

The UK Parliament's Decision to Bomb Syria is ILLEGAL

Arguments based on UN resolution 2249 in Prime Minister's report on airstrikes in Syria: some clarifications needed

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A few days ago, Prime Minister David Cameron has appealed to Parliament Members to vote in favor of Royal Air Forces (RAF) airstrikes against Islamic State (ISIS) in Syria, in order to "keep the British people safe" from the threat of terrorism. At the opening of a 10-hour Commons debate on December 2, the Prime Minister said the country had no other choice. In the report presented to the Parliament (see [full text](#)) he stated that: "I believe that the UK should now join Coalition airstrikes against ISIL in Syria" (p. 7) and pointed out that "On 20 November 2015, the UN Security Council unanimously called on Member States to use all necessary measures to prevent and suppress terrorist acts committed specifically by ISIL, and to deny them safe haven in Syria and Iraq" (p. 8). In page 15 of this same [document](#), he also indicated just after quoting Resolution 2249 that "there is a clear basis for military action against ISIL in Syria".

It must be reminded that on August 30, 2013, a similar vote took place in United Kingdom with a short negative result for the Executive concerning airstrikes in Syria (see [note](#) of BBC): the government motion was rejected at his time by 285 vote against and 272 in favor. In BBC note above referred, it can be read that "On Friday French President Francois Hollande told the newspaper Le Monde that he would still be willing to take action without Britain's involvement. He said he supported taking "firm" punitive action over an attack he said had caused "irreparable" harm to the Syrian people".

The "urgency" to take a decision

During these last days, United Kingdom's Executive seemed to be extremely "urged", as reported by press (see for example the title of this [note](#)), and time seemed extremely short for more debate and for the examination of further details. As very well known, "urgency" is sometimes extremely useful, mainly when arguments presented are simple. In a recent [article](#) entitled, "Voting on Military Action in Syria", it is written that Prime Minister seems quite clear on one very particular point: "In his address to Parliament, David Cameron insisted that the UN SC Resolution provides a legal basis for military action". It must be reminded that the Resolution 2249 has been adopted on November 20, just one week after Paris attacks of November 13, supposing also an urgent work among diplomats in New York to reach a consensus on a text. From this perspective, France's Executive was also expecting, with some urgency too, the decision to be taken in United Kingdom (see [note](#)), as it appears quite isolated in Europe Union concerning airstrikes in Syria, and its predicable consequences (**Note 1**).

It must be recalled that first official French airstrikes in Syria against ISIS positions took place last September 27 (see [note](#) of Le Monde of this very same day): just 24 hours after, France President took the floor at the United Nations General Assembly. The daily newspaper Le Monde understood (as all of us) that the choice of September 27 was not due to mere coincidence or hazard: *“C’est une opération qui tombe à point nommé. L’annonce des premières frappes aériennes françaises en Syrie, dimanche 27 septembre, ne doit rien au hasard »* (see [note](#) of Le Monde)

Even if United Kingdom’s Executive obtained this December 2, a positive vote on airstrikes in Syria (by a great majority of 397 votes in favor and 223 against) followed a few hours after by the first airstrikes of RAF in Syria (see [note](#) of France24), some of the arguments presented during the discussion deserve some comments, from the perspective of international law.

Which coalition are we talking about?

Concerning the sentence mentioned before in which Primer Minister said that *“I believe that the UK should now join Coalition airstrikes against ISIL in Syria”*, we must note that the expression *“Coalition airstrikes against ISIL in Syria”* seems to be a new one.

As known, a coalition has been set up in September 2014 by United States and its allies: State Department includes an [official list](#) with more than 60 Members of this Coalition called officially *“The Global Coalition to Counter ISIL”* : it must be noted that Panama appears as the only State from Latin America, whilst, concerning Africa, Morocco, Nigeria, Somalia and Tunisia are included in this official list. Prime Minister David Cameron seems to refer to another coalition, or at least, to a specific branch of *“The Global Coalition to Counter ISIL”*. In a recent [report](#) of the Foreign Affairs Committee of the House of Commons entitled *“The extension of offensive British military operations to Syria”*, extremely useful information is provided in order to know which are the States involved in airstrikes in Syria (and in Iraq). At note 22, page 9, we read the following data:

“Airstrikes in Iraq: US, UK, Australia, Belgium (withdrawn), Canada (expected to withdraw), Denmark (withdrawn), France, Jordan, The Netherlands (9). **Airstrikes in Syria:** US, Australia, Bahrain, Canada (expected to withdraw), France, Jordan, Saudi Arabia, Turkey, UAE (9). Total of 13 states overall”.

On Nov. 30, The Washington Times informed (see [note](#)) that some members of the coalition have stopped flights against ISIS positions:

“One Pentagon official directly involved in the counter-Islamic State fight told The Washington Times that the Saudis haven’t flown a mission against the group in nearly three months. The official, who spoke on condition of anonymity, said that Bahrain is still involved, but confirmed that Jordan stopped flying sorties against the extremists in August and the UAE hasn’t flown one since March”.

Curiously, in its presentation at the “Sénat” in France, last November 25, French Minister of Foreign Affairs declares publicly (see [compte-rendu analytique](#)) that: *“Une trentaine d’État sont engagés militairement dans la coalition”*. The number 13 is a number of member

States quite far from 30. But visually speaking (mainly if you are urged) the number 13 is very close to 31. Maybe (maybe not...) new glasses are needed somewhere at the Quai d'Orsay.

When Russia announced its first military operations in Syria last September 30, the reaction of the so called "Coalition" didn't included the signature of 60 or 30 States, but only 7 States agreed on a short declaration made public last October 2 (see official [text](#)): France, Germany, Qatar, Saudi Arabia, Turkey, United Kingdom and United States. The declaration stated:

« Nous, gouvernements de France, d'Allemagne, du Qatar, d'Arabie saoudite, de Turquie, du Royaume-Uni et des États-Unis d'Amérique faisons la déclaration suivante à la suite des récentes offensives militaires de la Fédération de Russie en Syrie : Nous exprimons notre vive inquiétude devant le renforcement de l'engagement militaire russe en Syrie et, en particulier les frappes de l'armée de l'air russe sur Hama et Homs hier qui ont tué des civils et ne visaient pas Daech. Ces opérations militaires constituent une nouvelle escalade et ne feront qu'attiser l'extrémisme et la radicalisation. Nous demandons instamment à la Fédération de Russie de mettre immédiatement fin à ses attaques contre l'opposition et la population civile syriennes et de concentrer ses efforts sur le combat contre Daech ».

As briefly presented, "*The Global Coalition to Counter ISIL*" is quite different from "*Coalition airstrikes against ISIL in Syria*"; with respect to numbers referred by France's head of diplomacy, they seem to be extremely far from reality if compared with the exact number of States involved in military operations in Syria and Iraq.

It must be recalled that France has been the first EU member to bomb ISIS positions in Iraq. During the last days of September 2014, Belgium, Denmark and United Kingdom acceded also to participate in these airstrikes in Iraq (see [note](#) of Temps Réels). As known, the main difference between Iraq and Syria is that the Iraqi authorities gave their formal consent to United States and its allies to combat ISIS on their territory (see [letter](#) of September 20, 2014 in which it can be read that:

"we, in accordance with international law and the relevant bilateral and multilateral agreements, and with due regard for complete national sovereignty and the Constitution, have requested the United States of America to lead international efforts to strike ISIL sites and military strongholds, with our express consent. The aim of such strikes is to end the constant threat to Iraq, protect Iraq's citizens and, ultimately, arm Iraqi forces and enable them to regain control of Iraq's borders").

UNSC Resolution 2249: a confusing text from legal perspective

With respect to another argument presented by Prime Minister David Cameron, the content of the Resolution 2249 has been made public since November 13 (**Note 2**), and assertions made by Prime Minister require, in our view, some clarifications. As known, Security Council 2249 (see [text](#)) resolution does not provide any legal basis for airstrikes in Syria. A careful reading of the text shows that Resolution 2249 does not mention Article 42 of the UN Charter, which allows Security Council to authorize States to the use of force, or even Chapter VII generally; nor does use the verb "*decide*", used when Security Council adopts a

resolution on the use of force. An extremely interesting [note](#) published by *Royal Institute on International Affairs* and entitled “*Assessing the Legal Basis for UK Military Action in Syria*” is quite clear on this very particular point of Resolution 2249 adopted last November 20 in New York by an urged Security Council:

“In order to provide legal authority for the use of force against ISIS under international law, a Security Council resolution would need to constitute a decision, taken under Chapter VII of the UN Charter, that states could use all necessary measures in their action against ISIS. Although resolution 2249 determines that ISIS is a ‘global and unprecedented threat to international peace and security’ and refers to ‘all necessary measures’, the language used in the operative part of the resolution is merely hortatory (‘calls upon’) and does not refer to Chapter VII. For those who are looking for specific UN authorization for the use of force, this is not it”.

Recently, two distinguished international lawyers entitled their analysis of Resolution 2249 (see [article](#)): “*The Constructive Ambiguity of the Security Council’s ISIS Resolution*”. For the authors of this article, the legal basis on which military actions can be taken in Syria is totally absent of the text:

“Resolution 2249, on the other hand, is constructed in such a way that it can be used to provide political support for military action, without actually endorsing any particular legal theory on which such action can be based or providing legal authority from the Council itself. The creative ambiguity in this resolution lies not only in the fact that it does not legally endorse military action, while appearing to give Council support to action being taken, but also that it allows for continuing disagreement as to the legality of those actions”.

With respect to the vote that took place last December 2 and, in particular to the arguments presented by Prime Minister concerning Resolution 2249, a distinguished professor of international law at Nottingham wrote in his [article](#) entitled “*How the Ambiguity of Resolution 2249 Does Its Work*” the following conclusion:

“Calling this particular resolution “clear and unambiguous” is, with respect, a real howler. But nonetheless we can see how the ambiguity of the resolution also did its magic in internal UK politics, and not just on the international plane – I very much doubt that without it the Prime Minister could have obtained the necessary majority for the air strikes, or even if he did that majority would have been slim indeed”.

A discrete French omission

It is possible that some colleagues that teach international law in France – extremely discrete since last month – will find the following lines politically incorrect, but it must be recalled that references to United Nations Charter in operative part of resolution 2249 are the result of ... Russia insistence, and were not included in the original draft presented by France to the members of the Security Council. In this [note](#) entitled “*Adoption of a Resolution on Counter Terrorism*”, specifically concerning modifications to the original draft presented, we read that: “*Russia insisted that a reference to the UN Charter be inserted and France agreed*”. Despite public declarations made by France’s delegates after the vote of Resolution 2249 (**Note 3**), this resolution does not justify the legality of France’s airstrikes

in Syria. On this and others French contradictions, and on the very first “premiere” offered by France diplomacy at the United Nations (in order to avoid an explicit reference to the Charter in operative paragraphs of a draft resolution) we refer to our modest [article](#) published in French and entitled “*La Résolution 2249 n’autorise pas à bombarder en Syrie*”.

In another recent [article](#) on the intervention of Russia in Syria from the legal perspective, entitled “*Russia’s intervention in Syria*”, France’s official reasons given to intervene in Mali’s civil war at the request of national authorities are mentioned. The author concluded that:

“On the basis of the reasoning of the Court and the responses of states to the recent interventions in Mali by France and in Syria by Russia, it is argued here that there is no such rule that prohibits an intervention in a civil war if the invitation comes from the government. It is thus submitted that the Russian intervention in Syria is in accordance with international law”.

With respect to this quite confused (and confusing) resolution 2249 adopted by Security Council one week after Paris attacks of November 13 (on which we can find many analysis written in English and we miss analysis from our French colleagues), another extremely interesting [article](#) has been entitled “*Permanent Imminence of Armed Attacks: Resolution 2249 (2015) and the Right to Self Defence Against Designated Terrorist Groups*”. The title in itself shows the confusion created by Resolution 2249 when talking of a “*Permanent Imminence*”. In accordance to the author, a distinguished professor of Cambridge:

“This declaration represents a very important, albeit risky, application by the Council of its powers even when acting outside of Chapter VII of the Charter. It affects the application of the right to self-defence of states wishing to rely on their own right to self-defence, rather than a right derived from Iraq or from Syrian consent”.

In his conclusion, the author emphasizes the fact that:

“In reality, this reluctance has opened up a Pandora’s box of potential claims to the use of force in Syria and possibly Iraq. This is because the resolution offers an authoritative interpretation of the facts in relation to international law and the Charter, in particular the right to self-defence”.

Conclusion: a reference to Canada’s recent prudent withdraw

Very early, on April 9, 2015, Canada launched its first airstrikes in Syria (see BBC [note](#)) and became the 2nd member of NATO (after United States) to do so in Syria. Turkey launched its first airstrike in Syria on August 29, 2015, as member of the Coalition (see CNN [note](#)). On September 16, 2015, Australia initiated its airstrikes in Syria (see BBC [note](#)), followed by France on September 27. Despite the support shown by Canada, observers indicated a few months after the first Canadian airstrikes that: “*Three months after a contentious vote to expand Canada’s combat mission against Islamic State into Syria, Canadian fighter jets have attacked targets there just three times*” (see [note](#) of Globe and Mail).

As known, Canadian new elected authorities announced their decision to suspend airstrikes in Syria as well as in Iraq (see [note](#) of The Guardian of October 21, 2015). In an [article](#)

published in 2015 on airstrikes launched by Canadian Air Force, entitled “*Canada’s Military Operations against ISIS in Iraq and Syria and the Law of Armed Conflict*” the author concludes that, with regard to airstrikes in Syria:

“However, there is a further legal hurdle for Canada to overcome. Unless Canada can attribute ISIS’ attacks in Iraq to Syria, then the question becomes whether Canada may lawfully target ISIS, as a nonstate actor in Syria’s sovereign territory, using the ‘unwilling or unable’ doctrine to prevent ISIS’ extraterritoriality attacks against Iraq. This justification moves significantly away from the Nicaragua, Congo and Israeli Wall cases’ requirement for attribution”.

The author ends his article with the following sentence: “*There is no escaping the conclusion that Canada’s air strikes on Syria are on shaky, or at least shifting, legal ground*”.

Despite “urgency “and Primer Minister David Cameron’s interpretation of Resolution 2249, from the legal perspective, these very same conclusions, in our modest view, are applicable to airstrikes in Syria realized by United States and its Arabic allies (Bahrain, Jordan, Saudi Arabia, United Arab Emirates), as well as by Australia, Canada, France, Turkey and the operations of this kind of RAF launched a few hours after the vote that took at United Kingdom Parliament.

Notes:

1. Three days after the first airstrikes of France in Syria (that took place on September 27, 2015) a French expert on counter terrorism and judge stressed in an interview in Paris Match ([see references in this article of Le Monde](#)) that: “« *J’ai acquis la conviction que les hommes de Daech [Etat islamique] ont l’ambition et les moyens de nous atteindre beaucoup plus durement en organisant des actions d’ampleur, incomparables à celles menées jusqu’ici. Je le dis en tant que technicien : les jours les plus sombres sont devant nous. La vraie guerre que l’EI entend porter sur notre sol n’a pas encore commencé* ».

2. At the end of this note, the full text of Resolution 2249 is reproduced.

3. In his declaration during Security Council session of November 20, (see [full text](#) of his declaration), French Ambassador Delattre affirmed that: “*Cette résolution encadre notre action dans le cadre du droit international et dans le respect de la Charte des Nations Unies qui est notre bien commun, qui est notre trésor commun. Il offre aussi une garantie de lutte efficace contre le terrorisme transnational* ».

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Text of the Security Council Resolution 2249 (2015)

Adopted by the Security Council at its 7565th meeting, on 20 November 2015

The Security Council,

Reaffirming its resolutions 1267 (1999), 1368 (2001), 1373 (2001), 1618 (2005), 1624 (2005), 2083 (2012), 2129 (2013), 2133 (2014), 2161 (2014), 2170 (2014), 2178 (2014), 2195 (2014), 2199 (2015), 2214 (2015) and its relevant presidential statements,

Reaffirming the principles and purposes of the Charter of the United Nations, Reaffirming its respect for the sovereignty, territorial integrity, independence and unity of all States in accordance with purposes and principles of the United Nations Charter,

Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed,

Determining that, by its violent extremist ideology, its terrorist acts, its continued gross systematic and widespread attacks directed against civilians, abuses of human rights and violations of international humanitarian law, including those driven on religious or ethnic ground, its eradication of cultural heritage and trafficking of cultural property, but also its control over significant parts and natural resources across Iraq and Syria and its recruitment and training of foreign terrorist fighters whose threat affects all regions and Member States, even those far from conflict zones, the Islamic State in Iraq and the Levant (ISIL, also known as Da'esh), constitutes a global and unprecedented threat to international peace and security,

Recalling that the Al-Nusrah Front (ANF) and all other individuals, groups, undertakings and entities associated with Al-Qaida also constitute a threat to international peace and security,

Determined to combat by all means this unprecedented threat to international peace and security,

Noting the letters dated 25 June 2014 and 20 September 2014 from the Iraqi authorities which state that Da'esh has established a safe haven outside Iraq's borders that is a direct threat to the security of the Iraqi people and territory,

Reaffirming that Member States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law,

Reiterating that the situation will continue to deteriorate further in the absence of a political solution to the Syria conflict and emphasizing the need to implement the Geneva Communiqué of 30 June 2012 endorsed as Annex II of its resolution 2118 (2013), the Joint Statement on the outcome of the multilateral talks on Syria in Vienna of 30 October 2015 and the Statement of the International Syria Support Group (ISSG) of 14 November 2015,

- 1.** Unequivocally condemns in the strongest terms the horrifying terrorist attacks perpetrated by ISIL also known as Da'esh which took place on 26 June 2015 in Sousse, on 10 October 2015 in Ankara, on 31 October 2015 over Sinai, on 12 November 2015 in Beirut and on 13 November 2015 in Paris, and all other attacks perpetrated by ISIL also known as Da'esh, including hostage-taking and killing, and notes it has the capability and intention to carry out further attacks and regards all such acts of terrorism as a threat to peace and security;
- 2.** Expresses its deepest sympathy and condolences to the victims and their families

and to the people and Governments of Tunisia, Turkey, Russian Federation, Lebanon and France, and to all Governments whose citizens were targeted in the above-mentioned attacks and all other victims of terrorism;

3. Condemns also in the strongest terms the continued gross, systematic and widespread abuses of human rights and violations of humanitarian law, as well as barbaric acts of destruction and looting of cultural heritage carried out by ISIL also known as Da'esh;

4. Reaffirms that those responsible for committing or otherwise responsible for terrorist acts, violations of international humanitarian law or violations or abuses of human rights must be held accountable;

5. Calls upon Member States that have the capacity to do so to take all necessary measures, in compliance with international law, in particular with the United Nations Charter, as well as international human rights, refugee and humanitarian law, on the territory under the control of ISIL also known as Da'esh, in Syria and Iraq, to redouble and coordinate their efforts to prevent and suppress terrorist acts committed specifically by ISIL also known as Da'esh as well as ANF, and all other individuals, groups, undertakings, and entities associated with Al Qaeda, and other terrorist groups, as designated by the United Nations Security Council, and as may further be agreed by the International Syria Support Group (ISSG) and endorsed by the UN Security Council, pursuant to the Statement of the International Syria Support Group (ISSG) of 14 November, and to eradicate the safe haven they have established over significant parts of Iraq and Syria;

6. Urges Member States to intensify their efforts to stem the flow of foreign terrorist fighters to Iraq and Syria and to prevent and suppress the financing of terrorism, and urges all Member States to continue to fully implement the abovementioned resolutions;

7. Expresses its intention to swiftly update the 1267 committee sanctions list in order to better reflect the threat posed by ISIL also known as Da'esh;

8. Decides to remain seized of the matter.

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