

INTERNATIONAL LAW

Assessing International Law on Self-Determination and Extraterritorial Use of Force in Rojava

By **Loqman Radpey** Friday, November 13, 2020, 8:01 AM



Kurdish forces watch over a political rally in northern Syria. Photo credit: Kurdishstruggle via Flickr

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In July 2012, Kurds living in northeastern Syria assumed control of the state institutions there to exert independent control over their internal and external affairs. They subsequently **adopted** “The Social Contract of Rojava Cantons in Syria” as the constitution of a self-proclaimed Kurdish autonomous canton union, and on March 17, 2016, issued a unilateral declaration of democratic confederalism. The name of the region has since been changed from Rojava (western Kurdistan) to Northern Syria in December 2016, and then to the Autonomous Administration of North and East Syria (AANES) in 2018 —though Rojava is still often used. These new names affirm the existence of the entity as part of Syria and an equal multiethnic polity, built on pluralism, democracy, women’s empowerment, and environmental sustainability (as per the social contract) via a consociational system. Through the

social contract, Kurdish groups have used the power of an internal form of self-determination to address the social fragmentation of Syrian society.

Rojava has not been recognized by the Syrian state and faces internal and external challenges. The greatest threat the system has faced is the Turkish invasion, which began in 2018. A close reading of international law demonstrates that Turkey's use of force in the context of Kurdish self-determination is illegal. In this situation, other states can take more serious measures to stop Turkey and may request the accused state to comply with *erga omnes* rules related to self-determination. These third-party states are also allowed to aid the Kurdish self-determination movement politically—short of dispatching troops.

The Turkish Invasion of Rojava (Northern Syria)

Turkey launched [Operation Olive Branch](#) on Jan. 19, 2018, with the deployment of Turkish troops into the Kurdish canton of Afrin in Rojava. The [argument](#) put forward by the Turkish government to justify the operation was that the intervention was necessary to “counter” the Kurdistan Workers’ Party (*Partiya Karkerên/krêkaren Kurdistanê*, PKK), the Kurdistan Communities Union (*Koma Civakên Kûrdistan*, KCK), the Democratic Union Party (*Partiya Yekîtiya Dêموكرات*, PYD), and the Islamic State, and to prevent an alleged “terrorist threat.” Many Kurdish [civilians](#) were killed during the operation. Later, Turkey occupied Afrin without objections from any third-party country or international organization.

Turkey then escalated the intervention beginning on Oct. 9, 2019; the new phase operated under the code name [Peace Spring](#) and engaged the help of the Free Syrian Army (FSA) and former members of the Islamic State. The operation followed the [U.S. decision](#) to withdraw its troops from Kurdish regions and invaded deeper into Rojava. Turkey justified its invasion in a series of [letters](#) to the United Nations in which it claimed its right to self-defense against a “direct and imminent threat” under Article 51 of the U.N. Charter and contended that it “will carry out this operation in support of efforts to facilitate the safe and voluntary return of displaced Syrians to their homes of origin.”

Turkey's justifications are controversial and could be considered a [violation](#) of the conventions governing the use of force and a breach of [other principles](#) of international law. Moreover, Turkish actions in the second phase of its intervention have incontrovertibly led to the mass displacement of people, summary executions that qualify as war crimes, and unlawful attacks, as [reported](#) by the [U.N. High Commissioner for Human Rights](#) and [Amnesty International](#). Turkey's use of force under the pretext of self-defense against the substate entity of Rojava and the de facto annexation of its territory are illegal. The use of force in the context of extracolonial self-determination is restricted by legal boundaries, but without enforcement by third-party states they are not sufficient to prevent violence.

Self-Determination and Extraterritorial Use of Force

Since 1945, colonial and a few non-colonial territorial populations like the Kurds of Rojava have been aided by the prohibition against the use of force by oppressive states. Article 2(4) of the U.N. Charter prohibits the threat or use of force by U.N. and non-U.N. members, except in instances of self-defense against armed attack under Article 51. More broadly, the charter proscribes the forceful annexation of territory. The charter interconnects the proscription of the use of force and self-determination by

prohibiting the use of force “in any other manner inconsistent with the Purposes of the United Nations.” The additional passus does not narrow the proscription—the principle of “equal rights and self-determination of peoples” is among the stated purposes of the United Nations established in Article 1(2) of the charter. The use of the word “other” extends the prohibition of the use of force to the context of equal rights and self-determination of peoples. Therefore, the use of force is banned against peoples laying a claim to their right to self-determination.

Historically, though, the United Nations has not applied these key clauses of the charter to protect political groups seeking self-determination or to condemn states that threaten them. “Territorial integrity ... of any state” under Article 2(4) does not cover territories undergoing self-determination; it does not extend to the use of force against colonial self-determination units or territories that is not covered by Article 2(4) prohibition. Though a close reading of Article 2(4) should protect self-determination projects, the United Nations has relied on other resolutions when attempting to constrain interventionist states. A relevant example concerns the African colonies of Guinea-Bissau, Angola, Cape Verde, and Mozambique, which were hindered from exercising their right to self-determination by their administering power, Portugal. The Security Council **condemned** Portugal’s “military operations and all acts of repression” preventing the people of these territories from exercising their right to self-determination and independence on the basis of Resolution 1514(XV). The Security Council did not refer to a violation of Article 2(4). In other words, Article 2(4) does not protect imperial states engaged in military operations directed against territory entitled to self-determination but controlled through forms of colonial or alien domination.

These precedents, though, demonstrate that the use of force is illegal for colonizers defending their colonial claim in a context of colonial self-determination as the use of force, in this context, is a violation of the right to self-determination. This precedent produces an interpretation of Article 2(4) that the invasion and occupation by a foreign power to decide the statehood and governmental form of a self-determined entity is likewise illegal. Moreover, the prohibition of the use of force means that no state may use force to deny the right of ethnic or racial groups equal access to government, and that no state may implement coercive measures to disenfranchise people of their right to self-determination—for example, when a self-determined unit is invaded and forcibly annexed without being allowed to opt for incorporation or any alternative status. In this case, the non-state self-determined unit may not use force to exercise its right to self-determination, but under international law, a non-state colonial entity’s use of force to assert its right to self-determination is unlikely to be characterized as illegal.

The acknowledgement of the right or capacity of the entity to exert force to defend its rights relies on the legal personality that its status as a self-determined unit confers upon it. The use of armed force is consistent with Article 7 of the General Assembly’s **Declaration on the Definition of Aggression**. In this context, the use of force is considered a form of self-defense against an oppressive state. Article 7 provides that

[n]othing ... could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations

and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination.

The international community has not yet accepted that the use of force to realize self-determination is lawful. Under the [Declaration on Friendly Relations](#) (GA Resolution 2625(XXV)), states are barred from implementing “any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.” The declaration entitles people “to seek and to receive support” in pursuit of their right to self-determination, but this is contradicted in the other relevant paragraph of the declaration, which states that “[n]othing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples.” This condition, though, is contingent on the government “representing the whole people belonging to the territory without distinction as to race, creed or colour.”

Using force to annex a self-determined territory is illegal without the consent of the people of the self-determined entity. The unlawfulness of such an annexation should be treated more severely in the special cases of a territory exercising a right of self-determination. Where a state annexes a territory on behalf of, or at least with the support of, a people having the right of self-determination, their self-determination alone does not make the annexation legal—consider Russia’s annexation of Crimea. Yet, as James Crawford [notes](#), it “may allow illegality to be more readily accommodated through the processes of recognition, whereas in other circumstances aggression partakes of the nature of a breach of a peremptory norm and is not, or not readily, curable by lapse of time or acquiescence.” On these grounds, the right of a people and its territory to self-determination will not end if the territory is annexed by an external force unless the local population consents or the annexing state is the enclaving state. The non-self-governing territories of East Timor and the Baltic states (Estonia, Latvia and Lithuania) are a few examples worth mentioning as their annexation, by Indonesia and the Soviet Union, respectively, did not end their right to self-determination. The Baltic states regained their independence in 1991, and East Timor (now Timor-Leste) achieved independence in 2002.

If a state deprives peoples of their right to self-determination, other states may request the accused state to comply with the corresponding *erga omnes* rules related to self-determination. The intervening state’s infringement on *erga omnes* obligations would oblige third-party states to take countermeasures permitted by international law against the respective state. This is possible through concerted action—for example, the General Assembly forum. A state that intends to take action unilaterally should settle the dispute peacefully (for example, with conciliation) before resorting to other necessary, proportional countermeasures such as sanctions. State practice provides examples in cases of officially unrecognized but *de facto* breaches against self-determination. The United Nations took countermeasures against [Southern Rhodesia](#) and [South Africa](#), and enforced measures against [Iraq](#). The international community must consider a state’s unilateral actions that violate peoples’ right to self-determination invalid, not recognize such situations, and respect the sovereignty and territorial integrity of respective states. They may also engage in conflict resolution.

With regard to noncolonial self-determination territories and the national liberation movements that advocate independence and self-rule, international law lacks a clear rule. In these contexts, the state has almost always prevailed because external support would be considered an unlawful intervention and is usually not provided to the secessionist or autonomy movements, while the state is entitled to receive any assistance, including military equipment, to subdue or overwhelm the liberation forces. Bangladesh (formerly East Pakistan) is an unusual case, however. Despite India's illegal, Soviet-backed intervention against Pakistan, Bangladesh was recognized as a new member of the international community.

The Need for a Robust International Response

Turkey's invasion and occupation of Syria's Kurdish regions has sparked international controversy. The Kurds are being prevented from exercising their right to self-determination under the pretext of Turkey's preemptive measures. The illegality of the de facto annexation is even more serious due to the local people's powerlessness to act. The right to self-determination of people in Afrin, Serê Kaniyê, Tell Halaf, Girê Spî, and elsewhere under Turkish occupation cannot be implemented by the occupying power; Turkey's [withdrawal](#) from northern Syria is a necessary [prerequisite](#) for the realization of local self-determination. Turkey has not abided by the truce and cease-fire agreements with the United States, and has occasionally infringed on other north Syrian cities. Turkey and its allies have also weaponized water against the Kurdish regions of northern Syria by cutting and restricting water supplies.

In its report in September 2020, the U.N. Independent International Commission of Inquiry on the Syrian Arab Republic [documented](#) continuing and widespread patterns of violations and abuses, particularly war crimes of pillage and hostage-taking, property appropriation, the use of civilian houses for military purposes by Turkish forces and the Syrian National Army, arbitrary detentions, interrogation of Kurds about their faith and ethnicity by Turkish officials, denial of food or water to Kurdish prisoners, and the coercive expulsion of civilians primarily of Kurdish origin from areas of Afrin, Serê Kaniyê, and Girê Spî under effective Turkish control. The report also documented the precarious situation of Kurdish women and girls subjected to forced marriage, abduction, rape and sexual violence. Turkish-backed forces have also participated in the looting and destruction of religious and archaeological sites of profound significance protected by UNESCO. The Turkish government has been pursuing a set of policies and institution-building efforts that may indicate plans to pave the way for de facto annexation. Since the invasion, occupied districts have been administered directly by Turkish governors; and the Turkish government has established public schools using a curriculum similar to that of the Turkish Ministry of Education, opened branches of the Turkish postal service, built a new campus of Gaziantep University, and used Turkish symbols in the public space.

The [illegal](#) second phase of the Turkish military offensive in northeastern Syria that began in October 2019 has been condemned by the [Arab League](#); the [European Council](#); [NATO](#); and the chairs of the foreign affairs committees of the parliaments of Germany, France, and the U.K., the European Parliament, and the U.S. House of Representatives. These bodies have cited Turkey's unlawful use of force against Kurdish forces and infringement on the sovereignty of the Syrian state, and called on Turkey to cease its unilateral military action and withdraw its forces from Syrian territory. Additionally, they have proposed or temporarily enacted a series of [sanctions](#) and restrictions.

Under international law, states are banned from assisting Turkey and may request that Turkey comply with obligations *erga omnes*. They also must refrain from assisting Turkey's efforts in areas where the rights of local groups are ignored. The occupying state should not be immune from condemnation and diplomatic pressure or external sanctions. Recently, Swedish Foreign Minister Ann Linde **reiterated** the EU's opposition to the Turkish intervention and urged Turkey to withdraw from Rojava, at a news conference in Ankara alongside Turkish Foreign Minister Mevlut Cavusoglu. If other states do not similarly confront Turkey, Rojava will become another example of Turkey's pattern of permanent occupation and intervention, carried out elsewhere in Northern Cyprus, Libya, Iraq and Nagorno-Karabakh.

National liberation movements recognized under international law are restricted to those colonies and other territories acknowledged by the U.N. General Assembly, such as Palestine. States are not prohibited from financially and politically aiding the Syrian Democratic Forces (SDF) as a partner in the Global Coalition against the Islamic State and other terrorist groups, and may be able to grant the SDF observer status within international organizations. The Kurdish-led SDF in Rojava and the *Peshmerga* of Iraqi Kurdistan have played a decisive role in liberating and clearing nearly all the territory that the Islamic State controlled in the region.

Self-determination is a fundamental aspect of human rights, and deference to peoples' human rights leads to the fulfillment of self-determination. The U.N. Charter makes clear that human rights broadly, and self-determination more specifically, is legally protected and that foreign states may not infringe on it. Every state has the duty to promote, through joint and separate action, the realization of the principle of equal rights and self-determination of peoples—in accordance with the provisions of the charter. States can also render assistance to the United Nations in carrying out the responsibilities entrusted to it by the charter regarding the implementation of the organization's principles.

Taking into account the laws surrounding self-determination, the use of force, and obligations *erga omnes*, a more appropriate response to protect the rights of Kurds in Rojava would be to establish a permanent internationally protected zone in northern Syria. The international community has already set a precedent for this with the success of the no-fly zone over northern Iraq in the 1990s to protect the Kurds there from Iraq's oppressive Ba'ath regime. Multilateral action to restrain Turkey and ensure the self-determination of Rojava would be the best policy to protect the rights of the local population today and international law principles into the future.

Topics: **Turkey, International Law, Syria**

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