



PERSPECTIVES

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Are Israeli Raids on Syrian Targets Legal?

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EXECUTIVE SUMMARY: Israel's recent raids against Syrian targets are lawful and law-enforcing. Facing an increasingly dangerous Hezbollah, Jerusalem correctly understands that even a failed state has legal obligations not to assist in terrorist assaults against Israel. These obligations, concerning Syria in particular, are authoritatively codified in treaty-based and customary international law. Moreover, in consequence of Syria's active and unambiguous complicity with Hezbollah, Israel has a corresponding obligation to prevent and/or mitigate such terrorist crimes. This obligation, which Israel is undertaking well within the limitations of humanitarian international law, is owed both to citizens of the Jewish State and to the broader community of nations.

Syria, a country in the midst of chaos, has launched multiple aggressions against neighboring Israel. In recent years, most of these assaults have assumed the form of heavy weapons transfers to Hezbollah, a Shiite terror group with not only genocidal views about the Jewish State but also correspondingly destructive military capacities. Moreover, the *de facto* army of Hezbollah – a fanatical adversary sponsored by non-Arab Iran – has become even more threatening to Israel than the regular armies of its traditional Arab state enemies.

These are not just operational or strategic matters. From the standpoint of international law, Israel has an unassailable right to launch appropriate measures of self-defense against Syria. Accordingly, the Israel Air Force has been conducting selective strikes against relevant targets inside Bashar al-Assad's fractured country.

Significantly, almost exactly one year ago, in April 2016, Israeli Prime Minister Benjamin Netanyahu confirmed for the first time that Israel had been attacking convoys transporting advanced weapons within Syria bound for Hezbollah. Among other substantial ordnance, these weapons included SA-17 anti-aircraft missiles, Russian arms that could enable Hezbollah to shoot down Israeli civilian aircraft, military jets and helicopters, and drones.

(It is plausible that at least some of the latest Israeli-targeted weapons are of North Korean origin. Until Israel's preemptive September 6, 2007 "Operation Orchard," an expression of "anticipatory self-defense" under international law, Syria had been actively working towards a nuclear weapons capacity with North Korean assistance and direction.)

Certain noteworthy operational ironies ought to be referenced here. For one, Israel's regular need to act against Hezbollah could inadvertently enlarge the power of ISIS and/or other Sunni militias now operating against Israel in the region. For another, because the Trump administration in Washington remains reluctant to criticize Russian war crimes in Syria (or anywhere else, for that matter), Jerusalem now has less reason to seek security assurances from the US.

But our concern here is law, not strategy or tactics. As a purely jurisprudential matter, Israel's measured and discriminate use of force against Hezbollah terrorists and associated targets in Syria has been conspicuously consistent with legal rules concerning *distinction*, *proportionality*, and *military necessity*. Although both Tehran and Damascus sanctimoniously identify Israel's defensive actions as "aggression," these actions are supported, *inter alia*, by Article 51 of the UN Charter. Under law, Israel, in the fashion of every other state on the planet, has a primary and incontestable prerogative to remain alive.

Legally, there is nothing complicated about the issues surrounding Israel's counter-terrorist raids within Syria. By willfully allowing its territory to be used as a source of Hezbollah terrorist weapons against Israel, and as an expanding base for anti-Israel terrorist operations in general, Assad has placed Syria in unambiguous violation of both the UN Charter and the wider body of international rules identified in Article 38 of the UN's Statute of the International Court of Justice.

There is more. Because Syria, entirely at its own insistence, maintains a formal condition of belligerency with Israel (that is, a legal "state of war"), no charge levied by Damascus or Tehran of "Israeli aggression" makes jurisprudential sense.

More practically, of course, Syria has become a failed state. In some respects, at least, with the Assad regime in full control of only limited portions of Damascus, Aleppo, and the Syrian Mediterranean coast, it makes little legal sense to speak of "Syrian responsibility" or "Syrian violations." Nonetheless, even amid the collapse of traditional boundaries between states, the Syrian president must bear full responsibility for blatantly illegal arms transfers to a surrogate Shiite militia.

For Israel, the principal legal issues here are easy to affirm. Express prohibitions against pro-terrorist behavior by any state can be found in Articles 3(f) and 3(g) of the 1974 UN General Assembly Definition of Aggression. These prohibitions are part of customary international law, and of what are identified in Article 38 of the ICJ Statute as "the general principles of law recognized by civilized nations."

Following the 1977 Protocols to the Geneva Conventions of August 12, 1949, insurgent organizations are expected to comply with humanitarian international law, sometimes called the law of armed conflict. Additionally, any documented failure to comply, such as resort to "human shields" (a common practice with Hezbollah) would be known in formal law as "perfidy."

Under international law, every use of force by states must be judged twice: once with regard to the justness of the cause, and once with regard to the justness of the means. This second standard concerns core issues of humanitarian international law. Specifically, even when it can be determined that a particular state maintains a basic right to apply force against another state, this does not automatically imply that any such use would comply with the law of war.

In defending itself against Hezbollah terror, Israel's actions have always been consistent with humanitarian international law. In stark contrast to the Shiite terrorist militias operating in Lebanon and southern Syria, and similarly unlike the Syrian-supported Islamic Jihad Sunni forces, who intentionally

target noncombatants, Israel has been meticulous about striking exclusively hard military targets in raids on Syria.

Unlike Syria, which even in its currently attenuated form opposes any peaceful settlement with Israel, Jerusalem resorts to defensive force only as a last resort. As for Syrian charges that Israel's actions somehow raise the risk of "escalation," this alleged risk would disappear entirely if Damascus and Tehran ceased their lawless support of Hezbollah and other criminal organizations. In this connection, it should be recalled, terrorism is always a codified crime under binding international law. It is never considered a permissible form of national liberation or self-determination.

Ultimately, the lawfulness of Israel's use of force against Hezbollah terrorists, and against Hezbollah-bound weapons in Syria, is supported by the inherent right of "anticipatory self-defense." Augmenting the specifically post-attack right of self-defense found in Article 51 of the UN Charter, this customary international law doctrine entitles any endangered state to use appropriate force preemptively; that is, whenever the "danger posed" is "imminent in point of time." In the face of a prospectively endless stream of Hezbollah terrorist rocket attacks upon its innocent civilian population, Israel maintains not only the juridical right but also the clear obligation to protect its citizens.

"The safety of the people," said Cicero, the ancient Roman Stoic, "shall be the highest law." In classical political philosophy as well as in documented jurisprudence, the obligation of a sovereign to assure protection for citizens or subjects is immutably primary and utterly beyond question. Israel need make no apologies for choosing to defend itself against Syrian-sponsored Hezbollah aggression.

International law is never a suicide pact.

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