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Sovereignty, Intervention and International Law: Evaluating United States Military Action against Venezuela under the Jus ad Bellum

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ABSTRACT

On 3 January 2026 the United States launched Operation Absolute Resolve, a multi-domain military operation against Venezuela that combined precision air strikes on Venezuelan military installations with a special-operations raid that seized President Nicolás Maduro and his wife, Cilia Flores, and transported them to the United States to face narco-terrorism indictments. The operation followed months of lethal United States strikes against vessels in the Caribbean and eastern Pacific allegedly linked to drug trafficking. Washington offered a shifting justification for the Venezuela operation, invoking self-defence under Article 51 of the United Nations Charter against an asserted 'narco-terrorist' armed attack, while simultaneously describing the raid as a law-enforcement arrest of indicted fugitives. This article subjects both rationales to sustained doctrinal scrutiny using a black-letter method grounded in the United Nations Charter, the jurisprudence of the International Court of Justice, General Assembly resolutions and leading scholarly commentary. It argues that the operation constitutes an unlawful use of force under Article 2(4) of the Charter; that transnational drug trafficking, however serious, does not meet the gravity threshold of an 'armed attack' recognised in Nicaragua and Oil Platforms; that the law-enforcement characterisation cannot cure a use of force conducted without territorial consent; that no Security Council authorisation existed; and that the forcible removal of a sitting head of state violated the customary rule of personal immunity confirmed in the Arrest Warrant case. The article further situates the episode within a wider pattern of executive practice, including sustained lethal strikes on suspected smuggling vessels, that collectively strains the Charter's prohibition on force, and it assesses the international response, dominated by condemnation from United Nations officials, human rights bodies and international law scholars, as evidence that the prohibition retains normative force even where enforcement against a veto-holding power remains structurally impossible. The article concludes that reasserting the primacy of Article 2(4) and strengthening

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accountability mechanisms outside the Security Council are essential to preventing the operation from calcifying into precedent.

Keywords: *use of force, article 2(4) UN Charter, self-defence, article 51, aggression, non-intervention, head-of-state immunity, Venezuela*

I. INTRODUCTION

State sovereignty is guaranteed in international law by Article 2(1) of the United Nations Charter, yet that guarantee sits in permanent tension with the Charter's categorical prohibition, in Article 2(4), on the 'threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'.¹ That tension was tested acutely by the United States' military intervention in Venezuela on 3 January 2026. In an operation code-named 'Operation Absolute Resolve', United States forces launched air strikes on Venezuelan military installations around Caracas, La Guaira, Miranda and Aragua, before a Joint Special Operations Command raid extracted President Nicolás Maduro and his wife, Cilia Flores, from a residence in Caracas and transported them by helicopter and naval vessel to the United States to face narco-terrorism charges.² Joint Chiefs Chairman General Dan Caine confirmed that more than 150 aircraft were launched from twenty bases across the Western Hemisphere, and that helicopters carrying the extraction force engaged Venezuelan personnel with what he termed 'overwhelming force and self-defence' before departing with Maduro and Flores in custody.³ The operation followed a six-month campaign of United States strikes against vessels in the Caribbean and eastern Pacific alleged to be smuggling narcotics on behalf of Venezuelan cartels, strikes that had already killed more than one hundred people and which the administration had likewise defended as acts of self-defence against 'narco-terrorist' organisations.⁴

The Trump administration's public justification for the Venezuela operation was neither singular nor stable. Secretary of State Marco Rubio initially characterised the mission as an exercise of

¹ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 2(4).

² Greg Norman, *US Military Details Timeline of Operation to Capture Maduro, Revealing More than 150 Aircraft Involved* (FOX NEWS, 3 January 2026) <<https://www.foxnews.com/us/us-military-details-timeline-operation-capture-maduro-revealing-more-than-150-aircraft-involved>> accessed 28 July 2026; *Operation Absolute Resolve: Inside the US Military's Capture of Nicolás Maduro* (THENATIONWEEK, 9 January 2026) <<https://thenationweek.com/2026/01/09/operation-absolute-resolve-inside-the-us-militarys-capture-of-nicolas-maduro/>> accessed 28 July 2026.

³ Norman (n 2); Colin Clark, *150 Aircraft, Cyber Effects and "Overwhelming Force:" How the Venezuela Operation Unfolded* (BREAKING DEFENSE, 8 January 2026) <<https://breakingdefense.com/2026/01/venezuela-150-aircraft-cyber-effects-maduro-operation-how-it-happened-caine/>> accessed 28 July 2026.

⁴ Scott R Anderson, *Striking Drug Cartels under the Jus ad Bellum and Law of Armed Conflict* (JUST SECURITY, 12 January 2026) <<https://www.justsecurity.org/120235/drug-cartels-jus-ad-bellum-loac/>> accessed 28 July 2026.

'inherent self-defense rights' under Article 51, framing Maduro's 'Cartel de los Soles' as a state-directed narco-terrorist enterprise responsible for an 'ongoing armed attack' on the United States through fentanyl trafficking.⁵ Yet within days United States officials pivoted to a second, incompatible rationale: that the raid was a domestic law-enforcement arrest of two federally indicted fugitives, modelled on the 1989 seizure of General Manuel Noriega in Panama, and therefore did not implicate the *jus ad bellum* at all.⁶ Both rationales were near-uniformly rejected by international law scholars, United Nations officials, and the overwhelming majority of the United Nations membership. The Amnesty International Secretary General, Agnès Callamard, condemned the operation as 'an act of aggression that endangers civilians and tears apart the guardrails of international law'.⁷ United Nations Secretary-General António Guterres told the Security Council that 'the power of the law must prevail', and voiced deep concern about 'the precedent it may set for how relations between and among States are conducted'.⁸

The Venezuela episode is accordingly a critical lens for examining the resilience of the Charter's use-of-force regime in an era of executive practice that increasingly stretches Article 51 to cover non-state and hybrid threats. Article 2(4) is now widely accepted as a rule of *jus cogens*, one of the foundational norms of the post-1945 order, from which states may derogate only through the two Charter-sanctioned exceptions: individual or collective self-defence against an 'armed attack' under Article 51, or authorisation of enforcement action by the Security Council under Chapter VII.⁹ The United States' reliance on a diffuse notion of narco-terrorism as an 'armed attack', combined with an alternative law-enforcement rationale that would, if accepted, hollow out the territorial-consent requirement altogether, tests whether powerful states can unilaterally redraw the boundaries of lawful force.

Research question. Is United States conduct against Venezuela, namely the 3 January 2026 strikes, raid and forcible removal of President Maduro, consistent with the restrictions on the

⁵ Marko Milanovic, *Some Further Thoughts on the Illegal US Attack on Venezuela: Self-Defence, Cyber, and Continuing Coercion* (EJIL: TALK!, 7 January 2026) <<https://www.ejiltalk.org/some-further-thoughts-on-the-illegal-us-attack-on-venezuela-self-defence-cyber-and-continuing-coercion/>> accessed 28 July 2026.

⁶ Saira Mohamed, interviewed in *Maduro Raid Flouted "Central Rule of International Law," Professor Saira Mohamed Says* (UC BERKELEY LAW, 21 January 2026) <<https://www.law.berkeley.edu/article/professor-saira-mohamed-international-law-nicolas-maduro-venezuela-united-nations/>> accessed 28 July 2026.

⁷ AMNESTY INTERNATIONAL, *USA: Act of Aggression against Venezuela Further Weakens Rules-Based International Order and Leaves Venezuelans Still Waiting for Justice* (3 February 2026) <<https://www.amnesty.org/en/latest/news/2026/02/usa-aggression-against-venezuela-further-weakens-rules-based-order/>> accessed 28 July 2026.

⁸ *Security Council LIVE: "The Power of the Law Must Prevail" amid Venezuela Crisis, Says Guterres* (UN NEWS, 5 January 2026) <<https://news.un.org/en/story/2026/01/1166700>> accessed 28 July 2026; UNITED NATIONS, *Secretary-General's Remarks to the Security Council on Venezuela* (5 January 2026) UN Doc SG/SM/22974.

⁹ CHRISTINE GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* (4th edn, OUP 2018) 29–33; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14, para 190.

use of force set out in the United Nations Charter? This article argues that it is not: the operation is an unlawful use of force under Article 2(4), unexcused by Article 51 or the law-enforcement rationale advanced in the alternative, and it further violates the customary rules of non-intervention, sovereign equality and head-of-state immunity, while exposing structural limits on Charter enforcement against a permanent member of the Security Council.

Methodology. The article employs a doctrinal (black-letter) methodology, examining primary sources, the United Nations Charter (Articles 2(4), 2(7) and 51), General Assembly Resolutions 2625 (XXV) and 3314 (XXIX), and the jurisprudence of the International Court of Justice in *Nicaragua*, *Oil Platforms*, *Arrest Warrant* and *Barcelona Traction*, alongside contemporaneous state practice and secondary interpretive authority drawn from peer-reviewed monographs and specialist international law commentary published in direct response to the operation.¹⁰ The approach is a textual and jurisprudential evaluation rather than a policy prescription; it does not purport to adjudicate the underlying merits of the criminal allegations against Maduro or the record of his government, matters that raise distinct bodies of international human rights and criminal law addressed only incidentally below.

II. LEGAL FOUNDATIONS: SOVEREIGNTY AND THE USE OF FORCE

State sovereignty remains the organising concept of public international law. It comprises territorial integrity (exclusive control over land, airspace and maritime zones), political independence (freedom from external dictation of governmental policy) and legal or sovereign equality (the premise that all states hold equal rights and duties irrespective of size or power).¹¹ These elements crystallised through the Westphalian settlement and were consolidated in the twentieth century by treaty and custom into the principle that no state may intrude upon another's domain absent consent.¹² Sovereign equality is codified in Article 2(1) of the Charter, which declares the Organization to be 'based on the sovereign equality of all its Members'; Article 2(7) shields matters within domestic jurisdiction from United Nations intervention save for Chapter VII enforcement measures.¹³

Sovereignty and non-intervention are further entrenched in customary international law, most authoritatively restated in General Assembly Resolution 2625 (XXV), the Declaration on

¹⁰ See eg TOM RUYS, 'ARMED ATTACK' AND ARTICLE 51 OF THE UN CHARTER: EVOLUTIONS IN CUSTOMARY LAW AND PRACTICE (CUP 2010); BRUNO SIMMA AND OTHERS (EDS), THE CHARTER OF THE UNITED NATIONS: A COMMENTARY (3rd edn, OUP 2012).

¹¹ ANTHONY CLARK AREND AND ROBERT J BECK, INTERNATIONAL LAW AND THE USE OF FORCE: BEYOND THE UN CHARTER PARADIGM (Routledge 1993) 3–6; JAMES CRAWFORD, BROWNIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW (9th edn, OUP 2019) 447–48.

¹² MALCOLM N SHAW, INTERNATIONAL LAW (9th edn, CUP 2021) 129–33.

¹³ Charter of the United Nations (n 1) arts 2(1), 2(7).

Principles of International Law concerning Friendly Relations and Co-operation among States, which affirms the duty of 'abstention from intervention in matters within the domestic jurisdiction of any State' and from acts that impair the territorial integrity or political independence of any state.¹⁴ The International Court of Justice confirmed in *Nicaragua* that the principle of non-intervention reflects customary international law independent of, and parallel to, the Charter, such that the prohibition on force binds even states that might contest particular treaty interpretations.¹⁵ Sovereignty is thus properly understood not as an absolute licence for internal misconduct, but as a shield against external coercion, a shield that a state's own human rights failings do not, without more, extinguish.¹⁶

A. Sovereignty and Non-Intervention

Non-intervention follows directly from sovereignty and prohibits not only armed force but coercive measures (economic pressure, subversion, or covert action) directed at a state's political choices.¹⁷ The Friendly Relations Declaration restates the duty to refrain from any forcible action depriving peoples of their right to self-determination; the International Law Commission's Articles on State Responsibility treat breach of non-intervention as engaging state responsibility for an internationally wrongful act.¹⁸ Territorial integrity precludes external force from altering borders or occupying territory; political independence precludes external dictation of leadership or policy, a rule squarely implicated where an external power physically removes a sitting head of state from office by force.

The peremptory character of the prohibition on forcible intervention is now widely, though not universally, accepted among publicists, tracing its lineage from the Kellogg–Briand Pact's renunciation of war as an instrument of policy through to the *erga omnes* obligations recognised by the Court in *Barcelona Traction*, where outlawing acts of aggression was cited as an example of an obligation owed to the international community as a whole.¹⁹ Even scholars who emphasise the legitimacy of a limited 'responsibility to protect' concede that unauthorised

¹⁴ UNGA Res 2625 (XXV) (24 October 1970) 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations', principles 1 and 3.

¹⁵ *Nicaragua* (n 9) paras 202–09.

¹⁶ Gray (n 9) 52–55.

¹⁷ Philip Kunig, *Intervention, Prohibition of* in RÜDIGER WOLFRUM (ED), MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (OUP 2008) paras 1–5.

¹⁸ INTERNATIONAL LAW COMMISSION, *Articles on Responsibility of States for Internationally Wrongful Acts*, UNGA Res 56/83 (28 January 2002) annex, arts 1–2.

¹⁹ *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* (Second Phase) [1970] ICJ Rep 3, paras 33–34; Kellogg–Briand Pact (General Treaty for Renunciation of War as an Instrument of National Policy) (signed 27 August 1928, entered into force 24 July 1929) 94 LNTS 57.

intervention, however well-motivated, presumptively violates this principle absent Security Council sanction or the target state's consent.²⁰

B. Charter Limits on the Use of Force

Under the Charter, regulation of force ceased to be an incident of sovereign discretion and became a collective obligation. Article 2(4) prohibits the 'threat or use of force' in terms broad enough to cover armed incursions, blockades, support for armed insurgents, and, on the prevailing view, cyber operations with kinetic-equivalent effects, where such conduct is attributable to a state.²¹ The threshold separating an 'armed attack' within the meaning of Article 51 from a lesser, unlawful but non-qualifying use of force was addressed by the Court in *Oil Platforms*, which called for an assessment of the scale and effects of the operation and, following *Nicaragua*, distinguished 'the most grave forms of the use of force (those constituting an armed attack)' from 'other less grave forms'.²²

Article 51 preserves 'the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations', a right the Charter drafters understood as declaratory of a pre-existing customary right rather than as an open-ended grant.²³ Customary law supplies the operative constraints of necessity and proportionality, traced to the 1837 *Caroline* incident, under which the necessity for self-defence must be 'instant, overwhelming, leaving no choice of means and no moment for deliberation'.²⁴ Anticipatory or pre-emptive doctrines of self-defence, of the kind associated with the 2002 United States National Security Strategy, remain contested and cannot be said to reflect settled *opinio juris*.²⁵

The sole further exception is Security Council authorisation under Chapter VII, empowering binding enforcement action against threats to the peace, breaches of the peace, or acts of aggression; the precedents include Resolution 678, authorising force to reverse Iraq's 1990 occupation of Kuwait.²⁶ The Court in *Nicaragua* confirmed that this Charter architecture runs parallel to an equivalent customary prohibition, so that a state cannot escape the substance of

²⁰ MICHAEL KEREN AND DONALD A SYLVAN (EDS), *INTERNATIONAL INTERVENTION: SOVEREIGNTY VERSUS RESPONSIBILITY* (Routledge 2002) 8–12, 112.

²¹ TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS (Michael N Schmitt ed, 2nd edn, CUP 2017) rule 68; Gray (n 9) 33–37.

²² *Oil Platforms (Islamic Republic of Iran v United States of America)* (Merits) [2003] ICJ Rep 161, paras 51, 64.

²³ Charter of the United Nations (n 1) art 51; Ruys (n 10) 61–68.

²⁴ Letter from Daniel Webster, US Secretary of State, to Lord Ashburton (27 July 1842), reproduced in JOHN BASSETT MOORE, *A DIGEST OF INTERNATIONAL LAW* (vol 2, Government Printing Office 1906) 412; R Y Jennings, *The Caroline and McLeod Cases* (1938) 32 AJIL 82, 89.

²⁵ Stefan Talmon, *The United Nations Charter at 75: Between Force and Self-Defense (Part Two)* (JUST SECURITY, 29 March 2021) <<https://www.justsecurity.org/70987/the-united-nations-charter-at-75-between-force-and-self-defense-part-two/>> accessed 28 July 2026.

²⁶ UNSC Res 678 (29 November 1990) UN Doc S/RES/678.

Article 2(4) merely by contesting its treaty obligations.²⁷ General Assembly Resolution 3314 (XXIX) supplies the accepted definition of aggression, listing invasion, bombardment, and attack by the armed forces of one state against the land, sea or air forces of another as acts that, being the first use of armed force, constitute *prima facie* evidence of aggression.²⁸

These three strands, sovereignty, non-intervention and the Charter's narrow exceptions to Article 2(4), form an interlocking framework that leaves minimal interpretive space for a state to justify extraterritorial force by redefining an ongoing law-enforcement or public-health problem, such as narcotics trafficking, as an 'armed attack'. It is against this framework that the lawfulness of Operation Absolute Resolve must be assessed.

III. UNITED STATES ACTIONS AND CLAIMED LEGAL JUSTIFICATIONS

Operation Absolute Resolve was the culmination of a broader campaign rather than an isolated incident. From September 2025 the United States Navy conducted more than thirty strikes on vessels in the Caribbean and eastern Pacific alleged to be trafficking narcotics on behalf of designated cartels, killing over 110 people without judicial process; the administration characterised these as acts of self-defence against 'unlawful combatants' in a purported armed conflict with narco-terrorist organisations.²⁹ In November 2025 the State Department designated the Cartel de los Soles, alongside Tren de Aragua and the Sinaloa Cartel, as a Foreign Terrorist Organization, describing it as responsible for 'terrorist violence throughout our hemisphere' and for trafficking narcotics into the United States and Europe.³⁰

Operation Absolute Resolve itself was activated on the night of 2–3 January 2026 following approximately six months of planning between the Pentagon and United States intelligence agencies. More than 150 aircraft launched from twenty bases across the Western Hemisphere; a Joint Special Operations Command element, supported by cyber operations degrading Venezuelan air-defence networks, conducted a helicopter assault on Maduro's residence in Caracas.³¹ Estimates of Venezuelan casualties diverge sharply: United States officials referred to a small number of Venezuelan military personnel killed, while independent monitors and

²⁷ *Nicaragua* (n 9) para 188.

²⁸ UNGA Res 3314 (XXIX) (14 December 1974) 'Definition of Aggression', arts 1, 2, 3(b), 3(d).

²⁹ Anderson (n 4); AMNESTY INTERNATIONAL, *Human Rights in Venezuela* (2026) <<https://www.amnesty.org/en/location/americas/south-america/venezuela/report-venezuela/>> accessed 28 July 2026.

³⁰ REPUBLICAN POLICY COMMITTEE, US HOUSE OF REPRESENTATIVES, *Operation Absolute Resolve: The Arrest of Maduro* (Memorandum, January 2026) <<https://republicanpolicy.house.gov/sites/evo-subsites/republicanpolicy.house.gov/files/evo-media-document/rpc-operation-absolute-resolve-memo.pdf>> accessed 28 July 2026; US DEPARTMENT OF STATE, *Terrorist Designations of Cartel de los Soles* (24 November 2025) <<https://www.state.gov/releases/office-of-the-spokesperson/2025/11/terrorist-designations-of-cartel-de-los-soles>> accessed 3 August 2026 (designation effective 24 November 2025).

Venezuelan officials placed the toll considerably higher, with reports of between roughly 50 and 100 deaths, including Cuban security personnel present in the country, and well over one hundred people injured.³² Maduro and Flores were flown by helicopter to a United States naval vessel offshore and subsequently transferred to federal custody in New York, where they were arraigned on an existing 2020 Southern District of New York indictment alleging narco-terrorism conspiracy, cocaine-importation conspiracy, and related firearms offences.³³

A. United States Legal Justifications

The administration's public justifications combined self-defence, law-enforcement, and counter-narcotics rationales without settling on a single consistent theory. In initial remarks Secretary Rubio invoked 'inherent self-defense rights' under Article 51, describing the Cartel de los Soles as an organ of the Venezuelan state directing an 'ongoing armed attack' on the United States through fentanyl trafficking and alleged Hezbollah linkages.³⁴ General Caine's Pentagon briefing referred to United States forces returning fire with 'overwhelming force and self-defense' once helicopters came under attack during the raid, language that scholars have pointed out describes, at most, a tactical unit-level right to repel an immediate attack, and does not supply a *jus ad bellum* justification for the underlying incursion into Venezuelan territory in the first place.³⁵

A parallel and ultimately more prominent rationale characterised the raid as law enforcement rather than an act of war. Legal advisers testifying before Congress described the mission as the 'arrest of fugitives' wanted on the 2020 indictment, analogising it to the 1989 seizure of General Noriega in Panama, and Secretary Rubio repeatedly maintained that 'there is no war against Venezuela or its people'.³⁶ Rubio further wrote to the Senate Foreign Relations Committee that, should the President seek to introduce forces into sustained hostilities in Venezuela, he would seek congressional authorisation, an assurance that implicitly conceded that the operation as

³¹ Clark (n 3); R Evan Ellis, *How Maduro's Capture Went Down: A Military Strategist Explains What Goes into a Successful Special Op* (THE CONVERSATION, 5 January 2026) <<https://theconversation.com/how-maduros-capture-went-down-a-military-strategist-explains-what-goes-into-a-successful-special-op-272671>> accessed 28 July 2026.

³² AMERICAN FRIENDS SERVICE COMMITTEE, *Tracking Global Responses to US Aggression in Venezuela* (16 January 2026) <<https://afsc.org/newsroom/tracking-global-responses-us-aggression-venezuela>> accessed 28 July 2026; CIVICUS MONITOR, *UN Experts and Human Rights Organisations Express Concern over Venezuela after Unlawful US Military Intervention and Emergency Declaration* (23 January 2026) <<https://monitor.civicus.org/explore/un-experts-and-human-rights-organisations-express-concern-over-venezuela/>> accessed 28 July 2026.

³³ *UN Security Council to Hold an Emergency Meeting Tomorrow to Discuss US Military Action in Venezuela* (NEWS ON AIR, 4 January 2026) <<https://www.newsonair.gov.in/un-security-council-to-hold-an-emergency-meeting-tomorrow-to-discuss-us-military-action-in-venezuela>> accessed 28 July 2026.

³⁴ Milanovic (n 5).

³⁵ Milanovic (n 5).

³⁶ Republican Policy Committee memorandum (n 30).

executed had not itself been so authorised, and that stretches the domestic War Powers framework in a direction with no bearing on the separate, and controlling, question of compliance with the Charter.³⁷

President Trump's own public remarks undercut the law-enforcement framing that his officials advanced. He stated that the United States intended to 'run' Venezuela pending a transition and to secure access to its oil reserves, a rationale disconnected from any theory of individual criminal apprehension and squarely implicating the political-independence and non-intervention limbs of Article 2(4).³⁸ Officials also invoked the scale of Venezuelan migration to the United States and the risk of ' Hamas-style ' non-state entrenchment as background national-security interests, but neither rationale was tied to any specific armed attack, and neither purports to be a recognised exception to Article 2(4).

Commentators have located the self-defence rationale within a broader trend of United States practice extending Article 51 to strikes against non-state actors, comparable to the post-2001 campaign against al-Qaeda and the 2020 killing of Qasem Soleimani. Even scholars sympathetic to an expansive reading of self-defence against non-state armed groups acknowledge that the right depends on the armed character of the underlying threat and, where the actor is not itself a state organ, on substantial state involvement of the kind described in *Nicaragua*, a threshold that open-source material did not establish for the Maduro government's relationship to drug-trafficking networks.³⁹

IV. DOCTRINAL ASSESSMENT: HAVE CHARTER LIMITS BEEN RESPECTED?

United States conduct in Venezuela fails each of the tests that would be required to bring it within a recognised exception to Article 2(4). The following subsections examine, in turn, the threshold question of whether a use of force occurred; the availability of self-defence under Article 51; the absence of Security Council authorisation; and the additional violation of head-of-state immunity.

A. Application of Article 2(4)

That the operation constitutes a 'use of force' within Article 2(4) is not seriously disputable. Air strikes on Venezuelan military installations, a helicopter assault into Caracas, and the extraction

³⁷ *ibid.*

³⁸ AMNESTY INTERNATIONAL, *Global: Amnesty International Raises Human Rights Concerns following US's Military Action in Venezuela* (3 January 2026) <<https://www.amnesty.org/en/latest/news/2026/01/amnesty-raises-concerns-following-us-military-action-in-venezuela/>> accessed 28 July 2026.

³⁹ Anderson (n 4), citing *Nicaragua* (n 9) para 195; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] ICJ Rep 168, para 146; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, para 139.

of the head of state and his spouse across sovereign territory satisfy any doctrinal test of a qualifying use of force; on any view the operation involved military force directed against another state's territory and armed forces, and would satisfy even the higher gravity threshold the Court applied in *Oil Platforms* when asking whether a use of force rises to the level of an armed attack.⁴⁰ Under General Assembly Resolution 3314, the strikes and the raid also meet the definition of aggression, falling within Article 3(b) ('bombardment') and Article 3(d) ('an attack by the armed forces of a State on the land, sea or air forces... of another State'); as a matter of the Resolution's own terms, being the first use of armed force in contravention of the Charter, the operation constitutes *prima facie* evidence of an act of aggression.⁴¹ Amnesty International's Secretary General and United Nations human rights experts have independently reached the same conclusion, describing the operation as 'a clear violation' of the Charter and 'an act of aggression'.⁴²

The law-enforcement characterisation advanced by United States officials does not alter this conclusion; it is, if anything, legally worse for Washington's position, because it concedes the absence of any claim to self-defence. As Professor Marko Milanovic observes, 'of course this was a use of force, and of course under international law no state can engage in "law enforcement" on the territory of another state without its consent, whether the person being arrested was a foreign head of state or a purely private individual'.⁴³ Article 2(4) contains no textual exception for extraterritorial arrests of indicted persons: forces entering another state's territory without consent transgress the provision regardless of whom they target or how narrowly tailored their operation may be.⁴⁴ Secretary-General Guterres reaffirmed precisely this bedrock principle of respect for sovereignty, political independence and territorial integrity in his remarks to the Security Council of 5 January, and more than one hundred delegations subsequently associated themselves, through statements at the United Nations and in the Non-Aligned Movement, with a position critical of the operation.⁴⁵

⁴⁰ *Oil Platforms* (n 22) paras 51, 64.

⁴¹ UNGA Res 3314 (n 28) arts 1, 2, 3(b), 3(d).

⁴² AMNESTY INTERNATIONAL (n 7).

⁴³ Milanovic (n 5).

⁴⁴ Adrián Agenjo, *Which Immunity for Nicolás Maduro? Personal Immunity, Inviolability, and the Implausible Exceptions the US Might Claim* (EJIL: TALK!, 22 January 2026) <<https://www.ejiltalk.org/which-immunity-for-nicolas-maduro-personal-immunity-inviolability-and-the-implausible-exceptions-the-us-might-claim/>> accessed 28 July 2026.

⁴⁵ UN NEWS (n 8); AMERICAN FRIENDS SERVICE COMMITTEE (n 32), recording that as of 14 January 2026, 117 of the parties tracked had adopted a critical stance towards the operation.

B. Self-Defence under Article 51?

The self-defence rationale fails on foundational requirements. Article 51 is triggered only 'if an armed attack occurs', language the ICJ has consistently read to demand a real or imminent use of armed force of sufficient gravity, not a diffuse security concern.⁴⁶ Chronic narcotics trafficking, however lethal in aggregate, has never been treated in international law as amounting to an armed attack; commentators writing immediately after the operation were unanimous that transnational drug trafficking 'has never been regarded in international law as constituting an armed attack'.⁴⁷ Nor did the United States identify any specific armed incursion, cross-border attack, or comparable conduct attributable to the Venezuelan state of the kind that grounded the Court's finding of an armed attack by proxy forces in *Nicaragua*; open-source material available at the time did not establish that the Venezuelan government directed or exercised effective control over cartel activity to the degree required by the *Nicaragua* 'effective control' test, still less the lower but still demanding 'substantial involvement' threshold under Article 3(g) of the Definition of Aggression.⁴⁸

General Caine's invocation of 'self-defense' when helicopters came under fire during the raid cannot bear the weight the administration placed on it. As Milanovic observes, when an invading force is met with resistance from the invaded state's own forces, it is the defending state exercising self-defence, not the intruder; at most, Caine's comments describe a tactical, unit-level right to return fire once already unlawfully present on Venezuelan territory, a proposition with no bearing on whether the initial resort to force was lawful under Article 51.⁴⁹ The *Caroline* formula, requiring necessity that is 'instant, overwhelming, leaving no choice of means and no moment for deliberation', is equally unmet: the operation followed roughly six months of deliberate planning, and the underlying narcotics-trafficking harms said to justify it were, on the administration's own telling, sustained and long-running rather than sudden or imminent, the paradigm of a threat properly addressed through interdiction, sanctions, and law enforcement rather than anticipatory force.⁵⁰

Scholars converged on this conclusion within days of the operation. Professor Milena Sterio wrote that the strikes and abduction 'constitute an armed attack under international law, authorize Venezuela to respond in self-defense', the inverse of the United States' position, and

⁴⁶ *Nicaragua* (n 9) paras 191, 195; *Oil Platforms* (n 22) para 51.

⁴⁷ *Trump's Illegal Attack on Venezuela and Its Consequences* (EJIL: TALK!, 5 January 2026) <<https://www.ejiltalk.org/trumps-illegal-attack-on-venezuela-and-its-consequences/>> accessed 28 July 2026.

⁴⁸ *Nicaragua* (n 9) paras 115 (effective control over the operations in question), 195 (armed attack; sending of armed bands and 'substantial involvement therein'); UNGA Res 3314 (n 28) art 3(g); Anderson (n 4).

⁴⁹ Milanovic (n 5).

⁵⁰ Webster–Ashburton correspondence (n 24); Ellis (n 31) (six months of planning).

that Washington 'cannot invoke any plausible exceptions to the prohibition on the use of force', since it had 'not been under an armed attack or the threat of an armed attack by Venezuela'.⁵¹ Professor Saira Mohamed likewise concluded that, because there was no Security Council authorisation, self-defence was the only conceivable ground left to the United States, and that the administration had in fact barely attempted to invoke it as applied to the 3 January raid itself.⁵²

C. Absence of Security Council Authorisation

No Chapter VII resolution authorised the operation. Venezuela wrote to the Security Council on 3 January 2026 requesting an emergency meeting, a request pressed by Colombia as a Council member and supported by Russia and China; the Council convened on 5 January under the 'threats to international peace and security' agenda item, with Under-Secretary-General Rosemary DiCarlo briefing on behalf of the Secretary-General.⁵³ Russia's representative described the operation as 'a harbinger of a return to an era of lawlessness and domination by force', while China warned that military means do not resolve political problems; both states, together with Venezuela and a number of Latin American and Global South delegations, called for Maduro's release, though in the absence of an adopted resolution these objections carried no binding legal force.⁵⁴

The structural problem identified by commentators is that the United States is simultaneously the acting state and a veto-holding permanent member, so that the Council's Article 24 responsibility for international peace and security cannot, as a practical matter, be exercised against it.⁵⁵ This mirrors the Council's paralysis following the 1989 United States invasion of Panama to seize General Noriega, when a draft resolution condemning the invasion was vetoed by France, the United Kingdom and the United States itself, before a substantially similar text was adopted by the General Assembly.⁵⁶ Article 27(3) immunises permanent members from binding Council censure through the veto, but that structural immunity from enforcement is a

⁵¹ Milena Sterio, *The United States' Attack against Venezuela: Might Does Not Make Right* (OPINIO JURIS, 6 January 2026) <<http://opiniojuris.org/2026/01/06/the-united-states-attack-against-venezuela-might-does-not-make-right/>> accessed 28 July 2026.

⁵² Mohamed (n 6).

⁵³ SECURITY COUNCIL REPORT, *Venezuela: Emergency Meeting* (WHAT'S IN BLUE, 4 January 2026) <<https://www.securitycouncilreport.org/whatsinblue/2026/01/venezuela-emergency-meeting.php>> accessed 28 July 2026; Venezuela's letter of 3 January 2026 requesting an emergency meeting, UN Doc S/2026/5.

⁵⁴ GOVFACTS, *UN Security Council Meets on Venezuela: What International Law Says about US Military Interventions* (6 January 2026) <<https://govfacts.org/policy-security/international-law/un-security-council-meets-on-venezuela-what-international-law-says-about-us-military-interventions/>> accessed 28 July 2026.

⁵⁵ GOVFACTS (n 54).

⁵⁶ SECURITY COUNCIL REPORT (n 53), noting the historical parallel to the 1989 Panama precedent; UNSC Draft Res S/21048 (23 December 1989) (vetoed by France, the United Kingdom and the United States); UNGA Res 44/240 (29 December 1989).

procedural fact about Council decision-making; it does not, as Simma's Commentary explains, license substantive breaches of Article 2(4), which remains binding on all member states, permanent or otherwise, and whose customary-law counterpart binds the United States independently of any Charter vote.⁵⁷

D. Head-of-State Immunity and Sovereignty Implications

The forcible seizure of a sitting president adds a distinct and independent layer of illegality. Personal immunity (*immunité ratione personae*) is a status-based customary rule shielding an incumbent head of state, head of government, or foreign minister from the criminal jurisdiction and coercive measures of foreign states for the duration of their term of office, as the ICJ held in *Arrest Warrant*.⁵⁸ That immunity is not conditioned on the gravity of the underlying allegations: the International Law Commission has repeatedly confirmed that no crime-based exception to personal immunity currently exists in customary international law, a position the United States has itself defended in other contexts even with respect to the gravest international crimes.⁵⁹

Nor can the United States' refusal to recognise Maduro as Venezuela's legitimate president cure the violation. Recognition is a discretionary political act and does not, under customary international law, extinguish the immunity attaching to whoever 'actually holds' the office in fact, a position the International Law Commission confirmed in its 2022 report and that finds partial analogy, and ultimate rejection as a legal matter, in the 1989 capture of General Noriega, whose head of state claim domestic United States courts dismissed only by reference to the Executive's non-recognition, a line of authority that has attracted sustained academic criticism precisely because it would let any state unilaterally dissolve another's immunity through non-recognition.⁶⁰ Delcy Rodríguez's swearing-in as acting president under the domestic succession mechanism of Article 233 of the Venezuelan Constitution does not retroactively legalise a seizure that occurred while Maduro remained the internationally recognised incumbent, and any later purported waiver of immunity procured by a government installed under conditions of continuing United States military and economic pressure could not, in any event, satisfy the requirement that waiver be free, express and unequivocal.⁶¹

⁵⁷ Simma and others (n 10); *Nicaragua* (n 9) para 188.

⁵⁸ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)* (Judgment) [2002] ICJ Rep 3, paras 51–55.

⁵⁹ Agenjo (n 44), citing INTERNATIONAL LAW COMMISSION, *Report of the International Law Commission* (65th Session, 2013) UN Doc A/68/10, ch V; INTERNATIONAL LAW COMMISSION, *Second Report on Immunity of State Officials from Foreign Criminal Jurisdiction* (2013) UN Doc A/CN.4/661.

⁶⁰ Agenjo (n 44).

⁶¹ *ibid.*

The forcible removal of the head of state also compounds the violation of political independence and non-intervention discussed above: coercively determining who governs Venezuela, whether through removal of Maduro or through demands subsequently made of his successor concerning oil exports and foreign alignment, falls squarely within the sovereign choices that *Nicaragua* identifies as protected from external coercion.⁶² Taken together, the United States has treated two of the Charter's own constraints (Article 51's armed-attack requirement and the customary law of immunities) as inapplicable to itself, has proceeded without Council cover, and has done so in a manner that a broad cross-section of the United Nations membership regards as a direct assault on the post-1945 settlement.⁶³

V. COUNTERARGUMENTS AND COMPETING NARRATIVES

A fair assessment must engage the strongest versions of the contrary position. Proponents of the operation, echoing arguments made in defence of Bush-era pre-emption and the 2020 Soleimani strike, contend that contemporary hybrid threats (state-tolerated cartels acting with quasi-military capacity, fentanyl flows causing tens of thousands of American deaths annually, and cross-border gang networks such as Tren de Aragua) are not adequately captured by an Article 51 framework built around conventional inter-state invasion.⁶⁴ On this view, the October 2025 executive determination that the United States was in an 'armed conflict' with designated narco-terrorist cartels, treating their members as unlawful combatants, reflects an evolving, if contested, body of practice extending self-defence to sufficiently organised non-state violence, analogous to post-9/11 practice against al-Qaeda.⁶⁵ Proponents also invoke the 1989 Noriega precedent for the proposition that an indicted head of state who has forfeited democratic legitimacy (the Trump administration maintained Maduro had lost the 2024 election) is a permissible target for what they characterise as an internationally tolerated hybrid law-enforcement operation, particularly where, as here, civilian casualties were comparatively contained and no formal territorial occupation followed.⁶⁶

These arguments do not withstand doctrinal scrutiny, for reasons already elaborated. First, Article 51 requires an 'armed attack', not chronic criminality or a public-health harm, however grave; the ICJ's jurisprudence in *Nicaragua* and *Oil Platforms* has consistently excluded harms of this character from the concept, and the *Caroline* necessity criteria, absent here given six

⁶² *Nicaragua* (n 9) para 205 (defining prohibited intervention as coercive interference with a state's free choice of political, economic or social system).

⁶³ AMNESTY INTERNATIONAL (n 7); GOVFACTS (n 54).

⁶⁴ Ilya Shapiro, *The Case for Trump's Targeted Attacks on the Venezuelan Narco-State* (SHAPIRO'S GAVEL, 7 January 2026) <<https://ilyashapiro.substack.com/p/the-case-for-trumps-targeted-attacks>> accessed 28 July 2026.

⁶⁵ Shapiro (n 64); Anderson (n 4).

⁶⁶ Shapiro (n 64).

months of deliberate planning, preclude characterising the strikes as anticipatory defence against an imminent attack.⁶⁷ Second, no rule of customary international law recognises law enforcement, however framed, as an exception to Article 2(4); the Noriega precedent is itself of contested legality, since the Security Council draft resolution condemning the 1989 Panama invasion was defeated only by a veto cast by the invading state itself together with France and the United Kingdom, and the General Assembly went on to adopt a resolution deploring the intervention as a flagrant violation of international law, hardly the ringing endorsement proponents suggest.⁶⁸ Third, and independently, the *Arrest Warrant* line of authority confirms that personal immunity continues for the duration of an official's incumbency irrespective of the gravity of the underlying allegations, foreclosing any 'forfeiture of legitimacy' exception of the kind the administration's defenders posit.⁶⁹

Proponents further point to regional security dynamics (Venezuelan-linked migration pressures, ELN guerrilla activity, and the destabilising effect of what they describe as a narco-state on hemispheric security) as legitimate United States interests. These interests are real, but the Friendly Relations Declaration and the structure of the Charter direct that such interests be pursued through collective processes, whether regional (the Organization of American States) or global (the Security Council), rather than through unilateral force; that a concern is legitimate does not, without more, license its pursuit by means the Charter forbids.⁷⁰ The scale of the international response reinforces the point: beyond the Council debate, the Non-Aligned Movement and the Group of Friends in Defence of the Charter of the United Nations issued statements strongly critical of the operation at the 5 January Council meeting, and independent tracking recorded that a clear majority of the delegations surveyed had, within two weeks, adopted a critical or vocally critical posture, with only a minority expressing support.⁷¹

VI. IMPLICATIONS FOR INTERNATIONAL LAW

The episode exposes a structural enforcement gap rather than a doctrinal ambiguity: the substantive illegality of the operation is, in the words of one prominent commentator, 'not open to reasonable disagreement', yet the same commentator's frank assessment was that the international community had taken no action against the United States beyond words.⁷² Because the acting state holds a Security Council veto, and because Venezuela had never accepted the

⁶⁷ *Nicaragua* (n 9) paras 191, 195; *Oil Platforms* (n 22) para 51.

⁶⁸ SECURITY COUNCIL REPORT (n 53); UNSC Draft Res S/21048 (n 56); UNGA Res 44/240 (n 56).

⁶⁹ *Arrest Warrant* (n 58) paras 58, 61; Ajenjo (n 44).

⁷⁰ UNGA Res 2625 (n 14); Gray (n 9) 214–16.

⁷¹ AMERICAN FRIENDS SERVICE COMMITTEE (n 32).

⁷² Milanovic (n 5); Mohamed (n 6).

compulsory jurisdiction of the International Court of Justice under Article 36(2) of its Statute nor ratified the Pact of Bogotá, the ordinary institutional avenues for redress (binding Council action or contentious ICJ proceedings) were largely unavailable to the injured state, leaving reputational and diplomatic consequences as the primary sanction.⁷³

Scholars have accordingly framed the operation as a test of whether the prohibition on force retains normative force even where enforcement fails. One assessment published two months after the raid observed that, while many states, particularly across Latin America, Africa and Asia, condemned the operation as a clear Charter violation, others adopted an ambiguous or even supportive posture, producing a genuinely mixed pattern of state practice that could, if repeated, begin to erode the rule's customary status.⁷⁴ The same commentary noted that the Venezuela operation was followed within weeks by further United States force, including strikes against Iran in February 2026, suggesting a pattern of executive practice rather than an isolated departure, a pattern that, if states elsewhere treat it as tacitly accepted, risks precisely the kind of precedent-setting erosion that Representative Jim Himes warned of when he observed that 'Russia and China just learned that all you need to do if you want to go into Estonia is to say that the leader of Estonia is a bad person'.⁷⁵

At the same time, the sheer scale and speed of condemnation (an emergency Council debate within two days, a critical posture from well over one hundred delegations within two weeks, coordinated statements from Amnesty International, the International Commission of Jurists, Human Rights Watch and multiple United Nations special procedures, and sustained scholarly output across EJIL: TALK!, OPINIO JURIS, VÖLKERRECHTSBLOG and JUST SECURITY within the first week alone) illustrates the continuing pull of *opinio juris* against aggression even where formal enforcement is unavailable.⁷⁶ This dynamic recalls Christine Gray's observation that the prohibition on force survives repeated violation not because it is reliably enforced, but because even violating states rarely renounce the norm outright, instead offering strained legal justifications, precisely the pattern visible in the shifting and ultimately unpersuasive rationales offered by Secretary Rubio, Ambassador Waltz and General Caine.⁷⁷

⁷³ Nicolas Boeglin, comment on Milanovic (n 5) (EJIL: TALK!, 7 January 2026), noting Venezuela's non-acceptance of compulsory ICJ jurisdiction under art 36(2) of the Statute and its non-ratification of the Pact of Bogotá.

⁷⁴ *Has the U.S. Operation Against Maduro Changed the Prohibition on the Use of Force?* (OPINIO JURIS, 3 March 2026) <<https://opiniojuris.org/2026/03/03/has-the-u-s-operation-against-maduro-changed-the-prohibition-on-the-use-of-force/>> accessed 28 July 2026.

⁷⁵ *ibid*; Jim Himes MC, quoted in *Rep. Jim Himes Says Maduro Capture Is "Clearly Illegal under International Law"* (CBS NEWS, 5 January 2026) <<https://www.cbsnews.com/amp/texas/news/jim-himes-maduro-capture-clearly-illegal-face-the-nation/>> accessed 28 July 2026.

⁷⁶ CIVICUS MONITOR (n 32); AMERICAN FRIENDS SERVICE COMMITTEE (n 32).

⁷⁷ Gray (n 9) 6–10; Milanovic (n 5).

VII. CONCLUSION

Operation Absolute Resolve, the 3 January 2026 air strikes, special-operations raid, and forcible removal of President Nicolás Maduro, is, on a doctrinal reading, manifestly contrary to Article 2(4) of the United Nations Charter. The *jus ad bellum* case for the operation fails at every turn: narco-terrorism, however serious as a transnational harm, does not satisfy the armed-attack threshold of Article 51 or the imminence demanded by the *Caroline* criteria; no Chapter VII resolution authorised unilateral action; and the alternative law-enforcement rationale, far from curing the illegality, both concedes the absence of self-defence and independently violates the customary law of head-of-state immunity confirmed in *Arrest Warrant*.⁷⁸ These conclusions are not those of the present author alone: they were reached, within days of the operation, by a broad and largely unanimous body of international law scholarship, and echoed by the United Nations Secretary-General, human rights organisations, and a majority of the United Nations member states that spoke.⁷⁹

Sovereignty and the prohibition on force remain, despite repeated challenge, central and peremptory norms of international law, reaffirmed through consistent state practice and *opinio juris* even by states that periodically breach them.⁸⁰ The definition of aggression in General Assembly Resolution 3314 squarely captures operations of this kind, and the breadth and speed of the condemnation the operation attracted (an emergency Security Council session within forty-eight hours, coordinated statements from the principal international human rights bodies, and a critical posture from well over one hundred delegations within a fortnight) evidences a rule that retains normative force precisely because so few states were prepared to defend the operation's legality outright, preferring instead to contest the facts or to remain silent.⁸¹

That said, the episode also lays bare the structural limits of Charter enforcement against a veto-holding permanent member, a vulnerability starkly different in kind from the ordinary case of a smaller state's violation. Security Council paralysis, Venezuela's absence from the compulsory jurisdiction of the International Court of Justice, and the sheer material imbalance between the parties combined to leave verbal condemnation as the principal available sanction, a pattern with troubling implications should other states, invoking the Venezuela precedent, extend comparably elastic self-defence or law-enforcement rationales to their own neighbours.⁸²

⁷⁸ *Arrest Warrant* (n 58) paras 51–55, 58; *Nicaragua* (n 9) paras 191, 195.

⁷⁹ Milanovic (n 5); Sterio (n 51); AMNESTY INTERNATIONAL (n 7); AMERICAN FRIENDS SERVICE COMMITTEE (n 32).

⁸⁰ Arend and Beck (n 11) 20–23; Gray (n 9) 6–10.

⁸¹ UNGA Res 3314 (n 28); AMERICAN FRIENDS SERVICE COMMITTEE (n 32).

⁸² Boeglin (n 73); Himes (n 75).

Strengthening avenues for accountability that do not depend on Council consensus (wider use of the Uniting for Peace mechanism, advisory opinion requests to the International Court of Justice, and universal-jurisdiction proceedings of the kind already being explored in respect of separate allegations against the Maduro government) offers a more realistic path to reinforcing the Charter's constraints on powerful states than reliance on the Security Council alone.⁸³ United States conduct in Venezuela tests, but need not permanently upend, the post-1945 settlement; reasserting the primacy of Article 2(4), including through sustained scholarly and diplomatic pressure of the kind the operation has already generated, remains essential to the stability of the wider international legal order.

⁸³ *Symposium on Prosecuting Heads of State for International Crimes: The Tangled Legal Terrain of the Maduro Cases* (OPINIO JURIS, 26 March 2026) <<https://opiniojuris.org/2026/03/26/symposium-on-prosecuting-heads-of-state-for-international-crimes-the-tangled-legal-terrain-of-the-maduro-cases-crimes-against-humanity-drug-trafficking-and-the-immunity-of-an-alleged-president/>> accessed 28 July 2026.