

Is the Expanding U.S. Military Presence in Syria Legal?

Washington has gone rogue.

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In July, the [White House](#) and Pentagon [requested](#) authority from Congress to build further “temporary intermediate staging facilities” inside Syria in order to combat ISIS more effectively. This request, it must be noted, comes in the wake of devastating ISIS defeats in Syria, mostly by the Syrian Arab Army (SAA) and its allied forces.

Shortly afterward, the Turkish state-owned Anadolu news agency revealed previously unknown details and locations of [ten U.S. bases](#) and outposts in northern Syria, several of them with airfields. These are in addition to at least two further U.S. outposts already identified in southern Syria, on the Iraqi border.

When asked about these military bases, a CENTCOM (U.S. Central Command) spokesman told me:

“We don’t have bases in Syria. We have soldiers throughout Syria providing training and assist to the SDF (the mainly Kurdish Syrian Democratic Forces in the north of the country).”

How many soldiers?

“Roughly 1,200 troops,” says CENTCOM.

Yet when questioned about the international law grounds for this U.S. military presence inside Syria, CENTCOM didn’t have a response on hand. They referred me to the Office of the Secretary of Defense whose spokesman obstinately cited U.S. domestic law—an issue quite irrelevant to Syrians. He, in turn, referred me to the White House and State Department on the international-law angle. The State Department sent me back to the Department of Defense, the White House pointed me in the direction of the National Security Council (NSC), and the Department of Justice’s Office of Legal Counsel blankly ignored my repeated requests.

It isn’t hard to conclude that official Washington simply doesn’t want to answer the “international law” question on Syria. To be fair, in December 2016, the Obama administration offered up an [assessment](#) on the legalities of the use of force in Syria, but

perhaps subsequent ground developments—the SAA and its allies defeating ISIS and Al Qaeda left, right, and center—have tightened some lips in the nation’s capital.



U.S. military bases and outposts in Syria identified by media and independent sources as of July 26.
(Commissioned by the author from M. Fahd and Z. Adra.)

The map of U.S. bases in Syria is confusing. For starters, it reveals that many of the US outposts—or “staging facilities”—are nowhere near ISIS-controlled areas. This has generated some legitimate suspicion about U.S. motives in Syria, especially since American forces have begun to attack Syrian military targets with more frequency. This summer saw U.S. [strikes](#) against Syrian allied forces, drones, and a fighter jet all in the space of a few weeks. And most memorably, in September 2016, Coalition fighters killed over [100 SAA troops](#) fighting ISIS in Deir Ezzor, paving the way for a brief ISIS takeover of strategic points in the oil-rich province.

It appears that U.S. intentions [may go beyond](#) the stated objective of fighting terrorism in Syria—and that Washington’s goals are also territorial and political and seek to retain post-conflict [zones of influence](#) within the country: in the south, north, and along the Syrian-Iraqi border.

Former Obama White House and NSC senior legal official Brian Egan believes the coming challenge for U.S. policymakers—in terms of international law—will be to justify clashes with Syrian forces and their allies.

“I think the harder international law question to defend is with respect to use of force against the [Syrian President Bashar] al-Assad regime,” warns Egan. “For example, the U.S. strike in response to the [alleged] chemical weapons attack. There’s no self-defense justification, there’s no UN Security Council resolution. It’s an open question what the U.S. depends on in terms of international law.”

“Theories that might be applicable against terrorist groups like ISIS don’t appear to apply for U.S. military ops against Syrian forces. The more that U.S. forces are in-theater in Syria, the greater the chance of conflict between the U.S. and Syrian forces, which makes it essential that [this administration] explains its justification for potential operations in Syria,” emphasizes Egan.

But it’s not only Syrian forces and [military targets](#) that have come under American fire. In a stream of letters to the UN Security Council this year, the Syrian government asserts U.S. air strikes have also “systematically” destroyed vital infrastructure and economic assets throughout the country for months, and complains that the attacks are “being carried out outside the framework of international legality.” The Syrians claim that these infrastructure targets include the Ghalban oil collection branch station, Umar oilfield, wells and facilities, electrical transformer stations, Tanak oil field and facilities, Izbah oil field and installations—all in Deir Ezzor governorate—a gas plant and bridges and structures of the Balikh Canal in Raqqa, buildings and facilities belonging to the General Establishment of Geology and Mineral Resources in Homs, Furat and Baath Dam facilities, the Euphrates Dam, the Tishrin Dam and their reservoirs, irrigation and power generation facilities, and many other vital sites across the country.

With U.S. legal arguments supporting military presence in Syria unravelling, the Pentagon's untenable position has become noticeable, even within its own ranks.

"Here's the conundrum," [explained](#) U.S. Special Operations Command Chief Army General Raymond Thomas to an Aspen gathering last week, in response to a question about whether U.S. forces will stay in Syria, post-ISIS:

"We are operating in the sovereign country of Syria. The Russians, their stalwarts, their back-stoppers, have already uninvited the Turks from Syria. We're a bad day away from the Russians saying, 'Why are you still in Syria, U.S.?'"

The Russians, Iranians, Hezbollah, and other allied Syrian forces are in Syria legally, at the invitation of the UN-recognized state authority. The United States and its coalition partners are not.

At the moment, the latter are trying hard to ignore that elephant in the room. But as ISIS collapses, the question "why are you still here?" is going to rise in volume.

When the U.S.-led coalition first launched overt military operations inside Syria in September 2014, various [western governments](#) cited both the recently-passed UNSC Resolution 2249 and Article 51 (Iraq's invitation for "collective self-defense") as their legal justification for doing so.

Neither of these justifications provided legal grounds for use of force in Syria, however. There are basically only three clear-cut international law justifications for use of force: a UN Security Council (UNSC) resolution providing [Chapter 7](#) authority, self-defense against an act of aggression by a territorial state, and an invitation by the legitimate authority of a sovereign state for foreign troops to act within its borders—"consent of a territorial state."

While UNSC Res. 2249 called upon member states to "take all necessary measures" against ISIS in Syria and Iraq, it explicitly stated that any such measures must be "in compliance with international law, in particular with the UN Charter"—which requires consent of a territorial state, in this case, the Syrian government.

And while Iraq did invite the Coalition to militarily engage ISIS within its territory, its "collective self-defense" argument does not justify the use of force inside Syrian territory—because Syria did not attack Iraq.

To make up for the gaping holes in its international-law arguments, the U.S.-led Coalition performed some legal acrobatics. The "unwilling and unable" theory posits that the Coalition could engage militarily in Syria because the legitimate government of Syria was either unable or unwilling (or both) to fight ISIS.

An onslaught of media articles and carefully-framed narratives were employed to set the scene for this theory. Recall, if you will, the slew of articles [claiming](#) that ISIS controlled [around 50 percent](#) of Syria—areas which were outside of Syrian state control—all meant to guide us to the conclusion that Syria was "unable" to fight ISIS. Or the narratives that insisted, until ground evidence proved otherwise, that the Syrian government aided ISIS, that it never fought the terror group, that it only targeted "moderate rebels"—all intended to persuade us that Syria was "unwilling" to target ISIS.

In fact, the Syrian Arab Army (SAA) and its allies have fought ISIS throughout this conflict, but were often distracted by more urgent battles against U.S., Turkish, British, French, Saudi, UAE and Qatari-backed Islamist militants in the western corridor of the country, where Syria's main population and infrastructure hubs are located. ISIS-controlled territories, it should be noted, were mostly in the largely barren, sparsely populated and desert regions in the north-east and east of Syria.

The NATO-Gulf Cooperation Council strategy appears to ping-pong Syrian troops from east to west, north to south, wearing them down, cleverly diverting them from any battle in which they were making gains. And it was working, until the Russians stepped into the fray in September 2015 and sunk the Coalition's "unwilling and unable" theory.

As Major Patrick Walsh, associate professor in the International and Operational Law Department at the US Army's Judge Advocate General's Legal Center and School in Virginia, [wrote](#) that October:

"The United States and others who are acting in collective defense of Iraq and Turkey are in a precarious position. The international community is calling on Russia to stop attacking rebel groups and start attacking ISIS. But if Russia does, and if the Assad government commits to preventing ISIS from attacking Syria's neighbors and delivers on that commitment, then the unwilling or unable theory for intervention in Syria would no longer apply. Nations would be unable to legally intervene inside Syria against ISIS without the Assad government's consent."

The UK's leading security and defense analyst firm IHT Markit observed in an April 2017 [report](#) that during the time period in which ISIS suffered its most crippling defeats, Syrian allied forces fought the terror group two and a half times as often as U.S.-backed ones. With the Russian air force providing Syrian allied troops with game-changing air cover, the battle against ISIS and other terror groups began to turn decisively in Syria's favor. And, with that, out went even the "theoretical" justification for U.S. military intervention in Syria.

As ISIS and Al Qaeda are beaten back in Syria, the American conversation about what comes next is missing a most critical point. In terms of international law, Washington has gone rogue in Syria. Will the world take notice?

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