

# Legal Justifications for a Safe Zone in Syria

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## ABOUT THE AUTHORS



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Brief Analysis

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**UN Security Council Resolutions 2170, 2249, and 2254 offer ample grounds for establishing a zone to protect refugees and counter the Islamic State, but shaping the international diplomatic response would be paramount given the legal gray areas inherent in such action.**

***This PolicyWatch is part of a TWI series on Syrian safe zones (<http://www.washingtoninstitute.org/policy-analysis/view/twi-series-on-syrian-safe-havens-zones>).***

Any discussion of imposing a no-fly zone, safe haven, or similar buffer area inside Syria must analyze possible legal justifications for such a measure. This means addressing various applicable laws and executive powers within the U.S. government, the relevant UN mechanisms, and the broader question of international diplomatic support.

## DOMESTIC LEGAL CONSIDERATIONS

**T**he Authorization for Use of Military Force (AUMF) of September 18, 2001, has been the primary legal vehicle enabling U.S. operations against al-Qaeda and, more recently, the Islamic State (IS or ISIL). In testimony before the Senate Armed Services Committee on December 9, 2015, Secretary of Defense Ash Carter reassured legislators that the AUMF was a sufficient legal basis for all operations against IS, including in Syria. Thus, establishing a safe or no-fly zone with the purpose of blocking IS lines of communication would seem to fall within the Obama administration's existing domestic legal authority for operations against the group.

To justify important subordinate goals for the zone -- protecting civilians and stemming the destabilizing flow of Syrian refugees to Turkey and Europe -- the administration could argue that its activities are in support of UN Security Council Resolution 2254, which specifically calls for humanitarian assistance inside Syria. The United States has ample precedent for using military personnel to assist the needy in natural disasters or wars (e.g., air

drops in Bosnia, Operation Provide Comfort in northern Iraq).

More problematic is the implicit purpose of using a safe zone to exert pressure on the Assad regime and its Iranian and Russian allies. One political justification for that goal is the Assad alliance's failure to live up to UNSCR 2254 and the February 12 Munich agreement; Russia signed the latter, and both Moscow and Tehran are party to 2254. Furthermore, many media reports have documented a CIA-run covert operation to support armed opposition against the Assad regime. Under U.S. covert action policies, such activities have to be approved by the appropriate congressional committees. This does not amount to legal approval by Congress, but it does constitute supporting evidence (albeit indirect given the classification of committee "Findings" on such matters) that the appropriate organs of Congress have generally approved administration efforts to help the opposition.

As for justifying defensive actions to protect a safe zone and personnel stationed within it, the president's constitutional authority as commander-in-chief and Chapter VII, Article 51, of the UN Charter (which established the inherent right of self-defense) should be sufficient grounds. There are certainly limits to this, however. The 2001 AUMF would be an unlikely vehicle to authorize a preemptive attack on Russian or Syrian aircraft and air defense systems based on the justification of protecting a zone designed to degrade IS.

Finally, the administration would be wise to take steps consistent with the War Powers Act -- that is, notifying Congress and pushing for it to authorize the action within the established sixty-to-ninety-day period. Such an approach would also signal American seriousness to friend and foe.

## INTERNATIONAL LEGAL CONSIDERATIONS

The latest and perhaps best analysis of the international legal aspects of a no-fly zone was published by the Institute for the Study of War (ISW) as part of its November report "U.S. Options for a Syria No-Fly Zone." Reasonably assuming that there would be no UN Security Council mandate for a zone, three potential legal justifications are evident:

- **Security Council resolutions on IS.** Here the ISW cites UNSCR 2170, which authorizes states to act against IS, and on which basis the United States and other coalition nations are conducting military operations in Syria without permission from Damascus. However, an even better legal argument can be found in UNSCR 2249 -- passed after a series of IS-linked terrorist incidents culminating in the Paris attacks -- which urged member states to "take all necessary measures, in compliance with international law, in particular with the United Nations Charter, as well as international human rights, refugee and humanitarian law, on the territory under the control of ISIL also known as Daesh, *in Syria* (emphasis added) and Iraq, to redouble and coordinate their efforts to prevent and suppress terrorist acts committed specifically by ISIL." That same resolution also urges member states "to intensify their efforts to stem the flow of foreign terrorist fighters to Iraq and Syria"; this of course would be one of the no-fly zone's specific purposes.
- **Security Council resolutions on Syria.** Here the ISW cites UNSCR 2118, but the latest resolution, 2254, is even more applicable because it presses for a ceasefire and calls for humanitarian assistance to the Syrian population (Article 12). Similar resolutions aimed at Saddam Hussein's Iraq served as implicit cover for no-fly zones over that country -- the resolutions themselves did not establish the zones, but their general admonitions about humanitarian concerns and threats to peace emanating from Iraq post-1991 served to justify action by the United States and other parties without significant legal challenge.
- **"Responsibility to protect."** This principle is not established in international law but has been used to justify action without Security Council resolutions, notably in Kosovo in 1999. Again, UNSCR 2249 authorizes "all necessary measures" against IS, inter alia, in compliance with "international human rights, refugee and humanitarian law" -- a clear acknowledgement of the "R2P" justification.

Two other legal justifications not cited in the ISW report may also be relevant. First, in the highly likely situation that the Assad regime and its partners ignore the cessation of hostilities called for in the Munich agreement -- which was negotiated under the umbrella of UNSCR 2254 and other resolutions -- then such a "violation" could justify a "force majeure" argument. For example, Washington could assert that the parties are unwilling to adhere to any international understandings and agreements on an issue of war and peace, thereby permitting other states to take action in their own interest. In particular, Article 13 of Resolution 2254 uses the strongest possible language to "demand" an end to attacks on civilians.

Second, a strong case could be made that NATO faces an emergency situation on two fronts: member state Turkey could become embroiled in broad, direct hostilities with Russia and other members of the Assad alliance, and the Syrian refugee crisis could have a destabilizing effect on the alliance's entire European wing. Both threats would seemingly legitimize limited U.S. and international action to establish a zone to protect civilians, drive out IS, and serve as a buffer between Turkey and the Assad front.

## **POLITICAL AND DIPLOMATIC CONSIDERATIONS**

**W**hile the domestic legal justification for a no-fly zone is clear cut, the situation is obviously less clear under international law. Nevertheless, enough legal justification exists under UNSCRs 2170 and 2249 against IS, and under 2249 and 2254 in support of humanitarian efforts for refugees, to make at least a "gray area" case for action. Under such circumstances, the manner in which U.S. action plays out in the international community becomes paramount. Washington has a major trump card in the current situation because the two parties most likely to challenge a zone on legal grounds would be Syria and Russia, both of which are right behind North Korea in the big league of international law violators.

Even so, any American action would have to adhere to certain principles to win broad international support. First, the United States would need to ensure that its actual actions support the strongest legal arguments -- namely, those that justify driving IS out and providing a haven for refugees and internally displaced persons. It would also have to enforce a ceasefire within the zone and prohibit even "friendly" opposition groups from launching attacks out of it. Likewise, U.S. personnel would have to train and equip opposition forces elsewhere.

Second, Washington must adhere to the principle of proportionality within the law of war. Taking any action beyond immediate self-defense against Assad and his allies would be perceived as incompatible with the zone's stated purpose.

In this regard, even if a safe zone is established, the United States would need to continue the negotiating process within the International Syria Support Group (ISSG), adhering to the letter and spirit of the Geneva, Vienna, and Munich agreements. Meanwhile, it should enlist as many members as possible from the anti-IS coalition for at least token participation in zone operations, alongside forces from the U.S. military and essential partner Turkey. It should also solicit formal declarations of support from international organs such as NATO and -- given the stakes for Syria, Lebanon, and Iraq -- the Arab League.

Finally, Washington should urge Russia to participate in the initiative, as the zone's explicit purposes would be aligned with UN and other instruments that Moscow has formally approved. While the Kremlin is unlikely to accept the invitation, making such an offer would weaken any Russian allegations about the zone's "aggressive" nature.

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