



BULLETIN

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Syria: Resolution 2118 and the Legal Aspects of an Intervention

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Pursuant to the UN Security Council Resolution, international inspectors started the process of destroying Syria's chemical weapons arsenal. Although the resolution allows for the possible use of force in the event of Syria's non-compliance, and despite the ongoing civil war and the alleged crimes committed in Syria with the use of conventional weapons, any intervention against the Assad regime is unlikely at this juncture. The compromise reached by the Council may however further the process of finding a political solution to the conflict, in which EU Member States should be involved.

The process of destroying Syrian CW, implementing Security Council Resolution 2118 (2013), began on 6 October. The resolution is based on the framework for elimination of Syria's chemical weapons as agreed by the U.S. and Russia on 14 September, according to which Syria was to surrender its chemical weapons under international supervision. This agreement draws upon Syria's declaration to accede to the 1993 Chemical Weapons Convention, and the regime's commitment to comply immediately with its provisions. Thanks to these arrangements, the Security Council was able to reach a consensus on measures addressing the conflict in Syria for the first time in two and a half years. According to the resolution, Syria is required to eliminate its chemical weapons arsenal in the first half of 2014, provide security, and grant unfettered access to international inspectors.

The resolution re-opened the door for a peaceful solution to the conflict under the auspices of the Security Council. At the same time, the document refers to the option of imposing measures under Chapter VII of the UN Charter in the event that Syria fails to implement the plan. However, this reference does not per se authorise the use of force. Furthermore, the resolution does not speak of measures addressing violations of the law of armed conflict committed against the civilian population in Syria, other than the use of chemical weapons. Thus, the question of possible intervention against the Assad regime and its legality remains on the table.

R2P and the Use of Force. The prohibition of the use of force, allied with the principle of non-intervention in internal matters and respect for territorial sovereignty of states, lies at the heart of the UN Charter system. Exceptions to these rules are prescribed in chapter VII of the Charter. These include the right to individual or collective self-defence (Art 51) and the UN Security Council's power to approve military action in response to threats or breaches of peace, threats thereof, or acts of aggression. Subsequent to the events that occurred in Somalia (1991), Rwanda (1994), Srebrenica (1995), and Kosovo (1999), some have also argued that the international community may intervene in states' internal affairs to prevent humanitarian catastrophes.

The NATO intervention in Kosovo in 1999 was often referred to in the recent discussion on a possible intervention in Syria. This intervention, exercised without the Security Council's authorisation, was declared "illegal but legitimate," as phrased by the Independent International Commission on Kosovo. The intervention gained political legitimacy due to its objective to prevent an imminent humanitarian catastrophe. The general lack of consensus on the legality of such interventions contributed to the development of the Responsibility to Protect, or R2P, doctrine. The latter asserts that sovereignty obliges states to protect their own people from genocide, war crimes, ethnic cleansing and crimes against humanity. When states are unable or unwilling to do so, the responsibility to protect must be borne by the broader community of states.

Various articulations of R2P refer to five legitimacy criteria when intervention is at stake: seriousness of the humanitarian threat, proper purpose (to halt or avert human suffering), last resort (peaceful measures have been explored and have failed), proportional means (for example, any military action taken should be the minimum necessary to secure the objective), and balance of consequences (the prospect of success must outweigh the consequences of inaction). The Commission on State Sovereignty and Intervention, established under the authority of Canadian government, was the first to elaborate on the R2P concept. In its report of December 2001, the Commission left open the question of whether and under what circumstances military humanitarian intervention would be legal if not authorised by the Security Council or the General Assembly. However, in the 2005 World Summit Outcome Document, adopted by the General Assembly (Resolution 60/1), the assembly departed from this approach by excluding any action taken under R2P by individual states without the authorisation of the Security Council.

The 2011 intervention in Libya was the first authorised by the Security Council (with Russia and China abstaining), which referred to the R2P (SC Resolution 1973). While the intervention's main objective was to protect the civilian population, NATO forces interpreted its mandate in a way that resulted in the overthrow of the Gaddafi regime. This broad understanding of the Security Council mandate has certainly had a bearing on Russia and China's persistent reluctance to authorise Security Council measures against Syria. Therefore, the Libya example demonstrates how important it is for the R2P, yet a fledgling and legally non-binding concept, to be applied rigorously and with neutrality.

R2P and Syria. Consensus reached within the Security Council aims at eliminating the possible use of chemical weapons in Syria. However, the question of the international community's responsibility to respond to the atrocities resulting from the use of conventional weapons remains unanswered. The UN Independent International Commission of Inquiry on the Syrian Arab Republic found that, since the beginning of the conflict in 2011, both the government and rebels have committed gross human rights violations, including crimes against humanity. Nonetheless, it is important to point out that violations of the law of armed conflict do not entitle states or groups of states to use force without the authorisation of the Security Council or, arguably, the General Assembly. At the same time, SC Resolution 2118 does not mention the international community's responsibility to protect Syrian civilians from violence, but refers solely to the threat to international peace and security posed by Syria's possession and use of chemical weapons.

However, neither does the use of chemical weapons authorise the use of force against a state. State practice indicates that the prohibition of the use of chemical weapons constitutes a customary rule of international law binding upon all states and is applicable to both international and internal conflicts. The international community's condemnation of the use of chemical weapons by the Assad regime, including the Security Council's determination in Resolution 2118 that "the use of chemical weapons anywhere constitutes a threat to international peace and security," obeys with and confirms this assertion.

Conclusion and Recommendations. Even limited, strikes exercised by the U.S. and its allies without the Security Council's authorisation would have certainly ignored the Charter. Resolution 2118 does not provide for an automatic authorisation in the event that the disarmament process fails or the conflict in Syria escalates. A possible intervention would require yet another compromise within the Security Council.

Launching an intervention without Security Council's authorisation would assert that, in instances such as Kosovo, when primary interests of the international community are at stake, the procedures established by the UN Charter can be bypassed by means of exception. Another argument for intervention could be that the Security Council's failure to fulfil its responsibility to ensure protection of populations at risk and to ensure observance of international law necessitated contravention of the Charter regime. In both instances, however, the objective and the measures adopted in the course of such an intervention would require the U.S. to obtain political legitimisation, not only from its European allies but also from the Arab League, as was the case in Libya in 2011.

Any decision on possible coercive action of a military character taken in response to a threat posed by the use of chemical weapons in Syrian territory should be preceded by a thorough assessment of the criteria referred to above in the context of the R2P: the seriousness of the threat, the necessity of the measure, its proportionality and prospects for success in decreasing the level of violence, and establishing peace.

The international community, including the EU Member States, should now work further to ensure that the compromise on eliminating Syria's chemical weapons paves the way for a political solution to the conflict at the peace conference planned to take place in November in Geneva. In its position towards the conflict in Syria, Poland may emphasise the need for enhanced dialogue with the regime and the rebel groups, regarding the civilian population's access to humanitarian assistance as well as the need to set up an adequate mechanism to investigate and hold to account those responsible for all crimes allegedly committed throughout the war in Syria. To this end one should recall that Resolution 2118 stresses that all individuals responsible for the use of chemical weapons in Syria should be held accountable.