

# The legality of international action in the skies of Syria

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## **Abstract**

## **Chapter 1:**

### **Problem Statement**

The broad theme of this thesis is to study the legality of international action in the skies of Syria. For the past many years, Syria has been continuously bombed from various countries, which has adversely affected the life in the country. There remain no standards of evaluation of the violation done to human rights and norms sets in international practice. This thesis studies the problem in Syria, whereby identifying its roots and the legality if the airstrikes, which are happening in the country.

### **Research Aims**

The following are the research aims of this thesis:

1. To identify the scenario of human rights violation in Syria especially in regards to airstrikes done by Russia, U.S and UK.
2. To understand the legal troubles and the legal provisions used by Russia, U.S and UK to defend the legality of airstrikes.
3. To examine the role of United Nations in securing peace and justice to the innocents of Syria.

## Research Methodology

The research methodology is such to suit the present problem statement and research aims. For this research, I have mainly relied on secondary sources, which include the reports, journal articles, blogs and detailed studies by various organizations regarding the situation of Syria and commenting upon the legality of airstrikes. Since the subject matter of this thesis does not give much scope to include primary sources, thus only international legislations, treaties and agreements in regards to Syria have been included as a part of primary source and rest all secondary sources have been relied upon.

Further, in this research, I have relied on qualitative research methods. By using this research method I get an enhanced scope of examining the problem by looking into the various pros and cons and researching the work already done by others and finally relating it to our work. This method shall help in conducting detailed analysis of the problem statement discussed above. The steps of analyzing, recording and uncovering vast research on this topic shall be followed while conducting qualitative research.

Lastly, the most appropriate research technique for this thesis is documentary analysis. This technique helps in collecting data from variety of sources, which serve as the base of study and further research. Since, it is not practically possible to conduct interviews or get direct access to the problem of airstrikes in Syria, thus I have mainly relied on the reports from authentic organizations to ensure credibility of information whereby at the same time inculcating international laws and practices relating to the present situation.

## Research Gaps

The main gap in the present research is that secondary sources are used at large, which might degrade the level of credibility as compared to the research, which is based on purely primary sources. However, efforts shall be made to ensure that this does not affect the research. The present research focuses on identifying the legality of airstrikes or the international action in the skies of Syria. Thus resources in abundance shall be considered for this thesis so that the gaps can be reduced at the most and only such information is taken, which is credible.

## Chapter 2: Literature Review

The Islamic State or the IS being transnational Sunni Islamist terrorist and insurgent group broadly comprises of Islamic State of Iraq and Syria (ISIS) and the Islamic State of Iraq and Levant (ISIL).<sup>1</sup> The main aim of this organization is to establish an Islamic State all over the world, which would be ruled as per the Sharia Law. It is a radical group organization and mainly controls the areas of north-eastern Syria and north-western Iraq. During the summer of 2014, this organization focused at seizing control of major Iraqi cities and made territorial advances into the northern areas of Iraqi territory, thereby threatening the Baghdadi federal government.<sup>2</sup> Considering the situation of alarm and risk of the country, the then Prime Minister requested the US to assist it by air in quelling the uprising of IS military.<sup>3</sup> With this, US partnered with other countries and initiated air strikes to combat IS. Later in 2014, the operation of US extended to the Syrian areas where the Islamic State was enjoying a secure platform and safe heaven.<sup>4</sup> The US saw these attacks to be necessary to evade the growing power of the group and at the same time secure the innocent citizens.<sup>5</sup> This led to the starting of air strikes by various countries

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<sup>1</sup> IS has been designated as a terrorist organization by the United Nations, the European Union, the United States and the United Kingdom amongst others; US Department of State, 'Foreign Terrorist Organisations,' accessed 31/10/14 at <http://www.state.gov/j/ct/rls/other/des/123085.htm>; Home Office 'Proscribed Terrorist Organisations,' (28/11/14) accessed 06/12/14 at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/380939/ProscribedOrganisations.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380939/ProscribedOrganisations.pdf); HM Treasury 'Financial sanctions: consolidated list of targets' (19/06/13) accessed 06/12/14 at <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets> and <http://hmt-sanctions.s3.amazonaws.com/sanctionsconlist.htm>

<sup>2</sup> 2 Abbas, M. 'Maliki asks for US help as ISIS expands in Iraq' (13/06/14) Al-Monitor, accessed 23/2/2017 at <http://www.al-monitor.com/pulse/tr/security/2014/06/iraq-isis-expansion-mosul-maliki-us-assistance.html#>.

<sup>3</sup> Mitchell, A. 'Iraq Asks U.S. to Help Quell Militant Uprising' (12/06/14) NBC News, accessed 24/2/2017 at <http://www.nbcnews.com/news/world/iraq-asks-u-s-help-quell-militant-uprising-n129091>; Letter from the Permanent Representative of Iraq to the United Nations addressed to the President of the Security Council, 22. September 2014, UN Doc. S/2014/691 accessed 24/2/2017 at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2014/691](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/691).

<sup>4</sup> BBC, 'Russia Warns US Against Strikes on Islamic State in Syria' (11/09/14), BBC News, accessed 24/2/2017 through <http://www.bbc.co.uk/news/world-middle-east-29154481>.

<sup>5</sup> Sherwood, Harriet, 'Attacking Isis in Iraq and Syria – the Guardian Briefing,' (16/09/14) The Guardian, accessed 26/2/2017 at <http://www.theguardian.com/world/2014/sep/16/-sp-world-briefing-us-attacking-isis>.

against various targets of IS in Syria. These air strikes have raised a huge debate on the international front as to whether the use of force by military action is justified for the situation.

The use of military force in Syria can be considered lawful only if it comes under the exception to prohibition on use of force as identified in international laws. Broadly, there are two exceptions to this principle that can turn the breach of prohibition of use of force into a legitimate, valid and lawful armed intervention namely, an invitation to intervene by the legitimate government of Syria and the rule of collective self-defence. The legitimate government in Syria is only the Assad regime and no other irrespective of its legitimacy being challenged and criticized. The main factor of considering it the legitimate government is the fact that it asserts effective control by controlling an adequately representative part of the territory of Syria. Further there is no major opposing force, which claims to be the government of the country. Mere claims of illegitimacy and political recognition of SOC cannot deprive the Assad government its status.<sup>6</sup> Thus, the main issue lies in ascertaining whether it was the Assad government giving formal consent to the air strikes led by foreign countries in the Syrian Territory or other political power.<sup>7</sup> This issue determines the legality of exception on prohibition to use force.

Another exception, dealing with collective self-defence has a weak application in itself pertaining to the ambiguity surrounding Article 51. The ICJ has favored the traditional view of attribution. However, with the cases of *DRC* and *Nicaragua*<sup>8</sup>, wherein force was used on both non-State actors and also harboring States, the rules of attribution are required to be considered

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<sup>6</sup> For the democratic illegitimacy of the Assad regime see the UK Government Press Release, 'Syria elections only designed to sustain Assad's dictatorship', 21 April 2014, accessed 24/2/2017 at <https://www.gov.uk/government/news/syria-elections-only-designed-to-sustain-assads-dictatorship>; Koush, O. 'Assad won elections but has not legitimacy' (08/06/14), Middle East Monitor, accessed 26/2/2017 at <https://www.middleeastmonitor.com/articles/middle-east/11961-assad-won-the-election-but-has-no-legitimacy>.

<sup>7</sup> Khayre, Ahmed A. M. (2014) Self-defence, intervention by invitation, or proxy war? The legality of the 2006 Ethiopian invasion in Somalia, *African Journal of International and Comparative Law*, 22(2), 208, p. 9; Le Mon, C. 'Unilateral Intervention by Invitation in Civil Wars: The Effective Control Test Tested', 35 *Journal of International Law and Policy* (2002): 741-93, at 762.

<sup>8</sup>Case Concerning Military and Paramilitary Activities in and against Nicaragua (Merits), (1986) I.C.J Rep. 14, para. 188; Vienna Convention on the Law of Treaties 1969, Article 53.

again so as to identify the correct stand on defensive actions by the State. The text of Art. 51 of the UN Charter<sup>9</sup> do not limit use of force for the purposes of self-defence in armed attacks conducted by a foreign State. This practice relies on the willingness of the harboring State to suppress the non-State actors by use of force requested by other States. In the current situation, it is more likely that the international community recognizes defensive measures used against various non-State actors as long as the situation is such that there is an armed attack, proportionality or necessity, which legitimizes such actions of the State.

## **Chapter 3: Introduction**

### **Situation in Syria- relating to airstrikes and bombardment**

Syria has already recorded death toll of 250,000 during the four and half and still in continuation armed conflict.<sup>10</sup> This current situation of Syria is a result of anti-government protests, which later escalated into civil war on a full scale. Apart from the death tolls, more than 11 million people have been forced to leave their homes and shift to safer places owing to battles and armed conflict between the forces loyal to President as against forces led by IS groups.<sup>11</sup> The Syrian war began during March 2011 with the pro-democracy protests, which led to civil war and killing of many innocent individuals. This battle for power of Presidency later turned into due to involvement of religious emotions, which led to the rising power of jihadist group Islamic State.

As an effort to degrade and thereafter completely destroy the IS from Syria, US led coalition launched the first air strike in September 2014 in Syria. However, this coalition failed to attack in a manner that was beneficial for the forces of Assad. A year later, Russia began its air campaign whereby it targeted the terrorists groups in Syria but these strikes were alleged to have killed

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<sup>9</sup> “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. ....”

<sup>10</sup> BBC, “Syria: The story of the Conflict”, (11/03/2016) accessed on 02/15/2017 at <http://www.bbc.com/news/world-middle-east-26116868>

<sup>11</sup> Office of the United Nations High Commissioner for Refugees. (2015). Refugee Statistics — Syrian Arab Republic. Accessed 15/02/2017 from: <http://www.unhcr.org/pages/49e486a76.html>

only civilians and rebels backed by Westerns. Russia had been actively involved in launching air strikes in support of Assad's forces. These airstrikes have been done in violation of international law. Turkey and France have argued that these airstrikes conducted by Russia aggravated the war crimes against the people of Syria.<sup>12</sup> Russia has conducted thousands of airstrikes, whose targets have failed as per reports from Amnesty International.<sup>13</sup> These have led to large scale violation of International humanitarian Law in particular, since the main targets for these airstrikes were civilian areas rather than legitimate military targets against the jihadists.<sup>14</sup> Therefore, the death of innocent civilians outnumbered the death of targeted jihadists. The damage caused to civilians by airstrikes and bombardment was aggravated by the airstrikes of Russia, which in real sense could do no good and justice to the civilians except for taking their lives in the names of killing targeted jihadists groups of IS. Russia has contributed significantly to the civil unrest and war of Syria and its contribution has been weighed out from the disproportionate loss caused to the innocents. Due to this, the claim of Russia that its intervention was by invitation thereby being valid was also nullified as per Articles 26 of the International Law Commission.<sup>15</sup>

Apart from Russia, US conducted its first air strike in Syria in 2014, which was joined by forces from Britain, Denmark, France, Canada, Bahrain, Holland, Australia, Jordan, Bahrain and Saudi Arabia to some extent.<sup>16</sup> A year later to these air strikes, Russia conducted its first aerial

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<sup>12</sup> 9 Elizabeth O'Bagy, Christopher Harmer, Jonathan Dupree and Liam Durfee, "Syrian Air Force and Air Defense Capabilities," Institute for the Study of War, May 2013, available at: [http://www.understandingwar.org/sites/default/files/Updated%20Syrian%20Air%20Force%20and%20Air%20Defense%20Capabilities%20Brief\\_8May.pdf](http://www.understandingwar.org/sites/default/files/Updated%20Syrian%20Air%20Force%20and%20Air%20Defense%20Capabilities%20Brief_8May.pdf);

Human Rights Watch, "Death from the skies: Deliberate and indiscriminate air strikes on civilians," 10 April 2013, available at: [http://www.hrw.org/sites/default/files/reports/syria0413webwcover\\_1\\_0.pdf](http://www.hrw.org/sites/default/files/reports/syria0413webwcover_1_0.pdf)

<sup>13</sup> Amnesty International Report. (2015). Russia's Statements on its Attacks in Syria. Retrieved February 26, 2017, from: <https://www.amnesty.org/en/documents/mde24/3113/2015/en/>

<sup>14</sup> McCain, J, "Russian Airstrikes Target CIA-backed rebels", (2015) Retrieved February 09, 2017, from: <http://www.cnn.com/2015/10/01/politics/john-mccain-cia-russia-airstrikes/>

<sup>15</sup> International Law Commission. (2001). Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Accessed 15/02/2017: [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)

<sup>16</sup> BBC News, "Russia is Coordinating with Assad — Russia joins war in Syria: Five key points" (2015), accessed 15/02/2017 from: <http://www.bbc.com/news/world-middle-east-34416519>.

bombing in September 2015. This move sparked a huge concern in various western countries. The main accusation against Russia was that it is not conducting airstrikes by targeting ISIS rather the opposition of Assad's forces, particularly the Free Syrian Army.<sup>17</sup> The entire international community including the US officials immensely criticized Russia for its blatant attempt at targeting CIA backed rebels and the Free Syrian Army. Russia has always maintained its stand that all of its airstrikes are justified since the objective is to combat terrorism and secure peace in Syria.<sup>18</sup>

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<sup>17</sup> The Washington Post, "Russia begins airstrikes in Syria; U.S. warns of new concerns in conflict", (September, 30, 2015), accessed 15/02/2017 from: [https://www.washingtonpost.com/world/russias-legislature-authorizes-putin-to-use-military-force-in-syria/2015/09/30/f069f752-6749-11e5-9ef3-fde182507eac\\_story.html](https://www.washingtonpost.com/world/russias-legislature-authorizes-putin-to-use-military-force-in-syria/2015/09/30/f069f752-6749-11e5-9ef3-fde182507eac_story.html)

<sup>18</sup> Sanchez, R., Lister, T., Bixler, M., O'Key, S., Hogenmiller, M., & Tawfeeq, M., "ISIS goes global: Mapping ISIS attacks around the world" (2016) accessed 15/02/2017 from: <http://www.cnn.com/2015/12/17/world/mapping-isis-attacks-around-the-world/>

## Chapter 4: Legality of Airstrikes

### Legality of Airstrikes by Russia in regards to 'Intervention by Invitation'

The Article 2 (4) of the UN Charter guides the use of force among States. This article does not expressly regard the concept of intervention by invitation, but this has been followed as a part of state practice.<sup>19</sup> The concept of intervention by invitation is that one state accepts invitation of the other then that state does not use force against the inviting state but it combines its military forces so as to re-establish notions of peace and security within the territory of the State, which has invited for such intervention. Even when such type of intervention is not expressly included in the UN Charter but it is allowed and has been practiced by various states. However, for the intervention to be legally justified, it must be followed by two conditions: the validity of consent or invitation along with the legitimate authority from where such invitation is received. If either of these conditions goes unfulfilled then the intervention by the State becomes entirely illegal and unjustified.<sup>20</sup>

Russia has used the defense of intervention by invitation against the accusations of illegal airstrikes conducted in Syria. The validity of this defense has been checked based on the two above pre-requisite conditions discussed in regards to the invocation of the principle of intervention by invitation.<sup>21</sup> Russia was invited by the Assad regime, which is not a democratically elected government of Syria but the test lies that whether the Assad's President was the legitimate authority to invite Russia. Since the Assad's government is considered to be the de facto government of Syria on the basis of its effective control over the majority parts of

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<sup>19</sup> Fox, G.H. (2014). Intervention by Invitation. Wayne State University Law School Research Paper No. 2014-04. Available at SSRN: <http://ssrn.com/abstract=2407539>

<sup>20</sup> Visser, L. (2015). Russia's Intervention in Syria. European Journal of International Law. Accessed 15/02/2017, from: <http://www.ejiltalk.org/russias-intervention-in-syria/#more-13869>

<sup>21</sup> Talmon, S. (2013) Recognition of Opposition Groups as the Legitimate Representative of a People, Bonn Research Papers on Public International Law, No.1/2013, p. 12, accessed 15/02/2017 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2227615](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2227615)



Syria, it is the legitimate authority.<sup>22</sup> The Assad's government also exercises all the functions and duties of a State and there is no other authority of force, which assumes to be in power in the place of Assad. Further, it has its continued presence in the UN also, which provides a strong evidence of it being the sole government and legitimate authority of Syria.<sup>23</sup> Another requirement for the intervention to be legitimate is requirement of a valid consent. It is pertinent for the consent to be valid irrespective of whether it is expressed or implied. Since the consent was direct from the President to support the military forces and combat the uprising jihadist groups, thus there is no concern regards the legitimacy of consent as well.

However, in the case of Syria, the above two pre-requisites are not sufficient for Russia to run away from evil consequences of airstrikes. The international community even when accepts the legal basis of Russia to conduct military operations but the manner in which such operations were conducted were not legal at all. Several reports from independent international organizations have disclosed rampant violations of international humanitarian laws by Russia. Russia took the veil of Article 26 of the International Law Commission draft Articles on State Responsibility. But even as per this, to invoke the principle of intervention by invitation there must be legal basis of the actions implemented by the stated who was invited for interventions. The invited state should not as an act constitutes any violation of the pre-emptive rules and norms of the international law; otherwise the applicability of this principle is nullified. Thus, even when the intervention by invitation is legal and lawful there cannot be any circumstance whereby there is derogation from preemptory rules of international law, including prohibitions of aggression, racial discrimination, slavery, crimes against torture and humanity. Therefore, Russia

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<sup>22</sup> For the democratic illegitimacy of the Assad regime see the UK Government Press Release, 'Syria elections only designed to sustain Assad's dictatorship', 21 April 2014, accessed 15/02/2017 at <https://www.gov.uk/government/news/syria-elections-only-designed-to-sustain-assads-dictatorship>; Koush, O. 'Assad won elections but has not legitimacy' (08/06/14), Middle East Monitor, accessed 15/02/2017 at <https://www.middleeastmonitor.com/articles/middle-east/11961-assad-won-theelection-but-has-no-legitimacy>.

<sup>23</sup> Member States of the United Nations, accessed 01/01/15 at <http://www.un.org/en/members/>; Reuters, 'U.S. restricts movements of Syria's U.N. envoy Ja'afari', (05/03/14) accessed 15/02/2017 at <http://www.reuters.com/article/2014/03/05/us-syria-crisis-usa-un-idUSBREA2429I20140305>; Rosen, A., Walker, H., 'Syria's Ruling Regime Liked Obama's UN Speech – Except for One 'Small Part'', Business Insider, accessed 15/02/2017 at <http://www.businessinsider.com/syrian-reaction-to-obamas-un-speech-2014-9?IR=T>.

is not only required to prove the legality of interventions by invitation but also that the force used by it was justified and has not violated any rule of pre-emption as per international law.

Amnesty International had produced a detailed report in December 2015 on the impact of airstrikes conducted by Russia thereby challenging its legality.<sup>24</sup> The Russian authorities have always maintained their stand as combating and targeting terrorist groups in Syria but this stand of Russia is not in accordance with its actions. The report of Amnesty also stated that Russia's actions have given way to various war crimes in Syria. Since September 2015, there have been thousands of airstrikes conducted by Russia on Syria, whereby it had claimed to target only the areas of jihadists but as per the reports clear majority of these airstrikes have occurred in areas of opposition of Assad and civilians.<sup>25</sup> Further, Amnesty had investigated a total of twenty-five incidents which would comprise of imminent failures in regards to International Humanitarian Laws. Thus, these reports vehemently contradict the stand of Russia on its legality of airstrikes.

### **Legality of Airstrikes by UK under the shield of 'Self- Defense'**

The military action of the UK was justified by the Prime Minister on the grounds of individual as well as collective self-defense. The UK took to the shield of self-defense to ensure that its military action does not become a ground of illegality under the international law. The UK clearly stated that the main objective of the collective actions of governments all over the world in Syria collective self-defense of the state of Syria & Iraq against ISIS. It was Iraq that had requested assistance from global military giants to assist it in evading control of ISIS military and on that various states responded and thereby fought for Syria, with the sole aim to restore its integrity, sovereignty and secure the lives of millions of people living there.<sup>26</sup>

Secondly, the claims of legality were further argued on the basis that campaign by ISIS against the UK and its other allies had reached a level, which was equivalent to an armed attack against all of them. Thereby referring to Article 51 of the UN Charter, wherein the states have a right to

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<sup>24</sup> Amnesty International, 2016 "Syria: Armed opposition groups committing war crimes in Aleppo city", accessed <https://www.amnesty.org/en/latest/news/2016/05/syria-armed-opposition-groups-committing-war-crimes-in-aleppo-city/> on 25/02/2017.

<sup>25</sup> Amnesty International, 2017 "Syria 2016/2017- Annual Report", accessed <https://www.amnesty.org/en/countries/middle-east-and-north-africa/syria/report-syria/> on 25/02/2017.

<sup>26</sup> Jennifer Daskal et al, (2014) "Strikes in Syria: The International Law Framework, JUST SECURITY", <http://justsecurity.org/15479/strikes-syriainternational-law-framework-daskal-deeks-goodman/> accessed 25/02/2017

self-defense when there is armed attack by another, the UK took to self-defense as the most important tool to prove legality of the military action and air strikes.<sup>27</sup> Thus, it was individual self-defense of the UK and the collective self-defense of Iraq as the sole reason for military action. For the claim of self-defense to work it is pertinent to ensure that the attack is imminently threatening and thus the act of self-defense is required in larger interest and is also in proportion to the attack. Further, to invoke self-defense against an armed group which is not a state actor, then it is mandatory to be shown that the state wherein such armed group is found is itself unable in preventing the people and the entire state from the attacks. There are a variety of factors that must be considered while evaluating the validity and character of self-defense including gravity of the attack, nature of threat, capability of the attacker and whether it came with or without any warning. The UK took to the assessment of ISIS as per Resolution 2249 of the Security Council and affirmed the evil characterization of the organization, whose intentions are clear to carry out armed conflicts and attack to not just areas affected by war but all the other regions of the world. This characterization has been made relevant to the reason due to which UK took to self-defense in Syria.

The above are the reasons given by the UK government to pacify their armed attacks and air strikes in Syria. These actions of powerful sovereign States have been heavily condemned by various organizations and independent State actors to be excessive use of force and power, which were done with sole intention to gain the control of the bewildered country during war.<sup>28</sup> The most relevant claim in respect to the act of self-defense used by UK is that the extent of force used proclaiming self-defense was not proportional to the individual acts of terrorism that was disregarded to be armed conflict. Thus, it has been criticized that rather than being an armed conflict, the situation in Syria was more related to individual acts of terrorism. These acts were exaggerated into being armed response and thus airstrikes were conducted.

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<sup>27</sup> Steven Erlanger & Stephen Castle, (2015) "British Jets Hit ISIS in Syria After Parliament Authorizes Airstrikes, N. Y. TIMES" available at [http://www.nytimes.com/2015/12/03/world/europe/britainparliament-syria-airstrikes-vote.html?\\_r=0](http://www.nytimes.com/2015/12/03/world/europe/britainparliament-syria-airstrikes-vote.html?_r=0) [https://perma.cc/N472-2RB6 25/02/2017].

<sup>28</sup> Harriet Moynihan, (2015) "Assessing the Legal Basis for UK Military Action in Syria" accessed at <https://www.chathamhouse.org/expert/comment/assessing-legal-basis-uk-military-action-syria> 25/02/2017.

UK has also been criticized by stating that the intentions of UK were clearly mala fide. It has been stated that if the sole intention of UK was to destroy and degrade ISIS and its military bases in the Syria then it should have first requested authorization from the government of Syria so that it could actively participate in the coordinated military campaign and could help the government in speeding up the task of eliminating armed action of ISIS.<sup>29</sup> The actions of UK were seen to be used against British nationals and other people who did not belong to any group of terrorists and ISIS. Thus, since the balance of power used could not pacify the actions of the UK, it cannot be clearly held as to what extent its airstrikes and military actions violated the international law.<sup>30</sup>

### **Legality of Airstrikes by the U.S**

The stand of US was same as per the stands of Russia and UK. All the sovereign states who were involved in armed attacks, especially Russia, US and UK took the same stands and have been equally criticized for the harm caused to the people as against the disproportional good done for them. The excessive use of military force, especially airstrikes that had caused harm and damage to millions of innocents can only come under the exception to the prohibition of use of force when they are in proportion. The application of Article 51 in the present situation to assess the claims of all these three State actors is unclear and uncertain. It is not sure if Article 51 would apply to non-state actors in a situation like this against its customary application. ICJ has always favored the rules of attribution. The case of self-defense and application of Article 51 to clearly establish legality of airstrikes can be settled only when it comes before the court for hearing as against all the criticisms made by independent actors for violations of humanitarian rights and under rights under the international law. The text of Article 51 has nothing to restrict the actions of another State to limit the force in armed attacks and the practice followed post 9/11 attacks portrays an emerging tendency whereby defensive actions have been considered legal when taken against non-State actors.<sup>31</sup> The main factor on whom legitimacy of such actions depend is

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<sup>29</sup> Sharmine Narwani, (2015) "Breaking International Law in Syria. US-NATO's "Humanitarian Air Strikes" accessed at <http://www.globalresearch.ca/breaking-international-law-in-syria-us-natos-humanitarian-air-strikes/5492208> on 25/02/2017.

<sup>30</sup> Ryan Goodman, (2013), "International Law on Airstrikes against ISIS in Syria, JUST SECURITY", <http://justsecurity.org/14414/international-lawairstrikes-isis-syria/> 24/02/2017.

<sup>31</sup> S. Sengupta, C. Savage, (2014) 'U.S. Invokes Iraq's Defence in Legal Justification of Syria Strikes' The New York Times, accessed at [http://www.nytimes.com/2014/09/24/us/politics/us-invokes-defense-of-iraq-in-saying-strikes-onsyria-are-legal.html?\\_r=0](http://www.nytimes.com/2014/09/24/us/politics/us-invokes-defense-of-iraq-in-saying-strikes-onsyria-are-legal.html?_r=0) 25/02/2017.

the harboring State whether it is unable or unwilling to use its own force to suppress the non-State actors or it requires the support of other countries to combat the non-State actors. It should be seen that whether there was a necessity in regards to the victim-State to take aid and military help of other states in exercising its right to self-defense. Finally, it is the international community to recognize and establish these actions to be defensive against non-State actors or not based on the conditions of legitimate actions, proportionality, necessity, and armed attack.<sup>32</sup>

The invasion of ISIS into Iraq is considered as a large scale armed rebellion by most of the critics and analysts. Further, the Assad regime was incapable to suppress the activities of ISIS in its own territory, which lead to usage of defensive measures. Also, to suppress the rebellion group, it was required to enter the territory of Syria and target the safe heavens of these non-State armed groups.<sup>33</sup> It was considered a huge risk if the territory of Syria would not be entered upon without putting its territorial integrity on stake and risking the lives of citizens and overall security of the State. Hence, the States commended action in Syria targeting the said safe heavens. The only criteria of evaluation remain the proportionality. It is required to be seen whether the proportion of force used as defensive action was justified in the air strikes. The U.S has always maintained that its air strikes were specifically targeted and limited to only such areas that were directly or indirectly controlled by ISIS. Further, the U.S has not denied the allegations that due to these airstrikes casualties have been caused to civilians but it has restricted the number of such casualties to minor. The U.S has justified its airstrikes to be in proportion of its main object, which was to end the attacks and demolish the growing power and strength of ISIS without causing major harm to the civilians or the population living therein. U.S has used all the shields to prove the legality of airstrikes. It has satisfied its claims of consent, proportionality, and self-defense.

Although the U.S has tried its best to satisfy all the conditions under which its actions could be justified but still the legality of its air strikes and military action in Syria against non-State actors depends upon recognition of other independent States. However, in regards to practices of States post 9/11 attacks, there appears to be a greater probability that the actions of US against the ISIS

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<sup>32</sup> Ranj Alaaldin; Bilal Khan, (2014) "Airstrikes on ISIS targets in Syria and Iraq are legal under the International law" accessed <http://blogs.lse.ac.uk/usappblog/2014/10/01/airstrikes-on-isis-targets-in-syria-and-iraq-are-legal-under-international-law/> on 22/02/2017.

<sup>33</sup> Dinstein, Y.(2005) War, Aggression and Self-Defence (4th Ed), Cambridge University Press, p. 207; Klabbbers, J. (2013) International Law, Cambridge University Press, p. 200.

would be recognized legal, especially when the criticism from the independent actors and organizations is comparatively weaker to stand against the most powerful sovereign nations of the world.<sup>34</sup> Still at present, it would be too early to conclude anything rather it would be better to analyze the situation in its entirety.

## **Chapter 5: The International Humanitarian Law Crisis in regards to Airstrikes**

The main issue that arose during the armed conflict in Syria and Iraq was to identify the real culprit behind huge humanitarian crisis. The armed attacks were strong from both the sides i.e. ISIS on one and other State actors with Iraq on the other but which side is to be blamed for causing casualties to millions. The international community has always restrained the use of arms and focused on resolving disputes by various peaceful means. Even the UN Charter has confined the scope of armed interventions and these have only been recognized in situations of breach of peace, threat to peace or when there is an imminent act of aggression<sup>35</sup> along with the instance of self-defense under Article 51. However, the scope of these armed interventions has been extended over time by seeking authorization from General Assembly in special circumstances. As a practice, States have invited other States to assist when the former is confronted with insurgents and it has become unable to evade the danger on its national peace and security. This practice has been followed by Iraq and thereby the airstrikes conducted against the ISIS by US and other forces are deemed to be lawful as per customs and norms of the contemporary international humanitarian law. However, it is equally important to note that US has been involved in conducting airstrikes not only in Iraq wherein it was invited but also Syria without having any request from its government. To accord legality to such airstrikes, various new rules and amendments to the humanitarian law have been proposed in regards to the ‘unable or unwilling’ government. Even when the proponents of the unable or unwilling rationale attempted to bring this concept of unwillingness and inability within the boundaries of the rule of self-defense or humanitarian intervention, there have been major contradicting views that hold

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<sup>34</sup> Van Steenberghe, R. (2010) Self-defence in Response to Attacks by Non-State Actors in the light of Recent State Practice: a Step Forward?, *Leiden Journal of International Law*, 183, p. 2.

<sup>35</sup> Article 42 of the UN Charter.

that this rationale is not appropriate to fit to the basic conditions of legitimate self-defense and it fails to fulfill the fundamental objections as given under the humanitarian intervention. The international humanitarian law has been molded to suit the actions done by US and other State actors in the Syrian crisis. The main object being to nullify the effect and regard these actions as legal and justified. The main aim of these modifications is to authorize the military actions of an outsider State when a State seeks its assistance in evading the non-State actors present within it. However, what is more important to consider is whether changing the humanitarian law is beneficial for the international community at large to fight with armed terrorists' groups. Since, the world at large is facing with the problem of terrorist organizations hampering their peace and security, thus the validity of these actions is required to be checked in their regard.

## **Chapter 6: Unfulfilled Obligations of Security Council to intervene and resolve the Syrian Crisis**

The international body, which is responsible for maintaining and ensuring peace and security at the global level is The Security Council. Resolution 2249<sup>36</sup> passed by the Security Council had clearly affirmed that ISIS comprises of a global organization, which acts as an unprecedented treat to the peace and security at global level. The threat posed by ISIS is of such a nature that it is omnipresent and has the capability to affect all Member States of the UN and other regions of the globe irrespective of how far they are from the real zones of conflict. Further, it has been recognized by the Council that ISIS has intentions to carry out armed conflicts all over the world in order to uphold their values and religions over other.

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<sup>36</sup> Security Council Resolution 2249 (2015), adopted by the Security Council at its 7565<sup>th</sup> meeting, on 20 november 2015.

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