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Talking Foreign Policy. Responding to Rogue States

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Repository Citation

Sterio, Milena; Buchwald, Todd F.; Johnson, James; Scharf, Michael P.; and Williams, Paul R., "*Talking Foreign Policy. Responding to Rogue States*" (2019). *Law Faculty Articles and Essays*. 1063.
https://engagedscholarship.csuohio.edu/fac_articles/1063

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TALKING FOREIGN POLICY: RESPONDING TO ROGUE STATES

“Talking Foreign Policy” is a one-hour radio program, hosted by the Dean of Case Western Reserve University School of Law, Michael Scharf, in which experts discuss the important foreign policy issues. The premier broadcast (airdate: March 1, 2012) covered the controversial use of predator drones, humanitarian intervention in Syria, and responding to Iran’s acquisition of nuclear weapons. Subsequent broadcasts have covered topics such as the challenges of bringing indicted tyrants to justice, America’s Afghanistan exit strategy, the issue of presidential power in a war without end, and President Obama’s second term foreign policy team. This broadcast focused on the responding to rogue states.

The purpose of the radio show is to cover some of the most salient foreign policy topics and discuss them in a way that can make it easier for listeners to grasp. “Talking Foreign Policy” is recorded in the WCPN 90.3 Ideastream studio, Cleveland’s NPR affiliate. Michael Scharf is joined each session with a few expert colleagues known for their ability to discuss complex topics in an easy-to-digest manner:

- The ambassador: Todd F. Buchwald, former Ambassador for Global Criminal Justice and Assistant Legal Adviser for U.N. Affairs, and current fellow at the Woodrow Wilson International Center for Scholars;
- The prosecutor: James Johnson, former Chief of Prosecutions of the Special Court of Sierra Leone and current the Director of the War Crimes Research Office at Case Western Reserve University;
- The international law guru: Milena Sterio, Associate Dean of The Cleveland Marshall College of Law; and
- The negotiator: Paul R. Williams, president of the Public International Law and Policy Group.

Archived broadcasts (both in audio and video format) of “Talking Foreign Policy” are available at: <https://law.case.edu/TalkingForeignPolicy>. The transcript of the September 17, 2018 broadcast appears below.

TALKING FOREIGN POLICY: RESPONDING TO ROGUE STATES

SEPTEMBER 17, 2018 BROADCAST¹

MICHAEL SCHARF: Welcome to Talking Foreign Policy, I'm your host, Michael Scharf,² Dean of Case Western Reserve University School of Law. In this broadcast, our expert panelists will be discussing the issue of responding to Rogue States. For our program today, we've assembled a panel of experts on peace negotiations, national security, human rights and war crimes. Joining Talking Foreign Policy for the first time is Todd Buchwald, who served as the State Department's Ambassador for Global Criminal Justice and Assistant Legal Adviser for U.N. Affairs, and he is currently a fellow at the Woodrow Wilson International Center for Scholars.³ I've known the ambassador since we worked together at the State Department twenty-five years ago, so I will dispense with the formalities and just say: Welcome to our show, Todd.

TODD BUCHWALD: Great to be here.

MICHAEL SCHARF: And we are also joined by another new guest, James Johnson,⁴ who served as Chief of Prosecutions of the Special Court of Sierra Leone after a two-decade career in the U.S. JAG Corps. He is currently the director of the War Crimes Research Office at Case Western Reserve University. Welcome Jim.

JAMES JOHNSON: Thank you, Michael.

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1. Transcript edited and footnotes added by Cox Center Fellows Nicole Divittorio, George Kamanda, Alexandria McKenna, and Alex Lilly.
 2. Michael Scharf, CASE WESTERN RESERVE SCHOOL OF LAW (2019), *available at* <https://law.case.edu/Our-School/Faculty-Staff/Meet-Our-Faculty/Faculty-Detail/id/142>. Michael Scharf is the Dean of Case Western Reserve University School of Law. He has also written and published extensively in the area of international law.
 3. Todd F. Buchwald, U.S. DEPARTMENT OF STATE (2019), *available at* <https://2009-2017.state.gov/r/pa/ei/biog/251248.htm>. Prior to becoming a career lawyer in the Department's Office of the Legal Advisor, Ambassador Buchwald served in the Office of White House Counsel and as an associate at Washington law firm Wilmer, Cutler, and Pickering.
 4. Jim Johnson, CASE WESTERN RESERVE SCHOOL OF LAW (2019), *available at* <https://law.case.edu/Our-School/Faculty-Staff/Adjunct-Faculty>. Jim Johnson served as Chief of Prosecutions of the Special Court of Sierra Leone after a two-decade career in the Jag Corps. He is currently the Director of the War Crimes Research Office at Case Western Reserve University.

MICHAEL SCHARF: And we have two Talking Foreign Policy regulars back with us today. First, Dr. Paul Williams,⁵ the president of the Public International Law & Policy Group, a Nobel-Peace-Prize nominated NGO that has provided legal counsel in a dozen peace negotiations over the past twenty-two years. Welcome back to the show, Paul.

PAUL WILLIAMS: Michael, it's great to be back.

MICHAEL SCHARF: And also with us in the WCPN 90.3 Ideastream Studio is Professor Milena Sterio,⁶ who is the associate dean of Cleveland Marshall College of Law and a renowned international law expert. It's good to have you back on the program, Milena.

MILENA STEREO: It is great to be here, Michael.

MICHAEL SCHARF: So, let me kick things off by asking Ambassador Todd Buchwald—how would you define what is a Rogue State?

TODD BUCHWALD: Well, it's very interesting. It's not really a legal term and it doesn't really have a fixed meaning.⁷ For the most part, it's been used as a way to talk about States that don't abide by norms on non-proliferation of weapons of mass destruction and terrorism.⁸ That's the way it was used early on by the Clinton

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5. Paul Williams, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW (2019), *available at* <https://www.wcl.american.edu/community/faculty/profile/pwilliams/bio>. Paul Williams is a professor at American University Washington College of Law. He is also the president of the Public International Law & Policy Group, a Nobel-Peace-Prize-nominated NGO that has provided legal counsel in a dozen of peace negotiations over the past twenty-two years.
 6. Milena Sterio, CLEVELAND MARSHALL COLLEGE OF LAW (2019), *available at* <https://www.law.csuohio.edu/newsevents/featuredfaculty/milena-sterio>. Milena Sterio is the Associate Dean of Cleveland Marshall College of Law and a renowned international law expert.
 7. The definition of "Rogue States" is not fixed. It once referred to States that had "failed to adhere to the rule of law." Now, "it has become an elastic catchphrase that is used to demonize behavior and rally political support." Robert S. Litwak, *A LOOK AT...Rogue States*, WASH. POST (Feb. 20, 2000), https://www.washingtonpost.com/archive/opinions/2000/02/20/a-look-at-rogue-states/62a19e42-433d-4915-9bbc-97c5b900603e/?utm_term=.09419533d376.
 8. *Post-Cold War Policy Isolating and Punishing "Rogue States"*, AMERICAN FOREIGN RELATIONS (2019), <http://www.americanforeignrelations.com/O-W/Post-cold-War-Policy-Isolating-and-punishing-rogue-states.html>.

administration; though, at some point, the Clinton administration made a concerted effort to stop using the word because they thought it was interfering with their ability to conduct diplomacy with countries on the list, like North Korea, who they engaged with.⁹ In the Bush administration, it came to be used in association with the famous Axis of Evil countries. Again, it was about terrorism and weapons of mass destruction.¹⁰ There was sort of a background noise to the whole thing—that you might be a target for regime change at some point—in the air. That was in the Bush administration. In the Trump administration, President Trump has used the term when he spoke to the U.N. General Assembly last year, and he added Venezuela to the list.¹¹ And that was interesting because it's a different kind of Rouge State. I mean, one can easily see that it's not a very comfortable State to deal with. But it was different in the sense that unlike most of the [Rogue] States, its *rougeness* was directed internally rather than externally. So, that's the way it's used. I think, by and large, the term is still about externally-directed threats.¹²

MICHAEL SCHARF: I think you have coined a new phrase that we may be using today, *rougeness*. So, based on the *rougeness* criteria, let me ask our expert panel: Which countries in the world do you all consider to be Rogue States?¹³ Todd, let's start with you. What would be on your list?

TODD BUCHWALD: I still tend to think of the States as the security threats. The security rogues. Maybe because of my background as an international lawyer, those are the States that tend to have the more immediate...

MICHAEL SCHARF: So, the worst ones on your list would be?

9. Litwak, *supra* note 7.

10. Massimo Calabresi, *The Axis of Evil Is It For Real?*, TIME (Feb. 3, 2002), <http://content.time.com/time/magazine/article/0,9171,198894,00.html>.

11. Remarks by President Donald Trump to the 72nd Session of the United Nations General Assembly (Sept. 19, 2017), *available at* <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-72nd-session-united-nations-general-assembly/>.

12. Litwak, *supra* note 7.

13. Robert Rotberg, *The Threat from Rogue States*, BOSTON GLOBE (Nov. 6, 2004), *available at* <https://www.belfercenter.org/publication/threat-rogue-states>.

TODD BUCHWALD: Well, the worst ones on the executive branch's list would still be Iran...you would have thought North Korea; there's sort of a strange relationship now with North Korea. But, those two are probably at the top of the list.

MICHAEL SCHARF: Paul, what would you add?

PAUL WILLIAMS: Oh, I would definitely keep North Korea on the list, and then I would add the triumvirate of Syria, Sudan, and Burma, or Myanmar, as they like to be called. All highly destabilizing both internally and externally.¹⁴

MICHAEL SCHARF: And Milena, what would you put on the list?

MILENA STERIO: For some historical perspective, you might go back to, for example, Libya under Gaddafi¹⁵—certainly at the end of that regime. And I certainly agree with both Paul and Todd regarding their lists. You might go back and say Serbia or the F.R.Y.—Federal Republic of Yugoslavia—under Milosevic, as well.¹⁶

MICHAEL SCHARF: But not currently in either of those cases?

MILENA STERIO: Not currently.

MICHAEL SCHARF: Okay, and Jim: Is there anything we are leaving off?

JAMES JOHNSON: Well, I think that I might add—I don't think Paul mentioned it—Yemen. I think I might add Yemen to that list.

MICHAEL SCHARF: Okay. So, what about Cuba? Would any of you put Cuba on that list? Todd?

TODD BUCHWALD: It is a funny kind of list to be put on because you don't know what it is that happens when you're on it. I think the relationship with Cuba, probably at this point, has a highly political

14. *Id.*

15. David E. Sanger and Judith Miller, *Libya To Give Up Arms Programs, Bush Announces*, N.Y. TIMES (Dec. 20, 2003), <https://www.nytimes.com/2003/12/20/world/libya-to-give-up-arms-programs-bush-announces.html>.

16. See Michael P. Scharf, *The Indictment of Slobodan Milosevic*, 4 ASIL INSIGHTS 3 (June 5, 1999), <https://www.asil.org/insights/volume/4/issue/3/indictment-slobodan-milosevic>.

dimension to it—but I think it really is a little bit different than the other States on the list.¹⁷

MICHAEL SCHARF: What about Turkey? Things are getting pretty out of control in our relations with Turkey.¹⁸ Would you put them on the list, anybody?

MILENA STERIO: I wouldn't. When I think of Rogue States, I also think of States that are willing to, essentially, flagrantly act *roguely*. That might be a new word, too.

MICHAEL SCHARF: So, like, invading another country, sending internet attacks into other countries...

MILENA STERIO: Invading another country, using chemical weapons, and things of that sort.

MICHAEL SCHARF: What about Russia?

MILENA STERIO: Well, Russia actually is very good at using international law rhetoric to justify its actions. Russia doesn't stand up and say, "Oh we don't care about international law."

MICHAEL SCHARF: So, is a Rogue State only one that says, "We don't care about the rules?"

MILENA STERIO: Well, the other difference I think is if we are defining *rogueness*, are we talking about it from the United States perspective, or are we talking about it from some objective, global perspective?

MICHAEL SCHARF: What's the difference?

MILENA STERIO: Well, there is a difference. There are States that are clearly threats, perhaps, to the U.S. And when we talk about, for example, Turkey, you might say, "Okay, U.S.-Turkey relations are really at a low point right now. But from a global perspective, I don't think Turkey is on the same level as Syria, for example, or some of these other States."

17. Claire Felter and Danielle Renwick, *U.S.-Cuba Relations*, COUNCIL ON FOREIGN RELATIONS (Jan. 19, 2018), <https://www.cfr.org/backgrounder/us-cuba-relations>.

18. Colin Dwyer and Larry Kaplow, *What's the Deal with The Deepening Dispute Between U.S. And Turkey?* NPR (Aug. 13, 2018), <https://www.npr.org/2018/08/13/638162581/whats-the-deal-with-the-deepening-dispute-between-u-s-and-turkey>.

MICHAEL SCHARF: Okay. So, focusing on those states that are threats to the United States that you've listed. Paul Williams: Why should the US care particularly about these countries?

PAUL WILLIAMS: Well, I think, Michael, there are two reasons why the United States should care about Rogue States. The first is that they directly impact our security. The United States has security interests woven throughout the globe, and when you have States—either by the strict definition of rejecting the norms relating to terrorism, or as the broader definition of *rogue*ness that we seem to be establishing here—this impacts our ability to maintain the security of the United States and our allies.¹⁹ So, for instance, with North Korea and its nuclear weapons, you know it has the ability to annihilate South Korea and Japan and possibly the ability to strike the United States. Syria pushing millions of refugees into Lebanon, Jordan, Turkey and into Europe—it's highly destabilizing.²⁰ Turkey might not be *rogue*, but is certainly on the verge of being destabilized, and there are security consequences.²¹ So, the States acting outside the bounds of the normative structure that the Americans have worked for over the decades to create substantially impacts our interests. Second, I think it's important to add that if they impact their own populations as well, that's also something Americans used to—and should continue to—care about. Burma has pushed out 700,000 of their own civilians into Bangladesh. And some would call this—what they've been doing—genocide.²² This is something that may not impact our security interests, but we should care about it.

MICHAEL SCHARF: Okay, so with most of the countries we have been talking about, it's the government itself that is acting roguish. What about those countries where there are terrorists, or rebels, or pirates that are operating freely because they are failed states? Milena, do

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19. Mara Karlin, *After 7 Years of War, Assad has Won in Syria: What's Next for Washington?*, THE BROOKINGS INSTITUTION (Feb. 13, 2018), <https://www.brookings.edu/blog/order-from-chaos/2018/02/13/after-7-years-of-war-assad-has-won-in-syria-whats-next-for-washington/>.
 20. Kemal Kirisci, Jessica Brandt, and M. Murat Erdoğan, *Syrian Refugees in Turkey: Beyond the Numbers*, THE BROOKINGS INSTITUTION (June 19, 2018), <https://www.brookings.edu/blog/order-from-chaos/2018/06/19/syrian-refugees-in-turkey-beyond-the-numbers/>.
 21. Sebnem Koser Akcapar, *Turkey Stands Between Europe and the Next Refugee Crisis*, N.Y. TIMES (Sept. 25, 2018), <https://www.nytimes.com/2018/09/25/opinion/syria-idlib-refugees-turkey-war-erdogan-putin-assad.html>.
 22. *Myanmar Rohingya: What you Need to Know About the Crisis*, BBC (Apr. 24, 2018), <https://www.bbc.com/news/world-asia-41566561>.

you think there is a difference between a Rogue State and a failed State?

MILENA STERIO: Sure. I think definitely there is a difference, as you correctly stated. Most of these Rogue States that we just mentioned are ruled by governments that have effective control over the territory of those States. A few years ago, maybe Syria was in a different category, but right now President Assad has control over most of the Syrian territory.²³ Other presidents of the States that we have mentioned have control over their territory. A failed State, to the contrary, is a State where the government no longer exercises effective control over their territory, which then allows groups like non-State actors, terrorists, pirates, rebels, and narco-traffickers to operate with impunity.²⁴ And the classical example of a failed State would be Somalia, where—about ten years ago—pirates were basically free to roam because there was no effective government oversight.²⁵

MICHAEL SCHARF: So, whether we are talking about a failed State or a Rogue State, let me ask the ambassador: When is it better for the U.S. to act in concert with others through the U.N. or NATO, and when do you feel it's necessary for the United States to consider acting on its own?

TODD BUCHWALD: Well, I think in principle, it's always better to act with others and in as large a coalition as possible. If you have this picture of a Rogue State as a State that is playing out of the accepted lines, if you're in concert with others, it's clear you're able to more clearly demonstrate where those lines are. So, if we're the only one saying, "You're playing outside the lines," it doesn't resonate nearly as much as if the entire international community makes that claim. Now, when you talk about the international community, it's a concept; you can't touch the international community. You could be talking about the U.N. General Assembly or the U.N. Security Council; if it's a situation in Europe, you could be talking about NATO.²⁶ There are times, however, when it won't be possible to act multilaterally, and I think the United States will always reserve to

23. Karlin, *supra* note 19.

24. *Failed States*, GLOBAL POLICY FORUM (last visited Nov. 1, 2018), <https://www.globalpolicy.org/nations-a-states/failed-states.html>.

25. Hassan Barise, *Somalia Where Pirates Roam Free*, BBC (Nov. 11, 2005), <http://news.bbc.co.uk/2/hi/africa/4424264.stm>.

26. Ian Black, *NATO Alerted to Dangers of Rogue States*, THE GUARDIAN (Nov. 1, 2018), <https://www.theguardian.com/world/2001/sep/27/afghanistan.terrorism> 20.

itself at least the prospect of acting unilaterally, if for no other reason than you have to reserve that prospect as part of the campaign of building a multilateral coalition.

MICHAEL SCHARF: And I think you're mostly talking about use of economic sanctions and use of force. Let me turn to Jim Johnson. As an international prosecutor, when should prosecution of leaders of Rogue States be considered and pursued?

JAMES JOHNSON: Well, first, Michael, let me just state that your question assumes that there might be an international tribunal or some judicial body that is capable of carrying out a prosecution. Unfortunately, in many instances—you look around the world today—with leaders this may not be the case. But there is clearly the precedent developed by Nuremberg and reinforced by the modern tribunals that makes it clear: war crimes and crimes against humanity are committed by individuals. And as a head of State, you are responsible; and, as a head of State, you have no immunity from international crimes. So, indeed, you can be prosecuted. And when you're looking at when you *should* be prosecuted, I'm a prosecutor and that's first and foremost in my mind. I believe that when there are reasonable grounds to believe that a leader has committed a war crime or crime against humanity, that action should be taken towards the prosecution of that leader. Beyond that, you also are going to want to look at the gravity of the crimes that have been committed. Also relevant is the location of the victims? Are they internal or external? These are some of the kinds of things that you look at, I think, when you are prosecuting a leader.

MICHAEL SCHARF: Well, we are almost out of time for our first segment. When we return, we will focus our discussion on the case study of Syria, the greatest humanitarian crisis facing the world in the last decade.²⁷ We'll be back in just a moment.

---- [*Station break*] ----

MICHAEL SCHARF: Welcome back to Talking Foreign Policy brought to you by Case Western Reserve University and WCPN 90.3 Ideastream. I'm Michael Scharf, the Dean of the Case Western Reserve University School of Law. I'm joined today by the former U.S. Ambassador for Global Criminal Justice, Todd Buckwald; the international prosecutor who convicted Liberian president Charles Taylor for war crimes, Jim Johnson; famed peace negotiator, Dr. Paul

27. *Syria: The Biggest Humanitarian Crisis of Our Time*, AMNESTY INTERNATIONAL (Nov. 1, 2018) <https://www.amnesty.org.nz/take-action/syria-crisis>.

Williams of the Public International Law & Policy group; and an international law guru, Associate Dean Milena Stereo of Cleveland Marshall College of Law. We are talking today about the challenges of responding to Rogue States. In this segment of our show, I'd like to focus the group's attention on the crisis in Syria. Since the beginning of the civil war there in 2011, the Assad regime has killed and displaced millions of people, and on several occasions the regime has used chemical weapons in opposition-controlled areas. Syria has become the greatest humanitarian crisis of our time.²⁸ Let me begin by asking ambassador Todd Buckwald: Why hasn't the U.N. Security Council been able to take action to respond to the growing crisis in Syria?

TODD BUCHWALD: Under the U.N. Charter, if the Security Council takes a decision, all U.N. member states—basically every country in the world—is under a legal obligation to accept and carry out the decision.²⁹ That's Article 25 of the U.N. Charter.³⁰ The U.N. Security Council has five permanent members: the United States, the United Kingdom, France, China, and Russia. And, the way the Charter is structured, a decision can only be taken if all five of the permanent members concur in that decision.³¹ And, of course, in the last several years Russia—acting as protector of the Syrian client state—has vetoed a number of resolutions, including a resolution to refer the situation in Syria to the International Criminal Court and a variety of other resolutions related to Syria that were favored by us and many other countries.³²

MICHAEL SCHARF: So, what is it about Syria that Russia likes so much? They do have a port in Tartus; is that important to them?³³

28. Eyder Peralta, *UN: Syrian Crisis Is 'Biggest Humanitarian Emergency of Our Era*, NPR (Aug. 29, 2014), <https://www.npr.org/sections/thetwo-way/2014/08/29/344219323/u-n-syrian-refugee-crisis-is-biggest-humanitarian-emergency-of-our-era>.

29. *What is the Security Council?*, UNITED NATIONS SECURITY COUNCIL, <http://www.un.org/en/sc/about/> (last visited Nov. 4, 2018).

30. *Repertory of Practice of United Nations Organs Supplement*, Supplement No. 10 (2000-2009), http://legal.un.org/docs/?path=../repertory/art25/english/rep_suppl10_vol3_art25.pdf&lang=E.

31. *United Nations Security Council Fast Facts*, CNN (Mar. 28, 2018), <https://www.cnn.com/2013/09/03/world/united-nations-security-council-fast-facts/index.html>.

32. *Syria: Does Russia Always Use a Veto at the UN Security Council?*, BBC (Apr. 16, 2018), <https://www.bbc.com/news/world-43781954>.

33. Frank Gardner, *How Vital is Syria's Tartus Port to Russia?*, BBC (Jun. 27, 2012), <https://www.bbc.com/news/world-middle-east-18616191>.

TODD BUCHWALD: Yes that's important to them. What's also important to them is their influence in the area, and I think it's partly a way to demonstrate that they have to be met on their terms. There have been lots of proposals to get around—lots of *ideas* for getting around—the Russian veto.³⁴ There are ideas to amend the Charter of the United Nations to take away or limit the use of the veto. The political reality is that I don't think there's a way around it. The Security Council veto is hard-baked into the Charter. I think in the reality of that, leaders—more and more—will come to other ways of organizing international efforts. In Syria it's hard to do anything effective because the Syrians, basically, are winning the war, and that's the reality that lawyers and policymakers in Washington are having a hard time dealing with.³⁵

MICHAEL SCHARF: But the U.S. *has* taken matters into its own hands: on April 6th, 2017, the U.S. fired 56 cruise missiles at a Syrian airbase after Syria deployed sarin gas in the town of Kahn Shaykhun near Damascus.³⁶ And then, on April 14th, 2018, the U.K., the U.S., and France together fired a hundred and five cruise missiles at Syrian chemical weapons production and storage facilities after the Syrian government deployed chlorine gas in the Damascus suburb of Duma.³⁷ Milena, do most governments and legal experts believe that these air strikes were lawful under international law given the Security Council's paralysis because of Russia's veto?

MILENA STERIO: I think that most governments and legal experts, as of now, do not believe that these airstrikes were lawful under international law because international law has a very basic norm which is a prohibition on States to use force against other States. The only two well-accepted, well recognized exceptions to that ban are situations where there is Security Council approval for the use of force

34. Louis Charbonneau, *Dozens of Nations Back French Appeal to Limit Use of U.N. Veto*, REUTERS (Sept. 30, 2015), <https://www.reuters.com/article/us-un-assembly-veto-idUSKCN0RU30V20150930>.

35. *Why Assad is Winning the War in Syria*, PBS (Apr. 14, 2018), <https://www.pbs.org/newshour/show/why-assad-is-winning-the-war-in-syria>.

36. Michael R. Gordon, Helene Cooper and Michael D. Shear, *Dozens of U.S. Missiles Hit Air Base in Syria*, N.Y. TIMES (Apr. 6, 2017), <https://www.nytimes.com/2017/04/06/world/middleeast/us-said-to-weigh-military-responses-to-syrian-chemical-attack.html>.

37. *Syria Air Strikes: US and Allies Attack 'Chemical Weapons Site'*, BBC (Apr. 14, 2018), <https://www.bbc.com/news/world-middle-east-43762251>.

and self-defense.³⁸ And, as Todd just told us regarding Syria, there is no Security Council authorization, nor will there be one in the near future, because of the Russian and, perhaps, Chinese veto.³⁹ So the Security Council is a no-go in this situation. And it's very hard for the U.S., the U.K., and France to argue that they acted in self-defense because Assad was using the chemical weapons only against *Syrian* citizens, in areas where there were no U.S., U.K., or French forces nearby. One argument that some scholars, and I know you, Michael, are starting to talk and write about this, is this idea that humanitarian intervention is another exception to this ban on the use of force.⁴⁰ And so, unless we're willing to accept this idea of humanitarian intervention without Security Council authorization as an exception to the use of force, it is hard to legally justify the airstrikes.

MICHAEL SCHARF: People have been talking about this for almost twenty years. Paul, for example, you participated in the negotiations at Rambouillet to try to avert the Kosovo conflict. And after the 1999 NATO airstrikes against Serbia to halt the ethnic cleansing of the Kosovo Albanians, the U.N. *did* endorse something called the "responsibility to protect," or R2P doctrine.⁴¹ Does that doctrine permit unilateral humanitarian use of force like the airstrikes on Syria?

PAUL WILLIAMS: Well Michael, my sense is that we're very close to having international acceptance of a legal doctrine which permits the unilateral use of force. As Todd has pointed out, Security Council authorization is hard-baked into the U.N. Charter, but it's being rampantly abused by the Russians to provide cover for states like Syria who are committing mass atrocities against their civilians—you know, four, maybe 500,000 killed by the regime.⁴² Milena properly

38. U.N. Charter, art. 2, para. 4; U.N. Charter, art. 51.

39. *Syria War: Russia and China veto Sanctions*, BBC (Feb. 28, 2017), <https://www.bbc.com/news/world-middle-east-39116854>.

40. Sarah Almkhatar, *Most Chemical Attacks in Syria Get Little Attention. Here Are 34 Confirmed Cases*, N.Y. TIMES (Apr. 13, 2018), <https://www.nytimes.com/interactive/2018/04/13/world/middleeast/syria-chemical-attacks-maps-history.html>.

41. *Responsibility to Protect*, U.N. OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, <http://www.un.org/en/genocideprevention/about-responsibility-to-protect.html> (last visited Nov. 4, 2018).

42. Note to Correspondents, Transcripts of Press Stakeout by United Nations Special Envoy for Syria, Mr. Staffan de Mistura, United Nations Secretary-General, Apr. 22, 2016, *available at*

pointed out that the doctrine was created to allow for States to intervene when a country was unable or unwilling to protect its population, or where it was actually, in fact, carrying out those atrocities.¹³ The early versions of R2P require Security Council authorization. But, I think we've seen in Kosovo there was a humanitarian intervention by NATO with no Security Council authorization.⁴³ We've now had two interventions: first, by the Americans, and then by the Americans along with the French and the British in Syria, where there was no Security Council authorization.⁴⁴ I think the flagrant violation of its responsibilities by Russia at the U.N., coupled with this increasing trend of countries massacring their own civilians, is definitely tipping the scales in the direction of some type of souped-up responsibility to protect which will no longer require authorization by the Security Council. And quite frankly, Mike, that day cannot come soon enough.

MICHAEL SCHARF: So, about 70 countries around the world chimed in with support of the U.S./U.K./French air strikes on Syria last April. The only countries that were against it, quite frankly, were Russia and Syria, and then China joined in.⁴⁵ Do this overwhelming support and other factors indicate that something is changing, as Milena pointed out? Let's unpeel the onion and see how this new case might be different than other cases. So, first of all, let me ask the panelists at large: Does it matter that this case was about chemical weapons use and the targets were chemical weapons facilities, as opposed to—in the other cases—other types of crimes against humanity where the targets were broad military and governmental targets? In the Serbia case, they just bombed anything that was a military target, right?⁴⁶ So, does that make a difference, Todd?

<https://www.un.org/sg/en/content/sg/note-correspondents/2016-04-22/note-correspondents-transcript-press-stakeout-united>.

43. Djamchid Momtaz, *NATO'S "Humanitarian Intervention" in Kosovo and the Prohibition of the Use of Force*, INTERNATIONAL COMMITTEE OF THE RED CROSS, No. 837 (Mar. 31, 2000), available at <https://www.icrc.org/eng/resources/documents/article/other/57jqcr.htm>.
44. *Syria: Does Russia Always Use a Veto at the UN Security Council?*, BBC (Apr. 16, 2018), <https://www.bbc.com/news/world-43781954>.
45. Hannah Elis-Peterson, et al., *World Reacts to Overnight Strikes on Syria by US, UK, and French Forces*, THE GUARDIAN (Apr. 14, 2018), <https://www.theguardian.com/world/2018/apr/14/airstrikes-syria-world-reacts-bombing-us-uk-french-forces>.
46. Brent Sadler and Christiane Amanpour, *NATO Attack on Yugoslavia Begins*, CNN (Mar. 24, 1999), <http://www.cnn.com/WORLD/europe/9903/24/kosovo.strikes/>.

TODD BUCHWALD: I think, whether rightly or wrongly, with the way international law works it *does* make a difference. I think *clearly* something's changing, and peoples' willingness to accept this kind of thing is way higher, and goes up more and more, because of all the atrocious behavior we see in Syria. Whether a new legal rule emerges is not necessarily the same question. When you look at the way the president talked about what he had authorized, he didn't really talk about it in terms of humanitarian intervention concepts. He talked about it in terms, like you're talking about, of the special threat that weapons of mass destruction pose to U.S. security.⁴⁷ He's dealing with it in a situation where U.S. troops are already in the theatre. And it seems to me that, in a not completely elegant way he's groping for a self-defense kind of explanation for what he's doing. But what's interesting is that he's justifying what he's doing by an appeal to a humanitarian doctrine. But some scholars have opined that if the real *rationale* were humanitarian intervention, there were probably ways to save more lives than bombing those chemical facilities. If the idea is to get your most humanitarian bang for the buck, this wasn't it. There's a different explanation for why this happened. That's at least one way to look at it.

MICHAEL SCHARF: Milena?

MILENA STERIO: The other thing that I would mention that's really important regarding this particular intervention in April of 2018 is the rhetoric used by the States—particularly the U.K. The U.K. government specifically talked about humanitarian intervention and how this was legal under that doctrine.⁴⁸ When you go back to the Kosovo case, the State Department was very explicit that Kosovo was *sui generis*; it wasn't supposed to create any kind of a precedent. They said “these were unique circumstances. We're not arguing that humanitarian intervention is actually legal.” In the Kosovo case, others talked about how that intervention was legitimate but not legal, and there was moral authority for it even if there wasn't legal

47. *Full Transcript of Trump's Address on Syria Airstrikes*, WASH. POST (Apr. 13, 2018), https://www.washingtonpost.com/news/post-politics/wp/2018/04/13/full-transcript-of-trumps-address-on-syria-airstrikes/?utm_term=.c0ded632ac11.

48. *UK's Theresa May Tells Lawmakers: Syria Strikes Were Legal and Moral*, NBC (Apr. 16, 2018), <https://www.nbcnews.com/news/world/uk-s-theresa-may-tells-lawmakers-syria-strikes-were-legal-n866386>.

authority.⁴⁹ Now, the U.K. government is saying: “this is humanitarian intervention, this is legal.” And the U.S. government is basically making statements like, “we’re in complete agreement with the U.K.”⁵⁰

MICHAEL SCHARF: Let me ask you, so Nikki Haley, the ambassador to the United Nations from the United States, *said that* at the Security Council. There is a doctrine in international law that if a country adopts another country’s position or other group’s positions—if they ratify it—they can be held to be responsible for it. Isn’t this kind of language that Nikki Haley used, when she said “we are in lockstep and in complete agreement with the U.K.” isn’t that close to a case of adoption under that doctrine?⁵¹ The adoption doctrine was once used in the International Court of Justice in the case of Iran’s adoption of the student protestors’ attack and takeover of the U.S. embassy. The International Court of Justice said the government of Iran is now responsible because they applauded that action, and because they said that they agreed with it. How is this any different?⁵² Todd?

TODD BUCHWALD: I think Nikki Haley’s words reflected a sort of *purposeful* ambiguity. “We’re in lockstep with them” is another way of just saying we were supportive of our allies. If you go back to the 1999 NATO intervention in Serbia, that is when the United Kingdom first said that humanitarian intervention was lawful.⁵³ The U.K. used the doctrine again to justify the imposition of no-fly zones to protect Kurds and Shi’ites in Iraq. They had their theory, which was a humanitarian intervention theory. And the U.S. had its own theory, which was not based on humanitarian intervention. To me, what I see going on is a long history of the United States coming up

49. See David Lefkowitz, *On Moral Arguments against a Legal Right to Unilateral Humanitarian Intervention*, 20 PUB. AFF. Q. 115 (Apr. 2006), <http://www.jstor.org/stable/40441432>.

50. Steven A. Engel, Memorandum Opinion for the Counsel to the President, April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities (May 31, 2018) (slip opinion), *available at* <https://www.justice.gov/olc/opinion/file/1067551/download>.

51. Nicole Gaouette, Richard Roth and Elizabeth Joseph, *Haley Says US ‘Locked and Loaded,’ Prepared to Maintain Pressure on Syria*, CNN (Apr. 14, 2018), <https://www.cnn.com/2018/04/14/politics/un-meeting-syria-strikes/index.html>.

52. See United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. Rep. 3 (May 24), *available at* <https://www.icj-cij.org/files/case-related/64/064-19800524-JUD-01-00-EN.pdf>.

53. Marc Weller, *Syria Air Strikes: Were They Legal?*, BBC (Apr. 14, 2018), <https://www.bbc.com/news/world-middle-east-43766556>.

with a different rationale, other than humanitarian intervention, to justify its actions. For it to be real customary international law, state officials are going to have to stand up and say, clearly, “this is what we think.”

MICHAEL SCHARF: Paul, what do you think?

PAUL WILLIAMS: Michael, I think the Brits have this right. The Brits realize that in today’s world, you’re going to need to engage in humanitarian intervention in cases like Kosovo and cases in Syria for your own national security and also just to protect, quite frankly, humanity. The Americans, for decades, have been dodging this question. The silliness of, “it’s illegal but it’s legitimate” and any possible rationale we could come up with. Quite frankly, it’s time for the U.S. government—and I think the Trump administration to a degree, has—to embrace that doctrine.²² The U.S. Department of Justice Office of Legal Counsel opinion on the Syria airstrikes talked about the relationship between the humanitarian catastrophe from use of chemical weapons against civilians and U.S. security interests, so the United States is inching towards humanitarian intervention. But it’s time for the Americans to be serious; we *are* doing humanitarian intervention. Let’s create a legal framework, like the British have, for those interventions. Let’s do it in a limited circumstance, with limited scope, with as little force as possible, but let’s create a legal framework around it. Let’s not have it run free range around the globe because that’s when the Russians, the Chinese, and others will take advantage of a wobbly legal doctrine.

MICHAEL SCHARF: I will note that Harold Koh, who was the former legal advisor at the State Department, has chastised both the Democratic and Republican administrations of the United States for not being specific when they do humanitarian intervention and doing, instead, what Todd was describing⁵⁴—having these factors, and saying it’s *sui generis*, which means there’s no precedent, just “this is an exceptional case.” Koh said the risk of the U.S. approach is that other countries will abuse the precedent because the U.S. is creating a very amorphous precedent. It’s not that they’re creating *no* precedent, which is what—I think—the U.S. hopes is happening. Instead, they are creating a precedent, but it’s one where they are letting the genie

54. See Harold Koh, *Humanitarian Intervention: Time for Better Law*, 111 *AJIL* UNBOUND 287 (Oct. 2, 2017), <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/humanitarian-intervention-time-for-better-law/05B23622D7C19B2B3BF4BD05D693BD0F/core-reader>.

out of the bottle and people can interpret it in all different ways. I think that's what you're getting at. Is that right, Paul?

PAUL WILLIAMS: Yes, the Russians have used a version of this humanitarian intervention for their intervention in South Ossetia, Abkhazia, and Crimea, Eastern Ukraine. None of those are humanitarian interventions that would be justified by the U.K. rationale.⁵⁵

MICHAEL SCHARF: But the answer is not to say, then, that there shouldn't *be* any humanitarian interventions, but to cabin it off with some very precise rules.

PAUL WILLIAMS: Right.

MILENA STERIO: Well Michael, Russia is citing the Kosovo precedent,⁵⁶ although the State Department is saying it's not a precedent.⁵⁷

MICHAEL SCHARF: This is Harold Koh's point.

MILENA STERIO: Exactly. And Harold Koh said that we, as lawyers, shouldn't be—I think he called us “potted plants.”⁵⁸ That it is our duty to get out there.

MICHAEL SCHARF: Get out there first and articulate clear doctrine.

MILENA STERIO: Exactly.

PAUL WILLIAMS: We're creating precedent, let's stop pretending we're not creating precedent.

MICHAEL SCHARF: So, one of the lawyers in the studio is an international prosecutor. Let me bring Jim Johnson back into the conversation. Jim, what is being done to pave the way for war crimes

55. Marc Weller, *Analysis: Why Russia's Crimea Move Fails Legal Test*, BBC (Mar. 7, 2014), <https://www.bbc.com/news/world-europe-26481423>.

56. Irina Filatova, *The Kosovo Precedent*, GUARDIAN (Feb. 23, 2008), <https://www.theguardian.com/commentisfree/2008/feb/23/thekosovopr ecedent>.

57. *Id.*

58. Harold Koh, *Syria and the Law of Humanitarian Intervention (Part III - A Reply)*, EJIL:TALK! (Oct. 12, 2013), <https://www.ejiltalk.org/syria-and-the-law-of-humanitarian-intervention-part-iii-a-reply/>.

trials of President Assad and others in Syria that are using chemical weapons, that are using barrel bombs, that are torturing people—and seem to be getting away with it?⁵⁹

JAMES JOHNSON: Well, Michael, as we mentioned a few minutes ago, one of the concerns right now is that for many of these leaders of rogue regimes, there is no option to prosecute them—as in the case of Syria.⁶⁰

MICHAEL SCHARF: What about the European countries which have launched prosecutions of Syrians based on universal jurisdiction in their national courts?⁶¹ Is that working?

JAMES JOHNSON: There have been some cases brought against lower figures but they have not pursued a case against President Assad as he is protected by Head of State immunity. And when you look from an international perspective, there does not seem to be an option to prosecute him.⁶² Attempts to either create an ad hoc tribunal, or to refer this case to the International Criminal Court, have been vetoed by Russia and others in the Security Council. But that doesn't mean that steps are not being taken. The most critical element of cases of war crimes and crimes against humanity is to get in and to collect and preserve the evidence.

MICHAEL SCHARF: And that's being done?

JAMES JOHNSON: That is being done, and initiatives are taking place to help that process along. First, really, since the start of the war in Syria, several NGO's have been attempting to collect and gather evidence in Syria and, most importantly, to preserve that evidence. And, now, the United Nations has taken steps. The General Assembly has established the International Independent and Impartial Mechanism, which has been created to collect, collate, and preserve evidence of war crimes in Syria—so that eventually, if there is a

59. Terry Atlas, *Hawkish Advisors Get Key Trump Roles*, ARMS CONTROL ASSN. (May 1, 2018), <https://www.armscontrol.org/act/2018-05/news/hawkish-advisers-get-key-trump-roles>.

60. Eliza Mackintosh, *War Crimes Prosecutor Quits Syria Inquiry Over UN Inaction*, CNN (Aug. 7, 2015, 7:57 AM), <https://www.cnn.com/2017/08/07/middleeast/syria-war-crimes-investigator-del-ponte-resigns/index.html>.

61. Maria Elena Vignoli, *These are the Crimes We Are Fleeing: Justice for Syria in Swedish and German Courts*, HUM. RTS. WATCH (Oct. 3, 2017), <https://www.hrw.org/report/2017/10/03/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts>.

62. *Id.*

prosecution that can indeed take place, it will.⁶³ You look at the killing fields of the Khmer Rouge in Cambodia, for example: it was thirty years after they fell from power that Cambodia finally created a tribunal that could try the genocide in Cambodia.⁶⁴

MICHAEL SCHARF: Meanwhile, if countries are getting impatient about prosecutions, I do note that Pulitzer prize winning journalist Bob Woodward's new book said that the White House had considered, seriously, the assassination of President Assad.⁶⁵ Let me turn to Paul: What's your take on that? What are the pros and cons of using assassination as a policy tool against rogue leaders?

PAUL WILLIAMS: Wow, that'd be the ultimate humanitarian intervention. It's highly dangerous, it's highly unpredictable, and it's highly destabilizing. I think this would be a return to the bad old days of targeting individual leaders, which is something—although we're quite extensively engaged in targeting terrorist leaders—we've very much moved away from the days of targeting heads of State. To do so without a plan for State building, or without a plan for an alternative government, could be very dangerous and very destabilizing, and wouldn't accomplish the objective of stopping the atrocities on the ground.

MICHAEL SCHARF: And I suppose it could turn the globe into a version of the Old West, where countries are just trying to assassinate each other's leaders left and right?

PAUL WILLIAMS: Yes.

MICHAEL SCHARF: Right, now there is a taboo against that.

PAUL WILLIAMS: There is a taboo, and that taboo supports our strategic interests.

MICHAEL SCHARF: Alright, well, it's time for another short break. When we return, we'll talk about some of the other rogue regime flashpoints around the world. Back in a moment.

63. G.A. Res. 71/248 (Dec. 21, 2016).

64. See Wolfgang Form, *Justice 30 Years Later? The Cambodian Special Tribunal for the Punishment of Crimes Against Humanity by the Khmer Rouge*, 37 J. NAT'L. AND ETHNICITY 889 (2009).

65. Ben Jacobs, *Trump 'Wanted Assad Assassinated': Key Claims in Bob Woodward's Book*, THE GUARDIAN (Sept. 4, 2018), <https://www.theguardian.com/us-news/2018/sep/04/donald-trump-bob-woodward-fear-syria-assad-claims>.

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MICHAEL SCHARF: This is Michael Scharf and we're back with Talking Foreign Policy. I'm joined today by some of the world's foremost experts on dealing with rogue nations. In this final segment of our broadcast, I want to ask our experts to discuss some of the other States that the Trump administration has labeled as rogue regimes, starting with Iran.⁶⁶ Paul Williams: Tell us why Iran should be on our radar as a rogue State.

PAUL WILLIAMS: Well, Mike, if we were to employ Todd's *rogueness* scale, we'd find that the Iranians are at the top of the scale. When the Iranians aren't busy attempting to build a nuclear weapons or ballistic missile delivery systems for those nuclear weapons, they're overseeing tens of thousands of elite Iranian troops operating in Syria, fighting against the Syrian opposition, and committing atrocities against the Syrian people. They're also funding and directing Hezbollah and their operations inside Syria.⁶⁷ They're heavily engaged in Yemen, providing assistance and weapons to the Houthis.⁶⁸ They're providing ballistic missiles to the Houthis in Yemen that can reach Riyadh—and *have* reached Riyadh—the capital of Saudi Arabia.⁶⁹ They still maintain a vast terrorist network throughout the Middle East and North Africa.⁷⁰ They basically are a highly destabilizing actor in the region.

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66. *At U.N., Trump Singles out 'Rogue' Nations North Korea and Iran*, N.Y. TIMES (Sept. 19, 2017), <https://www.nytimes.com/2017/09/19/world/americas/united-nations-general-assembly.html>.
67. Matthew Levitt, *Hezbollah Finances: Funding the Party of God*, WASH. INST. FOR NEAR EAST POL'Y (Feb. 2005), <https://www.washingtoninstitute.org/policy-analysis/view/hezbollah-finances-funding-the-party-of-god>.
68. Farzin Nadimi and Michael Knights, *Iran's Support to Houthi Air Defenses in Yemen*, WASH. INST. FOR NEAR EAST POL'Y (Apr. 4, 2018), <https://www.washingtoninstitute.org/policy-analysis/view/irans-support-to-houthi-air-defenses-in-yemen>.
69. Stephen Kalin, *Saudi Arabia Intercepts Missile over Riyadh: Al Arabiya*, REUTERS (Apr. 11, 2018, 10:47 AM), <https://www.reuters.com/article/us-saudi-security/saudi-arabia-intercepts-missile-over-riyadh-al-arabiya-idUSKBN1HI28K>.
70. Carol Morello, *Terrorism is Down Worldwide, but State Department says Iran Maintains 'near-global reach'*, WASH. POST (Sept. 19, 2018), https://www.washingtonpost.com/world/national-security/terrorism-is-down-worldwide-but-state-department-says-iran-maintains-near-global-reach/2018/09/19/fc3a85b1-dbac-4496-a295-b78599cd6720_story.html?utm_term=.c0376a1bb32e.

MICHAEL SCHARF: Alright, well, the Iranians do sound, from that description, like the bad boys of the Middle East. We, until recently, had an Iranian nuclear accord, which the United Nations and the inspectors said was actually working.⁷¹ Milena, why did the United States pull out of that?

MILENA STERIO: The Iranian nuclear accord, which was signed back in 2015, provided essentially that Iran was temporally halted in its production of enriched uranium for military purposes. The accord was going to be valid for 15 years. In exchange for that, there was an easing and lifting of U.N. sanctions against Iran.⁷² So, Iran had, definitely, a financial incentive to stay in the agreement. President Trump, back when he was candidate Trump, pretty often talked about the Iran agreement as a bad deal that he wanted to pull out of. And now he has announced that the U.S. is indeed pulling out.⁷³ There doesn't seem to be a Plan B, so it's unclear what happens now in terms of U.S. policies vis-à-vis Iran. In terms of explaining *why* he pulled out of the agreement, some commenters think it was all about undermining President Obama's legacy. If you view the Iran agreement as one of the high points of the Obama presidency, it has to do with undermining that.⁷⁴ Also, it has to do with turning more strategically towards our allies such as Israel, and perhaps Saudi Arabia,⁷⁵ and the influence of some more hawkish advisors in the Trump Administration, such as, for example: Mike Pompeo, who is

71. Erin Cunningham, *Iran Adhering to Nuclear Deal with World Powers, U.N. Watchdog Says*, WASH. POST (Aug. 31, 2017), https://www.washingtonpost.com/world/iran-adhering-to-nuclear-deal-with-world-powers-un-watchdog-says/2017/08/31/cb408e7d-bc9a-4874-bbdf-001f919a8c86_story.html?utm_term=.6a1f32f20b59.

72. William J. Broad and Sergio Pecanha, *The Iran Nuclear Deal-A Simple Guide*, N.Y. TIMES (Jan. 15, 2015), <https://www.nytimes.com/interactive/2015/03/31/world/middleeast/simple-guide-nuclear-talks-iran-us.html>.

73. Catherine Lucey and Josh Lederman, *Trump Declares U.S. Leaving 'Horrible' Iran Nuclear Accord*, CHI. TRIB. (May 8, 2018), <https://www.chicagotribune.com/news/nationworld/politics/ct-iran-nuclear-deal-20180508-story.html>.

74. Anthony Zurcher, *Three Reasons Behind Trump Ditching Iran Deal*, BBC (May 8, 2018), <https://www.bbc.com/news/world-us-canada-43902372>.

75. *Iran Nuclear Deal: Winners and Losers from Trump's Decision to Quit*, BBC (May 9, 2018), <https://www.bbc.com/news/world-middle-east-44055174>.

now Secretary of State, and John Bolton, who is now the National Security Advisor.⁷⁶

MICHAEL SCHARF: You said there didn't seem to be a Plan B, but prior to being appointed to the position of National Security Advisor, John Bolton did publicly advocate Israeli airstrikes against Iran's nuclear facilities.⁷⁷ Ambassador Todd Buchwald: what would be the pros and cons of either U.S. or Israeli airstrikes against those nuclear facilities?

TODD BUCHWALD: Well, there are actual examples of the Israelis attacking nuclear reactors in Iraq in 1981, a reactor called Osirak.⁷⁸ At that time, the United States actually condemned the Israelis, with President Reagan mitigating a little bit by saying the Israelis believed what they were doing was right. However, there was a clear condemnation.⁷⁹ There was another attack by the Israelis in 2007—same idea, though it wasn't acknowledged until much later.⁸⁰ It's a hard situation. I think that legal concepts will only dictate to a certain degree, and not that great of a degree, what countries decisions will be in using force in situations where they feel themselves under existential threat. But, as a practical matter, if you're thinking about something like this, you'd have to think through the situation. Can the reactors be destroyed? What are the benefits? What are the costs? How are you going to mitigate the costs? And—very importantly—how is the world is going to react even if you *can* pull it off. And where *you* will end up on the *rogueness* scale? I think it's a lot easier to say—when you're out of government—that this is a good

76. Terry Atlas, *Hawkish Advisors Get Key Trump Roles*, ARMS CONTROL ASSN. (May 1, 2018), <https://www.armscontrol.org/act/2018-05/news/hawkish-advisers-get-key-trump-roles>.

77. Vaughn P. Shannon, *US Reaction to the 2009 Iranian Election: The End of "Regime Change" Politics*, 26 J. IRAN. RES. AND ANALYSIS 47, 55 (2009).

78. David K Shipler, *Israeli Jets Destroy Iraqi Atomic Reactor; Attack Condemned by U.S. and Arab Nations*, N.Y. TIMES (June 9, 1981), <https://www.nytimes.com/1981/06/09/world/israeli-jets-destroy-iraqi-atomic-reactor-attack-condemned-us-arab-nations.html>.

79. Steven R. Weisman, *Regan Asserts Israel Had Cause to Mistrust Iraq*, N.Y. TIMES (June 17, 1981), <https://www.nytimes.com/1981/06/17/world/regan-asserts-israel-had-cause-to-mistrust-iraq.html>.

80. Stephen Farrell, *Israel Admits Bombing Suspected Syrian Nuclear Reactor in 2007, Warns Iran*, REUTERS (Mar. 20, 2018, 11:13 PM), <https://www.reuters.com/article/us-israel-syria-nuclear/israel-admits-bombing-suspected-syrian-nuclear-reactor-in-2007-warns-iran-idUSKBN1GX09K>.

idea, than to be in government and do it. I suspect that this is not really in the cards for the foreseeable future.

MICHAEL SCHARF: I hope you're right about that. Paul Williams: Let's go to a slightly different part of the globe. You've been involved in peace negotiations in both Yemen and the Sudan. Can you bring us up to date on what the situation is in those countries and what policy options you would recommend for the United States with regard to them?

PAUL WILLIAMS: As Todd pointed out, now that we're all out of government, we have lots of leeway to recommend policy options. So, I've got a few there. Both Yemen and Sudan have become never-ending wars. In Yemen, in particular, you've got a three- or four-way conflict by the parties in Yemen. But it's been a spill-in conflict with the Iranians and the Saudis heavily engaged in supporting the parties, and the Americans, the British, and the French providing a lot of weapons to our allies: the Saudis, the UAE, and others that are engaged.⁸¹ There are two problems with Yemen. One, there's no momentum for a peace process. Two, our allies—the Saudis—have incredibly bad aim, and thousands of civilians have been killed by American-made weapons.⁸² It's time to bring an end to the conflict in Yemen. The Americans have a lot of leverage that they can put on the Saudis and the others to be serious about engaging the peace process. And, with the continued sanctions on Iran, there's also international leverage to get the Iranians to be serious. But, it's going to have to be the Americans, and their allies, which pressure our allies to come to the table and negotiate a peace. In Sudan, we've got nearly 30 years of conflict—this is the Darfur genocide, and it continues.⁸³ There's also expanded conflict in Southern Kordofan and Blue Nile.⁸⁴ This is a case where we actually have a tribunal that's engaged. The International Criminal Court has indicted the president of Sudan for crimes against humanity, and yet he wanders the globe unencumbered.⁸⁵ We need to be serious about putting pressure on

81. The Editorial Board, *Why Are U.S. Bombs Killing Civilians in Yemen?*, N.Y. TIMES (Aug. 28, 2018), <https://www.nytimes.com/2018/08/28/opinion/us-yemen-saudi-arabia-trump-civilian-casualties.html?register=google>.

82. *Id.*

83. Mohamed Nureldin Abdallah, *Sudan Events of 2017*, HUM. RTS. WATCH (Sept. 23, 2017), <https://www.hrw.org/world-report/2018/country-chapters/sudan>.

84. *Id.*

85. *Where Can Sudan's President Omar al-Bashir Go Now?*, BBC (June 15, 2015), <https://www.bbc.com/news/world-africa-33140917>.

countries like South Africa—and other countries which host president Bashir in the face of the International Criminal Court’s arrest warrant—and threaten sanctions if they do not send Omar Bashir to the ICC to stand trial for crimes against humanity and genocide. Until we are serious about ending these conflicts, and until we use the leverage that we have, we are going to see these wars continue without end and continued genocide, crimes against humanity, and civilian casualties.

MICHAEL SCHARF: Let me bring Jim in on that question. So, Jim Johnson: You have prosecuted a head of State, Charles Taylor, of Liberia, at the Special Court for Sierra Leone. As Paul mentioned, al Bashir, the president of the Sudan, has been indicted for genocide, and he just pops over to neighboring countries. He’s even gone as far as China.⁸⁶ They allow him to come in as an honored guest. The International Criminal Court screams and yells, “he’s under indictment, you have to arrest him, you have to send him to us,” and nothing happens. The International Criminal Court, takes the case to the Security Council and says, “you’re the Security Council, you sent this case to us, do something!” And they don’t do anything.⁸⁷ What does this tell us about the state of international criminal justice?

JAMES JOHNSON: Well, Michael, it doesn’t necessarily tell us anything good. States have always and will continue to act in what they see is their best interest. One of the largest impediments that the modern international tribunals have had from the start—when you look at the Yugoslavia Tribunal, the Rwandan Tribunal, our tribunal, and now the ICC—is getting States to live up to their obligations to these tribunals. It took us three years to bring Charles Taylor into our custody after we indicted him.⁸⁸

MICHAEL SCHARF: Well, fortunately international criminal law is patient and persistent. We’re out of time. Todd Buchwald, Jim Johnson, Paul Williams, and Milena Sterio – thank you for your insights! This is Michael Scharf and you’ve been listening to Talking Foreign Policy.

86. *Beijing Defends Sudan President Bashir’s Presence at China-Africa Summit*, AGENCIA EFE (Sept. 3, 2018), <https://www.efe.com/efe/english/portada/beijing-defends-sudan-president-bashir-s-presence-at-china-africa-summit/50000260-3737446>.

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Thu Nov 7 15:49:53 2019

Citations:

Bluebook 20th ed.

Todd F. Buchwald; James Johnson; Michael P. Scharf; Milena Sterio; Paul R. Williams, *Talking Foreign Policy: Responding to Rogue States*, 51 *Case W. Res. J. Int'l L.* 267 (2019).

ALWD 6th ed.

Todd F. Buchwald; James Johnson; Michael P. Scharf; Milena Sterio; Paul R. Williams, *Talking Foreign Policy: Responding to Rogue States*, 51 *Case W. Res. J. Int'l L.* 267 (2019).

APA 6th ed.

Buchwald, T. F.; Johnson, J.; Scharf, M. P.; Sterio, M.; Williams, P. R. (2019). *Talking Foreign Policy: Responding to Rogue States*. *Case Western Reserve Journal of International Law*, 51, 267-292.

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Todd F. Buchwald; James Johnson; Michael P. Scharf; Milena Sterio; Paul R. Williams, "Talking Foreign Policy: Responding to Rogue States," *Case Western Reserve Journal of International Law* 51 (2019): 267-292

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Buchwald, Todd F., et al. "Talking Foreign Policy: Responding to Rogue States." *Case Western Reserve Journal of International Law*, 51, 2019, p. 267-292. HeinOnline.

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Todd F Buchwald and James Johnson and Michael P Scharf and Milena Sterio and Paul R Williams, 'Talking Foreign Policy: Responding to Rogue States' (2019) 51 *Case W Res J Intl L* 267

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