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The legality of the US-led airstrikes against the IS targets in Syria under *Jus ad Bellum*

Autor / Nachfragen

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Fokus

The IS poses a serious threat to an already destabilised region. However, it is controversial which angle this threat shall be addressed from. As there is no consent of the Syrian government for the US-led airstrikes and no SC Resolution has so far authorised them, it has to be analysed whether the airstrikes can be justified under Article 51 UN Charter.

Main sources:

<http://www.whitehouse.gov/the-press-office/2014/09/10/statement-president-isil-1>;
<http://www.independent.co.uk/news/world/middle-east/syria-air-strikes-iran-says-us-attacks-on-isis-are-illegal-9751245.html>;
SC Res. 2170 (2014) and 2178 (2014)

The US President Barack Obama made it clear in his speech of 10th Sept. 2014 that the US would not hesitate to take action against the Islamic State (IS) not only in Iraq, but also in Syria, and announced an open-ended counterterrorism strategy in order to "*degrade, and ultimately destroy*" the IS. So far the US military and its allies have conducted more than 135 airstrikes against the IS targets in Syria. When asked for his opinion on this matter, the Iran's President Hassan Rouhani stated that the bombardments were illegal since they lacked "*a certain framework that is needed to take place in a third country.*" Indeed, the question of whether the US-led airstrikes against the IS targets in Syria have a legal standing under the rules of *Jus ad Bellum* is a legitimate one.

The bombardments of targets within a territory of another State, even if directed against non-State actors, constitute a violation of the prohibition on the use of force under Article 2 (4) of the UN Charter and of the principle of non-intervention under Article 2 (1) of the UN Charter unless there is a consent by the State in question or another valid justification under *Jus ad Bellum*. So far there has been no explicit consent by the Syrian government for the airstrikes against the IS targets within the Syrian territory. It is also very nebulous whether there is an implicit consent from Damascus. Furthermore, neither SC Resolution 2178 (2014), which refers to IS and underscores the need to discourage travel and the provision of support to foreign terrorist fighters, nor SC Resolution 2170 (2014) on threats to international peace and security caused by terrorist acts authorise airstrikes against members of the IS. Since so-called humanitarian intervention is not, *de lege lata*, accepted as a justification for the actions infringing upon the sovereignty of foreign States, it has to be carefully analysed whether the US-led airstrikes can be justified under Article 51 of the UN Charter.

It has been recognised that large scale attacks by non-State actors can constitute an armed attack under Article 51 of the UN Charter. The magnitude of the acts perpetrated by the IS, which include kidnapping and hostage-taking, violence aimed at fomenting sectarian tensions, attempts to undermine stability in Iraq, Syria and the surrounding region, which have had a devastating impact on civilians and led to the displacement of millions, destruction of property and multiple criminal terrorist acts, significantly exceed pin-prick assaults and therefore amount to an armed attack. However, the crucial question is whether the US and the coalition of States executing the airstrikes can claim self-defence, given that the IS' actions are directed against Syria and Iraq. With respect to airstrikes on Iraqi territory, the Iraqi government has provided consent. Although the Syrian government has not consented, the IS militias are operating on both sides of the Iraqi-Syrian border and conducting their attacks from Syrian territory. This cross-border factor, as well as the fact that the Syrian government has not been sufficiently able to counter the threat posed by the IS to neighbouring States, gives Iraq the ability to act in order to suppress threats outside of its borders. Iraq's right to self-defence under Article 51 of the UN Charter is thus combined with Syria's obligation to tolerate the actions of the threatened neighbour State within its territory as long as these actions are directed against the IS militias. The inability of a State to effectively address a threat within its sovereign territory that has, as a result, become an acute threat to neighbouring States induces upon that State an obligation to tolerate certain actions by States acting in accordance with Article 51 of the UN Charter that limit its sovereignty to the degree necessary to respond to the threat posed by non-State actors. The fact that this right is being exercised by the US-led coalition on behalf of Iraq does not change this conclusion.

Verantwortung

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