

A Critical Investigation Concerning The Lawfulness Of American Missile Warfare On The 6th Of April 2017

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ABSTRACT

American involvement within the unceasing Syrian Civil War continues to exist as controversial foreign policy; promoting substantial criticism concerning the lawfulness of intervention arising from both domestic spheres and the international community. As part of ongoing efforts to degrade the al-Assad regime, the United States undertook a series of Tomahawk missile launches in April 2017 in direct response to a chemical weapons attack which inflicted grievous harm upon a civilian population. The missile strikes aimed to prevent further chemical weapons use by degrading weapons delivery systems and by demonstrating American resolve for direct military action against the al-Assad regime or any other force which deploys chemical weapons. Despite limited international criticism of the missile strike, an evaluation exploring the lawfulness under the jus ad bellum and jus in bello regimes is useful when attempting concoct predictions for the evolution of the use of force in future instances.

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INTRODUCTION

On April 6th 2017, the United States of America launched sixty Tomahawk cruise missiles against various military targets within the Syrian Arab Republic in direct response to the Khan Shaykhun chemical weapon attack on April 4th 2017¹ (Baldor, 2017). Within the unceasing Syrian Civil War, the missile strikes are the first official and publicly acknowledged direct attack against loyal Ba'athist Government forces which aimed to degrade and destroy air-offensive capabilities and to dissuade any further violations of the Chemical Weapons Convention. The effectiveness of the missile strikes remains highly controversial with both Russian and Syrian reports disputing American claims of lawful intent and operational success (Starr & Diamond, 2017;

Hartley-Parkinson, 2017). The international community remains predominantly supportive of the armed attack whilst acknowledging the drastically deteriorating situation in Syria and the urgent requirement for a peaceful resolution.

In addressing the lawfulness of the missile strikes the following shall be discussed:

Section I *Casus Belli et Jus ad Bellum*
Section II *Jus in Bello and International Humanitarian Law*

SECTION I

Article 2(4) of the Charter of the United Nations encompasses the contemporary efforts to secure international peace and security through the prohibition of threats or uses of force against the territorial integrity or political independence of any state.² The prohibition originates from

¹ Noting that from the sixty Tomahawk missiles fired from United States ships, only fifty-nine successfully reached the pre-designated targets.

² Charter of the United Nations 1945, Article 2(4): All Members shall refrain in their international relations

successive international armed conflicts, most notably from the failure of the League of Nations to guarantee international peace prior to the Second World War (McGlinchey, 2010) and operates simultaneously with Article 2(3) of the Charter which imposes a positivist duty upon states to resolve disputes ‘by peaceful means in such a manner that international peace and security, and justice are not endangered.’³ With the United Nations Security Council possessing exclusive cognisance determining instances where international peace and security has been threaten or violated⁴; whereby Articles 39, 40, 41, 42, and 43 of the Charter can permit states⁵ to use force only during instances with explicit Security Council authorisation, states may rely upon Articles 51 (Chapter VII) and 52 (Chapter VIII) of the Charter to exercise an inherent right of self-defence or to participate within collective security operations.⁶ However, states may pursue a policy

from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

³ Charter of the United Nations 1945, Article 2(3): All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

⁴ Charter of the United Nations 1945, Article 39 (Chapter VII): ‘The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.’ and see; Mónica Lourdes, ‘Interpretation of Article 39 of the UN Charter (Threat to the Peace) By the Security Council’ XI (2011) *Anuario Mexicano de Derecho Internacional*.

⁵ Thereby allowing the United Nations to intervene ‘in matters which are essentially within the domestic jurisdiction of any State’ through the application of direct or indirect military or non-military operations. Charter of the United Nations 1945, Article 2(7): Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

⁶ Charter of the United Nations 1945, Article 52 (Chapter VIII): Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such

of humanitarian intervention (Mahony, 1998) as a viable exception to the prohibition concerning the threat or use of force contained within Article 2(4) of the Charter.⁷ Despite insufficient state practice and resilient condemnation from global powers,⁸ (Fung, 2016) states may elect to remedy fundamental breaches of human rights, or ineffectual Security Council resolutions, through a state interpreted moral-relative perspective.

Concerning the authorising article for the use of force by ‘air, sea, or land’ (United Nations, 1945) within the Charter, and with regard to the Khan Shaykhun chemical weapon attack (Al-Zarier et al., 2016; BBC News, 2017), the Security Council has not yet become seized under Article 39 of the Charter; thereby indicating that United Nations authorisation directly responsive to the chemical attack and the primary publicised justification for the American missile strikes is not apparent. On April 12th 2017, the Russian Federation vetoed⁹ a Security Council resolution proposing to condemn the use of chemical weapons in Syria and from designating the attack as a breach of international peace and security. As both Mark Urban and Christopher Meyer note, the situations whereby a Permanent Member uses veto powers in favour of national interests and against the overarching humanity of any international situation demonstrates the futility of the current international paradigm for peaceful dispute resolutions (Urban, 2015; Meyer, 2015). Furthermore, both Urban and Meyer argue the continuing politicisation of the Security Council

arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations. It is worth noting the Preamble of the Charter of the United Nations which affirms the peaceful intent of states to ‘practice tolerance and live together in peace with one another as good neighbours’ and to ‘maintain international peace and security’.

⁷ The term humanitarian intervention includes the emerging political-military doctrine of the ‘responsibly to protect’.

⁸ Despite initial opposition, the People’s Republic of China has become a consistent advocate of humanitarian intervention, most notably through the responsibility to protect. However, states such as Brazil, India, South Africa, and Lebanon remain opposed to military intervention without Security Council authorisation.

⁹ United Nations (n 3) Chapter V (Functions and Powers Art 27(1)-(3)) does not explicitly mention the term veto, however the implication of the text infers a right possessed by the Permanent Five: Russian Federation, United Kingdom, Republic of France, United States of America, Peoples’ Republic of China.

often obstructs the actions of the United Nations and individual states when attempting to redress situations of international importance. Both commentators fail to suggest a viable alternative to permanent membership and veto power.

Aside from the failed Security Council resolution, the United States Government has attempted to justify the missile strikes through an interpretation of Security Council 2118 from 2013 (United Nations, 2013). Despite the issue of retroactively applying Security Council resolutions, post facto¹⁰ (Öberg, 2006), the Secretary of State of the United States, Rex Tillerson, alongside the National Security Advisor Herbert McMaster (Tillerson, 2017), has suggested that Russian failure to guarantee the destruction of Syrian chemical weapons pursuant to Resolution 2118 and the Framework for the Elimination of Syrian Chemical Weapons agreement of 2013 (OPCW, 2017; Eaves, 2014; Gladstone, 2014) has provided sufficient justification for American intervention to enforce and uphold the Russian guarantee, given the evidential violations of chemical weapon usage. Furthermore, Secretary Tillerson outlined how the severity of the armed conflict between the United States and Islamic State of Iraq and the Levant, alongside other international and non-international armed conflicts, precipitated an armed attack to reduce Ba'athist chemical weapon delivery capabilities, whilst citing Russian 'incompetence [or] complicity' (Tillerson, 2017) to fulfil an international obligation. Secretary Tillerson cited how the possession of deployed chemical weapons, within a highly volatile zone of conflict, required immediate action owing to possibility of capture and deployment by non-Ba'athist forces. Such justification, relying on international conventions, lack of performance concerning international obligations by other states, and the severity of the prevailing situation has been enacted by the United States, and by North Atlantic Treaty Organisation states during the NATO air campaign in Kosovo in 1999. As Michael Matheson notes, '[concerning the bombing] all [states] agreed that NATO had to respond to the policy of brutal expulsion and atrocities. Yet no single factor of doctrine seemed [applicable] under traditional legal standards.'

¹⁰ As shown in the Lockerbie case (Libyan Arab Jamahiriya v United Kingdom [1992] ICJ Rep 3) the International Court of Justice has denied retroactive effect to both General Assembly and Security Council resolutions and decisions.

(Matheson, 2000). Therefore, 'military action [would be justified] on a unique combination of several factors ... the failure of the FRY to comply with Security Council demands under Chapter VII; the danger of a humanitarian disaster in Kosovo; the inability of the Council to make a clear decision adequate to deal with that disaster and the serious threat to peace and security in the region ...' (Matheson, 2000). Matheson claims that such a unique combination was internationally accepted given the prompt withdrawal of NATO forces after the fulfilment of military air objectives. However, as Joost van Wielink notes, the novel combination of factors justifying action exceeded the permissible exceptions to the prohibition of threats or uses of force contained within Article 2(4) of the Charter (Van Wielink, 2002). As Charlie Savage suggests, the test proposed by Matheson could apply to the recent missile strikes if the American Government provided greater information concerning the precise legal framework used to evaluate the effectiveness of intervention (Savage, 2017). However, there has been no official Security Council Resolution authorising a missile strike against Ba'athist controlled objects within Ba'athist controlled territory; and noting Security Council Resolutions 1540 [2004]; 2042 [2012]; 2043 [2012] and 2118 [2013] reaffirming the sovereignty, independence, and territorial integrity of the Syrian Arab Republic, it would appear the United States does not possess lawful recourse under the framework of the United Nations.

Without the explicit consent of the Syrian Government and without express Security Council authorisation, the United States must justify military action as a form of self-defence aimed towards repelling or abating an armed attack against American territory, personnel, against the territory, or even personnel of an allied partner involved within the international armed conflict (Khomani & Grierson, 2017). As the missile strike occurred after the chemical weapons anticipatory attack, and pre-emptive self-defence is an unavailable justification for the United States given the temporal placement of the response relative to the attack. The Khan Shaykhun chemical weapon attack did not target immediate American or Iraqi strategic interests¹¹ (Mills,

¹¹ Iraq has requested collective self-defence from the United States of America in response to the emerging terrorist activities within the northern border region of Iraq and within Iraqi territory. The collective self-

2017) nor did the civilians residing within the town possess American or Iraqi citizenship. As both President Trump (Trump, 2017) and Captain Jeff David (Davis, 2017) pronounced the missile strike was unilaterally retaliatory against a chemical weapons attack, not directed towards the associated al-Qaeda terrorist organisation, Hay'at Tahrir al-Sham, which occupied and controlled the town, and not directly part of the War on Terror (Lubell & Dereiko, 2006; Bradley & Goldsmith, 2005).¹² It would appear the United States did not suffer an immediate armed attack with sufficient gravity to evoke individual self-defence, nor immediate allies, owing to the threshold created in Nicaragua.¹³ The International Court of Justice held an armed attack arises when the territorial integrity of another state is violated through the use of armed groups employing seriously grave force. Indeed, the use of chemical weapons and the violations of Article 1(b) of the Chemical Weapons Convention¹⁴ is definable as a war crime under Article 8(2)(xvii)(xviii) (War Crime) of the Rome Statute¹⁵ however the territorial nexus requirement linking Khan Shaykhun with the United States is not satisfied. Despite the repeated denials by the Ba'athist Forces, the chemical weapons attack can be attributed to Forces loyal to President al-Assad (Khomani & Grierson, 2017) owing to payload delivery capabilities and prior chemical weapons usage (BNS, 2017).¹⁶ However, Dapo Akande in citing the Oil

defence is primarily directed towards combatting ISIS insurgents and to prevent further spillover from the Syrian Civil War into other Middle Eastern states.

¹² A possible argument that could be advanced concerns the permissibility of American military action striking al-Qaeda occupied Khan Shaykhun is permissible given the international approach the American Government has taken towards combatting global terrorism; whereby individuals and organisations linked or associated with al-Qaeda are, from an American perspective, lawful targets irrespective of immediate location.

¹³ See, *The Republic of Nicaragua v The United States of America* [1986] ICJ 1.

¹⁴ See, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction [1997] Article I (General Obligations) 1(b).

¹⁵ See, Rome Statute of the International Criminal Court [2002] Article 8(2)(xvii)(xviii).

¹⁶ Over a recorded eighty chemical weapons attacks has occurred within Syrian territory. An attack at Sheikh Maqsood in 2016 resulted in the deaths of one hundred civilians.

Platforms Case, would suggest how 'as part of an constitute armed attack [...] the attack need not be directly targeted, with intention, against one particular state' (Akande, 2013) removes the direct requirement for territorial nexus. Such a non-intentional armed attack, as Akadne later suggests, in agreement with Dan Joyner, could facilitate claims of self-defence by geographically remote states, however such an interpretation, devoid of proportionality, entices abuse (Joyner, 2013). Therefore, as the territorial nexus remains an important component in attributing an attack with the right of self-defence, it shall be noted that actions conducted by the United States do not fulfil the immediate requirement to engage collective or individual self-defence.¹⁷

Jan Lemnitzer notes how the traditional exceptions to Article 2(4) have not successfully been activated by the United States to the requisite threshold to become justifiably lawful actions (Menitzer, 2017). However, Micah Zenko and David Tafuri argue that military action in Syria can be justified under humanitarian intervention, most notably using the emerging doctrine of the responsibility to protect (Zenko, 2017; Tafuri, 2017). Citing the failure of the United Nations to authorise an international response, the Secretary-General's Report on Implementing the Responsibility Protect (United Nations Secretary-General, 2009) outlines the multi-tiered response threshold before states may become seized within a threat or violation of international peace and security. When the domestic state has failed to prevent genocide, war crimes, crimes against humanity or ethnic

¹⁷ As Akande notes, such an argument is highly subjective based upon publicly available information. If the United States believed that additional chemical weapons possessed by Ba'athist Forces were targeted against American citizens, territory, or vital strategic interests or against Iraqi interests, anticipatory self-defence may become available. Likewise, pre-emptive self-defence may become available however both forms of self-defence would require the United States to present the connection between the threat of a chemical attack and an American object or person. However, and expanding upon the territorial nexus requirement, if additional chemical weapons were used within Syria and split-over into neighbouring Iraq or other Middle Eastern states, the United States would have a recourse to self-defence given the application of attributable intention as held at Oil Platforms case at paragraph 64 and Akande.

cleansing (Human Rights Watch, 2013),¹⁸ and with limited, or non-existent, international cooperation, intervening military action can become permissible.¹⁹ Despite numerous international conventions²⁰ prohibiting military involvement within sovereign states without consent or United Nations authorisation, international reaction to the missile strikes remains predominately supportive; thereby indicating a possibility that military action is tolerable and lawful (Lumsdenn, 2003).

Field Marshal Charles Guthrie provides a useful summation of military action within the concept of just wars. Guthrie argues that military action must centralise around a just cause often directed towards abating a universally acknowledged wrong; often manifested within humanitarian atrocities, and such military intervention should be sufficient and proportionate to the cause (Guthrie & Quinlan, 2007).²¹ General Rupert Smith argues that sufficient responses are equitable in response to the military capacity and capabilities possessed by an intervening state. Furthermore, Smith outlines how recent interventions have been conducted by sophisticated sovereign armed forces which adapt the application of military force relative to combatting various humanitarian atrocities (Smith, 2006). Additionally, Guthrie outlines that just military action requires a right intention, a right authority, and a reasonable prospect of

success (Guthrie & Quinlan, 2007).²² Applying Guthrie's test for just war and intervention it can be stated that American missile strikes abated further chemical weapon attacks by degrading and destroying Syrian air-offensive capabilities (Ackerman & Pilkington, 2017),²³ however failed in preventing the Khan Shaykhun attack in the first instance. The missile strikes targeted military objectives, not critical state infrastructure that was directly involved with the first chemical attack; whereby American intelligence indicated the chemical weapon attacks originated from the Shayrat Airbase. The use of sixty Tomahawk missiles caused damage to aircraft with no reported loss of civilian life (Yugas & Khomami, 2017) Furthermore, the degradation of Syrian air-offensive capabilities is essential to prevent further chemical weapons usage, however substantive questions remain unanswered concerning whether or not President Trump has domestic legal authority to launch a missile attack without Congressional approval under the Wars Powers Resolution of 1973 (NCC Staff).²⁴ The summation of the just war intervention test indicates that it is conceivable to suggest that

¹⁸ Noting how the Syrian Arab Republic is not a signatory to the Rome Statute, any violation of such crimes as defined under the Statute is un-actionable through the International Criminal Court. As Human Rights Watch notes, the amenability to hold the Syrian Government to account for chemical weapon violations does not exist directly outside Chapter VII powers within the Charter. Likewise, Human Rights First poses the question concerning the effective mechanisms to prevent and account for any war crimes and crimes against humanity (Human Rights First, 2009).

¹⁹ The Rome Statute provides the qualifying thresholds concerning the constitution and nature of genocide, ethnic cleansing, war crimes, crimes against humanity, and crimes of aggression.

²⁰ Most notably, The United Nations Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty 2131 (XX) [1965].

²¹ The assertions proposed by Guthrie are a direct and accurate reflection of the Caroline Incident principles concerning the necessity and proportionality when engaging self-defence.

²² Such principles originate from Saint Thomas Aquinas's Just War Theory, as supported by Michael Walzer's work (Walzer, 2015).

²³ This claim remains controversial given the combat readiness of Syrian fighter jets which launched offensive air missions against Rebel and ISIS forces less than five hours after the American missile strikes at Shayrat Airbase. The Airbase consists of three fighter-bomber squadrons which is primarily composed of third-generation MiG aircraft. The amenability of Syrian aircraft to re-enter combat operations has been attributed to advanced Russian warnings. Given the presence of Russian equipment and personnel within the Airbase, the American Government notified Russian military authorities of an impending attack to prevent any Russian casualties and any further escalation of tensions.

²⁴ The substantive issues regarding the rightful authority test concerns whether action against a sovereign military force without a declaration of war requires the President of the United States to declare the 'constitutional and legislative authority' for any attack within 48 Hours, as per Section 3(B) of the War Powers Resolution 1973 (50 U.S. Code § 1543 - Reporting Requirement). Comments from the National Constitutional Centre indicate the such actions does require the President to justify the attack, and alludes to the fact that no such justification can be found within domestic American legislation, as current authorisation legislation permits military action in Iraq not Syria, nor international law.

missile strikes are lawful under the doctrine citing the responsibly to protect. Given the lack of resilient international condemnation²⁵, humanitarian intervention appears as the only system of justifying the attack (Alexander, 2017).

SECTION II

The International Committee of the Red Cross indicates that *jus in bello* and international humanitarian law does not operate exclusively from *jus ad bellum* principles (Red Cross International Committee, 2015) therefore an unlawful recourse conflict can be evaluated with particular regard towards the conduct of hostilities during an armed conflict. As the missile strike targeted sovereign Syrian airfields and military targets conducted by the armed forces of the United States, Common Article 2 of the 1949 Geneva Convention²⁶ is automatically engaged; thereby imputing the burden of international humanitarian law upon both belligerents. Common Article 2 applies irrespective of non-recognition by one or more belligerent, as Sir Christopher Greenwood notes (Greenwood, 1996). Furthermore, the attack is classifiable as an international armed conflict as per the finding in the *Tadić* case²⁷, where the International Court of Justice held that when '[states] resort to armed force' of sufficient gravity, an international armed conflict exists.

The fundamental requirement under international humanitarian law is to distinguish military targets and objectives from civilian populations. Enshrined within Article 48 (Part IV - Civilian Population) of the First Additional Protocol of 1977, the basic rule imposes a duty upon belligerents to 'respect ... and protect the civilian population and civilian objects ... and to distinguish between ... combatants [and] military

objectives.'²⁸ Furthermore, belligerents should 'conduct operations only against military objectives' whilst recalling other fundamental principles ensuring a direct military advantage, discriminated attack and targeting, proportional response, and to ensure precautions are sufficiently taken.

Addressing the direct military advantage of the missile strike, the Handbook on International Humanitarian Law indicates that belligerents may only apply an amount of force necessary to defeat the enemy which is unlikely to cause unnecessary suffering (Fleck, 2013). Furthermore, the Handbook indicates that force used within a conflict should form the military necessity to degrade and defeat the enemy within a just cause (Walzer, 2015). As Saint Thomas Aquinas noted, conflict should centralise around securing peace and should not be arbitrary nor unnecessary in nature. Therefore, the direct military advantage must demonstrate an imperative need to rectify a grievous situation and to restore the modern equivalent of international peace and security (Fleck, 2013). The American missile strikes aimed to degrade and reduce Syrian air-offensive capabilities, with particular regard to destroying chemical weapons systems, alongside ground installations supporting aerial activities. The Trump Administration cited the urgent requirement to prevent any further chemical weapons usage and to prevent the dispersal of chemical weapons to other military locations (Gordon, 2013).²⁹ The Trump Administration cited concerns on the reoccurring usage of chemical weapons within the protracted Syrian Civil War and aimed to reduce any known chemical weapons storage sites and methods of delivery (Khomani & Grierson, 2017). Thus, the military advantage was fulfilled through the failure of previous diplomatic and international initiatives and with imperative to combat reoccurring violations of peremptory norms of international law.

Forming the requirement for distinction within an armed attack, Section I Article 35 of the First

²⁵ Major dissent originated from Syria and Russia which described the attack as an act of aggression and a blatant violation of Article 2(4) of the Charter. States such as China welcomed the attack citing the brutality of a chemical attack against children and displaced persons. Whilst the member states of the European Union welcomed the attack, Iran and Bolivia objected citing the urgent requirement for multilateral action.

²⁶ See, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva Convention [1949].

²⁷ See, *Prosecutor v. Dusko Tadic (Appeal Judgement)*, IT-94-1-A International Criminal Tribunal for the former Yugoslavia (ICTY) [1999].

²⁸ See, Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts [1977] Part IV - Civilian Population Article 48.

²⁹ Recalling the Syrian and Russian agreement in 2013, as part of an international effort to destroy all Syrian chemical weapons, Syrian stockpiles of poisons gases and other prohibited weapons should have been transferred to secure locations before destruction by Western coalition forces.

Additional Protocol imposes an obligation upon states to restrict the nature of warfare,³⁰ and to employ weaponry designed to prevent superfluous injury or unnecessary suffering.³¹ Furthermore, belligerents are required to distinguish civilians, civilian populations, and civilian objectives from the military objective. Chapter II (Civilians and Civilian Populations) obliges states to conduct hostilities when a lawful combatant is positively identified. Article 50(1) imposes an evidential test whereby individuals not confirmed as combatants should be assumed to be civilians; thus, immune from immediate targeting. Increasing conflicts between non-state actors which do not comply with identification principles enforced by the Third Geneva Convention of 1949 (Red Cross International Committee, 2017)³² is, as Dinah Pokempner describes, problematic (Pokempner, 2006). However, as the missile strike targeted sovereign military forces, as per the definition contained within Article 43 of the First Additional Protocol, this issue is ancillary. Likewise, the Shayrat Airbase was targeted as a legitimate military facility owing to the presence of an approximate forty hardened aircraft shelters, and the presence of three fighter-bomber squadrons forming part of the Syrian Air Force. The two runways and other military facilities, such as fuel and ammunition dumps (RadioFreeEurope, 2015), dispel any notion of any civilian use.³³ Likewise, the designation of the target as a military airfield dispels the notion of immediate civilian occupation, given the intensive military use by Russian and Syrian forces combatting Rebel and ISIS forces. The Tomahawk missiles used during the strike conform to Section C Rule 5 of the

Manual on International Law Applicable to Air and Missile Warfare; which imposes a duty upon states to deploy missiles capable of distinguishing between civilian and military objectives (Bruderlein, 2013). The missile type, the Tomahawk Cruise Missile, can loiter over target areas or respond to emerging objects and targets whilst delivering an adaptable accurate payload (US Navy, 2017). The missiles, reportedly, destroyed aircraft, bunkers, fuel and ammunition dumps, and damaged taxi and apron areas within the airbase (Buckley, 2017).³⁴ Therefore, it can be asserted that, owing to no civilian deaths or destruction of civilian objects, or civilian populations, the targeting and deployment of missiles conforms to the threshold concerning lawful distinction.

As Guthrie notes, the lawfulness of an attack when considering international humanitarian law must address proportionality (Guthrie & Quinlan, 2007). Both Guthrie and Smith discuss the force response mechanism and the weaponizing process deployed within areas of international and non-international armed conflicts (Guthrie & Quinlan, 2007). Citing the previously mentioned Articles of the First Additional Protocol, most notably Article 35 and the restrictive nature modern warfare is obliged to follow; Guthrie and Smith describe that in order for a state to achieve the central military objective, a careful application of force should be employed; whereby the minimum use of force should cause the minimum amount of damage and destruction to affect the maximum impact towards achieving the general objective (McCoubrey, 1994). Thus, Guthrie argues that proportionality is interlinked with distinction, weapon deployment, and reinforces the lack of applicability of the mirrored response quantum (Guthrie & Quinlan, 2007); whereby a state could respond to an attack using similar weapons. As noted within Section III of the Handbook of International Humanitarian Law, states must conduct attacks or self-defence operations within international law. Thus, a chemical weapons attack cannot be met with additional chemical weapons usage. The recent missile strikes targeted one Airbase within Syria, targeting specific objects within the Airbase. The missile strikes are proportionate resulting in no

³⁰ See, Geneva Convention, Section I (Methods and Means of Warfare) Article 35(1).

³¹ See, Geneva Convention, Section I (Methods and Means of Warfare) Article 35(2).

³² Third Geneva Convention [1949] Article 4(A)(2) states 'a) that of being commanded by a person responsible for his subordinates; b) that of having a fixed distinctive sign recognisable at a distance; c) that of carrying arms openly; d) that of conducting their operations in accordance with the laws and customs of war. Other Conventions such as the First and Second Hague Regulations (1899 and 1907) and the First and Second Additional Protocol to the Geneva Conventions outline the various requirements for identification.

³³ All airbases can retain a limited civilian function despite military designation. It was abundantly clear during the targeting operation that no civilian function was apparent and the airbase remained exclusively for military use.

³⁴ Russian sources dispute the effectiveness of the missile strikes with media outlets reporting at only eleven missiles hit targets within the airbase. Furthermore, Russian sources indicate that a majority of aircraft within the airbase were un-flightworthy.

excessive damage caused, relative to the inducing factor. Furthermore, and accurate until June 2nd 2017, no additional chemical weapons attacks have occurred within Syria. The retroactive perspective indicates the response of American missile strikes being sufficient to abate, repeal, and prevent any further chemical activities.

The duty to take precautions during an attack should be considered when evaluating the lawfulness of a military strike. Outlined within Article 58 of the First Additional Protocol, states are required to target military objectives located away from densely populated areas or to remove civilians from the combat zone whilst taking any other additional measures to mitigate damage to civilian life, civilian populations or civilian objects.³⁵ The actions conducted by the American armed forces appears to comply with such provisions. The Airfield is located away from the two nearest towns, Ash Sha'irat and Al Manzouel, by a minimum distance of five miles, and is located within an isolated region of Syria (Yuhas & Khomami, 2017). Civilians were not evacuated as such actions would detract from the direct military advantage of the missile strike and would not be required, in the first instance, due to the high accuracy rate of the Tomahawk Cruise missile employed during the strike (US Navy, 2017). Furthermore, foreign military forces involved within the Syrian Civil War and Syrian International Armed Conflict were informed about the impending missile strike. Thus, the United States took additional measures beyond the remit of the First Additional Protocol to minimise any potential loss of human life within the combat zone. Foreign military powers, such as Russia, operated from the Airbase and conducted regular air missions within the region. The high burden of targeting, precise weaponry use, and international dialog would infer a lawful approach towards precautions.

CONCLUSION

The American missile strike within Syrian territory on April 6th 2017 is the first direct military action conducted by the United States against the sovereign military force of the Syrian Arab Republic. The missiles destroyed an aircraft

in retaliation for participation with the deployment of chemical weapons and has, thus far, prevented any further use of poisonous and weaponised gases. Despite lacking United Nations Security Council authorisation, and not directly confirming to the pre-established requirements concerning the threshold of an armed attack, thus not directly confirming an action in self-defence, the missile strikes have been received, internationally, as a tolerable, if not as a highly desired action. Limited state practice prevents automatic approval under humanitarian intervention, therefore it is concluded that such missile strikes lack legitimate legal authority. However, the conduct of the strike, addressing targeting, military necessity, weaponising, and proportionally has been fulfilled. Thus, the recent missile strike conducted by the Trump Administration was unlawfully initiated but lawfully conducted.

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³⁵ See, Geneva Convention (n 63) (Chapter IV) Precautionary Measures. Article 57 - Precautions in Attack Articles 1-5; Manual on International Law Applicable to Air and Missile Warfare (n 76) Section G Precautions in Attack.

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