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Military Intervention in Syria: Is It Legal?

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When taking crucial decisions, nations strike a balance between moral, strategic, and legal considerations. In response to the Syrian government's use of chemical weapons in the August 21, 2013 attack that killed over 1,000 civilians, the United States is considering launching a limited military strike against Syria. However, absent authorization by the United Nations Security Council (UNSC), the international legal basis underlying such a military operation is far from clear-cut. This article analyzes briefly the formal legal aspect, i.e., the legality of intervening militarily in the Syrian conflict according to international law.

The United Nations Charter

Article 2(4) of the United Nations Charter sets forth the basic rule on the legality of using force, prohibiting the "threat or use of force against" any other member state. Accordingly, any use of force against Syria is prohibited unless a valid basis is found in international law. Notably, Article 2(4) does not prohibit a state from using force internally, nor does it prohibit a request for other states to use force on its territory. Thus, if the opposition forces had enough control over Syria to be regarded as the new government, they could request other states to assist them in their fight against the "former Assad regime." In such circumstances, forcible intervention would not be a breach of Article 2(4). Some countries (such as France) have recognized the National Coalition of Syrian Revolutionary and Opposition Forces as the sole legitimate representative of the Syrian people, but it is doubtful whether further recognition is feasible at the moment, mainly due to the opposition's apparent lack of sufficient control over Syria.

The UN Charter contains two exceptions to the general prohibition on the use of force. The first is use of force authorized by the UNSC under Chapter VII of the Charter, when "necessary to maintain or restore international peace and security."¹ Examples of this were the authorizations to use force against Iraq (1990)² and the NATO-led operation in

Libya in 2011.³ To date, however, Russia and China have blocked every attempt of the UNSC to authorize the use of force against Syria, rendering this exception unavailable.

The second exception is self-defense. Article 51 of the Charter establishes the “inherent right of individual or collective self-defence if an armed attack occurs.” In other words, if a state has been attacked, it has the right to respond with force. An attacked state may also request other states to assist it and respond with force based on the notion of “collective self-defense.” To date, neither the US nor any of its allies in the region has been attacked.

It is widely accepted that under certain conditions Article 51 permits preemptive use of force against anticipated attacks. President Obama seemed to allude to this notion by claiming that Syrian chemical weapons could fall into the hands of terrorist groups who would then intend to harm US interests, including allies in the region. The question is whether this risk is imminent enough to justify preemptive self-defense. There is a growing understanding that the use of force may be justified when “failure to act would deprive [a] State of an ability to defend itself in light of the risk inherent in attacks involving weapons of mass destruction launched without warning.”⁴ It is questionable, however, if this rationale applies to the factual realities on the ground in Syria.⁵

An even broader approach focuses on the use of preemptive self-defense against the general threat of facing chemical weapons in future conflicts. The argument here is that such a threat justifies “using a relatively small amount of force today to reinforce respect for a universal normative rule with compliance effects compounding into the future.”⁶ However, this argument stretches self-defense beyond what is commonly accepted.

Humanitarian Intervention

In recent years an additional exception to the prohibition on the use of force has been posited, namely, “humanitarian intervention.” Its rationale is linked to the soft law doctrine of the “Responsibility to Protect (R2P),” which claims that the international community has the obligation to intervene in order to put an end to atrocities against civilians when their own state does not offer such protection, or is in fact the perpetrator of such violence. This doctrine is widely accepted as justifying a decision by the UNSC to authorize the use of force. The controversy refers to its lawfulness without UNSC authorization, as occurred with the NATO intervention in Kosovo in 1999.

The United Kingdom has endorsed humanitarian intervention without UNSC authorization as the legal justification to use force in Syria. The British government released a document on August 29, 2013 outlining its legal reasoning that states, *inter alia*, that exceptional measures (i.e., force) are permitted in order to “alleviate the scale of the overwhelming humanitarian catastrophe in Syria by deterring and disrupting the

further use of chemical weapons by the Syrian regime,”⁷ noting that “such a legal basis is available, under the doctrine of humanitarian intervention.”⁸ According to this statement, the UK does not appear to be applying a broad understanding of humanitarian intervention based on widespread violence against civilians per se. Rather, it limits its focus to the suffering caused by the use of chemical weapons. While the international community has been hesitant to rely on the rationale of humanitarian intervention,⁹ there is a growing acceptance of its validity.

Use of Force due to the Unlawful Use of Chemical Weapons

In its public statements the Obama administration has focused on the unlawful use of chemical weapons in and of itself, and not on the widespread killing of Syrian civilians. This might suggest that the US is not relying on the doctrine of humanitarian intervention, but rather on the Syrian breach of the prohibition against the use of chemical weapons, which is universally accepted as binding international customary law.¹⁰ It might thus be asserted that the use of force is justified in order to prevent further use of chemical weapons. This assertion is buttressed by the fact that the prohibition against using chemical weapons is considered a *jus cogens* norm, a norm so fundamental in international law that no derogation is permitted, thereby justifying the use of force to enforce the norm. Most legal scholars, however, dispute this idea, which contradicts the concept that force cannot be used to enforce international obligations.

Conclusion

The legal basis in international law for striking Syria without UNSC authorization is contentious. Nevertheless, the US could decide to launch an attack on Syria, regardless of the controversy about its legality under existing international law. The main argument against such an approach is that it may create a precedent for other states to disregard legal limitations on the use of force in the future, risking an already fragile international legal structure.

On the other hand, it may be asserted that applying a formalistic legal approach to the use of force falls short of adequately addressing emerging threats, such as the use of weapons of mass destruction. In other words, accepting the notion that international law prohibits states from using force in situations such as Syria, based on a narrow interpretation of the UN Charter, could eventually lead to the frustration of the fundamental goal of the Charter, that of promoting international peace and stability. In any event, any decision to strike Syria, as well as the legal justifications provided, will have a significant impact on the development of international law dealing with the legality of the use of force.

¹ Article 42 of the United Nations Charter.

² UNSC Resolution 678 (1990).

³ UNSC Resolution 1973 (2011). Interestingly, Russia and China have voiced reservations over the interpretation of this resolution as authorizing the use of force.

⁴ See Michael Schmitt, "The Syrian Intervention: Assessing the Possible International Law Justifications," U.S. Naval War College, *International Law Studies* 89 (2013), <http://www.usnwc.edu/getattachment/2224c233-cd18-4ddf-848d-6c8a125b8dc9/The-Syrian-Intervention--Assessing-the-Possible-In.aspx>.

⁵ Ibid. Schmitt concludes that it does not, since, "there is no evidence that Syria intends to transfer chemical weapons to transnational terrorist groups targeting the United States or other countries. Nor has the Assad regime lost control of the country to the point where it is probable that the weapons will fall into the hands of terrorist groups."

⁶ Kenneth Anderson, "Five Fundamental International Law Approaches to the Legality of a Syria Intervention," 2013, <http://www.lawfareblog.com/2013/09/five-fundamental-international-law-approaches-to-the-legality-of-a-syria-intervention/>.

⁷ For the official full text, see: <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>. The UK puts forward three conditions that need to be met: (1) that "extreme humanitarian distress on a large scale" exists; (2) that "there is no practicable alternative to the use of force if lives are to be saved" and (3) that the amount of force used is necessary and proportionate. The UK has concluded that these three conditions have been met.

⁸ Ibid.

⁹ Ashley Deeks, "Syria, Chemical Weapons, and Possible U.S. Military Action," <http://www.lawfareblog.com/2012/12/syria-chemical-weapons-and-possible-u-s-military-action/>.

¹⁰ This prohibition also appears in the 1993 Chemical Weapons Convention; however Syria is not a party to this convention. Syria is bound by the 1925 *Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare* that prohibits the use of such methods of warfare in international armed conflicts.

