Would External Intervention by Military Force to Protect Civilians in Syria be Legally Justified?

Richard Lappin

Anti-government protests erupted in Syria in March 2011, assuming a more formal nature following a violent government response that ultimately escalated into civil war. There is broad consensus that the Syrian regime has committed crimes against humanity against its own population over the past two years. It has been reported that more than 100,000 people have been killed, that 1.7 million people have been registered as refugees, and that chemical weapons were used in the Ghouta area of Damascus.[1] Yet widespread debate – in policy circles, academia, and the media – testifies to some confusion as to whether external intervention by military force to protect civilians in Syria would be legally justifiable. This article contends that such an intervention would lack legal justification in a positivist sense, that is to say according to treaties, custom, and general principles of law,[2] and the general principles of treaty interpretation as codified in the 1969 Vienna Convention on the Law of Treaties.

Keywords: Syrian civil war, crimes against humanity, forced intervention, R2P movement, treaty interpretation, legal positivism

Part One: Treaty Interpretation

Treaty interpretation has always enjoyed a prominent place in international law, yet its role has been enhanced with the proliferation of international human rights treaties and the expansion of international judicial bodies. Part one of this article outlines the relevant principles of

Scan this article onto your mobile device

treaty interpretation as codified in the Vienna Convention on the Law of Treaties (VCLT) and how these have been applied to human rights treaties. The section concludes by assessing the extent to which local contexts should be taken into account when interpreting human rights treaties, calling for an approach that remains faithful to the positivist foundations established in the VCLT as a means to reinforce the universalism of human rights and avoid their dilution.

Principles of Treaty Interpretation

Section 3 of the 1969 VCLT codifies a robust and authoritative guide to interpreting international treaties, including human rights instruments.[3] Article 31(1) establishes that interpretation should be in 'good faith' in accordance with three core principles. First, in respect of the *text*, that is to say 'the ordinary meaning to be given to the terms to the treaty'. Second, in respect of the *context*, that is to say a word or phrase should not be read in isolation but 'in their context'. Third, in respect of the *objective*, that is to say 'in light of its object and purpose'.

These core principles are elaborated upon. Article 31(2) notes that *context* refers to the full text, including the preamble and annexes, as well as any other agreement or instrument established in connection to the treaty.[4] Article 31(3) provides that *objective* can be determined from the context, as well as subsequent agreements and practice in respect of its interpretation, in view of 'relevant rules of international law'.[5] While paragraphs 1-3 of Article 31 do not create an unequivocal hierarchical order of interpretation, they do generally 'embody a logical procession'.[6]

The notion of 'good faith' prevails throughout the process of interpretation, embodying the principle of *pacta sunt servanda* as contained in Article 26 of the VCLT. While it has been argued that 'good faith itself has no normative quality',[7] it has become, according to the International Court of Justice (ICJ), 'one of the basic principles governing the creation and performance of legal obligations'.[8] Good faith, essentially, requires parties to a treaty to act honestly, fairly, and reasonably, in accordance with the spirit of the law as well as the letter.[9]

In confirming the meaning resulting from the application of Article 31, and particularly if the 'meaning is ambiguous or obscure' or 'leads to a result which is manifestly absurd or unreasonable', Article 32 provides that recourse can also be made to supplementary materials, including the *travaux préparatoires* and the circumstances of its conclusion.

These principles of interpretation are fully consistent with Article 38 of the 1945 Statute of the ICJ, which establishes the parameters of international law.[10] At present, 113 states are party to the VCLT[11] and Section 3 has been widely accepted as part of international customary law.[12] As Orakhelashvili rightly observes, Section 3 of the VCLT 'reinforces the consensual positivist foundation of the international legal system, which means that international rules are created through agreement between states, and interpretation methods help to ascertain the parameters of that agreement'.[13]

This understanding has been expressly connected to human rights treaties, as reflected in the jurisprudence of UN human rights treaty bodies[14] and regional human rights tribunals.[15] While there are no specific provisions on interpretation in the European Convention of Human Rights (ECHR), the American Convention on Human Rights, or the African Charter on Human and Peoples' Rights, the subsequent reliance on the VCLT is reassuring in terms of promoting consistency in the interpretation of human rights law. Furthermore, as Sorensen writes, 'a statement as to the validity or invalidity of a logical proposition cannot be applied to itself – a principle, which like all other principles of logic, must be observed in all legal interpretation'.[16]

Schools of Interpretation

While the brief articles of the VCLT establish authoritative parameters for treaty interpretation, their application can be lengthy, requiring careful consideration when applied to a given context.[17] Sinclair notes that 'there are few topics in international law which have given rise to such extensive doctrinal dispute as the topic of treaty interpretation'.[18] Indeed, notwithstanding the precision of the VCLT, it is widely held that three schools of interpretation have arisen.[19] First, the *textualist* school that focuses on the text and its 'ordinary meaning', where words and phrases are given their normal and unstrained meaning. Second, the *intentionalist* school that focuses on the intention of the drafters, often with an emphasis on the *travaux préparatoires*. Third, the *teleological* school that focuses on the 'object and purpose' of a treaty, in a way that gives scope to the fundamental problem is was supposed to address. Significantly, these schools are not mutually exclusive and may very according to the case, thereby imbuing a flexibility that is necessary for effective interpretation and implementation of the law.

The Special Character of Human Rights Treaties

Consideration should be given to the special character of human rights treaties, which create obligations on states to protect individual rights rather than reciprocal responsibilities between parties.[20] As early as 1951, the ICJ opined that parties to the Genocide Convention 'do not have any individual advantages or disadvantages nor interests of their own, but merely a common interest'.[21] This approach has been reaffirmed by regional tribunals and was concisely explained by the Inter-American Court of Human Rights (IACHR) in 1982:

> Modern human rights treaties... are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting states. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other states, but towards all individuals within their jurisdiction.[22]

This approach naturally lends itself to the teleological school of interpretation and its emphasis on *objective*, specifically the protection of the individual human person. As the European Court of Human Rights (ECtHR) has noted, it is 'necessary to seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty'.[23] This has been further articulated in the principle of *pro homine* as promoted by the IACHR, whereby '*it is always necessary to choose the alternative that is most favourable to protection of the rights enshrined in said treaty, based on the principle of the rule most favourable to the human being.*'[24]

It follows that such interpretation should ensure that human rights protection is effective. The IACHR has spoken of 'appropriate effects', while the ECtHR has held that provisions should 'be interpreted and applied so as to make its safeguards practical and effective'.[25] Jurisprudence further illustrates that this emphasis on 'objective and purpose' often requires an evolutive approach, reflecting a view that human rights are not static and should be interpreted in accordance with developments in law and society.[26] In this respect, the ECtHR has held that the ECHR is

a 'living instrument which must be interpreted in the light of present day conditions'.[27] The ICJ has also frequently ruled that treaties should be interpreted in accordance with the legal framework prevailing at the time of interpretation, rather than the one at the conclusion of the treaty.[28]

In some instances the evolutive principle has led to interpretations that have established rights not expressly defined in the original wording. For example, the ECtHR has established that the right of access to a court could be interpreted from Article 6 of the ECHR's guarantee of a fair trial.[29] This has led Fitzmaurice to label the evolutive approach as 'controversial' and one that does 'not always conform to the classical rules on interpretation.'[30] While the above example may be deemed reasonable and one interpreted in 'good faith', it is clear that there should be limits to this approach. Indeed, the ECtHR has acknowledged that although '*the Convention and its Protocols must be interpreted in the light of present-day conditions… the Court cannot, by means of an evolutive interpretation, derive from these instruments a right that was not included therein at the outset*'.[31]

Local Context and the Margin of Appreciation

The VCLT does not mention whether local contexts should be taken into account during the process of treaty interpretation, yet the relevant articles are expressed at a level of generality that grants some discretion to local authorities and regional tribunals. On this basis, the ECtHR has made reference to regional consensus on particular issues, at times reflecting a national law standard that can act as the lowest common denominator. Similarly, UN human rights treaty bodies have been praised for their ability to reconcile tensions between diverse local practices and respect for universal human rights.[32]

Another possibility is the application of the principle of a 'margin of appreciation', whereby states are afforded a degree of discretion in applying local measures to international standards.[33] For example, the ECtHR recently ruled that while an indiscriminate ban on prisoner voting rights breached the ECHR, states do enjoy wide discretion in deciding which prisoners should be prohibited.[34] The principle of a margin of appreciation may vary depending on the issue. Moreover, where a right may justifiably be restricted, jurisprudence establishes that proportionality should be employed in order to establish 'a fair balance between the

demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights'.[35]

Much of the debate on treaty interpretation at the local level has, however, focused on the need to interpret universal treaties according to local contexts. Campbell has opined that the 'positivization of human rights increases their utility but compromises their moral status' at the local level.[36] While Merry has asserted that 'in order for human rights ideas to be effective… they need to be translated into local terms and situated within local contexts of power and meaning. They need, in other words, to be remade in the vernacular.'[37]

Yet, while it is important to remain sensitive to local contexts, caution should be exercised. For instance, how is the local context defined? By geography only? And whose vernacular represents the local context?[38] In addition, a focus on the local context has the 'potential to detract from the universalist aspirations of the global system by posing different and indeed lower standards of protection',[39] while also providing convenient justifications for human rights violations.[40] It may also risk opening an unnecessary distinction between 'ordinary' and 'higher' rights, which may have an adverse effect on 'the credibility of human rights as a legal discipline'.[41] Moreover, it should be underlined that 'when a treaty is being interpreted, it has to be appreciated that the parties to it have already made their political choice which they then expressed through legal commitments; it is not for the interpreter to replace that choice by its own one.'[42]

This is not to diminish the importance of the local context, which is of high relevance in the drafting and ratification of treaties, as well as in efforts to inform citizens of their treaty rights in a given context and the reasoning of decisions. Indeed, such outreach programmes are imperative to bridging identified gaps between legal discourse and lived experiences.[43] However, while carefully drafted treaties provide a margin of appreciation for interpretation by local authorities, caution should be exercised to ensure that any interpretation based on local context does not dilute the universal standards that states have already agreed to through legal commitments.

Part Two: External Intervention in Syria

Section 3 of the VCLT provides clear, positivist parameters for interpreting human rights treaties; an approach that should be applied when considering the legality of possible external intervention by military force

to protect civilians in Syria. Part two of this article analyses the basis of a possible intervention in Syria, affirming that such an action would lack legal justification in a positivist sense, that is to say according to treaties, custom, and general principles of law.[44] The section concludes by acknowledging competing political and moral justifications for intervention that, while compelling, do not necessarily reinforce the legal basis for external military action.

Treaty Law

One of the fundamental rules of international treaty law is the prohibition of the use of force between states.[45] While Articles 55 and 56 of the UN Charter oblige states to 'promote universal respect for human rights' and 'to take joint and separate action' to do so,[46] Article 2(4) clearly prohibits the use of force with the caveat of two exceptions: to restore or maintain collective security on the basis of UN Security Council (UNSC) authorization (Articles 39-42) or as self-defence in case of 'armed attack' (Article 51).[47] Both conditions are manifestly absent from the Syrian context.

First, there has been no UNSC authorization of force. Article 24 of the UN Charter delegates 'primary responsibility for the maintenance of international peace and security' to the UNSC, requiring decisions be made by 9 of the 15 members with no veto from the 5 permanent members. Russia and China, as permanent members, have consistently opposed the use of force in Syria rendering any UNSC authorization unlikely in the foreseeable future.

Second, Syria has also not attacked another state, nor has it threatened to, thus removing the possibility of action based on self-defence. It has been posited that the opposition, the National Coalition of Syrian Revolutionary and Opposition Forces, could request external intervention to assist them in collective self-defence against the "former Assad regime".[48] Although the likes of France and the UK have recognised the opposition as 'the sole legitimate representative of the Syrian people', it is apparent that the opposition does not hold effective control across Syria, that the legitimacy of the opposition is contested at an international level, and that the Assad regime does in fact maintain the formal requirements to be recognised as the legal government.[49]

Additionally, while the US has linked the use of chemical weapons (in general) to core national interests, the extension of the argument to one of 'self-defence' is tenuous. Justifying intervention on the basis of

chemical weapon use in Syria as part of a broader strategy of self-defence strays into a pre-emptive discourse that is not provided in treaty law and certainly does not represent an imminent threat to US security.[50]

Lastly, it should also be underscored that while the use of chemical weapons is a violation of international law it does not, on its own, constitute a legal basis for a military response to such violations.

Customary International Law

From a customary international law (CIL) perspective, proponents of intervention argue that custom has developed since the UN Charter, providing a legal basis for military intervention 'to prevent a humanitarian catastrophe or to stop widespread human rights abuse'.[51] In the case of Syria, it is argued that the 1925 Geneva Protocol, the 1993 Chemical Weapons Convention and other custom[52] have established the prohibition of chemical warfare as a *jus cogens* norm that amounts to a crime against humanity, from which no state may derogate in its actions.[53] This was the position assumed by the UK government in respect of Syria, on the basis that 'there is no practicable alternative to the use of force' due to continued blocking of the UNSC and that 'the proposed use of force… is the minimum necessary to achieve the end and for no other purpose'.[54] Advocates of this position also refer to precedents of military intervention on humanitarian grounds in the absence of UNSC approval, including the Belgian action in the Congo in 1960, Tanzania's intervention in Uganda in 1978-79, the US action in Grenada in 1983, and the NATO operation in Serbia/Kosovo in 1999.[55]

However, it should be recalled that such a position has been rejected by the vast majority of states, including the some 130 members of the G77 at the 2000 Declaration of the South Summit, with paragraph 54 stating that 'we reject the so-called "right" of humanitarian intervention which has no legal basis in the United Nations Charter or in the general principles of international law'. Additionally, when past "humanitarian" interventions have occurred, there are very few instances in which humanitarian grounds were explicitly cited.[56] For example, the oft-cited precedent of the 1999 Serbia/Kosovo intervention was formally based on the security interests of NATO members rather than on humanitarian grounds.[57] Joyner asserts that 'it is important to understand that both elements (state practice and *opinio juris*) must be satisfied before a prin-

ciple may become a candidate for recognition as customary international law'.[58] The clear absence of state practice and *opinio juris*, thus, fails to provide a compelling legal case for intervention based in CIL.

Even if parallel contradictory CIL were to ultimately become established, it would likely not prevail over the UN Charter treaty-based obligations. While there is no *a priori* hierarchy between treaty and custom as sources of international law,[59] 'relevant norms deriving from a treaty prevail between the parties over norms deriving from customary law',[60] except in rare cases such as *desuetude* when a treaty loses its binding character, which the UN Charter has clearly not.[61] Moreover, Article 103 of the UN Charter states that obligations under the Charter prevail over obligations under any other international treaties, a provision that can, largely, be extended to custom. Additionally, the interpretive rule of *lex specialis derogate legi generalis* may be applied; prioritizing the specific rules of the UN Charter over the more general and ambiguous custom of humanitarian intervention.[62]

The recent 'Responsibility to Protect' (R2P) movement, despite initial aspirations, does not alter the legal basis in a meaningful way. R2P emerged as a means to prevent mass atrocities such as the genocides in Rwanda and Srebrenica in the 1990s. Under R2P reasoning, the international community has a responsibility to protect a nation's citizens when its government has clearly forfeited that duty.[63] However, while the 2005 UN GA Resolution 60⁄1 recognised a *responsibility* to protect, it reaffirmed the need for collective action through the (legally authorized) UNSC.

Reforming International Law

Ultimately, the strongest legal argument for military intervention against Syria on humanitarian grounds rests on the claim that the intervention itself will help crystallize a new customary norm of international law that does not yet exist.[64] Such claims of a legal basis for intervention are, paradoxically, fully consistent with the system of international law.[65] Under certain conditions a willingness to violate existing international law for the sake of reforming it is not only consistent with a commitment to the rule of law but may even be required by it.[66] To paraphrase Akande; the only way to change customary law it is to break (or reinterpret) it. One possible avenue of reinterpretation is that the prohibition of the use of force should *not* be seen in a limited way. Indeed, Article 2(4) of the

UN Charter prohibits force against 'the territorial integrity or political independence of another State or in a manner inconsistent with the purposes of the UN', arguably allowing the permissible use of force to be extended to the protection of human rights.[67]

Such an approach can be loosely grouped with the so-called 'pragmatic' approach, which 'sees international law not as a formal enterprise unto itself, but instead as part of a system of general international order, where the law itself embraces the legality of enforcing a certain amount of rough order in the world'.[68] As Henkin asked in the aftermath of Kosovo: 'Is it better to leave the law alone, while turning a blind eye (and a deaf ear) to violations that had compelling moral justification? Or should Kosovo [or Syria] move us to push the law along to bring it closer to what the law ought to be?'[69]

The 'reform' and 'pragmatic' schools offer insightful observations about the direction of international law, but ones that do not yet have an unequivocal basis in international law. They are also ones that require careful and inclusive consideration, preferably through treaty-based reform, because if international law is to be accepted as being so inherently malleable and easy to circumvent it risks becoming 'not law but rather a mere collection of recommendations.'[70]

Legality vs. Legitimacy

Although intervention would not be legally justifiable, it does not mean that it would not be morally or politically justifiable. In the words of Austin, 'the existence of the law is one thing; its merit or demerit is another'.[71] Political and moral justifications are more qualitative, more subjective – but they can be more compelling and ultimately accepted, especially when cloaked in CIL language; as in the 'illegal but legitimate' tradition of the Serbia/Kosovo intervention.[72] The need to respond to the use of chemical weapons to uphold the international norm prohibiting their use and to deter future use has political credence.[73] These justifications, moreover, gain more normative weight in the absence of UNSC agreement to intervene to protect against gross human rights abuses.[74]

However, such developments bypass critical and rigorous checks and balances, legally enshrined in the UN Charter. The use of force, irrespective of the underlying intent, should be subject to collective authorization according to mutually agreed and objective standards: 'what is sauce for the goose is sauce for the gander'.[75] While this may – and has – led to the

unnecessary and preventable loss of life, it should be preserved, albeit potentially amended.[76] The alternative of looser, unilateral and competing claims of legality for intervention based on custom is inherently more subjective and not only risks undermining the international law system but also escalating larger threats to global peace by opening the possibility for powerful states to redefine the grounds for unrestrained force on nominal and self-proclaimed "humanitarian" grounds.[77]

Additionally, the legality versus legitimacy paradigm is reductionist and risks obfuscating other key criteria. Intervention to protect human lives is almost always morally compelling but, irrespective of the legality of the use of force, it should be accompanied by considerations of the proportionality of force, potential to deter future violations (in Syria and elsewhere), timeframes, local reaction to external intervention, and the impact on the internal balance of power.[78]

Furthermore, it should be underlined that states may also utilise a range of legal non-military measures to protect civilians, including multilateral diplomacy, humanitarian aid, GA resolutions and special commissions, economic and political sanctions, weapons inspections, and criminal prosecutions. Indeed, the concept of R2P is explicit in calling for multiple non-military measures to be employed; 'R2P cannot be relegated to code for armed intervention.'[79]

Conclusions

International treaty law clearly prohibits the use of force between states with the exception of two caveats, UNSC authorization or as an act of self-defence, both of which are manifestly absent from the Syrian context. Additionally, external intervention by military force to protect civilians has not attained CIL status through state practice or *opinio juris* and, even if a CIL doctrine of humanitarian intervention were to be satisfied, it would not necessarily prevail over the UN Charter prohibition. Moreover, it is held that the use of force, irrespective of political or moral justifications, should be subject to collective authorization according to mutually agreed and objective standards. As such, external intervention by military force to protect civilians in Syria would not be legally justified.

RICHARD LAPPIN is affiliated to the University of Leuven, Belgium and may be reached at: *richard.lappin@gmail.com*

Notes

1. United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic; Hurd; Martin; British Broadcasting Company
2. See, Article 38 of the 1945 Statute of the International Court of Justice
3. Of note, the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, not yet in force, follows the same principles of interpretation as the 1969 VCLT. See also, Aust, pp.7-8; D'Amato, p.599, Fitzmaurice, Elias and Merkouris, p.153, Sinclair, p.153. For a counterview, see: McDougal, Lasswell and Miller. It should also be noted that the leading authorities on treaty interpretation often sat on the International Law Commission (ILC), the principal drafter of the VCLT.
4. In support of this principle, see: *Case of Golder v. The United Kingdom*, Judgement, 21 February 1975, ECtHR, paragraph 34; *Rights of Nationals of the United States of America in Morocco* (*France v. United States)*, Judgement, 27 August 1952, ICJ, p.196; *Resources Foundation v. Zambia*, Judgement, 7 May 2001, African Commission on Human and Peoples' Rights (ACHPR), paragraph 70
5. Article 31(4) further provides that 'a special meaning shall be given to a term if it is established that the parties so intended'. For an insightful analysis on this specific provision, see: Icelandic Human Rights Centre
6. Fitzmaurice, Elias and Merkouris, p.157. See also, Aust, p.187, Gardiner, pp.37-38, Orakhelashvili, p.121, Sinclair, p.153. See also, *Case of Witold Litwa v. Poland*, Judgement, 4 April 2000, ECtHR, paragraphs 58-59, which states that interpretation '*places on the same footing the various elements enumerated in the four paragraphs of that Article…* [yet] *the sequence in which those elements are listed in Article 31 of the Vienna Convention regulates, however, the order which the process of interpretation of the treaty should follow'. Others, however, caution that the Articles should be read in a purely holistic manner, see, for example: Abi-Saab*
7. Viliger, p.365
8. *Nuclear Tests Case* (*Australia v. France)*, Report, 20 December 1974, ICJ, p.268
9. See, Rosenne, p.35; D'Amato, p. 599
10. According to Article 38 of the 1945 Statute of the ICJ, international law comprises: 'a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law'. See also, Sinclair, p.8, Gardiner, D'Amato
11. The VCLT entered into force on 27 January 1980.
12. See, *Case Concerning Kasikili/Sedudu Islands* (*Botswana v. Namibia)*, Judgement, 13 December 1999, ICJ, supra note 5 at paragraph 18, which states

that Articles 31 and 32 of the VCLT are 'applicable inasmuch as it reflects customary international law.' See also, *Case Concerning the Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgement, 13 July 2009, ICJ, paragraph 47; *US – Continued Existence and Application of Zeroing Methodology*, Report of the World Trade Organization Appellate Body, 4 February 4 2009, p.267. For a contrasting view, see, Klabbers, p.30: 'no rule on interpretation could likely be of customary law nature; interpretation rules simply are of a different quality than ordinary norms of behaviour'.

13. Orakhelashvili, p.117
14. Allain, p. 4, Addo, Icelandic Human Rights Centre
15. Killander, p.145, Orakhelashvili, p.117. Killander notes that while the ECtHR has traditionally put more emphasis on regional consensus, the IACHR and African Commission have often looked outside of their continent to treaties and soft law of the UN as well as jurisprudence of other regional courts.
16. Sorensen, p.153. Such a view was affirmed by a Greek representative in their comments on the VCLT: 'even if a treaty provided rules for the interpretation of clauses regarding interpretation, those provisions would require to be interpreted by means not contained in the treaty', as quoted in Viliger, p. 14.
17. Linderfaulk, Gardiner, Sinclair, p.119, Yasseen
18. Sinclair, p.114. See, also: Ris, p.111, Fitzmaurice, Elias and Merkouris, p.157
19. American Society of International Law and the International Judicial Academy, Brownlie, pp.604-7, Orakhelashvili, p.118, Sinclair, p.115. These schools may also be referred to as 'objective', 'subjective', and 'purposive'.
20. Harris, O'Boyle, Bates and Buckley, p.6
21. *Reservations to the Convention on the Prevention and Punishment of Crimes of Genocide*, Advisory Opinion, 28 May 1951, ICJ
22. *The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights (Arts. 74 and 75)*, Second Advisory Opinion, 24 September 1982, Inter-American Court of Human Rights, paragraph 29. See also, *Austria v. Italy (Application No. 788/60)*, European Human Rights Commission, 1961.
23. *Case of Wemhoff v. Germany*, Judgement, 27 June 1968, ECtHR, paragraph 8
24. *Case of Mapiripán Massacre v. Colombia*, Judgement, 15 September 2005, IACHR, paragraph 106
25. *Case of Paniagua Morales et al. v. Guatemala*, Preliminary Objections, 25 January 1998, IACHR, paragraph 40. *Case of Golder v. The United Kingdom*, Judgement, 21 February 1975, ECtHR, paragraph 34. See also, *Case of Soering v. The United Kingdom*, Judgement, 7 July 1989, ECtHR, paragraph 87; *Scanlen and Holderness v. Zimbabwe*, Judgement, 3 April 2009, ACHPR, paragraph 178
26. See, Alvarez-Jiminez, Bernhardt, Bjorge, Letsas, Lixinski, McCaig, Simma and Kill, Tzevelekos, Van Damme
27. *Case of Loizidou v. Turkey (Preliminary Objections)*, Judgement, 23 March 1995, ECtHR, paragraph 79. See also, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of*

the American Convention on Human Rights, Advisory Opinion,14 July 1989, IACHR, paragraph 37; *Case of Tyrer v. the United Kingdom*, Judgement, 25 April 1978, ECtHR, paragraph 31.

28. See: *Case Concerning the Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgement, 13 July 2009, ICJ, paragraph 66; *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgement, 26 February 2007, ICJ, paragraph 160
29. *Case of Golder v. The United Kingdom*, Judgement, 21 February 1975, ECtHR
30. Fitzmaurice, p.955. See also: Letsas, p.509, Mowbray
31. *Case of Jonhston and Others v. Ireland*, Judgement, 18 December 1986, ECtHR, paragraph 53. See, also: Harris, O'Boyle, Bates and Buckley, p.7
32. Addo, p.615,Pasqualucci, p.39, Thornberry, p.245. It is of note that the importance of culture is referenced in most major human rights treaties. For example, Article 27 of the ICCPR provides that persons belonging to minorities 'shall not be denied the right, in community with other members of their group, to enjoy their own culture'.
33. Stacy, pp.134-138. See also, Rellis, pp.511, 519: 'universal standards must be interpreted in diverse ways by different cultures'.
34. *Case of Scoppola v. Italy (No.3)*, Judgement, 22 May 2012, ECtHR, paragraph 85.
35. *Case of Soering v. The United Kingdom*, Judgement, 7 July 1989, ECtHR, paragraph 89. Article 8(2) of the ECHR.
36. Campbell, p.6
37. Merry, p.1. For an example in respect of gender-based violence, see Amirthalingam
38. Chanock, pp.38-39: 'There is typically a wide gap between those who speak for cultures and those who live the culture spoken about. While cultures are complex and multi-vocal, in the representation of cultures the voices of the elites overwhelm others. Assertions about cultures tend to be totalizing and simplifying, privileging some voices and patterns of acts and ignoring and marginalizing others'.
39. Heyns and Killander, p.43, Mechlem. For examples, full or partial, see: Ardeshiri, Banda, Leane
40. Obokata and O'Connell, p.396
41. Meron, p.21
42. Orakhelashvili, p.118
43. Twining, Killander
44. See, Article 38 of the 1945 Statute of the International Court of Justice
45. Dinstein, p.95; Green, p.215
46. For some, these Articles alone give sufficient grounds for military intervention, see: Shapiro
47. See also, 1970 UN General Assembly (GA) Resolution 2625, 'Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations': 'armed intervention… [is] in violation of international law.' For support of the authoritative status of the Declaration see Article 31(2) and

(3) of the 1969 Vienna Convention on the Law of Treaties.
48. For an elaboration of this argument in a different context, see: Bannelier and Christakis, pp.861-864
49. Anderson; Baruch and Weinstock, p.1; Rozenberg; For a statement of criteria of state legality, see: Merkel, pp.478-479, as well as Restatement (Third) of US Foreign Relations, Section 203.
50. Anderson; Baruch and Weinstock, p.2
51. Akande. See also: Brown, pp.1686-1687; Holzgrefe, p.18; Roberts, p. 5
52. Syria formally acceded to Chemical Weapons Convention on 14 October 2013. See also, the 1972 Biological Weapons Convention as a generally accepted source of CIL, as well as state practice since 1945.
53. Other examples of *jus cogens*, or peremptory, norms include prohibition of genocide, slavery, and torture.
54. Prime Minister's Office (United Kingdom). Similar arguments were also presented in support of the Kosovo intervention, see: Roberts. And more generally by: Annan; International Commission on Intervention and State Sovereignty
55. Brown, pp.1703-1706; Greenwood, pp.163-171; Koh; Roberts, pp.22-25
56. Joyner, p.602; Arend and Beck, p.110
57. Roberts, Campos;
58. Joyner, p.601
59. Meron
60. The Institute of International Law
61. Akande; Joyner, pp.602-604
62. Conde, p.150; Joyner, p.604; Perrazzelli and Vergano, p.747
63. See, among others: Evans; Glanville; International Commission on Intervention and State Sovereignty; Massingham
64. Campos; Hurd
65. Akande
66. Buchannan, pp.440-473; Kadish and Kadish
67. See, for example: Macklem, p.389; Welsh, p.55
68. Anderson; Koh
69. Henkin, p.827
70. Joyner, p.609
71. John Austin, quoted in: Macklem, p.374
72. Independent International Commission on Kosovo
73. Hurd;Kerry; Koh
74. Resiman, pp.861-862; Teson
75. Dinstein, p.101
76. See, for example: Joyner, pp.609-617
77. Anderson; Joyner
78. Akande; Massingham, pp.817-822; Moore, pp.1-3; Roberts; British Broadcasting Company
79. See, for example: Moore, p.2