

DIGEST OF STATE PRACTICE  
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INTRODUCTION

Scholars, legal advisors and students working on the *jus ad bellum* often face a daunting challenge pulling together relevant primary materials. Indeed, while a number of key sources are relatively easy to consult (Security Council meeting records and most other UN documents are readily accessible through the UN Official Documentation System), others are dispersed and at times difficult to identify. While a handful of states publish national digests of practice in international law,<sup>1</sup> the vast majority do not. Furthermore, in contrast to the law of armed conflict,<sup>2</sup> there is no international institution that consistently keeps track of relevant practice. As a result, identifying exchanges of claims and counter-claims—or even establishing the relevant facts—can be a cumbersome exercise. This is particularly the case in relation to small-scale incidents that generate little or no international attention.

The aim of the present ‘Digest of State Practice’ is precisely to address this lacuna and to provide a tool for scholars, legal advisors and students by systematically collecting all relevant state practice and *opinio iuris* in the field of the *jus ad bellum* on a periodic basis. By so doing, the Digest aspires to facilitate methodological rigour in academic research. It also aims at promoting a better understanding of the normative framework and its underlying challenges by

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<sup>1</sup> See, in particular, the ‘Digest of United States Practice in International Law’, published by the US State Department, [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm) (accessed 20 May 2014). As is well known, several academic journals moreover exist that keep track of a specific state’s practice in international law (eg *American Journal of International Law*, *Revue belge de droit international*, *Revue générale de droit international public*, *German Yearbook of International Law*, etc.).

<sup>2</sup> See the Customary Law Database of the International Committee of the Red Cross at [www.icrc.org/customary-ihl/eng/docs/home](http://www.icrc.org/customary-ihl/eng/docs/home).

addressing relevant practice and *opinio* that may remain below the academic radar, namely more small-scale incidents (as opposed to large-scale military interventions) or practice of various ‘non-Western’ states.

The Digest provides a periodic *descriptive* overview of relevant evolutions in state practice and *opinio iuris*. In other words, the goal is *not* to provide critical assessments of specific interventions, new security doctrines, etc (which will receive ample attention in the articles published in this journal), but rather to bring together the relevant sources in a structured and transparent manner.

As far as its scope is concerned, the Digest does not claim exhaustivity, but has the ambition to provide as comprehensive an overview of relevant practice and *opinio* as possible. It covers unilateral uses of force (irrespective of the justification put forward) and Security Council-authorized Chapter VII operations, as well as interventions by invitation, ‘rescue of nationals’ operations, etc. Consensual peacekeeping operations and forcible actions that take place in the context of a purely non-international armed conflict are, in principle, excluded.

Furthermore, the Digest will cover both ‘verbal’ and ‘physical’ practice. It will also deal with both ‘concrete’ instances involving forcible intervention, as well as more ‘abstract’ practice (eg debates within the UN General Assembly that are not directly linked to a specific case of use of force). In other words, attention is paid not only to (i) military interventions that give rise to diplomatic exchanges (whether or not at the UN level), but also to (ii) military interventions (including small-scale cross-border uses of force) that are not accompanied by any ‘verbal’ practice. Last but not least, the Digest details (iii) strictly ‘verbal’ practice, whether at the international, regional or national level (eg national military doctrines or domestic legislation).

The compilation of this Digest draws heavily on the input received from a group of ‘regional co-ordinators’, each of whom tracks relevant evolutions in one of several regions (the Americas; Europe; Asia and Oceania; Northern Africa and the Middle East; Sub-Saharan Africa). The journal editors-in-chief therefore wish to express their sincere gratitude to those ‘pioneers’ who helped make this first Digest a reality: Daniel Joyner (University of Alabama), Russell Buchan (University of Sheffield), Sten Verhoeven (University of Macau), Raphaël Van Steenberghe (Université de Louvain-la-neuve), Kenneth Chan (University of Leuven), Patrick Butchard (University of Liverpool) and Ben Murphy (University of Liverpool).

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## I. AFRICA

### Eastern DRC—Congolese and UN forces fight rebel groups— tension with Rwanda

Following the extension of the mandate of the UN Organization Stabilization Mission in the DRC (MONUSCO) on 28 March 2013,<sup>3</sup> MONUSCO's 'Intervention Brigade', acting alongside the Congolese armed forces, continued offensive operations against rebel groups, in particular against the M23 rebels.<sup>4</sup>

On various occasions, however, Rwanda was accused of providing aid to Congolese rebels. According to the Midterm report of the UN Groups of Experts on the DRC, M23 commanders regularly met with Rwandan army officers.<sup>5</sup> On 23 July 2013, US State Department spokeswoman Jen Psaki '[called] upon Rwanda to immediately end any support to the M23, withdraw military personnel from eastern DRC, and follow through on its commitments under the framework'.<sup>6</sup> Allegations of Rwandese support to the M23, while denied by Rwanda,<sup>7</sup> were fuelled by Rwanda's obstruction (as a non-permanent Security Council member sitting on the Congo sanctions committee) of Security Council sanctions against senior M23 commanders.<sup>8</sup>

<sup>3</sup> UNSC Res 2098 (28 March 2013) UN Doc S/RES/2098. The resolution, adopted under Chapter VII UN Charter, authorises the Intervention Brigade to use 'all necessary means' *inter alia* to act in a 'robust, mobile and versatile manner' to prevent the expansion of all armed groups, to neutralize them, and to disarm them (para 12) At the same time, the Resolution emphasises that it does not intend to create a 'precedent' or to cause 'any prejudice to the agreed principles of peacekeeping' (para 9). See also UNSC Verbatim Record (28 March 2013) UN Doc S/PV.6943.

<sup>4</sup> See eg Kenny Katombe, 'Congo Army Battles M23 Rebels Near Eastern City of Goma', *Reuters*, 26 August 2013; UNSC 'Press Statement on Attacks Against United Nations Stabilization Mission in Democratic Republic of Congo' (28 October 2013) UN Doc SC/11163

<sup>5</sup> 'Midterm Report of the Group of Experts on the Democratic Republic of the Congo', annexed to UN Doc S/2013/433 (19 July 2013) § 44.

<sup>6</sup> US State Department, Daily Press Briefing by spokesperson Jen Psaki, 23 July 2013, [www.state.gov/r/prs/dpb/2013/07/212358.htm#GREATLAKESREGION](http://www.state.gov/r/prs/dpb/2013/07/212358.htm#GREATLAKESREGION) (accessed 12 May 2014). See also: 'US Warns Rwanda Over Support for DRC rebels', *Al Jazeera*, 24 July 2013; Lesley Wroughton and Christopher Wilson, 'US Urges Restraint as Fighting Escalates in Eastern Congo', *Reuters*, 25 August 2013.

<sup>7</sup> For example, Richard Lough and Edmund Blair, 'Rwanda Dismisses US Charges it backs Congo Rebels', *Reuters*, 30 July 2013.

<sup>8</sup> Louis Charbonneau, 'Rwanda Blocks Proposed UN Sanctions for Two Congo Rebels', *Reuters*, 28 August 2013. Rwanda suggested that sanctions might undermine peace talks between the Congolese authorities and the M23 movement.

In turn, Rwanda in late August 2013 accused Congo of shelling its territory and said it would not tolerate such 'provocation', raising fears that violence in eastern Congo could erupt into a regional conflict. According to Rwanda's Minister of Foreign Affairs:

The persistent shelling of Rwandan territory is unacceptable, as it would be to any sovereign nation. Rwandan civilians are being targeted by DRC forces. We have remained restrained for as long as we can but this provocation can no longer be tolerated. We have the capacity to determine who fired at us and will not hesitate to defend our territory. Rwanda has a responsibility to protect its population.<sup>9</sup>

Minister Mushikiwabo said the government of Rwanda had repeatedly urged the DRC government to stop attacks on its territory but instead violations had increased in frequency and intensity:

The shelling by FARDC and FDLR has been a sustained strategy of provocation designed to draw Rwanda into the conflict. Rwanda is the most willing signatory to the peace and security framework and we have done everything we can to contribute durable peace in the Eastern DRC. But we will not stand by while the army of one of the signatories continues to shell civilian targets in Rwanda.<sup>10</sup>

UN peacekeepers confirmed firing incidents into Rwandan territory originating from M23 positions, but reported not having witnessed any Congolese army firing into Rwandan territory.<sup>11</sup> According to the DRC, Rwanda's accusations should be read as a sign that Kigali intended to intervene openly in the conflict.<sup>12</sup> The Security Council on 29 August issued a press statement in which the Council members 'expressed concern at reports of repeated mortar shells and bombs from Democratic Republic of the Congo territory landing in Rwandan territory, and called for a thorough investigation into the sources of these shells and bombs by the Expanded Joint Verification Mechanism (EJVM).<sup>13</sup>

Rwanda again accused the DRC of shelling its territory during clashes with M23 rebels in late October.<sup>14</sup> Rwanda's UN ambassador reportedly warned the other Security Council members in a closed meeting that it would not tolerate shelling of its territory and was in a position to respond militarily.<sup>15</sup> In

<sup>9</sup> Republic of Rwanda, 'Shelling of Rwanda by DRC Forces Intensifies', Kigali, 29 August 2013, [www.gov.rw/SHELLING-OF-RWANDA-BY-DRC-FORCES-INTENSIFIES?lang=en](http://www.gov.rw/SHELLING-OF-RWANDA-BY-DRC-FORCES-INTENSIFIES?lang=en) (accessed 15 May 2014).

<sup>10</sup> *Ibid.* According to the Rwandan government, a total of 38 bombs and rockets had been fired into Rwanda late August. See also Nicholas Kulish, 'Rwanda warns Congo after shells hit its territory', *New York Times*, 29 August 2013.

<sup>11</sup> Louis Charbonneau, Michelle Nichols and Philip Barbara, 'Shelling into Rwanda Came from Congo Rebel Areas, UN Says', *Reuters*, 29 August 2013.

<sup>12</sup> Jenny Clover and Pete Jones, 'Rwanda Accuses Congo of Shelling as Tensions Mount', *Reuters*, 29 August 2013.

<sup>13</sup> UNSC (29 August 2013) Press Release SC/11108.

<sup>14</sup> Kenny Katombe, 'Rebels and Congo Army Clash; Rwanda Says it Was Shelled', *Reuters*, 25 October 2013.

<sup>15</sup> *Ibid.*

a press statement of 25 October, the US State Department expressed concern at ‘reports that at least one round landed across the border in Rwanda’ and ‘urgently [called] on all parties to exercise restraint to prevent military escalation of the conflict.’<sup>16</sup>

By the end of 2013, the MONUSCO Intervention Brigade and Congolese forces had achieved a military victory over the M23, bringing the M23 to accept a peace deal with the government.<sup>17</sup> MONUSCO subsequently shifted its focus to battling the Democratic Forces for the Liberation of Rwanda (FDLR) and the Allied Democratic Forces (ADF). In December 2013, the mission deployed unmanned aircraft—a first for UN peacekeeping operations—to monitor the border region.<sup>18</sup>

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### Congolese troops briefly detained by Angola

On 18 October the Republic of the Congo (Congo-Brazzaville) claimed that Angolan troops had crossed into Congolese territory and had encircled and detained a group of Congolese soldiers. Angola dismissed the accusations.<sup>19</sup> According to Angola’s foreign minister, Georges Chikoti, ‘There was never any incursion [by Angola], there were Congolese troops who got lost in Angolan territory, they met our troops and have now been returned to their country.’<sup>20</sup>

Mr Chikoti added that the two countries should keep working together to ensure that ‘the border line is visible to everyone so this kind of incident doesn’t happen again.’<sup>21</sup> A senior Congolese government official confirmed that the troops were released on 19 October.<sup>22</sup>

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### Sudan–South Sudan border incidents

After both sides agreed in March 2013 to set up a border buffer zone and resume cross-border oil flows in a bid to end hostilities after coming close to war in April 2012, South Sudan in early July accused Sudan’s army of launching

<sup>16</sup> US State Department, ‘Renewed Fighting in Eastern DRC’, Press Statement, Washington DC, 25 October 2013, [www.state.gov/r/pa/prs/ps/2013/10/215891.htm](http://www.state.gov/r/pa/prs/ps/2013/10/215891.htm) (accessed 16 May 2014).

<sup>17</sup> For example, Michelle Nichols, ‘UN Peacekeepers in Congo Focus on New Armed Groups’, *Reuters*, 6 October 2013; ‘Ban Welcomes Signing of Declarations between DR Congo-M23’, *UN News Centre*, 13 December 2013.

<sup>18</sup> ‘UN Forces Introduce Drones in Congo’, *Al Jazeera*, 4 December 2013.

<sup>19</sup> Christian Tsoumou, ‘Angolan Troops Enter Congo Republic, Seize Soldiers – Officer’, *Reuters*, 18 October 2013.

<sup>20</sup> Shrikesh Laxmidas, Ed Stoddard and Mike Collett-White, ‘Angola Denies Congo Incursion, says Lost Troops Entered its Territory’, *Reuters*, 21 October 2013.

<sup>21</sup> *Ibid.*

<sup>22</sup> ‘Angolan Troops Free Seized Congolese Soldiers: Local Official’, *Reuters*, 20 October 2013.

two separate attacks with planes and land troops near their disputed border.<sup>23</sup> According to a spokesman for South Sudan's army, two Sudanese MiG fighters had bombed military positions in the disputed Jau area, wounding four soldiers and two civilians.<sup>24</sup> Sudan denied the allegations and accused South Sudan of supporting rebels operating across the shared border—accusations which were in turn denied by the latter state.

In a Security Council debate dated 8 July, the representative of South Sudan recognised the existence of ongoing tensions between the two countries, yet also drew attention to positive signs, such as consultations at the highest political level.<sup>25</sup>

On 11 July, the UN Security Council unanimously passed resolution 2109(2013), extending the mandate of the UNMISS operation and urging it to redeploy to focus on South Sudan's hot spots. While the Chapter VII resolution focused primarily on intra-communal violence within South Sudan (in particular in the state of Jonglei), the Council also

[condemned] the repeated incidents of cross-border violence between Sudan and South Sudan, and [recognised] that the prevailing situation of tension and instability in South Sudan's border area with Sudan and outstanding issues from the Comprehensive Peace Agreement have adversely affected the security situation, while also noting that there has been a reduction in the violence in the border region<sup>26</sup>

Later in July, the African Union and IGAD launched the 'Ad Hoc Investigative Mechanism' (AIM) into allegations by the Republic of Sudan and the Republic of South Sudan, of continued support to, and harbouring of, armed groups operating against the other state.<sup>27</sup> While the mechanism was expected to complete its work in six weeks, its report was still outstanding at the end of 2013.

On 5 August 2013, Sudan claimed that one Sudanese was killed in a clash with troops from South Sudan after a patrol from South Sudan crossed the border and opened fire in the Heglig area.<sup>28</sup> The spokesperson for Sudan's army added that the situation was 'brought under control by the commanders of both sides' and had since 'stabilized'.<sup>29</sup>

In a Presidential Statement adopted shortly after the incident, the Security Council expressed grave concern about continued challenges to the implemen-

<sup>23</sup> Andrew Green, 'South Sudan Accuses Sudan of Attacks in Disputed Borderland', *Reuters*, 5 July 2013.

<sup>24</sup> *Ibid.*

<sup>25</sup> UNSC Verbatim Record (8 July 2013) UN Doc S/PV.6993, 6.

<sup>26</sup> UNSC Res 2109 (11 July 2013), UN Doc S/RES/2109.

<sup>27</sup> African Union Press Release, 'Launch of the Investigative Team on the Relations between Sudan and South Sudan' (22 July 2013) [http://au.int/en/sites/default/files/aucom\\_aim\\_22-07-2013.pdf](http://au.int/en/sites/default/files/aucom_aim_22-07-2013.pdf) (accessed 16 May 2014).

<sup>28</sup> Khalid Abdelaziz, Michael Georgy, Eric Beech and Jackie Frank, 'One Sudanese Soldier Killed in Clash with South Sudan', *Reuters*, 6 August 2013.

<sup>29</sup> 'Sudan-South Sudan Border Clash Kills One', *AFP*, 6 August 2013.

tation of the 2012 co-operation agreements between Sudan and South Sudan and urged the parties to carry them out fully and immediately.<sup>30</sup> The Council among other things recalled that resolution 2046 (2012) prohibited both states from supporting any rebel groups operating against the other state, while welcoming the establishment of the AU/IGAD AIM.

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### South Sudan—large-scale violent conflict erupts between rival factions—third states evacuate nationals

Heavy fighting erupted mid-December 2013 between rival political factions in South Sudan as President Salva Kiir accused former Vice-President Riek Machar of plotting a coup. In the face of a rapidly deteriorating security and humanitarian crisis that left hundreds of civilians dead and tens of thousands driven from their homes, including deadly attacks on a UN base, the Security Council authorised UN peacekeeping reinforcements.<sup>31</sup>

In consultation with the South Sudanese authorities the United Kingdom and the United States sent aircraft to Juba to evacuate their nationals from the country.<sup>32</sup> Four US troops were injured when their aircraft came under ground fire in the course of the evacuation operation.<sup>33</sup>

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<sup>30</sup> UNSC Presidential Statement 14 (2013) UN Doc S/PRST/2013/14.

<sup>31</sup> UNSC Res 2132 (24 December 2013) UN Doc S/RES/2132. See also: 'South Sudan: Assaultants Attack UN Base Sheltering Desperate Civilians', UN News Centre, 19 December 2013; 'South Sudan: Ban, Security Council Strongly Condemn Deadly Attack on UN Base', UN News Centre, 20 December 2013; 'Security Council Doubles UN Peacekeeping Force in South Sudan in Face of Spreading Conflict', UN News Centre, 24 December 2013.

<sup>32</sup> Evacuation of UK nationals: see eg UK government, 'UK Aircraft en Route to South Sudan to Evacuate British Nationals', 19 December 2013: <https://www.gov.uk/government/news/uk-aircraft-en-route-to-south-sudan-to-evacuate-british-nationals> (accessed 17 May 2014); 'UK to Airlift Britons from South Sudan Amid Fighting', *BBC News*, 19 December 2013; 'South Sudan: British Plane to Resume Evacuation', *BBC News*, 23 December 2013. Evacuation of US nationals, see eg US State Department, Press Statement, 'US Citizen Evacuation in South Sudan', 22 December 2013, [www.state.gov/r/pa/prs/ps/2013/219057.htm](http://www.state.gov/r/pa/prs/ps/2013/219057.htm) (accessed 17 May 2014); US Department of Defense, 'DOD Aids State Department in South Sudan Evacuation' (18 December 2013) [www.defense.gov/news/newsarticle.aspx?id=121366](http://www.defense.gov/news/newsarticle.aspx?id=121366) (accessed 17 May 2014); Phil Stewart and Missy Ryan, 'US Moves Marines to Africa as South Sudan Violence Rages', *Reuters*, 23 December 2013.

<sup>33</sup> US Department of Defense, 'Ground Fire Injures 4 US Troops in South Sudan', 21 December 2013: [www.defense.gov/news/newsarticle.aspx?id=121382&](http://www.defense.gov/news/newsarticle.aspx?id=121382&) (accessed 17 May 2014). The aircraft was allegedly attacked when approaching Bor, a city occupied by forces loyal to former Vice-President Machar. See also: 'South Sudan Evacuation Aircraft Fired On, US Troops Hurt', *BBC News*, 21 December 2013.



### Chad launches attack on Chadian rebels in Darfur

In November 2013, Chad reportedly launched a helicopter attack on Chadian rebels in Darfur, Sudan, and sent a military convoy to the region.<sup>34</sup> Although the relations between Chad and Sudan had previously been strained, ties had since been strengthened. There was speculation that the Chadian soldiers were deployed in support of Sudan's overall military plan to end the rebellion in Darfur. Officials declined to comment.

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### Kenya—Somalia—al-Shabaab attack on Westgate shopping mall in Nairobi

On 21 September 2013, unidentified gunmen attacked the Westgate shopping mall in Nairobi, Kenya. The attack, which lasted until 24 September, resulted in at least 67 deaths, including several attackers.<sup>35</sup> Responsibility for the attack was claimed by the Somali Islamist group al-Shabaab, which characterised it as retribution for Kenya's military deployment in Somalia (in particular in the context of 'Operation Linda Nchi' (2011–12)<sup>36</sup>). The attack was widely condemned, including by the UN Envoy for Somalia Nicholas Kay, who stressed that the 5,000 militants of al-Shabaab posed an international threat.<sup>37</sup> The Somali prime minister stated that Somalia was working closely with the Kenyan authorities and called for international support to combat al-Shabaab.<sup>38</sup>

In the wake of the attack, Kenya declared that it was 'at war' with al-Shabaab,<sup>39</sup> and cautioned Somalia to 'put its house in order'.<sup>40</sup> In reaction to repeated warnings of al-Shabaab to Kenya that new attacks would follow if it did not pull its troops from Somalia, Kenyan President Uhuru Kenyatta stated Kenya would stay until 'they bring order in their nation'.<sup>41</sup>

<sup>34</sup> Madjiasra Nako, Emma Farge and Toby Chopra, 'Chad Starts Military Campaign Against Rebels in Darfur', *Reuters*, 16 November 2013.

<sup>35</sup> For example 'Somalia's al-Shabab Claims Nairobi Westgate Kenya Attack', *BBC News*, 22 September 2013.

<sup>36</sup> On 17 October 2011, Kenya informed the Security Council that 'with the concurrence of the Transitional Federal Government of Somalia, [it had] been compelled to take robust, targeted measures to protect and preserve the integrity of Kenya ... in the face of the Al-Shabaab terrorist militia attacks emanating from Somali'. Letter dated 17 October 2011 from the Permanent Representative of Kenya to the United Nations addressed to the President of the Security Council (18 October 2011) UN Doc S/2011/646.

<sup>37</sup> Stephanie Nebehay and Tom Miles, 'UN Envoy for Somalia Seeks More Resources to Combat al Shabaab', *Reuters*, 24 September 2013.

<sup>38</sup> Tom Miles, Stephanie Nebehay and Mike Collett-White, 'Somali Prime Minister Calls for Aid to Combat al Shabaab', *Reuters*, 24 September 2013.

<sup>39</sup> Matthew Mpoke Bigg and James Macharia, 'Kenya Says "At War" with al Shabaab, Faces Security Questions', *Reuters*, 28 September 2013.

<sup>40</sup> Richard Lough and James Macharia, 'Kenya Tells Somalia "Put House in Order" after Mall Attack', *Reuters*, 1 October 2013.

<sup>41</sup> *Ibid.*

On 31 October, the Kenyan military announced that its warplanes had bombed al-Shabaab targets in Somalia in retaliation for the Westgate mall attack, allegedly resulting in the destruction of an al-Shabaab training camp, and that it had conducted a drone strike killing two al-Shabaab leaders.<sup>42</sup> According to a spokesman for the Kenyan military, ‘This was part of a broader mission by the AMISOM [the UN-backed African peacekeeping mission in Somalia].’<sup>43</sup> Al-Shabaab denied that there had been any attack.<sup>44</sup>

### Simultaneous US commando operations in Somalia and Libya

On 6 October 2013, US special forces carried out separate operations in Libya and Somalia.<sup>45</sup> The former raid resulted in the capture of Abu Anas al-Liby, suspected of being involved in the 1998 bombings of the US embassies in Nairobi and Dar Es Salaam. The latter operation, aimed against a leader of al-Shabaab (responsible for the large-scale attack on a shopping mall in Kenya one week earlier—see above), ultimately proved unsuccessful, as US special forces were forced to retreat after encountering fierce resistance from al-Shabaab fighters.

Although the United States did not put forward a formal legal justification for the operations,<sup>46</sup> during two press briefings dated 7 and 11 October, respectively,<sup>47</sup> a spokesperson of the State Department suggested that the US had not violated the sovereignty of Libya and stressed that the US ‘consulted regularly’ with the Libyan government ‘on a range of security and counterterrorism issues.’ Reference was made to the Authorization for the Use of Military

<sup>42</sup> James Macharia, ‘Kenyan Warplanes Bomb al Shabaab Strongholds in Somalia’, *Reuters*, 31 October 2013.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> See Kevin Rawlinson, ‘US Special Forces Raids Target Islamist Militants in Libya and Somalia’, *The Guardian*, 6 October 2013; ‘Libya Demands US Return al-Qaeda Suspect’, *Al Jazeera*, 9 October 2013; Chris Stephen, Abdalle Ahmed and David Smith, ‘Libya Demands Explanation for US “Kidnapping” of Al-Qaida Leader al-Liby’, *The Guardian*, 7 October 2013; Nicholas Kulish, Eric Schmitt and Mark Mazzetti, ‘Target in US Raid on Somalia is Called Top Shabab Planner of Attacks Abroad’, *New York Times*, 6 October 2013; ‘US Commando Raids Target Islamist Leaders in Africa’, *BBC News*, 6 October 2013.

<sup>46</sup> Secretary of State John Kerry expressed the hope that the operations made ‘clear that [the US] will never stop in its effort to hold those accountable who conduct acts of terror’, US State Department, Remarks of Secretary of State John Kerry (6 October 2013) [www.state.gov/secretary/remarks/2013/10/215160.htm](http://www.state.gov/secretary/remarks/2013/10/215160.htm) (accessed 18 May 2014). For a similar general statement, see: US Department of Defense, Statement by Secretary Hagel on Operations in Libya and Somalia (6 October 2013) Release No 701-13 [www.defense.gov/releases/release.aspx?releaseid=16295](http://www.defense.gov/releases/release.aspx?releaseid=16295) (accessed 18 May 2014).

<sup>47</sup> US Department of State, Daily Press Briefing, 7 October 2013, [www.state.gov/r/pa/prs/dpb/2013/10/215183.htm](http://www.state.gov/r/pa/prs/dpb/2013/10/215183.htm) (accessed 18 May 2014); US Department of State, Daily Press Briefing, 10 October 2013, [www.state.gov/r/pa/prs/dpb/2013/10/215296.htm#LIBYA](http://www.state.gov/r/pa/prs/dpb/2013/10/215296.htm#LIBYA) (accessed 18 May 2014).

Force of 2001 under US domestic law as well as to the applicability of the law of armed conflict.

In a statement on the operation in Somalia, Pentagon Press Secretary George Little suggested that the operation was approved by the Somali authorities.<sup>48</sup> When asked whether Somalia had been aware of the raid, the Somali prime minister, Abdi Farah Shirdon, responded that '[o]ur co-operation with international partners on fighting against terrorism is not a secret'.<sup>49</sup> Somalia effectively welcomed the operation: 'We have close cooperation with the world, especially the western countries in the fight against al-Shabaab. ... We welcome any operation to hunt the terrorist leaders. ... Al-Shabaab is a Somali problem, a regional problem and world problem.'<sup>50</sup>

Amidst suggestions of senior US officials that it had tacitly approved the capture of al-Liby,<sup>51</sup> the Libyan government refused to say whether it had been informed of the operation in advance. Prime Minister Ali Zaidan stated that 'The Libyan government is following the news of the kidnapping of a Libyan citizen who is wanted by US authorities. The Libyan government has contacted US authorities to ask them to provide an explanation.'<sup>52</sup> The Libyan National Congress for its part adopted a statement describing the US operation as a 'flagrant violation of [Libya's] national sovereignty'.<sup>53</sup>

Three weeks later, a suspected US drone strike killed at least two al-Shabaab fighters travelling in Somalia.<sup>54</sup> No responsibility was claimed for the strike.

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### Ongoing French troop deployment in Mali

Throughout the second semester of 2013, French troops, participating in 'Opération Serval', continued to operate alongside MINUSMA peacekeepers, with a view to assisting the government of Mali to battle terrorist groups operating within its territory.<sup>55</sup>

<sup>48</sup> US Department of Defense, Statement by Pentagon Press Secretary George Little on US operations in Somalia, Release No. 703-13 (7 October 2013) [www.defense.gov/releases/release.aspx?releaseid=16297](http://www.defense.gov/releases/release.aspx?releaseid=16297) (accessed 18 May 2014).

<sup>49</sup> 'US Commando Raids: Libya Demands Explanation', *BBC News*, 7 October 2013.

<sup>50</sup> Quoted in Stephen *et al* (n 45).

<sup>51</sup> Michael S Schmidt and Eric Schmitt, 'US Officials Say Libya Approved Commando Raids', *New York Times*, 9 October 2013.

<sup>52</sup> Quoted in Stephen *et al* (n 45).

<sup>53</sup> See 'Libya Demands US Return al-Qaeda Suspect', *Al Jazeera*, 9 October 2013.

<sup>54</sup> Feisal Omar, James Macharia and Ralph Boulton, 'Drone Strike Kills at Least Two in Somalia—Residents', *Reuters*, 28 October 2013.

<sup>55</sup> See in particular UNSC Res 2085 (20 December 2012) UN Doc S/RES/2085; UNSC Res 2100 (25 April 2013) UN Doc S/RES/2100. In a letter dated 2 October 2013 (Letter dated 2 October 2013 from the Permanent Representative of Mali to the United Nations addressed to the Secretary-General, UN Doc S/2013/586), Mali 'urges[d] the entire international community to remain actively engaged in support of Mali's counter-terrorism efforts'. In November 2013, al-Qaeda in the Islamic Maghreb claimed responsibility for the killing of two French journalists

Asked if French soldiers should be allowed to cross borders to pursue militants leaving Mali, French army chief Edouard Guillaud in a radio interview responded as follows: 'I think we should hunt them down everywhere. That's why we are working with our neighbors Niger, Burkina Faso and Chad, and also cooperating with Algeria so that there is no sanctuary for them.'<sup>56</sup> Late 2013, France announced a partial withdrawal of its troops from Mali by the end of January 2014.<sup>57</sup>

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### **Ghana claims Ivory Coast sent hit squads to Ghana to kill Gbagbo followers**

Ghana told a UN panel in July 2013 that Ivory Coast had sent hit squads to abduct or kill exiled supporters of former Ivory Coast President Laurent Gbagbo (currently awaiting trial before the International Criminal Court).<sup>58</sup> Ghana claimed to have foiled at least two such missions. The accusations were dismissed by the Ivorian government and could not be independently verified. The Ivorian government and UN investigators have accused exiled Gbagbo followers of continuing to orchestrate violence inside Ivory Coast.

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### **Conflict rages on in the Central African Republic—French troops operating alongside African peacekeepers—regional spillover**

The sectarian war between the *Séléka* Muslim militias and government forces and *Anti-balaka* Christian militias, which broke out in late 2012, raged on in the Central African Republic (CAR). As violence intensified, with hundreds of civilians being massacred, the UN Security Council on 5 December 2013 authorised the African-led International Support Mission to the CAR (MISCA) and French troops present in the country to use force to protect civilians.<sup>59</sup> The

in northern Mali in retribution for France's military involvement in Mali. See Laurent Prieur, Daniel Flynn, David Lewis and Kevin Liffey, 'Al Qaeda Claims Killing of French Journalists in Mali: Report', *Reuters*, 6 November 2013.

<sup>56</sup> John Irish, 'French Troops Should Hunt Qaeda Beyond Mali Borders: Army Chief', *Reuters*, 14 November 2013.

<sup>57</sup> 'France Prepares to Withdraw Mali troops', *Al Jazeera*, 25 December 2013.

<sup>58</sup> Joe Bavier, 'Ghana says Ivory Coast Sent Agents to Kill Exiles: UN', *Reuters*, 2 December 2013; 'Ivory Coast Targets Gbagbo Followers in Ghana', *Al Jazeera*, 2 December 2013.

<sup>59</sup> UNSC Res 2127 (5 December 2013) UN Doc S/RES/2127. See also UNSC Res 2121 (10 October 2013) UN Doc S/RES/2121; UN Secretary-General, 'Concerned Over Grave Situation in Central African Republic, Secretary-General Calls for Urgent Action to Deploy African, French Forces' (2013) UN Doc SG/SM/15522; 'Central African Republic : Security Council Approves New Peacekeeping Force', *UN News Centre*, 5 December 2013; Michelle Nichols and Louis Charbonneau, 'UN Authorizes French, African Troops in Central African Republic', *Reuters*, 5 December 2013; Elysée, 'Déclaration à l'issue du Conseil restreint de défense sur la situation

Security Council moreover welcomed efforts to transform MISCA into a UN peacekeeping operation.

Meanwhile, there were also reports of spillover effects into neighbouring countries. On 17 November, for instance, Cameroon declared that its army had repelled a raid against a village in eastern Cameroon by gunmen from the CAR.<sup>60</sup>

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## II. ASIA

### Taiwan and Philippines agree on not to use of force against each other's fishing vessels

Following the *Guang Da Xing No 28* shooting incident, in which a Taiwanese fisherman was killed when a Philippine coastguard vessel fired on a Taiwanese fishing boat in overlapping exclusive economic waters, Taiwan and the Philippines in June 2013 agreed that law enforcement vessels from each side would not use armed force or violence against fishing boats of the other side. The two sides moreover agreed

to establish means for notifying each other without delay whenever hot pursuit, boarding, inspection, arrest, detention, or judicial proceedings are carried out against vessels and crews of either side pursuant to the enforcement of their respective fisheries laws and relevant regulations, consistent with international practice.<sup>61</sup>

The agreement was reaffirmed during a meeting of the two parties in August 2013.<sup>62</sup>

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en République centrafricaine' (5 December 2013) [www.elysee.fr/declarations/article/declaration-a-l-issue-du-conseil-restraint-de-defense-sur-la-situation-en-republique-centrafricaine/](http://www.elysee.fr/declarations/article/declaration-a-l-issue-du-conseil-restraint-de-defense-sur-la-situation-en-republique-centrafricaine/) (accessed 20 May 2014); Emmanuel Braun and Paul-Marin Ngoupana, 'France to Start Disarming Central African Republic Fighters on Monday', *Reuters*, 8 December 2013.

<sup>60</sup> Tansa Musa, Matthew Mpoke Bigg and Jackie Frank, 'Cameroon says Army Repulses Attack from Central African Republic', *Reuters*, 17 November 2013; 'Cameroon 'Repels Attack' from Central African Republic', *BBC News*, 18 November 2013.

<sup>61</sup> Ministry of Foreign Affairs, Republic of China (Taiwan), '1st preparatory meeting on ROC–Philippines fisheries cooperation yields concrete results, with both sides guaranteeing avoidance of the use of force to prevent recurrence of incidents such as that involving the *Guang Da Xing No 28*' (15 June 2013) Press Release No 162, [www.mofa.gov.tw/EnOfficial/ArticleDetail/DetailDefault/a2ecdc04-286c-43e0-b402-9c81d14b0f99?arfid=7b3b4d7a-8ee7-43a9-97f8-7f3d313ad781&opno=84ba3639-be42-4966-b873-78a267de8cf1](http://www.mofa.gov.tw/EnOfficial/ArticleDetail/DetailDefault/a2ecdc04-286c-43e0-b402-9c81d14b0f99?arfid=7b3b4d7a-8ee7-43a9-97f8-7f3d313ad781&opno=84ba3639-be42-4966-b873-78a267de8cf1) (accessed 20 May 2014).

<sup>62</sup> Ministry of Foreign Affairs, Republic of China (Taiwan), 'Following the constructive response of the Philippine government to the shooting incident involving the Taiwan fishing boat *Guang Da Xing No 28*, the government of the Republic of China announces that cooperative and friendly relations between the two countries are being restored, effective immediately' (8 August 2013) Press Release No 202 [www.mofa.gov.tw/EnPDA/News/Detail/eb8081fd-8616-4263-8b96-f443c63b3294?arfid=7b3b4d7a-8ee7-43a9-97f8-7f3d313ad781](http://www.mofa.gov.tw/EnPDA/News/Detail/eb8081fd-8616-4263-8b96-f443c63b3294?arfid=7b3b4d7a-8ee7-43a9-97f8-7f3d313ad781) (accessed 20 May 2014). See also

### States agree to continue consultation on the Code of Conduct of Parties in the South China Sea

During a meeting on 14–15 September 2013, senior officials of ASEAN Member States and China agreed to continue official consultations on the 2002 Declaration of Code of Conduct of Parties in the South China Sea, and make regular reports to foreign ministers.<sup>63</sup> During the meeting, the Philippines expressed its position that the Code of Conduct should be legally binding and called for respect for the principles enshrined therein, in particular for the non-use of force.

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### China announces East China Sea air defence identification zone

The People's Republic of China announced the installation of an air defence identification zone (ADIZ), encompassing a substantial part of the East China Sea, effective as from 23 November 2013. According to a statement issued by the National Ministry of Defense, aircraft flying through the ADIZ are required, inter alia, to report flight plans to the Chinese authorities; to maintain two-way radio communications, and respond in a timely and accurate manner to identification inquiries, and; to follow the instructions of the Chinese authorities.<sup>64</sup> According to the statement, 'China's armed forces will adopt defensive emergency measures to respond to aircraft that do not cooperate in the identification or refuse to follow the instructions.'<sup>65</sup>

The Chinese ADIZ overlaps with a previously established Japanese ADIZ, as well as (to lesser extent) South Korean and Taiwanese ADIZ, and includes contested maritime areas and islands, including the Senkaku/Diaoyu Islands (disputed between China and Japan) and the Socotra Rock/Suyan Jiao (disputed between China and South Korea). Its creation evoked strong reactions from several regional players.

Japanese Prime Minister Shinzo Abe stated that the Chinese measures 'have no validity whatsoever on Japan, and we demand China revoke any measures that could infringe upon the freedom of flight in international airspace'.<sup>66</sup> Foreign

eg Mainland Affairs Council, Republic of China (Taiwan), 'President Ma attends 2013 East China Sea Peace Forum' (5 August 2013) [www.mac.gov.tw/ct.asp?xItem=105925&ctNode=5909&mp=3](http://www.mac.gov.tw/ct.asp?xItem=105925&ctNode=5909&mp=3) (accessed 20 May 2014).

<sup>63</sup> Philippine Information Agency, 'ASEAN, China Launch Official Consultations on Code of Conduct in South China Sea' (17 September 2013) <http://news.pia.gov.ph/index.php?article=1551379325658> (accessed 20 May 2014).

<sup>64</sup> PRC Ministry of National Defense, 'Announcement of the Aircraft Identification Rules for the East China Sea Air Defense Identification Zone of the PRC' (23 November 2013) [http://eng.mod.gov.cn/Press/2013-11/23/content\\_4476143.htm](http://eng.mod.gov.cn/Press/2013-11/23/content_4476143.htm) (accessed 20 May 2014).

<sup>65</sup> *Ibid.*

<sup>66</sup> John Hofilena, 'Japan PM Abe Demands that China Revoke Claim to Airspace Over Disputed Lands', *Japan Daily Press*, 26 November 2013.

Minister Kishida issued a statement stressing that the measures announced by the PRC 'unduly infringe the freedom of flight in international airspace, which is the general principle of international law, and will have serious impacts on the order of international aviation.'<sup>67</sup> Noting that Japan was working closely with the US and would co-ordinate with other states in the region, the Japanese foreign minister asserted that his country would 'continue to respond firmly but in a calm manner against China's attempt to unilaterally alter the status quo by coercive measures with determination to defend resolutely its territorial land, sea and airspace.'<sup>68</sup> Japanese Defence Minister Onodera stressed that it was 'important for both sides to take a calm approach and deal with the situation according to international norms.'<sup>69</sup>

South Korea summoned a Chinese diplomat to protest against the Chinese move<sup>70</sup> and announced a substantial expansion of its own air defence identification zone, to include a submerged rock disputed between the two countries.<sup>71</sup> There was no immediate response from Beijing or Tokyo.

US Secretary of State John Kerry expressed his 'deep concern' about China's decision to establish the East China sea ADIZ:

This unilateral action constitutes an attempt to change the status quo in the East China Sea. Escalatory action will only increase tensions in the region and create risks of an incident. Freedom of overflight and other internationally lawful uses of sea and airspace are essential to prosperity, stability, and security in the Pacific. We don't support efforts by any state to apply its ADIZ procedures to foreign aircraft not intending to enter its national airspace. The United States does not apply its ADIZ procedures to foreign aircraft not intending to enter US national airspace. We urge China not to implement its threat to take action against aircraft that do not identify themselves or obey orders from Beijing.<sup>72</sup>

US Secretary of Defence Chuck Hagel expressed similar concern, while also stressing that '[t]his announcement by the [PRC] will not in any way change

<sup>67</sup> Ministry of Foreign Affairs of Japan, 'Statement by the Minister for Foreign Affairs on the Announcement on the 'East China Sea Air Defence Identification Zone' by the Ministry of National Defense of the People's Republic of China' (24 November 2013) [www.mofa.go.jp/press/release/press4e\\_000098.html](http://www.mofa.go.jp/press/release/press4e_000098.html) (accessed 20 May 2014).

<sup>68</sup> *Ibid.*

<sup>69</sup> Quoted in 'East China Sea Tensions Prompt Caution from US Airlines', *CBC News*, 30 November 2013.

<sup>70</sup> 'China Hit with Complaints over Maritime Air Defense Zone', *Voice of America*, 25 November 2013.

<sup>71</sup> Choe Sang-Hun, 'South Korea Announces Expansion of its Air Defense Zone', *New York Times*, 8 December 2013; 'South Korea Declares Expanded ADIZ Overlapping with Other Zones', *Japan Times*, 8 December 2013.

<sup>72</sup> United States Department of State, 'Statement on the East China Sea Air Defense Identification Zone' (23 November 2013) [www.state.gov/secretary/remarks/2013/11/218013.htm](http://www.state.gov/secretary/remarks/2013/11/218013.htm) (accessed 20 May 2014).

how the United States conducts military operations in the region.<sup>73</sup> Secretary Hagel moreover 'reaffirmed' the United States' 'longstanding policy that Article V of the US–Japan Mutual Defense Treaty applies to the Senkaku Islands.'<sup>74</sup> Vice-President Biden reiterated US concerns about the Chinese ADIZ during a visit to China early December.<sup>75</sup>

The United States, Japan and South Korea each defied the Chinese ADIZ by flying military aircraft through the zone without informing Beijing.<sup>76</sup> China claimed that it had monitored the flights concerned, without undertaking further action.

In a move that was condemned by the PRC as putting the security of Japanese citizens at risk,<sup>77</sup> two major Japanese airlines agreed with the Japanese government that they would continue flying through the zone without notifying China.<sup>78</sup> In a similar vein, the South Korean Ministry of Transport said that Korean aircraft flying through China's ADIZ should not submit their flight plans to China, since South Korea did not recognise the zone.<sup>79</sup> By contrast, the United States advised US commercial airlines to comply with China's instructions to avoid unintended confrontations.<sup>80</sup> The United States nonetheless emphasised that this position in no way indicated its acceptance of China's requirements for operating in the newly declared ADIZ.<sup>81</sup>

Several other players voiced concern with regard to the Chinese ADIZ. Australian Foreign Minister Julie Bishop, for instance, stated that:

<sup>73</sup> United States Department of Defense, 'Statement by Secretary of Defense Chuck Hagel on the East China Sea Air Defense Identification Zone', Release No NR-036-13 (23 November 2013) [www.defense.gov/releases/release.aspx?releaseid=16392](http://www.defense.gov/releases/release.aspx?releaseid=16392) (accessed 20 May 2014).

<sup>74</sup> *Ibid.*

<sup>75</sup> See eg United States White House, 'Remarks by the Vice President at a Breakfast with the American Chamber of Commerce in Beijing and the US–China Business Council' (5 December 2013) [www.whitehouse.gov/the-press-office/2013/12/05/remarks-vice-president-breakfast-american-chamber-commerce-beijing-and-u](http://www.whitehouse.gov/the-press-office/2013/12/05/remarks-vice-president-breakfast-american-chamber-commerce-beijing-and-u) (accessed 20 May 2014).

<sup>76</sup> See eg 'China Says US Bombers Flew Over its Defence Zone', *CBC News*, 27 November 2013; 'China Monitors US Bombers in Defense Zone', *Xinhua News*, 27 November 2013; Craig Whitlock, 'US Flies Two Warplanes over East China Sea, Ignoring New Chinese Air Defense Zone', *Washington Post*, 26 November 2013; Simon Denyer and Chico Harlan, 'China Sends Warplanes to New Air Defense Zone after US, Japan, S Korea Incursions', *Washington Post*, 28 November 2013.

<sup>77</sup> 'Japan Must See Air Zone Is about Safety: Experts' (30 November 2013) [http://eng.mod.gov.cn/TopNews/2013-11/30/content\\_4477157.htm](http://eng.mod.gov.cn/TopNews/2013-11/30/content_4477157.htm) (accessed 20 May 2014).

<sup>78</sup> 'East China Sea Tensions Prompt Caution from US Airlines', *CBC News*, 30 November 2013. Japan also asked the International Civil Aviation Organization to assess whether the Chinese ADIZ could endanger civilian flights. See Ministry of Foreign Affairs of Japan, '200th Session of the Council of the International Civil Aviation Organization (ICAO)' (30 November 2013) [www.mofa.go.jp/press/release/press4e\\_000114.html](http://www.mofa.go.jp/press/release/press4e_000114.html) (accessed 20 May 2014).

<sup>79</sup> 'Seoul Considers Southward Expansion of Air Defense Zone', *Korea Herald*, 1 December 2013.

<sup>80</sup> United States Department of State, Office of the Spokesperson, 'China's Declared ADIZ—Guidance for US Air Carriers' (29 November 2013) [www.state.gov/r/pa/prs/ps/2013/11/218139.htm](http://www.state.gov/r/pa/prs/ps/2013/11/218139.htm) (accessed 20 May 2014).

<sup>81</sup> *Ibid.* See also: Yuka Hayashi and Andy Pasztor, 'Japan, US at Odds over China's Air Zone', *Wall Street Journal*, 1 December 2013.



The timing and the manner of China's announcement are unhelpful in light of current regional tensions, and will not contribute to regional stability. Australia has made clear its opposition to any coercive or unilateral actions to change the status quo in the East China Sea.<sup>82</sup>

A spokesman of the Department of Foreign Affairs of the Philippines declared that: 'China's East Asia Sea ADIZ transforms the entire airzone into its domestic airspace, infringes on the right to freedom of flight in international airspace and compromises the safety of civil aviation and national security of affected states.'<sup>83</sup> Furthermore, following the adoption of a non-binding resolution in which the legislature's caucus leaders urged him to lodge an official protest with China over the creation of the East China Sea ADIZ,<sup>84</sup> Taiwanese President Ma Ying-jeou emphasized the need to restore harmony to the region and to pursue peaceful negotiations to this end.<sup>85</sup> The European Union similarly expressed concern that the creation of the Chinese ADIZ heightened the risk of escalation and contributed to raising tensions in the region.<sup>86</sup>

In reaction to criticism of its conduct, China suggested third states adopted 'double standards.'<sup>87</sup> Asked if China would or would not rule out the recourse to armed force vis-à-vis aircraft not complying with the ADIZ instructions, a spokesman for the Chinese Foreign Ministry stated that 'China [would] take corresponding action in accordance with the situation and the level of threat that it may face.'<sup>88</sup> On 3 December, Geng Yansheng, spokesman of the PRC Ministry of National Defence made the following statement:<sup>89</sup>

<sup>82</sup> Australian Minister for Foreign Affairs, 'China's Announcement of an Air-Defence Identification Zone OVER the East China Sea' (26 November 2013) [http://foreignminister.gov.au/releases/Pages/2013/jb\\_mr\\_131126a.aspx?ministerid=4](http://foreignminister.gov.au/releases/Pages/2013/jb_mr_131126a.aspx?ministerid=4) (accessed 20 May 2014).

<sup>83</sup> Quoted in Louis Bacani, 'DFA: China's New Air Defense Zone Unsafe, Threatens Flight Freedom', *Philippine Star*, 28 November 2013.

<sup>84</sup> Chris Wang and Shih Hsiu-chuan, 'Resolution Urges Air Zone Protest', *Taipei Times*, 30 November 2013.

<sup>85</sup> 'Taiwan Wades into East China Sea Air Defence Zone Debate', *Australia Network News*, 2 December 2013.

<sup>86</sup> EU 'Declaration by the High Representative Catherine Ashton on behalf of the European Union on the Establishment by China of an "East China Sea Air Defence Identification Zone"' (28 November 2013) Doc 17082/1/13/REV 1, [www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/139752.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/139752.pdf) (accessed 20 May 2014).

<sup>87</sup> See eg Alex Spillius, 'China Scrambles Jets After US and Japan Enter Air Zone', *The Telegraph*, 29 November 2013; Wu Liming, 'Commentary: US, Japan Wrong to Blame China for Air Zone', *Xinhua News*, 26 November 2013; Wu Liming, 'Commentary: US, Japan's Logic on Air Zone Ridiculous', *Xinhua News*, 25 November 2013.

<sup>88</sup> 'Defense Ministry Spokesman Yang Yjun's Response to Questions of ADIZ at Regular Press Conference' (28 November 2013) [www.chinamission.be/eng/zt/zbzc/t1109759.htm](http://www.chinamission.be/eng/zt/zbzc/t1109759.htm) (accessed 20 May 2014).

<sup>89</sup> 'Defense Ministry Spokesman on China's Air Defense Identification Zone', *Xinhua News*, 3 December 2013.

The [ADIZ] is a necessary measure for China to protect its state sovereignty and territorial and airspace security. It is conducive to maintaining flying safety in international airspace, and is in line with international laws and conventions. ...

Some people take the ADIZ to be a territorial airspace by falsely saying that China violates other countries' interests; some equate the ADIZ with a no-fly zone, accusing China of severely undermining the freedom of overflight. Both statements are incorrect. An ADIZ is essentially different from territorial airspace or no-fly zones. It is not a country's territorial airspace, but an international airspace demarcated outside the territorial airspace for the purpose of identification and early warning; it is not a no-fly zone, and will not affect the freedom of overflight, based on international laws, of other countries' aircraft. According to international practice, a country can identify and verify aircraft entering its ADIZ. China's ADIZ was established to set aside enough time for early warning to defend the country's airspace, with defense acting as the key point. The zone does not aim at any specific country or target, nor does it constitute a threat to any country or region.

... The Chinese military's determination and volition to safeguard the security of national territory and territorial airspace are unwavering, and the military is fully capable of exercising effective control over the East China Sea ADIZ. Generally, supervision and control are exercised through reported flight plans and radar response and identification, among other means. Military planes can also take flight if necessary to identify entering targets. Measures to be taken are based on factors such as an entering aircraft's attributes—military or civilian, the extent of threat, or distance. Fighter planes are unnecessary when an entering aircraft is found to pose no threat to us, but necessary surveillance is needed; when the entering threat is ascertained to reach a certain extent, military aircraft will be mobilized at an appropriate time to dispose of the situation. It is well-known that civil flights pose no threat in most circumstances. China always respects other countries' freedom of overflight according to international laws, so that international flights that fly normally within the rules in the East China Sea ADIZ will not be affected ...

China unswervingly adheres to the road of peaceful development and a defensive national defense policy. ... We are willing to conduct active communication and consultation with relevant parties to jointly safeguard flight safety and promote peace, stability and development in the Asia-Pacific region.

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### China–US warship encounter in the South China Sea

A Chinese and a US naval vessel came close to colliding in the South China Sea on 5 December 2013, when a Chinese warship cut across the bow of a US cruiser, the *USS Cowpens*, forcing the ship to undertake evasive action.<sup>90</sup> At the time of the incident, the *Cowpens* was engaged in surveillance of the *Liaoning*, the new aircraft carrier of the People's Republic of China, as it made its first

<sup>90</sup> Tom Shanker, 'Hagel Criticizes Chinese Navy, Citing Near Miss', *New York Times*, 19 December 2013.

voyage in the South China Sea. One expert described the events as the most significant US–China maritime incident in the South China Sea since 2009.<sup>91</sup> The Chinese Ministry of Defence downplayed the incident, stressing that the two ships had communicated effectively and that the Chinese warship ‘handled the situation strictly according to relevant operation specifications.’<sup>92</sup> Later in December, however, US Defence Secretary Chuck Hagel called the actions of the Chinese Navy ‘irresponsible,’ warning that a near collision ‘could be a trigger or a spark that could set off some eventual miscalculation.’<sup>93</sup>

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### **Tension between India and Pakistan—exchange of fire along the ‘Line of Control’**

India, on 6 August 2013, stated that a group of militants from Pakistan had killed five of its soldiers in an ambush along the disputed border in Kashmir, in an accusation that threatened to derail efforts to resume peace talks. Pakistan rejected the allegation and affirmed its commitment to the ceasefire.<sup>94</sup> Two Pakistani soldiers were wounded the next day in an exchange of fire with Indian troops along the Line of Control (LoC) in Kashmir.<sup>95</sup> A Pakistani military official spoke of ‘unprovoked Indian firing.’ A senior Indian army officer conversely suggested that Pakistani troops had opened fire and Indian forces had retaliated. On 8 August, Indian Defence Minister Antony openly claimed that troops of the Pakistan army had been involved in the ambush two days earlier.<sup>96</sup> In another incident, Pakistan accused Indian forces of having resorted to unprovoked firing at the LoC, wounding a Pakistani civilian.<sup>97</sup> Another exchange of fire occurred on 11 August 2013.<sup>98</sup>

Tension along the LoC continued in subsequent weeks and months. While India repeatedly accused Pakistan of violating the LoC, the Pakistani Ministry of Foreign Affairs on 23 October 2013 published a press release stating as follows:

<sup>91</sup> David Alexander and Pete Sweeney, ‘US, Chinese Warships Narrowly Avoid Collision in South China Sea,’ *Reuters*, 14 December 2013.

<sup>92</sup> PRC Ministry of National Defense, ‘China, US Communicate Effectively over Warship Encounter: Ministry’ (18 December 2013) [http://eng.mod.gov.cn/DefenseNews/2013-12/18/content\\_4479365.htm](http://eng.mod.gov.cn/DefenseNews/2013-12/18/content_4479365.htm) (accessed 20 May 2014).

<sup>93</sup> Quoted in Shanker (n 90).

<sup>94</sup> Fayaz Bukhari, ‘India–Pakistan Talks in Jeopardy as Indian Soldiers Killed,’ *Reuters*, 6 August 2013.

<sup>95</sup> Katharine Houreld, ‘Pakistani Soldiers Wounded in New Kashmir Confrontation with India,’ *Reuters*, 7 August 2013.

<sup>96</sup> Ross Colvin, ‘India Accuses Pakistan Army of killing Soldiers in Ambush,’ *Reuters*, 8 August 2013.

<sup>97</sup> Katharine Houreld and Maria Golovnina, ‘Pakistan Army Says Civilian Wounded by Indian Fire on Kashmir Border,’ *Reuters*, 8 August 2013.

<sup>98</sup> Ashok Pahalwan, ‘India, Pakistan Exchange more Gunfire, Ceasefire under Strain,’ *Reuters*, 11 August 2013.

During the last two days, Indian troops have intensified violations and have carried out unprovoked firing. ... The indiscriminate shelling on civilian population and targeting of 27 Pakistani posts has resulted in casualty of two civilians and one security personnel and serious injuries to 26 civilians. The Indian Border Security Force has fired almost 4,000 mortar shells and 59,000 rounds of machine gun fires, escalating tension across LoC and the working boundary. The Pakistani security forces exercised restraint and gave a measured and calibrated response to the unprovoked Indian aggression.<sup>99</sup>

## US–Pakistan relations

### *Pakistan protests against repeated drone strikes*

Throughout the second half of 2013, the Pakistani government repeatedly protested against US drone strikes carried out within its territory. Thus, when on 3 July a US drone strike killed at least 17 people after two missiles struck a house near the main market in Miranshah,<sup>100</sup> the Pakistani Ministry of Foreign Affairs issued the following statement:

The Government of Pakistan strongly condemns the US drone strike that took place in Miranshah, North Waziristan on 03 July 2013. These strikes are a violation of Pakistan's sovereignty and territorial integrity. Pakistan has repeatedly emphasized the importance of bringing an immediate end to drone strikes. The Government of Pakistan has consistently maintained that drone strikes are counter-productive, entail loss of innocent civilian lives and have human rights and humanitarian implications.<sup>101</sup>

Similar statements were made in relation to numerous other drone strikes.<sup>102</sup> Pakistan repeatedly raised its objections to the drone strikes in contacts with

<sup>99</sup> Pakistan, Ministry of Foreign Affairs, 'Pakistan's Response to Unprovoked Firing by India' (Islamabad, 23 October 2013) [www.mofa.gov.pk/pr-details.php?prID=1500](http://www.mofa.gov.pk/pr-details.php?prID=1500) (accessed 21 May 2014).

<sup>100</sup> Jibran Ahmad, 'Drone Attack Kills 17 in Pakistan's Waziristan Region', *Reuters*, 3 July 2013. Rescuers were allegedly hesitant to help the wounded and injured for fear of a second attack.

<sup>101</sup> Pakistan, Ministry of Foreign Affairs, 'Pakistan Protests against Drone Strikes in Miranshah' (Islamabad, 3 July 2013) [www.mofa.gov.pk/pr-details.php?prID=1296](http://www.mofa.gov.pk/pr-details.php?prID=1296) (accessed 21 May 2014).

<sup>102</sup> For example, Pakistan, Ministry of Foreign Affairs, 'Pakistan Protests against the Drone Strike in Mir Ali' (Islamabad, 15 July 2013) [www.mofa.gov.pk/pr-details.php?prID=1320](http://www.mofa.gov.pk/pr-details.php?prID=1320) (accessed 21 May 2014); 'Pakistan Condemns the US Drone Strike in Shawal Area' (Islamabad, 29 July 2013) [www.mofa.gov.pk/pr-details.php?prID=1342](http://www.mofa.gov.pk/pr-details.php?prID=1342) (accessed 21 May 2014); 'Pakistan Condemns US Drone Strike' (Islamabad, 6 September 2013) [www.mofa.gov.pk/pr-details.php?prID=1415](http://www.mofa.gov.pk/pr-details.php?prID=1415) (accessed 21 May 2014); 'Pakistan Condemns the US Drone Strike in South Waziristan' (Islamabad, 22 September 2013) [www.mofa.gov.pk/pr-details.php?prID=1442](http://www.mofa.gov.pk/pr-details.php?prID=1442) (accessed 21 May 2014); 'Pakistan Condemns the US Drone Strike Near Miranshah' (Islamabad, 29 September 2013) [www.mofa.gov.pk/pr-details.php?prID=1483](http://www.mofa.gov.pk/pr-details.php?prID=1483) (accessed 21 May 2014); 'Pakistan Condemns the US Drone Strike in North Waziristan' (Islamabad, 30 September 2013) [www.mofa.gov.pk/pr-details.php?prID=1484](http://www.mofa.gov.pk/pr-details.php?prID=1484) (accessed 21 May 2014); 'Pakistan Condemns the US Drone Strike in Miranshah' (Islamabad, 31 October 2013) [www.mofa.gov.pk/pr-details.php?prID=1513](http://www.mofa.gov.pk/pr-details.php?prID=1513) (accessed 21 May 2014); 'Pakistan Condemns the US Drone Strike in North Waziristan' (Islamabad, 1 November 2013) [www.mofa.gov.pk/pr-details.php?prID=1517](http://www.mofa.gov.pk/pr-details.php?prID=1517) (accessed 21 May 2014); 'Pakistan

US officials,<sup>103</sup> as well as before the UN Security Council<sup>104</sup> and before the UN General Assembly.<sup>105</sup>

On 10 December 2013, the Pakistani Parliament condemned the drone attacks on its territory as a 'violation of the principles of the Charter of the United Nations, international laws and humanitarian norms'<sup>106</sup>

At the same time, top-secret CIA documents and Pakistani diplomatic memos obtained by the *Washington Post* reportedly indicated that top officials in Pakistan's government had for years secretly endorsed the CIA's drone programme and had routinely received classified briefings on strikes and casualty counts.<sup>107</sup>

*Pakistani Commission concludes that the bin Laden killing was an act of war in clear violation of Pakistan's sovereignty, independence and territorial integrity*

The final report of Pakistan's Abbottabad Commission, set up to probe the raid and previous efforts to capture Osama bin Laden, was leaked by Al Jazeera in early July.<sup>108</sup> The report painted the United States as an arrogant military power and suggested that the Abbottabad raid illustrated Washington's 'contemptuous disregard of Pakistan's sovereignty, independence and territorial integrity'.<sup>109</sup>

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Condemns the US Drone Strike in Hangu' (Islamabad, 21 November 2013) [www.mofa.gov.pk/pr-details.php?prID=1565](http://www.mofa.gov.pk/pr-details.php?prID=1565) (accessed 21 May 2014); 'Pakistan Condemns the US Drone Strike in Miranshah' (Islamabad, 26 December 2013) [www.mofa.gov.pk/pr-details.php?prID=1631](http://www.mofa.gov.pk/pr-details.php?prID=1631) (accessed 21 May 2014).

<sup>103</sup> See eg 'Pakistani PM Urges Obama to End Drone Strikes', *Al Jazeera*, 24 October 2013; Pakistan, Ministry of Foreign Affairs, 'US Ambassador Conveyed Concerns over Drone Strikes' (Islamabad, 2 November 2013) [www.mofa.gov.pk/pr-details.php?prID=1518](http://www.mofa.gov.pk/pr-details.php?prID=1518), accessed 21 May 2014; 'Hagel Holds Talks with Pakistan Leaders', *Al Jazeera*, 9 December 2013.

<sup>104</sup> UNSC Verbatim Record (26 September 2013) UN Doc S/PV.7036, 14/20: 'We call for an end to the use of drone strikes, as they violate international law, including international humanitarian law, and are also detrimental to our efforts to fight terrorism.'

<sup>105</sup> UNGA Verbatim Record (27 September 2013) UN Doc A/68/PV.15, 24/51: 'The war against terrorism must be waged within the framework of international law. The use of armed drones in the border areas of Pakistan is a continued violation of our territorial integrity.'

<sup>106</sup> National Assembly of Pakistan, Resolution (10 December 2013) [www.na.gov.pk/en/resolution\\_detail.php?id=140](http://www.na.gov.pk/en/resolution_detail.php?id=140) (accessed 14 May 2014).

<sup>107</sup> Greg Miller and Bob Woodward, 'Secret Memos Reveal Explicit Nature of US, Pakistan Agreement on Drones', *Washington Post*, 24 October 2013.

<sup>108</sup> See <http://webapps.aljazeera.net/aje/custom/binladenfiles/Pakistan-Bin-Laden-Dossier.pdf> (accessed 22 May 2014); [www.documentcloud.org/documents/724833-aljazeera-bin-laden-dossier.html#document/p230](http://www.documentcloud.org/documents/724833-aljazeera-bin-laden-dossier.html#document/p230) accessed (22 May 2014). See also Hannah Strange, 'US Raid that Killed bin Laden was "An Act of War", Says Pakistani Report', *The Telegraph*, 9 July 2013.

<sup>109</sup> *Ibid.*

**Pakistan protests over cross-border firing by Afghan border police**

Pakistan lodged strong protest and summoned the Afghan chargé d'affaires in September over the alleged indiscriminate firing by the Afghan border police near the village of Godwana, resulting in the death of five Pakistani civilians.<sup>110</sup>

**Afghanistan—UN Security Council extends ISAF mandate**

On 10 October 2013, the UN Security Council, acting under Chapter VII of the Charter, adopted resolution 2120 (2013), extending the authorisation of the International Security Assistance Force (ISAF) and 'authorizing' the Member States participating in ISAF 'to take all necessary measures to fulfil its mandate' (§ 2).

**Azerbaijan—Armenia—ongoing violations of the 1994 ceasefire in and around the Nagorno-Karabakh region**

Throughout the second semester of 2013, Azerbaijan and Armenia each reported on a regular basis to the UN Security Council accusing the other side of violating the 1994 ceasefire, providing detailed information about the timing and location of the various alleged incidents, the type of ammunition used and the resulting casualties (if any). In a letter of 24 July, for instance, Azerbaijan stated as follows:

As is known, a fragile ceasefire in the conflict between Armenia and Azerbaijan was put in place in May 1994. However, the Armenian side regularly and deliberately violates the ceasefire by attacking and killing Azerbaijani military personnel as well as civilians residing in the territories adjacent to the front line. Over the past years, such violations and armed provocations have become more frequent and violent. Therefore, despite a formal ceasefire, the Daghylyq Garabagh region and other occupied territories of Azerbaijan represent none other than a zone of ongoing hostilities, with active terrorist and related organized criminal activity and heavily mined areas.<sup>111</sup>

Numerous reports were submitted accusing Armenian forces of engaging in intensive fire 'from their positions in the occupied territories of Azerbaijan and from the territory of Armenia'.<sup>112</sup>

<sup>110</sup> Pakistan, Ministry of Foreign Affairs, 'Pakistan Lodges Strong Protest over the Cross-Border Firing by Afghan Border Police' (Islamabad, 18 September 2013) [www.mofa.gov.pk/zahidan/pr-details.php?prID=1435](http://www.mofa.gov.pk/zahidan/pr-details.php?prID=1435) (accessed 22 May 2014).

<sup>111</sup> Letter dated 24 July 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General (24 July 2013) UN Doc S/2013/442.

<sup>112</sup> For example: Letter dated 15 July 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General (15 July 2013) UN Doc S/2013/429 (listing 246 incidents, whereby one member of the armed forces of Azerbaijan was allegedly killed and

Armenia similarly reported to the UN Security Council on 'ongoing violations of the ceasefire by the armed forces of the Republic of Azerbaijan'.<sup>113</sup> Apart from listing alleged violations by Azerbaijan (as well as any casualties caused), Armenia on several occasions claimed that Azerbaijan overstated the number of incidents and presented exaggerated data of ceasefire violations (not corresponding to Armenia's own 'operational data').<sup>114</sup>

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### III. MIDDLE EAST

#### Iran—US stresses that possible use of force is 'not off the table'

Following an agreement between Iran and six major powers concerning Iran's nuclear programme, the US Secretary of State noted that, while the US welcomed the nuclear deal and believed it was necessary first to exhaust diplomacy, it would not take off the table the possible use of force against Iran.<sup>115</sup>

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another wounded); Letter dated 21 August 2013 from the Chargé d'Affaires a.i. of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General (21 August 2013) UN Doc S/2013/506 (referring to 273 shooting incidents—no casualties reported); Letter dated 30 August 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General (30 August 2013) UN Doc S/2013/526 (215 incidents—one casualty); Letter dated 1 November 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General (1 November 2013) UN Doc S/2013/647 (222 incidents—one civilian and one member of the armed forces reportedly wounded); Letter dated 3 October 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General (3 October 2013) UN Doc S/2013/589 (271 incidents—one civilian wounded); Letter dated 10 December 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General (10 December 2013) UN Doc S/2013/733 (187 incidents—killing one member of the armed forces of Azerbaijan and wounding another).

<sup>113</sup> Letter dated 5 July 2013 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General (5 July 2013) UN Doc S/2013/400 (132 incidents—two Armenian soldiers reported killed, one wounded); Letter dated 15 October 2013 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General (15 October 2013) UN Doc S/2013/610 (165 incidents); Letter dated 3 December 2013 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General (3 December 2013) UN Doc S/2013/718 (177 incidents).

<sup>114</sup> Letter dated 16 August 2013 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General (16 August 2013) UN Doc S/2013/497 ('of the 262 incidents reported by Azerbaijan ... only 43 coincide with the operational data of the armed forces of the Republic of Armenia'); Letter dated 31 October 2013 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General (31 October 2013) UN Doc. S/2013/640.

<sup>115</sup> 'Kerry Says Nuclear Deal Makes Mideast Nations, Israel Safer', *Reuters*, 23 November 2013.

## Syrian civil war—Threats of military strikes against Syria in reaction to the use of chemical weapons

### *The Ghouta attack*

On 21 August 2013, several hundreds of civilians were killed when rockets containing sarin nerve gas hit the Ghouta suburb of Damascus.<sup>116</sup> The Ghouta attack led to widespread indignation within the international community. While Syria (and Russia) insisted that rebel forces were responsible for the attack, the Syrian opposition, as well as the governments of the United States, France and the United Kingdom, took the view that it was the work of the Assad regime. In a preliminary report<sup>117</sup> dated 16 September 2013 and a final report<sup>118</sup> dated 12 December 2013, the ‘United Nations Mission to Investigate Allegations of the Use of Chemical weapons in the Syrian Arab Republic’<sup>119</sup> confirmed that sarin gas had been used. Some of the findings of the UN inspection team were seen as corroborating the view that the rockets were fired from areas controlled by the Syrian regime.<sup>120</sup>

### *Initial reaction: the United States, France and the United Kingdom hint at a military response*

Following the Ghouta attack, the United States, having previously warned that the use of chemical weapons by the Syrian regime constituted a ‘red line’,<sup>121</sup> quickly hinted at the possibility of a military reaction.<sup>122</sup> On 26 August, US Secretary of State John Kerry warned that President Obama would seek ‘account-

<sup>116</sup> ‘France Says ‘at least 281’ Killed in Syria Chemical Attack’, *Daily Star*, 2 September 2013; Joby Warrick, ‘More than 1,400 Killed in Syrian Chemical Weapons Attack, US Says’, *Washington Post*, 30 August 2013.

<sup>117</sup> UN Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, ‘Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus’ (16 September 2013) [www.un.org/disarmament/content/slideshow/Secretary\\_General\\_Report\\_of\\_CW\\_Investigation.pdf](http://www.un.org/disarmament/content/slideshow/Secretary_General_Report_of_CW_Investigation.pdf) (accessed 24 May 2014).

<sup>118</sup> UN Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, ‘Final Report’ (12 December 2013) <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/12/report.pdf> (accessed 24 May 2014).

<sup>119</sup> The inspection team had been established already in March 2013 pursuant to allegations by Russia and Syria that rebels had used chemical weapons. See *eg ibid*, § 27; Letter from the Permanent Representative of Syria to the United Nations (19 March 2013) UN Doc S/2013/172; ‘Syria Rebels Made Own Sarin Gas, Says Russia’, *Al Jazeera*, 10 July 2013.

<sup>120</sup> See *eg* CJ Chivers, ‘Data in Gas Attack Points to Assad’s Top Forces’, *New York Times*, 18 September 2013. Russian officials nonetheless attacked the preliminary report as biased and incomplete. See *eg* Steven Lee Myers and Rick Gladstone, ‘Russia Calls UN Chemical Report on Syria Biased’, *New York Times*, 19 September 2013.

<sup>121</sup> See the quote from US President Obama in Mark Landler, ‘Obama Threatens Force against Syria’, *New York Times*, 20 August 2012: ‘We cannot have a situation in which chemical or biological weapons are falling into the hands of the wrong people ... we have been very clear to the Assad regime but also to other players on the ground that this is a red line for us.’

<sup>122</sup> On the US reaction, see also: John R Crook, ‘Contemporary Practice of the United States Relating to International Law’ (2013) 107 *American Journal of International Law* 900.



ability for those who would use the world's most heinous weapons against the world's most vulnerable people.<sup>123</sup> On 30 August, President Obama noted 'the possibility of a limited, narrow act that would help make sure that [Syria] and others ... understand that the international community cares about maintaining this chemical weapons band'. He also noted his 'preference would have been that the international community already would have acted', and expressed frustration over 'the inability of the Security Council to move in the face of a clear violation of international norms'.<sup>124</sup>

While the United States did not offer a clear international law rationale for the envisaged intervention,<sup>125</sup> President Obama called the attack 'an assault on human dignity' that both 'presents a serious danger to ... national security' and 'risks making a mockery of the global prohibition on the use of chemical weapons', and that 'could lead to escalating use of chemical weapons, or their proliferation to terrorist groups who would do our people harm'.<sup>126</sup> He stressed that military action against Syria 'would be designed to be limited in duration and scope. But I'm confident we can hold the Assad regime accountable for their use of chemical weapons, deter this kind of behavior, and degrade their capacity to carry it out'.<sup>127</sup>

Again, in an 'address to the nation' on 10 September 2013, President Obama stressed the need to uphold international limits on the use of chemical weapons and referred to the 'national security interests' of the United States:<sup>128</sup>

If we fail to act, the Assad regime will see no reason to stop using chemical weapons. As the ban against these weapons erodes, other tyrants will have no reason to think twice about acquiring poison gas, and using them. Over time, our troops would again face the prospect of chemical warfare on the battlefield. And it could be easier for terrorist organizations to obtain these weapons, and to use them to attack civilians.

If fighting spills beyond Syria's borders, these weapons could threaten allies like Turkey, Jordan, and Israel. And a failure to stand against the use of chemical weapons would weaken prohibitions against other weapons of mass destruction, and embolden Assad's ally, Iran—which must decide whether to ignore international law by building a nuclear weapon, or to take a more peaceful path.

<sup>123</sup> US Secretary of State John Kerry, 'Press Briefing—Remarks on Syria' (26 August 2013) [www.state.gov/secretary/remarks/2013/08/213503.htm](http://www.state.gov/secretary/remarks/2013/08/213503.htm) (accessed 19 May 2014).

<sup>124</sup> Frederik Pleitgen and Tom Cohen, "War-Weary" Obama Says Syria Chemical Attack Requires Response, *CNN*, 30 August 2013.

<sup>125</sup> See eg Tim Lister, 'What Justifies Intervening if Syria Uses Chemical Weapons', *CNN*, 28 August 2013; 'President Obama: "I Have Not Made a Decision" on Syria', *PBS Newshour*, 28 August 2013.

<sup>126</sup> 'Statement by the President on Syria', Press Release (Washington, 31 August 2013) [www.whitehouse.gov/the-press-office/2013/08/31/statement-president-syria](http://www.whitehouse.gov/the-press-office/2013/08/31/statement-president-syria) (accessed 19 May 2014).

<sup>127</sup> *Ibid.*

<sup>128</sup> US White House, 'Remarks by the President in Address to the Nation on Syria' (10 September 2013) [www.whitehouse.gov/the-press-office/2013/09/10/remarks-president-address-nation-syria](http://www.whitehouse.gov/the-press-office/2013/09/10/remarks-president-address-nation-syria) (accessed 19 May 2014).

This is not a world we should accept. This is what's at stake. And that is why, after careful deliberation, I determined that it is in the national security interests of the United States to respond to the Assad regime's use of chemical weapons through a targeted military strike. The purpose of this strike would be to deter Assad from using chemical weapons, to degrade his regime's ability to use them, and to make clear to the world that we will not tolerate their use.

While President Obama repeatedly asserted that he was not legally required to seek Congressional approval, faced with political pressure, he nonetheless considered that 'it was right in the absence of a direct or imminent threat to our security, to take this debate to Congress'.<sup>129</sup> On 6 September 2013, the Senate Foreign Relations Committee effectively approved a temporary 'Authorization for the Use of Military Force against the Government of Syria to Respond to Use of Chemical Weapons'.<sup>130</sup> The resolution refers to the use of force:

in a limited and specified manner against legitimate military targets in Syria, only to—

- (1) respond to the use of weapons of mass destruction by the Government of Syria in the conflict in Syria;
- (2) deter Syria's use of such weapons in order to protect the national security interests of the United States and to protect United States allies and partners against the use of such weapons;
- (3) degrade Syria's capacity to use such weapons in the future; and
- (4) prevent the transfer to terrorist groups or other state or non-state actors within Syria of any weapons of mass destruction.

The resolution nonetheless faced opposition in the full Senate as well as in the House of Representatives.<sup>131</sup> No further Congressional action was taken.

Next to the United States, France also indicated its support for, and readiness to participate in, military strikes against the Assad regime. On 27 August, the French foreign minister suggested that a 'reaction with force' could be needed if Syria were effectively found to have used chemical weapons against civilians.<sup>132</sup> President François Hollande similarly expressed support for a unilateral military action. Alluding to the difficulties in getting any strong action through the UN Security Council, and referring to the 'Responsibility to Protect', Hollande suggested that 'international law must evolve with the times. It cannot be a

<sup>129</sup> *Ibid.* See also Dan Roberts, 'Obama Seeks Global Backing on Syria: "I Didn't Set a Red line. The World Did', *The Guardian*, 4 September 2013.

<sup>130</sup> United States Senate, Foreign Relations Committee, SJ Res 21, 113th Congress (6 September 2013) [www.gpo.gov/fdsys/pkg/BILLS-113sjres21pcs/pdf/BILLS-113sjres21pcs.pdf](http://www.gpo.gov/fdsys/pkg/BILLS-113sjres21pcs/pdf/BILLS-113sjres21pcs.pdf) (accessed 19 May 2014). The authorisation does not extend to the deployment of ground troops in Syria.

<sup>131</sup> For example, Karen DeYoung and Ed O'Keefe, 'Senate Sets Aside Authorization Resolution', *Washington Post*, 12 September 2013; Joel Achenbach, 'One-Obvious Congressional Alliances Go Out the Window', *Washington Post*, 11 September 2013.

<sup>132</sup> 'Syria "Chemical" Attack: France Says Force May be Needed' *BBC News* (London, 22 August 2013)

pretext to allow mass massacres to be perpetrated.<sup>133</sup> In an interview dated 30 August, President Hollande confirmed France's readiness to participate in a military coalition.<sup>134</sup> Asked about the legal basis for military strikes, he referred to the prohibition on the use of chemical weapons in the 1925 Gas Protocol and the fact that the use of gas against the civilian population constituted a crime against humanity, as well as to the Security Council's two-year blockage over the situation in Syria. At the same time, President Hollande emphasised that any military action would be proportionate and would not aim at overthrowing the regime.

The United Kingdom government similarly indicated its willingness to take part in a military operation against Syria, with or without backing from the UN Security Council.<sup>135</sup> On 29 August, the government published a 'legal position' on 'Chemical Weapon Use by Syrian Regime'.<sup>136</sup> Noting that the use of chemical weapons by the Syrian regime amounts to a war crime and a crime against humanity, the document emphasises that the UK 'is seeking' a Chapter VII resolution of the UN Security Council that would, among other things, authorise Member States 'to take all necessary measures to protect civilians in Syria from the use of chemical weapons and prevent any future use of Syria's stockpile of chemical weapons' (para 4). It goes on as follows (para 5):

If action in the Security Council is blocked, the UK would still be permitted under international law to take exceptional measures in order to alleviate the scale of the overwhelming humanitarian catastrophe in Syria by deterring and disrupting the further use of chemical weapons by the Syrian regime. Such a legal basis is available, under the doctrine of humanitarian intervention, provided three conditions are met:

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

<sup>133</sup> Quoted in Albert Aji and Gregory Katz, 'Syria Intervention? Momentum Builds for Western Military Action', *Huffington Post*, 27 August 2013.

<sup>134</sup> 'François Hollande au "Monde": "Il ne s'agit pas de renverser le dictateur syrien"', *Le Monde*, 30 August 2013.

<sup>135</sup> Nicholas Watt, 'Syria Crisis: UK and US Move Closer to Intervention. Foreign Secretary Says Britain and Allies Could Intervene in Syria without the Authority of United Nations', *The Guardian*, 26 August 2013.

<sup>136</sup> UK Prime Minister's Office, 'Guidance—Chemical Weapon Use by Syrian Regime: UK Government Legal Position' (29 August 2013) <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version> (accessed 22 May 2014).

The document concludes that each of the cited conditions is met in the case at hand:

- (i) The Syrian regime has been killing its people for two years. ... Given the Syrian regime's pattern of use of chemical weapons over several months, it is likely that the regime will seek to use such weapons again. ...
- (ii) Previous attempts by the UK and its international partners to secure a resolution of this conflict ... have been blocked over the last two years. If action in the Security Council is blocked again, no practicable alternative would remain to the use of force to deter and degrade the capacity for the further use of chemical weapons by the Syrian regime.
- (iii) In these circumstances, and as an exceptional measure on grounds of overwhelming humanitarian necessity, military intervention to strike specific targets with the aim of deterring and disrupting further such attacks would be necessary and proportionate and therefore legally justifiable. Such an intervention would be directed exclusively to averting a humanitarian catastrophe, and the minimum judged necessary for that purpose.

In an emergency session, a narrow majority within the British Parliament on 29 August nonetheless voted against British military action against Syria. Prime Minister Cameron subsequently acknowledged that the Parliament 'does not want to see British military action'.<sup>137</sup> France indicated that the outcome of the UK vote would not change its resolve on the need to act in Syria.<sup>138</sup>

#### *Support for unilateral military actions by other states*

Plans to take action in the form of missile strikes by naval or air forces against selected targets were reportedly discussed during a two-day meeting on 25–26 August in Jordan, attended by the chairman of the US joint chiefs, the head of Britain's armed forces as well as military commanders from ten other Western and Middle Eastern countries.<sup>139</sup>

Several states expressed public support for unilateral military actions against Syria. The Australian foreign minister, for example, confirmed that if the use of chemical weapons were proven, Australia would support intervention with or without the support of the UN: 'Our preference, everyone's preference, would be for action, a response, under United Nations auspices. But if that's not possible,

<sup>137</sup> 'Syria Crisis: Cameron Loses Commons Vote on Syria action', *BBC News*, 30 August 2013.

<sup>138</sup> *Ibid.*

<sup>139</sup> 'Military Commanders to Meet in Jordan to Discuss Syria Conflict', *Al Jazeera*, 25 August 2013; Ben Farmer, Philip Sherwell and Damein McElroy, 'Western Attack to Punish Syria Likely to Begin with Barrage of More than 100 Missiles in 48 Hour Blitz', *Daily Telegraph*, 27 August 2013. It was reportedly stressed during the meeting that the attacks would be designed to punish Assad's use of chemical weapons rather than to tilt the balance in favour of the rebels.

the sheer horror of a government using chemical weapons against its people, using chemical weapons in any circumstances, mandates a response.<sup>140</sup>

Furthermore, the Turkish foreign minister made it clear that Turkey would consider taking part in an international coalition against the Syrian regime, even if the UN Security Council failed to endorse military action:

We always make it a priority to act in accord with the United Nations and the international community. If the Security Council does not reach a decision [to take action], we will address other possible options. These alternatives are currently being discussed by 36 to 37 countries. If a coalition emerges from these discussions, Turkey will be a part of it.<sup>141</sup>

Kosovo's Foreign Minister Enver Hoxhaj, expressing support for the notion of a unilateral humanitarian intervention, called for a military action replicating the NATO intervention model used in Kosovo in 1999.<sup>142</sup>

In the margin, Israel stressed that it was prepared to 'act decisively' to protect itself in the event of the Syrian regime launching an attack against it in response to a possible US-led military intervention.<sup>143</sup>

#### *Opposition to possible military strikes—calls for caution*

On the other hand, in a letter to the Security Council dated 31 August 2013, Syria condemned the threats of 'military aggression' against it, and the preparations undertaken to this end. In so doing, it referred to 'calls made by the international community and the United Nations to abide by the provisions of the Charter of the United Nations and the principles of international law and to await the results of the [UN] investigation' into the events.<sup>144</sup>

Russia, for its part, while asserting that it 'did not rule out' approving a military operation in Syria if clear evidence showed Damascus had carried out chemical weapons attacks,<sup>145</sup> repeatedly criticised suggestions that military intervention could go ahead without a UN Security Council resolution. The Russian foreign minister underlined that 'The use of force without the sanction of the UN Security Council is a grave violation of international law.'<sup>146</sup> In a similar

<sup>140</sup> James Grubel and Mark Bendeich, 'Australia Backs Action against Syria, With or Without UN Approval', *Reuters*, 27 August 2013.

<sup>141</sup> Harriet Sherwood, Constanze Letsch, Kate Connolly, Alec Luhn and Kim Willsher, 'Syria Crisis: International Views on Intervention', *The Guardian*, 26 August 2013.

<sup>142</sup> Enver Hoxhaj, 'It's 1999 in Syria', *Foreign Policy*, 23 August 2013.

<sup>143</sup> Sherwood *et al* (n 141).

<sup>144</sup> Identical letters dated 31 August 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (31 August 2013) UN Doc S/2013/520.

<sup>145</sup> Thomas Grove, 'Putin "Does Not Rule Out" Approving Syria Strike with Evidence Assad Used Poison Gas', *Reuters*, 4 September 2013.

<sup>146</sup> Alexei Anischchuk, 'Russia Warns against Military Intervention in Syria', *Reuters*, 26 August 2013; Sherwood *et al*, (n 141).

vein, President Putin stressed that ‘According to current international law, only the United Nations Security Council can sanction the use of force against a sovereign state. Any other approaches, means, to justify the use of force against an independent and sovereign state, are admissible.’<sup>147</sup> President Putin reiterated this position in an op-ed in the *New York Times* dated 11 September.<sup>148</sup>

In a letter dated 24 September to the Security Council, the members of the Collective Security Treaty Organization moreover stated the view that ‘external intervention, including by force, is unacceptable and may lead to even greater destabilization of the situation in the country and far beyond the region. In addition, any international intervention in the Syrian conflict which bypasses the [UN] Security Council and violates the Organization’s charter is illegitimate.’<sup>149</sup>

Official representatives of the People’s Republic of China also occasionally voiced opposition to a unilateral military intervention in Syria. On 11 September 2013, for instance, the spokesperson of the Foreign Ministry stated as follows:

Our position on the issue of chemical weapons is consistent. We are firmly opposed to the use of chemical weapons by anyone. In the meantime, China objects to the use or threat of force in international relations. To bypass the Security Council and take unilateral military actions goes against the international law and basic norms governing international relations and will add to turbulences in Syria and the region as a whole.<sup>150</sup>

In a debate before the UN Security Council on 27 September 2013, China against voiced its opposition to ‘the use of force in international relations,’ stressing that its belief ‘that military means cannot solve the Syrian issue.’<sup>151</sup>

Pakistan similarly took the view that ‘the sovereignty and integrity of Syria must be respected and that there should be no foreign interference in Syria.’<sup>152</sup>

<sup>147</sup> Grove (n 145).

<sup>148</sup> Vladimir V Putin, ‘A Plea for Caution from Russia. What Putin Has to Say to Americans about Syria’, *New York Times*, 11 September 2013).

<sup>149</sup> Identical letters dated 24 September 2013 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General and the President of the Security Council (24 September 2013) UN Doc S/2013/571.

<sup>150</sup> China, Ministry of Foreign Affairs, ‘Foreign Ministry Spokesperson Hong Lei’s regular press conference on September 11, 2013’ (11 September 2013) [www.fmprc.gov.cn/eng/xwfw/s2510/t1075618.shtml](http://www.fmprc.gov.cn/eng/xwfw/s2510/t1075618.shtml) (accessed 22 May 2014). See also: China, Ministry of Foreign Affairs, ‘Foreign Ministry Spokesperson Hong Lei’s regular press conference on September 9, 2013’ (9 September 2013) [www.fmprc.gov.cn/eng/xwfw/s2510/t1074618.shtm](http://www.fmprc.gov.cn/eng/xwfw/s2510/t1074618.shtm) (accessed 22 May 2014); China, Ministry of Foreign Affairs, ‘Foreign Ministry Spokesperson Hong Lei’s regular press conference on September 12, 2013’ (12 September 2013) [www.fmprc.gov.cn/eng/xwfw/s2510/t1076098.shtml](http://www.fmprc.gov.cn/eng/xwfw/s2510/t1076098.shtml) (accessed 22 May 2014).

<sup>151</sup> UNSC Verbatim Record (27 September 2013) UN Doc S/PV.7038, 9/16.

<sup>152</sup> ‘Sovereignty, Integrity of Syria Must Be Respected: Pakistan’, *The News*, 29 August 2013; [www.thenews.com.pk/article-115783-Sovereignty,-integrity-of-Syria-must-be-respected:-Pakistan](http://www.thenews.com.pk/article-115783-Sovereignty,-integrity-of-Syria-must-be-respected:-Pakistan) (accessed 22 May 2014).

The legality of unilateral military strikes against Syria was also implicitly questioned by UN Secretary-General Ban Ki-Moon<sup>153</sup> as well as by the United Nations and Arab League Special Envoy to Syria, Lakhdar Brahimi.<sup>154</sup> Both took the position that such strikes would only be lawful if approved by the UN Security Council.

#### *A negotiated outcome*

In response to a question during a press conference on 9 September as to what the Syrian regime could do to avoid intervention, US Secretary of State John Kerry answered that it could immediately turn over all of its chemical weapons to the international community and account for it.<sup>155</sup> While the US State Department later asserted that this statement was a 'rhetorical argument', or even a 'joke', the invitation was taken seriously by Russia, which proposed that Syrian chemical arsenals be moved under international control, in turn averting the threat of military strikes. Syria in turn was quick to welcome the proposal to place its chemical weapons under international control.<sup>156</sup>

Following several days of negotiations, the United States and Russia on 14 September agreed on a 'Framework for Elimination of Syrian Chemical Weapons', calling for the elimination of Syria's chemical weapons stockpiles under OPCW supervision by mid-2014.<sup>157</sup> Syria immediately hereafter joined the Chemical Weapons Convention. While welcoming the agreement, US President Obama insisted that the United States remained 'prepared to act' should diplomatic efforts fail.<sup>158</sup> In reaction, the Russian deputy foreign minister noted

<sup>153</sup> Louis Charbonneau, 'UN's Ban Casts Doubt on Legality of US Plans to Punish Syria', *Reuters*, 3 September 2013: 'The use of force is lawful only when in exercise of self-defense in accordance with Article 51 of the United Nations charter and/or when the Security Council approves of such action', Ban said. 'That is a firm principle of the United Nations'; 'Syria: With Samples en Route to Labs, Ban Calls on Security Council to Develop Response', *UN News Centre*, 3 September 2013.

<sup>154</sup> Tom Miles, Stephanie Nebehay and Mark Heinrich, 'Military Intervention in Syria Would Need UN Approval: Brahimi', *Reuters*, 28 August 2013: 'I think international law is clear on this. International law says that military action must be taken after a decision by the Security Council. That is what international law says.'

<sup>155</sup> For example Arshad Mohammed and Andrew Osborn, 'Kerry: Syrian Surrender of Chemical Arms Could Stop US Attack', *Reuters*, 9 September 2013; Michael R Gordon and Steven L Myers, 'Obama Calls Russia Offer on Syria Possible "Breakthrough"', *New York Times*, 9 September 2013.

<sup>156</sup> 'Syria says it "Welcomes" Russian Proposal to Place Chemical Weapons under International Control', *CBS News*, 9 September 2013.

<sup>157</sup> 'Framework for Elimination of Syrian Chemical Weapons' (14 September 2013) annexed to OPCW Doc EC-M-33/NAT.1 [www.opcw.org/fileadmin/OPCW/EC/M-33/ecm33nat01\\_e\\_.pdf](http://www.opcw.org/fileadmin/OPCW/EC/M-33/ecm33nat01_e_.pdf) (accessed 22 May 2014).

<sup>158</sup> Steve Holland, 'Obama Says US Remains Prepared to Act on Syria if Diplomacy Fails', *Reuters*, 14 September 2013. A similar position was voiced by the Pentagon press secretary: see eg Michael R Gordon, 'US and Russia Reach Deal to Destroy Syria's Chemical Arms', *New York Times*, 14 September 2013.

that, since '[US] plans to punish Damascus [remained] in force ... the threat of aggression in violation of international law is so far only delayed, not dismissed fully'.<sup>159</sup>

Eventually, the UN Security Council on 27 September adopted resolution 2118 (2013), requiring the destruction of all Syrian chemical weapons in accordance with the agreed Framework.<sup>160</sup> The resolution 'determines' that 'the use of chemical weapons anywhere constitutes a threat to international peace and security' (para 1). It furthermore 'condemns in the strongest terms any use of chemical weapons in [Syria] ... in violation of international law' (para 2) and 'expresses its strong conviction that those individuals responsible for the use of chemical weapons in [Syria] should be held accountable' (para 15). The Council 'decides' that Syria 'shall not use, develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer them to other states or non-state actors' (para 4). Paragraph 21 indicates the possibility of imposing measures under Chapter VII of the UN Charter in case of non-compliance with the resolution. In relation to the latter paragraph, a number of states underlined that it did not allow for the automatic use of coercive enforcement measures by individual Member States.<sup>161</sup>

As Syria started to implement the required transfer of its chemical arsenal, threats of military action eventually faded.

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### Syrian Civil War—third-state assistance to the warring parties

Throughout the second half of 2013, reports of third-state assistance to the parties involved in the Syrian civil war continued.<sup>162</sup> In September, for instance, the *Washington Post* reported that the CIA had begun delivering weapons (notably light weapons and munitions that could be 'tracked') to rebels in Syria, as had previously been promised by the Obama administration.<sup>163</sup> Having previously provided Syrian rebels with 'non-lethal assistance' French President Hollande moreover hinted at arming Syrian rebels.<sup>164</sup>

<sup>159</sup> 'Russia Fears US Will Still Use Force in Syria', *Al Jazeera*, 24 September 2013.

<sup>160</sup> UNSC Res 2118 (27 September 2013) UN Doc S/RES/2118. See also: Michael R Gordon, 'UN Deal on Syrian Arms Is Milestone after Years of Inertia', *New York Times*, 26 September 2013.

<sup>161</sup> UNSC Verbatim Record (26 September 2013) UN Doc S/PV.7036, 4/16 (Russia, declaring that the resolution 'does not allow for any automatic use of coercive measures of enforcement'; Argentina: 'it is also clear that should there be non-compliance, it is within the exclusive power of the Council to convene in order to assess and take measures that it deems appropriate under Chapter VII of the Charter').

<sup>162</sup> For example CJ Chivers and Eric Schmitt, 'Arms Shipments Seen from Sudan to Syria Rebels', *New York Times*, 12 August 2013.

<sup>163</sup> Ernesto Londoño and Greg Miller, 'US Weapons Reaching Syrian Rebels', *Washington Post*, 12 September 2013.

<sup>164</sup> John Irish and Peter Cooney, 'France Suggests it is Ready to Give Weapons to Syria Rebels', *Reuters*, 19 September 2013; 'France's Hollande Hints at Arming Syrian Rebels', *France24*, 20



Syria on numerous occasions complained to the UN Secretary-General and the UN Security Council about third-state assistance to the Free Syrian army and to other non-state armed groups.<sup>165</sup> In a letter dated 5 September, for instance, Syria stated that ‘those states that are arming, funding, training and providing safe havens for armed terrorists and facilitating their entry into Syria are partners in terrorism and complicit in the killing of Syrians.’<sup>166</sup> On other occasions, Syria accused the third states concerned of violating international counter-terrorism instruments, including Security Council resolution 1373(2013). In a letter dated 19 September Syria stated as follows:<sup>167</sup>

Syria has sent dozens of letters to the Security Council and the Secretary-General of the United Nations documenting all that the Syrian Arab Republic has endured over the last two and a half years, including direct and indirect aggression, bare-faced interference in its internal affairs, attacks on its sovereignty and independence, and a campaign to change its Government and constitutional order by force. ...

September 2013. See also Sylvie Corbet, ‘France “Ready to Punish” Syria over Gas Attack’, *Huffington Post*, 27 August 2013, [www.huffingtonpost.com/2013/08/27/france-syria\\_n\\_3823398.html](http://www.huffingtonpost.com/2013/08/27/france-syria_n_3823398.html) (accessed 22 May 2014).

<sup>165</sup> Identical letters dated 29 July 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (29 July 2013) UN Doc S/2013/449; Identical letters dated 25 November 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (25 November 2013) UN Doc S/2013/690; Identical letters dated 25 November 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (25 November 2013) UN Doc S/2013/693 (referring to interference by Lebanon); Identical letters dated 6 December 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (6 December 2013) UN Doc S/2013/723 (referring to assistance by Turkey); Identical letters dated 24 December 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (24 December 2013) UN Doc S/2013/766 (referring to interference by Saudi Arabia); Identical letters dated 9 December 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (9 December 2013) UN Doc S/2013/727 (referring to interference by Saudi Arabia); Identical letters dated 16 December 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (16 December 2013) UN Doc S/2013/743 (accusing Israel of providing rebels with logistical assistance); UN Doc S/2013/762 (24 December 2013); Identical letters dated 24 December 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (24 December 2013) UN Doc S/2013/762.

<sup>166</sup> Letter dated 5 September 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (5 September 2013) UN Doc S/2013/529. See also Letter dated 4 November 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (4 November 2013) UN Doc A/68/572-S/2013/644

<sup>167</sup> Identical letters dated 19 September 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (19 September 2013) UN Doc S/2013/563.

The United States of America, France, Britain, Turkey, Saudi Arabia and Qatar, along with certain other states, are continuing to support, fund, arm, recruit and dispatch terrorists to Syria, in clear violation of the rules and principles of international law and the principles governing international relations and goodneighbourly relations, as well as the Security Council resolutions concerning counter-terrorism. They are also acting in clear and blatant violation of Article 2, paragraph 4, of the Charter of the United Nations. ...

They are furthermore in blatant violation of ... General Assembly resolution 3314 (XXIX), to which is annexed the Definition of Aggression; General Assembly resolution 2625 (XXV) of 1970, to which is annexed the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations, ...; General Assembly resolution 42/22, to which is annexed the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations; ...

The Syrian Arab Republic would like to draw the attention of the Security Council, the Secretary-General and the countries of the world to these clear acts of aggression that are being committed by the United States of America, Britain, France, Turkey, Saudi Arabia, Qatar and certain other states through their ongoing support for terrorism, their blatant interference in Syria's internal affairs and their attacks on Syria.'

In a Security Council meeting on 16 July, Iraq called on all sides 'to cease providing financial and military support to all militias and militant groups, which we believe can only further complicate matters.'<sup>168</sup>

### Syrian civil war—spillover effects

While the Syrian regime condemned third-state intervention in support of rebel forces, neighbouring countries in turn repeatedly spoke out, or acted, against spillover effects of the Syrian civil war.

Jordan, for instance, provided the UN Security Council with two notes verbales previously communicated to the Syrian embassy in Amman, in which it complained of shelling of Jordanian territory.<sup>169</sup> In the first note verbale, for instance, Jordan

note[d] with regret the growing number of violations of Jordanian territory caused by various types of shelling and gunfire from the Syrian side of the border' inflicting damage on civilians, the Jordanian armed forces and public and private property. It stressed that Syria 'must bring an end to the violations ... and take all necessary measures to ensure that no shells or bullets land on Jordanian territory.'<sup>170</sup>

<sup>168</sup> UNSC Verbatim Record (16 July 2013) UN Doc S/PV.7000 at 11/13.

<sup>169</sup> Letter dated 7 October 2013 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General and to the President of the Security Council (16 October 2013) UN Doc S/2013/595.

<sup>170</sup> *Ibid.*

Lebanon similarly complained before the UN Security Council that ‘increasing cross-border fire and incursions from Syria into Lebanon [were] threatening [its] security and stability’.<sup>171</sup> It ‘strongly condemn[ed] all such acts, whoever their perpetrators may be and whatever their alleged reasons.’ On 17 July, militants assassinated a well-known supporter of the Syrian president in Lebanon in an attack that was allegedly the work of members of the Syrian rebel opposition.<sup>172</sup> In a Presidential Statement, the UN Security expressed ‘deep concern at all violations of Lebanon’s sovereignty’:

As the impact of the Syrian crisis on Lebanon’s stability and security becomes more and more apparent, the Security Council underscores its growing concern at the marked increase of cross-border fire from the Syrian Arab Republic into Lebanon, which caused death and injury among the Lebanese population, as well as incursions, abductions, and arms trafficking across the Lebanese–Syrian border. The Security Council also expresses its concern at all other border violations. The Security Council echoes President Michel Sleiman’s protest, ... at such repeated shelling from the conflicting parties, including by the Syrian Arab armed Forces and Syrian armed opposition groups that violate Lebanon’s sovereignty and territorial integrity.<sup>173</sup>

Furthermore, the Council noted with ‘deep concern’ new developments with regard to the involvement of Lebanese parties in the fighting in Syria and urged all parties in Lebanon to avoid a ‘slide into conflict’ and recommit to Lebanon’s policy of disassociation.

There were also recurrent reports of incidents along the Syrian border with Turkey. Thus, on 17 July stray bullets from Syria killed two persons in a Turkish border town.<sup>174</sup> Turkish troops returned fire. One week later, a Turkish border patrol killed one of eight civilians trying to cross illegally from Turkey into Syria.<sup>175</sup> And in September, Turkish warplanes shot down a Syrian helicopter after it crossed into Turkish airspace.<sup>176</sup> According to Turkey, repeated warnings had been given before the helicopter was shot down. The Turkish foreign minister declared that ‘Turkey will definitely not allow any violation of its border. ... We will defend our borders and our people’s security to the end.’<sup>177</sup> In turn, in a statement by the state news agency SANA, Syria accused Turkey of escalating the situation:

<sup>171</sup> UNSC Verbatim Record (16 July 2013) UN Doc S/PV.7000 at 9/13.

<sup>172</sup> Oliver Holmes and Andrew Heavens, ‘Militants Assassinate Pro-Assad Syrian in Lebanon’, *Reuters*, 17 July 2013.

<sup>173</sup> UNSC Presidential Statement 9 (2013) UN Doc S/PRST/2013/9.

<sup>174</sup> Seyhmus Cakan, ‘Stray Bullets from Syria Kill Two in Turkish Border Town’, *Reuters*, 17 July 2013.

<sup>175</sup> Jonathan Burch, ‘Turkish Troops Kill Civilian Trying to Cross into Syria’, *Reuters*, 23 July 2013.

<sup>176</sup> Saif Tawfiq, ‘Turkish Warplanes Shoot Down Syrian Helicopter’, *Reuters*, 16 September 2013.

<sup>177</sup> *Ibid.* See also: ‘Turkey says will Inform UN, NATO on Syrian Helicopter Downing’, *Reuters*, 16 September 2013.

The hasty response from the Turkish side, especially as the aircraft was on its way back and was not charged with any combat missions, is proof of the true intentions of [Turkey] toward Syria to increase tensions and escalate the situation on the border between the two countries.

Last but not least, Israel submitted several letters to the UN Security Council with regard to violations of the buffer zone on the Golan Heights as well as attacks with mortar shells fired from Syria. Thus, on 16 July, Israel informed the Security Council that

The fasting and prayers of thousands of Israelis commemorating the Jewish holiday of Tisha B'Av were interrupted by a barrage of mortar shells fired from Syria. ... Israel has thus far shown maximum restraint. ... However, the Israeli Government will not allow its citizens to be the ongoing victims of these attacks and will continue to exercise its right to self-defence, as appropriate, and take all necessary measures to protect its population.<sup>178</sup>

During a Security Council debate on 23 July, Israel similarly drew attention to attacks with mortar shells and violations of the buffer zone by Syrian tanks and armoured vehicles, in defiance of the 1974 Separation of Forces Agreement.<sup>179</sup> It warned that '[i]f provocations by the Syrian government continue, Israel will have no choice but to respond accordingly'.<sup>180</sup> In a letter dated 9 October 2013, Israel informed the Security Council that it had responded to mortar shells being fired into northern Israel by returning fire to the Syrian military outpost from where the shells had originated.<sup>181</sup> In relation to another shooting incident in December whereby a Syrian soldier allegedly opened fire from Syrian territories towards an Israeli military outpost, Israel again stressed that it could not 'be expected to stand by as its soldiers and citizens are repeatedly put at risk'.<sup>182</sup>

In turn, according to US officials, Israel in July conducted an air strike in Syria targeting advanced missiles sold to Syria by Russia.<sup>183</sup> Israel declined to comment on the strikes. During the Security Council debate of 23 July, Iran, speaking on behalf of the Non-Aligned Movement moreover condemned the Israeli air strikes against targets near Damascus that took place on 5 May

<sup>178</sup> Identical letters dated 16 July 2013 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council (16 July 2013) UN Doc S/2013/425.

<sup>179</sup> UNSC Verbatim Record (23 July 2013) UN Doc S/PV.7007, 10/57.

<sup>180</sup> *Ibid.*

<sup>181</sup> Identical letters dated 9 October 2013 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council (9 October 2013) UN Doc S/2013/601.

<sup>182</sup> Identical letters dated 2 December 2013 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council (2 December 2013) UN Doc S/2013/711 See also: Maayan Lubell and Crispian Balmer, 'Israel Says Returns Fire into Syria on Occupied Golan Heights', *Reuters*, 2 December 2013.

<sup>183</sup> Michael R Gordon, 'Israel Airstrike Targeted Advanced Missiles that Russia Sold to Syria, US Says', *New York Times*, 13 July 2013.

(allegedly carried out in an attempt to destroy Iranian missiles bound for Hezbollah<sup>184</sup>) as an 'act of aggression' by Israel.<sup>185</sup> Other states took a more cautious approach urging on both states not to let things escalate.<sup>186</sup>

In a resolution adopted on 18 December, the Security Council 'strongly condemn[ed] the recent intense fighting in the area of separation and [called] on all parties to the Syrian domestic conflict to cease military actions in the UNDOF area of operation.'<sup>187</sup> The Council stressed that both parties should abide by the 1974 Disengagement of Forces Agreement and scrupulously observe the ceasefire.

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### Israel–Lebanon

#### *Violations of the 'Blue Line'*

Tension remained high along the UN-established 'Blue Line' between Israel and Lebanon.

Lebanon submitted numerous letters to the UN Security Council complaining of Israeli incursions by land, sea or air.<sup>188</sup> It consistently asserted that '[t]hese acts are a blatant violation of [Lebanon's] sovereignty and the relevant international resolutions, including Security Council resolution 1701(2006). They are

<sup>184</sup> Dominic Evans and Oliver Holmes, 'Israel Strikes Syria, says Targeting Hezbollah Arms', *Reuters*, 5 May 2013.

<sup>185</sup> UNSC Verbatim Record (23 July 2013) UN Doc S/PV.7007, 45/57. See also: *ibid.*, 41 (Syria: similarly condemning the Israeli 'aggression' that took place on 5 May).

<sup>186</sup> For example *ibid.*, 17 (Republic of Korea, 'strongly condemn[ing] all firing across and within the area of separation adjacent to the Golan Heights'), 56 (Peru).

<sup>187</sup> UNSC Res 2131 (18 December 2013) UN Doc S/RES/2131.

<sup>188</sup> Identical letters dated 1 July 2013 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council (1 July 2013) UN Doc S/2013/409; Identical letters dated 19 July 2013 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council (19 July 2013) UN Doc S/2013/437; Identical Letters dated 4 September 2013 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council (4 September 2013) UN Doc S/2013/527; Identical letters dated 11 October 2013 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council (11 October 2013) UN Doc S/2013/604; Identical Letters dated 4 November 2013 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council (4 November 2013) UN Doc S/2013/658; Identical letters dated 25 November 2013 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council (25 November 2013) UN Doc S/2013/713; Identical letters dated 12 July 2013 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council (12 July 2013) UN Doc S/2013/418 (also accusing of having opened fire on a civilian fishing within Lebanese territory without hitting him).

also a flagrant contravention of the Charter of the United Nations and the principles and provisions of international law.<sup>189</sup>

Conversely, Israel complained of dozens of ‘breaches of Israeli sovereignty’ in violation of Security Council resolution 1701(2006) by Lebanon.<sup>190</sup> In particular, in a letter dated 16 December 2013,<sup>191</sup> Israel accused Lebanese armed forces of having engaged in an ‘unprovoked attack’, killing an Israeli soldier driving in Israeli territory, and warning that ‘provocations and breaches of Israeli sovereignty will not be tolerated’. An Israeli army spokesperson declared that: ‘We will not tolerate aggression against the state of Israel and maintain the right to exercise self-defence.’<sup>192</sup>

And when on 29 December, five rockets were fired from southern Lebanon towards Israel, Israel responded with ‘massive shelling toward the launch area.’<sup>193</sup> Prime Minister Netanyahu warned that Israel held ‘the Lebanese government responsible for firing that is carried out from within its territory.’<sup>194</sup> In a letter to the Security Council dated 30 December 2013,<sup>195</sup> Israel stated as follows:

Yesterday, the early morning calm in northern Israel was once again shattered by a barrage of rockets fired from Lebanon towards the northern Israeli town of Kiryat Shmona.

The Government of Israel holds the Lebanese government responsible for the escalation of violence in recent weeks. In addition to the wave of rockets, armed fighters have been firing across the Blue Line into northern Israel throughout the month of December. And just last week, a member of the Lebanese Armed Forces shot and killed an Israeli, Shlomi Cohen, while he was driving in a civilian vehicle inside Israel. ...

<sup>189</sup> For example, Identical letters dated 11 October 2013 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council (11 October 2013) UN Doc S/2013/604.

<sup>190</sup> Letter dated 13 August 2013 from the Permanent Representative of Israel to the United Nations addressed to the President of the Security Council (13 August 2013) UN Doc S/2013/486; Letter dated 12 September 2013 from the Permanent Representative of Israel to the United Nations addressed to the President of the Security Council (12 September 2013) UN Doc S/2013/546; Letter dated 8 October 2013 from the Permanent Representative of Israel to the United Nations addressed to the President of the Security Council (8 October 2013) UN Doc S/2013/596; Letter dated 23 October 2013 from the Permanent Representative of Israel to the United Nations addressed to the President of the Security Council (23 October 2013) UN Doc S/2013/626.

<sup>191</sup> Identical letters dated 16 December 2013 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council (16 December 2013) UN Doc S/2013/745.

<sup>192</sup> Quoted in ‘Israeli Soldier Killed near Lebanon border’, *Al Jazeera*, 15 December 2013.

<sup>193</sup> William Booth, ‘Israel Fires Artillery Shells into Lebanon after Rockets Fall’, *Washington Post*, 29 December 2013.

<sup>194</sup> *Ibid.*

<sup>195</sup> Identical letters dated 30 December 2013 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council (30 December 2013) UN Doc S/2013/780.

Israel has shown maximum restraint, but will continue to exercise its right to self-defence, as appropriate, and will take all necessary measures to protect its citizens.

#### *Other incidents*

Several other incidents took place involving Israeli–Lebanese relations. Thus, on 23 August the Israeli military reported that its jets had bombed a ‘terror site’ near a coastal town south of Beirut in reaction to a barrage of four rockets launched at northern Israel the day before.<sup>196</sup> The Popular Front for the Liberation of Palestine-General Command (PFLP-GC) said one of its bases had been hit. On 4 December, senior Hezbollah commander Hassan al-Laqaes was gunned down outside his home in Hadath, south of Beirut.<sup>197</sup> Hezbollah immediately issued a statement accusing Israel of the assassination. Yet, Israel stated it had nothing to do with the incident. Other sources suggested that the killing might rather be linked to the Lebanon’s soaring sectarian tensions.<sup>198</sup>

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#### **Israel—Palestine—incidents in the West Bank and the Gaza Strip**

Multiple incidents occurred in the West Bank and the Gaza Strip. On 26 August, three Palestinians were killed by Israeli police when a large crowd attacked police with ‘stones and petrol bombs’ during an Israeli arrest operation in the Qalandiya refugee camp on the West Bank.<sup>199</sup> In late September 2013, two Israeli soldiers were killed in separate incidents in the West Bank city of Hebron.<sup>200</sup> On 22 October, Israeli forces killed a suspected Palestinian fighter—wanted for his alleged involvement in a Tel Aviv bus bombing the year before—during an exchange of fire near the village of Bilin in the West Bank.<sup>201</sup> And, in December, a Palestinian sniper killed an Israeli defence ministry employee near the border with the Gaza Strip.<sup>202</sup> Israel responded by shutting down its main cargo crossing to the Gaza Strip and by launching an air and artillery assault, killing a Palestinian girl. A Hamas spokesperson denounced the Israeli actions as a ‘collective punishment’ of the Gaza population.<sup>203</sup>

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<sup>196</sup> ‘Israeli Jets Bomb Lebanon Target after Rocket Strike’, *BBC News*, 23 August 2013.

<sup>197</sup> Liz Sly and Loveday Morris, ‘Hezbollah Commander Hassan al-Laqaes Assassinated outside his Beirut Home’, *Washington Post*, 4 December 2013.

<sup>198</sup> *Ibid.*

<sup>199</sup> ‘Palestinians Killed in Clashes with Israeli’, *BBC News*, 26 August 2013.

<sup>200</sup> ‘Clashes in Hebron after Israeli Troop Deaths’, *Al Jazeera*, 24 September 2013.

<sup>201</sup> ‘Israeli Forces Kill Palestinian in West Bank’, *Al Jazeera*, 22 October 2013.

<sup>202</sup> Calev Ben-David and Saud Abu Ramadan, ‘Israel Shuts Gaza Crossing after Worker Shot Dead at Fence’, *Bloomberg*, 25 December 2013.

<sup>203</sup> *Ibid.*

### Yemen—US drone strike—resolution of the Yemen parliament

Throughout the second semester of 2013, the United States continued to conduct drone strikes against suspected al-Qaeda members within Yemeni territory. On 30 July, for instance, three suspected al-Qaeda members were allegedly killed in the second such attack in three days, according to a Yemeni military official and tribal sources.<sup>204</sup>

In another incident, at least 14 people were reportedly killed and 22 injured, when on 12 December, a US drone mistakenly targeted a wedding convoy in Yemen's al-Baitha province after intelligence reports identified the vehicles as carrying al-Qaeda militants.<sup>205</sup> In reaction, the Yemeni parliament on 15 December passed a (non-binding) resolution—mere days after the Pakistani parliament voted a similar resolution (see *supra*)—condemning US drone attacks.<sup>206</sup> The resolution stressed 'the importance of protecting all citizens from any aggression' as well as the 'importance of preserving the sovereignty of Yemeni air space'.

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## VI. OTHER

### UN General Assembly urges the international community to ensure that drone strikes comply with international law

On 18 December 2013, the UN General Assembly adopted (without a vote) resolution 68/178 on the 'Protection of Human Rights and Fundamental Freedoms while Countering Terrorism'.<sup>207</sup> The resolution inter alia calls upon states, when countering terrorism, to

ensure that any measures taken or means employed to counter terrorism, including the use of remotely piloted aircraft, comply with their obligations under international law, including the Charter of the United Nations, human rights law and international humanitarian law, in particular the principles of distinction and proportionality.

It also stresses the urgent and imperative need to seek agreement between states on the legal questions pertaining to the use of drones. The resolution was adopted not long after Amnesty International and Human Rights Watch released separate reports detailing the deaths of dozens of civilians as a result

<sup>204</sup> 'US Drone Kills al-Qaeda Suspects in Yemen', *Al Jazeera*, 30 July 2013.

<sup>205</sup> Hakim Almasmari, 'Yemen says US Drone Struck a Wedding Convoy, Killing 14', *CNN*, 13 December 2013.

<sup>206</sup> 'Yemeni Parliament Votes to Ban Drone Attacks', *RT*, 16 December 2013: <http://rt.com/news/yemen-parliament-bans-drones-294/> (accessed 25 May 2014); 'Yemeni Parliament in Non-Binding Vote against Drone Attacks', *Reuters*, 15 December 2013.

<sup>207</sup> UNGA Res 68/178, 'Protection of Human Rights and Fundamental Freedoms while Countering Terrorism' (18 December 2013) UN Doc S/RES/2098.



of US drone strikes in Pakistan and Yemen, and accusing the United States of breaking international law and perhaps committing war crimes<sup>208</sup>—accusations that were vehemently denied by the US authorities.<sup>209</sup> Three months earlier, the prime minister of Pakistan had strongly raised the issue of drone attacks in his address to the General Assembly on 27 September, denouncing them as a continued violation of Pakistan's integrity and as detrimental to efforts to eliminate extremism and terrorism<sup>210</sup> (see also *supra*).

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### Security Council condemns terrorist attacks/attacks against embassies

Throughout the second Semester of 2013, the Security Council on repeated occasions condemned specific terrorist attacks and attacks against embassies.

On 29 July 2013, the Council condemned the suicide car bomb attack against the Turkish embassy in Mogadishu, Somalia, on 27 July, resulting in one death and leaving several others wounded.<sup>211</sup>

On 4 October, it adopted a similar press statement in relation to the attack against the Russian embassy in Tripoli, Libya, on 2 October, thereby calling on Libya to protect diplomatic and consular property and personnel in accordance with its international obligations in this regard.<sup>212</sup>

On 28 November, the Council condemned the shelling of the Russian embassy in Damascus, Syria, killing one and wounding nine people including among the embassy security personnel.<sup>213</sup>

Finally, on 29 and 30 December, respectively, the Security Council adopted press statements condemning in the strongest terms two terrorist attacks that occurred in Volgograd (Russia), in the run-up to the winter Olympics in Sochi, both of which resulted in numerous deaths and injuries.<sup>214</sup>

<sup>208</sup> Susan Cornwell and Mark Hosenball, 'US Broke International Law by Killing Civilians with Drones: Rights Group', *Reuters*, 22 October 2013.

<sup>209</sup> 'White House Defends Legality of Drone Attacks—US Says it "Strongly Disagrees" with Amnesty International and Human Rights Watch about Legality of Drone Attacks', *Al Jazeera*, 22 October 2013.

<sup>210</sup> UNGA Verbatim Record (27 September 2013) UN Doc A/68/PV.15 at 24/51.

<sup>211</sup> UNSC Press Statement on Attack against Turkish Embassy in Somalia (29 July 2013) Press Release SC/11080.

<sup>212</sup> UNSC Press Statement on Attack against Russian Federation Embassy in Tripoli, Libya (4 October 2013) Press Release SC/11140.

<sup>213</sup> UNSC Press Statement on Shelling against Russian Federation Embassy in Damascus (28 November 2013) Press Release SC/11196.

<sup>214</sup> UNSC Press Statement on Terrorist Attack in Russian Federation (29 December 2013) Press Release SC/11233; UNSC Press Statement on Second Terrorist Attack in Russian Federation (30 December 2013) Press Release SC/11234.