

TURKISH PRE-EMPTIVE STRIKES ON NORTHERN IRAQ AND THE BUSH DOCTRINE

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Abstract

85 year-old-history of the Republic of Turkey, terrorism has been the most sanguinary combat since the war of independence. In the period of twenty years, the vital problem is a nightmare that it emerged from southeast Anatolia and spread gradually other regions. The south-eastern question is a considerable threat against the territorial integrity in Turkey. During this stressful term, Turkey has been made twenty five massive military operations up to now against separatist movement which caused more than 37.000 citizens killed. Indeed, what is special to these operations? In fact, it is resorted to use of military force against another sovereign state's -Iraq- territorial integrity. Turkey has been used of force in northern Iraq in order to destroy terrorist groups. Last operation occurred three months ago via Turkish air forces and finally ended with eight-day aggression from land last month. In the light of these developments, therefore, current arguments escalate in the international agenda. Has Turkey violated to international law? These aggressions infringed upon Iraq's territorial integrity or not! I would like to dwell on current international terrorism and the use of force issue in this article. I also try to debate these impressive questions; does it possible to overwhelm terrorism merely with a military victory? Does the military defeat mean that the authorities will start to genuine approach for reconciliation about Kurdish question and will this allow Turkey to reform its friendly relations with Iraq?

Keywords: The Bush Doctrine, Use of Force, Pre-Emptive Strike, Self-Defence, Turkey

Introduction

The long history of just war in various cultural traditions must be sought elsewhere. However, the current legal regime, which is based upon the United Nations Charter, can only

be understood adequately in relation to certain antecedents, and these must be examined.³³ The rules governing resort to force form a main factor within international law and, together with other principles such as territorial sovereignty and the independence and equality of states, provide the framework for international order.³⁴

The use of force, in the face of current practice of states, appears to have become accepted in international law as a means to resolve international disputes in relation to territorial claims, ethnic conflicts, terrorism and the right to self-defence. In particular, Turkey has been resorted to force so many times to ensure national security against terrorist attacks in southeast of the country. The role and manifestation of the use of force in international field is, of course, dependent on political and other illegal factors as well as on the current state of the law, but the law must seek to provide adequate mechanisms to restrain and punish the resort to violence all around the world.³⁵

The essentials of the current legal regime just outlined reappear in the United Nations Charter brought into force on 24 October 1945. Article 2³⁶ particularly formulates certain principles which bind both the Organisation and its Members.³⁷

Article 2(4) has been described as the corner-stone of the Charter system and principle of customary international law.³⁸ Turkey has been criticised and condemned especially means of article 2(4) in the international area because of last military operation against terrorists in Northern Iraq. It means that Turkey has resorted to force illegally to Iraq's territorial integrity. Iraq also is an independence state and member of UN.

Article 2(4) was elaborated as a principle of international law in the 1970 Declaration on Principles of International Law and analysed systematically. Firstly, wars of aggression constitute a crime against peace for which there is responsibility under international law.³⁹ Secondly, states must not threaten or use force to violate existing international frontiers or to solve international disputes. This principle is obviously related to Turkish military operations to Northern Iraqi frontier. Because, Turkish troops has infringed the Iraq's north boundary to

³³BrownlieI., 'Principles of Public International Law', 6th ed., Oxford, 2003, p.697.

³⁴ Shaw, M. N., 'International Law', 4th ed., Cambridge, 1997, p.777.

³⁵ Shaw, p.777.

³⁶The key provisions for present purposes: (3). All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence if any state, or in any other manner inconsistent with the Purposes of the United Nations.

³⁷ Brownlie, p.699; Dinstein, Y., 'War, Aggression and Self-defence', p. 81; Shaw, p.781.

³⁸ Brownlie, p.699; Dinstein, p. 80-81; Shaw, p.781.

³⁹ Article 19(3) of the International Law Commission's Draft Articles on State Responsibility provides that a serious breach of an international obligation of essential importance for maintenance of international peace and security may constitute an international crime for which the state may be criminally liable.

collapsed terrorist groups. Anyway, thirdly, states are under a duty to refrain from acts of reprisal involving the use of force. Although territorial integrity is violated by the Turkish armed forces, both local Kurdish representatives and formal Iraqi Government showed self-possessed behaviour during the operation. Fourthly, states must not use of force to deprive peoples of their right to self-determination and independence. And fifthly, states must refrain from organising, instigating, assisting or participating in acts of civil strife or terrorist acts in another state and must not encourage the formation of armed bands for incursion into another state's territory. Many of items are crucial, but ambiguous.⁴⁰

The Right of Self-Defence

The traditional definition the right of self-defence in customary international law occurs in the Caroline Case. This dispute revolved around an incident in 1837 in which British subjects seized and destroyed a vessel in an American port. This had taken place because the Caroline had been supplying groups of American nationals, who had been conducting raids into Canadian territory. In the correspondence with British authorities which followed the incident, the American Secretary of State laid down the essentials of self-defence.⁴¹

On the other hand, Article 51⁴² reserves the right of individual or collective self-defence 'if an armed attack occurs against a Member of the United Nations', and this is described as 'the inherent right'. At the Merits phase of the Nicaragua Case it was recognized that this formulation refers to pre-existing customary law.⁴³ In other words the court mentioned as follows:

As regards the suggestion that the areas covered by the two sources of law are identical, the Court observes that the United Nations Charter, the convention to which most of the United States argument is directed, by no means covers the whole area of the regulation of the use of force in international relations. The Court therefore finds that Article 51 of the Charter is only meaningful on the basis that there is a natural or inherent right of self-defence, and it is hard to see how this can be other than of a customary nature, even if its present content has been confirmed and influenced by the Charter.⁴⁴

⁴⁰ Shaw, p.781-782.

⁴¹ Ibid., p.787.

⁴² Charter provides: '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. Measures taken by members in the exercises of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security'.

⁴³ Brownlie, p.700; Dinstein, p.82-89; Shaw, p.788.

⁴⁴ The Nicaragua Case, Nicaragua vs the US, ICJ Reports, 1986, 94, para.176.

The current legal regime has some essential questions of interpretation. First question is related to the formulation ‘against the territorial integrity or political independence of any state’. According to some writers, it should depend upon this language to produce substantial qualifications of the prohibition of the use of force, and the United Kingdom applied this kind of argument to defend the mine-sweeping operation to collect evidence within Albanian waters in the Corfu Channel Case⁴⁵. However, the preparatory work of the Charter is adequately clear and this phrasing was introduced precisely to provide guarantees to small States and was not intended to have a restrictive effect.⁴⁶

Second question is about the phrase ‘armed attack’, it is argued that article 51 in conjunction with article 2(4) now specifies the scope and limitations of the doctrine.⁴⁷ This is further and particularly controversial issue of interpretation relates to the phrase ‘armed attack’. Some writers take the view that ‘armed attack’ has a reasonably clear meaning which necessarily excludes anticipatory self-defence, but this position requires clarification. Indeed, since the phrase ‘armed attack’ strongly suggests a trespass it is very doubtful if it applies to the case of aid to revolutionary groups and forms of subversion which do not involve offensive operations by the forces of a state. Sporadic operations, for example, by army would also seem to fall outside the concept of ‘armed attack’.⁴⁸

On the contrary, this spreading of the doctrine is potentially dangerous and could lead to its use in almost any dispute between states. Anticipatory self-defence should be narrowly defined because of its ambiguity and because in the wrong circumstances it can cause the very conflicts it seeks to limit.⁴⁹

The International Court of Justice in the Nicaragua Case⁵⁰ has clearly constituted that the right of self-defence exists as an inherent right under customary international law as well as under the UN Charter. It is also obviously important for definition of armed attack where the complaint of Nicaragua and the counter-case assertions of the US involved alleged support to the operations of irregular forces. The Court was stressed that:

Article 51 of the Charter is only meaningful on the basis that there is a ‘natural’ or ‘inherent’ right of self-defence and it is hard to see how this can be other than of a customary nature, even if its present content has been confirmed and influenced by the Charter...It can

⁴⁵ Corfu Channel Case, the UK vs Albania, ICJ Reports, 1949, p.4.

⁴⁶ Brownlie, p.700.

⁴⁷ Shaw, p.788.

⁴⁸ Brownlie, p.700.

⁴⁹ Public International Law lecture, Use of Force: Case Studies handout,05.12.2007, p.8.

⁵⁰ ICJ Reports, 1986, p.14, 94.

not, therefore be held that article 51 is a provision which ‘subsumes and supervenes’ customary international law.⁵¹

There are some essential developments related to anticipatory or pre-emptive self-defence in state practices until The Bush Doctrine. Since 1945 the practice of states generally has been opposed anticipatory self-defence. For example, the Israeli has attacked by armed bands as a pre-emptive strike on Syria, Jordan, Egypt and Tunisia since 1960 against terrorist movements. According to British writer Bewett, it is determined that there were 22 in 26 reprisals by the Israel in the period 1957 to 1970. Furthermore, O’Brein defined again that there were other 18 reprisals acted by the Israel in the period 1971 to 1988.⁵² The Israeli also attack on an Iraqi nuclear reactor in 1981 was strongly condemned as a violation of the Charter of the United Nations’ in Security Council Resolution 487 (1981).⁵³ Similarly, one of another example of an anti-terrorist military campaign, the 1982–2000 Israeli presence in Lebanon, shows the importance of legal restraints in anti-terrorist operations, and the hazards that can attend a failure to observe them. This episode has certain similarities to the case of Afghanistan in 2001–02, as well as some obvious differences.⁵⁴

Turkey has acted 25 military operations as a pre-emptive self-preservation on Northern Iraq since 1983. These use of force series started with regional arrangement between two neighbour countries, Turkey and Iraq. However, Turkey could not preserve its status on these land so that emerged some political crisis among them. Their international relations always effect further strategies in the Middle East in terms of international peace. Afterwards, a basic principle of the laws of war is that attacks should be directed against the adversary’s military forces, rather than against civilians. This principle, violated in terrorist attacks specifically directed against civilians, can be difficult to apply in anti-terrorist operations, because the terrorist movement may not be composed of defined military forces that are clearly distinguished from civilians.⁵⁵

Nevertheless, states may be held responsible for failing to prevent certain actions carried out by individuals, including terrorist acts. UN General Assembly Resolution 2625 (XXV) (1970)⁵⁶ – the ‘Friendly Relations’ resolution – lays down that member-states shall

⁵¹ Shaw, p.788, Brownlie, p.700.

⁵² Arend C. A.-Beck J. R., ‘International Law and the Use of Force’, London, 1993, p.152.

⁵³ Brownlie, p.702.

⁵⁴ Roberts, A., ‘Counter-terrorism, Armed Force and the Laws of War’, *Survival*, 2002, 44:1, p.13; Ulfstein, G., ‘Terrorism and the Use of Force’, *Security Dialogue*, 2003, p.154.

⁵⁵ Roberts, p.12.

⁵⁶ See also UN General Assembly Resolution 42/22 (1987), (‘Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations’),

not tolerate the use of their territory for terrorist acts. UN General Assembly Resolution 49/60 (1994),⁵⁷ on ‘Measures to Eliminate International Terrorism’, also contains a prohibition against allowing the preparation of terrorist acts that are to be carried out on the territory of other states. It is true that UN Security Council Resolution 1269 (1999) on international cooperation against terrorism was not adopted under Chapter VII and is therefore not binding. However, it refers to UN General Assembly Resolution 49/60⁵⁸ and ‘calls upon’ the member-states to implement appropriate measures, among these being to prevent the preparation of acts of terrorism within their territory.⁵⁹

Returning the Turkish claims in relation to the current strikes as one of pre-emptive self-defence acted in the international area, but we should not consider Turkish-Iraqi question on Northern Iraq without the Kurdishness and the Kurdish separatist movement.

Kurdish Ethnic Conflict and Terrorism

Turkish state has a rigid policy in relation to the Kurdish question since the beginning of the 1980s. Indeed, the Turkish state has, for a long time, consistently avoided recognizing the Kurdishness of the Kurdish question and denied that the Kurds existed.⁶⁰

When the Republic of Turkey was founded, there were not any kinds of discrimination on this territory. In addition, returning before the independence war, in the Ottoman Empire there was a Muslim millet, but no Turkish or Arab or Kurdish millets; also there were Greek and Armenian and Jewish millets, but as religious communities, not as ethnic nations.⁶¹ All people, who lived together as a brother, were fighting against common adversaries. They had been sharing similar values, but this position changed gradually in Turkey. People start to forget our common history and relationship. Today, it is obviously reflected that there is a real problem about Kurdish identity in Turkey. There are significant tribal, religious, linguistic, socio-economic, and political distinctions among Turkish Kurds. The Kurdish conflict in Turkey is primarily a conflict between the Turkish state and Kurdish nationalists, especially those represented by the Kurdistan Workers’ Party (PKK), and it entail significant regional and socio-economic dimensions.⁶²

chapter I, para 6.

⁵⁷ See also UN General Assembly Resolution 51/210 (1996), (‘Measures to Eliminate International Terrorism’), chapter I, para 5.

⁵⁸ See also UN Security Council Resolutions 1189 (1998), 1214 (1998), 167 (1999) and 1333 (2000).

⁵⁹ Ulfstein, p.161.

⁶⁰ Yegen, M., ‘The Kurdish Question in Turkish State Discourse’, *Journal of Contemporary History*, 1999, 34:4, p.555.

⁶¹ Lewis, B., ‘The Emergence of Modern Turkey’, London, 1965, p.329.

⁶² Somer, M., ‘Failures of the Discourse of Ethnicity: Turkey, Kurds, and the Emerging Iraq’, *Security Dialogue*, 2005, 36, p.116-117.

Kurdistan Workers' Party (PKK) was established in 1974 as a Marxist-Leninist insurgent group primarily composed of Turkish Kurds. The PKK sought to set up an independent Kurdish state in south-eastern Turkey, where there is a predominantly Kurdish population. Geography, politics and history have conspired to render 30 million Kurds the largest stateless people in the Middle East. The PKK had also moved beyond rural-based insurgent activities to include urban terrorism by the late 1990s.⁶³ The PKK is listed as a terrorist organisation internationally by range of states and organisations such as USA and NATO.

There is a serious destabilisation as a means of political and economic in Turkey because of this separatist movement. A consolidation of the Kurdish identity in the region as a result of Iraqi-Kurdish statehood would have destabilizing effects on Turkey only insofar as Turkish Kurds viewed their bonds with Iraqi Kurds to be their primary identity, and Turks and Kurds came to view each other as opponents.⁶⁴

In this sense, a major weakness of the Turkish state was its failure to create opportunities for the emergence of moderate political movements that represented the Kurdish identity and had mixed membership by clamping down on moderate Kurdish political actors along with hard-line Kurdish nationalists. Expectedly, post-1999 liberalization has allowed the emergence of moderate Kurdish voices inside and outside the PKK, which, threatened by such developments, has intensified its efforts to oppress these voices and ended a self-declared ceasefire vis-à-vis the Turkish government in June 2004.⁶⁵ What were the feared consequences for the domestic Kurdish conflict? Turkey appears to have tried to avert two major consequences. The first consequence was that the PKK, which fought a separatist war against Turkey between 1984 and 1999, would find a safe haven in Kurdish controlled northern Iraq. The second possible consequence was Iraqi-Kurdish statehood or autonomy.⁶⁶

Accordingly, the major conflict underlying Turkey's Kurdish question may be viewed as one that takes place between the holders of the rival and compatible definitions of the Turkish and Kurdish identities, not one between Turks and Kurds. Turkey's preventative policies toward Iraqi-Kurdish statehood appear to draw on the assumption that people, especially Turkish Kurds, hold a rival definition of their identities.⁶⁷

⁶³ See also more information <http://www.globalsecurity.org/military/world/para/pkk.htm>, 10.10.2012.

⁶⁴ Somer, p.118.

⁶⁵ Ibid., p.120.

⁶⁶ Somer, p.112-113.

⁶⁷ Ibid., p.118.

It is examined that the issue is continuing following section which is military strike on northern Iraq and tries to answer what is the importance of PKK terrorism in Turkey?

Turkish Pre-Emptive Strikes and The Bush Doctrine

Although the combat strategies of organized armies have usually failed against ethnic insurgencies, Turkey has emerged from a 20-year struggle against the Kurdish PKK separatist movement with a decisive military victory. Turkish armed forces have succeeded in eliminating most of the PKK's armed combatants and capturing the group's leader, Abdullah Ocalan, leading to the retreat of virtually all remaining PKK units from Turkish soil.⁶⁸ Turkey has resorted to use of military force twenty five times on northern Iraq in this struggling period. Some of these pre-emptive strikes were acted cooperation with Iraq.

It is required that we should consider these impressive questions in order to conceive the issue entirely. Does the military defeat mean that the authorities will now start to genuine approach for reconciliation and will this allow Turkey to reform its friendly relations with Iraq? Does it possible to overwhelm terrorism merely with a military victory? And does the separatist movement's defeat make it easier for Turkey to reach European economic standard particularly in east and south-east of the country?

When the dreadful terrorist attacks carried out against the United States on 11 September 2001 that is a watershed date for international law and practices of state. These attacks caused changing of perceptions of states against 'war of terrorism'. According to some observers, the law had been seriously challenged by the impact of 11 September, and a whole new law was emerging. But, as time went by, others observed that it was in fact possible to find solutions to the issues rose within the existing law, and that legal responses simply had to be fine-tuned to address this new situation.⁶⁹

What is terrorism? How can it be characterised in law, and in particular international law? The notion of terrorism is obviously related to that of 'terror'. In the most general sense, that term denotes an extreme fear, usually stemming from a vaguely perceived, relatively unknown and largely unforeseeable threat. In this sense, terror can be caused by human action but also by natural disasters such as volcanic eruptions or earthquakes.⁷⁰

When President Bush, nine days later from attacks, gave his first full speech about the attacks and he identified Al Qaeda as their perpetrator and laid out a detailed course of action.

⁶⁸ Aydinli, E., 'Between Security and Liberalization: Decoding Turkey's Struggle with the PKK', Security Dialogue, 2002, 33, p.209; Somer, p.113.

⁶⁹ Guillaume, G., 'Terrorism and International Law', ICLQ, 2004, 53:3,p.537.

⁷⁰ Ibid., p.537.

Then he added two memorable sentences: ‘Our war on terror begins with Al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated.’⁷¹ In particular, he stated that the new strategic doctrine of pre-emption being touted by the White House and Pentagon is that the US has the right to use military force against any state that is seen as hostile or makes moves to acquire weapons of mass destruction.⁷²

Turkey also has maintained decisively its struggling against terrorist movements as fifth-year-allied who start to global war against global terrorism all around the world. Furthermore, he resorted to use of military force -eight days with land troops- on Iraqi territorial integrity at the end of the last month. Formal Iraqi authorities strongly condemned this acted in terms of breach of the UN Charter article 2(4). Unlikely Turkish counterparts declared that use the right of pre-emptive self-defence against imminent aggression from northern Iraq soil and Turkey has to protection its citizens.

Turkish state had reached first regional arrangement about boundary security and cooperation bargain with Iraq in 1983 so that Iraq had given an authorised of hot pursuit formally at first time. However, in the period 1988 to 1991, Turkey met with Iraqi opposition and for this reason there was no military attack. Then, when he gained the local Kurdish groups supporting in 1991, hot pursuits started again serially until 1999.⁷³ During this war, more than 37.000 people have died. In 2004, the PKK resumed its violent campaign, which has escalated steadily over the past two years despite several other short-lived, unilateral ceasefires. Two recent attacks - the killing of 13 Turkish soldiers in a single clash and the killing of 12 civilians in a bus ambush - were regarded as being among the worst over recent years.⁷⁴

In the face of these terrorist attacks Turkey claimed that the right of *pre-emptive self-defence* as President Bush mentioned. Part of it’s laid out in the National Security Strategy, a document in which each administration outlines its approach to defending country. The Bush administration plan, released September 20, marks a significant departure from previous approaches, a change that it attributes largely to the attacks of September 11. To address the

⁷¹ Lemann, N., ‘The War on What? The White House and The Debate About Whom to Fight Next’, in Sifry M.L.-Cerf C. (ed), *The Iraq War Reader: History, Documents, Opinions*, New York, 2003, p.283.

⁷² Falk, R., ‘The New Bush Doctrine’, in Sifry M.L.-Cerf C. (ed), *The Iraq War Reader: History, Documents, Opinions*, New York, 2003, p.272.

⁷³ See also more information <http://www.usakgudem.com/makale.php?id=285>, 15.10.2012.

⁷⁴ O’Toole, P., ‘Profile: The PKK’, 2007, <http://news.bbc.co.uk/2/hi/europe/7044760.stm>, 25.10.2012.

terrorism threat, the president's report lays out newly aggressive military and foreign policy, embracing *pre-emptive attack* against perceived enemies⁷⁵

Sometimes, there are strong indications that a new, political struggle between Turkey and the PKK, in its own way as intensive as the first, has only just begun. Even though this new phase is more political in nature, the primacy of security and threat perceptions seems to be continuing unabated, and the Turkish security establishment seems reluctant to relinquish management of the issue to the political circles.⁷⁶

Conclusion

In the light of current developments, Turkey should take more responsible for international peace and security in the Middle East. As one of Iraq's major neighbours and as a democracy at the doorsteps of the EU, Turkey could make a major contribution to international security and development by focusing on Iraq's reconstruction and reconfiguration as a stable democracy.⁷⁷

However, the international community has not yet been able to reach an agreement on such a definition of terrorism. It pointed out that terrorism is a term without any legal significance. It is merely a convenient way of alluding to activities, whether of States or of individuals, widely disapproved of and in which either the methods used are unlawful, or the targets protected, or both.⁷⁸

The separatist terrorism has lost power seriously both in Turkey and in its organisation by the agency of Turkish pre-emptive strikes, but struggling against terrorism is not short-term progress and it is not shown its result easily. The PKK remained active politically and militarily in Turkey, Iraq, and other countries, including parts of Western Europe. The reasons for the concern with Kurdish statehood are more complex and require more critical evaluation. A substantial portion of Turkish military and political leaders long suspected the USA – and Israel – of sympathizing with Iraqi-Kurdish statehood, and they apparently believed that Kurdish statehood would reignite Kurdish secessionism within Turkey.⁷⁹

Finally, Turkey's contributing to the training of Iraqi security forces, including that of Iraqi Kurds, would be more conducive to the development of long-term trust and cooperation

⁷⁵ Bookman, J., 'The President's Real Goal in Iraq', in Sifry M.L.-Cerf C. (ed), *The Iraq War Reader: History, Documents, Opinions*, New York, 2003, p.348.

⁷⁶ Aydinli, p.210.

⁷⁷ Somer, p.110.

⁷⁸ Higgins, R., 'The General International Law of Terrorism', in Higgins R.-Flory M. (ed), *International Law and Terrorism*, London: Routledge, 1997, p.28.

⁷⁹ Somer, p.113.

between Turkey and Iraq than any deployment of Turkish troops on Iraqi soil. While the establishment of order and security is an obvious priority in Iraq now, long-term security depends on ensuring economic cooperation and development among neighbouring countries.

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