – it would be hard to assume that the attacks, and especially the 2018 attack, were conducted 'on a large scale'.

At the same time, it should also be noted that the UK apparently does not regard *every* case of the use of chemical weapons as an event that triggers a humanitarian intervention, but instead allows itself the discretion to choose which cases give rise to a need for such an intervention. Throughout 2013 alone, after the Ghouta attack the Organisation for the Prohibition of Chemical Weapons (OPCW) publicly described several other attacks, including in Bahhariyeh on 22 August 2013; Jobar on 24 August 2013; and Ashrafiah Sahnaya on 25 August 2013.⁶¹ However, there is no mention that the UK again tried to gain parliamentary authorization for the launch of a humanitarian intervention.

Likewise, no such proposal was submitted when airstrikes on 4 April 2017 released sarin in the town of Khan Sheikhun, killing at least 83 persons and injuring another 293.⁶² When in the aftermath of that attack the USA commenced a military operation on 7 April 2017, the UK did not join it, nor did it claim that there were grounds for a humanitarian intervention. While it did again label the situation as an 'overwhelming humanitarian distress', it did so not as a criterion for its own humanitarian intervention, but as an argument for the USA strikes,⁶³ without presenting further legal justification for that operation.⁶⁴ However, although the chemical weapons attack of 7 April 2018 was on a smaller scale than that which took place in April 2017, this time the UK government labelled it as an 'extreme humanitarian distress on a large scale' as grounds for a humanitarian intervention, even without the UK's parliament consent.

Thus, the example of the UK's application of the criteria for a humanitarian intervention demonstrates why humanitarian interventions should never become lawful under international law. Why did the chemical attack in April 2018 constitute 'extreme humanitarian distress on a large scale' and suffice to justify an armed humanitarian intervention, while the 2017 and previous attacks did not fulfil these criteria? Why is

⁵⁹ Government Assessment of the Syrian Government's Use of Chemical Weapons (n 17); 'Syria chemical attack: What we know' (BBC News, 24 September 2013) <<https://www.bbc.com/news/world-middle-east-23927399>> accessed 10 January 2019.

⁶⁰ Syria war: What we know about Douma "chemical attack" (n 1).

⁶¹ *Identical letters dated 13 December 2013 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council*, UNGA Official Records (13 December 2013) UN Doc A/68/663-S/2013/735, 2.

⁶² Human Rights Council, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (8 August 2017) UN Doc A/HRC/36/55, paras 72–75.

⁶³ The UK representative stated that: 'The United States strike was a proportionate response to unspeakable acts that gave rise to overwhelming humanitarian distress' (UNSC Provisional Records (7 April 2017) UN Doc S/PV.7919, 5).

⁶⁴ Christine Gray highlights that the UK claimed that the USA airstrikes were 'appropriate' but it did not expressly name it as 'legal' (Christine Gray, *International Law and the Use of Force* (4th edn, Oxford University Press 2018) 58).

it that the use of chemical weapon triggers the criterion of 'extreme humanitarian distress on a large scale'? Why are reported attacks on homes, medical facilities, markets, and schools in Syria not sufficient to trigger an armed humanitarian intervention while the 2018 attack was deemed a sufficient reason for one? This example clearly illustrates that leaving the assessment of such a situation to individual States and allowing them to act only when they judge it as necessary leads to discretionally undertaken decisions not as soon as the 'extreme humanitarian distress on a large scale' appears but only when politically such decisions seems most convenient.

2. 'Convincing evidence, generally accepted by the international community as a whole'

One of the reasons behind the UK intervention is the fact that there is 'convincing evidence, generally accepted by the international community as a whole'. As was mentioned above, this condition shifts responsibility from the State which theoretically would otherwise discretionally undertake a decision to intervene, to 'the international community as a whole'. However, what does 'generally accepted by the international community as a whole' actually mean? Does it refer only to States, or maybe also to individuals and other actors that form part of this community in the broadest sense? How should this acceptance be expressed? While it is beyond the scope of this article to discuss all these issues in detail,⁶⁵ it is however important to draw attention here to two aspects, namely: Does the 'acceptance' mean that literally all States should agree that there is an 'extreme humanitarian distress'; and what precisely should this 'acceptance' relate to?

Marko Milanovic pointed out that the criterion of the 'international community as a whole' should also include Russia and China.⁶⁶ And with reference to this condition, Dapo Akande highlighted that the intervention took place before the OPCW had reached the area and investigated the case.⁶⁷ This shows that two possible interpretations may be employed. Firstly, one may read this criterion as referring to the general humanitarian situation in Syria. In that case, there can be little doubt that all States, including also Russia,⁶⁸ would accept that there is the 'convincing evidence' of 'extreme humanitarian distress on a large scale, requiring immediate and urgent relief'. However, on the other hand the criterion of 'generally accepted by the international community' may refer to the specific context of the use of chemical weapons in Syria on 7 April 2018, and the 'humanitarian distress' that was caused by the use of these weapons. In the latter case, this criterion raises serious doubts, since for instance Russia immediately negated the fact that the chemical weapons were used at all.⁶⁹

To sum up, the interpretation of this criterion depends, firstly, on whether 'extreme humanitarian distress on a large scale' refers to the general situation in Syria or to the specific situation of the use of chemical weapons; and secondly, whether it allows for dissenting opinions. The fact that the UK referred in its justification mostly to the use of chemical weapons would suggest that the 'extreme humanitarian distress' it perceived was linked directly to the employment of these specific weapons, and not the humanitarian situation in Syria in general. At the same time, it is interesting to observe that the UK did not even attempt to justify its bald assertion that there is such 'convincing evidence'. It only enumerated some of the cases of humanitarian atrocities in Syria and speculated that 'it was highly likely that the regime would seek to use chemical weapons again'. This proves that the UK might well have been aware of how hard (or even impossible) it would have been to prove that there is indeed 'convincing evidence' accepted by the 'international community as a whole'.

3. 'Objectively clear that there is no practicable alternative to the use of force if lives are to be saved'

When it comes to the criterion that it 'must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved', the UK did not specify who stood behind this 'objective' assessment

⁶⁵ For answers to these questions see eg Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community* (Brill 2009) 64–74.

⁶⁶ Milanovic (n 24).

⁶⁷ Dapo Akande, 'The Doctrine of "Humanitarian Intervention" and the Legality of the UK's Air Strikes against the Assad Government in Syria' (16 April 2018) para 10 <<https://www.globalresearch.ca/the-doctrine-of-humanitarian-intervention-and-the-legality-of-the-uks-air-strikes-against-the-assad-government-in-syria/5637943>> accessed 10 January 2019. Also Christian Henderson observes that without the official reports on the situation, the UK is unable to ascertain what is the position of the international community (although this Author made such remark in reference to the 2013 legal position, it is still valid for the 2018 intervention) (Henderson (n 21) 181).

⁶⁸ During the debate in the UN SC after the USA, France and the UK airstrikes, Russia stated that the humanitarian situation in Syria is 'catastrophic' (S/PV.8233 (n 23) 3).

⁶⁹ As the Russian Ambassador stated in the UN SC, 'After an inspection by our specialists, Russia's representatives stated unequivocally that no such incident took place.' (ibid 4).

of the situation nor how the conclusion that there was a lack of any 'practicable alternative' was arrived at. In discussing this criterion the UK referred only to the inaction of the UN SC, but did not indicate whether it tried to make use of the UN General Assembly Resolution 377 of 3 November 1950 'Uniting for Peace', which seems the only real 'practicable alternative' to the Russian veto within the UN SC and to armed interventions undertaken outside the collective security system.⁷⁰ Again, this criterion also makes both the UK's justification and its argumentation highly contestable.

In conclusion, the reasons behind the humanitarian intervention as established in the UK's legal position not only set out very vague criteria for a humanitarian intervention, but also allow for their broad and discretionary assessment which, if became the rule in the future, would permit individual States to freely interfere into the sovereignty of other States under any pretext that could be related to the humanitarian situation.

B. The Goal of a Humanitarian Intervention

The next question that arises is: What purposes should be achieved by a humanitarian intervention? Again, there are no clear criteria expressed in the doctrine of international law. Among the most frequently repeated, it is claimed that such an intervention should be conducted 'to avert a humanitarian catastrophe',⁷¹ 'for humanitarian reasons',⁷² 'for the sake of preventing human rights violations',⁷³ 'to stop mass killing',⁷⁴ 'in order to protect the lives of persons situated within a particular state',⁷⁵ or 'to prevent excessive violations of international humanitarian law'.⁷⁶ Thus these goals vary: from very broad ones ('for humanitarian reasons') to those which refer to the reasons behind the intervention, setting the goals of intervention in a very limited way ('to stop mass killing').

The UK's argumentation so far has fit into this very general framework, since in 1991 the UK claimed that the goal of the operation was to bring 'relief', as well as that the intervention was 'for humanitarian reasons'.⁷⁷ Likewise, in 1999 the UK argued that the intervention in Kosovo was justified as a humanitarian intervention 'to prevent an overwhelming humanitarian catastrophe'.⁷⁸ The way the UK determined the goals of its 2013 and 2018 legal positions also do not differ substantially since the aim of intervention was 'relief of humanitarian suffering'.⁷⁹ However, an examination of the circumstances of the 2018 intervention, the further UK justification, as well as the statements made by the USA and France shed new light on the interpretation of this goal.

As claimed above, both in 2013 and in 2018 the UK issued its legal positions on the humanitarian intervention only after chemical weapons were used, which suggests that the 'humanitarian suffering' was indeed connected with the use of chemical weapons, and that 'relief' means mitigating the effects of the use of such weapons. However, in elaborating its legal position with reference to the 2018 intervention, the UK claimed that the airstrikes were conducted 'in order to effectively alleviate humanitarian distress by degrading the Syrian regime's chemical weapons capability and deterring further chemical weapons attacks'.⁸⁰ Also, in order to justify the criterion of necessity the UK stated that '[t]here was no 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'.⁸¹ Thus the 'relief' refers first and foremost to the prevention of further use of chemical weapons in the future. This goal of the intervention was also supported by the positions of the USA and France. In his statement, President Trump said that the aim of the attack was 'to establish a strong deterrent against the production, spread and use of chemical weapons'.⁸² Also President Macron described the operation as '*dirigée contre l'arsenal chimique clandestin du*

⁷⁰ Even H. H. Koh, who does not exclude the legality of humanitarian intervention and names the USA 2017 airstrikes as 'not illegal', claims that such an action should be collective, involving e.g. the 'Uniting for Peace' Resolution (Harold Hongju Koh, 'Humanitarian Intervention: Time for Better Law' (2017) 111 AJIL Unbound 287, 289).

⁷¹ Lowe and Tzanakopoulos (n 36) para 3.

⁷² Budislav Vukas, 'Humanitarian Aid and Humanitarian Intervention' in Kalliopi Koufa (ed.), *International Challenges to Peace and Security in the New Millennium* (Sakkoulas Publications 2010) 255.

⁷³ Buchanan (n 3) 53.

⁷⁴ John W Lango, 'Is Armed Intervention to Stop Mass Killing Morally Obligated?' in Pattison (n 3) 82.

⁷⁵ Malcolm N Shaw, *International Law* (6th edn, Cambridge 2008) 1155.

⁷⁶ Shabtai Rosenne, *The Perplexities of Modern International Law* (Martinus Nijhoff Publishers 2004) 141.

⁷⁷ Marston (n 8) 828.

⁷⁸ UNSC Provisional Records (24 March 1999) UN Doc S/PV.3988, 12.

⁷⁹ The UK government's legal position in full (n 23) para 3.

⁸⁰ *ibid.* par. 4(iii).

⁸¹ *ibid.* par. 4(ii).

⁸² Statement by President Trump on Syria (n 24).

régime syrien' due to the '*capacités du régime syrien permettant la production et l'emploi d'armes chimiques*'.⁸³ Moreover, this goal of the intervention is also evidenced by the targets of the airstrikes: a scientific research centre near Damascus as well as a production facility and a chemical weapons storage compound near the city of Homs.⁸⁴

To conclude, the UK interpreted the goal – 'relief of humanitarian suffering' – not as a 'relief' of the *current* 'suffering' of the Syrian population, but primarily as a prevention against *future* 'suffering' that could take place if chemical weapons were used again. Thus, in the view of the UK it was permissible to conduct a humanitarian intervention in order to prevent the further use of one type of weapon that contributes to the suffering of the Syrian population.⁸⁵ No State, nor the doctrine of international law, has ever before submitted a similar condition as grounds for a humanitarian intervention.

One should also examine the goal of the intervention from the perspective of its effectiveness. In the doctrine of international law, it is claimed that States should examine the 'likelihood of success' when taking a decision about an armed humanitarian intervention. George R. Lucas, Jr describes this criterion in the following way: 'Military force may be utilized for humanitarian purposes only when there is a reasonable likelihood that the application of force will meet success in averting a humanitarian tragedy'.⁸⁶ Thus, a State should not resort to force when it is likely that the use of force will be ineffective, or may even worsen the situation, nor when the international community cannot define the goals of such an intervention.⁸⁷ Interestingly, the UK referred to this criterion in 1999, stating that the intervention should be 'likely to achieve its objective'.

In assessing the effectiveness of the airstrikes against the chemical weapons facilities in terms of the further use of chemical weapons in Syria, it should be noted that the 2017 USA intervention in Syria was also motivated by the need 'to prevent and deter the spread and use of deadly chemical weapons'.⁸⁸ The target of that intervention was the Syrian military base Shayrat near the city of Homs because, as the USA officials claimed, the aircraft that carried out the chemical attack took off from that military base. However, the airstrikes did not stop the Syrian regime from the further use of chemical weapons, which is not only proven by the chemical attack of 7 April 2018, but also by the previous attacks which took place between April 2017 and April 2018.⁸⁹ Thus the 2017 strikes turned out to be ineffective, and the UK expressly acknowledged that in its 2018 legal position, observing that the USA strikes did not sufficiently degrade Syrian chemical weapons capabilities or deterred it from further use of these weapons.⁹⁰ At the same time, the UK did not point out why the 2018 airstrikes would make a difference.

Even though the effectiveness of the 2018 airstrikes can only be properly assessed over a longer time perspective, as for now one may observe that the destruction of three facilities connected with the production and storage of chemical weapons has probably not disabled the Syrian regime's chemical weapons capabilities, since according to the OPCW's reports there were more than three chemical weapons sites in Syria (the reports show that there were at least two stationary above-ground, and five underground structures which

⁸³ Communiqué de presse du Président de la République (n 24).

⁸⁴ Luis Martinez and Elizabeth McLaughlin, 'US strike in Syria targets military, chemical weapons sites' (ABC News, 14 April 2018) <<https://abcnews.go.com/International/us-strike-syria-targets-military-chemical-weapons-sites/story?id=54435901>> accessed 10 January 2019.

⁸⁵ On the other hand, Marko Milanovic observes that if the intervention was conducted in order to stop the mass atrocities connected with the armed conflict in Syria in general, and not specifically with the use of chemical weapons, the strike also did not reach this purpose since it would not stop the conflict (Milanovic (n 25)).

⁸⁶ George R Lucas Jr, 'From *jus ad bellum* to *jus ad pacem*: Re-thinking Just War Criteria for the Use of Military Force for Humanitarian Ends' (n 3) 125.

⁸⁷ *ibid.*

⁸⁸ 'Transcript and Video: Trump Speaks About Strikes in Syria' (The New York Times, 6 April 2017) <<https://www.nytimes.com/2017/04/06/world/middleeast/transcript-video-trump-airstrikes-syria.html>> accessed 10 January 2019.

⁸⁹ Most famously, on 25 February 2018 the Syrian regime allegedly used the chlorine in eastern Ghouta, killing one person and injuring few ('Chlorine gas symptoms seen after blast near Damascus-opposition health authorities', (Reuters, 25 February 2018) <<https://www.reuters.com/article/us-mideast-crisis-syria-ghouta-attack/chlorine-gas-symptoms-seen-after-blast-near-damascus-opposition-health-authorities-idUSKCN1G90ZF>> accessed 10 January 2019). Further cases of the use of chemical weapon examined by the OPCW occurred on 4 February 2018, as well as on 24 and 25 March 2018 (OPWC, 'Report of the OPCW Fact-Finding Mission in Syria Regarding an Alleged Incident in Saraqib, Syrian Arab Republic' (15 May 2018) S/1626/2018).

Also Human Rights Watch observed that the US airstrikes were ineffective in terms of prevention from further use of chemical weapons (Human Rights Watch, *Syria: A Year On, Chemical Weapons Attacks Persist* (4 April 2018) <<https://www.hrw.org/news/2018/04/04/syria-year-chemical-weapons-attacks-persist>> accessed 10 January 2019).

⁹⁰ The UK government's legal position in full (n 23) para 4(ii).

were examined by the inspections).⁹¹ Moreover, later in 2018 media reported about the possible chemical attack in Aleppo on 24 November 2018.⁹² Consequently, if one interprets the goal of the intervention as being the 'relief of humanitarian suffering' in the context of prevention of the further use of chemical weapons, given these facts the 'likelihood of success' of this humanitarian intervention seems rather small.

To sum up, the UK presented very limited goals for its intervention, which were not related to the improvement of the general humanitarian situation in Syria but to the avoidance of use of one specific type of weapon in the future. Given the objective data about the chemical industry in Syria, it does not seem these goals were achievable, all the more so given that the 2017 USA intervention did not end the production of chemical weapons by President Assad's regime. Thus, contrary to what the allies claimed, the intervention was more a demonstration of force or an armed reprisal rather than assistance in a humanitarian crisis.⁹³ Moreover, in addition to the assessment of the UK's intervention as illegal, the above analysis also puts in question whether the humanitarian intervention, under the criteria and circumstances defined by the UK, can even be labelled as legitimate.

IV. Conclusions

The UK's argumentation and the reaction of other States proves that there is no place for a humanitarian intervention under current international law, not only because it remains illegal under the UN Charter, but also because States do not support such argumentation based on the doctrine of humanitarian intervention. It also seems that in the current state of affairs States are more willing to accept an intervention aimed at deterring the use of chemical weapons than to support a vague and broad concept like a humanitarian intervention. The criteria for a humanitarian intervention as presented by the UK, as well as their employment, also prove that if humanitarian intervention was to become legal one day, it could be interpreted very broadly and not necessarily serve the purposes and goals of such an intervention, which also questions its legitimacy.

Even though the 2018 intervention in Syria constituted a violation of the prohibition of the use of force and the UK's argumentation was ungrounded in international law, it is also true that the international community has to come up with a way to deal with such violations of human rights as have been occurring in Syria before the eyes of the whole world for the past eight years. This requires working out new standards, clear and understandable to and for the whole international community, which on one hand could not be limited by a veto of one of the States, and on the other would be invulnerable to abuses (at least to the maximum extent possible). As H. H. Koh has pointed it out, 'the time has come for international lawyers to develop a better rule to evaluate the legality of unilateral humanitarian intervention: namely, an affirmative defence that would exempt from legal wrongfulness actions that meet rigorous standards'.⁹⁴ As this author further claimed, 'the goal is not for lawyers to provide an excuse for unconstrained use of force in places like Syria. Rather, the goal is to make legally available the option of diplomacy backed by force (...)'.⁹⁵

Competing Interests

The author has no competing interests to declare.

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⁹¹ OPWC, 'Progress in the Elimination of the Syrian Chemical Weapons Programme' (23 March 2018) EC-88/DG.1, para 6(a); OPWC, 'Draft Report of the OPCW on the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction in 2017' (25 April 2018) EC-88/CRP.1, para 3 [1.1] ft 6.

⁹² Neither the attack, nor perpetrators of the attack have been confirmed yet. See OPWC, 'OPCW Spokesperson's Statement on Allegation of Chemical Weapons Use in Aleppo, Syria on 24 November, 2018' (8 January 2019) <<https://www.opcw.org/media-centre/news/2019/01/opcw-spokespersons-statement-allegation-chemical-weapons-use-aleppo-0>> accessed 10 January 2019; US Department of State, 'The Russian and Assad Regime's False Allegations on Chemical Weapons Use in Aleppo' (7 December 2018) <<https://www.state.gov/r/pa/prs/ps/2018/12/287941.htm>> accessed 10 January 2019.

⁹³ Ambassador Haley claimed in the UN SC that 'The United Kingdom, France, and the United States acted not in revenge, not in punishment and not in a symbolic show of force' (S/PV.8233 (n 26) 5).

⁹⁴ Koh (n 58) 287.

⁹⁵ *ibid.* 290.

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