United States/Iraq/Military Presence in Iraq

Starting October 2023, allegedly Iran-backed armed groups in Iraq have targeted remaining U.S. military troops in the country. As a response, the U.S. military led drone attacks against such groups.

Acknowledgments

Case prepared by Cyrielle Danzin, Master student at Université Paris-Panhtéon-Assas, under the supervision of Professor Julia Grignon (Head of Assas International Law Clinic and Visiting professor at Laval University).

A. GLOBAL CONFLICT TRACKER, INSTABILITY IN IRAQ

[Source: Center for Preventive Action, “Instability in Iraq”, Global Conflict Tracker, 13 February 2024, available at: https://www.cfr.org/global-conflict-tracker/conflict/political-instability-iraq]

[1] Six years after the war against the Islamic State, Iraq still faces significant challenges to its recovery. Over one million people remain internally displaced while three million people need humanitarian assistance as Iraq continues its reconstruction. In addition to reintegrating liberated Sunni communities into the political system, the government has struggled to achieve the demobilization and integration of powerful Shiite militias, which formed during the fight against the Islamic State, into the Iraqi security forces. The government also faces ongoing tensions with Kurdish groups pressing for greater autonomy in the north following a failed independence referendum in October 2017. Since the start of the Israel-Hamas War, Iraq’s stability has deteriorated significantly, with Iran-backed militias targeting U.S. forces in the west and north of the country.

Background

[2] Since the U.S.-led invasion in 2003, Iraq has undergone a long period of instability, with armed groups like

the self-proclaimed Islamic State taking advantage of the power vacuum left by the disbandment of the military and the ban on Saddam Hussein's Baath party. In 2014, the Islamic State advanced into Iraq from Syria and took over parts of Anbar province, eventually expanding into the northern part of the country and capturing Mosul in June 2014. Former President Barack Obama authorized targeted air strikes against Islamic State militants in Iraq and Syria, and the United States formed an international coalition of nearly eighty countries to counter the terrorist group. Regional forces—including as many as thirty thousand Iranian troops—joined the Iraqi army, local tribes, and the Kurdish Peshmerga in operations to retake territory from the Islamic State, recapturing Tikrit in April 2015, Ramadi in December 2015, Fallujah in June 2016, and Mosul in July 2017.

[3] The Trump administration sharply escalated the U.S. presence in Iraq in early 2017 to bring a swift end to the Islamic State, and the Iraqi government declared victory over the group in December 2017. Since then, most foreign troops have withdrawn from Iraq, except for a small U.S. contingent.

[4] In late April 2018, the U.S. military officially disbanded the command overseeing the fight against the Islamic State in Iraq, declaring an end to major combat operations against the group. Roughly 2,500 U.S. troops remain in Iraq at the invitation of the Iraqi government as part of a mission to train, advise, and assist the Iraqi military in fighting domestic terrorism.

[5] Underlying sectarian tensions in Iraq among Sunni and Shiite groups, as well as tensions between Kurdish groups in the north and the government in Baghdad, exacerbated the fight to dislodge the Islamic State. These tensions intensified after the U.S. invasion in 2003 and the fall of Saddam Hussein, now threatening the stability of the new Iraqi government as it looks to rebuild the country and prevent a resurgence of the Islamic State. There also remains a larger concern that the aftermath of the conflict and challenges of reconstruction and reintegration will lead to the break up of Iraq and that sectarian tension will plague the region for years to come, possibly expanding into a proxy conflict among various international groups.

[6] A coalition of parties led by Shiite cleric Muqtada al-Sadr won a surprise victory in Iraq's May 2018 parliamentary election. Their victory raised questions about continued Iranian influence in Baghdad, as al-Sadr's Shiite bloc has historically remained at odds with Iranian-backed groups in Iraq. Following the 2021 election, which saw increased representation [PDF] for minority groups, the newly elected parliament could not form a coalition government, precipitating a political crisis.

[7] The assassination attempt on Prime Minister Mustafa al-Kadhimi in November 2021 led to armed clashes between the Iraqi government and the Iran-backed militias accused of orchestrating the attack. Amid the political crisis, the entirety of al-Sadr's political bloc resigned from parliament in a gamble aimed at pressuring the government to elect a president. The move largely backfired as al-Sadr's bloc was quickly replaced, allowing the Shiite groups backed by Iran to assume a majority in the parliament. Al-Sadr retired from politics in August 2022, leaving control of the Iraqi government to his Iranian-backed rivals.

[8] In October 2022, Abdul Latif Rashid was elected president, promising to return the country to normalcy. The premiership was ultimately handed to Mohammad Shia al-Sudani, a long-time ally of Iran. His pro-Iran government includes ministers with ties to several U.S.-designated terrorist organizations, including Kataib Hezbollah. However, al-Sudani has taken a measured approach by expressing a desire to keep U.S. forces in Iraq while continuing his predecessor's "balance and openness" policy. The United States remains concerned about Iran's increasing involvement in Iraq and its government, which has disrupted Iraqi relations with the United States and reintegration with other Arab countries, particularly the wealthy Gulf Cooperation Council (GCC) states.

[9] Meanwhile, the Islamic State continues to plague Iraq, despite its diminished presence. The Islamic State has reverted to its insurgency roots and refocused to orchestrating a hit-and-run campaign. For example, it planted a bomb near the city of Kirkuk in December 2022 that targeted and killed nine federal police officers. In response, the United States announced that it would keep its troops in Iraq to fight the Islamic State.

Recent Developments

[10] Since late 2022, Iraq has faced economic and infrastructural issues. In November, a gas cylinder explosion killed fifteen people in the northern city of Sulaimaniyah, and in October, a gas tanker explosion in Baghdad killed at least nine people. In January, al-Sudani replaced the Central Bank governor after the value of the Iraqi dinar hit new lows, and the previous governor essentially quit. To solve these critical issues, al-Sudani has implemented several measures, including approving a $152 billion budget meant to add public sector jobs and increase public salaries.

[11] However, Iraq's political instability persists. In late March 2023, the Iraqi government passed amendments that would increase the size of electoral districts, reducing opportunities for smaller parties and independent candidates to win seats in future elections. These amendments were supported by the Iran-backed Coordination Framework but proved to be controversial, sparking demonstrations and prompting several MPs to leave and postpone the session. Similarly, in late June, over fifty MPs resigned from the local parliament in Iraq's Kurdish region. They protested a court ruling by the Iraqi Federal Supreme Court that rejected their decision to delay regional elections. The ruling is another sign that Baghdad has largely reigned in the Kurdish region's autonomy, having asserted its control over oil revenue and key infrastructure.

[12] Days later, thousands of Iraqi followers of a Shiite cleric protested in major Iraqi cities, criticizing the burning of a Quran during a demonstration in Sweden, demanding the Swedish ambassador's expulsion from Iraq, and storming the Swedish embassy in Baghdad. These recent mobilizations showcase the ongoing capacity of al-Sadr to foster instability despite the suspension of his movement in April.

[13] In August 2023, Iran-aligned groups killed Kurdish protestors in the disputed northern city of Kirkuk over

the handover of a building to the Kurdish Democratic Party (KDP). Following days of deadly ethnic clashes, the Supreme Court in Baghdad halted Al-Sudani's order to return the building to the KDP on September 1. The oil-rich province lies along the fault line between the Kurdish autonomous region and areas controlled by Iraq's government. It has been the center of some of Iraq's worst violence since the Islamic State. Meanwhile, Turkey has escalated its military attacks against the Kurdistan Workers Party (PPK) in northern Iraq, including a drone strike that killed seven members on August 24. In late August, Turkey called on Iraq to designate the PKK as a terrorist organization, citing the group's threat to both Iraqi and Turkish security.

[14] At the end of August 2023, the Iranian government announced that the central Iraqi government had pledged to disarm and relocate militant groups from the Kurdish region of northern Iraq by September 19. Despite the joint success of the Iraqi government and the Kurdish Regional Government in Erbil, tensions between Turkey and the Kurds increased following a PKK suicide bombing outside of a government building in the Turkish capital Ankara in October. Although no casualties besides the two PKK-linked attackers were reported, the attack was the first in the Turkish capital since 2016. In response, Turkish forces conducted air strikes in northern Iraq, destroying sixteen targets of the PKK. The situation continued to escalate with further Turkish strikes in northern Iraq in 2024 following a PKK December 22 attack on a Turkish base that killed twelve soldiers, and a similar attack on January 12 that killed nine more.

[15] Over the course of the Israel-Hamas War, Iran-backed militia groups in Iraq and Syria have targeted U.S. troops in the region over 165 times in opposition to Israel's campaign in Gaza. The remaining 2,500 U.S. troops in Iraq have been subject to consistent attacks on their bases, such as the Al-Asad Airbase in western Iraq, where an attack on October 17 resulted in the death of an American civilian contractor. In February 2024, the United States conducted a series of retaliatory strikes in response to an attack in Jordan on a U.S. military outpost near the Syrian border that killed three American soldiers. The strikes included more than eighty-five targets throughout Iraq and Syria and were the first in a multi-tiered response by the Biden administration. According to the Iraqi government, sixteen people, including civilians, were among those killed in the first round of U.S. strikes, while twenty-five were injured. On February 5, 2024, Russia called a UN Security Council meeting, where the Russian Ambassador to the United Nations accused the United States of violating international law by striking Iraq and Syria.

B. UNITED STATES OF AMERICA CONGRESSIONAL RESEARCH SERVICE DEFENSE: IRAQ: ATTACKS AND U.S. STRIKES REOPEN DISCUSSION OF U.S. MILITARY PRESENCE

[Source: Congressional research service, "Iraq: Attacks and U.S. Strikes Reopen Discussion of U.S. Military Presence", 16 February 2024, available at https://crsreports.congress.gov/product/pdf/IN/IN12309]

[1] Iran-backed armed groups attacked U.S. personnel in Iraq more than 60 times between the October 2023 onset of the Israel-Hamas war and February 4, 2024. In response, President Joe Biden has ordered U.S. air strikes in Iraq and in neighboring Syria. Iraq's government, citing risks to Iraq's security from the attacks and

counter-strikes, says it seeks to end the presence in Iraq of the U.S.-led Global Coalition to Defeat the Islamic State (IS, aka ISIS/ISIL) and to engage in bilateral discussions about the future of the U.S. military presence. U.S.-Iraq talks announced by Secretary of Defense Lloyd Austin have begun on the “evolution” of the coalition mission and to “enable the transition to an enduring bilateral security partnership.” After Iraq-coalition talks on February 11, an Iraqi military spokesman said, “a timetable will be formulated for a deliberate and gradual reduction, leading to the end of the mission of the international coalition forces ... and the transition to a bilateral relationship, as long as peace is not disturbed.”

[2] In December 2023, President Biden cited the Iraqi government’s invitation for U.S. forces and the coalition to remain in Iraq in his semiannual comprehensive war powers report to Congress. That same month, U.S. Central Command reported that approximately 2,400 U.S. military personnel were deployed in Iraq and 800 in Syria. The U.S. military presence in Iraq and U.S. military access to Iraq’s airspace and land border with Syria facilitate U.S. military operations in Syria, where IS insurgents are more active than in Iraq and U.S. partner forces secure prisons holding thousands of IS fighters.

[3] In December 2023, Congress authorized U.S. counter-IS partnership programs in Iraq and Syria through December 2024. Members of Congress may consider how potential changes to the U.S. and/or coalition presence in Iraq may affect U.S. interests in the region; whether changes should be made to patterns of U.S. assistance to Iraqi and Syrian partners; whether additional consultation with the executive branch or oversight is warranted; and how attacks on U.S. personnel and U.S. strikes comport with the War Powers Resolution and the 2001 and 2002 legislative authorizations for the use of military force.

Escalating Attacks and U.S. Strikes Follow Hamas-Led Attacks on Israel and Onset of Gaza War

[4] Following the U.S. killing in Iraq of Iran’s Islamic Revolutionary Guards Corps (IRGC)-Qods Force commander Qasem Soleimani and an Iraqi security official (both U.S.-designated terrorists) in January 2020, Iraq’s parliament voted to direct the Iraqi government to expel foreign forces and deny foreign access to Iraqi airspace, territory, and waters. Iraq’s then-caretaker government did not do so, and its successors engaged U.S. counterparts in talks that led in December 2021 to an announced end to U.S. combat operations and a transition to training and advisory support. Intermittent attacks on U.S. forces in Syria and Iraq continued through early 2023, with some attributed to Iran-backed Iraqi armed groups. Observers noted changes in the pattern of such attacks in relation to developments in Iraq, Syria, and the wider region. President Biden directed strikes following some attacks on U.S. personnel in Syria and Iraq, and the Administration has stated its intent to defend U.S. personnel with “proportional” responses.

[5] Since October 2023, observers have documented more than 150 claimed attacks by the “Islamic Resistance in Iraq” on U.S. and other targets in Iraq, Syria, Israel, and Jordan, including the January 28 attack in Jordan that killed and injured U.S. servicemembers. Some attacks in Syria and Iraq have resulted in injuries to U.S. and Iraqi personnel. Reportedly, U.S. response strikes have destroyed facilities of the IRGC and of an Iran-backed Iraqi group in Syria and Iraq, and have killed some members of the Iraqigroups inside

Iraq. Iraq's government has described attacks on U.S. forces as acts hostile to Iraq while saying U.S. strikes on Iraqi territory violate Iraqi sovereignty. A January 4, 2024, U.S. strike in Baghdad killed a leader of an Iran-backed U.S.-designated terrorist group who also served as a commander in Iraq's state-affiliated Popular Mobilization Forces. Dozens of U.S. strikes on February 2 targeted militia groups in Iraq, prompting Iraq's government to summon the U.S. chargé d'affaires and submit a letter of protest over what it described as "a new act of aggression." A U.S. strike on February 7 killed a leader of the U.S.-designated Foreign Terrorist Organization Kata'ib Hezbollah. An Iraqi military spokesman said the coalition had deviated from the reasons for its presence in Iraq and that the current "trajectory compels the Iraqi government more than ever to terminate the mission of this coalition."

[6] On February 10, some members of Iraq's parliament convened a session to call for the expulsion of U.S. forces, but they were denied a quorum by other members refusing to attend. Iraq's parliament could play a role in ratifying any bilateral U.S.-Iraq agreements that result from planned talks.

[7] Possible Considerations for Congress Secretary of Defense Lloyd Austin has said U.S. forces remain "focused on the mission of defeating Daesh [IS/ISIS/ISIL], and we are here for no other purpose," and in January 2024 he reiterated U.S. "commitment to deepen our security cooperation to advance stability within Iraq and the region." In August 2023, a U.S.-Iraq Joint Security Cooperation Dialogue agreed "to consult on a future process ... inclusive of the Coalition, to determine how the Coalition's military mission will evolve on a timeline according to the following factors: the threat from ISIS, operational and environmental requirements, and [Iraqi] capability levels." As part of those discussions, the Iraqi government "reaffirmed its commitment to protect U.S. and Global Coalition personnel and advisors, convoys, and diplomatic facilities."

DISCUSSION

I. Classification of the situation and applicable law:

1. *(Document A, paras 10 – 15)*

a. How would you classify the situation in Iraq? Can it be considered either an international armed conflict (IAC) or a non-international armed conflict (NIAC)? Both? What differentiates these types of conflicts? Who are the parties to the conflict(s)? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1)

2. *(Document A, paras 2 and 10 – 15; Document B, paras 1 and 2)*

a. According to you, what is the nature of the U.S. presence in Iraq? From 2003 to 2014? From 2014 to today? Has the situation changed over time? Did the official withdrawal of U.S. forces in 2014 change the situation? Does the presence of 2,500 U.S. troops in Iraq impact the current classification? (HR, Arts 42 – 56; GC IV, Arts 6 and 47 – 78)

b. Can the U.S. still be considered an Occupying Power in Iraq? In a situation of occupation, what obligations does an Occupying Power have? (HR, Arts 42 – 56; GC IV, Arts 6 and 47 – 78)

3. *(Document A; Document B)* Would the mention that militias in Iraq are allegedly backed by Iran affect the classification of the situation? Under what conditions could a NIAC be considered internationalised? (ICTY, The Prosecutor v. Dusko Tadić, IT-94-1-AR72, Appeals Chamber, Decision, 2 October 1995, paras 72 – 73)

4. *(Document A, para 15; Document B, paras 1 and 5)* Does the targeting of U.S. troops, in addition to Iraqi troops, affect the classification of the situation? What if the targets are located outside the territory of Iraq?

II. Conduct of hostilities

5.

a. What are the three cardinal rules that govern the conduct of hostilities? Do these rules apply equally in IACs and NIACs? (P I, Arts 48, 52(1)-(2), 57 and 58; P II, Art. 13; CIHL, Rules 7, 8, 9, 10, 14 and 15)

b. Under the rules relating to the conduct of hostilities, is the death of civilians always prohibited? Is it ever permissible to target civilians? Are deaths or injuries of civilians resulting from collateral damage lawful? Under what conditions?

c. What is considered a military objective under IHL? In your opinion, can U.S. military troops be considered a military objective? (P I, Art. 52 (1); CIHL, Rules 7, 8, 9, 10)

6. What is the definition of reprisals under IHL? Are they authorized under IHL? (GC IV, Art. 33; PI, Art. 51 (6); CIHL, Rules 145, 148) In your opinion, does the U.S. drone-led attacks against militias in Iraq fall under that classification? Why or why not?