

German Parliament Report: U.S. Presence in Syria Is Illegal

by MOA via cyd - Moon of Alabama *Tuesday, Jul 10 2018, 11:24pm*

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The Scientific Services of the German Bundestag are the equivalent to the Congressional Research Service in the United States. Members of Parliament can ask the services to give their neutral expert opinions on legal questions and other issues. Opinions by the Scientific Services are held in high regard.

[Alexander Neu](#), a Member of Parliament for the Left Party in Germany, requested an opinion on the legality of the military presence and operations by Russia, the United States and Israel in Syria.

The result ([pdf](#), in German) is quite clear-cut:

- Russia was asked by the recognized government of Syria to help. Its presence in Syria is without doubt legal under International Law.
- U.S. activities in Syria can be seen as two phases:

Regime Change

The provision of arms to insurgents in Syria by the U.S. (and others) was and is illegal. It is a breach of the Prohibition on the Use of Force in international law specifically of the UN Charter [Article 2\(4\)](#):

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Fight against ISIS

The U.S. [argues](#) that its presence in Syria is in (collective) self-defense under Article 51 of the UN Charter because the Islamic State in Syria threatens to attack the United States. That, in itself, would be insufficient as Syria is a sovereign state. The U.S. therefore additionally claims that the Syrian state is "unwilling or unable" to fight against the Islamic State.

The Scientific Services says that the claim of "unwilling or unable" was already dubious when the U.S. operation started. This for two reasons:

- It is not law or an internationally accepted legal doctrine. (The 120 members of the Non-Aligned Movement (NAM) and others have argued strongly [against](#) it.)
- The Syrian government itself was fighting ISIS, but it could not operation in large parts of its territory where the Islamic State had taken control. Some argue that this justified the "unable" argument. But ISIS is largely defeated and it no longer has any significant territorial control.

The already dubious legal case for the presence of U.S. (and other 'coalition' troops in Syria) can thus no longer be made. The U.S. presence in Syria is illegal.

- Israel's attack on Hizbullah and Iranian units and installations in Syria, as well as against Syria itself, are claimed by Israel to be 'anticipatory self-defense' under UN Charter Article 51. But 'anticipatory self-defense' could only be claimed when attacks against Israel were imminent. That case has not been made. The Israeli attacks are thus 'pre-emptive self defense' which is not an accepted doctrine of International Law.

The service was not asked for an opinion on Turkey's incursion into Syria but it notes that claims of 'self defense', as Turkey makes in its fight against Kurdish entities in Syria, are often abuses for Geo-strategic purposes.

So far the Scientific Services opinion.

The given legal arguments are not new. Other have long reasoned along the same lines and came to the same result.

But Germany is a partner of the U.S. coalition of the willing against ISIS. Its military has flown reconnaissance missions from Turkey and Jordan in support of the U.S. operation under the same legal argument the U.S. made. The German parliament is now unlikely to renew the mandate for the anti-ISIS operation. Other countries will likely follow and end their participation in the U.S. coalition.

While this is will not change the situation on the ground in Syria it does change the international political atmosphere. It also 'rehabilitates' the Syrian government in the European public eye as it can no longer be depicted as an 'enemy.'

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