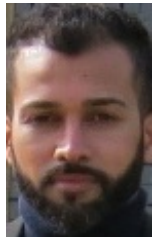


Airstrikes on Isis targets in Syria and Iraq are legal under international law

Last week, the United Kingdom's parliament voted to once again intervene militarily in Iraq in order to attack the terrorist group Isis. This follows more than a week of US and Arab world airstrikes on Isis targets in Syria. While the Iraqi government requested assistance from British and other foreign powers, the Syrian regime has not asked for intervention. Many commentators have questioned the legality of such a move under international law. In this article, [Ranj Alaaldin](#) and [Bilal Khan](#) argue that airstrikes on Isis targets in both Syria and Iraq are legal and justified under international law. It is the defence of Iraq that triggers the right to use force against Isis targets in Syria, they write.



On Friday the UK parliament voted in favour of extending the country's role in the ever-expanding battle against the Islamic State of Iraq and Syria (Isis) by approving UK airstrikes on Isis targets in Iraq. This follows more than a week of airstrikes by the US and its Arab world partners. Collectively, they have launched airstrikes on Isis targets in both Iraq and Syria, in tandem with efforts to train and arm a respectable force of moderate rebel forces that can defeat Isis in Syria and force some kind of settlement in the broader, three year conflict against President Bashar al-Assad's regime.



The new wave of airstrikes, particularly in Syria, has prompted concerns that they might not be justified under international law, an argument often put forward by politicians and commentators alike but often without any elaboration on the extent to which the parameters of international law allow for the use of force on Isis targets.

US-led airstrikes on Isis targets in Syria are not only justifiable from a moral and geostrategic perspective – on which there is near unanimous acceptance, given the grave threat Isis poses to the region, at the very least, as well as the international community – but are also legal and justified under international law.

US Ambassador to the UN, Samantha Power defended the US/Arab world attacks, noting “The Syrian regime has shown that it cannot and will not confront these safe havens effectively itself.” She further states that the US has initiated necessary and proportionate military actions in Syria in order to “eliminate the ongoing ISIL threat to Iraq”. Ambassador Power's words were carefully chosen, as they essentially set the framework in which the airstrikes are allowed for under international law. It is particularly the last sentence in Power's statement that warrants appreciation, as it is the defence of Iraq that triggers the right to use force against Isis targets in Syria, as this article will show.

International law prohibits the use or threat of force against the territorial integrity or political independence of any state, save for a number of exceptions, the most widely accepted of which are a Security Council resolution sanctioning the use of force under Chapter VII of the UN Charter as well as the right of self-defence.

The use of self-defence warrants particular attention here because it is through the right of self-defence that the US has justified its actions, a right that can be exercised without a Security Council resolution. This also reflects the unlikelihood of the US or UK taking the issue to the Security Council, not least because of a likely rejection from Russia, a permanent member of the Council that has the right to veto such a resolution. Russia has supported the Assad regime over the past three years and has been vehemently against any use of force by the West on Syrian territory, lest this undermines its own geostrategic interests.

The starting point for the legal argument in favour of airstrikes in Syria is Iraq. The Iraqi government consented to US airstrikes on Isis targets located on Iraqi territory after the jihadist group took control of significant swathes of territory in Iraq's Sunni Arab heartlands to the north. Iraq has the right to invite outside assistance to discard non-state actors like Isis from its territory, and it is by way of this invitation that there is no breach of Iraq's sovereignty and territorial integrity. It is also on this basis that Britain's extended military involvement, following [Friday's](#)

[approval from parliament](#) for British airstrikes against Isis in Iraq, is legal.

Further, as Article 20 of the International Law Commission's (ILC) [Articles on State Responsibility](#) provides "Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act", provided of course that the "act" conforms to the parameters of the consent given by Iraq. Although a State that has lost all legitimacy and faces a genuine civil uprising is legally unentitled to call for outside assistance, the crisis in Iraq is distinguishable. Firstly, Isis continues to commit flagrant human rights violations and is universally recognised as a threat to international peace and security; secondly, the Iraqi government has democratic legitimacy.

Although the above limits US and UK airstrikes to Iraqi territory, it is Iraq's right to self-defence under Article 51 of the UN charter, and its request for outside assistance in light of its lack of capability to engage Isis, that allows the US to extend its strikes into Syrian territory, without a Security Council resolution.



An F-22A Raptor waits to taxi in the U.S. Central Command area of responsibility prior to strike operations in Syria Sept. 23, 2014. These aircraft were part of a large coalition strike package that was the first to strike ISIL targets in Syria. (U.S. Air Force photo by Tech. Sgt. Russ Scalf)

What constitutes Isis' Achilles heel in this respect is its transnational nature, which is ironic given that it is its transnational capacity that has made it such a powerful force. Iraq can invoke its right to self-defence under the UN Charter, and authorise the US to help it fulfill this right, because Isis' attacks are not purely internal, as emphasised by various International Court of Justice (ICJ) rulings and opinions. Put differently, there must be an international dimension and given that Isis' main apparatus is in Syria, an apparatus from which it launches its attacks on Iraq, from which it mobilises fighters and garners its resources, this condition is sufficiently met.

Under the terms of Article 51 and customary international law – evolving state practice in relation to the article and its implementation – there must be an actual or imminent armed attack; secondly, it has to attain a minimum scale and, thirdly, it has to be necessary and proportionate, terms that Ambassador Power carefully used in her statement.

In the case of Isis and the threat it poses to Iraq, both the first condition and second conditions are satisfied. The group has conducted, and continues to conduct, armed attacks and they are of a sufficient scale, given that the group has taken control of towns and cities and has severely undermined the territorial integrity of the Iraqi state. Since 1998 and 2001 the law also now provides that non-state actors can carry out armed attacks. This came after the international community was unified in its sanctioning of military operations against Al-Qaeda in Afghanistan in 1998 and 2001. Both Security Council resolutions [1368](#) and [1373](#) recognised the "inherent right of self-defense" in the context of terrorism, without any suggestion of *attribution to a State*.

The final conditions of necessity and proportionality, namely that it is necessary for Iraq and its allies to use force and such force is proportionate to the threat and armed attack faced, are also satisfied. As Roberto Ago states in his [8th Report to the ILC](#) on State Responsibility “the State must not have had any means of halting, repelling or preventing the attack other than recourse to armed force.”

Turning to necessity; Isis is launching ongoing attacks. Further, anything less than the use of force will only help the jihadist group expand its gains, consolidate its hold and use this to prepare and conduct further attacks. In Syria, inaction has allowed Isis to operate with impunity and used its growing strength during the course of the three-year civil war to not only consolidate its hold in Syria but also expand into Iraq. It was from its Syrian bases that the group took control of Iraq’s Sunni Arab north back in June. Inaction allowed the group to take Mosul and then further towns and cities. This included Isis’ recent control of previously Kurdish controlled towns and cities like Sinjar, which prompted the US to take action to protect the Kurdistan region as well as ameliorate the resulting humanitarian crisis.

Commentators have been quick to point out that the Assad government has not consented to US airstrikes and that this, therefore, renders them illegal. Further, it is argued that the Assad regime has not acquiesced in Isis attacks; it has not tolerated them and has even actively combated the group, albeit to various extents. International law maintains that self-defence against non-state actors is permissible when the state from which these actors launch their attacks have acquiesced in them, as with the Afghan Taliban government toleration of Al-Qaeda.

In the Syria case, however, it is crucial that the Syrian regime lacks the capacity and capability to dismantle Isis. In other words, willingness on the part of the Syrian regime to tackle Isis is not sufficient to prevent Iraq and its allies from invoking its right to use force under Article 51. Syria has had at least two-years to dismantle militant groups like Isis. Interestingly, on 23rd September the UN Secretary General, Ban Ki-Moon [endorsed the strikes](#), noting that they “took place in areas no longer under the effective control of [Syria]”.

It is also questionable whether the regime has been fully committed to defeating Isis, given the widespread acceptance among analysts that the regime has exploited and used as leverage Isis’ rivalry with other rebel groups seeking its downfall, namely by giving Isis some space to operate.

Consent from the Assad regime should be sought but any rejection from the regime, in light of the above political realities, would be rendered unreasonable and trigger the necessity of action and, therefore, Iraq and its allies’ right to use force. As the late President of the International Criminal Tribunal for the former Yugoslavia (ICTY), Antonio Cassese, noted, in such cases a State “may not oppose its sovereign rights to any foreign State that intends to lawfully use force”.

Any defensive response must also be proportionate. This has two elements. Firstly, the response must not be manifestly out of proportion to the scale of Isis’ attacks. This does not, however, require complete symmetry of scale between the two. In 1982 the UK had to use significantly more force in recapturing the Falklands than Argentina had used in taking it. Secondly, the objective of the action must be reasonable, and the action itself must not go beyond what is necessary to achieve the objective. Airstrikes against Isis bases, assets and personnel within Syrian territory will arguably be proportionate to both the scale of Isis’ attacks, and the reasonable aim of diminishing its capability.

Iraq, therefore, has the indisputable right to self-defence against armed attacks perpetrated by Isis. This legal right is extended to the US and UK by way of Iraq’s need for outside assistance and its request that the US, UK and others intervene on its behalf, given its limited capacity to do so independently.

Note: This article first appeared at our sister site, [British Politics and Policy at LSE](#).

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