

Legality, Legitimacy, and Human Protection: International Intervention

Against ISIS in Syria

International Peace Institute Alex Bellamy 16 October

2014

As the

battle for the tiny Kurdish enclave in Kobane goes into what could be its final phase, and the US-led coalition steps up its air campaign against the so-called Islamic State (ISIS) in Syria, serious questions are being asked about the legality and legitimacy of intervention and about what all this means for the Responsibility to Protect (R2P).

Several prominent commentators

[have argued](#)

that the airstrikes in Syria are illegal because they have not been authorized by the UN Security Council and are not acts of self-defense because ISIS poses no direct threat to the US. But this rests on a mistaken view of the scope of self-defense enshrined in the UN charter. Article 51 of the charter notes the “inherent right” of states to “individual

or collective

self-defense” (emphasis added). In other words, not only does the government of Iraq have a right to use force to defend itself against ISIS, other states have a right to

assist

it, as Jason Ralph

[has pointed out](#)

. The absence of a direct threat to the US or its allies does not, therefore, invalidate self-defense as grounds for intervention, because actions against ISIS in Syria are essentially a defensive response to that organization’s armed aggression against Iraq. Indeed, this was

[precisely the argument](#)

US officials employed. While there may be some legal squabbling at the margins, it appears from the international response to the intervention that this is a justification broadly accepted by most member states. (...)

Of course, all this raises difficult questions about the extent to which the US and its allies are now actively supporting a regime responsible for untold atrocity crimes against its own population.

This is a particular problem for efforts to fulfill the Responsibility to Protect (R2P), since action that degrades ISIS will necessarily embolden the Syrian regime. It is important to be clear-eyed about some of the potential downside risks associated with this action. On the one hand, relieved of the need to commit forces to the war against ISIS, the Syrian regime will be free to commit greater resources to its campaign against the Free Syrian Army. On the other, any action that degrades the opponents of Damascus will necessarily strengthen the regime’s relative position. With its position strengthened, the regime will likely be less, not more, inclined to negotiate a settlement. As such, it is not surprising that there is no sign yet of any opportunities for a negotiated settlement and nor are they likely while the frontlines remain in flux.

These are difficult and troubling questions, but perhaps the hard reality is that on this specific matter of the threat posed by ISIS to civilians, the interests of the Syrian government, the US-led coalition, and the protection of populations from genocide and other mass atrocities are temporarily aligned. Irrespective of the precise legal justifications for action, important as they are, those following the chaotic scenes in Kobane would be hard-pressed to claim that the US-led air strikes were not supporting the goals of R2P. By degrading ISIS forces, the strikes have bolstered Kurdish efforts to protect their own and, at the very least, bought civilians more time to flee. This response may be much less than what is needed, may be motivated by a range of concerns of which R2P is just one, and may carry with it downside risks for the long term, but the time for perfect solutions is long past and the airstrikes are supporting frantic efforts on the ground to hold back the ISIS tide and protect Kurdish civilians. (...)

Read the full article

[here](#)