

The Largest Threat to World Peace Trending

“The Impact of Terrorist Group in Middle East and Minimization of Terrorist Activities”

Abstract

This Comment details the void in international legislation with respect to the world’s largest threat to peace currently, the Islamic State of Iraq and Syria (ISIS). Territorial boundaries ground the international legal system, inhibiting the armed intervention required to successfully combat ISIS. The United Nations (U.N.) Charter permits armed intervention in self-defense or collective self-defense and armed intervention sanctioned by the Security Council, but neither model allows States to defeat ISIS. Without armed intervention to stop the expansion of Islamic militants, terrorist organizations like ISIS will continue to flourish. The U.N. Security Council is required to maintain international peace and security and therefore, the Security Council must set clear standards that allow States to combat ISIS with the force of law. First, armed intervention must be a last resort that is limited to threats involving a high severity and probability of mass atrocities. Second, armed intervention must serve a common interest—preventing gross human rights violations and safeguarding international peace and security. The international legal system must evolve to solve the ISIS problem.

Introduction

“They threaten us and beat us if we try to resist. Often I wish they would beat me so hard I will die. But they are cowards even in this. None of them have the courage to end our suffering.”

—17-year old Yazidi girl held as a sex slave by the Islamic State. The suffering of young Yazidi women at the hands of the Islamic State of Iraq and Syria (ISIS) is unending. ISIS captures, tortures, rapes, and sells the women into slavery, leaving the members of the Yazidi, an Iraqi monotheistic religions minority, wishing they were dead. Apart from targeting Yazidis, the Islamic militants practice indiscriminate warfare, rounding up all non-believers from

ISIS is the deadliest terrorist organization operating today and the greatest threat to world peace, amassing more fighters, more funding, and more territory than any other terrorist movement. The Islamic State’s fanaticism and disciplined organization is similar to the Khmer Rouge in Cambodia and the Nazi Regime. On top of employing tactics of intimidation and public punishment, ISIS aims to exterminate entire categories of people. The group’s

Iraqi Christians to Turkmen, Shiite Muslims and fellow Sunni Muslims. As daily death tolls multiply, the number of Muslims seduced into militancy simultaneously increases. ISIS wishes to establish a State that encompasses the Arab World. The self-appointed leader of the Islamic State, Abu Bakr al-Baghdadi, spreads his sermon, urging Muslims to return to their religious obligations by waging a holy war in the name of Allah.

unparalleled ability to transmit its message, control hundreds of square miles in Northern Syria and Northern Iraq, and impose harsh Shari’a law sets the terrorists apart from Al-Qaeda. Despite ISIS’ dominant presence, it is most successful against those who cannot or will not fight back. Therefore, the real issue is whether the international legal system is prepared to stop this large-scale suffering and worldwide threat.

From the Nuremberg trials to the creation of the International Criminal Court (ICC), the international legal system has increasingly recognized individual criminal liability for waging wars of aggression and crimes against humanity. The progression of international law demonstrates a commitment to protecting human rights over national sovereignty. Further, the preamble to the United Nations (U.N.) Charter Islamic terrorist organizations like ISIS rely on a misguided interpretation of the teachings of Islam, violating basic principles of the Islamic faith to justify unimaginable crimes. The militants thrive on being called murderers by “apostates” because they believe it is a privilege and a pleasure to fight to uphold the tenets of Islam established by the Prophet Muhammad, which makes

First, in Part I, this Comment discusses the historical development of Islamic militant groups. Then, Part II reflects facts about ISIS’ activities as of April 2015. In Part III, this Comment details international regulation of armed interventions, illustrating that armed intervention in Iraq is legal within the confines of international humanitarian law, but intervention in Syria is not. Next, Part IV considers the importance of human rights law, highlighting humanitarian intervention and the U.N.’s adoption of the Responsibility to Protect doctrine, which advances the “unwilling or unable rationale.” This Comment emphasizes that each existing theory or doctrine provides insufficient legal principles to justify armed intervention in Syria. Additionally, Part V of this Comment recognizes that the ICC cannot deter the mass atrocities committed by ISIS. However, this Comment notes that armed intervention in both Iraq and Syria is necessary to stop the terrorists. Then, Part VI holds that the U.N. Security Council, under its obligation to maintain international peace and security, must implement clear standards for armed intervention to provide States the ability to overcome the ISIS threat through the force of law. First, the Security Council must recognize armed intervention to stop gross human rights violations, even when the perpetrators are non-state actors. Second, the Security Council must limit this mode of armed intervention to a last resort measure to combat threats with a high severity and probability of mass atrocities for the common interest of safeguarding international peace and security.

I. Dar-al-Islam, the Common “Home-land” of all Muslims: The Historical Development and Resurgence of Islamic Imperialism

First, Part I.A will outline the history of Islamic Imperialism and the Caliphate. Then, Part I.B will illustrate that ISIS is a resurgence of Islamic Imperialism and the Muslim Caliphate.

A. The History of Islamic Imperialism

In the words of the Prophet Muhammad, “I was ordered to fight all men until they say, ‘There is no god but Allah.’” This statement resonates considerably with Islamist militants and was reiterated centuries later by Osama Bin Laden: “I was ordered to fight the people until they say there is no god but Allah, and his prophet Muhammad.” A post-9/11 theory attributes the attacks by Al-Qaeda to the indigenous historical trends in Middle Eastern society, which illustrate that the institution of the empire originated in the Middle East and the concept of a world empire as well

reaffirmed human rights as foundational to the organization’s mission. Now, the ICC serves to bring perpetrators of international crimes to justice, a notion that once seemed unimaginable on an international scale. However, despite immense advances, the international community struggles to suppress self-initiating terrorist organizations like ISIS.

defeating ISIS so difficult. The eradication of terrorist organizations like ISIS will require a long-term strategy. This Comment will argue that the confines of international law, from U.N. Charter provisions, human rights law, and theories of humanitarian intervention to the ICC, make it difficult to take the action required to put an end to ISIS.

as universalism are closely linked to Islam. Muhammad spent the last ten years of his life building an unearthly empire in the name of Allah and intended to expand the empire beyond the peninsula, but his sudden death derailed his religious imperialist ambitions.

In the centuries following Muhammad's death, the Caliphate, a political-religious empire comprised of the Muslim community and governed by a supreme leader and successor of the prophet Muhammad called a caliph, ruled the Middle East. From the Umayyad Caliphate to the Abbasid Caliphate and the renowned Ottoman Caliphate, later generations of Muslims remember the reign of the Caliphate as the "the golden age of pure Islam." Ultimately, Islamic imperial rule ceased when the Ottoman Caliphate fell after World War I. The "imperialist dream" and the "link between religion, politics, and society" created during the Ottoman Empire lasted long after its fall. Despite a vast history of imperial rule, the Middle East Arabic speaking population never integrated or regarded themselves as one nation. Today, tensions between different factions subsist and contribute to consistent conflicts in the Middle East, which will end only with the eventual triumph of Dar al-Islam, the house of Islam. Militant groups, like ISIS, aspire to fulfill the open role as the leader of the Islamic world to require "all free male, adult Muslims to carry out an uncompromising struggle 'in the path of Allah' or jihad."

B. Reinstating the Caliphate: The Islamic State of Iraq and Syria

The Islamic State of Iraq and Syria, formerly known as ISIL, the Islamic State of Iraq and the Levant, dates back to 1999, although it claims to be a resurgence of Islamic imperialism and the Muslim Caliphate. In the mid-1990s, a Jordanian named Abu Mosab al-Zarqawi sought the creation of a "pure" Islamic State in Jordan; he was arrested and imprisoned for several years, during which time he managed to rally support for his movement. Upon his release in 1999, Al-Zarqawi moved to Afghanistan to meet with Osama bin Laden, but he decided not to join Al-Qaeda forces. Then, with the fall of the Taliban in 2001, al-Zarqawi fled to Iraq and set up the Party of Monotheism and Jihad, comprised largely of non-Iraqis.

The Party gained the attention of Osama bin Laden through its bombing campaigns, targeting Iraq's majority Shiite population, which also controlled the Iraqi political system. Eventually, the Party joined forces with Al-Qaeda as Al-Qaeda in Iraq. Later, in 2006, Al-Zarqawi was killed in United States-led airstrikes, dismantling the Iraqi branch of Al-Qaeda. However, in 2011, when United States troops completely withdrew from Iraq, Abu Bakr al-Baghdadi assumed control and amplified al-Zarqawi's ideology. In 2014, the party severed all ties with Al-Qaeda Iraq, and rebranded itself as ISIS. ISIS is a modernized splinter of Al-Qaeda that seeks to reinstate the Caliphate by creating an Islamic State that spans the Arab world. At the helm of ISIS is Caliph al-Baghdadi, a former detainee at an American camp in Iraq. Upon release in 2009, the man who would assume the role as the leader of ISIS issued a menacing warning to his captors, "I'll see you guys in New York."

The following Part will discuss ISIS in action as of April 2015—its Internet campaign, funding mechanisms, recruitment of fighters, gross human rights violations, and life in the Caliphate. Then, this Part will outline the international response to ISIS through April 2015.

II. A Message from ISIS to the World

First, Part II.A will outline ISIS' Internet campaign that assisted the militant group in raising money, instilling fear, and recruiting fighters. Next, Part II.B will summarize the violent acts perpetrated by the terrorist organization. Lastly, Part II.C will illustrate the international community's response to ISIS.

A. ISIS' Internet Campaign

The success of ISIS hinges on the group's use of social media to raise money, instill fear, and recruit fighters. Primarily, ISIS took to the Internet to disseminate their message to the world by posting videos, creating memes, and tweeting. As a result of ISIS' Internet propaganda, the militants captured the attention of wealthy "angel investors" in the Gulf region, which greatly assisted with start-up costs. Secondly, the group's avid use of social media inspired worldwide terror, while also reaching new members through "highly ritualized killings." On the one hand, videos detailing beheadings of American journalists and British aid workers were meant to intimidate the world. On the other hand, pictures with children playing in the street, militants swimming and laughing, and jihadi brides posing with luxury cars were meant to glamorize life within the caliphate as well as entice recruits to join the jihad. ISIS even tweeted pictures of their black and white flag in front of the White House. Twitter and YouTube tried to derail ISIS' advertising campaign by shutting down accounts, removing videos, and promoting hashtags such as #ISISMediaBlackout. Nevertheless, ISIS continues to garnish support for their cause.

B. ISIS in Action

One of the deadliest terrorist organizations in the world, ISIS, is recruiting more fighters, gaining more funding, and capturing more territory. As of September 2014, CIA reports estimated that ISIS had recruited 31,500 fighters in Iraq and Syria from eighty-one different countries. Further reports estimated that as of October 2014, 2,000 western fighters had joined the ISIS movement, more than a hundred of whom were Americans who had traveled or attempted to travel to Syria. Moreover, ISIS has been successful in rallying support from civilians who remain in their home country. In September 2014, a New York storeowner attempted to sell his business to donate the proceeds to ISIS. Later, in March 2015, U.S. officials arrested an air force veteran as well as a U.S. national guardsman for attempting to join ISIS. Additionally, in September 2014, U.S. intelligence officials estimated ISIS made three million dollars per day from "cash-raising activities [that] resemble those of a mafia-like organization." The group obtains millions of dollars from banks, levies taxes on small and large businesses, receives ransom in exchange for foreign hostages, trades antiquities, and sells kidnapped women and children into slavery. ISIS' largest, most profitable source of funding is oil. The militants have seized numerous oil fields in Syria as well as Iraq and sold the oil directly to the market through generations-old smuggling networks. As of April 2015, the Islamic State maintained control over about one-third of Syria and nearly one-third of Iraq. ISIS even controls entire cities, including the city of Mosul, Iraq's second largest city, and the city of Raqqa in Syria, where ISIS has established its own courts and is imposing harsh Shari'a law.

Despite gaining territory, the militants continue to target innocent civilians and seek to expand their state by way of an interpretation of Islam that contradicts key religious tenets. ISIS has been condemned for persecuting individuals for their religious beliefs, recruiting child soldiers, attacking hospitals and schools, kidnapping or detaining civilians, destroying cultural property, and obstructing the exercise of economic, social and cultural rights. ISIS rarely allows women to be out in public, has eliminated the possession of guns, and has made electricity available for a mere two hours every two or three days. Many stores are closed, and food supplies is limited. Civilians in ransacked towns are prohibited from carrying any flags other than the ISIS flag, while the terrorists destroy all non-Sunni cultural property, including shrines and graves. Yet, their terroristic reign in Iraq and Syria is not enough, and the militants continue to release videos targeting countries around the world with violence. The videos denounce the U.S. and other Western Nations, issuing direct threats to President Obama. Further, a video released in January 2015 featured the beheading of one of two Japanese hostages and a threat to take the remaining

hostage's life—a threat that the group later carried out. In a follow-up video, ISIS demanded the release of a female suicide bomber on death row in Jordan as the price of a Jordanian pilot's life. Although Jordan agreed to swap the requested terrorist for the pilot on the condition that ISIS demonstrated the pilot was still alive, on February 3, 2015, ISIS released a video of the militants burning the hostage to death in a locked cage, their most inhumane display of brutality at that point.

As disturbing videos circulate, ISIS has made plans to expand beyond Syria and Iraq. In January 2015, militants responsible for an armed assault in Libya pledged their allegiance to ISIS. In addition, following the overthrow of the Yemeni government, local jihadi groups pledged their allegiance to ISIS. In March 2015, twin suicide bombings occurred during prayers at two mosques in Sanna, the Yemeni capital, and killed approximately 120 people. In the wake of the group's expansion into Libya and Yemen, Boko Haram, a Nigerian terrorist group with thousands of fanatical fighters, the Egyptian Sinai-based jihadi group, Ansar Beit al-Maqdis, the Soldiers of the Caliphate of Algeria, Sons of the Call for Tawhid and Jihad in Jordan, and Abu Sayyaf in the Philippines all pledged *bay'ah* (allegiance) to ISIS. The terrorist organization also claimed responsibility for the deadliest terror attack in Tunisia, and founded new chapters in Afghanistan, Pakistan, and Saudi Arabia. ISIS is gaining supporters from the Atlantic to the Hindu Kush and competing with Al-Qaeda to dominate the region in pursuit of global jihadist leadership.

C. The International Response to ISIS

In 2004, the U.N. Security Council adopted Resolution 2170 under the Chapter VII powers of the U.N. Charter. The Resolution condemned ISIS' attacks against civilians on the basis of ethnicity or religious beliefs as gross, widespread abuses of human rights that might constitute crimes against humanity, and emphasized the importance of bringing perpetrators and foreign fighters to justice. In the Resolution, the Security Council,

1. Deplore[d] and condemn[ed] in the strongest terms the terrorist acts of ISIL and its violent extremist ideology, and its continued gross, systematic and widespread abuses of human rights and violations of international humanitarian law;
2. Strongly condemn[ed] the indiscriminate killing and deliberate targeting of civilians, numerous atrocities, mass executions and extrajudicial killings.

The Security Council “call[ed] upon all States to take all measures as may be necessary and appropriate in accordance with their obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance perpetrated by individuals or entities associated with [ISIS].” Further, in September 2014, sixty-two countries pled support to a U.S.-led coalition to work together to stifle the groups' advances and assist Iraq, who requested the help of the U.S. to fight ISIS in collective-self-defense.

President Obama justified the U.S.'s leadership role in the fight against ISIS on the broad language of the 2001 Authorization for Military Force (AUMF) against the Taliban and Al-Qaeda as well as the 2002 AUMF in Iraq. The U.S. conducted airstrikes against Al-Qaeda targets to advance this argument. However, in a January 2015 State of the Union Address, President Obama informed the American public that he would seek Congressional approval to take action to combat ISIS. Since the U.S. began leading the international coalition to fight ISIS in August 2014, President Obama has deployed 3,000 troops to Iraq and spent more than one billion dollars to conduct airstrikes. The U.S., France, Britain, Australia, Jordan, and Saudi Arabia, among others, continue to conduct airstrikes. The U.S. launches airstrikes in both Iraq and Syria; several other States, including Britain, launch airstrikes in Iraq, but have refrained from launching airstrikes in

Syria. From August 2014 to March 2015, the United States-led coalition has launched 1,700 airstrikes against ISIS in Iraq, and the U.S. alone has launched 946 airstrikes in Syria. Further, American, Canadian, and British soldiers have voluntarily traveled to Iraq to fight against ISIS alongside the Kurdish militia, which is backed by the U.S. In conjunction with U.S. airstrikes, in January 2015, Kurdish ground troops pushed ISIS out of the Syrian town of Kobani, a major loss for the extremist group. In addition, the U.S. assumed a lead role in the offensive on Tikrit, conducting airstrikes to aid Iraqi ground forces in regaining control of the city. On March 31, 2015, Iraqi Prime Minister Haider al-Abadi announced that Iraq had successfully recovered Tikrit from ISIS. Iraqi forces planned an offensive on Mosul in April or May of 2015. Yet, despite current world action, ISIS continues to seize new territory. Airstrikes have forced ISIS caliph al-Baghdadi into hiding, but the air campaign has not stopped ISIS from committing acts of violence.

III. Armed Intervention Under the United Nations Charter

The following Part discusses the legality of armed intervention to combat ISIS under the U.N. Charter. First, Part III.A will outline the two permissible methods of armed intervention against the territorial sovereignty of a Nation State expressed in the U.N. Charter: Security Council-sanctioned intervention and self-defense. Then, Part III.B will analyze international case precedent that limits the use of self-defense based on three principles: necessity, proportionality, and immediacy. Lastly, Part III.C will discuss whether self-defense justifies armed intervention to combat ISIS and illustrate that armed intervention in Iraq to combat ISIS is legally justified under the principle of collective-self-defense. However, Part III.C argues that armed intervention in Syria is illegal and concludes that the U.N. Charter bolsters territorial sovereignty but fails to address the threat posed by ISIS.

A. Armed Intervention Under the U.N. Charter

Jus ad bellum, the longstanding legal principal governing when a nation may resort to force, is reflected in the U.N. Charter. Largely, the Charter prohibits the use of force by one State against another. Article 2(4) asserts “[a]ll 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 U.N. Charter.” However, under Chapter VII, the Charter details two circumstances under which States may resort to the use of force against another State. In the event of a threat to peace, breach of peace or act of aggression, Member States can lawfully resort to force if: (1) the U.N. Security Council sanctions the use of force, or (2) a State resorts to force in self-defense. International law recognizes a State’s right to protect its territorial integrity, permitting the use of force, or armed intervention, in the face of armed conflict. Traditionally, an armed conflict occurred when a State resorted to extensive armed force against States, a State government, an organized armed group, or groups within a State. Now, after 9/11, when the U.N. Security Council acknowledged the U.S.’s inherent right of self-defense in response to the attacks launched by Al-Qaeda, the notion that non-state actors can also engage in armed conflict has arguably become common State practice. ISIS is an organized group of non-state actors that resorted to armed force in Iraq and Syria; therefore, action is necessary to stop the conflict.

Under Chapter VII of the U.N. Charter, first, Article 42 allows the Security Council to pass a resolution to “restore international peace and security,” and second, Article 51 allows intervention in self-defense against an armed attack. If the U.N. Security Council sanctions armed intervention, the intervention is legally justified. Throughout its history, the Security Council has sanctioned peacekeeping missions in the Korean War, the Gulf War, and in Libya. Further, Article 51 specifies the appropriate use of self-defense:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense 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 exercise of this right of self-defense 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 and restore international peace and security.

When an armed conflict occurs that poses an imminent threat to the well-being of a U.N. Member State, the State maintains the inherent right to act in individual or collective self-defense, which allows a State to request the assistance of other States.¹¹⁸ Before resorting to armed intervention, however, an armed attack must occur. In addition, the theory of anticipatory self-defense argues that the U.N. Charter permits a Member State to resort to armed intervention in self-defense of an impending threat that presents no choice of means or moment of deliberation. Although the right of self-defense against non-state actors exists, the right to self-defense is not without limits. Rather, the lawful use of self-defense depends on the fulfillment of three conditions: necessity, proportionality and immediacy.

B. International Case Precedent: Necessity, Proportionality, and Immediacy

A prominent decision of the International Court of Justice in 1986, *Nicaragua v. United States*, limited the right to collective self-defense, addressing the elements of necessity and proportionality. The Court found collective self-defense insufficient to support the U.S.'s military intervention and use of force in Nicaragua, holding the U.S. breached its duty under international law to not infringe on a State's territorial sovereignty. Although El Salvador requested assistance from the U.S. military to suppress conflict within its borders, no evidence linked Nicaragua to the armed conflict. Allegedly assisting armed groups did not constitute an armed attack, and states do not possess a right to collective self-defense without an established armed attack. Further, the U.S. could not prove the necessity of intervention, or the need for intervention to deter or defeat an attack in the absence of any non-forceful options, because no attack existed. The U.S.'s response was disproportionate because El Salvador neither faced nor imminently feared an armed attack by Nicaragua. Finally, the U.S.'s assistance was unlawful because El Salvador was not the victim of an armed attack, and "[t]here is no rule in customary international law permitting another State to exercise the right of collective self-defense on the basis of its own assessment of the situation." Rather, the U.S.'s decision to aid Contra forces was based on international policy, not international law, and violated every sovereign state's "fundamental right to choose and implement its own political, economic and social systems." *Nicaragua* established that the direct or indirect use of military action to support subversive activities in another State defies international law and cannot be justified under the principle of collective self-defense.

More recently, in 2004, the International Court of Justice issued an advisory opinion concerning Israel's construction of a wall in occupied Palestinian territory as a means of self-defense and, in particular, the Court addressed the proportionality of Israel's response. The Court applied *Nicaragua* and held that Israel should terminate the construction of the wall. The right of self-defense failed to encompass the construction of the wall because it was not the only means to safeguard Israel against attacks and therefore, not necessary to achieve security objectives. Further, Israel could not rely on the right of self-defense to justify usurping the Palestinian's right to self-determination within occupied Palestinian territory or their liberty of movement guaranteed by the International Covenant on Civil and Political Rights. Self-defense, as sanctioned by the U.N. Charter, permits a response that is necessary and proportional, and Israel's infringement on Palestinians' basic human rights was far from proportional.

Similarly, the international legal system questioned the legality of an armed response to the terrorist attacks of September 11, 2001. President George W. Bush proclaimed the attacks as an act of war, and U.N. Security Council Resolution 1368 recognized the right to individual or collective self-defense against Afghanistan because the country allowed Al-Qaeda to flourish in its territorial bounds. In contrast, the legal basis for extending U.S. military intervention to Iraq in 2003 could not be justified under the principle of self-defense. Iraq had not launched an armed attack against the U.S., and the dictatorial nature of Saddam Hussein's regime was a matter of governance under the control of the sovereign State of Iraq.

C. Self-Defense Against ISIS

To combat ISIS, the U.S.-led coalition of more than fifty States continues to launch airstrikes and aid in training Iraqi military forces and Syrian rebel groups on the ground. As thousands of citizens from all over the world join the jihadist movement and attacks by the terrorist group persist, there is no doubt that the spread of ISIS poses a threat to the entire world. A cross-section of the world has united to suppress the movement and defeat ISIS. Despite the U.N. Security Council's adoption of Resolution 2170 condemning ISIS' attacks against civilians on the basis of ethnicity and religious beliefs, the Security Council did not sanction armed intervention as the mechanism for bringing the perpetrators to justice. Therefore, since the U.N. has not sanctioned armed intervention in Iraq and Syria, the principles of self-defense remain the only legal mode of intervention left standing. Collective self-defense justifies States' resort to armed intervention in Iraq, but fails to justify necessary armed intervention in Syria to stop ISIS.

In Iraq, collective self-defense justifies States' armed intervention. ISIS' actions pose an imminent threat to Iraq because the terrorist organization continues to attack schools and hospitals, kill civilians, and displace minorities. As of April 2015, ISIS controlled nearly one-third of Iraq, including Iraq's second largest city, Mosul, and had imposed harsh Shari'a law in its territory. The militants kidnap and detain civilians, persecute individuals for their religious beliefs, destroy cultural property, and obstruct the exercise of economic, political, and social rights. Some have argued that the Iraqi government is entitled to exercise the right of self-defense to stop the armed terrorists and that Iraq's right to self-defense allows it to seek assistance from other States to successfully defeat ISIS. Under *Nicaragua*, a State can solicit aid from another State to act in collective self-defense against an armed attack, so long as it complies with the principles of necessity and proportionality. Iraq expressly called upon the U.S. to act in collective self-defense and lead international efforts to stop the Islamic militants. Arguably, the measures taken by the Iraqi military to fight ISIS on the ground and the airstrikes led by various States are necessary to defeat ISIS and are not exceedingly aggressive. Dissimilar to Israel's construction of a wall on Palestinian territory, Iraq's actions could reasonably constitute a proportional response to the mass atrocities committed by ISIS because the use of airstrikes and ground troops is arguably the only means to safeguard civilians from persecution as well as death. Therefore, Iraq's exercise of self-defense and the legality of the U.S.-led coalition in Iraq are arguably consistent with current international law.

However, armed intervention in Syria is more difficult to legally justify. The government of Syria should be entitled to fight ISIS because the group indiscriminately executes its nationals and seized control of about one-third of the country, but the U.S. and other States cannot legally conduct airstrikes in Syria for four reasons. First, the U.S. seeks to defend armed intervention in Syria based on a continuation of its right of self-defense against Al-Qaeda under the U.N. Resolution 1368, and U.S. officials maintain that the targets in Syria are Al-Qaeda targets. Yet only eight out of twenty-two air strikes target the Khorosan group, an obscure organization associated with Al-Qaeda. ISIS is not affiliated with Al-Qaeda, as both the groups appear to have distinct and varying

objectives. Rather, ISIS and Al-Qaeda appear to operate independently and battle for global jihadist leadership. The U.S.'s justification of continued self-defense against Al-Qaeda should not be read to extend to the right to conduct airstrikes in Syria against ISIS. Similar to the use of U.S. military force in Iraq in 2003, the U.S. aims to justify its actions under international law on the basis of Resolution 1386 and Authorizations to Use Military Force in Afghanistan and Iraq, but the most legally justified means of intervention would require new approval. However, in the past, U.N. Security Council approval has been difficult to obtain on account of the permanent five veto powers. All permanent members of the Security Council must agree to sanction armed intervention and the five members are unlikely to reach a consensus. The veto power stifles necessary action to suppress gross human rights violations and large-scale threats to world peace.

Second, the British Parliament authorized airstrikes in Iraq, yet did not authorize airstrikes in Syria, highlighting the legal uncertainty that surrounds armed intervention in Syria. Unlike the Iraqi government, the Syrian government never invited the U.S. or any other State, which is required under *Nicaragua* to invoke collective self-defense, to assist Syria in fighting ISIS. Syria's inaction in response to the U.S.'s notice prior to conducting airstrikes can neither invoke collective self-defense nor be considered consent from the Syrian government. The U.S. needs express consent from Syria to intervene militarily.

Third, the ability to act in collective self-defense in Iraq is not a blanket justification for armed intervention in Syria. *Nicaragua* holds that allegedly assisting armed groups does not establish an armed attack, thus suggesting that any assistance rendered by ISIS in Syria to ISIS in Iraq does not necessarily rise to the level of an armed attack against Iraq. Yet, even if other States could prove either an armed attack by ISIS in Syria on Iraq or an imminent threat of an armed attack, action in collective self-defense in Iraq against the territorial sovereignty of Syria is limited. Under the guidelines set forth in *Construction of a Wall*, the means of collective self-defense exercised on behalf of Iraq must be necessary to both safeguard the country against ISIS and the only means to ensure ISIS is unable to conduct future attacks on Iraq. For example, States could prevent trans-border attacks, but armed intervention could not aim to destroy all ISIS targets in Syria. Lastly, although ISIS threatens the U.S. and States worldwide, anticipatory self-defense cannot legally justify intervention in Syria because states cannot demonstrate an "instant, overwhelming" necessity to act in self-defense, or an instant necessity of armed intervention without any time for deliberation. As a result, the principle of self-defense bars necessary armed intervention in Syria to stop ISIS.

IV. Human Rights, Humanitarian Intervention and the Responsibility to Protect

The following Part will discuss the importance of human rights law, humanitarian intervention and the Responsibility to Protect (R2P) doctrine. First, Part IV.A will outline the importance of human rights in the international legal system. Then, Part IV.B describes the theory of humanitarian intervention. Lastly, Part IV.C discusses the U.N.'s adoption of the R2P doctrine, which serves as the springboard for the "unwilling or unable" rationale as a justification to armed intervention in Syria. However, Part IV concludes the legal divide in international law derails the fight to stop ISIS.

A. Human Rights

The Preamble to the U.N. Charter affirms the international legal system's commitment to protecting human rights. The Charter begins: "We the Peoples of the United Nations [d]etermined to save succeeding generations from the scourge of war.... and to affirm our faith in fundamental human rights..." In advancement of its mission to prevent war and protect human rights, the U.N. adopted several human rights conventions and doctrines. In 1948, the Universal

Declaration of Human Rights afforded legal recognition to the rights of individuals worldwide. The Declaration's thirty articles advanced the principle that all humans universally possess inalienable rights. The first article states: "All human beings are born free in dignity and rights." "They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood." The Declaration also proclaims that every human being worldwide is born free and equal. Everyone is entitled to the universal rights set forth in the Declaration, regardless of "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Principally, "everyone has the right to life, liberty and security of person." The U.N.'s desire to prevent religious and political violence is demonstrated in the Declaration's first three articles. The international community seeks to use universal human rights as a central mechanism in safeguarding peace in the world legal system. Humans have a right to life and, moreover, the right to live securely within their territory of origin.

To ensure the implementation of principles contained in the Universal Declaration of Human Rights, the U.N. adopted the International Covenant of Civil and Political Rights. The Covenant requires nations to provide their inhabitants with civil and political freedom. Article I provides the right to self-determination, which belongs to people bound together by a common culture, religion or language in a specific State, to all people. Self-determination entitles individuals to associate with a particular group. The right to self-determination refers to a cultural, economic, social, or political freedom, but the right is not absolute. The Covenant opposes religious or cultural rights that affront basic human rights, and self-determination bars an ethnic, religious or cultural group from seeking independence within the territory of their State of residence.

ISIS' actions clearly violate numerous human rights. Although the Islamic State rationalizes their wrongdoings as a holy war in the name of Islam, the terrorist group relies on a warped view of the Quran's teachings to justify violent extremism.¹⁹⁹ Instead, ISIS strips human beings of a life free of dignity and rights. The terrorist organization acts with disregard for individuals' right to life, liberty and security of person. ISIS executes innocent civilians, rapes women, and recruit's children to fight as soldiers in the Jihad. Civilians living in conquered territory under the strict rule of ISIS and Shari'a law risk being ripped from their families and living without food or electricity. The fear imposed by ISIS extends beyond its territory; ISIS beheads soldiers, reporters, and aid workers, recording the horror for the world to see. The militants' tactical use of intimidation terrifies the world. ISIS demanded the release of a convicted terrorist on death row in Jordan for the liberation of a captive Jordanian pilot, but the terrorists had no intention to make good on the exchange. Instead, with the world's attention at their fingertips, ISIS committed one of their most egregious human rights offenses of all, burning the pilot to death in a locked cage.

In addition, ISIS violates human being's right to self-determination. All people bound by a common culture, religion or language in a specific territory, whether Yazidis, Iraqi Christians or Shiite Muslims, possess the freedom of association. ISIS persecutes and kills individuals on the basis of their national, cultural, ethnic, religious, and political affiliation. The imposition of repressive Shari'a law displaces civil and political rights. The militants wish to destroy cultural property, including shrines and graves that belong to non-Sunni Muslims. Iraqi and Syrian nationals incarcerated in their home States under ISIS's reign must pledge loyalty to the terrorists as soldiers of Islam by displaying only the black and white ISIS flag. ISIS' attempts to prevent individuals from practicing their own religion and culture are in contravention of the Covenant on Civil and Political Rights and the right to self-determination.

B. Humanitarian Intervention

The U.N. Charter and human rights law indicate that the enforcement of human rights is imperative to international peace and security. As a result, a new viewpoint—humanitarian intervention—is gaining support in the international legal system. Humanitarian intervention allows a State to intervene in suppressing the human rights violations waged by another State against its own citizens when the intervening State seeks to abolish the repressive State’s regime and institute democracy. If a State severely subjugates human life and continuously commits human rights violations, then the international community can intervene collectively. The theory could earn a place as a legally recognizable form of armed intervention alongside U.N. Security Council sanctioned intervention and self-defense.

Legal scholars present three justifications for humanitarian intervention. The first justification is the literalist approach, which focuses on the language of the U.N. Charter. Literalists recognize that Article 2(4) prohibits the use of force against States, but argue that the prohibition seeks to prevent armed intervention that infringes a State’s territorial sovereignty and political independence. Therefore, humanitarian intervention is permissible within the language of the text because it does not seek to change a State’s territorial borders or political structure. Humanitarian intervention instead aims to liberate nationals from the repressive rule of the existing regime. The second justification is the flexible approach, which advances the idea that together the U.N. Charter’s prohibition of the threat or use of force and the organization’s commitment to human rights legalize humanitarian intervention. Lastly, the emergency approach holds that the veto powers of the five permanent members of the Security Council immobilize necessary armed intervention, which prevents the U.N. from fulfilling its obligation to maintain international peace and security. Indeed, the permanent members often fail to reach a consensus. However, when it comes to humanitarian intervention, uncertainty in the face of an international emergency diminishes, thus allowing the Security Council to properly serve its role. The three theories provide different routes to one conclusion—that humanitarian intervention is a logical extension of the U.N. Charter and human rights principles.

In 1989, the Security Council arguably approved humanitarian intervention. Belgium and Germany relied on humanitarian intervention to legally justify NATO-led air strikes to suppress the ethnic cleansing of the people of Kosovo in Serbia. After the armed intervention, the Security Council sanctioned NATO’s actions through the approval of the Kosovo settlement, which indicated that the U.N. sought to permit collective intervention beyond the veto-bound Security Council in situations of grave danger to human life. Although military intervention in Serbia failed to qualify as an armed response in self-defense, the Security Council granted a “waiver of the illegality” because stopping at the U.N Charter’s prohibition on the use of force would ignore developments in human rights law and the common practice of intervention.²³³ The Kosovo settlement suggests that the rule of law is not absolute; human rights values can overcome the importance of strictly adhering to the principles of the U.N. Charter.

Although the Kosovo settlement advanced humanitarian intervention, the legality of the theory is still uncertain. An argument in favor of humanitarian intervention claims that armed intervention is morally imperative to respond to severe human rights violations. The opposing argument views humanitarian intervention as a violation of express international law. In 2013, Great Britain attempted to rely on humanitarian intervention to justify intervening militarily in Syria to stop the government from using chemical weapons against its own nationals. Great Britain argued that the use of chemical weapons is strictly prohibited as a matter of customary international law and a gross violation of human rights, which justifies humanitarian intervention. However, a common understanding of the theory mandates the intervening State to suppress human rights violations

and liberate nationals from repressive governmental rule through the institution of a democratic regime. Under this definition, Great Britain was required to topple the Syrian government and institute a democratic regime in its place; Great Britain's sole aim, however, was to end human rights violations. Great Britain was on the right track by advancing the theory of humanitarian intervention to justify an armed attack against Syria, but international law ultimately extinguished British military intervention. Therefore, Great Britain forwent armed intervention, and the unstable environment in Syria persisted.

Humanitarian intervention pushes the bounds of armed intervention legalized by the U.N. Charter, but it fails to address the threat of ISIS in Syria for two reasons. First, the theory of humanitarian intervention applies to States. Even though ISIS commits gross human rights violations that may rise to the level of crimes against humanity, ISIS is a non-state terrorist organization operating independently within the bounds of Iraq and Syria; its actions are not attributable to either State. Second, the theory of humanitarian intervention requires States participating in the fight against ISIS to overthrow the existing repressive regime and institute democracy. Although States desire to end the human rights violations committed by the terrorists, States do not intend to overthrow President Assad's regime in Syria. A U.S. House Armed Services member remarked, "getting rid of Assad is 'part of a broader effort, but in the immediate future we have to deal with the [ISIS] threat.'" The action to combat ISIS is neither action against State actors, nor is it aimed to overthrow the existing Syrian government, rendering the theory of humanitarian intervention a non-viable justification to infringing on Syria's territorial boundaries.

C. Responsibility to Protect and the Unwilling or Unable Rationale

The U.N. continued to promote human rights through its adoption of the R2P doctrine following the 2005 World Summit. The doctrine centers on the desire to resolve the important contradiction between humanitarian needs and the principle of state sovereignty. R2P derives its authority, at least in part, from international humanitarian law, the Convention for the Prevention and Punishment of Genocide, and the Rome Statute of the ICC. If a population suffers serious harm and a State is unwilling or unable to halt or avert the harm, the international community bears the responsibility to protect that harmed population. R2P permits armed intervention in extreme circumstances that "shock the conscience of mankind, or which present a danger to international security." Additionally, the doctrine sets out six criteria to clarify when armed intervention is appropriate: right authority, large-scale loss of life or large-scale ethnic cleansing, the right humanitarian intention, a last resort measure, the minimum force necessary to achieve the object, and a reasonable chance of success. The R2P doctrine seeks to eliminate the inability to reach a consensus on how to end a humanitarian crisis before the loss of numerous innocent lives.

R2P operates as a valuable starting point; however, the common perception that the doctrine legitimizes the theory of humanitarian intervention is a misperception. The R2P doctrine does not redefine sovereignty or the bounds of legal armed intervention; instead, the doctrine simply repackages existing State obligations. First and foremost, the intervening State is required to possess the right authority, meaning the State must seek authorization from the Security Council. If the Security Council rejects a proposal or fails to address a situation within a reasonable amount of time, then either the General Assembly can consider the matter during an Emergency Special Session or regional and sub-regional organizations can act, subject to Security Council authorization. Either way, authorization is required. Second, in 2011, the Security Council authorized U.N. Member States to "take all necessary measures to protect civilians and civilian populated areas under the threat of attack in Libya," which is proffered as a defining moment in the development of the R2P doctrine and legal humanitarian intervention. Yet, the Security Council's resolution was not novel; it invoked pre-existing authority under the U.N. Charter to

carry out its mandate of regulating international peace and security through Member States. The implementation of the R2P doctrine remains consistent with current international laws, as States are not attempting to employ the doctrine at a local level to preempt human rights violations.

The enforcement of R2P principles has two inherent flaws. First, many regional players default, especially in the Middle East and North Africa. Second, although R2P permits armed intervention to halt or avert gross human rights violations, the doctrine does not represent any new legal norms or obligations in practice. For example, the international community's inaction in Syria illustrates the limits of the R2P doctrine. The doctrine should have stopped President Assad's use of chemical weapons against Syrian nationals. Yet, the paralysis of the Security Council prevented the U.S., Britain, and France from intervening.

Regardless, the U.S. channels the R2P doctrine's express language to legalize armed intervention in Syria under the "unwilling or unable" rationale:

Where a population is suffering, as a result of internal war, insurgency, repression or state failure, and the state is *unwilling or unable* to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

The United States permanent representative to the U.N., Samantha J. Power, stated in her letter to Secretary General Ban Ki-moon, "[t]he Syrian regime has shown that it cannot and will not confront [ISIS] safe havens effectively itself." Power argued that if "the government of the State where a threat is located is unwilling or unable to prevent the use of its territory for such attacks," which is the case in Syria, then States must be able to defend themselves. The "unwilling or unable" rationale expands upon traditional humanitarian intervention, allowing armed intervention to eliminate a threat in a State unwilling or unable to prevent the use of its territory to launch an attack.

Despite the R2P doctrine's aim to facilitate greater collaboration to stop mass atrocities, Islamic militant groups like ISIS persist. ISIS directly jeopardizes the right to life of people in Iraq and Syria, and potentially the whole world. The group commits acts that "shock the conscience of mankind" and "present a danger to international peace and security." For example, the organization burned a Jordanian hostage to death in a locked cage. In the face of an enemy like ISIS, the international system cannot hesitate to stop terrorists, and States should not be forced to rely on unsettled rationales. The evolution of customary law evidences how legal armed intervention has moved beyond the bounds of the U.N. Charter, but clearer norms are needed to save thousands of lives.

V. The International Criminal Court

The following Part identifies another progressive international institution, the ICC. This Part recognizes the progressive nature of the ICC, but notes that the threat of prosecution by the Court does not stall Islamic terrorists' resort to international crimes and gross human rights violations.

The ICC brings international law one step closer to suppressing crime. The ICC is founded on notions set by the Nuremberg trials, which first recognized individual liability for crimes against humanity. The Nuremberg trials held Nazi officials responsible for crimes against humanity, crimes against peace, and war crimes; now, the ICC charges individuals with the most serious crimes against humanity. The ICC retains jurisdiction over States that have ratified the Rome Statute of the ICC, the Court's founding document, and agreed to be bound by the decisions of the Court. Article 5 of the Rome Statute allows the Court to investigate and prosecute genocide, crimes against humanity, war crimes, and the crime of aggression. Further, Article 17 of the Rome Statute expressly states that if a case is being properly investigated or prosecuted by the State that has

jurisdiction over the case, the Court cannot intervene. However, the Court can intervene if action taken by the State reflects unwillingness or inability to carry out the investigation or prosecution. The Rome Statute, like R2P, suggests that a State's failure to address breaches of international law within its borders entitles the Court to intervene. To date, the Security Council has held important tribunals in the former Yugoslavia and Rwanda to condemn individual criminal actions.

Although the Rome Statute permits prosecution of international crimes, many indicted criminals remain at large because the suspects have not yet been turned over to the Court for trial. Under Article 17, the ICC likely retains jurisdiction to prosecute ISIS in Syria because the Assad regime fails to actively combat the rebel terrorist group that operates within its territorial bounds. Because Syria is unwilling or unable to suppress ISIS, the ICC should have the right to prosecute the militants. Furthermore, even though Iraq is working to eradicate the ISIS threat, the State's weak government may be unable to adequately prosecute the perpetrators, permitting prosecution in the ICC. However, the strong language in the Rome Statute has generated little success because the Court lacks cooperation from States that ratified the statute and from three permanent members of the U.N. Security Council—China, Russia and the U.S—that are not signatories. Further, terrorism is the largest threat worldwide, so ICC jurisdiction must expand to include the crime. Because ISIS militants are willing to give their lives to their “religious” cause, fear of prosecution in an international court system with ineffective enforcement mechanisms will likely not deter them. The ICC cannot put an end to ISIS's mass atrocities and combat the terrorist group in its current form.

VI. The International Legal System Must Evolve to Solve the ISIS Problem

The following Part recaps prior international treaties and doctrines discussed throughout this Comment, acknowledging the failure of the current international legal system to solve the ISIS problem. Further, Part VI details the immense threat posed by the Islamic militants, reflecting on the rise of ISIS and the resurgence of the Caliphate. This Part also discusses how new threats to international peace outpace the rigid text of the U.N. Charter. Therefore, Part VI argues that the Security Council must uphold its duty to maintain international peace and security by expressly recognizing armed intervention as a last resort to stop non-state actors that commit widespread human rights abuses.

Currently, U.N. Charter provisions, theories of legal intervention, and the ICC fail to adequately address the threat posed by ISIS. International laws inhibit armed intervention in Syria, which is necessary to successfully combat the terrorist organization. Under the U.N. Charter, airstrikes to stop the progression of ISIS throughout Iraq are legally justifiable under the principle of collective self-defense; however, the right to intervene in Syria poses a more difficult legal question. Further, the theory of humanitarian intervention, the R2P doctrine, and the “unwilling or unable rationale” are insufficient legal measures to justify armed intervention in Syria to end the ISIS threat. Lastly, the threat of prosecution in the ICC is failing to deter the rise of ISIS and cannot halt the mass atrocities underway.

However, the progression of human rights law, from the Declaration of Human Rights to the R2P doctrine and the establishment of the ICC, suggests that human rights are more important than State sovereignty. The international legal system cannot resist the force of human rights; the system must evolve alongside the trend. Terrorist organizations assemble in weaker States that lack the political, military, and governmental infrastructure to overcome threats like ISIS, such as in Syria and Iraq. Therefore, if a State itself cannot combat mass atrocities, armed intervention

needs a place in the international legal system to stop injustice, safeguard human rights, and, most importantly, protect the right to life.

ISIS emerged more aggressive and resilient than Al-Qaeda, the Taliban, and any previous group of Islamic militants, leaving armed intervention as the last viable resort to stop their terrorism. Defeating ISIS requires understanding that the organization's emotional, cultural, and psychological views influence their decision-making process and cause them to resort to horrific crimes. ISIS rebranded Al-Qaeda's ideologies and amplified the group's approach. Fanatical Islamic religious beliefs, that are contrary to the true teachings of the Qur'an, ground ISIS's movement. The militants believe in the resurgence of Islamic Imperialism and the Muslim Caliphate, refusing to stop at anything until they unite the world under one supreme Islamic ruler. Moreover, the group's biggest hurdles, the U.S.'s and Western ideals, are obstacles the terrorists seek to remove at all costs. Members' social pathologies motivate them to give their lives willingly to the Jihadist war in the name of Allah. ISIS will stop at nothing in pursuit of its goals. The terrorist group acts in complete disregard for humanitarian law, committing mass atrocities on a large scale. Legal recourse, including fear of prosecution in the ICC or the responsibility to protect the human population, has no hold on the militants. The current international legal system cannot inhibit the armed intervention required to stop ISIS; thus, it must evolve to allow such action.

States worldwide need more than a moral and ethical conviction compelling them to counterattack ISIS; States need the force of law. ISIS operates within the bounds of both Iraq and Syria, meaning effective deterrence requires armed intervention in each State. Even though U.N. Member States possess the requisite consent to enter Iraq—but not Syria—under the principle of collective self-defense, international law should not inhibit the armed intervention in Syria that is necessary to combat ISIS. Although Article 2(4) of the U.N. Charter strictly prohibits the use of force, compliance with its mandates has been inconsistent. In the international legal system, legality is a question of four things: (1) treaty law; (2) black letter contract principles that legally bind States; (3) State practice under customary international law; and (4) the common legal standards States regard as binding. With respect to ISIS, some States have disregarded the principles of Article 2(4) and attempted to stretch customary international law to justify armed intervention in Syria. Over the past quarter of a century, the prohibition on the use of force has been diminished by States to the point where “only the words remain,” which begs the question whether States can live without it.

Instead of acquiescing to international action that opposes the rule of law, the international legal system should uphold the integrity of the law by modifying established rules to improve international decision-making and to better mobilize responsive action. In a dynamic world, new threats like ISIS outpace the rigid text of the U.N. Charter; the Security Council, under its duty to maintain world peace and security, must therefore adapt international norms to modern times. Clear standards can be established through Security Council Resolutions. The Security Council previously acknowledged humanitarian intervention through the Kosovo Settlement and responses to actions in Libya, but must push a step further. First, the Security Council must recognize armed intervention to stop gross human rights violations, even when the perpetrators are non-state terrorist organizations. Second, the Security Council must set limits regarding this mode of armed intervention to prevent abuse. Armed intervention must be utilized as a last resort and be limited to threats where the severity and probability of mass atrocities rise to the level of those committed by ISIS. The international legal system cannot allow unilateral force, only collective force. Armed intervention must serve a common interest in preventing mass atrocities, safeguarding human rights, and maintaining world peace and security. Predictability, anticipation

and the elimination of the lack of international consensus will enhance the international legal system. In turn, clear standards may deter the resurgence of threats to world peace, such as radical Islamic militants, or, at the very least, prevent the rule of ISIS from deteriorating into a large-scale humanitarian disaster. In the words of the famed international legal scholar, Thomas Franck, “[t]o stand by nothing is highly immoral, and being immoral should be illegal.” The Security Council must stand by its duty to maintain international peace and security and evolve to solve the ISIS problem.

Questions a Draft Resolution should answer:

- Define the points of contention with ISIS
- Define any possible compromises
- Give detailed short term and long term solutions for a complete solution to the problem.

