



Overview

**Assessment of Russian, US and Israeli involvement in the conflict in Syria in the light of international law**

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## 1. Introduction

Since the start of the conflict in Syria in 2011, numerous states and non-state actors have been intervening there.<sup>1</sup> Some of the features of the Syrian conflict are now those of a **proxy war**. The reasons for involvement in the conflict are manifold; not all of the participating states, however, can cite international law to justify their interventions.<sup>2</sup> Some players crave a permanent presence – meaning a military presence – in Syria so as to be able to intervene on the spot in the conflict there, while others confine themselves to intervention from outside. The following overview **examines aspects of the Russian, US and Israeli involvement in the Syrian conflict in the light of international law**.

## 2. Russia

### 2.1. Background

Russia has been officially involved in the conflict in Syria since 2015 with the consent of the Assad regime. The Russian Air Force attacked targets in Syria for the first time on 30 September 2015.<sup>3</sup> The declared objective of the Russian military engagement is to **stabilise the Assad regime**.<sup>4</sup> Russian air support has ultimately secured military superiority for the regime.<sup>5</sup>

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- 1 Hierzu bereits ausführlich Sachstand WD 2 - 3000 - 043/17 vom 1. Juni 2017, „Der Syrienkrieg – Akteure und Verhandlungen“, abrufbar unter: <https://www.bundestag.de/blob/515094/6add202f3f24cc5c6295548c897f0d07/wd-2-043-17-pdf-data.pdf>.
  - 2 Vgl. Gutachten WD 2 - 3000 - 048/18 vom 18. April 2018, „Völkerrechtliche Implikationen des amerikanisch-britisch-französischen Militärschlags vom 14. April 2018 gegen Chemiewaffeneinrichtung in Syrien“, S. 4, abrufbar unter: <https://www.bundestag.de/blob/551344/f8055ab0bba0ced333ebcd8478e74e4e/wd-2-048-18-pdf-data.pdf>.
  - 3 SZ.de v. 9.9.2015, „Unterstützung für Assad – Russland bestätigt Präsenz eigener Soldaten in Syrien“, abrufbar unter: <http://www.sueddeutsche.de/politik/unterstuetzung-fuer-assad-russland-bestaetigt-praesenz-eigener-soldaten-in-syrien-1.2640288>; welt.de v. 30.9.2015, „Einsatz in Syrien – Russland will mit Luftwaffen gegen den IS kämpfen“, abrufbar unter: <https://www.welt.de/politik/ausland/article147035611/Russland-will-mit-Luftwaffe-gegen-den-IS-kaempfen.html>.
  - 4 So der russische Präsident *Wladimir Putin* in einem Fernsehinterview, das mit deutschen Untertiteln hier abrufbar ist: *Julia Smirnova*, „Mit Assads Besuch demonstriert Putin seine Macht“, welt.de v. 21.10.2015, abrufbar unter: <https://www.welt.de/politik/ausland/article147892253/Mit-Assads-Besuch-demonstriert-Putin-seine-Macht.html>; *Raisa Ostapenko*, „What does Putin want in Syria?“, cambridgeglobalist.org v. 16.1.2017, abrufbar unter: <http://cambridgeglobalist.org/?p=999>.
  - 5 HAZ.de v. 21.9.2017, „Russland verhilft Assad zum Sieg“, abrufbar unter: <http://www.haz.de/Nachrichten/Politik/Deutschland-Welt/Russland-verhilft-Assad-zum-Sieg>.

## 2.2. Assessment in the light of international law

### 2.2.1. General permissibility of an invited intervention

The Russian military presence in Syrian territory and the associated Russian military actions are based on their **explicit authorisation by the Syrian Government**. This means that it may be classed as an **invited intervention**. The prevalent interpretation of international law is that such an intervention is **permissible** at the outset and does not breach the obligation to refrain from the threat or use of force that is enshrined in Article 2(4) of the UN Charter.<sup>6</sup> The International Court of Justice<sup>7</sup> and the International Law Commission of the United Nations<sup>8</sup> have both embraced this interpretation. As an expression of territorial sovereignty, every state may permit the stationing of foreign troops in its own territory. In this respect the obligation to refrain from the threat or use of force has not been breached because the Russian military actions are not targeting the incumbent government, in other words the Assad regime.

Accordingly, **the Russian presence in Syria is held** by scholars of international law **to be permissible**.<sup>9</sup>

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- 6 *Malcolm N. Shaw*, International Law, 7. Aufl. 2014, S. 834 f.; *Andreas von Arnould*, Völkerrecht, 3. Aufl. 2016, Rn. 1039; *Markus Krajewski*, Völkerrecht, 2017, § 9 Rn. 28; *Sven Simon/Judith Thorn*, Der Konflikt in Syrien – Eine völkerrechtliche Betrachtung, Vereinte Nationen 6/2012, 243 (245).
- 7 IGH, Case Concerning Armed Activities on the Territory of the Congo, Judgment, I.C.J. Reports 2005, p. 168 Rdnr. 51, abrufbar unter: <http://www.icj-cij.org/files/case-related/116/116-20051219-JUD-01-00-EN.pdf>; hierzu *Heintschel von Heinegg*, in: Ipsen (Hrsg.), Völkerrecht, 6. Aufl. 2014, § 52 Rn. 40; *Laura Visser*, Russia's Intervention in Syria, *ejiltalk.org* v. 25.11.2015, abrufbar unter: <https://www.ejiltalk.org/russias-intervention-in-syria/#more-13869>; vgl. auch IGH, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports, 1986, p. 14, Rn. 246, abrufbar unter: <http://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>, wobei sich der IGH hierbei nicht eindeutig zu Militäroperationen geäußert hat, s. *Georg Nolte*, Intervention auf Einladung, 1999, S. 170 f.
- 8 Vgl. Art. 20 der im Jahre 2001 veröffentlichten „Artikelentwürfe über die Verantwortlichkeit von Staaten für völkerrechtswidriges Handeln“ (ASR) (*Draft Articles on Responsibility of States for Internationally Wrongful Acts*), Anlage der Resolution Nr. 56/83 der VN-Generalversammlung vom 12. Dezember 2001, abrufbar unter: [http://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf): „Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.“ In ihrer Kommentierung nimmt die Völkerrechtskommission auch implizit auf die Möglichkeit Bezug, fremde Truppen im eigenen Staat zu stationieren, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, 2001, Art. 20 Rn. 8 (S. 74): „Consent to the stationing of foreign troops for a specific period would not preclude the wrongfulness of the stationing of such troops beyond that period.“ Inwiefern dies auch Militäroperationen umfasst, wird von der Völkerrechtskommission nicht beantwortet.
- 9 *Pierre Thielbörger*, „Grenzen des Völkerrechts – Wer darf was in Syrien?“, *tagesschau.de* v. 7.3.2018, abrufbar unter: <https://www.tagesschau.de/ausland/syrien-voelkerrecht-101.html> (Claudia Kornmeier); *Andreas von Arnould*, Völkerrecht, 3. Aufl. 2016 Rdnr. 1039.

### 2.2.2. The right of the Assad regime to represent Syria

The government of a state is entitled to authorise intervention by another state. In civil wars and similar conflict scenarios, however, it is sometimes difficult to establish who is entitled to represent a conflict-ridden country.<sup>10</sup> In the case of Syria, however, the prevailing assumption is that the **Assad regime was empowered by international law to seek Russian assistance.**<sup>11</sup>

### 2.3. Preliminary conclusion

Russia's involvement in the conflict in Syria is based on the explicit consent of the Assad regime, which is the legitimate representative of Syria in international law. This means that Russia is not in breach of the obligation to refrain from the threat or use of force that is enshrined in Article 2(4) of the UN Charter. In terms of *jus ad bellum*, Russia's involvement in the Syrian conflict is therefore compliant with international law.

## 3. The United States

### 3.1. Background

The United States' intervention in Syria is divisible into **two phases**:<sup>12</sup>

The original aim of the US intervention in Syria was to **combat the Assad regime**. Ever since 2012, the United States has been supporting its allies' efforts to supply arms to Syrian groups such the Free Syrian Army.<sup>13</sup>

Some arms deliveries made by the United States itself were subsequently discovered.<sup>14</sup> For a time US service personnel were also providing groups of Syrian rebels with military training.<sup>15</sup>

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10 Vgl. *Michael Bothe*, in: Wolfgang Graf Vitzthum (Hrsg.), *Völkerrecht*, 5. Aufl. 2010, 8. Abschnitt Rn. 23.

11 *Mehrdad Payandeh*, *Militäraktion gegen ISIS: ein Präzedenzfall für eine Aufweichung des völkerrechtlichen Gewaltverbots?*, *verfassungsblog.de* v. 24.9.2014, abrufbar unter: <https://verfassungsblog.de/militaeraktion-gegen-isis-ein-praezedenzfall-fuer-eine-aufweichung-des-voelkerrechtlichen-gewaltverbots/>. *Pierre Thielbörger*, „Grenzen des Völkerrechts – Wer darf was in Syrien?“, *tagesschau.de* v. 7.3.2018, abrufbar unter: <https://www.tagesschau.de/ausland/syrien-voelkerrecht-101.html> (Claudia Kornmeier).

12 Vgl. auch Sachstand WD 2 - 3000 - 043/17 vom 1. Juni 2017, „Der Syrienkrieg – Akteure und Verhandlungen“, S. 16 ff., abrufbar unter: <https://www.bundestag.de/blob/515094/6add202f3f24cc5c6295548c897f0d07/wd-2-043-17-pdf-data.pdf>.

13 *Eric Schmitt*, „C.I.A. Said to Aid in Steering Arms to Syrian Opposition“, *nytimes.com* v. 21.6.2012, abrufbar unter: <https://www.nytimes.com/2012/06/21/world/middleeast/cia-said-to-aid-in-steering-arms-to-syrian-rebels.html>.

The second phase, which began towards the end of 2014, has focused on the **fight against so-called Islamic State** in the framework of the international anti-IS alliance. In 2014 the United States was already carrying out air strikes against IS in Syria.<sup>16</sup> This pushed the fight against the Assad regime into the background, since the regime is also engaged in action against IS.<sup>17</sup>

In April 2016 came the first reports of US military units being on Syrian soil.<sup>18</sup> At the present time, the US military presence in Syria probably amounts to **some 2,000 combat troops**.<sup>19</sup> The Russian Foreign Minister believes that there are ten US bases in Syria.<sup>20</sup> It was not until April 2017 that the United States carried out its first direct military action against facilities belonging to the Assad regime in Syria.<sup>21</sup>

### 3.2. Assessment in the light of international law

#### 3.2.1. Measures taken against the Assad regime

In its judgment in *Nicaragua v. United States*, the International Court of Justice recognised the arming and training of paramilitary forces as a **breach of the obligation to refrain from the threat**

- 14 *Frederik Obermaier*, „So hat die SZ die US-Waffenlieferung nach Syrien rekonstruiert“, sueddeutsche.de v. 12.9.2017, abrufbar unter: <http://www.sueddeutsche.de/politik/fragen-und-antworten-so-hat-die-sz-die-us-waffenlieferung-nach-syrien-rekonstruiert-1.3664119>.
- 15 *Zeit.de* v. 9.10.2015, „Syrien – USA beenden Ausbildung syrischer Rebellen“, abrufbar unter: <https://www.zeit.de/politik/ausland/2015-10/syrien-usa-rebellen-ausbildung>.
- 16 *Raniah Salloum*, „Krieg gegen Islamisten – Die wichtigsten Fakten zum US-Luftkrieg in Syrien“, spiegel.de v. 23.9.2014, abrufbar unter: <http://www.spiegel.de/politik/ausland/is-islamischer-staat-bomben-auf-syrien-schwaechen-miliz-a-993209.html>.
- 17 Vgl. *zeit.de* v. 20.7.2017, „Donald Trump – Amerika beendet Hilfe für syrische Rebellen“, abrufbar unter: <https://www.zeit.de/politik/ausland/2017-07/donald-trump-usa-syrien-cia-waffen-rebellen>.
- 18 *Reuters.com* v. 28.4.2016, „Damascus concerned at reports of U.S. troops arrival“, abrufbar unter: <https://www.reuters.com/article/us-mideast-crisis-syria-condemnation-idUSKCN0XP1XM>.
- 19 *Amanda Erickson*, „6 basic questions about the war in Syria“, washingtonpost.com v. 15.4.2018, abrufbar unter: [https://www.washingtonpost.com/news/worldviews/wp/2018/04/12/syria-explained/?noredirect=on&utm\\_term=.64900b53dc13](https://www.washingtonpost.com/news/worldviews/wp/2018/04/12/syria-explained/?noredirect=on&utm_term=.64900b53dc13).
- 20 *Anna Samarina*, „US-General: US-Präsenz in Syrien ist völkerrechtswidrig – Nach Sieg über IS kann Russland die USA ‚ausladen‘“, epochtimes.de v. 1.9.2017, abrufbar unter: <https://www.epochtimes.de/politik/welt/us-general-us-praesenz-in-syrien-ist-voelkerrechtswidrig-nach-sieg-ueber-is-kann-russland-die-usa-ausladen-a2205041.html?text=1>.
- 21 *Tagesschau.de* v. 7.4.2017, „Nach Giftgaseinsatz – USA greifen Luftwaffenbasis in Syrien an“, abrufbar unter: <https://www.tagesschau.de/ausland/usa-syrien-luftangriff-103.html>.

**or use of force.**<sup>22</sup> The same parameters apply to the **arming and training of Syrian rebel groups** by the United States since 2012. As regards the US-UK-French air strikes against chemical-weapons facilities of the Assad regime, please see the Research Services' overview of 18 April 2018.<sup>23</sup>

### 3.2.2. Action against IS in the framework of the international anti-IS alliance

For its participation in the international anti-IS alliance<sup>24</sup> in Syria, the United States invokes its right of self-defence under Article 51 of the UN Charter:

“ISIL and other terrorist groups in Syria are a threat not only to Iraq, but also to many other countries, including the United States and our partners in the region and beyond. **States must be able to defend themselves, in accordance with the inherent right of individual and collective self-defense, as reflected in Article 51 of the UN Charter**, when, as is the case here, the government of the State where the threat is located is unwilling or unable to prevent the use of its territory for such attacks. The Syrian regime has shown that it cannot and will not confront these safe-havens effectively itself. Accordingly, the United States has initiated necessary and proportionate military actions in Syria in order to eliminate the ongoing ISIL threat to Iraq, including by protecting Iraqi citizens from further attacks and by enabling Iraqi forces to regain control of Iraq's borders.”<sup>25</sup>

The right of self-defence in the context of the struggle against the terrorist militias of so-called Islamic State, however, raises numerous issues of international law:

A continuous subject of discussion since 11 September 2001 has been **whether the right of self-defence under Article 51 of the UN Charter can be invoked against non-state actors.**<sup>26</sup> In this case, international law has traditionally been interpreted in the sense that the acts of terrorism in

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22 IGH, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Mer-its, Judgment, I.C.J. Reports, 1986, S. 119 Abs. 228: „In the view of the Court, while the arming and training of the contras can certainly be said to involve the threat or use of force against Nicaragua, this is not necessarily so in respect of all the assistance given by the United States Government.”

23 Gutachten WD 2 - 3000 - 048/18 vom 18. April 2018, „Völkerrechtliche Implikationen des amerikanisch-britisch-französischen Militärschlags vom 14. April 2018 gegen Chemiewaffeneinrichtungen in Syrien“, abrufbar unter: <https://www.bundestag.de/blob/551344/f8055ab0bba0ced333ebcd8478e74e4e/wd-2-048-18-pdf-data.pdf>.

24 Hierzu srf.ch v. 4.2.2015, „Das sind die wichtigsten Mitglieder der Anti-IS-Allianz“, abrufbar unter: <https://www.srf.ch/news/international/das-sind-die-wichtigsten-mitglieder-der-anti-is-allianz>.

25 Schreiben vom 23.9.2014 der damalige US-Botschafterin bei den Vereinten Nationen an den damaligen VN-Generalsekretär *Ban Ki-Moon*; vgl. dazu *Marty Lederman*, The War Powers Resolution and Article 51 Letters Concerning Use of Force in Syria Against ISIL and the Khorasan Group, justsecurity.org v. 23.9.2014, <https://www.justsecurity.org/15436/war-powers-resolution-article-51-letters-force-syria-isil-khorasan-group/>.

26 Vgl. zum Ganzen *Jasper Finke*, Selbstverteidigungsrecht gegen nichtstaatliche Akteure, AVR 55 (2017), 1 ff.



question must be **attributable** to a territorial state, although the **precise attribution criteria** are a bone of contention. In the conflict in Syria, however, the actions of IS cannot be attributed to the Assad regime for the simple reason that the regime itself is fighting IS.<sup>27</sup>

Under the **‘unable and unwilling’ doctrine**, it is said to be enough to warrant intervention if the state from which the terrorists are operating **cannot or will not** curb acts of terrorism – this is what the United States expressly referred to in the aforementioned letter to the UN Secretary-General of the time. **Whether this doctrine is a valid principle of customary international law**, however, **has not yet been firmly established**.<sup>28</sup>

Some scholars of international law are more prepared to accept the ‘unable and unwilling’ doctrine if non-state groups, rather like a *de facto* governing regime, exercise **territorially consolidated control of part of a country**.<sup>29</sup> In such a case, however, the proportionality principle would have to be respected, and **the only permissible military measures would be those directed against the non-state actors**.<sup>30</sup>

**The fact that so-called Islamic State has largely lost its territorial foothold in Syria**<sup>31</sup> has made it increasingly difficult to rely on **the right of self-defence**. The United States has already announced the withdrawal of its troops from Syria.<sup>32</sup>

### 3.3. Preliminary conclusion

The legitimacy of the **military presence of the United States** in Syria in the fight against so-called Islamic State is **controversial** in terms of the right of self-defence against non-state actors in international law and is becoming ever harder to justify with the dwindling territorial presence of IS in Syria.

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27 Vgl. tagesschau.de v. 26.7.2015, „Überblick zum ‘Islamischen Staat’ – Gegner und Unterstützer des IS“, abrufbar unter: <https://www.tagesschau.de/ausland/gegner-verbundene-islamischer-staat-101.html>.

28 Ablehnend etwa *Jefferi Hamzah Sendut*, The Unwilling and Unable Doctrine and Syria, *culs.org.uk* v. 21.2.2018, abrufbar unter: <https://culs.org.uk/per-incuriam/legal-updates/unwilling-unable-doctrine-syria/>.

29 *Torsten Stein/Christian v. Buttlar*, *Völkerrecht*, 13. Aufl. 2012, Rn. 845; *Albrecht Randelzhofer/Georg Nolte*, in: Bruno Simma/Daniel-Erasmus Khan/Georg Nolte/Andreas Paulus (Hrsg.), *The Charter of the United Nations*, Vol. II, 2012, Art. 51 Rdnr. 41.

30 Vgl. Gutachten WD 2 - 3000 - 023/18 vom 7. März 2018, „Völkerrechtliche Bewertung der „Operation Olivenzweig“ der Türkei gegen die kurdische YPG in Nordsyrien“, S. 9, abrufbar unter: <https://www.bundestag.de/blob/546854/07106ad6d7fc869307c6c7495eda3923/wd-2-023-18-pdf-data.pdf>.

31 *Faz.net* v. 9.11.2017, „Herrschaftsgewalt verloren – IS in Syrien militärisch vor dem Ende“, abrufbar unter: <http://www.faz.net/aktuell/politik/ausland/herrschaftsgebiet-verloren-is-in-syrien-militaerisch-vor-dem-ende-15284813.html>.

32 *Zeit.de* v. 31.3.2018, „USA – Trump will US-Truppen aus Syrien abziehen“, abrufbar unter: <https://www.zeit.de/politik/ausland/2018-03/donald-trump-syrien-truppen-abzug-hilfsfond-einfrieren>.

## 4. Israel

### 4.1. Background

Since the foundation of the State of Israel on 14 May 1948, Israel and Syria have been embroiled in several conflicts – the Israeli War of Independence of 1948/49, the Six-Day War of 1967 and the Yom Kippur War of 1973. In the war of 1982 in Lebanon, the two countries were also on opposite sides. After the Israeli War of Independence Syria and Israel **did sign a ceasefire agreement**<sup>33</sup> but **did not conclude a peace treaty**,<sup>34</sup> which meant that **hostilities were never formally ended**.<sup>35</sup> Since 1974 the Syrian-Israeli ceasefire on the Golan Heights has been supervised by the United Nations Disengagement Observer Force (UNDOF) on the basis of UN Security Council Resolution 350 (1974).

Israel does not regard itself as a party to the conflict in Syria.<sup>36</sup> Nevertheless, in 2013 Israel announced that there were ‘red lines’ which, if crossed, would compel it to react, in other words would trigger a military response. One red line would be crossed if arms were supplied to the Hezbollah militia in Lebanon, the other if the Syrian conflict were to spill over into Israeli territory.<sup>37</sup>

In recent times, the Israeli Air Force has **repeatedly attacked targets in Syria**.<sup>38</sup> **The Israeli attacks are directed against both the Hezbollah militias and Iranian targets**.<sup>39</sup> Israel suspects Iran of supporting Hezbollah in Syrian territory. Attacks have also been launched, however, on **posi-**

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33 Abrufbar unter: Yale Law School, Israeli-Syrian General Armistice Agreement, July 20, 1949, [http://avalon.law.yale.edu/20th\\_century/arm04.asp](http://avalon.law.yale.edu/20th_century/arm04.asp).

34 Landeszentrale für politische Bildung Baden-Württemberg, Die Geschichte Israels, <https://www.lpb-bw.de/geschichte-israels.html>.

35 *Gil Murciano*, Israel vis-à-vis Iran in Syrien: Die Gefahr einer aktiven Eindämmung, SWP-Aktuell 3 (Januar 2018), S. 1, abrufbar unter: [https://www.swp-berlin.org/fileadmin/contents/products/aktuell/2018A03\\_mco.pdf](https://www.swp-berlin.org/fileadmin/contents/products/aktuell/2018A03_mco.pdf).

36 *Christina Hebel/Christoph Sydow*, „Luftschläge in Syrien – An Israel traut Putin sich nicht ran“, *spiegel.de* vom 13.1.2017, abrufbar unter: <http://www.spiegel.de/politik/ausland/syrien-krieg-an-israel-traut-wladimir-putin-sich-nicht-ran-a-1129866.html>.

37 *Nir Boms*, Israel’s Policy on the Syrian Civil War: Risks and Opportunities, *Israel Journal of Foreign Affairs* (2017), S. 323 (325), abrufbar unter: <https://www.tandfonline.com/doi/full/10.1080/23739770.2017.1430006>.

38 *Markus C. Schulte von Drach*, „Syrien – Weshalb die Golanhöhen für Israel so wichtig sind“, *sueddeutsche.de* v. 11.5.2018, abrufbar unter: <http://www.sueddeutsche.de/politik/syrien-weshalb-die-golanhoehen-fuer-israel-so-wichtig-sind-1.3975645>.

39 *Zeit.de* v. 17.4.2018, „Neue Front im Syrien-Krieg? – Israel und Iran auf Konfrontationskurs“, abrufbar unter: <https://www.zeit.de/news/2018-04/17/israel-und-iran-auf-konfrontationskurs-180417-99-932878>.

## tions held by the forces of the Assad regime.<sup>40</sup>

### 4.2. Assessment in the light of international law

A state of war between two countries that has not been formally ended **does not of itself justify the use of military force**, provided that a live armed conflict is not raging.<sup>41</sup> On the contrary, the same principle applies that any use of armed force must be consistent with international law and must therefore be justified by specific extenuating circumstances.

The right of self-defence is often cited as justification for Israel's military strikes in Syria,<sup>42</sup> particularly the legal concept of 'anticipatory self-defence'.<sup>43</sup> It is recognised in international law that a state may invoke its right of self-defence as soon as an attack **is imminent**.<sup>44</sup> States cannot be expected to wait for an attack to materialise before they can begin to defend themselves.

By contrast, 'pre-emptive' measures of self-defence based on **no more than a general threat scenario** that has not yet escalated sufficiently are decidedly controversial in international law.<sup>45</sup> The main criticism directed at such measures concerns the risk of abuse arising from such a broad interpretation of the right of self-defence.

As far as the Israeli military actions are concerned, the following distinctions must be made:

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- 40 Faz.net v. 26.6.2017, „Golanhöhen – Israelische Luftwaffe greift wieder syrische Ziele an“, abrufbar unter: <http://www.faz.net/aktuell/politik/ausland/syrien-krieg-luftwaffe-aus-israel-greift-syrische-ziele-an-15077498.html>; spiegel.de v. 30.11.2016, „Krieg in Syrien – Israelische Luftwaffe greift Stellung der Assad-Armee an“, abrufbar unter: <http://www.spiegel.de/politik/ausland/syrien-israels-luftwaffe-greift-stellung-der-assad-armee-an-a-1123717.html>.
- 41 Oona Hathaway, Recent Israeli Strikes on Syria and the Prohibition on the Unilateral Use of Force, justsecurity.org v. 16.1.2018, abrufbar unter: <https://www.justsecurity.org/51047/israeli-strikes-syria-prohibition-unilateral-force/>; kritisch auch Amichai Cohen/Elena Chachko, Law of Armed Conflict – The Israel-Iran-Syria Clash and the Law on Use of Force, lawfareblog.com v. 14.2.2018, abrufbar unter: <https://lawfareblog.com/israel-iran-syria-clash-and-law-use-force>.
- 42 So etwa der israelische Premierminister Benjamin Netanjahu, s. Eva Lell, „Konflikt zwischen Israel und Syrien – Israel bekräftigt Recht auf Selbstverteidigung“, deutschlandfunk.de v. 12.3.2018, abrufbar unter: [http://www.deutschlandfunk.de/konflikt-zwischen-israel-und-syrien-israel-bekraeftigt.1773.de.html?dram:article\\_id=410558](http://www.deutschlandfunk.de/konflikt-zwischen-israel-und-syrien-israel-bekraeftigt.1773.de.html?dram:article_id=410558).
- 43 Louis Rene Beres, „Israel well within rights to defend against ‘spillover’ Syrian violence“, thehill.com vom 7.5.2017, abrufbar unter: <http://thehill.com/blogs/pundits-blog/international-affairs/340714-israel-well-within-rights-to-defend-against>.
- 44 Vgl. Michael Bothe, in: Wolfgang Graf Vitzthum (Hrsg.), Völkerrecht, 5. Aufl. 2010, 8. Abschnitt Rdnr. 19.
- 45 Vgl. Gutachten WD 2 – 3000-049/07 vom 22. Juni 2007, „Zum Konzept der prä-emptiven Selbstverteidigung – Ausgewählte Stimmen aus der völkerrechtlichen Literatur“, abrufbar unter: <https://www.bundestag.de/blob/414640/44a2b7337d3b8fd94962639cb365c9c8/wd-2-049-07-pdf-data.pdf>.

In the case of air strikes targeting **Hezbollah**, the prevailing view is that an armed attack within the meaning of Article 51 of the UN Charter can also emanate from **a non-state actor**. As noted in point 3.2.2 above, however, it is a matter of controversy in international law whether the acts in question must be attributable to a territorial state; nor is there general agreement on the precise criteria for such attribution.

There is insufficient evidence to establish clearly whether and to what extent President Assad and Hezbollah are cooperating. If the Assad regime is offering Hezbollah a government-backed safe haven, this could serve to justify measures of self-defence against Hezbollah under the safe-haven doctrine, although the latter is not uncontested.<sup>46</sup> The situation is complicated, however, by the fact that the imminence of a threat to Israel cannot be proved *in detail*, even though it may be assumed that the Hezbollah militias pose a *general* threat.<sup>47</sup>

The Israeli air strikes against **Iranian positions** in Syria are difficult to assess from a legal perspective for want of factual clarity. It is unclear whether an adequately substantiated threat exists. According to information from the Israel Defence Forces (IDF), Iran is said to have launched missile attacks on IDF positions in the Golan Heights on 9 May 2018.<sup>48</sup> Iran has denied the allegations.<sup>49</sup>

It is, moreover, a matter of legal debate **whether an attack on occupied territory, even illegally occupied territory, can establish a right of self-defence**.<sup>50</sup> In view of the obligations of an occupying power under international humanitarian law, such as the Fourth Geneva Convention, to protect the population of the occupied territory, a case can be made for the right of an occupying power to invoke Article 51 of the UN Charter to protect the population of the territory it occupies if that territory is attacked by a third party.

Where Israeli air strikes target **Syrian positions**, it must also be specifically demonstrated that the Assad regime poses an imminent threat to Israel. This particular scenario raises legal problems

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46 Vgl. hierzu nur *Markus Krajewski*, *Völkerrecht*, 2017, § 9 Rn. 128.

47 Vgl. zur Diskussion um Waffenlieferungen auch *Oona Hathaway*, *Recent Israeli Strikes on Syria and the Prohibition on the Unilateral Use of Force*, justsecurity.org v. 16.1.2018, abrufbar unter: <https://www.justsecurity.org/51047/israeli-strikes-syria-prohibition-unilateral-force/>.

48 Idf.il v. 10.5.2018, *IDF Strikes Iranian Targets in Syria*, abrufbar unter: <https://www.idf.il/en/minisites/terror-and-threats/idf-strikes-iranian-targets-in-syria/>; tagesschau.de v. 10.5.2018, „Nach Raketenbeschuss auf Golan - Israel greift iranische Ziele in Syrien an“, abrufbar unter: <https://www.tagesschau.de/ausland/israel-iran-101.html>.

49 Tagesspiegel.de v. 11.5.2017, „Golanhöhen – Iran dementiert Beteiligung an Angriffen auf Israel“, abrufbar unter: <https://www.tagesspiegel.de/politik/golanhoehen-iran-dementiert-beteiligung-an-angriffen-auf-israel/21266316.html>.

50 Zur Diskussion vgl. *Alessandro Mario Amoroso*, *The Israeli Strikes on Iranian Forces in Syria: a case study on the use of force in defence of annexed territories*, ejiltalk.org v. 8.6.2018, abrufbar unter: <https://www.ejiltalk.org/the-israeli-strikes-on-iranian-forces-in-syria-a-case-study-on-the-use-of-force-in-defence-of-annexed-territories/>.

because Israel is attacking Syrian positions in order to strike at Iran.<sup>51</sup> Whether such actions are necessary as a means of averting an imminent attack cannot be definitively assessed in the absence of sufficient relevant information. Israel, for example, has remained silent in the face of allegations that it attacked a Syrian military base in April 2018.<sup>52</sup>

#### 4.3. Preliminary conclusion

**Any assessment of the Israeli attacks** on Syrian and Iranian positions and on Hezbollah **in the light of international law is fraught with problems.** In many cases the facts have not been adequately clarified. Furthermore, some of the legal grounds that have been cited by way of justification are based on contentious doctrines.

### 5. Conclusion

The conflict scenario in Syria is extremely confusing as far as the facts are concerned. This makes it more difficult to answer the question whether the actions of the states involved in the conflict – the neighbouring states of Israel and Turkey as well as Iran and Russia – and of non-state actors such as Hezbollah and the Kurdish militias are actually consistent with international law. Syria's neighbours are plainly pursuing geostrategic interests in the region and using the precarious situation of a temporarily failing state for their own ends. In particular, the right of self-defence is not infrequently used as a pretext to lend the legitimacy of international law to the pursuit of political interests.

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51 Vgl. zeit.de v. 9.4.2018, „Syrien – Tote und Verletzte bei Angriff auf syrischen Militärflughafen“, abrufbar unter: <https://www.zeit.de/politik/ausland/2018-04/syrien-angriff-militaerflughafen>.

52 Zeit.de v. 9.4.2018, „Syrien – Russland wirft Israel Angriff auf Militärbasis vor“, abrufbar unter: <https://www.zeit.de/politik/ausland/2018-04/syrien-russland-wirft-israel-angriff-auf-militaerbasis-vor>.