

Canada's Strikes against Syria. Violating International Law: The Canadian Recipe Against ISIS

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How is it possible to expand something that is, by definition, immeasurable? Such length of string arguments are bound to dog Canadian Prime Minister Stephen Harper's opinion that the air campaign against ISIS needs expansion, lengthening, and deepening. "ISIL has made it clear that it targets, by name, Canada and Canadians."

Earlier in the week, Harper told the House whilst announcing a one-year extension of its military mission against the Islamic State about his intention to avoid that stumbling block called sovereignty, and the UN charter that acknowledges it with solemn clarity. Canada would **"not seek the express consent of the Syrian government"** in launching strikes against ISIS targets on Syrian soil.[1]

The suggestion here is that Canada becomes the third country after the United States and Israel to launch airstrikes on Syrian soil on the pretext of targeting mischief making "non-state actors". This reverses the position the prime minister took last fall, when Syria was declared to be "off-limits" to fighters of the Royal Canadian Air Force.

In so doing, long-time legal observer Michael Byers of the University of British Columbia, suggested that Canada was "taking sides in a decade-long debate" which was shaped by "George W. Bush and cultivated by his administration - very controversially." Central to the debate was the breakdown of supposedly traditional views about one state taking action against another. Supposedly threatening non-state actors have become targets of the US-Israel view that, irrespective of which country is hosting them, they constitute legitimate targets.

The justifying counter to traditionalists comes in the form of self-defence arguments that are permitted under Article 51 of the UN Charter, though Harper initially tiptoed around it. In fact, Harper could only be dismissive of the questioning by Opposition leader Tom Mulcair as to whether the United Nations had been informed of this decision to move on Syria. "Has the prime minister," posed the NDP leader, "written to the United Nations, laying out Canada's justification for its planned intervention in Syria?" ISIS lawyers, sneered Harper, would hardly be taking Canada to court on the subject, a view that suggests much on the impoverishment of legal debate.

The task of picking a legal framework fell to Defence Minister Jason Kenney, who produced the apologetics of self-defence out of his bag of tricks, citing the views of Canada's top legal eagle in the military. Self-defence remains the last refuge of the international law scoundrel - or at least one who wishes to see it used in violation of territorial integrity. According to James Bezan, parliamentary secretary to the minister of defence, "Collectively, the coalition

- which includes the government of Iraq - needs to defend themselves and have the right to defend themselves from ISIL [ISIS].”

Foreign Affairs Minister Rob Nicholson decided to shift the onus on the Assad regime for not doing enough to curtail and destroy the forces of ISIL. “If Syria is unable or unwilling to prevent ISIL from staging operations into Iraq, that is a legal justification to get involved.” Ever a poor precedent, Nicholson cited the indiscrete and stomping US lead on the subject. “The Americans have operated in there for six months without resistance from the Syrian government.”

Tim Harper of *The Toronto Star* has found the brazen manner of Harper’s decision stunningly slothful. Canadians, “even those who slavishly back this mission - deserve more than a simplistic, ‘there are bad guys out there and we’re going to get them’ rationale, the product of either a tired, complacent government or one that values domestic politics over the inconveniences of international convention.”[2]

Liberal leader Justin Trudeau believes that such strikes will have another unintended consequence. Even the targeting breaches Syrian sovereignty, the Assad regime will profit from such fabulously expansive rationales of Canadian self-defence. “I believe the unintended but predictable consequence of helping (Assad) consolidate his grip on power in Syria is definitely something we could qualify as making things worse.”[3]

The open-ended conflict, interminable, and impossible to gauge in terms of success, is here to stay. With that has come a relentless attenuation of state sovereignty. US forces strike with impunity in global borderlands. The term “self-defence,” which has been extended since 2001 via the US Congress Authorisation for Use of Military Force Against Terrorists resolution, is characterised by “precision munitions” and drone warfare.

Lawyers have warned that the sheer nature of such resolutions would be abused, as it has been. But others resort to that old idea that responsibility is also a relevant excuse in using violence to combat violence. To protect civilians, irrespective of their nationality, it may be necessary to wade into the murky waters of humanitarian intervention at the end of a missile. ISIS, for the University of Toronto’s Aurel Braun, represented a “credible, immediate and global threat” that justified the use of Article 51 (CBC, Mar 26). Besides, “Sovereignty is not only about right, but also about duties and responsibilities.”

The result of all of this? Territorial limits prove to be less relevant. Governments in power are inconsequential if they do not doff their hats to the holy church that is the responsibility to protect. If the designated enemy is an associate of terrorism, however one defines it, it constitutes a legitimate target irrespective of who governs the territory of residence. This is the law of the jungle moderated by the disingenuousness of moral force.

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Notes

[1] <http://www.cbc.ca/news/politics/anti-isis-mission-in-syria-built-on-shaky-legal-ground-critics-say-1.3009643>

[2] <http://www.thestar.com/news/canada/2015/03/26/pms-syrian-decision-rolled-out-with-arrogance-and-laziness-tim-harper.html>

[3] <http://www.thestar.com/news/canada/2015/03/25/canada-in-the-right-to-bomb-targets-in-syria-says-foreign-affairs-minister.html>

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