Australia Joins Another Illegal War

by James O'Neill via sal - CounterPunch *Friday, Sep 11 2015, 12:04pm*
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> On Wednesday 9 September 2015 the Australian government announced that it was going to use the Royal Australian Air Force in bombing targets that it says can be identified as being those of ISIS, or the "death cult" as Australian Prime Minister persists in calling them.

This decision was allegedly made in response to a request from the United States to assist the US in its bombing campaign in Syria. It had already been widely reported in the Fairfax media that the Australian government in fact solicited the "request" from the Americans.

Quite how the Americans had any legal authority to request Australia's assistance in its own illegal activities is something the Australian media prefer not to discuss.

I have sought under Freedom of Information legislation the legal advice the Australian government purportedly relied upon as the legal basis for its decision. That has not as yet been forthcoming although the government claimed that it was taking legal advice as to its options.

It is doubtful that one could have any confidence in that advice, given that the current head of the Attorney-General's department, Chris Moraitis, was the co-author of the legal advice to the earlier Howard government in 2003 that there was no legal obstacle to the Australian government joining the attack upon and occupation of Iraq in March of that year. The lengths to which governments will go to ensure they receive the advice they want to hear was recently set out in a post on the excellent Craig Murray website [1].

Some commentators have suggested that for Australia to join the attack on Syria was a "legal grey area"[2] or that there is a "new rule" allowing military strikes in Syria [3]. In the latter case the author points to the minority opinion in the International Court of Justice's decision in the DRC v Uganda case [4] that a state ought to be able to use force against terrorist groups when the "host" state is unable or unwilling to do so.

That was a minority opinion for the very good reason that to embark on sanctioning such military moves would open up new and potentially very dangerous opportunities for countries with less than altruistic motives to interfere in the domestic affairs of a sovereign state.

The Australian Foreign Minister Julie Bishop, despite being a lawyer herself, is prone to ill-considered forays into international law. Her latest statement in this context was to suggest that military action could be justified because they would take place on areas of Syria that were no longer under the "effective control" of the Syrian government. This is a novel concept, hitherto unknown in international law.

Australian Prime Minister Tony Abbott went even further into uncharted legal territory. Referring to ISIS he said:

"Whether it's operating in Iraq or Syria it is an absolute evil movement and in the end, when they do

not respect the border, the question is why should we?"

The answer to that question is very short: because it is contrary to international law to do other than respect international borders except in very limited circumstances.

The starting point should be Article 2(4) of the United Nations Charter, a document clearly foreign to the Australian government's perception of its international role. That Article requires States "to refrain in their international relations from the threat or the use of force."

That this is a provision widely ignored, such as the current unrestrained assault by Saudi Arabia upon Yemen (a subject on which the Australian government is almost completely silent) does not lessen its importance.

Even more critical to what should be the Australian government's considerations in deciding to join the assault on Syrian territory is Article 51 of the UN Charter.

That Article provides that a State may only use force against another State in very limited circumstances. It may do so pursuant to a resolution of the UN Security Council authorizing such force. That has neither been sought nor obtained. The Security Council had the opportunity to do so as recently as 14 August of this year when it passed Resolution 2170 deploring the terrorist acts of ISIS, and its "continued gross, systematic and widespread abuses of human rights".

That resolution, crucially, did not authorise the use of force. Discussion of this resolution and its implications has been conspicuously absent from statements by the Australian government, from the Labor Opposition, and indeed from the media. Its absence from the debate is symptomatic of the poor level of understanding of foreign affairs in Australia.

The second exception contained within Article 51 is the right to self-defence. That is manifestly not applicable to Australia, which has not been attacked by anyone, much less ISIS, since World War 2. It is a justification that is tightly circumscribed. The self-defence must be in response to an actual attack, or an imminent threat. The response must be proportional to the threat.

Nobody familiar with the history of Australian attacks upon Iraq and Afghanistan could seriously argue that this country faced an actual or imminent threat, or that Australia's response was remotely proportional. In both cases invasion and occupation for more than a dozen years and the concomitant destruction of civil society in both countries absolutely refutes the flimsy legal justifications that were advanced.

The attacks on both Iraq and Afghanistan were based upon lies and there is no reason to believe that any greater level of truthfulness is being applied to Syria.

A State may of course invite another State to bomb others within its territory. That appears to be the current case with Iraq although there are legitimate questions about the actual sovereignty of the Iraqi government. It does not apply to Syria as the Syrian government has made no such request, nor is it ever likely to while the Assad government remains in power.

Instead, it appears that the Australian government is seeking to invoke the notion of "collective self-defence of Iraq" against ISIS fighters who move back and forth across the border.

The legal basis to that claim is vague to non-existent. It might become clearer if the Australian government releases the legal advice, which one assumes provides some sort of legal fig leaf to

cover the embarrassing opaqueness of its legal position.

The greater suspicion is that the “legal” foundation of the government’s decision is no sounder than the statements by Abbott and Bishop quoted above. In short, they are nonsensical.

The concept of collective self-defence has in fact been comprehensively analysed by the International Court of Justice in its Advisory Opinion of 9 July 2004[5]. That Opinion dealt with the legality of the wall being built by Israel in the Palestinian occupied territories.

The relevant principle from that Opinion applicable to the current Australian government’s apparent decision to invoke “collective self-defence” is that it does not apply to actions against non-State parties. ISIS, whatever its claims or ambitions may be is not a State in any legal sense of the word.

The illegal occupation of territory by conquest by ISIS within the sovereign states of Iraq and Syria does not alter that fact. It is a point the ICJ also made in connection with the occupied Palestinian territories.

The Australian government’s purported invocation of the notion of collective self-defence is therefore without any legal justification. Any attack by Australian military forces on the territory of Syria is therefore a war crime. In a just world Abbott and his cabinet would be held accountable before the International Criminal Court.

The Labor Opposition is likely to capitulate on this as it has on just about every other national security issue, not on any principled basis but because it fears being wedged by the Abbott government as being “soft” on national security.

That the Abbott government should use illegal military force for political purposes and the Opposition capitulates is a measure of the sorry state of Australian politics.

Neither the Opposition nor the media raises some very obvious questions about ISIS. Why for example, is there no discussion on the role of Turkish President Erdogan’s son and daughter in selling ISIS oil and treating wounded fighters respectively? Why would the US, allegedly fighting ISIS, try and prevent Russian planes from transiting Bulgarian and Greek air space to deliver supplies to the Assad government?

Why, further, is there no discussion at all in the Australian media, of US ambitions to displace Russia as the main supplier of gas to Europe? To do so, using the Qatar gas fields, it needs to build gas transit pipes through Iraq and Syria and that ambition is thwarted as long as President Assad remains in power.

Instead of the geopolitical analysis the situation demands we are fed a barrage of false and misleading propaganda about “death cults”.

Both major political parties have a greater fear of upsetting the dubious advantages of American “protection” than they have of being held accountable for yet another foray into other people’s wars at the behest of the Americans and, if successful, to the advantage of the Americans.

As it has done at regular intervals since 1945 Australia has acted yet again without proper regard for what are its true national interests, and yet again, is doing so outside the framework of international law.

Notes:

1. www.craigmurray.org September 9 2015. Exclusive: I can reveal the legal advice on drone strikes and how the establishment works.
2. Kevin Boreham www.theconversation.com August 25 2015.
3. Alison Pert The Drum August 24 2015. www.abc.net.au
4. DRC v Uganda www.icj-cij.org Judgment of December 19 2005.
5. www.icj-cji.org Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory July 9 2004.

http://www.counterpunch.org/2015/09/11/australia-joins-another-illegal-war/
