International law as shibboleth: the continued appeal of heroic narratives in support of military intervention

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Political debates on the use of force draw on Manichean narratives which are legitimated by legalistic language. Overreliance on such narratives devalues international law as a safeguard against the illegal use of force, silences criticism that militarism is not the solution to international crises, and blurs legal and non-legal justifications for intervention.

The success of Manichean narratives[1] in support of military intervention relies on their co-optation of the language of international law to present military intervention as a legitimate response to conflict and humanitarian crisis. Focusing on the UK parliament, this article considers recent scholarly claims that increasing mindfulness of international law in domestic legislatures stems from a determination to 'learn lessons from Iraq' and ensure that future military interventions comply with international law.[2] I argue to the contrary that

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1 Manichaeism is generally understood as an ancient set of beliefs that described the world in terms of a cosmic war between the forces of light and darkness. However, Baker-Brian notes that the term has become synonymous in political and international relations discourse with describing a binary or simplified state of affairs where two opposing agendas or sets of values are pitted against each other: NJ Baker-Brian, *Manichaeism: An Ancient Faith Rediscovered* (T&Clark International 2011) 1.

2 White observed that, since Iraq, states have taken 'much greater care to ensure their actions [are] underpinned by legality'. ND White, 'Libya and Lessons from Iraq: International Law and the Use of Force by the United Kingdom' (2011) 42 *Netherlands Yearbook of International Law* 215, 215. Strong similarly stated that: 'the orthodox explanation of Parliament's developing role is that the fallout from Iraq means ministers have been obliged to gain Parliament's assent to demonstrate

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there has not been renewed respect for the *jus ad bellum* in UK parliamentary debate. Rather, there has been an increasing reliance on 'legalistic' language to present intervention as complying with international law. Paradoxically, this approach has served compliance less than it has reified Manichean tropes supporting extralegal approaches to the use of force. This approach has also tended to blur the distinction between legal and non-legal justifications for intervention. This incurs the danger that purely moral and political arguments drive interventions albeit under the cover of legal process and language.

This article posits that the UK government's recent exaltation of international law when advocating military intervention is essentially performative, offering little evidence of a robust or meaningful re-engagement with the *jus ad bellum*. Despite seeming to position compliance with international law as the watershed for authorising military intervention, parliamentary debates and wider political discussions continue to rely on the familiar binaries that have served to oversimplify complexity in previous debates on the subject.[3] Accordingly, this article considers whether the apparently embryonic constitutionalisation of the law on the use of force in the UK extends beyond mere 'ritual incantation'[4] of the language of international law while, more concerningly, instrumentalising process to undermine principle. The discussion focusses on how the language of international law is invoked by parliamentarians to render the appeal of military intervention abroad irresistible. Revisiting the military interventions of the Blair era—Kosovo, Sierra Leone, Afghanistan, and Iraq—it highlights how political debates on military deployments, both inside and outside parliament, were focused more on 'moral righteousness' and less on legality.

Post-Iraq, MPs have expressed a willingness to engage with international law and appear keen not to endorse military intervention that would violate the UN Charter.[5] However, the substance of debates continued to focus on the

their commitment to thorough oversight of the use of force': J Strong, 'Why Parliament Now Decides on War: Tracing the Growth of the Parliamentary Prerogative through Syria, Libya and Iraq' (2014) 17 *British Journal of Politics and International Relations* 604, 605.

3 This article uses the term 'parliamentary debates' to refer to the key discussions in the House of Commons that preceded parliamentary votes on the deployment of military force. However, parliamentary debates are not homogenic and encompass a wide procedural process. Military intervention has also been opposed in the UK parliament. However, my focus here is on arguments in favour of intervention and their instrumentalisation of international law. I would like to thank one of the anonymous reviewers for raising this point.

4 Gray famously referred to states' tendency to justify military action under the doctrine of self-defence as the 'ritual incantation of self-defence': C Gray, *International Law and the Use of Force* (3rd edn Oxford University Press 2008) 31–33.

5 Article 2(4) of the UN Charter prohibits the threat or use of force unless authorised by the UN Security Council under Article 39 and in accordance with Article 42 or as an act of self-defence under Article 51.

moral impetus to intervene. Once this was established through the deployment of good versus evil imagery, international law engaged on a primarily surface level to suggest a veneer of legality for action already presented as 'necessary' and thereby 'legitimate'. By continuing to use these tired tropes, international law's rhetorical power is being utilised to facilitate military intervention, with scant regard in practice for technical legal requirements and criteria. Consequently, the power of 'crisis' is both instrumentalised and retrenched.[6] Such framing also exploits the fact that the war paradigm provides a framework that tends to depict inaction as weak, and so the question of how to respond is implicitly polarised between a military response or no response at all. Accordingly, this article concludes that it may be premature to celebrate a 'return to respect for the *jus ad bellum*'[7] when it comes to legislative oversight of military intervention.[8] It therefore cautions against presenting international law as a viable restraint on UK military deployment when evaluating how greater parliamentary oversight might be wielded.

Although responsibility for foreign affairs rests with the executive, and not parliament as a whole, analysis of parliamentary language remains instructive. It reveals that for parliamentarians, respect for international law, even if not solely determinative, is an important factor when pondering the use of force.[9] It also shows, however, that such respect may serve rather as a legitimating figleaf than as a comprehensive method of oversight.

THE OPERATION OF THE HEROIC NARRATIVE: SAVING CIVILIANS AND DEFENDING THE UNITED KINGDOM AGAINST TERRORISTS

Critical scholars have long held that framing contemporary humanitarian disasters and conflicts in terms of good versus evil overrides the restraints of the *jus ad bellum*. When successfully invoked, such use is virtually impossible to resist.[10] This well-worn trope triggers a moral compulsion to intervene, which

6 H Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65 *Modern Law Review* 377.

7 White (n 2) 217.

8 In 2015, for example, in regard to military intervention in Syria, Angus Robertson MP implored MPs 'to make sure we do not ignore the lessons of Afghanistan, Iraq and Libya. Let us not repeat past mistakes' while Jeremy Corbyn MP stated that 'the spectre of Iraq, Afghanistan and Libya looms over this debate': HC Deb 2 December 2015, vol 603, cols 347–57.

9 While this article refers to parliament and parliamentarians, it acknowledges that parliament is comprised of a diverse group of individuals who have differing understandings of parliament's relationship with international law and are addressing different audiences.

10 JA Tickner, 'Feminist Perspectives on 9/11' (2002) 3 *International Studies Perspectives* 333.

critical legal scholars have argued works successfully to position military intervention as necessary, even in the absence of legality.[11] It is also well established that state behaviour is legitimated through the retelling of familiar stories which reinforce certain ideas and exclude others.[12] One such story used to explain the appeal of military intervention is the heroic rescue story, in which a hero figure is entreated to save an innocent victim from the evil villain because the hero is honourable and dutiful.[13] Orford argues that this heroic narrative underpins international military intervention by presenting rogue states, 'despotic dictators' and 'fanatical terrorists' as threats to the existing world order.[14] This creates a call to arms where Western military intervention is necessary to remove the threat, restore the existing order, and save the victims.[15] The heroic narrative sits firmly within the Manichean tradition, which Deliovsky and Kitossa define as 'a moral and symbolic framework that constructs the world as polarised by forces of good and evil, represented in the oppositions between lightness and darkness and between black and white'.[16] To retell familiar stories, detailing the human rights violations and suffering of oppressed civilians at the hands of 'evil' regimes, therefore performs the function of presenting military intervention as the only, and indeed proper, solution.[17]

The attraction of this narrative is that it serves to render complex geopolitical realities as simplistic situations with easy solutions, and firmly positions Western states and their militaries as the heroic masculine figure acting in a

11 A Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press 2003); M Koskenniemi, 'The Lady Doth Protest Too Much' (2002) 65 *Modern Law Review* 159.

12 S Wright, 'The Horizon of Becoming: Culture, Gender and History after September 11' (2002) 71 *Nordic Journal of International Law* 215; H Charlesworth, C Chinkin and S Wright, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613; F Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act* (Cornell University Press 1982); G Heathcote, *The Law on Use of Force: A Feminist Analysis* (Routledge 2013).

13 Orford, *Reading Humanitarian Intervention* (n 11).

14 A Orford, 'Muscular Humanitarianism: Reading the Narratives of the New Interventionism' (1999) 10 *European Journal of International Law* 679; Orford, *Reading Humanitarian Intervention* (n 11).

15 D Chandler, *From Kosovo to Kabul and Beyond: Human Rights and International Intervention* (Pluto 2006); M Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42 *Harvard International Law Journal* 201.

16 K Deliovsky and T Kitossa, 'Beyond Black and White: When Going Beyond May Take us out of Bounds' (2013) 44 *Journal of Black Studies* 158, 160.

17 See L Mitchell, 'Re-affirming and Rejecting the Rescue Narrative as an Impetus for War: To War for a Woman in a Song of Ice and Fire' (2018) 12 *Law and Humanities* 229; Orford, *Reading Humanitarian Intervention* (n 11).

benevolent and chivalrous manner.[18] Feminist scholars have noted how this narrative is powerfully seductive, both for its promised happy ending and for the deeply rooted power relations that it reaffirms and reasserts.[19] Yet fetishising the suffering of civilians, particularly women and children, serves to reinforce the Manichean stereotype of evil in a decontextualized vacuum existing solely to cause oppression and harm to civilians. This binary world view then presents action (that is, military intervention) by the heroic figure as the only possible response to such suffering.[20]

As such, it is readily understood that when it comes to international law, and in particular the *jus ad bellum*, the narrative of 'saving' civilians from impending crisis works as a convenient, if not deliberate, rhetorical framing device to attract support for military deployments by allowing lawmakers and the general public to invest in the myth that they are saving people,[21] even though the evidence suggests the contrary.[22] This narrative works to promote the sidelining of international law and diplomacy by depicting them as cumbersome, bureaucratic, and time-consuming, thereby diminishing international law's potential as a constraint on the use of force.[23] By depicting a crisis situation that needs to be resolved immediately, states can elicit support for military intervention while circumventing the restrictions of the international legal system.[24] Yet such depictions of geopolitical crises masks the true realities or consequences of conflict or humanitarian crises: juxtaposing the 'saving' of innocent civilians—whose oppression is blamed on an irrational 'other'[25]—against doing nothing.

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18 L Mitchell, 'Monsters, Heroes, Martyrs and Their Storytellers: The Enduring Attraction of Culturally Embedded Narratives in the "War on Terror"' (2014) 35 *Liverpool Law Review* 83.

19 S Arat-Koc, 'Feature-Hot Potato: Imperial Wars or Benevolent Interventions? Reflections on "Global Feminism" Post September 11th' (2002) 26 *Atlantis: Critical Studies in Gender, Culture & Social Justice* 53.

20 Mutua (n 15). See also H Myrttinen and A Swaine, 'Monster Myths, Selfies and Grand Declarations' (2015) 17 *International Feminist Journal of Politics* 496.

21 For discussion of the enduring appeal of rescue myths drawing on gendered fairy tales that present women as passive and in need of rescue see M Warner, *Once Upon a Time: A Short History of Fairy Tale* (Oxford University Press 2014) 132–35.

22 Orford, *Reading Humanitarian Intervention* (n 11).

23 Otto argues that 'in the guise of responding to an emergency, proponents of crisis governance remap the legal and political landscape'. See D Otto, 'Remapping Crisis through a Feminist Lens' in S Kouvo and Z Pearson (eds), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance* (Hart 2011) 80. See also O Gross and F Ni Aolain, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge University Press 2006) 399.

24 Charlesworth (n 6).

25 Chandler (n 15); D Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press 2005).

Before the Iraq war of 2003, UK parliamentary debates on military intervention were peppered with non-legal arguments, rooted in cliched narratives about good versus evil and the duty to save people. These tropes make the immediacy of action key. At the beginning of the New Labour period beginning in 1997, one of the party's key foreign policy themes was to make Britain a force for good in the world. Foreign Secretary Robin Cook advocated a 'global foreign policy' for Britain that would contain an 'ethical dimension'.[26] Throughout the New Labour years, this ethical foreign policy, which primarily involved promoting human rights and democracy, was given prominence by policy makers and became increasingly popular with the British public and NGOs, who had been invited to help formulate the policy.[27] The government's commitment to this new ethical foreign policy was to be tested in 1999 when hundreds of thousands of ethnic Albanian Kosovar civilians were forced to flee from their homes after Slobodan Milosevic's militias began a campaign of ethnic cleansing. Tony Blair took the view that the international community had previously let down the people of the former Yugoslavia, notably at Srebrenica in 1995, and that Milosevic could not be allowed to act with impunity.[28] Despite being unable to secure a UN resolution to authorise the use of force, Tony Blair spoke of the need to take a 'moral stand'.[29] He told the House of Commons: 'We must act to save thousands of innocent men women and children from humanitarian catastrophe, from death, barbarism and ethnic cleansing by a brutal dictatorship. We have no alternative but to act and act we will.'[30] Attempting to persuade a reluctant President Clinton to commit US ground troops, Blair gave a speech to the Chicago Economic Club,[31] which has been described as 'the most important of his political career'.[32] He outlined the five criteria he believed necessary for humanitarian intervention, and in doing so set out the 'Blair Doctrine' and attempted to highlight the morality

26 'Robin Cook's Speech on the Government's Ethical Foreign Policy', *The Guardian* (12 May 1997) <https://www.theguardian.com/world/1997/may/12/indonesia.ethicalforeignpolicy>.

27 N Wheeler and T Dunne, 'Good International Citizenship: A Third Way for British Foreign Policy' (1998) 74 *International Affairs* 847; S Kettell, *New Labour and the New World Order: Britain's Role in the War on Terror* (Manchester University Press 2011).

28 T Blair, *A Journey: My Political Life* (Hutchinson 2010).

29 See T Blair, 'A New Generation Draws the Line' *Newsweek* (19 April 1999); T Blair, 'A New Moral Crusade' *Newsweek* (14 June 1999).

30 T Blair, 'Statement to Parliament', HC Deb, 23 March 1999, vol 328, col 162.

31 T Blair, 'The Doctrine of International Community' (Economic Club, Chicago, Illinois, 22 April 1999) <http://www.britishpoliticalspeech.org/speech-archive.htm?speech=279>.

32 C Coughlin, *American Ally: Tony Blair and the War on Terror* (Ecco Press 2006) 93.

of this cause.[33] This was to form the backdrop of Blair's justification for all future UK military interventions.[34]

There was no parliamentary vote on UK participation in the NATO bombing campaign, which was justified on the legal ground of humanitarian intervention.[35] Instead, the commencement of military activity was merely announced in parliament as being 'justified as an exceptional measure to prevent an overwhelming humanitarian catastrophe'.[36] Images of oppressed civilians being targeted by President Milosovic's forces dominated the media; the need to save these civilians was held to necessitate extraordinary measures.[37] Charlesworth notes how 'the epithet "humanitarian" was often used by international lawyers to describe the NATO intervention in Kosovo as though it were an uncontroversial and factual description'.[38] This one-dimensional pro-intervention narrative in Kosovo relied on amplified accounts of rape and gender violence, which served to render the Serbs as evil and depraved, and the Kosovar Albanians as innocent civilians necessitating rescue by chivalrous NATO forces.[39] In the same way, this narrative implicitly portrayed Western militarism as being the 'complete antithesis of Serbian brutality'[40] and the Kosovar Albanians as helpless victims. The success of such a narrative allowed international law scholars to famously conclude that the Kosovo intervention was 'illegal but legitimate'.[41]

The same framing was then utilised to justify the UK's unilateral intervention in Sierra Leone in 2000.[42] Although the existence of a United Nations

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33 ibid.

34 ibid.

35 HL Deb 16 November 1998, vol 594, cols WA139–40; Foreign Affairs Committee, Kosovo, Minutes of Evidence, 26 January 1999, 1 (HC 188-i).

36 HC Deb 24 March 1999, vol 388, col 484.

37 See Blair, 'Statement to Parliament' (n 30).

38 Charlesworth (n 6) 383.

39 G Stables, 'Justifying Kosovo: Representations of Gendered Violence and US Military Intervention' (2003) 20 *Critical Studies in Media Communication* 92, 101.

40 ibid 103.

41 The Independent International Commission on Kosovo, *The Kosovo Report* (The Humanitarian Law Centre 2000) 85. See also B Simma, 'NATO, the UN and the Use of Force: Legal Aspects' (1999) 10 *European Journal of International Law* 1; A Cassese, 'Ex Iniuria Ius Oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?' (1999) 10 *European Journal of International Law* 23; C Chinkin, 'Kosovo: A "Good" or "Bad" War?' (1999) 93 *American Journal of International Law* 841.

42 The UN Security Council passed various resolutions under its Chapter VII powers establishing a peace keeping force in Sierra Leone and encouraged its members to provide further assistance

Security Council (UNSC) resolution[43] meant there was less need to construct a legal basis for the intervention, the framing by the government conjured images of protection of innocent civilians and the need to do something in the face of savagery and evil.[44] Williams notes how the decision to deploy troops in Sierra Leone was presented as the need to protect British citizens as well as a 'humanitarian impulse to "do something"' situated within a wider setting of ethical foreign policy and upholding democracy.[45]

Similarly, in 2001, in the immediate aftermath of 9/11 Tony Blair pleaded that 'the world should stand together against this outrage'.[46] The legal basis for UK military action in Afghanistan was given as self-defence, but the prevailing language similarly relied on rhetoric that presented the Taliban as 'evil' and 'barbaric' and the West as 'just' and 'righteous'.[47] When Tony Blair announced in parliament that the bombing campaign had begun, he once again invoked the 'Blair Doctrine':

> So this military action we are undertaking is not for a just cause alone . . . We will see this struggle through to the end and to the victory that would mark the victory not of revenge but of justice over the evil of terrorism.[48]

Accordingly, in popular and political British discourse on the 9/11 attacks and the subsequent military intervention in Afghanistan, there was a natural tendency for politicians to ground military intervention in the language of humanitarianism, and moral righteousness.[49] Once the intervention had begun, a sensationalised media response to the mistreatment of Afghan women

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when that peace keeping force looked in danger of being overwhelmed. Thus, the legality of this intervention was not considered to be in question.

43 UNSC Res 1270 (22 October 1999) UN Doc S/RES/1270(1999); UNSC Res 1289 (7 February 2000) UN Doc S/RES/1289(2000).

44 R Cook, 'Britain Will Not Abandon Its Commitment to Sierra Leone' (House of Commons, 8 May 2000).

45 P Williams, 'Fighting for Freetown: British Military Intervention in Sierra Leone' (2001) 22 *Contemporary Security Policy* 140, 155.

46 HC Deb 14 September 2011, vol 372, col 605.

47 Kouvo argues that the military intervention in Afghanistan 'dusted off imperial imagery of the "civilised" and the "native", and of men as agents either on the side of good or on the side of evil and of women as mourners and victims'. S Kouvo, 'Taking Women Seriously? Conflict, State-Building and Gender in Afghanistan' in S Kouvo and Z Pearson (eds), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance* (Hart 2011).

48 HC Deb 8 October 2011, vol 372, col 814.

49 J Holland, 'Blair's War on Terror: Selling Intervention to Middle England' (2012) 14 *British Journal of Politics and International Relations* 74; J Holland, 'Foreign Policy and Political Possibility' (2013) 19 *European Journal of International Relations* 49, 58.

provided a ready-made impetus for military action that would 'liberate' them.[50] Tony Blair invoked images of compassion to articulate that the 'War on Terror' needed to be set against a wider backdrop of global inequality and injustice.[51] The effect was that the British public conceptualised the invasion of Afghanistan and the wider 'War on Terror' as an act of benevolence towards, and liberation of, the women of Afghanistan: a textbook example of what Spivak famously referred to as 'white men saving brown women from brown men'.[52]

Similar imperatives would drive the Blair government's framing of its military force against Iraq as a response to weapons of mass destruction allegedly held by Saddam Hussein's regime. Despite well-publicised public disapproval, parliament was widely supportive of this action.[53] There was much reference to the now infamous intelligence dossiers that alleged Saddam Hussein had the capacity to strike the UK within forty-five minutes.[54] Again, MPs were presented with a stark choice: take military action or allow evil to take hold. In this way, Hoggett claims that Blair justified the Iraq war through 'humanitarianism as well as determinism'.[55] While the government paid some lip service to international law and maintained it was acting in accordance with it, both legal academics and the report of the Iraq Enquiry agreed that this was not in fact the case.[56] Indeed, the ease with which parliament could be

50 M Ferguson, '"W" Stands for Women: Feminism and Security Rhetoric in the Post-9/11 Bush Administration' (2005) 1 *Politics & Gender* 9; C Delphy, 'A War for Afghan Women?' in S Hawthorne and B Winter (eds), *After Shock: September 11, 2001 Global Feminist Perspectives* (Raincoast Books 2003).

51 Holland, 'Blair's War on Terror' (n 49).

52 GC Spivak, 'Can the Subaltern Speak?' in C Nelson and L Grossberg (eds), *Marxism and the Interpretation of Culture* (Macmillan 1988) 297.

53 Public criticism of the war in Iraq is well documented. See S Jeffery, 'UK's "Biggest Peace Rally"' *The Guardian* (15 February 2003) <https://www.theguardian.com/uk/2003/feb/15/politics.politicalnews>. Blair's decision was criticised in parliament by Liberal Democrat leader Charles Kennedy. See HC Deb 18 March 2003, vol 401, col 781.

54 *Iraq's Weapons of Mass Destruction: The Assessment of the British Government* (HMSO, 24 September 2002); These claims were advanced in parliament by Tony Blair: HC Deb 24 September, vol 390, col 1.

55 P Hoggett, 'Iraq: Blair's Mission Impossible' (2005) 7 *British Journal of Politics and International Relations* 418, 422.

56 See 'The Report of the Iraq Enquiry' HC264 (6 July 2016) (the Chilcot Report). Those decisions were also the subject of a court case. See *R (Gentle) v Prime Minister* [2008] UKHL 20. The decision to intervene in the absence of a UN Security Council resolution was the subject of fierce academic critique. See C Greenwood, 'International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq' (2003) 4 *San Diego International Law Journal* 7; C Gray, 'From Unity to Polarization: International Law and the Use of Force against Iraq' (2002) 13 *European Journal of International Law* 1.

compelled to support military action in the absence of a viable legal justification became apparent in the criticism of the government's decision to send troops to Iraq. The fact that the intervention was considered illegal by many legal commentators was seized upon by critics, and the operation of international law as an intended constraint on government decisions to go to war became part of public discourse.

After heavy criticism of the war in Iraq, when David Cameron was elected as Prime Minister in 2010 he departed from the war powers convention,[57] ushering in parliamentary oversight by extending a vote to determine whether the executive should deploy the armed forces.[58] He made it clear in 2013 that he was 'deeply mindful of the lessons of previous conflicts and, in particular, of the deep concerns in the country that were caused by what went wrong with the Iraq conflict in 2003'.[59] Cameron was keen to involve parliament more in the decision as to whether to authorise force.[60] Yet when the time came to discuss military intervention in Libya in 2011 and Syria in 2013, Cameron's government used the same framing as the previous New Labour government. He likewise positioned the UK at the forefront of humanitarianism, presenting

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57 In response to the claim by the Leader of the Opposition, Neil Kinnock, that decisions on the deployment of UK troops to the Falklands was a decision for parliament, Prime Minister Margaret Thatcher, replied that 'it is an inherent jurisdiction of the government to negotiate and reach decisions. Afterwards the House of Commons can pass judgment on the government.' HC Deb 11 May 1982, vol 23, cols 597–98. For discussion on the evolution of parliamentary involvement in military deployment see ND White, *Democracy Goes to War* (Oxford University Press 2009) 19–25.

58 While this commitment to a parliamentary vote was lauded as a constitutional innovation and parliament celebrated this new-found oversight, there was no actual constitutional amendment, and the power to deploy the armed forces remains with the Prime Minister using their prerogative powers. Although there is an ongoing debate about the scope of any legal requirement to consult parliament before using the prerogative power to go to war and whether this is now a constitutional requirement. See Strong, 'Why Parliament Now Decides on War' (n 2) 604; A McHarg, 'Reforming the United Kingdom Constitution: Law, Convention, Soft Law' (2008) 71 *Modern Law Review* 853; A Bolt, 'The "Convention" to Consult Parliament on Decisions to Deploy the Military: A Political Mirage?' in M Bedard and P Lagasse (eds) *The Crown and Parliament* (Yvon Blais 2015); P Lagasse, 'Parliament and the War Prerogative in the United Kingdom and Canada: Explaining Variations in Institutional Change and Legislative Control' (2016) *Parliamentary Affairs* 1; D Jenkins, 'Efficiency and Accountability in War Powers Reform' (2009) 14 *Journal of Conflict & Security Law* 145. See also G Phillipson, 'Historic' Commons' Syria Vote: The Constitutional Significance (Part I)' *UK Constitutional Law Blog* (19 September 2013) <https://ukconstitutionallaw.org/2013/09/19/gavin-phillipson-historic-commons-syria-vote-the-constitutional-significance-part-i/>.

59 HC Deb 29 August 2013, vol 566, col 1427.

60 While Cameron's commitment to involving parliament in decisions to authorise force was welcomed by parliamentarians, many recognised that mandating a parliamentary debate did not equate to following parliament's views. It is therefore likely that not all MPs were engaging in a robust legal analysis of military intervention given their awareness that the executive was not legally bound to follow parliament's views.

the intervention as a duty to the global community to act against evil, tyranny, and human rights abuses. This was despite distancing himself from New Labour's foreign policy and instead voicing a commitment to respect the lessons learned from Iraq, especially when the UN resolutions referred to were understood by most international lawyers to stop short of authorising force.

THE CONTINUED USE OF MANICHEAN TROPES TO SELL UNITED KINGDOM MILITARY INTERVENTION IN SYRIA

This section demonstrates how, despite claims that David Cameron had ushered in a new era of parliamentary oversight of the use of force, Manichean appeals to save civilians that presented military intervention as a zero-sum game were similarly deployed during the debates on military force between 2011 and 2015. The apotheosis of this was the debates over intervention in Syria, where a combination of the tropes used to sell questionably legal intervention during the Blair era could be identified, resulting in the same dismissal of the *jus ad bellum* as before. This was despite the Syria debate in 2013 (in which the government motion to authorise force was defeated) being celebrated for ushering in a new era of constraint on government use of force.[61]

Cameron's first appeal to parliament to sanction military deployment came in 2011 during the 'Arab Spring' uprisings which saw fighting break out between supporters of Libyan leader Colonel Gaddafi and those calling for his deposal. The UN Security Council passed a series of resolutions calling on members to protect civilians in Libya.[62] While these resolutions were understood by many to fall short of authorising force, save in humanitarian operations,[63] they were interpreted as such by NATO states, who mounted a series of airstrikes on Gaddafi's forces. While there is academic debate over the

61 See J Strong, 'Why Parliament Now Decides on War: Tracing the Growth of the Parliamentary Prerogative through Syria, Libya and Iraq' (2014) 17 *British Journal of Politics and International Relations* 604; J Kaarbo and D Kenealy, 'No prime minister: Explaining the House of Commons' vote on intervention in Syria' (2016) 25 *European Security* 28.

62 UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970(2011); SC Res 1973 (17 March 2011) UN Doc S/RES/1973(2011).

63 Statement by H E Ambassador Li Baodong, Permanent Representative of China to the United Nations, at the Security Council Meeting on the Situation in Libya (17 March 2011) <http://un.china-mission.gov.cn/eng/chinaandun/securitycouncil/regionalhotspots/africa/201105/t20110520_8417128.htm>; Statement by Vitaly Churkin, Permanent Representative of the Russian Federation to the UN (17 March 2011) <http://www.rusembassy.ca/node/546>. See also S Milne, 'There's Nothing Moral About NATO's Intervention in Libya' *Guardian* (23 March 2011); M Payandeh, 'The United Nations, Military Intervention, and Regime Change in Libya' (2012) 52 *Virginia Journal of International Law* 355.

legality of this intervention,[64] the existence of Security Council resolutions and NATO coordination of air strikes meant there were few objections in parliament and, in consequence, little need for the government to manufacture justifications for the action. Therefore, this article focusses primarily on the debates on military intervention in Syria, which did feature such a parliamentary debate.

In 2013, the UK government sought parliamentary authorisation to use military force, ostensibly to protect Syrian civilians from violence perpetrated by the Syrian regime.[65] The parliamentary motion referenced breaches of international law and human rights abuses perpetrated by the Syrian regime on Syrian civilians,[66] and cited humanitarian intervention as the legal basis for the proposed military intervention.[67] MPs discussed chemical weapons, and the breach of international law that such weapons posed,[68] all the while packaging the moral arguments within a wider narrative of 'saving' Syrian civilians. While it cannot be said that parliament engaged in a robust analysis of whether the intervention was legal under international law, endorsing an intervention that was *illegal* was something that most parliamentarians appeared keen to avoid, even if only to differentiate this debate from the one on Iraq. David Cameron urged that 'a strong humanitarian response [was] required from the international community and that this may, if necessary, require military action that is legal, proportionate, and focused on saving lives by preventing and deterring further use of Syria's chemical weapons'.[69] Many MPs seemed to believe that identifying a humanitarian crisis was

64 Much academic commentary revolved around the extent of force authorised and what its aims were. Thielborger notes 'the mismatch of the intervention's rationale expressed in the text of the resolution as opposed to the one which shone through its execution'. See P Thielborger, 'The Status and Future of International Law after the Libya Intervention' (2012) 4 *Goettingen Journal of International Law* 11, 18. See also Payandeh (n 63).

65 HC Deb 29 August, vol 566, col 1447.

66 HC Deb 29 August, vol 566, col 1447. See also, UK Prime Minister's Office, *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>.

67 David Cameron stated that 'the use of chemical weapons is a war crime under customary law and a crime against humanity', and that 'the principle of humanitarian intervention provides a sound legal basis for taking action': HC Deb 29 August 2013, vol 566, col 1426. See also C Henderson, 'The UK Government's Legal Opinion on Forcible Measures in Response to the Use of Chemical Weapons by the Syrian Government' (2015) 64 *International and Comparative Law Quarterly* 179.

68 David Cameron told MPs that: 'For as long as Assad is able to defy international will and get away with chemical attacks on his people, I believe that he will feel little if any pressure to come to the negotiating table. Far from undermining the political process, a strong response over the use of chemical weapons could in my view strengthen it.' HC Deb 29 August 2013, vol 566, col 1438.

69 HC Deb 29 August 2013, vol 566, col 1425.

the key component to unlocking the doctrine of humanitarian intervention. Yet, despite referencing the lessons that had been learned and demonstrating a new-found respect for international law on the use of force, the contentious nature of humanitarian intervention as a legal doctrine was barely acknowledged. Instead, the debates followed a familiar pattern whereby the government and its supporters highlighted the suffering of civilians at the hands of the 'evil' regime. As one MP entreated the Prime Minister:

> There are already hundreds, if not thousands, of civilian casualties—those who are thrown off buildings, burned, decapitated, crucified, and those who have had to flee Syria, away from their co-religionists who have so bastardised that religion? Those are the civilian casualties we are trying to help.[70]

Accordingly, framing the situation in Syria as a conflict which required the UK to intervene on the side of the innocent civilians again allowed military intervention to be understood as both necessary and instinctive, making military action seem altruistic.[71] Manichean rhetoric was engaged heavily in this debate and can be seen in the recurring depictions of saving innocent people from tyranny[72] and the moral obligation to act.[73] Although MPs had not voted in favour of military intervention in Syria in 2013, the framing of the argument using the same familiar tropes is instructive. Rather than moving to a rational discussion of what was permissible under international law and what the international community or UN might endorse, the debate was centred around the usual hyperbole of saving innocents from evil. Despite culminating in a vote against deploying force, the 2013 debate did not, therefore, represent the shift in parliamentary deliberation on the use of force that many scholars had celebrated.[74] Indeed, parliament's reluctance to authorise intervention in

70 HC Deb 2 December 2015, vol 603, col 332.

71 Holland, 'Blair's War on Terror' (n 49).

72 David Cameron spoke of the regime slaughtering 'innocent men, women and children in Syria': HC Deb 29 August 2013, vol 566, col 1426. Ed Miliband spoke of his 'revulsion at the killing of hundreds of innocent civilians': HC Deb 29 August, vol 566, col 1440. Richard Ottaway stated that 'faced with the mass murder of innocent civilians, doing nothing is not an option': HC Deb 29 August 2013, vol 566, col 1449.

73 David Cameron argued that 'doing nothing is a choice—it is a choice with consequences': HC Deb 29 August 2013, vol 566, col 1434. Liam Fox stated that 'if we do nothing, I believe it would be an abdication of our international legal and moral obligations': HC Deb 29 August 2013, vol 566, col 1453.

74 P Mello, 'Curbing the Royal Prerogative to Use Military Force: The British House of Commons and the Conflicts in Libya and Syria' (2017) 40 *West European Politics* 80, 80. See also Democratic Audit, 'War, Peace and Parliament: Experts Respond to the Government's Defeat on Syrian

2013 may in fact have led to an increased reliance on emotive rhetoric at the expense of rational discussion in later debates on Syria, where parliament's lack of authorisation in 2013 was presented as an abdication of moral responsibility and global leadership.

The head of the Foreign Affairs Select Committee, Crispin Blunt MP, appeared to suggest that the humanitarian catastrophe unfolding in Syria in 2015 was a direct result of parliament's failure to authorise military force in 2013. MPs who had opposed the military intervention in 2013 were described as having 'blood on their hands'.[75] Similarly, rather than viewing the 2013 vote not to authorise intervention as a successful restraint on the government, the late Paddy Ashdown commented that the failure to authorise force had 'diminished' the UK and that those MPs who had failed to back the motion made him ashamed.[76]

As such, when the government again sought approval for military intervention in Syria in 2015, the emotive framing was easily resurrected and bolstered by these accusations that the UK had shirked its obligations in not endorsing intervention in 2013. This muscular atonement for parliament's perceived failings resurrected images of the UK's role as protector, reminiscent of the narrative framing of the Kosovo intervention where parliament was told there was an immediate moral obligation to act. As well as referencing the humanitarian catastrophe and continuing to depict Syrian civilians as needing rescue, this time the government also referenced the threat of terrorism, and the duty imposed on states to halt the spread of ISIS by UN resolutions, as justifications for the intervention.[77] This generated an unassailable moral imperative to intervene, which was further bolstered by the addition of self-defence as an unquestionable legal basis. The discourse made clear that the purpose of the military action was to 'protect' both Syrian and UK civilians.[78]

Intervention' (2 September 2013) <http://blogs.lse.ac.uk/politicsandpolicy/war-peace-and-parliament-experts-respond-to-the-governments-defeat-on-syrian-intervention/>.

75 C Blunt, *The Today Programme*, BBC Radio 4 (14 December 2016).

76 C Carter, 'Syria Crisis: Paddy Ashdown "Ashamed" of Britain Over Commons Vote' *The Telegraph* (30 August 2013).

77 The Government's motion to the House stated that 'this House notes that ISIL poses a direct threat to the United Kingdom; welcomes United Nations Security Council Resolution 2249 which determines that ISIL constitutes an "unprecedented threat to international peace and security" and calls on states to take "all necessary measures" to prevent terrorist acts by ISIL': HC Deb 2 December 2015, vol 603, col 323. David Cameron further referenced 'terror' and 'terrorism' twenty times in the debate.

78 'The question before the House today is how we keep the British people safe from the threat posed by ISIL': David Cameron, HC Deb 2 December 2015, vol 603, col 323.

Between 2013 and 2015, terrorist group ISIS became a household name.[79] David Cameron claimed ISIS was a 'real threat'[80] to the UK. He stated that 'the House should be under no illusion: these terrorists are plotting to kill us and to radicalise our children right now. They attack us because of who we are, and not because of what we do.'[81] The threat of radicalised fighters returning to the UK posed further security problems and added to the growing fear of terrorist attacks at home.[82] Many MPs echoed Cameron's rhetoric that ISIS were 'women-raping, Muslim-murdering, medieval monsters'[83] who visited untold horror on ordinary Syrian civilians, while many more appeared preoccupied with the potential of ISIS to attack British citizens.[84] The government was able to capitalise on this fear and revisited the imagery that had compelled support for the 2001 intervention in Afghanistan.

Therefore, the real difference, leading to parliament's authorisation of force in Syria in 2015 but not 2013, was the additional invocation of the need to defend the UK from the threat of terrorism which amplified the framing of the irrational 'other'. It is well established that depictions of barbarism heighten anxiety over enemy threats with the consequence that 'extra-normal means are called for to fight terrorism'.[85] The government readily invoked this imagery of attack by fundamentalist terrorists, which Edward Said asserts stems from a fear of Islam threatening Western freedom,[86] and reflects a prevailing discomfort.[87] The addition of this heightened rhetoric citing 'evil barbarians' as a threat was the necessary ingredient that had been missing in 2013. It provided the catalyst to authorise intervention, elevating the need to 'do something' immediately and capitalising on a sense of vulnerability reminiscent of 2001.

In the aftermath of the 9/11 terrorist attacks President George W Bush invoked similar imagery.[88] Bush's uncompromising language about the threat

79 Several media outlets focussed on the ISIS executioner Mohammed Emwazi who was nicknamed 'Jihadi John'. See eg D Murray, 'Jihadi John: A Very British Export' *The Spectator* (20 August 2014).

80 David Cameron, HC Deb 2 December 2015, vol 603, col 324.

81 HC Deb 2 December 2015, vol 603, col 329.

82 T Whitehead, 'Paris Attacks: Special Forces on Streets of UK amid Fears Britain Could be Next Target for ISIL' *The Telegraph* (16 November 2015).

83 David Cameron, HC Deb 2 December 2015, vol 603, col 336.

84 See eg Alan Johnson, HC Deb 2 December 2015, vol 603 col 366; HC Deb 2 December 2015, vol 603, col 373; Nigel Dodds, HC Deb 2 December 2015, vol 603, col 378.

85 I Porras, 'On Terrorism: Reflections on Violence and the Outlaw' (1994) *Utah Law Review* 119.

86 EW Said, 'Islam Through Western Eyes' *The Nation* (26 April 1980).

87 EW Said, *Orientalism* (Penguin Classics 2003).

88 GW Bush, 'Address Before a Joint Session of the Congress on the United States Response to the Terrorist Attacks of September 11' (20 September 2001).

of Al Qaeda ultimately allowed the US Administration to turn a complicated geopolitical crisis into a simplistic showdown between the 'good guys' (US and its allies) and the 'bad guys' (the Taliban and Al Qaeda).[89] The 2015 framing of ISIS mirrored this framing of the Taliban in 2001, with detailed depictions of the group's barbarity.[90] In both the run-up to the debate and the debate itself, David Cameron repeatedly called ISIS an 'evil death cult'[91] and an 'evil terrorist threat'.[92] He asked MPs: 'do we sit back and wait for them to attack us?'[93]

In 2001, despite there being a lack of evidence that the Taliban was linked to Al Qaeda,[94] the call to arms was framed as eradicating the Taliban to protect UK and American citizens from terrorism.[95] Similarly, the intervention in Iraq was deemed necessary to prevent Saddam Hussein from using chemical weapons against the UK. Despite no evidence that ISIS in Syria had the capability to plan and carry out terrorist attacks in the UK,[96] the call to arms took place amidst the same lingering anxiety.[97] Notwithstanding the references to the atrocities committed by ISIS against Syrian civilians, it was the need to

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89 S Faludi, *The Terror Dream: What 9/11 Revealed About America* (Atlantic Books 2008) 6; J Mead, 'Manhood, Mourning and the American Romance' in J Birkenstein, A Froula and K Randell (eds), *Reframing 9/11: Film, Popular Culture and the 'War on Terror'* (Continuum 2010). See also R Buchanan and R Johnson, 'The Unforgiven Sources of International Law: Nation-Building, Violence, and Gender in the West (Ern)' in D Buss and A Manji (eds), *International Law: Modern Feminist Approaches* (Hart 2005) 141.

90 HC Deb 2 December 2015, vol 603, cols 336, 329, 331 and 357.

91 D Cameron, 'Transcript: We Will Defeat Terrorism and the Poisonous Ideology that Fuels it' *The Telegraph* (22 November 2015).

92 I Silvera, 'War on ISIS: David Cameron Says World is Uniting to Destroy Evil Death Cult of Islamic State' *International Business Times* (23 November 2015).

93 HC Deb 2 December 2105, vol 603, col 324.

94 The only official account that linked the Taliban to the attacks was a report released by the British Government, UK Government Press Release, *Responsibility for the Terrorist Atrocities in the United States, 11 September 2001* (4 October 2001) published by *BBC News* <http://newsrss.bbc.co.uk/1/hi/uk_politics/1579043.stm>. The US claimed to have proof that the Taliban was responsible but did not publish this evidence. The 9/11 Commission would later conclude that there was no evidence and that it was highly unlikely that the Taliban had been involved in planning or sanctioning the attacks. See 9/11 Commission, *The Final Report of the National Commission on Terrorist Attacks Upon the United States* (2004).

95 Hunt argues that 'this casting of north American women as passive, and in need of protection, contributes to justifications for a violent American response'. See K Hunt, 'The Strategic Co-Optation of Women's Rights' (2002) 4 *International Feminist Journal of Politics* 116, 117.

96 There is no clear sense of the capabilities of ISIS to attack the West, although the group has certainly claimed credit for attacks carried out in Europe by 'home-grown' terrorists. See B Smith, 'ISIS and the Sectarian Conflict in the Middle East' (House of Commons Library Research Paper 15/16, 19 March 2015) 12.

97 HC Deb 2 December 2015, vol 603, col 329.

protect the UK from 'evil' that appears to have motivated MPs to vote for military action in 2015. Yet while this framing allowed MPs to understand they were endorsing action against ISIS as a form of self-defence, it conflated defensive military strikes against terrorists with protecting ordinary Syrians and addressing humanitarian catastrophe. In the same way, the intervention in Afghanistan in 2001, which was primarily justified legally as self-defence against further terrorist attacks on the US, was conflated with liberating oppressed Afghan women.[98] It would therefore appear that the authorisation of force in 2015 (unlike 2013) was successful *because* the framing of military action was situated within a wider background of anxiety and so worked to construct an emotive argument for self-defence, if not a legal one.[99]

The language of self-defence readily unlocks a viable legal lexicon that appears to 'legalise', if not actually legally justify, intervention.[100] Despite the absence of any discussion of the correct legal parameters of self-defence (there was no mention of Article 51 of the UN Charter, or any reference to an imminent 'armed attack' on the UK), MPs were happy to endorse this justification (although many MPs did not, in fact, position themselves as the ultimate arbitrators on the legality of the proposed intervention). Despite conjuring an atmosphere of even more pressing urgency than in 2013, the government failed to provide evidence that there was any imminent threat of an 'armed attack' against the UK.[101] This led Henderson to note that the UK's proposed military action could in fact be more appropriately conceived as 'an unlawful threat to use force'[102] or even, as Stahn argued, an 'act of aggression against Syria'.[103]

Therefore, despite claiming to have learned lessons from Iraq and be guided by international law, there was no sense that MPs took this as their starting point in either 2013 or 2015. Instead, claims in 2015 that intervention

98 The oppression of Afghan women was offered as a clear example of the barbarity of the Taliban. Liberating these women was given as an additional aim of the military intervention. However, the disconnect between conflict and liberation was much criticised by feminist legal scholars and critical scholars in general. See Delphy (n 50); Mitchell (n 18); LJ Shepherd, 'Veiled References: Constructions of Gender in the Bush Administration Discourse on the Attacks on Afghanistan Post-9/11' (2006) 8 *International Feminist Journal of Politics* 19.

99 HC Deb 2 December 2015, vol 603 cols 323, 324, 325, 329, 331, 351, 357 and 358.

100 G Heathcote, 'Article 51 Self Defence as a Narrative: Spectators and Heroes in International Law' (2005) 12 *Texas Wesleyan Law Review* 131.

101 Self-defence is one of only two clearly accepted exceptions to the prohibition against the use of force set out in Article 2(4) of the UN Charter. Article 51 states: 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs.'

102 Henderson (n 67) 194.

103 C Stahn, 'Syria and the Semantics of Intervention, Aggression and Punishment' (2013) 11 *Journal of International Criminal Justice* 955.

would be legal under the doctrine of self-defence, as with the 2001 intervention in Afghanistan, were accepted at face value. While the legislature is not equipped to determine the legality of military intervention, a common thread is the need to be seen to be pronouncing that the intervention complies with international law. However, MPs are not lawyers and may generally have different understandings of how parliament and the executive is bound by international law. They are also more beholden to their constituents and their parties than international law. Yet, international law's importance as a performative mechanism is clear, and accordingly it is suggested that the government's invocation of the language of self-defence was merely 'ritual incantation'[104] to provide a veneer of legality to an otherwise potentially illegal operation. Indeed, this may have been cynically motivated by the knowledge that self-defence is a solid legal basis for the use of force in international law and so harder to refute.

While the 2015 parliamentary motion may be celebrated by some for demonstrating a respect for the *jus ad bellum* in situating the military intervention within the UN Charter's exceptions to the prohibition of force, rather than the doctrine of humanitarian intervention which was given in 2013, it is argued that such a shift is merely 'narrative spectacle'.[105] Writing about the shift that took place in international legal discourse following 9/11, Heathcote notes that 'new narratives (in this case pre-emptive force) do not emerge fully formed and in contradistinction to past narratives. Instead, new narratives, to gain legitimacy, invoke signs from previously accepted narratives to enhance their credibility.'[106] She outlines how, with the advent of the 'War on Terror', self-defence under Article 51 was 'used as a sign available to assist the development of new narratives'.[107] Accordingly, it is posited that substituting self-defence as the justification for military intervention in Syria in 2015 was likewise a sign, or symbolic incantation, of legality rather than a statement of legal fact and, much as in 2013, cannot be considered an example of greater engagement with the *jus ad bellum*. Rather than encouraging greater debate on the legality of any proposed intervention in Syria, the invocation of self-defence shuts down debate by providing an impervious legal justification that serves to endorse an intervention whose moral imperatives have already been established. Despite increasing reference to international law, and in particular the *jus ad bellum*, by government ministers in the parliamentary debates,

104 Gray, *International Law and the Use of Force* (n 4) 31–33.

105 Heathcote, 'Article 51 Self Defence as a Narrative' (n 100).

106 Heathcote, *The Law on Use of Force* (n 12) 97.

107 ibid 100.

Murray and O'Donoghue correctly conclude that law was side-lined in favour of moral legitimacy.[108] Yet paradoxically, this moral legitimacy, propagated through reliance on Manichean narratives, is itself bolstered by legal language, suggesting a symbiotic relationship between the two.

THE QUEST FOR LEGITIMACY: THE USE AND ABUSE OF LEGAL LANGUAGE TO SELL MILITARY INTERVENTION

It is well established that discussion of international law is central to debates on war and is used as a tool to shape the discourse by offering a veneer of legitimacy.[109] Simpson writes that '[f]or a while, international law was *the* language of argument about the war'.[110] This section demonstrates how, in the debates on use of force in Syria, 'legalistic' language[111]—that is to say the rhetoric of international law—was invoked by the government in order to win support for war, because 'when parliament is swayed by legalized language, it generates a precedent which makes support for future actions easier to secure'.[112] The government appeared to construct support for military intervention by referring to a variety of legal terms of art, invoking an aura of legality to present compliance with international law as a determining factor. The vernacular of law in parliamentary debates on war, and in particular the 'pervasiveness of international legal language',[113] has therefore been referred to as a 'trump' card.[114]

Fikfak notes that if the Iraq war's legacy was that parliament must now be consulted prior to a military deployment,[115] then it is logical to assume it is now necessary to 'sell' intervention as legal to MPs to secure parliamentary approval.[116] Certainly, MPs appeared to use compliance with international law as

108 C Murray and A O'Donoghue, 'Towards Unilateralism? House of Commons Oversight of the Use of Force' (2016) 65 *International and Comparative Law Quarterly* 305.

109 V Fikfak, 'The Legacy of Iraq: Bringing Parliament into a Debate on War' (Cambridge University Legal Studies Research Paper Series No 55/2017, November 2017) 1–3; Murray and O'Donoghue (n 108) 305; Stahn, 'Syria and the Semantics of Intervention, Aggression and Punishment' (n 103).

110 G Simpson, 'International Law in Diplomatic History' in J Crawford and M Koskenniemi, *The Cambridge Companion to International Law* (Cambridge University Press 2012) 44.

111 'Legalistic' is a term used to convey the idea that legal terms of art—for example 'self-defence', 'necessity', 'proportionality', which have a specific meaning in law—can be used to invoke a pretence of legality, through decoupling such terms from their accepted specificity.

112 Murray and O'Donoghue (n 108) 311.

113 Fikfak, 'The Legacy of Iraq' (n 109) 9.

114 ibid.

115 ibid 1–3.

116 ibid 15.

the benchmark for evaluating intervention in Syria—although it was unclear whether they were conceding that parliament was in any way bound by such an evaluation. It is easier to pronounce a military intervention 'legitimate' than to pronounce it legal, and so, increasingly, legitimacy rather than legality has effectively come to serve as the benchmark for authorising force. Roberts argues that this is because, in the rare instances where intervention can be viewed as complying with international law, these legal justifications alone are enough to legitimate the use of force to a domestic audience. Conversely, in those with much more tenuous claims to legality—as was the case with UK interventions in Syria and Iraq, Kosovo, and Afghanistan—moral and political arguments become the primary justifications, although they still need to be packaged within a 'legalistic' vernacular.[117]

While endorsing Roberts's analysis, this article suggests that legitimation of military intervention may be even more complex: analysis of the discourse of the Syria debates suggests there is not necessarily a straightforward delineation between legal and non-legal arguments. As Fikfak notes, 'legalized arguments and political and moral legitimacy claims provide a mutually-reinforcing cycle'.[118] States invoke a variety of legal languages when justifying military intervention,[119] but this language is obfuscatory rather than clarificatory. Kritsiotis notes, 'it is difficult to distinguish legal justifications from rhetoric'.[120] Arguments in favour of intervention now appear to draw on legal and non-legal (moral and political) justifications simultaneously, suggesting a degree of symbiosis.

The time devoted to discussing the legality of intervention, and the use of international law as a yardstick, suggest that legality in the conventional sense is the benchmark for authorisation. Murray and O'Donoghue suggest otherwise,[121] and Liste notes: 'There might, indeed, be occasions when reliance on international law is prudent and those where it is not ... international law receives a meaning as a potentially adequate tool but not as an end itself.'[122]

117 A Roberts, 'Legality vs Legitimacy: Can Uses of Force Be Illegal but Justified?' in P Alston and E MacDonald (eds), *Human Rights, Intervention, and the Use of Force* (Oxford University Press 2008) 202. See also V Fikfak and HJ Hooper, *Parliament's Secret War* (Hart 2018) 59.

118 Murray and O'Donoghue (n 108) 310.

119 J Brunnee and SJ Toope, *Legitimacy and Legality in International Law* (Cambridge University Press 2010) 275.

120 D Kritsiotis, 'When States Use Armed Force' in C Reus-Smit (ed), *The Politics of International Law* (Cambridge University Press 2004) 44.

121 Murray and O'Donoghue (n 108) 310.

122 P Liste, '"Public" International Law? Democracy and Discourse of Legal Reality' (2011) 42 *Netherlands Yearbook of International Law* 177.

Most MPs are not lawyers,[123] and of those legally trained, few have experience in international law—even fewer with the *jus ad bellum*.[124] Fikfak correctly concludes that the parliamentary debates 'misuse' international legal terms such as 'self-defence', 'UN authorisation', 'proportionality' and 'necessity'.[125] In 2015, many MPs who voted for intervention explained their support on the basis of Security Council Resolution 2249,[126] which called on all member states to 'redouble their efforts against ISIS/Daesh'.[127] While the resolution did indeed call on member states to offer support, it was not adopted under Chapter VII and explicitly did not authorise force. This supports Kritsiotis's observation that 'the legal justification that is officially proclaimed can be mistaken or misunderstood or misinterpreted or misrepresented from that which is actually advanced in practice'.[128]

In 2015, legal justifications in accordance with the *jus ad bellum*, such as self-defence or Security Council authorisation, were implied via vague references to Security Council resolutions and the need to defend the UK against terrorists.[129] This helped to underscore the binary tropes evoked through emotive language that referenced crises, humanitarian catastrophe, human

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123 D Howarth, 'Lawyers in the House of Commons' in D Feldman (ed), *Law in Politics, Politics in Law* (Hart 2014) 41–42.

124 Fikfak, 'The Legacy of Iraq' (n 109) 11.

125 ibid.

126 The Government cited self-defence as the official legal basis for the intervention. See 'Prime Minister's Response to the Foreign Affairs Committee's Second Report of Session 2015–16: The Extension of Offensive British Military Operations to Syria' (Memorandum to the Foreign Affairs Select Committee, November 2015). The parliamentary motion noted 'the clear legal basis to defend the UK and our allies in accordance with the UN Charter' and 'welcome[d] United Nations Security Council Resolution 2249 which determines that ISIL constitutes an "unprecedented threat to international peace and security"'. While it was acknowledged that the UN resolution did not authorise force, parliament appeared to accept that there was an implied right of self-defence. See Mark Pritchard, HC Deb 2 December 2015, vol 603, col 385; Keir Starmer, HC Deb 2 December 2015, vol 603, col 467; J Strong, 'The War Powers of the British Parliament: What has Been Established and What Remains Unclear' (2018) 20 *British Journal of Politics and International Relations* 19, 27.

127 SC Res 2249 (20 November 2015) UN Doc S/RES/2249(2015). Several authors note that the resolution did not authorise force nor did it recognise the UK's inherent right to self-defence. See D Akande and M Milanovic, 'The Constructive Ambiguity of the Security Council's ISIS Resolution' *EJIL:Talk!* (21 November 2015); V Fikfak, 'Voting on Military Action in Syria' *UK Constitutional Law Blog* (28 November 2015).

128 D Kritsiotis, 'Arguments of Mass Confusion' (2004) 15 *European Journal of International Law* 233, 238.

129 The Prime Minister told the House: 'We have taken legal advice. We have a unanimous United Nations resolution' which inferred, while not outright stating, that there was a UN resolution authorising force. HC Deb 2 December 2015, vol 603, col 339; HC Deb 2 December 2015, vol 603, col 323.

rights abuses, terrorism and genocide, all perpetrated by 'evil doers', thereby placing a duty on the UK to intervene and save Syria and its civilians. It is posited that this blurring of legal and non-legal justifications allowed moral and political arguments to initially compel the impetus for intervention, while the additional invocation of 'legalistic' language created a veneer of legality, offering legitimacy when the absolute certainty of legality was lacking.

Hardy argues that debates about recourse to force in international politics often conflate legality and legitimacy,[130] while Thomas asserts that 'the language of legitimacy and the language of crisis have long been associated with each other'.[131] Indeterminacy in the language of international law appears to be what allows it to be invoked as a shibboleth to bestow legitimacy on executive decision making, due to what Thomas calls its 'semantic ambiguity and its capacity to be used strategically with little regard for consistency'.[132] As Koskenniemi explains, 'when Western experts claimed that the intervention in Kosovo in 1999 might have been illegal, but was quite legitimate, their point was precisely to find a normative vocabulary overriding formal validity'.[133] It seems this normative vocabulary has in fact been perfected and is legitimating intervention in Syria. The seeds sown in 1999 now prove impossible to uproot.

However, since the language of international law appears to foreclose any meaningful debate on legality, the lack of interrogation of individual legal terms is additionally problematic. There were frequent statements and reassurances by the Government that any use of military force would be 'proportionate'[134] and 'necessary',[135] suggesting that these were the appropriate legal thresholds for determining the legality of military intervention. Yet this language draws on customary international law principles more usually associated with the law of armed conflict.[136]

130 J Hardy, 'Legitimacy in the use of force: *Opinio* or *Juris*?' (Paper presented to the Sixth Oceanic Conference on International Studies, University of Melbourne, 9–11 July 2014) 3.

131 C Thomas, 'The Use and Abuses of Legitimacy within International Law' (2014) 34 *Oxford Journal of Legal Studies* 729, 732.

132 ibid. See also J Crawford, 'The Problems of Legitimacy-Speak' (2004) 98 *Proceedings of the ASIL Annual Meeting* 271, 271.

133 M Koskenniemi, 'Miserable Comforters: International Relations as New Natural Law' (2009) 15 *European Journal of International Relations* 395, 409.

134 'Chemical Weapon Use by Syrian Regime: UK Government Legal Position' (Policy Paper 29 August 2013) para 4(1)(iii).

135 ibid.

136 Henderson (n 67) 181. Conflating *jus in bello* principles for *jus ad bellum* justifications is discussed by Chinkin and Kaldor in C Chinkin and M Kaldor, *International Law and New Wars* (Cambridge

Sands questioned parliament's ability to meaningfully assess compliance with international law, especially when 'the PM's assertions were not an accurate assessment of the legal advice and had the effect of misleading parliament'.[137] The legal advice was not all made available and, even so, 'MPs tended to accept the government's interpretation of international law without question'.[138] Instead, international law, or the semblance of compliance with international law, was here used as a rhetorical tool of persuasion. As Mallory highlights, the aim of parliamentary rhetoric is not to convince other politicians of the merits or demerits of a particular agenda. Rather, deliberate rhetoric is adopted to align with the public's distrust of illegal military interventions.[139] In authorising military intervention, rhetorical engagement with international law allows MPs to be seen as engaging with an objective framework, even if they are not.

This led Murray and O'Donoghue to conclude that governments can manipulate the indeterminacy of legal language to generate a basis for military action, and that in the Syria debates the government effectively 'parsed international law' to create a veneer of legitimacy[140] seeking to 'supplant legal discourse'.[141] This use of legal language in parliamentary debates serves to present war as an 'obligation or necessity, not a complex choice'.[142] Such a deliberate shift means that legitimacy of action can be understood as a product of a combination of legal, political and moral considerations that are increasingly difficult to differentiate.[143] Stahn suggests the reason for this trend toward merging different rationales into a case for military action is that 'typically, these objectives are not sufficient on their own to support a legal basis but are weaved together in order to make the case for legality more acceptable'.[144]

It may therefore be that the language of international law is used in parliamentary debates to bestow legitimacy on interventions whose legality is questionable, and not as an effective objective mechanism. Legal language is

University Press 2017) 222. See also D Kennedy, *Of Law and War* (Princeton University Press 2006) 156.

137 House of Commons Political and Constitutional Reform Committee, *Parliament's Role in Conflict Decisions: A Way Forward* (Twelfth Report of Session 2013–14, 27 March 2014, HC 892) para 44.

138 Fikfak, 'The Legacy of Iraq' (n 109).

139 C Mallory, 'Rights-Restricting Rhetoric: The Overseas Operations (Service Personnel and Veterans) Act 2021' (2022) 85 *Modern Law Review* 461, 462.

140 Murray and O'Donoghue (n 108).

141 Thomas (n 131) 732.

142 Fikfak and Hooper (n 117) 63.

143 Murray and O'Donoghue (n 108).

144 C Stahn, 'Between Law-breaking and Law-making: Syria, Humanitarian Intervention and "What the Law Ought to Be"' (2014) 19 *Journal of Conflict and Security Law* 25, 32.

decoupled from its specific moorings in international law and is used to bolster heroic narrative tropes seeking to encourage intervention by appealing to moral sensibilities.[145] Legal scholars therefore need to be cautious when pronouncing a legacy of Iraq to be the return of deference for the *jus ad bellum* given that, despite the apparent elevation of international law in the debates on authorisation of military force in Syria, international law as a constraining force has been shown little respect since.[146] It appears unlikely that international law could adequately serve as the ultimate determining mechanism as some MPs suggested, in part because parliament's general approach to international law is to insist on the importance of compliance while advocating legislation or action that may in fact be in breach.[147]

THE DANGER OF THE HEROIC NARRATIVE: OBSCURING REALITY AND SILENCING INTERNATIONAL LAW

Despite a brief window in which it appeared that the legislature might operate an effective 'veto' (even if only as a constitutional courtesy) against military intervention, with a renewed respect for international law, the UK rather framed the situation in Syria through a Manichean lens familiar from previous conflicts. The executive continues to present military intervention as serving to rescue innocent civilians abroad and protect British citizens at home, resurrecting evocative but dangerous tropes about the West as the saviour figure whose intervention will solve a crisis, all while perpetuating unhelpful imagery of an uncivilised other.[148] This section argues that while parliament's adherence to these well-worn tropes about fear of terrorists and rescue missions is a sure way of generating support for military intervention,[149] doing so is

145 See Fikfak, 'Voting on Military Action in Syria' (n 127).

146 See the scholars cited above at n 2.

147 The Internal Market Bill and the Overseas Operations (Service Personnel and Veterans) Bill both involved acknowledgements that the UK Government intended to breach international law. See Mallory (n 139).

148 See A Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2007); M Koskenniemi, *The Gentle Civiliser of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press 2008).

149 Chesterman argues that the moral ideology of waging war to protect the innocent has remained and has influenced the creation of the doctrine of Responsibility to Protect, which sought to create a normative framework for humanitarian intervention, while Tsagourias argues that the requirements for humanitarian intervention are merely 'refinements of the just war theory'. See NK Tsagourias, *Jurisprudence of International Law: The Humanitarian Dimension* (Manchester University Press 2000) 73; S Chesterman, *Just War or Just Peace?: Humanitarian Intervention and International Law* (Oxford University Press 2001).

damaging because, as is well established, focusing on such reductive and binary narratives reduces the space for detailed consideration of the *jus ad bellum* which ought to be at the centre of any debate on military force.[150] While it is correct that it is the proper function of the legislature to hold the government to account, the insistence that parliament would now have greater accountability over the deployment of military force post-Iraq should mean that debates on whether to authorise military force are conducted in the knowledge of the facts. Parliamentarians cannot simply revert to hyperbolic emotive rhetoric that involves stereotypical imagery if they are indeed to wield oversight of the government's plans to deploy troops, especially if it is claiming to use international law as an instrument to measure whether such a deployment is appropriate. This section outlines the consequences of once again capitulating to a reductive framing, which suggests that 'doing something' is better than doing nothing, even when the evidence suggests the contrary.[151] It highlights that, even when parliament resolves to learn lessons from its previously unfettered adherence to this narrative, it appears unable to do so.

As many have argued, the use of such rhetoric reduces complex situations to simplistic good versus evil scenarios and successfully positions any debate on military intervention as an 'all or nothing' situation whereby, in essence, those advocating intervention can 'contrast unilateral humanitarian intervention' with 'inhumanitarian non-intervention'.[152] This framing entreats MPs to consider that if they do not support military action then they will be guilty of 'doing nothing'.[153] Yet, military action, particularly when it involves airstrikes, is rarely in the interests of civilians.[154] Similarly, military action, despite what is claimed, is rarely a successful tool for improving women's rights.[155] MPs

150 White argues that in the UK 'where formal constitutional legal constraints are few, but international legal constraints are applicable means it is international law that should play an increased role in helping to shape such decisions': ND White, 'International Law, the United Kingdom and Decisions to Deploy Troops Overseas' (2010) 59 *International and Comparative Law Quarterly* 814, 814.

151 D Kennedy, 'Spring Break' (1984) 63 *Texas Law Review* 1377; Kennedy, *The Dark Sides of Virtue* (n 25); R Belloni, 'The Trouble with Humanitarianism' (2007) 33 *Review of International Studies* 451.

152 Chesterman (n 149) 236.

153 David Cameron framed voting against military action as doing nothing when he asked: 'Do we go after these terrorists in their heartlands, from where they are plotting to kill British people, or do we sit back and wait for them to attack us?'. HC Deb 2 December 2015, vol 603, col 323–24.

154 DM Weissman, 'The Human Rights Dilemma: Rethinking the Humanitarian Project' (2003) 35 *Columbia Human Rights Law Review* 259.

155 K Engle, 'Calling in the Troops: The Uneasy Relationship among Women's Rights, Human Rights, and Humanitarian Intervention' (2007) 20 *Harvard Human Rights Journal* 189; G Heathcote, 'Feminist Reflections on the End of the War on Terror' (2010) 11 *Melbourne Journal of International Law* 277.

present military intervention as a clear and consequence-free solution to complex problems, and in doing so they reduce international law to a mere incantation spoken in parliament. Much of the political and legal discourse following Iraq acknowledged the danger of becoming beholden to Manichean narratives and ignoring international law.[156]

Reducing the discussion on military intervention to a polarised, antagonistic battle over whether to 'do something' or 'do nothing' unfairly presents the choice 'as being between legal formalism and substantive morality'.[157] David Cameron claimed that 'doing nothing was a choice',[158] while the late Jo Cox, Chairperson of the All-Party Group on Syria, called for military action, stating that 'all it takes for evil to triumph is for good men to do nothing'.[159] Therefore, 'intervention is presented as a lesser of two evils.[160] It was argued that blockage in the [Security] Council posed a dilemma of choice between 'turning a blind eye (and a deaf ear) to violations and the use of military force'.[161] During the 2015 debate many MPs said that, with significant reservations, they would endorse military action in Syria, because a refusal to do so would be tantamount to doing nothing and abandoning innocent civilians.[162] The implication was that doing nothing was not an option, as the world would judge the UK for its failure to act, thereby rendering non-action as tantamount to an endorsement of terror and suffering. Attempting to rebut this presumption, the Leader of the Opposition, Jeremy Corbyn, entreated members not to endorse military action just to be seen to be doing something.[163]

Accordingly, it appeared that what had changed many MPs' minds since parliament's 2013 rejection of military force in Syria was not a re-evaluation of international law, or a material change in the circumstances on the ground, but the portrayal in the media of the dangers of ISIS and the need to do

156 R Falk, 'The Iraq War and the Future of International Law' (2004) 98 *Proceedings of the ASIL Annual Meeting* 263; A Paulus, 'The War Against Iraq and the Future of International Law: Hegemony or Pluralism?' (2004) 25 *Michigan Journal of International Law* 691; E MacAskill and J Borger, 'Iraq War Was Illegal and Breached UN Charter, Says Annan' *The Guardian* (16 September 2004); K Dörmann and L Colassis, 'International Humanitarian Law in the Iraq Conflict' 47 (2004) *German Yearbook of International Law* 293.

157 Roberts (n 117) 207.

158 HC Deb 29 August 2013, vol 566, col 1434.

159 J Cox, '"If We Don't Tackle Assad, We'll Never Defeat ISIS Evil" MP Tells David Cameron' *The Mirror* (28 November 2015).

160 J Strong, 'Interpreting the Syria Vote' (2015) 91 *International Affairs* 1123.

161 Stahn (n 144) 34.

162 Angus Robertson MP stated that '[t]here is agreement across this House that the threat from Daesh is real and that doing nothing is not an option.' HC Deb 2 December 2015, vol 603, col 351.

163 HC Deb 2 December 2015, vol 603, col 323.

something and address this.[164] Yet in spite of, or perhaps because of, the emotive focus on ISIS, many parliamentarians failed to acknowledge that in many instances the suffering of civilians in Syria was caused by fighting between the Syrian regime and the Free Syrian Army, and that strikes on ISIS would do little to alter this.[165] Therefore, the actual issue was not whether to do something or nothing, but how to adequately respond.[166] However, the power of reductive tropes to position the situation in Syria as an urgent crisis requiring immediate military action, and framing anything short of military force as failing to act, meant that any response not involving force was not considered and the utility of any intervention was then assumed to flow from its presumed legality.

The power of these tropes renders the alternatives to using force invisible. Temouni argues that the use of chemical weapons by the Syrian regime would constitute a breach of customary international law,[167] potentially triggering a referral to the International Criminal Court, yet no discussion of this took place.[168] Instead, the language of humanitarian intervention was immediately invoked to make intervention appear the only option. Further, despite invoking the heroic narrative imagery of 'saving' civilians, MPs did not refer to the responsibility to protect doctrine, which Henderson argues might have offered a more robust set of parameters for debating intervention and outcomes.[169] This meant that the debate on intervention, which was presented as a moral good and urgent necessity, took place absent any discussion about

164 Dominic Grieve MP stated that failure to intervene militarily was 'controlling Daesh's ability to perpetrate violence and cruelty in the area and terrorism in Europe': HC Deb 2 December 2015, vol 603, col 354.

165 James Gray MP stated: 'There are then the geopolitical questions we have not really addressed very much this afternoon. By fighting in Syria against Daesh, will we be on the same side as President Putin or even Mr Assad? Is our enemy's enemy our friend? No one has really addressed that question.' HC Deb 2 December, vol 603, col 407.

166 See Stahn (n 144) 35; Fikfak and Hooper (n 117) 160–62.

167 The use of chemical weapons against civilians is both a violation of customary international law and an international crime. See ICRC, 'Rule 74' *Customary IHL Database* (first published 2005) <https://ihl-databases.icrc.org/en/customary-ihl>. This was reiterated by the UN Security Council in UNSC Res 2118 (27 September 2013) UN Doc S/RES/2118(2013)27 September 2013.

168 Some scholars noted that the terrorist acts of 9/11 were criminal acts, and the correct course was to pursue the responsible individuals through municipal or international criminal justice systems. See SD Murphy, 'Terrorism and the Concept of Armed Attack in Article 51 of the UN Charter' (2002) 43 *Harvard International Law Journal* 41; A Cassese, 'Terrorism Is Also Disrupting Some Crucial Legal Categories of International Law' (2001) 12 *European Journal of International Law* 993. Therefore, it is logical to question why the chemical attacks on Syrian civilians were not framed as crimes against humanity, and why a criminal response was not pursued.

169 Henderson (n 67) 181.

responsibility or accountability.[170] It also meant that the effectiveness of any military action was rarely considered, which is problematic in view of Franck's famous assertion that the ultimate test of an intervention's legitimacy is 'whether it results in significantly more good than harm'.[171] Despite NATO citing civilian protection as motivation for its bombing campaign in 1999, the majority of those who suffered ill effects during the conflict were those whom the NATO operation was designed to protect.[172] The Independent Commission on Kosovo concluded that NATO had 'failed to achieve its avowed aim of preventing massive ethnic cleansing', noting that almost one million Kosovar Albanians were made refugees and almost 10,000 died as a result of NATO action.[173] Despite these findings the prevailing narrative of Kosovo was that the intervention was a morally just and benevolent mission.[174]

Mindful of this, Heathcote called for international law to be re-scripted 'through empirical accounts of the impact of military behaviour on civilian communities'.[175] However, such accountability and long-term evaluation was notably absent from the key parliamentary debates. Therefore, as Banta puts it, 'humanitarianism's "do something" simplicity can obfuscate shifts to means that do more to serve the interests of the intervening parties than those ostensibly being saved'.[176] While the Manichean narrative framing creates the conditions for situating military intervention as a necessary response to an imminent crisis, its reductive characterisation means that there is a lack of detailed discussion of any wider consequences of military action.[177] Indeed, as Fikfak and Hooper note, 'thinking of war as a matter of choice facilitates debate, whilst referring to war as a "necessity" closes it down'.[178] As such, the rhetoric of 'necessity' and 'doing something' silenced the claims that military intervention could make the situation worse. Dr Julian Lewis MP remarked: 'The fact that the British government wanted to bomb first one side and then

170 ibid.

171 T Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* (Cambridge University Press 2002) 174–89.

172 AH Cordesman, *The Lessons and Non-lessons of the Air and Missile Campaign in Kosovo* (Praeger 2001) 97.

173 The Kosovo Report (n 41) 5.

174 See Koskenniemi, 'The Lady Doth Protest Too Much' (n 11).

175 Heathcote, *The Law on the Use of Force* (n 12) 106. See also Chinkin and Kaldor (n 136) 172.

176 B Banta, 'Leveraging the Idea of "Humanitarian War"' (2017) 31 *International Relations* 426, 438.

177 Stahn (n 144) 36.

178 Fikfak and Hooper (n 117) 165.

the other in the same civil war, and in such a short space of time, illustrates to my mind a vacuum at the heart of our strategy.'[179]

Accordingly, this author cautions against the continued use of highly emotive language to discuss authorisation of military force, especially when mixed in with the technical terms of international law to suggest legitimacy. If compliance with international law were ever to be a true yardstick for authorisation, then there would need to be scope for more expert advice and opinion to better furnish MPs with the means to gauge this. However, determining whether a military deployment complies with international law should not be the determining factor as to whether such a deployment is appropriate. The co-optation of international law as a threshold for determining action does little to further adherence to international law as a whole. Even if parliament is not ultimately attempting to fully adjudicate the legal merits of any deployment, the danger of parliamentarians claiming to use international law as a metric of legality—all while misconstruing legal language—is that it contributes to the erasure of international law norms on use of force. This has especially powerful resonance given that the UK is a permanent member of the UN Security Council. It bolsters the precedent whereby certain military interventions are legitimated as humanitarian. The UK parliament's endorsement means there is a readily available template for any state to legitimate future military deployments, which is the opposite of what most commentators believed would be the legacy of Iraq.

CONCLUSION

Despite the use of legalistic language purporting to analyse the appropriateness of military intervention via appeals to compliance with legality, the overwhelming impetus of parliamentarians in such cases remains the imperative to 'do something'. The language of international law is therefore co-opted to bolster the political argument that there is legal authority for an intervention that MPs have already deemed 'necessary'. The invocation of this pseudo-legalistic language serves to supplant rather than supplement international law.[180] Despite claims that the 2013 vote in the House of Commons heralded a new era of parliamentary scrutiny of government requests to deploy military force, this article has argued that there has been no major shift and that, post-Iraq, parliamentarians are still encouraged to reduce discussions on intervention to simplistic images of rescuing civilians and protecting the UK from terrorists.

179 Dr Julian Lewis, HC Deb 2 December 2015, vol 603, col 369.

180 Murray and O'Donoghue (n 108).

Instead, I have argued that since Iraq, parliamentarians have been more aware of the need to invoke international law as a measure in the authorisation of force, but that in the process, the language of international law has been co-opted by parliamentarians to legitimise interventions already deemed necessary. Yet this review cautions that, while this Manichean framework allows MPs to simplify humanitarian and security concerns, and position military intervention as 'doing something' to address human suffering, it offers little insight into the actualities of the situation on the ground nor any long-term solution to improve the lives of people in war zones. This is because the heroic narrative operates by positioning military intervention as the only solution to international crises. War, rhetorical or actual, provides a framework that quells any criticism of inaction and simultaneously seeks to justify the very crisis that it presumes to create. Scholars are correct to be wary and highlight the effects of this paradigm. Despite what was claimed after Iraq, it remains the case that 'the language of "crisis" has become ubiquitous in international law and politics',[181] and continued portrayal of events as crises is skewing our perception of international peace and security.[182] Presenting the situation in Syria as a crisis by resorting to hyperbole establishes the necessity of military force, which could then be explained as humanitarian since the ensuing narrative paints the military in a heroic light for both solving the crisis and saving innocent victims, despite evidence from previous military interventions demonstrating that it does neither.

The deployment of good-versus-evil tropes to underpin military action in Syria obscured impartial analysis of the reality on the ground, as well as obviating rational debate on the legality of intervention. This article thus cautions against the pseudo-invocation of the language of international law by parliamentarians to justify intervention, and argues that there is a gap between how international law terms are utilised by lawyers and by parliamentarians. Hence, the departure from the war powers convention may be celebrated as a win for the legislature over the executive, but not as a win for international law.

181 Otto (n 23) 75.

182 Charlesworth (n 6).