

Self-Defence Against the PKK? The Turkish Approach to International Law

The conflict between Turkey and the Kurdistan Workers' Party (PKK) as a Kurdish insurgent movement is a four-decade-long (from the 1980s) guerrilla war in the southeast region of the country. Turkish President R.T. Erdogan, in a reaction to an attack in the centre of Ankara which killed at least 28 people and left another 61 injured on 17 February 2016, [stated](#) that “Our State will never give up its right to self-defence against all kinds of terror threats.” Holding an independence referendum in Kurdistan Regional Government of Iraq (KRG) last September increased Turkey’s concerns about the possibility of inspiring Kurdish uprisings in Turkey, because an independent Kurdistan region might shelter the PKK militants. Based on this, Turkey targeted the PKK camps in KRG territory more severe than ever as a reflection of its right to self-defence.

Self-Defence in the ICJ’s Jurisprudence

As a matter of international law, a victim of an armed attack can only exercise its right to self-defence under the conditions foreseen by Article 51 of the UN Charter. From the wording of Article 51 of the UN Charter “... if an armed attack occurs against a Member of the United Nations ...” it seems clear that only “States” are designated as the targets of armed attacks, and the Charter remains silent on the issue of the “origin of the armed attack.” However, the International Court of Justice (ICJ) removed the doubt over this issue in the [Wall Case](#), where it provided that “Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State.” Therefore, there is in practice no space for an interpretation accepting that armed non-State actors can be the perpetrators of an act permitting the exercise of the right to self-defence. Accordingly, the ICJ’s jurisprudence is based on the rejection of self-defence against armed non-State actors.

Nevertheless, there are many different interpretations of the ICJ’s jurisprudence. Hence, we can see the development of a State practice of exercising the right of self-defence against non-State actors as a result of increasing violent actions of such actors. As Jeremy Wright [argues](#), “many States now hold the view, and have acted on the basis, that the inherent right of self-defence extends to the use of force against armed groups, and includes the right to use force in response to both an actual and an imminent armed attack by that non-State actor.” Currently, States are frequently confronted with attacks by armed non-State actors which use other States’ territories to carry out these attacks. In such conditions, the use of military force in self-defence against these groups by extending Article 51 of the UN Charter to non-State actors has become a matter of controversy. To be clear, using self-defence measures against armed non-State actors has changed the international community’s understanding of self-defence in international law. As Anna Peters [states](#), “the silence of the vast majority of States is in normative terms problematic because it risks being interpreted as implied acquiescence to an extensive interpretation of Article 51 of the UN Charter.” Likewise, the State directly affected by a use of force justified by an extensive interpretation of Article 51– [will be likely to protest](#) explicitly. Moreover, as Judge Simma pointed out in the [Congo Case](#) (para. 11), “... a restrictive reading of Article 51 might well have reflected the state, or rather the prevailing interpretation, of the international law on self-defence for a long time. However, in the light of more recent developments not only in State practice but also with regard to accompanying *opinio juris*, it ought urgently to be reconsidered, also by the Court.”

Self-Defence in the PKK Case

Based on the above, the Turkish authorities now characterize the PKK's actions as "armed attacks" since Article 51 highlights a right to self-defence in response to an armed attack. However, the main point here is the gravity of the PKK's cross-border attacks in accordance with Article 3(g) of the [Definition of Aggression Annexed to General Assembly Resolution 3314 \(XXIX\)](#), which has been qualified as a reflection of customary international law in the ICJ's [Nicaragua Case](#) (para. 195). Similarly, the ICJ has identified in its [Oil Platforms Case](#) that armed attacks of a lesser gravity, even when made by the armed forces of a State, did not justify self-defence (para. 51). Therefore, in order for Turkey to exercise the right of self-defence, the PKK's cross-border operations from bases in Iraq must be classified as armed attacks rather than as mere frontier incidents because of the scale (the amount of force used and the duration of attack or its locale) and effects (the damage or casualties caused) of these operations. The ICJ's practice has been criticized in the legal doctrine because of its narrow reading of Article 3(g) of the Definition of Aggression. Despite the view that a massive attack is needed to qualify as an armed attack, there are some counter-views that assert generally any use of armed force or a relatively small-scale attack to be qualified as an armed attack. (T. Ruys, *'Armed Attack' and Article 51 of the UN Charter*, Cambridge, 2010, 145). Nevertheless, the attacks of 11 September 2001 demonstrated that operations with a smaller scale than the PKK's operations qualified as armed attacks. Additionally, after Hizbullah's killing of eight soldiers of Israel's Defence Forces and kidnapping two on the border with Lebanon in an attack on 12 July 2006, [Israel's right to self-defence](#) was recognized by a large number of States in the UN Security Council meeting on 21 July 2006. In the case of the PKK, it has been recognised that the scale of the PKK's operations organized from northern Iraq is bigger than Hizbullah's operations carried out against Israel. According to the [latest reports](#), since the 7 June 2015 general elections in Turkey, the PKK's cross-border armed operations and their extensions to the largest cities have resulted in hundreds of civilian and military deaths. The International Crisis Group confirmed in its last updated [open-source](#) on 02 May 2017, at least 921 State Security Force Members and 393 civilians have been killed in clashes between security forces and the PKK since 20 July 2015. A large proportion of the casualties were soldiers, police officers and village guards, including ethnic Kurdish paramilitaries who were armed and paid by the Turkish government. Thus, evaluation of the PKK's operations "as a whole" demonstrates that all of these operations were carried out by "irregular military forces" located in northern Iraq and the "scale and effects" of their actions were grave enough to constitute "armed attacks."

Anyways, Turkey provides some reasonable grounds to believe "[the KRG] in Iraq [supports] the PKK and turns a blind eye to its cross-border incursions into Turkey" (Ch. Gray, *International Law and the Use of Force*, Oxford, 2004, 143). While, all States as stated the UN Security Council, shall prevent armed non-State actors or terrorist organizations from carrying out armed attacks [using their respective territories](#) for those purposes against other States or their citizens. In conformity with the Council's resolution, the PKK's attacks are imputable to the KRG because of Iraq's turning a blind eye to the PKK's cross-border attacks against Turkey using the KRG's territories. In a letter to the UN General Assembly and Security Council, Turkey stated that "if respect for Iraq's territorial integrity is an obligation for Turkey as well as other members of the international community, Iraq is no less obliged to prevent the use of its territory for the staging of terrorist acts against Turkey." Based on this, Turkey as the victim State has used Article 51 of the UN Charter by notifying the UN Security Council of its right to the use of force in self-defence within the territorial State's territories.

The PKK's attacks that preceded the Turkish cross-border operations were carried out by PKK fighters who entered Turkey from Iraqi Kurdistan. Taking account of the preceding and continuing attacks, it may, therefore, be assumed that Turkey is subject to attacks which have serious consequences: human casualties or considerable destruction of property (Y. Dinstein, *War, Aggression and Self-Defence*, Cambridge, 2005, 208). Therefore, it can be concluded that the armed attack requirement [is fulfilled](#) in the PKK case. As Ban Ki-moon, former Secretary-General of the UN, [pointed out](#), armed actions taken by Turkey against the PKK were done in accordance with the UN Charter, as a way of exercising self-defence. In other words, Turkey invokes the right to self-defence against the armed attacks of the PKK,

which is active inside and outside its territory. In sum, there is a cross-border conflict between Turkey and the PKK which organizes cross-border operations from Iraq's territory against Turkey and the use of force in self-defence against the PKK based in Iraq is justified since Iraq, as the territorial State, turns a blind eye to using its territories by the PKK for organizing cross-border attacks against Turkey.

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