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A Host of Possible Objections to Expanded Airstrikes in Syria

By SOMINI SENGUPTA SEPT. 17, 2014

UNITED NATIONS — Airstrikes on Iraq were a fairly easy sell. The government in Baghdad asked for help in combating the Islamic State, and the United States answered its request.

That is perfectly legal under international law, diplomats agreed, and it helped to get dozens of European and Middle Eastern allies on board. The United Nations secretary general, Ban Ki-moon, applauded the airstrikes as a “decisive” move. Secretary of State John Kerry is now scheduled to preside over a Security Council meeting on Friday, at which more than 40 foreign leaders from as far afield as Germany and Qatar are expected to articulate their support for the American-led effort against the Islamic State, also known as ISIS, in Iraq.

But airstrikes on the group in Syria? That is another matter altogether.

The White House has articulated no rationale for airstrikes on Syrian territory, nor has it sought a Security Council resolution to authorize going to war. Syria has not consented to strikes within its territory, and Mr. Ban has demurred on the question of whether a Security Council resolution authorizing them is necessary, saying only that he expects the 15-member body to take it up — and not without disagreement.

“I hope that the Security Council will discuss this matter and the Security Council will be united in this matter,” he said in an interview on Wednesday, adding that “there may be some political and legal issues which

may be raised by certain countries.”

“This operation should be carried out in a broader framework of international law under strict observance of international law,” Mr. Ban said.

The Russian Foreign Ministry has already said that without a Security Council resolution, any strike against Syria would constitute an act of aggression.

American allies have by and large been silent on the question of military action against Islamic State targets in Syria. Western diplomats here privately say that they confront a difficult dilemma over how to support American military action against the group’s strongholds in Syria, while also obeying the law.

“Many European governments really are sticklers on international law rules on the use of force, particularly after the Iraq war,” said John B. Bellinger III, a former legal adviser in the Bush administration. “This may look a lot more justifiable, but they nonetheless feel the obligation to have a legal basis.”

Under international law, any country can ask the world for help in defending itself. And any country in the world can heed the call. The same principle applied to strikes against Al Qaeda and its affiliates in Yemen and Afghanistan, for instance, in the years since the Sept. 11, 2001, attacks. Likewise, France has intervened in Mali and the Central African Republic at the request of its government authorities.

Far more tricky is the question of whether a foreign power can chase its ally’s enemies across a land border, into the territory of another country. The law allows countries to chase pirates on the high sea in what is known as hot pursuit, though not necessarily on land.

The diplomatic challenge in Syria has become increasingly evident among American allies. France on Monday hosted a conference of Western and regional Middle Eastern countries to pledge support for the new Iraqi government’s fight against the Islamic State. The statement produced at the conference made no mention of Syria. Germany said it would provide arms

and training to the Iraqi Kurdish forces fighting the insurgents. Prime Minister David Cameron of Britain offered military assistance to the Kurds as well, though his government has not said anything about what it is willing to do in Syria.

What is more, American allies say they worry that any aggression against the Islamic State in Syria could strengthen the bargaining power of President Bashar al-Assad's government, which has spent the last couple of years bashing all Syrian rebels as terrorists and criticizing the West for not taking them on.

Some of Washington's most crucial partners in the region are reluctant to focus solely on the Islamic State and risk dropping the diplomatic effort to oust Mr. Assad. Their objections are likely to come up at the meetings over the next several days on how to combat the threat of the Islamic State.

"The focus of the meetings is ISIS and combating terrorism," said one diplomat from a Middle Eastern country who declined to be identified because diplomatic discussions were underway. "What about the root cause of the problem — which is the Syrian regime?"

So what are the options for the United States and its allies?

In principle, the Security Council could authorize military action, though the chances of that seem slim at the moment. Russia, which has veto power, has staunchly backed the Assad government.

Western diplomats cited the precedent of Kosovo, where NATO airstrikes came before Security Council authorization. That could happen here, too, they said.

Helping an ally defend itself could be offered as a rationale, though the legal basis for targeting insurgents who have fled across the border is not so clear cut. The United States has in the past faced the same quandary when it comes to targeting militants who moved across the Pakistan-Afghanistan border.

Not least, the experience of Libya complicates matters. The Council authorized airstrikes in 2011 on the grounds that civilians needed protection, but it ended up with the ouster of Libya's longtime ruler, Col.

Muammar el-Qaddafi. Russia and others complained that the Security Council resolution, intended to protect civilians, was used as a pretext for regime change.

The American ambassador to the United Nations, Samantha Power, on Tuesday struck a testy note when asked whether there was a legal basis for airstrikes on Syria.

“We believe we have a basis for action,” she said, declining to describe what they were, because, as she said, it would depend on the action taken and under what circumstances. “In the event that action is taken, believe me, we will have plenty of time to engage on it.”

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