

Attacking terrorist camps on foreign territory: Israel's strikes against an alleged training camp in Syria

Replies and Comments:

Noëlle Quénivet

For comments:

Noelle.quenivet@ruhr-uni-bochum.de
0049.234.3227956

On the web

<http://www.ifhv.de/>

Focus

For an interesting discussion on the necessity of State's involvement in an "armed attack" and in directing the reaction in "self-defence", see the different views adopted by Yoram Dinstein and Carsten Stahn at the conference "Terrorism as a Challenge for National and International Law"

(<http://edoc.mpil.de/conference-on-terrorism/presentation.cfm>)

Security Council Resolution 1368

"3. Calls on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable"

The Israeli armed forces dropped bombs on an alleged training camp near Damascus on 6 October 2003. It is clear from the statements of Israeli officials that the attack was in reaction to a suicide bombing that killed 19 people in a restaurant hours earlier. The Israelis alleged that the terrorists were trained in the camp in Syria.

There is no doubt that there is a general prohibition of the use of force enshrined in article 2(4) of the UN Charter as well as in customary international law (see 1986 *Case Concerning Military and Paramilitary Activities in and against Nicaragua, Nicaragua v. US*). There are only two exceptions to this rule under the UN Charter: the inherent right to individual or collective self-defence enshrined in article 51 and the use of force under the authorisation of the Security Council exercising the Chapter VII provisions. In the absence of a Security Council resolution, the only possible legal ground that Israel could claim for using force is the right to self-defence.

Article 51 of the UN Charter clearly indicates that such a right can only be claimed "if an armed attack [has] occur[red]". The core question is, hence, whether the acts carried out by the alleged terrorists trained in Syria amount to an armed attack. Whether an armed attack can only be perpetrated by State has come under scrutiny since the terrorist attacks of September 11th. Although it is still controversial, most writers have been prepared to say that the plane crashes amounted to an "armed attack". The question is whether suicide-attacks carried out by terrorists in Israel can be regarded as "armed attack". In other words, can the accumulation of smaller attacks be regarded as an "armed attack"? This theory propounded by Israel never found widespread approval by the international community.

To justify an attack against Syria, Israel would need to attribute the attacks to Syria by showing a certain degree of State involvement. Three different tests appear to have emerged: According to the 1986 *Nicaragua* case, mere provision of financial and logistical support cannot be regarded as an armed attack. What needs to be demonstrated is that a group is acting on behalf of the State, i.e., that the terrorists are acting on behalf of Syria. To what degree Syria supported the terrorists is unknown, but it is likely that a closer look at the facts would show that the level of assistance provided by Syria would fail the *Nicaragua* test. The ICTY Appeal Chamber proposed in the *Tadic* case a lower threshold, requiring the evidence of "overall control" instead of "effective control" as elaborated in the *Nicaragua* case. However, aspects of the collective response to the September 11 attacks and notably Security Council resolution 1368 strongly suggest that the threshold for attribution has been lowered more substantially. Al Qaeda's conduct was imputed to Afghanistan on the basis that the Taliban had harboured and supported this terrorist group as well as refused to surrender the head of the terrorist group, Ben Laden.

If Israel cannot prove that Syria harbours or supports the suicide-bombers, i.e. that Syria knew of the existence of this camp, then it is clear that Israel's action violates Charter law.

Israel, along with some authors, argues that the attack was in compliance with customary international law. They assert that, on several occasions, the international community acknowledged a right to self-defence following attacks carried out by terrorists. Although proponents of such a right to self-defence admit that many of these events were severely criticised by the international community, they contend that it was not done on the basis that these acts were illegal *per se* but rather because they did not fulfil all the criteria required. Yet, the different opinions expressed by international organisations as well as States cannot support this stance. No fine line is drawn between the legality of the attack and its fulfillment of certain criteria. For example, the legality of the American attacks in Sudan and Afghanistan in 1998 was highly disputed as much as was the one on Libya in 1986.

Neither the Charter nor customary international law seems to support the claim that Israel acted in self-defence when it attacked the Ein Saheb training camp in Syria. It is, therefore, likely that Israel violated the international norm of prohibition of the use of force.

Responsibility

BOFAXEs are published by the Institute for International Law of Peace and Humanitarian Law of the Ruhr-University Bochum: IFHV, NA 02/33 Ruhr-Universität Bochum, 44780 Bochum. Tel: 0049234/3227366, Fax: 0049234/3214208.

BOFAXEs are supported by the German Red Cross. **The writer is solely responsible for the content.**