

INTRODUCTION TO SYMPOSIUM ON UNAUTHORIZED MILITARY INTERVENTIONS FOR THE PUBLIC GOOD

Monica Hakimi*

On April 6, 2017, the United States [launched fifty-nine Tomahawk missiles](#) against an air base in Syria, after evidence surfaced that Bashar Al-Assad's regime had again used chemical weapons against its people.¹ [President Trump](#) announced that the strikes were intended “to prevent and deter the spread and use of deadly chemical weapons.”² But as of this Symposium's publication, the United States has not articulated a formal legal justification for the strikes. Instead, it reportedly circulated [a document](#) that listed several case-specific considerations that, in its view, justified the use of force.³ Yet the global reaction was overwhelmingly positive. [Many states openly supported](#) the U.S. strikes; very few condemned them.⁴

This Symposium uses that incident as a springboard for asking a more general and fundamental question about the *jus ad bellum*: how should we assess military interventions that lack Security Council authorization but are, or are claimed to be, taken for a public good? The public good might be halting an ongoing humanitarian crisis, supporting a people's right to self-determination, deterring conduct that is widely believed to be unlawful, enabling the transfer of power after a democratically sound election, or helping to stabilize a “failing” state. The majority view is that such interventions are unlawful, unless they can be justified in self-defense or by the territorial state's consent. As a practical matter, this means that they are often unlawful—or at least, legally dubious. Although some actors might try to justify them in defensive or consensual terms, such claims typically rely on legal theories that are controversial and not widely endorsed.

However, the majority view might not be fully satisfying for at least two reasons. First, as the Syria incident shows, states periodically acquiesce in or condone such interventions, despite their purported illegality. Second, the interventions sometimes promote the very policies that drive the *jus ad bellum*'s restrictions on the use of force—the protection of human and global security. This Symposium thus explores how the evident tensions within the *jus ad bellum* should be understood, managed, or addressed, and what they portend for the law going forward.

* *Professor of Law, University of Michigan Law School.*

¹ See Michael R. Gordon et al., [Dozens of U.S. Missiles Hit Air Base in Syria](#), N.Y. TIMES (Apr. 6, 2017).

² [Text: Trump Statement on U.S. Military Strikes in Syria](#), REUTERS (Apr. 6, 2017).

³ The document is quoted in full at Marty Lederman, [\(Apparent\) Administration Justifications for Legality of Strikes Against Syria](#), JUST SECURITY (Apr. 8, 2017, 1:54 PM).

⁴ UN SCOR, [72d Sess., 7919th mtg.](#), UN Doc. S/PV.7919 (Apr. 7, 2017) (support from Australia, France, Germany, Italy, Japan, Netherlands, New Zealand, Saudi Arabia, Turkey, United Kingdom, and Ukraine); [Syria War: World Reaction to US Missile Attack](#), BBC NEWS (Apr. 7, 2017) (support from Canada, Israel, Poland, and the European Union); [U.S. Allies Show Support for Strikes on Syria](#), REUTERS (Apr. 7, 2017, 7:49 AM) (support from Qatar, UAE, Bahrain, and Kuwait); Madison Park, [Who's With the US on Syria Strike and Who Isn't](#), CNN (Apr. 9, 2017, 2:02 AM) (support from Jordan, and Spain).

Three of the five Symposium essays focus squarely on humanitarian interventions. [Harold Koh](#) takes issue with the majority view that I just described.⁵ He claims that, as applied to unilateral humanitarian interventions, that view is both unsustainable and undesirable—that “we need a better law by which to evaluate” these interventions.⁶ He articulates his preferred legal test, but he also invites other international lawyers to engage with him in the debate and, as he puts it, take advantage of this “lawmaking moment.”⁷ (Along the way, Koh contends that, as a matter of U.S. domestic law, the President may sometimes use force for humanitarian reasons without congressional action.)

[Kimberley Trapp](#) responds directly to Koh.⁸ She critiques the elements of his test that require, as conditions for the use of unilateral force in this context: (1) a “humanitarian crisis [that] creates consequences significantly disruptive of the international order . . . that would likely soon create an imminent threat to the acting nations (which would give rise to an urgent need to act in individual and collective self-defense under UN Charter Article 51)”;

(2) that any “force for genuinely humanitarian purposes [is] necessary and proportionate to address the imminent threat.”⁹ According to Trapp, these elements conflate humanitarian interventions with a controversial theory of anticipatory self-defense. She argues that the policy consequences are problematic.

For his part, [Mohamed Helal](#) suggests that the entire concept of humanitarian interventions (and, with it, the Responsibility to Protect) needs more work.¹⁰ He says that, even when such interventions are lawful under the *jus ad bellum*, they can increase the overall levels of global insecurity and human victimization. He uses the 2011 intervention in Libya as his example. He suggests that, when planning and evaluating such interventions, we ought to account for not only the lives that were saved during the operation but also the conditions in the territorial state that follow it and its geopolitical repercussions.

[Jure Vidmar](#) offers a more general theory on the *jus ad bellum*.¹¹ He posits that the UN Charter prohibits cross-border force, except pursuant to the Security Council’s authorization or in self-defense against an armed attack by a state. He says that any departure from those strict confines cannot be legally justifiable. In his view, other uses of cross-border force—his examples are humanitarian interventions and operations to incapacitate nonstate actors—are best understood as pleas of necessity and, if appropriate, excused under something like a mitigation principle. Vidmar contends that the distinction between justifications and excuses is important to preserving the strength of the prohibition of the use of force and to limiting the space for “creative interpretations” that could “invite ever-wider disobedience.”¹²

Finally, [Erika de Wet](#)’s essay focuses on interventions by invitation and the well-known tension that they can create between two public goods: (1) the territorial state’s interest in peace and security, and (2) the right to self-determination of its people.¹³ De Wet surveys several incidents in Africa and the Middle East to assess how international law balances those two goods. She concludes that “the existence of a [noninternational conflict] as such does not limit the right of the recognized government to invite military assistance by third states for the purpose of

⁵ Harold Hongju Koh, [Humanitarian Intervention: Time for Better Law](#), 111 AJIL UNBOUND 287 (2017).

⁶ *Id.* at 287.

⁷ *Id.* at 288, 291.

⁸ Kimberley N. Trapp, [Unauthorized Military Interventions for the Public Good: A Response to Harold Koh](#), 111 AJIL UNBOUND 292 (2017).

⁹ Koh, *supra* note 5, at 289.

¹⁰ Mohamed S. Helal, [The Unknown Unknowns of Humanitarian Law](#), 111 AJIL UNBOUND 297 (2017).

¹¹ Jure Vidmar, [The Use of Force as a Plea of Necessity](#), 111 AJIL UNBOUND 302 (2017).

¹² *Id.* at 306.

¹³ Erika de Wet, [Reinterpreting Exceptions to the Use of Force in the Interests of Security: Forcible Intervention by Invitation and the Demise of the Negative Equality Principle](#), 111 AJIL UNBOUND 307 (2017).

suppressing opposition movements.”¹⁴ She then raises the possibility that the prevalence of such interventions degrades not only the right to self-determination but also the collective security system of the Charter itself. Together, the Symposium essays offer much food for thought. And they suggest that we, as international lawyers, still have plenty of theoretical, policy, and doctrinal work to do on the *jus as bellum*.

¹⁴ *Id.* at 311.