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Exceptionality and context

Turkish intervention in Syria and the war on terror

ELENA CIRKOVIC — 26 February, 2016



The present Turkish military interventions in Syria and northern Iraq continue to raise the question of when States may use defensive force against armed non-State actors in other States. It is one of the ongoing and legally disputed actions of multiple, state and non-state, actors involved in the Syrian conflict. This post analyses the international legal implications of the ensuing military action by Turkey, especially the meaning of *ius in bello* and *ius ad bellum* in the context of supreme emergencies.

Turkey regards the Kurdish militia People's Protection Units (YPG) as a terrorist organization and alleges that it is affiliated with the Kurdistan Workers' Party (PKK). In December 2015, Turkey intervened with its troops in in the

Iraqi territory, without the Iraqi government's invitation. The Turkish government argued that the activities of armed non-state groups at its border poses a threat to Turkish security. Following appeals by both the US and Iraqi governments, Turkey withdrew its troops from Northern Iraq.

The international legal framework for Turkey's action in Syria

If we observe the need for the Syrian and Iraqi consent, it can be argued that the Syrian sovereignty, as analyzed under UN Charter Art. 2(4), has already been compromised. The Syrian government has been unable to curtail the overflow of the armed conflict across its borders, as well as the operations of transnational terrorist groups, such as the Daesh. The US-led coalition Operation Inherent Resolve invoked the right of individual and collective self-defense under Article 51 of the UN Charter, where the government of the State in which the threat is located is "unable or unwilling" to prevent the use of its territory for the attacks. In addition, the right of response was originally related to the claim of the Iraqi state. Syria appeared to be unable to adequately respond to the Daesh threat and prevent its forces from using Syrian territory to launch attacks against Iraq.

The individual state and the collective armed interventions in the Syrian conflict are broadly interpreting the UN Charter framework on the use of force in international law. The Turkish case is another example where state commitments to international rules seem to have become increasingly contextual.

Possible legal bases

It can be argued that Turkey is acting within the expanded doctrine of self-defense in international law. As Christian Tams points out, the doctrine of self-defense now includes a right of states to use unilateral force against terrorists.

Turkey has invoked self-defense and the UN Security Council war on terror framework. But, at the same time, the mere legitimation of self-defense is distinct from authorizing force: and unilateral actions of countries, such as Turkey are not always automatically legitimized.

Nevertheless, following the Paris attacks in November 2015, UNSC Res. 2249 (2015) recalled and added to the text of the existing counter- terrorism framework by calling on member states to respond to the threat of foreign terrorist fighters by “all necessary measures”, and in the context of the self-defense narrative employed by most states forming the “Global Coalition to Counter ISIL”. Turkey has also relied on this language in its approach to the Kurdish fighters.

Surely, the focus on self-defense in the war-on-terror framework does not need to stand in contradiction to the use of force for humanitarian purposes, or general respect for international law. However, considering the scope of the humanitarian crisis emanating from the war in Syria, the focus on ethics of earlier norms such as the Responsibility to Protect (R2P), appears to have disappeared from the contemporary frame of political and legal rhetoric. Individual state interests appear to take center stage.

Broader trends in the use of force

Both, *ius ad bellum* and *ius in bello* have been expanded to include the use of force in response to armed attacks by

terrorist non-state actors by “all necessary measures”. The legality debate over the air strikes in Syria, as well as the broader war-on-terror context, needs to address the wider implications these developments have on how we view the contemporary role of international law. Legal scholars need to consider in their research methods, a map of individual State actions in specific contexts. For instance, following its adoption of the UNSC Res. 2249 France stated that the Resolution creates “conditions for international mobilization”. Similarly, the USA, Germany, and the UK have referred to the resolution to reinforce their self-defense claims and the ongoing air strikes in Syria. Thus, Turkey has claimed similar justification for its current operations in Syria.

In fact, the Turkish case demonstrates a fragmented approach not only among individual states but also in the application of the norms of international law, in the ongoing conflict in Syria. Individual States have already declared the state of emergency both within their borders and as part of the global war on terror. As unilateral military interventions proliferated from a variety of sides in the past two years in response largely to non-state actor activities, it is not clear whether we have entered into a new phase of international law, or if we are still in a moment of “emergency” measures. However, when emergency is the norm, we have to revisit the very essence of the type of international legal project we actually have. Crises are supposed to be temporary, but what happens if the law of exception outlives them?

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