

War Crimes and Shifting Borders in the Middle East

Steven Blockmans

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The summer of 2014 saw an explosion of violence in the Middle East: Israel delivered a sledgehammer blow against Gaza, Lebanon was again the scene of terrorist onslaught, and the relentless war in Syria pushed the numbers of casualties and displaced people to record highs. In terms of geopolitical change, however, the advance of the 'Islamic State' and the emergence of a de facto independent Iraqi Kurdistan are the most important recent developments in the region. Common to all these conflicts are the levels of barbarity involved in this struggle for a place in the region's security order.

Sykes-Picot, the infamous agreement of 1916 in which Britain and France secretly divided their zones of influence in the Middle East, is dead.¹ Reality now trumps cartography. Not only have an estimated 2.5 million Syrians fled across the porous borders to neighbouring countries,² terror groups with a stronghold in Syria have mounted cross-border campaigns against the town of Arsal in eastern Lebanon, against UN peacekeeping troops on the Israeli-occupied Golan Heights and above all in Iraq, to the extent that the Syrian frontiers with Jordan and Iraq are no longer a physical reality. Meanwhile, new dividing lines are being drawn in the sand.

The US and individual EU member states, too, have been jockeying to position themselves in the changing regional security landscape. The European Union itself, however, has been a bystander to developments in the Middle East. It would seem that the member states intend

¹ See S. Blockmans, "Vanishing lines in the sand: Why a new map of the Middle East is necessary", Commentary, CEPS, Brussels, 1 October 2013 (<http://ceps.be/book/vanishing-lines-sand-%E2%80%93-why-new-map-middle-east-necessary>).

² The UN High Commissioner for Refugees estimates that 9 million Syrians have fled their homes since the outbreak of civil war in March 2011. Some 6.5 million are internally displaced within Syria. Fewer than 100,000 have requested asylum in the EU, with a small number offered resettlement by countries like Germany and Sweden.

Steven Blockmans is Senior Research Fellow at CEPS and Head of the EU Foreign Policy research programme.

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to use their organisation's external action capabilities only for issuing political declarations, providing humanitarian assistance and paying for post-conflict rehabilitation.

Arguably, though, the direct and indirect challenges posed by the multiple crises in the Middle East exceed any member state's individual capacity to play a determining role on the international scene. A more comprehensive common strategy should therefore be put in place to guide joint action and to make sure that the dust kicked up in the Middle East settles in places that best suit the EU's collective interests.

Israel-Gaza

Following the murder of three Israeli teenagers by Hamas in June and a revenge killing of a Palestinian youth by a group of Israeli extremists, tensions spiralled out of control. A barrage of Hamas rockets on Israel at the beginning of July triggered a 50-day campaign by Israel against Hamas.³ An open-ended truce was mediated by Egypt and agreed on August 26th.

The human cost has been great. Whereas Hamas killed 64 Israeli soldiers in Israel's ground invasion of Gaza – the highest death toll for Israel since the Second Lebanon War in 2006 – in addition to six civilians, the Israeli army killed more than 2,000 Palestinians, mostly civilians. More than 10,000 Palestinians were injured. The tactics employed by the Israeli army seemed intent not only on dealing a knockout blow to Hamas by destroying its rocket-launch facilities and network of underground tunnels but also to punish the population of Gaza collectively. The Israeli army destroyed Gaza City's only power plant, thereby worsening already severe problems with Gaza's water supply, sewage treatment and power supplies to medical facilities. It also reduced large parts of Gaza's residential areas to rubble, driving nearly 500,000 people from their homes and repeatedly hit UN safe havens, killing internally displaced people.

Israel's conduct of the war has drawn widespread international condemnation, from the EU and even from the US, its staunchest ally. It has led the UN Human Rights Council to establish an international commission of inquiry into possible war crimes, violations of international humanitarian law and breaches of human rights law committed by both sides during Israel's military offensive in the Gaza Strip. The inquiry is led by the internationally renowned academic lawyer William Schabas. The Israeli government, which has been very critical of the UN Human Rights Council because it includes states with extremely dubious human rights records themselves, has denounced the inquiry, describing it as a "kangaroo court" incapable of impartial deliberations. In parallel, a full-page advertising campaign has been launched by an American Jewish lobby in *The New York Times*, *The Washington Post*, *The Guardian* and other outlets, calling the appointment of Schabas,

a steadfast friend of Iran and its genocidal former President Mahmoud Ahmadinejad (...), the most recent symptom of the [United Nations'] well-documented anti-Israeli bias.

This war of words follows a pattern similar to reactions to all sorts of previous international inquiries into alleged Israeli human rights violations against Palestinians, ranging from the UN's 2009 inquiry on the first Gaza conflict led by Judge Richard Goldstone to the citizens'

³ On the mystery that shrouds the decision of Prime Minister Netanyahu to go to war, see R. Cohen, "A War of Choice in Gaza", *International New York Times*, 9 September 2014. On the lack of clear aims by the Israeli government to conduct the war, see A. Sharon, "Failure in Gaza", *The New York Review of Books*, 28 August 2014.

movement under the umbrella of the authoritative Russell Tribunal on Palestine.⁴ In an effort to pre-empt the latest inquiry, the Israeli army has opened its own criminal probes into possible military misconduct in the third Gaza war.

Besides the allegations of war crimes, this summer's conflict has aggravated the humanitarian and economic situation in the Gaza Strip, as indeed on the West Bank.⁵ Even before the latest crisis, Gaza's local economy was in a state of collapse, attributable mainly to the accumulated impact of a crushing seven-year blockade and two devastating Israeli military operations, in December 2008 and November 2012. More than 80% of people in Gaza remain dependent on some form of humanitarian aid. The need for assistance to the Palestinian territories is directly linked to increasing restrictions and administrative obstacles, including the more than 500 internal checkpoints and barriers erected since 1993 in the West Bank. These measures delay the provision of aid and severely restrict the movement of Palestinians, blocking their ability to build homes and develop land and resources. The demolition orders against Palestinian structures have increased more than 2,000% and new Israeli settlements support an Israeli population that has more than tripled in 20 years, with the attendant increases in shared land and water usage. There has also been an increase in the excessive use of violence against Palestinian civilians.⁶ This situation has left international donors footing a humanitarian aid bill that topped \$400 million in 2013 alone. No doubt, the bill for 2014 will be even higher.

Now 15 years past its expiration date, the temporary framework for administering Gaza and the West Bank set up under the Oslo Accords is splitting at the seams – and the consequences for the daily lives of civilians in the territories have become dire.⁷ Since the breakdown of the Israeli-Palestinian peace talks promoted by US Secretary of State John Kerry, the lessons to be learned from what went wrong are more acute than ever. It is imperative that the failure of the talks not be used to provide cover for new appropriation of land by Israel and worsening humanitarian and economic conditions for Palestinians.

Syria

Meanwhile, the war in Syria has pushed the country further downwards in a spiral of madness. According to the UN High Commissioner for Human Rights, the death toll has climbed beyond 190,000. The UN Commission of Inquiry on Syria on August 27th said that both the Syrian government and Islamic State insurgents are committing war crimes and crimes against humanity and should face trial at the International Criminal Court. Its report,

⁴ Russell Tribunal on Palestine, Findings of the Final Session of the Russell Tribunal on Palestine, Brussels, 16–17 March 2013 (www.russelltribunalonpalestine.com/en/full-findings-of-the-final-session-en).

⁵ United Nations Conference on Trade and Development, Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, UN Doc. TD/B/61/3, 7 July 2014.

⁶ See the Amnesty International Annual Reports Archive, Annual Report 2013: Israel and the Occupied Palestinian Territories, (www.amnesty.org/en/region/israel-and-occupied-palestinian-territories/report-2013).

⁷ See the video report of the high-level symposium organised by the Norwegian Refugee Council (NRC) and CEPS in Brussels on 22 November 2013: "The Oslo Accords at 20: Humanitarian Reality and Ways Forward" (www.euractiv.com/video/oslo-accords-20-humanitarian-reality-and-ways-forward-307364).

the inquiry commission's eighth since it was established three years ago, pays close attention to the terror campaign being waged by the Islamic State:

In areas of Syria under [Islamic State] control, particularly in the north and north-east of the country [Aleppo and Raqqa provinces], Fridays are regularly marked by executions, amputations and lashings in public squares.... Bodies of those killed are placed on display for several days, terrorising the local population.⁸

The report goes on to say that “violence has bled over the borders of the Syrian Arab republic, with extremism fuelling the conflict's heightened brutality”. The Islamic State, which has usurped many of the smaller jihadist groups bankrolled by donors from Saudi Arabia and Qatar in fighting the regime of President Bashar al-Assad,⁹ now occupies about one-third of Syrian territory, which provides it with a source of weapons and recruits to expand its activities in Iraq and elsewhere in the Levant.

Islamic State

The Islamic State grew out of al-Qaeda's offshoot in Iraq, where it was founded in 2003 as a reaction to the US-led invasion. In 2005, the Sunni jihadist group declared war on Shia Muslims and used suicide bombings and (mass) executions to carry out attacks on Shia-dominated and mixed sectarian neighbourhoods. In 2006 it rebranded itself as the 'Islamic State in Iraq', the name under which it continued to carry out its activities after the withdrawal of US forces from the country.

The terrorist group benefited from the security vacuum in neighbouring Syria to expand its activities and adopted the name 'Islamic State of Iraq and Syria' (ISIS). The advances that ISIS troops have made in large parts of northern Syria have substantially strengthened their position. In 2013, ISIS carried out attacks in Turkey and Lebanon, and by the end of last year it had advanced on central and northern Iraq. On 3 January 2014, ISIS militia shocked the world by taking control of the Iraqi cities of Fallujah and Ramadi, less than 100 kilometres west of the capital, Baghdad.

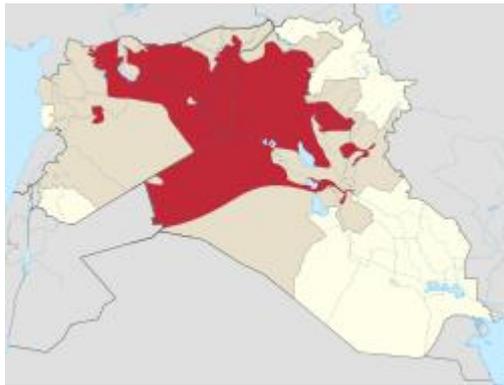
In June, during a large-scale offensive by ISIS in the north, its troops, outnumbered 15-to-1 by Iraqi security forces, seized control of most of Mosul, the second-most populous city in Iraq and a strategic linchpin, as well as a large part of the surrounding, oil-rich Nineveh province and the city of Tikrit. Amid the chaos, Iraqi military helicopters carried out attacks on ISIS in Syria, whereas the Syrian Air Force bombed ISIS positions on Iraqi territory. These uncoordinated actions underscore the blurring of the Sykes-Picot-drawn boundaries between the two countries. By late June, Iraq had lost complete control of its borders with Jordan and Syria to ISIS.

In a show of confidence, ISIS changed its name to the 'Islamic State' (IS) and on 29 June announced the establishment of a new 'caliphate', a government based on Islamic law that would include Iraq and Syria. IS called upon Muslims all over the world to pledge allegiance to their caliph Ibrahim, better known as Abu Bakr al-Baghdadi.

⁸ United Nations Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/27/60, 13 August 2014 (published on 27 August 2014).

⁹ D. Kirkpatrick, "Qatar's Support of Islamists Alienates Allies Near and Far", International New York Times, 7 September 2014.

Figure 1. Advance of IS, as of 4 September 2014

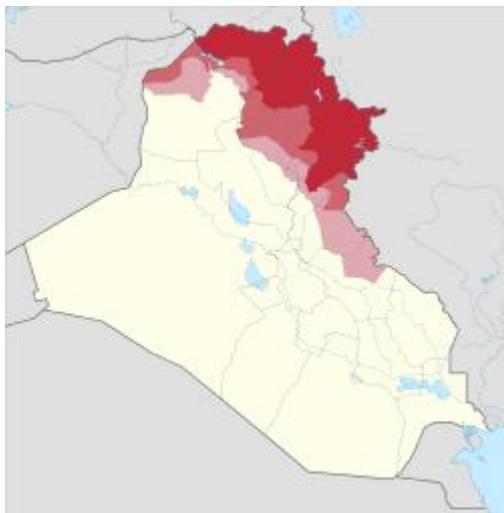


■ Areas controlled by the Islamic State ■ Areas claimed by the Islamic State □ Rest of Iraq and Syria
 Source: http://en.wikipedia.org/wiki/Islamic_State_of_Iraq_and_the_Levant.

Iraqi Kurdistan

When Iraqi government forces fled south as a result of ISIS’s northern offensive in June, the Kurds – the majority of whom adhere to Sunni Islam – advanced into the oil hub of Kirkuk, 100km south of the Kurdish regional capital, Erbil, and thereby expanded their control of large parts of northern Iraq. Kurdish forces (known as Peshmerga) repelled ISIS troops trying to seize parts of Kirkuk. Two weeks later, Massoud Barzani, the leader of the Kurdistan autonomous region in Iraq, asked its parliament to organise an independence referendum. Israel’s Prime Minister Benyamin Netanyahu stated that his government would support an independent Iraqi Kurdistan.

Figure 2. Iraqi Kurdistan, as of 4 September 2014



■ Official territory of Iraqi Kurdistan
 ■ Territory controlled by Iraqi Kurdistan
 ■ Territory claimed by Iraqi Kurdistan
 □ Rest of Iraq

Source: [http://en.wikipedia.org/wiki/Northern_Iraq_offensive_\(June_2014\)](http://en.wikipedia.org/wiki/Northern_Iraq_offensive_(June_2014)).

In early August 2014, the Islamic State launched a new offensive against Kurdish-held territory in northern Iraq, advancing to within 40 km of Erbil. Within days, the IS managed

to capture the town of Sinjar, prompting thousands of its Yazidi population – a religious subset of the Kurds – to take refuge on Mount Sinjar, where they lacked food, water and shelter. The large number of Yazidis killed in the attack and the threat of an even larger massacre of those trapped on Mount Sinjar prompted the United States to wade into the conflict. The US asserted that the systematic destruction of the Yazidi people by the Islamic State amounted to genocide.

Acceptance of new realities

Since August 8th, US airstrikes on IS militants have led to some of the territory being recaptured by the Peshmerga. American and British planes airdropped humanitarian aid for the civilians trapped in the mountains. The UK also provided surveillance and refuelling to assist the humanitarian mission. France also moved to provide humanitarian aid to the Kurds. US airstrikes and Kurdish ground forces eventually broke the IS siege of Mount Sinjar, allowing thousands of refugees to escape. At that point, the US started arming Kurdish forces directly. France followed suit, and the UK, Croatia, the Czech Republic, Denmark, Germany, Italy and the Netherlands have indicated that they too intend to supply arms to the Kurds. As observed by Julian Barnes-Dacey,

unlike in Syria, where the [US and the EU have] struggled for three years to find a reliable address to which they can deliver armed assistance, the Kurdish regional government and [P]eshmerga represent a dependable and long-standing partner with whom [the West] feels confident it can engage militarily ..., without detrimentally exacerbating the politics fuelling the wider Iraqi crisis by backing the perceived sectarian central government in Baghdad. Fears that arming the Kurds will empower their longstanding desire for independence, further fuelling the political disintegration of Iraq – as it probably eventually will with profound consequences – have been seconded to more immediate security and humanitarian concerns.¹⁰

However, supporting the Kurds alone will not be enough to defeat the Islamic State in Iraq. For some time now, the transatlantic partners have been hesitant to offer military support to the Shia-dominated central government in Baghdad, given its inability to establish a cross-sectarian coalition government that could have prevented the IS's dramatic rise in the first place. The nomination in mid-August of Haider al-Abadi as Iraq's new prime minister has changed Washington's calculus. Al-Abadi is seen as a more consensual figure than his predecessor, Nouri al-Maliki. The prospect of the formation of an inclusive government against the jihadist group has led the US to support the Iraqi army from the air in its attempts to regain some ground from the IS.

Fighting the Islamic State in Iraq can only be successful if the militants' bases in Syria are also targeted, however. The US has already carried out its first air and ground assault in Syria, in the form of an unsuccessful covert attempt to rescue journalist James Foley and other Americans held captive in Syria by the IS. Considering the Islamic State a direct threat to American security, US President Obama has now authorised airstrikes on its troops in Syria. It is highly questionable, however, that (pre-emptive) airstrikes could be justified under international law as a matter of self-defence. In the absence of an invitation from the Syrian government, considered illegitimate by the US, air strikes would require a mandate

¹⁰ J. Barnes-Dacey, "Europe desperately seeking answers on Iraq", European Council on Foreign Relations, 14 August 2014 (www.ecfr.eu/content/entry/commentary_europe_desperately_seeking_answers_on_iraq).

of the UN Security Council and thus the consent, or least acquiescence, of its five permanent members. Fearing that a US-led operation in Syria might lead to an unauthorised regime change in Damascus, and pointing to the abuse by a NATO-led coalition of the UN mandate for its 2011 intervention in Libya, which toppled Colonel Muammar Gaddafi, Russia and China have long opposed the adoption of such a UN Security Council resolution.

In his long-term strategy to defeat the IS, presented on the eve of the 13th anniversary of the September 11th attacks, Obama stated that the US is recruiting a global coalition to “degrade and ultimately destroy” the militants. He has already accepted a tacit alliance with arch foe Iran to achieve that aim in Iraq, with Iranian-backed Shia militias fighting the IS alongside the Iraqi military, backed up by US air power. Saudi Arabia has agreed to cooperate in the training and arming of moderate Syrian rebels to fight the militants of the IS. On the margins of the 69th Session of the UN General Assembly, to be held in the second half of September, President Obama will host a leaders’ security conference with the aim of fleshing out duties of the coalition – and hopefully also the legal basis for their operations.

The EU should not stand idly by. It should go beyond the provision of humanitarian relief and be a part of the international strategy to fight the IS and all the evil it represents. On the diplomatic front, the EU should assist in forging international support for a roadmap that excludes both Syrian President Assad, as the driver of the kind of extremism now troubling even his allies in Iran, and the Islamic State, the enfant terrible of those governments willingly or unwittingly backing Islamist extremists against Assad.

Towards a new regional security arrangement for the Middle East

Similar to what has happened in Lebanon in recent decades, the power of central government has waned in Syria and Iraq. Ethno-religious groups have created new realities outside of the artificial states created in the wake of the First World War. They have changed borders accordingly. The US and individual EU member states are implicitly endorsing some of the emerging changes to Sykes-Picot, as evidenced by their support for the Iraqi Kurds, but they are actively denying other dynamics from maturing. They are leading from behind in the fight against the Islamic State and attempting to fill in the black hole in the heart of the Middle East.

The gross and widespread abuse of human rights by the Islamic State is a grave problem for all stakeholders in the region. The unanimous adoption of UN Security Council Resolution 2170 (2014), which condemns human rights violations by extreme Islamist groups in Iraq and Syria and calls on states to prevent the flow of arms, recruits and financing to such groups, is testament to the challenge. Reversing the seemingly unstoppable rise of the Islamic State is a potential unifier that should push regional adversaries (Iran versus Saudi Arabia, Qatar, Turkey), backed up by global powers (the Security Council’s Permanent Five plus the EU), not only into a coordinated response on the ground and in the air but also into negotiations on a new regional security arrangement. Arguably, a lasting agreement will not be reached if negotiators stick to Sykes-Picot and ignore the new realities emerging from the wider conflicts playing out in the Middle East: a regional struggle between Shia and Sunni that is also a longstanding conflict between Iran and its traditional enemies, notably Saudi Arabia; territorial disputes between Israel and its Arab neighbours; the independence drive of the Palestinians; and irredentist claims of the Kurds. These conflicts should not be dealt with in isolation. Any way out of the quagmire will require a grand bargain – one that establishes a new order in the whole region, draws borders accordingly and offers transitional justice to the victims of the many atrocities that have taken place.