

## LEGAL ASPECTS OF USING FORCE AGAINST THE ISLAMIC STATE IN SYRIA AFTER RUSSIAN INTERVENTION

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*I'm so ashamed of what they are doing to me. There's a part of me that just wants to die. But there is another part of me that still hopes that I will be saved and that I will be able to embrace my parents once again.<sup>1</sup>*

### I. Introduction

Since the summer of 2014, the world has witnessed “the map of the Middle East redrawn.”<sup>2</sup> Over the course of one-hundred days, the Islamic State<sup>3</sup> (IS) changed the politics of the region drastically.<sup>4</sup> In early June 2014, IS militants advanced deep into northern Iraq from Syria. In a relatively short time, they took control of wide swaths of territory, including Mosul, Iraq’s second largest city.<sup>5</sup> Following the takeover of

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<sup>1</sup> Nick Squires, *Yazidi Girl Tells of Horrific Ordeal as ISIL Sex Slave*, TELEGRAPH (Sept. 7, 2014), <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/11080165/Yazidi-girl-tells-of-horrific-ordeal-as-Isil-sex-slave.html>.

<sup>2</sup> Simon S. Cordall, *How ISIS Governs Its Caliphate*, NEWSWEEK (Dec. 2, 2014), <http://www.newsweek.com/2014/12/12/how-isis-governs-its-caliphate-288517.html>.

<sup>3</sup> It is also referred to as Islamic State in Iraq and Syria (ISIS), or Islamic State in Iraq and the Levant (ISIL). The group’s acronym in Arabic is DAESH. See Faisal Irshaid, *ISIS, ISIL, IS or DAESH? One group, many names*, BBC NEWS (Dec. 2, 2015), <http://www.bbc.com/news/world-middle-east-27994277>. This article will refer to the group as the “Islamic State” (IS) throughout the article.

<sup>4</sup> PATRICK COCKBURN, *THE RISE OF ISLAMIC STATE: ISIS AND THE NEW SUNNI REVOLUTION I* (2015).

<sup>5</sup> See Loveday Morris & Liz Sly, *Insurgents in Northern Iraq Seize Key Cities, Advance Toward Baghdad*, WASH. POST (June 12, 2014), [https://www.washingtonpost.com/world/middle\\_east/insurgents-in-northern-iraq-push-toward-major-oilinstallations/2014/06/11/3983dd22-f162-11e3-914c-1fbd0614e2d4\\_story.html](https://www.washingtonpost.com/world/middle_east/insurgents-in-northern-iraq-push-toward-major-oilinstallations/2014/06/11/3983dd22-f162-11e3-914c-1fbd0614e2d4_story.html).

Mosul and subsequent attacks on adjacent areas, the IS targeted Iraq's minority communities of Yazidis, Shia Turkmens, and Christians.<sup>6</sup> More than 500,000 Yazidis and other minorities fled northern Iraq after the IS attacks began, while many were trapped on nearby Mount Sinjar, surrounded by IS fighters.<sup>7</sup> The IS militants tortured and raped women and girls, forced them to marry their fighters, or sold them in a slavery market in Syria.<sup>8</sup>

The IS drew substantial attention when it began releasing videos of western journalists, including James Foley and Steven Sotloff, being beheaded by masked terrorists holding knives at their necks.<sup>9</sup> On February 3, 2015, the IS released another horrible video depicting a Jordanian military pilot being burned alive while confined in a cage.<sup>10</sup> At the invitation of the Iraqi government, the coalition, led by the United States, began launching airstrikes on IS targets in Iraq and Syria in the face of ongoing atrocities.<sup>11</sup> The initial reaction from the international community concerning the legality of the operations was generally positive.<sup>12</sup> Then, on September 30, 2015, the world's news media circulated a surprising development: Russian warplanes had begun conducting airstrikes over Syrian territory.<sup>13</sup> While unexpected, Russia's

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<sup>6</sup> See *Iraq: Forced Marriage, Conversion for Yazidis*, HUM. RTS. WATCH (Oct. 11, 2014), <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis>.

<sup>7</sup> See *Iraq's Yazidi Minority Flees Militant Threat*, DAWN (Aug. 4, 2014, 04:01 PM), <http://www.dawn.com/news/1123250>.

<sup>8</sup> See Diana Chandler, *ISIS Forcing Yazidi Conversions, Marriages*, BIBLICAL RECORDER (Oct. 15, 2014), <http://www.brnow.org/News/October-2014/ISIS-forcing-Yazidi-conversions-marriages>.

<sup>9</sup> See Awr Hawkings, *U.S. Escalates Military Action in Iraq: A Timeline*, BREITBART (Aug. 24, 2014), <http://www.breitbart.com/national-security/2014/08/24/u-s-escalates-military-action-in-iraq-a-timeline/>. The IS announced that "his [James Foley's] beheading was brought about by Obama's decision to strike IS positions and pledged that they would behead others if the strikes continued."

<sup>10</sup> See CBS & Associated Press, *Jordanian Pilot's "Obscene" Burning Death by ISIS Sparks Outrage in Mideast*, CBS NEWS (Feb. 4, 2015, 9:40 AM), <http://www.cbsnews.com/news/jordanian-pilots-obscene-burning-death-by-isis-sparks-outrage-in-mideast/>.

<sup>11</sup> See *Syria: US Begins Air Strikes on Islamic State Targets*, BBC NEWS (Sept. 23, 2014), <http://www.bbc.com/news/world-middle-east-29321136>.

<sup>12</sup> See *Islamic State: Where Key Countries Stand*, BBC NEWS (Dec. 3, 2015), <http://www.bbc.com/news/world-middle-east-29074514>; see also Monika Hakimi, *Defensive Force Against Non-State Actors: The State of Play*, 91 INT'L L. STUD. 21, 21–23 (2015) (arguing that several states expressly endorsed the operations, while the only vocal objections came from Russia and Iran).

<sup>13</sup> Ed Payne et al., *Russia Launches First Airstrikes in Syria*, CNN (Sept. 30, 2014), <http://www.cnn.com/2015/09/30/politics/russia-syria-airstrikes-isis/>.

intervention brought disputes concerning the legal basis of using military force in Syria to the forefront, especially after allegations arose that Russia was striking moderate rebels instead of IS targets.<sup>14</sup>

This article will evaluate the legal aspects of using force against the IS in Syria. After reviewing the security threat posed by the IS in the region, this article will examine the legal basis for the use of force against non-state actors, and the specific legal aspects of using force against the IS in Syria. Evaluating all the factors in light of the international legal standards, this article concludes that despite Russia's intervention, the Syrian government remains unwilling or unable to prevent the use of its territory for the IS's armed attacks. Therefore, upon the invitation of the Iraqi government, use of military force against the IS in Syria, in the exercise of both collective self-defense of Iraq and individual self-defense of other victim states, is in accordance with international law.

## II. The Islamic State

### A. Rise of the Islamic State

In the summer of 2014, the world awoke to the threat posed by the IS, but the story began years before.<sup>15</sup> The origins of the IS go back to 2003, when Abu Musab al-Zarqawi established *Jamaat al-Tawhid Wal Jihad*<sup>16</sup> in Iraq, an armed group aimed primarily at opposing the U.S. occupation.<sup>17</sup> In October 2004, al-Zarqawi declared allegiance to Osama Bin Laden, renaming his group al-Qaeda in Iraq (AQI).<sup>18</sup> Following al-Zarqawi's death in June 2006, AQI merged with other jihadist groups, which gave birth to the Islamic State of Iraq (ISI), an umbrella organization governed by Abu Omar al-Baghdadi.<sup>19</sup> However, between 2007 and 2010, the ISI

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<sup>14</sup> Lizzie Dearden, *Russia Launches First Airstrikes in Syria as Non-ISIS Rebels Claim They Are Being Targeted*, INDEPENDENT (Sept. 30, 2015), <http://www.independent.co.uk/news/world/middle-east/russia-launches-first-airstrikes-in-syria-us-says-as-non-isis-rebels-claim-they-are-being-targeted-a6673621.html>.

<sup>15</sup> JESSICA STERN & J.M. BERGER, *ISIS THE STATE OF TERROR* 13 (2015).

<sup>16</sup> See *Jamaat Al-Tawhid Wal-Jihad*, UNSOLICITED RES. (Nov. 20, 2014), <https://unsolicitedresearch.wordpress.com/2014/11/20/jamaat-al-tawhid-wal-jihad/>. This group was notorious for its high-profile operations, including targeting civilian organizations, such as the Jordanian Embassy, Canal Hotel, and Red Cross. *Id.*

<sup>17</sup> MICHAEL WEISS & HASSAN HASSAN, *ISIS INSIDE THE ARMY OF TERROR* 13–14 (2015).

<sup>18</sup> *Id.* at 34.

<sup>19</sup> See M. J. Kirdar, *Al-Qaeda in Iraq*, CTR. STRATEGIC & INT'L STUD. (June 2011), <https://www.csis.org/analysis/al-qaeda-iraq>; Ellen Knickmeyer & Jonathan Finer,

experienced significant setbacks due to the cooperation of Sunni tribes<sup>20</sup> with U.S. forces in confronting terrorist groups.<sup>21</sup>

In 2010, Abu Omar al-Baghdadi died and Abu Bakr al-Baghdadi became the ISI leader.<sup>22</sup> In early 2011, as the uprising in Syria spread and became more violent, al-Baghdadi decided to send members of his group, headed by Abu Muhammad al-Jawlani, into Syria in order to make Syria another battlefield of jihad.<sup>23</sup> Fleeing to Syria gave the ISI the chance to reconstitute itself by recruiting numerous foreign fighters.<sup>24</sup> In April 2013, the ISI joined the Syrian civil war, and al-Baghdadi proclaimed the establishment of the “Islamic State in Iraq and the Levant” or “al-Sham” (ISIL or ISIS), declaring the group’s amalgamation with the terrorist group Jabhat al-Nusra.<sup>25</sup> However, al-Jawlani, now the leader of Jabhat al-Nusra, immediately denied the fusion.<sup>26</sup> By early 2014, the situation in

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Insurgent Leader Al-Zarkawi Killed in Iraq, Coun. On Foreign Affairs (June 8, 2006 5:57 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/08/AR2006060800114.html/>.

<sup>20</sup> See Kimberly Kagan, *Anbar Awakening: Displacing Al-Qaeda from its Stronghold in Western Iraq*, INST. FOR THE STUDY OF WAR (Aug. 21, 2006–Mar. 30, 2007), <http://www.understandingwar.org/report/anbar-awakening-displacing-al-qaeda-its-stronghold-western-iraq>. In 2007, a group of Sunni sheikhs in Ramadi refused al-Qaeda and began to cooperate with U.S. forces. *Id.* Known as “The Anbar Awakening,” this movement transformed Anbar from a terrorist stronghold into an area where the U.S. and Iraqi forces could conduct effective operations. *Id.*

<sup>21</sup> Jessica D. Lewis, *Al-Qaeda in Iraq Resurgent the Breaking the Walls Campaign*, INST. FOR THE STUDY OF WAR (Sept. 2013), [http://www.understandingwar.org/sites/default/files/AQI-Resurgent-10Sept\\_0.pdf](http://www.understandingwar.org/sites/default/files/AQI-Resurgent-10Sept_0.pdf).

<sup>22</sup> STERN & BERGER, *supra* note 15, at 33.

<sup>23</sup> Stephan Rosiny, *The Rise and Demise of the Islamic Caliphate*, 22 MIDDLE E. POL’Y 97 (2015). Almost ten years ago, al-Zarqawi had interpreted his fight in Iraq as an anticipation of Armageddon as he wrote, “The spark has been lit here in Iraq, and its heat will continue to intensify . . . until it burns the Crusader armies in Dabiq.” *Id.*

Dabiq is a village north of Aleppo in which the decisive battle against the western powers is supposed to take place, [and] will then open the way for the conquest of Constantinople and Rome. This is what [the] IS now predicts in its colorful magazine of the same name, Dabiq.

*Id.* at 98.

<sup>24</sup> Andrew W. Terrill, *Understanding the Strengths and Vulnerabilities of ISIS*, 44 PARAMETERS 15 (2014).

<sup>25</sup> Rosiny, *supra* note 23, at 98.

<sup>26</sup> See Terrill, *supra* note 24, at 15. See also ANDREW HOSKEN, EMPIRE OF FEAR INSIDE THE ISLAMIC STATE 164 (2015) (stating that al-Jawlani pledged his allegiance to Ayman al-Zawahiri, the leader of al-Qaeda).

Syria transformed into “a war within a war,” with the ISIL battling against a number of rebel factions, including Jabhat al-Nusra.<sup>27</sup>

Despite a number of key groups in the area refusing to cooperate,<sup>28</sup> the ISIL was able to successfully capture and expand its territory by seizing and consolidating control of Raqqa, a city in eastern Syria, and most of the surrounding area.<sup>29</sup> Moreover, the ISIL gained control of Deir ez Zour, a major oil hub in the region, which provided a steady stream of income to finance its war effort.<sup>30</sup>

In early June 2014, the power-vacuum in Iraq gave the ISIL the opportunity to capture Mosul.<sup>31</sup> Shortly after Mosul, the hometown of Saddam Hussein, Tikrit, fell into ISIL hands. On June 29, 2014, the “IS announced the formation of a transnational entity infinite in its claim to territory and power: The Islamic State.”<sup>32</sup> In an audio recording, the chief spokesman of the IS also declared that it was reestablishing the caliphate, a historical Islamic empire for Muslims around the world.<sup>33</sup> Abu Bakr al-Baghdadi was announced as the new caliph during his first public appearance, delivering a sermon at a Mosul mosque.<sup>34</sup>

## B. The Islamic State’s Structure, Strategy, and Ideology

The Islamic State is a hybrid of other jihadist groups, internalizing the radical Islamic ideology of al-Qaeda and the centralized command model and tactics of the Taliban.<sup>35</sup> Abu Bakr al-Baghdadi, the leader of the

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<sup>27</sup> STERN & BERGER, *supra* note 15, at 43.

<sup>28</sup> See *Al-Qaeda Disavows ISIS Militants in Syria*, BBC NEWS (Feb. 3, 2014), <http://www.bbc.com/news/world-middle-east-26016318>. The Jabhat al-Nusra was not the only key faction in the area disavowing affiliation with the IS. *Id.* On February 2, 2014, al-Qaeda formally repudiated the IS in a written statement: “[A]l-Qaeda has no connection with the group called the ISIS . . . . Therefore, it is not affiliated with al-Qaeda and has no organizational relationship with it. Al-Qaeda is not responsible for ISIS’s actions.” *Id.*

<sup>29</sup> See Rosiny, *supra* note 23, at 98.

<sup>30</sup> STERN & BERGER, *supra* note 15, at 44.

<sup>31</sup> See COCKBURN, *supra* note 4, at 11–13.

<sup>32</sup> Rosiny, *supra* note 23, at 99.

<sup>33</sup> See STERN & BERGER, *supra* note 15, at 46.

<sup>34</sup> See *id.* at 46–47.

<sup>35</sup> Lina Khatib, *The Islamic State’s Strategy: Lasting and Expanding*, CARNEGIE ENDOWMENT 3 (June 2015), [http://carnegieendowment.org/files/islamic\\_state\\_strategy.pdf](http://carnegieendowment.org/files/islamic_state_strategy.pdf).

group, is the supreme political, religious, and military authority.<sup>36</sup> The organizational structure of the IS consists of four main councils, each responsible for specific aspects of administration: Shura, Sharia, Military, and Security Councils.<sup>37</sup>

The IS considers itself as a state-building project, “with a need [of] not just fighters but also professionals.”<sup>38</sup> Through its recruitment strategy, an unprecedented number of foreign fighters have traveled to Syria in order to join the IS. Andre Poulin, a Canadian-national IS fighter, expressed this notion in a video release: “[T]here is role for everybody. . . . If you cannot fight, then you give money, if you cannot give money, you can assist in technology.”<sup>39</sup>

The ideology of the IS seems to be the same as that of al-Qaeda, but ideology is not the primary purpose of the group. “[I]t is a tool to acquire power and money.”<sup>40</sup> A particularly extreme apocalyptic Salafi-Jihadi ideology drives the IS.<sup>41</sup> It “seeks to overthrow the existing world order,” abolish the boundaries between states, “convert all the people to Islam, and rule all Islamic lands.”<sup>42</sup>

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<sup>36</sup> Terrence McCoy, *How ISIS Leader Abu Bakr al-Baghdadi Became the World's Most Powerful Jihadist Leader*, WASH. POST (June 11, 2014), <https://www.washingtonpost.com/news/morning-mix/wp/2014/06/11/how-isis-leader-abu-bakr-al-baghdadi-became-the-worlds-most-powerful-jihadi-leader/>.

<sup>37</sup> See Richard Barreth, *The Islamic State*, THE SOUFAN GROUP 29–33 (Nov. 2014), <http://soufangroup.com/wp-content/uploads/2014/10/TSG-The-Islamic-State-Nov14.pdf>. The Shura Council is the main advisory body, and theoretically meant to approve al-Baghdadi's appointment and decisions. *Id.* The Sharia Council's duties include selection of the caliph and ensuring compliance with Sharia law. *Id.* The Military Council drives the campaigns to gain more territory and defend what is at hand, while the Security Council is responsible for ensuring physical security and eliminating rivals of al-Baghdadi. *Id.*

<sup>38</sup> J.M. Berger, *Tailored Online Interventions: The Islamic State's Recruitment Strategy*, COMBATING TERRORISM CTR. (Oct. 23, 2015), <https://www.ctc.usma.edu/posts/tailored-online-interventions-the-islamic-states-recruitment-strategy>.

<sup>39</sup> Laith Alkhouri & Alex Kassirer, *Governing the Caliphate: The Islamic State Picture*, COMBATING TERRORISM CTR. (Aug. 21, 2015), <https://www.ctc.usma.edu/posts/governing-the-caliphate-the-islamic-state-picture>.

<sup>40</sup> Khatib, *supra* note 35, at 14.

<sup>41</sup> Charles Lister, *A Long Way from Success: Assessing the War on the Islamic State*, 9 PERSP. ON TERRORISM 7 (2015).

<sup>42</sup> *Id.*

### C. The Security Threat Posed by the Islamic State in the Region

Since 2010, the IS has evolved from a terrorist group into an almost “full-blown army.”<sup>43</sup> Today, it is able to design and execute military campaigns at the strategic, operational, and tactical levels.<sup>44</sup> It possesses collective competencies, such as command and control, hybrid warfare, and maneuver capabilities that are critical to planning and operating at all three levels. It is through these capabilities that the IS is able to conquer terrain in both Syria and Iraq, and to conduct multiple offensive and defensive operations along several fronts.<sup>45</sup>

At the same time, the IS is a terrorist organization, without political or moral boundaries, killing innocent civilians, and threatening the very survival of nations.<sup>46</sup> The IS’s actions have imperiled civilians of all ages, gender, ethnicity, and nationality. During its August, 2014 attack on the Sinjar region, the IS abducted hundreds of Yazidi women and girls, made them slaves, and sold them as “war booty” in markets across al-Raqqa.<sup>47</sup>

Although the IS initially focused on consolidating territorial gains in Iraq and Syria, it has now adopted a strategy of retaliatory attacks against coalition states in response to airstrikes. On June 26, 2015, an IS terrorist infiltrated a hotel and killed thirty-seven people on a beach in the Tunisian resort town of Sousse.<sup>48</sup> On October 10, 2015, two IS suicide bombers killed 102 people during a rally in Ankara.<sup>49</sup> The Turkish Office of the

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<sup>43</sup> Michael Knights, *ISIL’s Political-Military Power in Iraq*, COMBATING TERRORISM CTR. (Aug. 27, 2014), <https://www.ctc.usma.edu/posts/isils-political-military-power-in-iraq>.

<sup>44</sup> Jessica D. Lewis, *The Islamic State: A Counter-Strategy for a Counter-State*, INST. FOR THE STUDY OF WAR (July 2014), <http://www.understandingwar.org/sites/default/files/Lewis-Center%20of%20gravity.pdf>.

<sup>45</sup> *Id.* See also *ISIS Territory Remains Larger than Many Countries*, N.Y. TIMES (Mar. 6, 2015), [http://www.nytimes.com/interactive/2014/06/12/world/middleeast/the-iraq-isis-conflict-in-maps-photos-and-video.html?\\_r=0](http://www.nytimes.com/interactive/2014/06/12/world/middleeast/the-iraq-isis-conflict-in-maps-photos-and-video.html?_r=0).

<sup>46</sup> See Ross Harrison, *Towards a Regional Strategy Contra ISIS*, 44 PARAMETERS 37 (2014).

<sup>47</sup> WILLIAM McCANTS, *THE ISIS APOCALYPSE THE HISTORY, STRATEGY, AND DOOMSDAY VISION OF THE ISLAMIC STATE* 112–13 (2015).

<sup>48</sup> See *Tourists Gunned Down at Tunisian Resort*, AL-JAZEERA AMERICA (June 26, 2015, 7:45 AM), <http://america.aljazeera.com/articles/2015/6/26/tourist-hotel-in-tunisia-report-edly-attacked.html>.

<sup>49</sup> See *ISIL Behind Oct. 10 Ankara Massacre, Says Prosecutor’s Office*, HURRIYET DAILY NEWS (Oct. 28, 2015), <http://www.hurriyetdailynews.com/isil-behind-oct-10-ankara-massacre-says-prosecutors-office-.aspx?pageID=238&nID=90441&NewsCatID=509>.

Prosecutor determined that an IS terrorist cell committed the attack upon the order of the IS leadership in Syria.<sup>50</sup>

The IS also claimed responsibility on social media for double suicide-bomb attacks on November 12, 2015, which killed 43 people and wounded 239 others, in a Shia-majority district of Beirut.<sup>51</sup> On November 13, 2015, it carried out organized attacks across six locations in Paris. It was one of the worst terrorist attacks on French soil since World War II; 130 people were killed and 368 were wounded. The IS claimed responsibility for the attack and threatened France and other countries with more attacks.<sup>52</sup> Additionally, there is significant concern about foreign fighters who have travelled to Iraq or Syria to join the fight.<sup>53</sup> This creates extra pressure on security agencies, because the future intentions of returning fighters are unpredictable and difficult to assess.<sup>54</sup>

The armed conflict in Syria has triggered the world's largest refugee crisis since World War II.<sup>55</sup> Beginning in March 2011, more than 4.6 million people have fled into neighboring countries as refugees, while half of Syria's population has been internally displaced.<sup>56</sup> In September 2015, over 500,000 Syrian asylum-seekers and thousands of Iraqis have fled to

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<sup>50</sup> *Id.*

<sup>51</sup> Kareem Shaheen, *ISIS Claims Responsibility as Suicide Bombers Kill Dozens in Beirut*, THE GUARDIAN (Nov. 12, 2015), <http://www.theguardian.com/world/2015/nov/12/beirut-bombings-kill-at-least-20-lebanon>.

<sup>52</sup> See Adam Chandler et al., *The Paris Attacks: The Latest*, ATLANTIC (Nov. 22, 2015, 4:58 PM), <http://www.theatlantic.com/international/archive/2015/11/paris-attacks/415953/>.

<sup>53</sup> The number of foreign fighters that have joined the militant organizations in Iraq and Syria reportedly exceeded 20,000. See Peter R. Neumann, *Foreign Fighter Total in Syria/Iraq Now Exceeds 20,000; Surpasses Afghanistan Conflict in the 1980s*, ICSR (Jan. 26, 2015), <http://icsr.info/2015/01/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/>.

<sup>54</sup> See *Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq*, THE SOUFAN GROUP (Dec. 8, 2015), <http://soufangroup.com/foreign-fighters/>.

<sup>55</sup> See Jan Egeland, *This Is the Worst Refugee Crisis Since WWII. It's Time for Us to Rethink Our Response*, WORLD POST (Sept. 15, 2014, 12:19 PM), [http://www.huffingtonpost.com/jan-egeland/refugee-crisis-wwii-aid-\\_b\\_5791776.html](http://www.huffingtonpost.com/jan-egeland/refugee-crisis-wwii-aid-_b_5791776.html).

<sup>56</sup> See *Syria's Refugee Crisis in Numbers*, AMNESTY INT'L (Feb. 3, 2016, 7:02 PM), <https://www.amnesty.org/en/latest/news/2016/02/syrias-refugee-crisis-in-numbers/>. Lebanon hosts 1.1 million refugees, the largest per capita refugee population in the world. *Id.* Turkey hosts more than 2.5 million Syrian refugees, the largest number in a single country in the world. *Id.*



Europe, which has stoked a fear of more terrorism and violence in Europe.<sup>57</sup>

### III. Theoretical Legal Basis for Use of Force Against a Non-State Actor<sup>58</sup>

#### A. Prohibition on the Use of Force

The architects of the United Nations (UN) Charter sought to establish a regime that would severely restrict the resort to force in order to “save succeeding generations from the scourge of war.”<sup>59</sup> These efforts resulted in Article 2(4) of the UN Charter, which clearly set forth the obligation of states to “refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any state . . . .”<sup>60</sup> Within the UN Charter, there are two exceptions to the prohibition on the use of force: measures taken by the UN Security Council (UNSC) authorizing use of force, and self-defense.<sup>61</sup> Finding its roots in international law, consent of a state is also recognized as an exception to the prohibition.

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<sup>57</sup> Daniel Byman, *Do Syrian Refugees Pose a Terrorism Threat?*, LAWFARE (Oct. 25, 2015, 10:26 AM), <https://www.lawfareblog.com/do-syrian-refugees-pose-terrorism-threat>

<sup>58</sup> “Non-state actor” is a category comprised of individuals or groups that are not part of or acting on behalf of a state. See NOAM LUBELL, EXTRATERRITORIAL USE OF FORCE AGAINST NON-STATE ACTORS 14 (2010). This article classifies the IS as a non-state actor on the basis that it is an armed group using transnational force, but not affiliated or under the effective control of any state.

<sup>59</sup> AIDEN WARREN & INGVLID BODE, GOVERNING THE USE-OF-FORCE IN INTERNATIONAL RELATIONS 11 (2014).

<sup>60</sup> *Id.* See also Kimberley N. Trapp, *Actor-pluralism, the ‘Turn to Responsibility’ and the jus ad bellum: ‘Unwilling or Unable’ in the Context*, 2 J. ON USE OF FORCE & INT’L L. 8 (2015) (“The prohibition on the use of force in Article 2(4) is directed *at* states, and prohibits force *between* states . . . . In particular, Article 2(4) does not directly prohibit the use of force *by* [non-state actors] NSAs, nor does it speak to uses of force by states *against* NSAs.” (emphasis added)).

<sup>61</sup> Michael Schmitt, *Counter-Terrorism and the Use of Force in International Law*, in 79 INT’L L. STUDIES, INT’L L. & WAR ON TERROR 19 (Fred L. Borch & Paul S. Wilson eds., 2003).

## B. Exceptions to the Prohibition on the Use of Force

### 1. Consent

Although not stated directly in the UN Charter, state consent to the use of force is a well-recognized principle of international law.<sup>62</sup> Article 2(4) of the UN Charter prohibits “the use of force against the territorial integrity and political independence” of any state. Therefore, consensual interventions to support a state in its internal conflicts are not within the scope of the prohibition.<sup>63</sup> Article 20 of the UN International Law Commission’s draft articles on Responsibility of States for Internationally Wrongful Acts concludes that “valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.”<sup>64</sup> In other words, if a state consents to the use of force in its territory by another state, it is generally not considered to be a violation of international law.<sup>65</sup>

Valid consent justifies an act so long as the act remains within the context of consent.<sup>66</sup> The consenting state may also eventually revoke the consent it had given previously, and such revocation would render any future use of force unlawful.<sup>67</sup> Thus, it is generally the host state’s domestic law that determines whether a particular occasion of consent is valid internationally.<sup>68</sup>

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<sup>62</sup> See Benjamin R. Farley, *Drones and Pakistan, Consent and Sovereignty*, D.C. EXILE (Mar. 16, 2013), <http://dcexile.blogspot.com/2013/03/drones-and-pakistan-consent-and.html>.

<sup>63</sup> See Eliav Lieblich, *Intervention and Consent: Consensual Forcible Interventions in Internal Armed Conflicts as International Agreements*, 29 B.U. INT’L L. J. 364 (2011).

<sup>64</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, Int’l Law Comm’n, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 72 (2001).

<sup>65</sup> Anders Henriksen, *Jus ad bellum and American Targeted Use of Force to Fight Terrorism Around the World*, 19 J. OF CONFLICT & SECURITY L. 219 (2014).

<sup>66</sup> See Farley, *supra* note 62.

<sup>67</sup> See Lieblich, *supra* note 63, at 364.

<sup>68</sup> See Ashley S. Deeks, *Consent to the Use of Force and International Law Supremacy*, 54 HARV. J. INT’L L. 5 (2013).

### 2. Authorization from the United Nations Security Council

The principal objective of the UN is “[t]o maintain international peace and security.”<sup>69</sup> According to Article 24(1) of the UN Charter, “[i]n order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security . . . .”<sup>70</sup> Chapter VII of the UN Charter lays down the most extensive powers of the UNSC for the maintenance of international peace and security.<sup>71</sup> If the Council considers peaceful measures, such as economic sanctions or severance of diplomatic relations, to be inadequate in restoring international peace and security, it may authorize enforcement measures “including military operations by air, sea, or land forces.”<sup>72</sup>

### 3. Self-Defense

Another exception to the prohibition on the use of force is the right of self-defense in response to a prior or impending illegal use of force.<sup>73</sup> Self-defense is generally accepted as a “fundamental right of States to survival,”<sup>74</sup> which grants States the right “to respond individually or collectively to an illegal armed attack directed against its territory or citizens, military vessels, aircraft . . . subject to the legal criteria and conditions in both the UN Charter and customary international law.”<sup>75</sup>

Article 51 of the UN Charter describes self-defense as *inherent* in nature and recognizes both individual and collective self-defense.<sup>76</sup>

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<sup>69</sup> The United Nations (UN) Charter art. 1, ¶ 1 (stating that the purpose of the UN is “[t]o maintain international peace and security, and to that end: to take effective collective measures for prevention and removal of threats to the peace . . .”).

<sup>70</sup> *Id.* art. 24(1).

<sup>71</sup> See DAVID SCHWEIGMAN, *THE AUTHORITY OF THE SECURITY COUNCIL UNDER CHAPTER VII OF THE UN CHARTER* 33 (2001).

<sup>72</sup> *Id.* at 49. See also Adam Roberts, *The Use Force, in THE UN SECURITY COUNCIL FROM COLD WAR TO THE 21ST CENTURY* 133–39 (David M. Malone ed., 2003).

<sup>73</sup> See YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENCE* 187 (2011).

<sup>74</sup> *Id.* at 189.

<sup>75</sup> Terry D. Gill, *Legal Basis of the Right of Self-Defense Under the UN Charter and Under Customary International Law, in THE HANDBOOK OF THE INTERNATIONAL LAW OF MILITARY OPERATIONS* 187 (Terry D. Gill & Dieter Fleck eds., 2015).

<sup>76</sup> DINSTEIN, *supra* note 73, at 188. Article 51 reads: “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.” U.N. Charter art. 51.

However, it does not disclose the specific elements of self-defense in explicit terms, leaving it to customary international law. The relevance of customary international law principles concerning the scope and meaning of self-defense has been the subject of much debate.<sup>77</sup> According to proponents of the restrictive view to self-defense, Article 51 is exclusively conditioned upon the phrase: “if an armed attack occurs,” and without regard to the principles otherwise derived from customary international law.<sup>78</sup> On the other hand, the broader view is that Article 51 and customary international law complement each other, and the reference to the inherent right of self-defense in Article 51 incorporates customary international law, providing greater guidance for applying self-defense.<sup>79</sup>

This article analyzes a state’s right to self-defense under the broader view. However, regardless of the view one ascribes to, nearly every current armed threat to regional and global security gives rise to the question of attribution. Therefore, discussion concerning whether an armed attack must first be attributed to a state before a victim state may respond in self-defense is necessary; analysis concerning the principles of self-defense and the “unwilling or unable” doctrine will follow.

Self-defense hinges on the phrase “armed attack,” which is a threshold requirement in order to trigger the use of force allowed under Article 51 of the UN Charter.<sup>80</sup> Although almost all states agree that the right to self-defense arises when there is an armed attack, “there are disagreements as to what constitutes an armed attack.”<sup>81</sup>

In the *Nicaragua* case, the International Court of Justice (ICJ) rendered a decision against the United States for using force against paramilitary forces under the claim of self-defense.<sup>82</sup> In its decision, the court first discussed the scope and criteria for determining what constitutes an armed attack.<sup>83</sup> The ICJ stated, “[S]cale and effects are to be considered

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<sup>77</sup> See Gill, *supra* note 75, at 189.

<sup>78</sup> CHRISTINE GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 98–99 (2004); *see also* ANTONIO CASSESE, INTERNATIONAL LAW 254–55 (2005).

<sup>79</sup> See Gill, *supra* note 75, at 188. *See also* THOMAS FRANCK, RECOURSE TO FORCE STATE ACTION AGAINST THREATS AND ARMED ATTACKS 45 (2003); Ian Brownlie, *The Use of Force in Self-Defense*, 37 BRIT. Y.B. INT’L L. 232–41 (1961).

<sup>80</sup> See DINSTEIN, *supra* note 73, at 193.

<sup>81</sup> GRAY, *supra* note 78, at 108.

<sup>82</sup> Military and Paramilitary Activities in and Against Nicaragua, (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 191 (June 27) (distinguishing the most grave forms of the use of force (those constituting an armed attack) from other less grave forms).

<sup>83</sup> *Id.*

when determining whether particular actions amount to an armed attack.”<sup>84</sup> In other words, “an armed attack denotes a reasonably significant use of force which rises above the level of an ordinary criminal act . . . .”<sup>85</sup>

Additionally, the ICJ appeared to adopt the position that an armed attack must indicate state involvement, and self-defense can only be exercised in response to an attack by a state.<sup>86</sup> In the *Nicaragua* case, the court decided that the conditions of self-defense were not present, because the armed attacks by non-state actors were not attributable to the host state.<sup>87</sup> The ICJ reiterated this position in the *Palestinian Wall Advisory Opinion*, concluding that an armed attack triggering a response in self-defense must first be attributable to a state.<sup>88</sup>

However, the judges on the ICJ are not unanimous on this point. Both Judge Higgins<sup>89</sup> and Judge Kooijmans<sup>90</sup> criticized this point in their separate opinions. The crux of their criticism was that unlike Article 2(4) of the UN Charter, which specifically refers to use of force by states, “Article 51 does not mention the nature of the party responsible for the attack” as an element to trigger a state’s right to self-defense.<sup>91</sup> The ICJ, in its 2005 decision in *Democratic Republic of Congo (DRC) v. Uganda* case, further explained the impetus of attribution to states and the right to self-defense. In its decision, the ICJ ruled that the facts did not support the finding that actions of non-state actors against Uganda were

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<sup>84</sup> *Id.* at 101.

<sup>85</sup> Gill, *supra* note 75, at 191.

<sup>86</sup> See LUBELL, *supra* note 58, at 31.

<sup>87</sup> *Nicar. v. U.S.*, 1986 I.C.J. at 103.

<sup>88</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 136, ¶ 139, (July 9) (“Article 51 of the Charter thus recognizes the existence of an inherent right of self-defense in case of armed attack by one State against another State.”).

<sup>89</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 136, 208, ¶ 33, (July 9) (Separate opinion by Higgins, J.) (“Nothing in the text of Article 51 . . . stipulates that self-defense is available only when an armed attack is made by a state.”).

<sup>90</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 136, 219, ¶ 35, (July 9) (Separate opinion by Kooijmans, J.) (“Resolutions 1368 (2001) and 1373 (2001) recognize the inherent right of self-defense without making any reference to an armed attack by a state . . . . This is completely the new element in these resolutions.”).

<sup>91</sup> LUBELL, *supra* note 58, at 31–32. See also Natalino Ronzitti, *The Expanding Law of Self-Defense*, 11 J. CONFLICT & SEC’Y L. 348–49 (2006).

attributable to the DRC.<sup>92</sup> But, in its decision, the ICJ made a distinction between the need for attribution before using force *against the state* from whose territory the attacks originate, versus using force *within the state* from whose territory non-state actors operate.<sup>93</sup> This is a key distinction, particularly because “each contentious case to come before the ICJ, the host [victim] state was the target of the defensive force,”<sup>94</sup> thus requiring attribution to state action before triggering Article 51. According to the Court’s decisions, attribution is a necessary condition only when the use of force is targeted *against the state*. Thus, the ICJ’s decisions do not prevent the use of force *against non-state actors* in a third state’s territory in response to armed attacks that are not attributable to that state.<sup>95</sup>

Importantly, this approach appears to be endorsed by state practice. For example, the U.S. and UN responses to the al-Qaeda attack on September 11, 2001 (9/11), were authorized in self-defense against non-state actors operating in another country.<sup>96</sup> Even though the armed attacks carried out by al-Qaeda were not attributable to Afghanistan or its *de facto* Taliban government, the UNSC Resolutions 1368 (2001) and 1373 (2001), adopted in the wake of 9/11, recognized the actions of al-Qaeda as armed attacks, and accepted the legality of action taken in self-defense in response to these attacks.<sup>97</sup>

International law requires that any use of force under self-defense be necessary and proportionate.<sup>98</sup> The parameters of self-defense under customary international law generally date back to the *Caroline* incident.<sup>99</sup>

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<sup>92</sup> Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. Rep. 168, ¶ 146, (Dec. 19).

<sup>93</sup> See KIMBERLEY N. TRAPP, STATE RESPONSIBILITY FOR INTERNATIONAL TERRORISM 48-51 (2011).

<sup>94</sup> *Id.* at 51.

<sup>95</sup> *Id.* See also Brent Michael, *Responding to Attacks by Non-State Actors: The Attribution Requirement of Self-Defense*, 16 AUS. INT’L L. J. 144 (2009). But see Mary Ellen O’Connell, *Remarks: The Resort to Drones Under International Law*, 39 DENV. J. INT’L L. & POL’Y 590-91 (2011) (“The International Court of Justice (ICJ) has said that the armed attack must be attributable to a state for the exercise of self-defense on that state’s territory to be lawful . . . . [B]efore you can take offensive measures against another state, that state has to be responsible for the first unlawful use of force.”).

<sup>96</sup> See GRAY, *supra* note 78, at 164.

<sup>97</sup> TOM RUYTS, ‘ARMED ATTACK’ AND ARTICLE 51 OF THE UN CHARTER: EVOLUTIONS IN CUSTOMARY LAW AND PRACTICE 433-42 (2010). See also Sean D. Murphy, *Terrorism and the Concept of “Armed Attack” in Article 51 of the U.N. Charter*, 43 HARV. INT’L L. J. 47, 47-50 (2002).

<sup>98</sup> See Michael, *supra* note 95, at 135.

<sup>99</sup> *British-American Diplomacy The Caroline Case*, AVALON PROJECT, <http://avalon.law>.

According to the principles established by the *Caroline* incident, a state resorting to self-defense must “show a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation . . . justified by the necessity . . . and kept clearly within it.”<sup>100</sup>

As stated in the *Caroline* incident, necessity, proportionality, and immediacy are considered to be the bedrocks of self-defense.<sup>101</sup> Immediacy is the temporal aspect of self-defense and relates to the timeframe of an armed attack.<sup>102</sup> Necessity means there is an exigency to use force in response to an armed attack, because there is “no practicable alternative means of redress” within reach.<sup>103</sup> In other words, a state can rely on self-defense when peaceful measures have reasonably been exhausted, or when diplomatic efforts have clearly proved futile.<sup>104</sup> Proportionality focuses on counter attacks, and doctrine states that “[t]o comply with the proportionality criterion, [s]tates must limit the magnitude, scope, and duration of any use of force to that level of force which is reasonably necessary to counter a threat or attack.”<sup>105</sup> It operates in tandem with the necessity requirement in that the use of force must not go beyond what is necessary to halt the armed attack.<sup>106</sup>

The “unwilling or unable” doctrine is generally defined as “the right of a victim state to engage in extraterritorial self-defense where the host state is either unwilling or unable to take measures to mitigate the threat posed by domestic non-state actors.”<sup>107</sup> The doctrine seeks to balance the right of sovereignty against that of self-defense and begins with the presumption that all states have an obligation<sup>108</sup> to make certain their

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yale.edu/19th\_century/br-1842d.asp (last visited Sept. 23, 2016).

<sup>100</sup> James A. Green, *Docking the Caroline: Understanding the Relevance of the Formula in Contemporary Customary International Law Concerning Self-Defense*, 14 CARDOZO J. INT’L & COMP. L. 435 (2006).

<sup>101</sup> LUBELL, *supra* note 58, at 44.

<sup>102</sup> See JAMES A. GREEN, THE INTERNATIONAL COURT OF JUSTICE AND SELF-DEFENSE IN INTERNATIONAL LAW, 103–04 (2009).

<sup>103</sup> DINSTEIN, *supra* note 73, at 232.

<sup>104</sup> See RUYLS, *supra* note 97, at 95.

<sup>105</sup> INT’S & OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GEN.’S LEGAL CTR. & SCH., U.S. ARMY JA 422, OPERATIONAL LAW HANDBOOK ch. 1, at 4 (2015). See also Gill, *supra* note 75, at 196.

<sup>106</sup> Kimberley N. Trapp, *Back to Basics: Necessity, Proportionality, and the Right of Self-Defense Against Non-State Terrorist Actors*, 56 INT’L COMP. L. Q. 146 (2007).

<sup>107</sup> Gareth D. Williams, *Piercing the Shield of Sovereignty: An Assessment of the Legal Status of the ‘Unwilling or Unable’ Test*, 36 U. N. S. W. L. J. 625 (2013).

<sup>108</sup> G.A. Res. 25/2625, annex, Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the

territory is not used for acts contrary to the rights of other states.<sup>109</sup> If the host state is either unwilling or unable to prevent its territory from being used in contravention of international law, the victim state has the right to engage defensively against the non-state actor.<sup>110</sup>

However, the parameters of the doctrine remain relatively unclarified.<sup>111</sup> For instance, who determines whether the host state is unwilling or unable? It is generally suggested that the victim state should make that determination.<sup>112</sup> Regardless, the victim state must take into account the host state's capacity or willingness "as part of the assessment as to whether the use of force in self-defense is necessary."<sup>113</sup>

The legal basis for the unwilling or unable doctrine is not specified as a basis for self-defense pursuant to Article 51 of the UN Charter,<sup>114</sup> but originates from the responsibility of neutral parties pursuant to the *Hague Convention (V)*.<sup>115</sup> In this context, sovereignty of the host state is increasingly understood also in terms of responsibility, including its responsibility to prevent its territory from being used as a base for

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United Nations, ¶ 1 (Oct. 24, 1970) ("Every State has the duty to refrain from organizing, instigating, [or] assisting . . . terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts.").

<sup>109</sup> Louise Arimatsu & Michael N. Schmitt, *Attacking "Islamic State" and the Khorasan Group: Surveying the International Law Landscape*, 53 COLUM. J. TRANSNAT'L L. BULL. 1, at 21 (2014).

<sup>110</sup> See Trapp, *supra* note 106, at 147. See also Daniel Bethlehem, *Self-Defense Against an Imminent or Actual Armed Attack by Non-State Actors*, 106 AM. J. INT'L L. 776 (2012).

<sup>111</sup> See Ashley S. Deeks, "Unwilling or Unable": *Toward a Normative Framework for Extraterritorial Self-Defense*, 52 VAJ. INT'L L. 519–33 (2012). The following parameters are suggested for victim states considering use of force under the doctrine. First, a victim state should seek consent if the circumstances permit time for diplomatic efforts. Second, the victim state must request that the host state address the threat, and give the host state time to respond. *Id.* If a victim state deems that time does not permit such action, or after making a reasonable assessment that the host state lacks the control or capacity to suppress the threat, the victim state should act under this doctrine. *Id.*

<sup>112</sup> See *id.* at 495–96. But see Dawood I. Ahmed, *Defending Weak States Against the "Unwilling or Unable" Doctrine of Self-Defense*, 9 INT'L L. & INT'L REL. 21 (2013) (arguing that the United Nations Security Council (UNSC) should act as a fact-finder and information transmitter and make this determination in order to protect weak states from unilateral determination by strong states).

<sup>113</sup> Williams, *supra* note 107, at 639–40.

<sup>114</sup> See *id.* at 630.

<sup>115</sup> Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land art. 5, Oct. 18, 1907, 36 Stat. 2310 (prohibiting neutral powers from allowing belligerents to conduct hostile operations within their territory).



activities that are harmful to security across its borders.<sup>116</sup> Accordingly, the doctrine prioritizes the right of self-defense above the principle of territorial sovereignty if the host state fails in its responsibility to prevent organized armed groups from posing a threat to victim states.

Recently, many states, including the United States, Russia, Turkey, and Israel have justified their extraterritorial use of force on the basis of the unwilling or unable doctrine.<sup>117</sup> This shows that there has been an increasing state practice that suggests the unwilling or unable doctrine is considered lawful under current international law.<sup>118</sup> Consequently, with the expanding phenomenon of non-attributable, non-state actor, cross-border armed attacks, it is apparent that the doctrine will have growing relevance and importance in international law.<sup>119</sup>

#### IV. Legal Basis for the Use of Force Against the Islamic State in Syria

Since June 2014, the IS has controlled large swaths of territory both in Iraq and Syria. Thousands of innocent civilians have lost their lives, and hundreds of thousands have fled their homes due to the IS attacks.<sup>120</sup> The U.S.-led coalition of states taking active military action in Syria generally use individual self-defense or collective self-defense of Iraq as their legal basis for use of force. Russia based its military involvement on consent pursuant to the invitation of the Syrian government. However, there are still many states that remain uncommitted on the grounds that there is an ambiguity as to the legal basis for military action in Syria.<sup>121</sup> Therefore, it is worth taking a closer look into the legal terrain created within the Syrian territory.

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<sup>116</sup> See Trapp, *supra* note 60, at 21–22.

<sup>117</sup> Israel's use of force against Hezbollah in Lebanon in 2006, Turkey's defending its resort to force against Partiya Karkeren Kurdistan (PKK) terrorists in Northern Iraq, and Russia's use of force against Chechen rebels in Georgia in 2002 are the examples. See Williams, *supra* note 107, at 626; see also Hakimi, *supra* note 12, at 13–14.

<sup>118</sup> See Deeks, *supra* note 111, at 486.

<sup>119</sup> Trapp, *supra* note 60, at 2.

<sup>120</sup> Arimatsu & Schmitt, *supra* note 109, at 3.

<sup>121</sup> *Id.* at 4.

### A. Consent of the Syrian Government

The Syrian government did not expressly consent to the U.S.-led coalition of states conducting military operations in Syria. After the coalition states began airstrikes within Syria on September 23, 2014, the Syrian Foreign Minister warned the U.S.-led coalition “not to conduct airstrikes inside Syria against the Islamic State without the Syrian government’s consent.”<sup>122</sup> Even though there were some early speculations concerning the Syrian government’s implied consent to coalition airstrikes,<sup>123</sup> the progress of events proved that it was not a valid justification for military actions.<sup>124</sup>

Conversely, according to the Syrian government’s statement, Bashar al-Assad sent a letter to his Russian counterpart asking for support to fight against terrorists.<sup>125</sup> On September 30, 2015, the Russian Parliament approved a resolution by President Putin to conduct airstrikes against the IS in Syria.<sup>126</sup> On the same day, Russian military jets began launching airstrikes over Syrian territory.<sup>127</sup> From the outset, Russia justified its operations on the basis of Assad regime’s consent.<sup>128</sup> However, the open-

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<sup>122</sup> See Seina Karam, *Syria Warns U.S. Against Bombing ISIS Without Permission*, NAT’L POST (Aug. 25, 2014, 8:35 PM), <http://news.nationalpost.com/news/syria-warns-u-s-against-bombing-isis-without-permission>. However, the airstrikes were taking place in areas totally controlled by the IS. United Nations Secretary General, Ban Ki Moon, seemed to affirm this when he announced that “[T]he strikes took place in areas no longer under the effective control of that [Syrian] [g]overnment.” See Michelle Nichols, *Exclusive: United States Defends Syria Airstrikes in Letter to U.N. Chief*, REUTERS (Sept. 23, 2014, 3:11 PM), <http://www.reuters.com/article/us-syria-crisis-un-usa-exclusive-idUSKCN0HI22120140923>.

<sup>123</sup> There were arguments among legal scholars concerning implied consent of Syria based on statements from a Syrian government Spokesperson, stating, “We are facing an enemy. We should cooperate.” See *Attacks on Islamic State: Another Long War*, ECONOMIST (Sept. 27, 2014), <http://www.economist.com/news/briefing/21620220-americas-bombing-raids-so-called-islamic-state-syria-have-greatly-increased-its>.

<sup>124</sup> Arimatsu & Schmitt, *supra* note 109, at 10.

<sup>125</sup> Albert Aji & Bassem Mroue, *Syria’s Assad Welcomes Russian Decision on Sending Troops*, THE BIG STORY (Sept. 30, 2015, 9:30 AM), <http://bigstory.ap.org/article/8d80568a19bd4556a5e14a1c661ed874/syrias-assad-welcomes-russian-decision-sending-troops>.

<sup>126</sup> See *Russia Joins War in Syria: Five Key Points*, BBC NEWS (Oct. 1, 2015), <http://www.bbc.com/news/world-middle-east-34416519>.

<sup>127</sup> See *id.*

<sup>128</sup> Statements of the Russian Foreign Minister equated Russia’s legal position to that of the U.S.-led coalition states. However, there is a critical difference. The Iraqi government, which invited the United States to assist in their defense, had been duly elected and is considered to be the legitimate government of the Iraqi people. Whereas the legitimacy of

ended agreement between Russia and Syria, which allowed unrestricted passage of Russian personnel and material into Syria and permitted Russia to conduct military operations without Syrian input, raised “questions about Russia’s broader ambitions in Syria and the region.”<sup>129</sup>

## B. The UN Security Council Actions

The UNSC has not issued a resolution giving member states specific authority to use force in Syria. However, the UNSC has issued resolutions urging member states to disrupt the IS’s financial and recruitment aspects. In Resolutions 2170 (2014) and 2178 (2014), the UNSC condemned the actions of the IS, expressed its gravest concern that the territory in part of Iraq and Syria was under control of the IS, and principally urged member states to stop individuals believed to be foreign terrorist fighters crossing their borders.<sup>130</sup> The UNSC Resolution 2199 (2015) aimed at curtailing the funding streams of the IS. The Resolution 2199 (2015) condemned those buying oil from the IS, and called upon states to end ransom payments.<sup>131</sup> In UNSC Resolution 2249 (2015), the Council called upon member states that have the capacity to do so to take all necessary measures in the territory under the control of the IS.<sup>132</sup> It provided a “creative ambiguity,” seeming to authorize use of force in Syria, but lacked the specific Chapter VII formula that is usually used when the UNSC intends to take a binding action.<sup>133</sup>

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the Syrian government, having been disowned by such an enormous segment of its population and having lost control of its territory, has been contested in the international community. See Nick Robins-Early, *Russia Says Its Airstrikes In Syria Are Perfectly Legal. Are They?*, WORLD POST (Oct. 1, 2015, 05:33 PM), [http://www.huffingtonpost.com/entry/russia-airstrikes-syria-international-law\\_us\\_560d6448e4b0dd85030b0c08](http://www.huffingtonpost.com/entry/russia-airstrikes-syria-international-law_us_560d6448e4b0dd85030b0c08).

<sup>129</sup> Molly McKew, *Details of Moscow’s Deal with Syria Reveal Extent of Russian Dominance*, THE WASH. FREE BEACON (Jan. 19, 2016, 12:20 PM), <http://freebeacon.com/national-security/details-of-moscows-deal-with-syria-reveal-extent-of-russian-dominance/> (asserting that Syria gave away considerable sovereignty to Russian military); see also Michael Birnbaum, *The Secret Pact Between Russia and Syria that Gives Moscow Carte Blanche*, WASH. POST (Jan. 15, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/01/15/the-secret-pact-between-russia-and-syria-that-gives-moscow-carte-blanche/>.

<sup>130</sup> S.C. Res. 2170 (Aug. 15, 2014); S.C. Res. 2178 (Sept. 24, 2014).

<sup>131</sup> S.C. Res. 2199 (Feb. 12, 2015).

<sup>132</sup> S.C. Res. 2249 (Nov. 20, 2015).

<sup>133</sup> Dapo Akande, *Embedded Troops and the Use of Force in Syria: International and Domestic Law Questions*, EJILTALK! (Sept. 11, 2015), <http://www.ejiltalk.org/embedded-troops-and-the-use-of-force-in-syria-international-and-domestic-law-questions/>. But see Marc Weller, *Permanent Imminence of Armed Attacks: Resolution 2249 (2015) and the*

### C. Collective Self-Defense of Iraq and Individual Self-Defense of Other Victim States

On June 25, 2014, the Iraqi government wrote a letter to the UNSC noting that “ISIL has repeatedly launched attacks against Iraqi territory from eastern Syria.”<sup>134</sup> In its second letter, Iraq announced that “ISIL has established a safe haven outside Iraq’s borders that is a direct threat to the security of our people . . . . The presence of this safe haven made our borders impossible to defend.”<sup>135</sup> In the same letter, the Iraqi government gave notice that it had requested assistance from the U.S.-led coalition to strike ISIL sites. This satisfied a key condition for collective self-defense, “a request from a state that has been the victim of an armed attack.”<sup>136</sup>

Following the request from Iraq, the U.S. government declared that it “initiated necessary and proportionate military actions in Syria in order to eliminate the ongoing ISIL threat to Iraq.”<sup>137</sup> The U.S. government also asserted that “States must be able to defend themselves, in accordance with the inherent right of individual and collective self-defense.”<sup>138</sup> Furthermore, in September 2014, sixty-two other countries committed support to the U.S.-led coalition to work together to stop the IS’s advances and assist Iraq.<sup>139</sup>

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*Right to Self-Defence Against Designated Terrorist Groups*, EJIL TALK! (Nov. 25, 2015), <http://www.ejiltalk.org/permanent-imminence-of-armed-attacks-resolution-2249-2015-and-the-right-to-self-defence-against-designated-terrorist-groups/> (arguing that UNSC Resolution 2249 can be interpreted as making it easier for states to make argument for individual self-defense).

<sup>134</sup> Permanent Rep. of Iraq to the UN, Letter dated June 25, 2014 from the Permanent Rep. of Iraq to the UN addressed to the President of the Security Council, U.N. Doc. S/2014/440 (June 25, 2014) [hereinafter UN Letter] (stating also that “ISIL has since been terrorizing citizens, carrying out mass executions, persecuting minorities and women, and destroying mosques, shrines, and churches”).

<sup>135</sup> Permanent Rep. of Iraq to the UN, Letter dated Sept. 20, 2014 from the Permanent Rep. of Iraq to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2014/691 (Sept. 22, 2014).

<sup>136</sup> See Arimatsu & Schmitt, *supra* note 109, at 23.

<sup>137</sup> Permanent Rep. of the United States of America to the UN, Letter dated Sept. 20, 2014, from the Permanent Rep. of the United States of America to the UN addressed to the Secretary-General, U.N. Doc. S/2014/695 (Sept. 23, 2014) [hereinafter the U.S. Letter to the UN].

<sup>138</sup> *Id.*

<sup>139</sup> See Annalise Lekas, *ISIS: The Largest Threat to World Peace Trending Now*, 30 EMORY INT’L L. REV. 324 (2015). Five Arab countries; Bahrain, Jordan, Saudi Arabia, Qatar, and the United Arab Emirates participated in airstrikes in Syria from the beginning. *Id.*

On July 25, 2015, Turkey declared that it had commenced military operations against the IS in Syria, in coordination with the U.S.-led coalition, in order to counter the terrorist threat and safeguard its territory and citizens.<sup>140</sup> In its letter to the UNSC, the Turkish government relied on both individual and collective self-defense as reflected in Article 51 of the UN Charter. Moreover, in late 2015, the governments of the United Kingdom and Australia announced that they had begun undertaking military operations against the IS in Syria in the exercise of the collective self-defense of Iraq.<sup>141</sup> France followed these states on September 9, 2015, submitting a letter to the UNSC in which it declared that it had taken military actions in response to attacks carried out by the IS from Syria.<sup>142</sup> Lastly, the Netherlands announced that it planned to join the U.S.-led coalition with airstrikes targeting the IS in Syria.<sup>143</sup>

Taking into account the IS's military capacity and the scale of attacks it has conducted to date, it is clear they are something more than just a criminal organization.<sup>144</sup> It is unquestionable that the military action taken either in individual or collective self-defense is necessary and proportionate with regard to the IS.<sup>145</sup> Excluding the issue of state attribution, it is reasonable to conclude that the military action taken by the U.S.-led coalition states in the exercise of both individual and collective self-defense, are lawful.<sup>146</sup> However, the IS's armed attacks are not directly attributable to the Syrian government, regardless of the symbiotic relationship that may exist between them. Therefore, what

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<sup>140</sup> See Permanent Rep. of Turkey to the UN, Letter dated July 24, 2015 from the Permanent Rep. of Turkey to the UN addressed to the Secretary-General, U.N. Doc. S/2015/593 (July 24, 2015) (stating that the IS's terrorist attacks took the lives of Turkish citizens including a Turkish soldier and Turkey is under the imminent threats of continuing attacks from the IS).

<sup>141</sup> See *Battle for Iraq and Syria in Maps*, BBC NEWS (Feb. 10, 2016), <http://www.bbc.com/news/world-middle-east-27838034>.

<sup>142</sup> See Permanent Rep. of France to the UN, Letter dated Sept. 9, 2015 from the Permanent Rep. of France to the UN addressed to the Secretary-General and the President of the Security Council, U.N. Doc. S/2015/745 (Sept. 9, 2015) (asserting that it had taken action in accordance with Article 51, but it was not clear whether this referred to attacks against Iraq or France).

<sup>143</sup> See *Dutch to Join US-Led Airstrikes Against IS in Syria*, N.Y. TIMES (Jan. 29, 2016, 11:25 AM), <http://www.nytimes.com/aponline/2016/01/29/world/europe/ap-eu-nether-lands-syria.html>.

<sup>144</sup> Bilal Khan, *The Use of Force Against ISIS*, JURIST (July 9, 2014, 12:00 PM), <http://jurist.org/hotline/2014/07/bilal-khan-force-isis.php>.

<sup>145</sup> *Id.*

<sup>146</sup> See Mark Weller, *Islamic State Crisis: What Force Does International Law Allow?*, BBC NEWS (Sept. 25, 2014), <http://www.bbc.com/news/world-middle-east-29283286>.

remains to be discussed at this stage is whether the Assad regime is “willing and able” to suppress the threat posed by the IS even after Russia’s intervention.

#### D. Is the Syrian Government “Willing and Able” to Deal with the Islamic State?

The United States declared in its letter to the UN that the Syrian government is unwilling and unable to prevent the use of its territory from the attacks of the IS and noted that it had initiated necessary and proportionate military actions in Syria.<sup>147</sup> Other coalition states carrying out airstrikes against the IS in Syria, including Canada, Turkey, and Australia also referenced the unwilling or unable doctrine in their letters to the UN<sup>148</sup>

In September 2015, the Syrian government sent two letters to the UN in which Syria contested the coalition states’ interpretation of Article 51, and announced that combating terrorism on the ground requires cooperation and close coordination with the Syrian government.<sup>149</sup> Can these letters be interpreted to mean an offer—and be seen as a sign of willingness—for the Assad regime to cooperate with the western states in countering the IS threat? Arguably, no. First, it would be infeasible and unlawful for the western states to cooperate with the Assad regime, whose systematic violations of international law, and even use of chemical weapons, brought the region nearly into an international armed conflict with many of the states that are now conducting operations against the

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<sup>147</sup> UN Letter, *supra* note 134 (“The Syrian regime has shown that it cannot and will not confront these safe havens effectively itself.”).

<sup>148</sup> See Jonathan Horowitz, *A Legal Map of Airstrikes in Syria (Part 1)*, JUST SECURITY (Dec. 7, 2015, 1:20 PM), <https://www.justsecurity.org/28167/legal-map-airstrikes-syria-part-1>. Additionally, British Prime Minister Cameron declared that “the Assad regime is unwilling and/or unable to take action necessary to prevent ISIL’s continuing attack on Iraq.” See David Cameron, *David Cameron’s Full Statement Calling for UK Involvement in Syria Air Strikes*, TELEGRAPH (Nov. 26, 2015, 1:44 PM), <http://www.telegraph.co.uk/news/politics/david-cameron/12018841/David-Camerons-full-statement-calling-for-UK-involvement-in-Syria-air-strikes.html>.

<sup>149</sup> See H. Said, *Foreign Ministry: British, Australian, and French Military Measures Against Syria Violate UN Charter*, SANA (Sept. 17, 2015), <http://sana.sy/en/?p=55063>. The letters assert that the Syrian Army has been successful in its fight against terrorist organizations, while the western armies yielded nothing tangible. *Id.*

IS.<sup>150</sup> Secondly, prior to the rise of the IS, many states called for Assad's ouster due to the number of atrocities committed by his regime against its own people.<sup>151</sup> Thirdly, conducting coordinated military measures by western states under Assad regime's control would put countries at substantial risk of Syrian intelligence operations against their militaries.<sup>152</sup> Therefore, those letters do not show that the Assad regime was willing to cooperate with western states to suppress the IS threat. Additionally, any fair-minded person who can closely observe the case would understand that Assad was playing a double-game and was not acting in good faith.<sup>153</sup>

On the other hand, this issue of consent as a sign of willingness to combat the IS may be moot. The legal considerations seem to have changed after Russia began conducting airstrikes in Syria. The Russian government justified its military action as part of a fight against terrorism, upon the invitation of the Syrian government.<sup>154</sup> So, does Russian intervention change the legal landscape for the U.S.-led coalition against the IS?

The crucial question is whether Syria and Russia are really willing to suppress the IS threat.<sup>155</sup> While Russia claimed its airstrikes were targeting the IS militants,<sup>156</sup> the NATO and U.S. officials stated that

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<sup>150</sup> Claus Kress *The Fine Line Between Collective Self-Defense and Intervention by Invitation: Reflections on the Use of Force Against 'IS' in Syria*, JUST SECURITY (Feb. 17, 2015, 8:45 AM), <https://www.justsecurity.org/20118/clauss-kress-force-isil-syria/>.

<sup>151</sup> CNN Wire Staff, *Al-Assad reflects calls for ouster as U.N. team visits Syria*, CNN (Aug. 21, 2011, 4:53 PM), <http://www.cnn.com/2011/WORLD/meast/08/21/syria.unrest/index.html>

<sup>152</sup> Ryan Goodman, *International Law on Airstrikes Against ISIS in Syria*, JUST SECURITY (Aug. 28, 2014), <https://www.justsecurity.org/14414/international-law-airstrikes-isis-syria/>.

<sup>153</sup> *Id.*

<sup>154</sup> Liz Sly & Andrew Roth, *Russia Defends Syria Airstrikes Amid Claims of Blows to U.S.-backed Rebels*, WASH. POST (Oct. 1, 2015), [https://www.washingtonpost.com/world/russia-vehemently-defends-syrian-airstrikes-and-denies-targeting-us--backed-rebels/2015/10/01/cddada92-67af-11e5-bdb6-6861f4521205\\_story.html](https://www.washingtonpost.com/world/russia-vehemently-defends-syrian-airstrikes-and-denies-targeting-us--backed-rebels/2015/10/01/cddada92-67af-11e5-bdb6-6861f4521205_story.html)

<sup>155</sup> Major Patrick Walsh, *What if Assad Becomes Willing Now that Russia is Able?*, LAWFARE (Oct. 20, 2015, 8:16 PM), <https://www.lawfareblog.com/what-if-assad-becomes-willing-now-russia-able>.

<sup>156</sup> Russia seems to have tailored its military operations to address the immediate vulnerabilities of the Assad regime by conducting airstrikes and launching artillery fires on the opposition-held territory. Russia also increased its force protection capabilities, long-range surface-to-air missile systems, which have little or no value in the direct fight against the IS. See Hugo Spaulding, *5 Huge Myths About Russia's Military Intervention in Syria*, BUS. INSIDER (Nov. 30, 2015, 6:47 PM), <http://www.businessinsider.com/5-huge-myths-about-russias-military-intervention-in-syria-2015-11>.

Russia is in fact targeting moderate opposition groups in order to support the Assad regime.<sup>157</sup> Setting aside Russia's claims about targeting the IS, there are allegations about Russia's cooperation with the IS at a gas facility in northern Syria known as the Tuweinan gas facility, which has been a site of collaboration between the IS and a Russian energy company.<sup>158</sup>

Furthermore, there are accusations from the international community that Russia intensified its airstrikes against Turkmen populated areas, killing many civilians and displacing thousands of others.<sup>159</sup> Apart from that, tens of thousands of Syrians had to flee the city of Aleppo after intense Russian airstrikes, which took place on February 5, 2016.<sup>160</sup> In another incident, Russian warplanes targeted medical facilities and schools in Azaz and Idlib regions in Syria, which killed almost fifty civilians on February 15, 2016.<sup>161</sup>

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<sup>157</sup> Nick Robins-Early, *What Putin's Airstrikes Mean For Syria*, WORLD POST (Sept. 30, 2015, 7:32 PM), [http://www.huffingtonpost.com/entry/russia-airstrikes-syria-isis\\_us\\_560c1a7ce4b0af3706def546](http://www.huffingtonpost.com/entry/russia-airstrikes-syria-isis_us_560c1a7ce4b0af3706def546); see also Robert Chesney, *Does Article II Authorize the U.S. Military to Defend CIA-Trained Syrian Forces against a Russian Attack?*, LAWFARE (Oct. 1, 2015, 5:01 PM), <https://www.lawfareblog.com/does-article-ii-authorize-us-military-defend-cia-trained-syrian-forces-against-russian-attack> (arguing that U.S. forces have a right to defend the Syrian opposition groups, trained by the Department of Defense, in the event of an attack from the Russian forces).

<sup>158</sup> See Ceren Kenar & Ragip Soylu, *Why Are Russian Engineers Working at an Islamic State-Controlled Gas Plant in Syria?*, FP (Feb. 9, 2016), [http://foreignpolicy.com/2016/02/09/why-are-russian-engineers-working-at-an-islamic-state-controlled-gas-plant-in-syria/?utm\\_source=Sailthru&utm\\_](http://foreignpolicy.com/2016/02/09/why-are-russian-engineers-working-at-an-islamic-state-controlled-gas-plant-in-syria/?utm_source=Sailthru&utm_) The Tuweinan gas facility is said to be under IS control since early 2014. *Id.* A Russian energy company, through a Syrian subcontractor, continued the facility's construction with the IS's permission, using Russian engineers to complete the project.

<sup>159</sup> *Map Shows Russian Airstrikes Target Syrian Moderate Opposition and Civilians, not Daesh*, DAILY SABAH (Nov. 27, 2015), <http://www.dailysabah.com/syrian-crisis/2015/11/27/map-shows-russian-airstrikes-target-syrian-moderate-opposition-and-civilians-not-daesh>. See also Bassem Mroue, *Dozens killed after suspected Russian airstrikes hit schools, hospitals in Syria*, STAR (Feb. 15, 2016), <https://www.thestar.com/news/world/2016/02/15/dozens-killed-after-suspected-russian-airstrikes-hit-schools-hospitals-in-syria.html>

<sup>160</sup> See John Davison, *Thousands Flee as Russian-Backed Offensive Threatens to Besiege Aleppo*, REUTERS (Feb. 6, 2016, 5:39 AM), <http://www.reuters.com/article/us-mideast-crisis-syria-aleppo-idUSKCN0VE0ZA>. Video footage shows thousands of innocent civilians massing at the Bab al-Salam crossing on the Turkish border. *Id.* An opposition spokesman said, "The situation in Aleppo is a humanitarian catastrophe." *Id.*

<sup>161</sup> See Suleiman Al-Khalidi & Lisa Barrington, *Around 50 Dead as Missiles Hit Medical Centers and Schools in Syrian Towns*, REUTERS (Feb. 15, 2016, 5:10 PM), <http://www.reuters.com/article/us-mideast-crisis-syria-missiles-idUSKCN0VO12Y>. The UN Secretary-General Ban Ki Moon announced that the attacks "were a blatant violation of international law." *Id.* The UN spokesman Farhan Haq said, "These incidents cast a



State sovereignty entails an obligation to prevent its territory from being used as a base for armed attacks against other states. In the case of Syria, the Assad regime has proved to be unwilling and unable to prevent its territory from being exploited by the IS to plan, prepare, and execute attacks against victim states such as Iraq, Turkey, and France.<sup>162</sup> Even after Russian intervention, it seems fair to conclude that Syria is still unwilling and unable to impede the IS attacks from its territory. Russia's involvement has not proved to substantially neutralize, degrade, or defeat the IS. In fact, Russian intervention created a new risky dynamic in an already complex conflict.<sup>163</sup> Therefore, the U.S.-led coalition and other victim states may continue to lawfully take forcible action in relation to the IS in areas beyond the control of the Syrian government in the exercise of both collective self-defense of Iraq and individual self-defense of other victim states.<sup>164</sup>

## V. Conclusion

The Islamic State is the most deadly terrorist group operating in the world today. It controls large areas in both Iraq and Syria, posing an unprecedented threat to international peace and security.<sup>165</sup> The U.S.-led coalition of more than 60 states has engaged in international efforts to counter the IS threat in Syria since September 2014.<sup>166</sup> Recently, Russia began military operations in Syria.<sup>167</sup> In the midst of this chaos, there has been significant debate concerning the legal basis of using force against the IS in Syria.

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shadow on the commitments made at the International Syria Support Group meeting in Munich on February 11." *Id.*

<sup>162</sup> Michael Lewis, *What Does the "Unwilling or Unable" Standard Mean in the Context of Syria?*, JUST SECURITY (Sept. 12, 2014, 9:05 AM), <https://www.justsecurity.org/14903/unwilling-unable-standard-context-syria/>.

<sup>163</sup> Charles Lister, *Russia's Intervention in Syria: Protracting an Already Endless Conflict*, BROOKINGS (Oct. 21, 2015), <http://www.brookings.edu/research/opinions/2015/10/21-russia-intervention-in-syria-lister>.

<sup>164</sup> Marc Weller, *Islamic State Crisis: What Force Does International Law Allow?*, BBC NEWS (Sept. 25, 2014), <http://www.bbc.com/news/world-middle-east-29283286>.

<sup>165</sup> Daniel R. DePetris, *The 5 Deadliest Terrorist Groups on the Planet*, NAT'L INTEREST (Nov. 16, 2014), <http://nationalinterest.org/feature/washington-watching-the-5-deadliest-terrorist-groups-the-11687>.

<sup>166</sup> See *Syria: US Begins Air Strikes on Islamic State Targets*, *supra* note 11.

<sup>167</sup> See Payne et al., *supra* note 13.

There are three different legal bases that states employ to justify their actions according to the present facts and circumstances: the Syrian government's consent to Russia's intervention pursuant to Article 51 of the UN Charter; individual self-defense of states, such as Iraq, Turkey, and France, which have been direct victims of IS armed attacks; and collective self-defense on behalf of Iraq, upon the invitation of the Iraqi government.

Even though Russia's intervention following Assad regime's invitation seems to have a solid legal basis in international law, Russia's targeting of moderate opposition groups instead of the IS has produced considerable objection.<sup>168</sup> Additionally, Russia's unique agreement with Syria has raised questions concerning Russia's true ambition in the region.

The U.S.-led coalition states have generally justified military action based on individual or collective self-defense.<sup>169</sup> The actual situation in Syria supports the assertion that the Syrian government is still unwilling *and* unable to prevent its territory from being used by the IS to plan, prepare, and execute attacks in Iraq and in other victim states.<sup>170</sup> Russian intervention did not change this reality on the ground, as the IS still controls significant portions of territory in Syria.<sup>171</sup> In this context—under the broader reading of Article 51 of the UN Charter, and in accordance with the ICJ's case law and state practice—military actions taken in the exercise of both collective self-defense of Iraq and individual self-defense of other victim states against the IS in Syria are lawful.

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<sup>168</sup> See Robins-Early, *supra* note 157.

<sup>169</sup> See U.N. Letter, *supra* note 134, *see also* Lekas, *supra* note 139.

<sup>170</sup> See Lewis, *supra* note 162.

<sup>171</sup> See Lister, *supra* note 163.