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Syria Policy Should Be Driven by U.S. Interests, Not the U.N.

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There are good reasons why Americans, under the current circumstances, should question a military intervention in Syria.¹ But President Obama has muddied the waters further by giving as much weight to international law as he did to U.S. interests in presenting his case for military intervention, frequently expressing the need to enforce an “international norm” prohibiting the use of chemical weapons. In his September 10 speech, President Barack Obama doubled down on this approach by calling for a delay in congressional consideration of an authorization to use military force and announcing that he is again returning to the United Nations Security Council, where Russia has repeatedly blocked any substantive action.²

Only days ago, National Security Advisor Susan Rice dismissed this option as unrealistic and U.N. Ambassador Samantha Power called the belief that Russia might change its position “naïve.”³ Indeed, there is little reason to expect a meaningful Security Council resolution. There are also problems and inconsistencies with justifying U.S. action with international law. However, the underlying problem is the Administration’s belief that an international legal justification is necessary. Ultimately, the

decision to use military force should be based on U.S. interests, not vague international norms or bureaucratic processes.

No “Responsibility to Protect”? Thankfully, the Administration has not embraced the “responsibility to protect” (R2P) doctrine—which it used to justify force in Libya⁴—to support strikes against Syria. The President justified an attack on Libya based largely on Muammar Qadhafi’s threat to attack the civilian population in Benghazi. In April 2011, the Libyan opposition claimed that approximately 10,000 people had died since the start of the conflict. By contrast, deaths related to the Syrian civil war exceeded 10,000 by mid-2012, and the U.N. currently estimates that deaths related to the war in Syria exceed 100,000.⁵

Although it has condemned the loss of life in Syria, the Administration has not used the magnitude of deaths to justify military action. A possible reason for this is that the R2P doctrine explicitly states a series of steps required to make military intervention a legitimate R2P exercise, one of which is a U.N. Security Council resolution authorizing action. The “international community” is largely skeptical of such a strike, and Security Council action on Syria has been repeatedly blocked by the Russians and the Chinese.

In any event, no U.S. Administration should subscribe or give credence to the R2P doctrine. Advancing a doctrine that makes the legitimacy of use of force contingent on decision making at the Security Council or in regional organizations, and arguably compels the U.S. to act to prevent atrocities occurring in other countries, is imprudent. The U.S. needs to preserve its national sovereignty by

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maintaining a monopoly on the decision to deploy its military forces.

A Ban on Chemical Weapons? The Administration has repeatedly justified its call for military strikes on the basis that there exists an international norm against the use of chemical weapons and that the enforcement of that norm through the use of military force is justified under international law.⁶ In support, the Administration has pointed to the 1993 Chemical Weapons Convention (CWC) and, harkening back to the days of the League of Nations, the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.

However, Syria is not a signatory to the CWC and, thus, has not obligated itself to the terms of that treaty. The Geneva Protocol applies to international conflicts between states, not non-international armed conflicts (civil wars), as is the situation in

Syria. Moreover, neither treaty compels parties to intervene if chemical weapons are used.

It is true that documented use of chemical weapons is rare, and nearly all governments at least rhetorically support the prohibition on their use. The prohibition against using chemical weapons may have even attained the status of a “peremptory” norm—i.e., a norm that all nations are supposed to observe regardless of whether they are party to a particular treaty. The problem is that such norms—including those against slavery, crimes against humanity, and racial discrimination—are violated with troubling regularity by various nations around the world.

Setting a precedent that violations of peremptory norms justify military intervention would be a major departure from widely recognized international law, as would the implication that simply because nearly all nations have ratified a treaty its terms become binding on the few states that decided not to do so.⁷

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1. James Carafano, “Top 5 Reasons Not to Use Missile Strikes in Syria,” The Heritage Foundation, The Foundry, August 25, 2013, <http://blog.heritage.org/2013/08/25/top-5-reasons-not-to-use-missile-strikes-in-syria/>.
 2. President Barack Obama, “Remarks by the President in Address to the Nation on Syria,” September 10, 2013, <http://www.whitehouse.gov/the-press-office/2013/09/10/remarks-president-address-nation-syria> (accessed September 11, 2013).
 3. The White House, “Remarks As Prepared for Delivery by National Security Advisor Susan E. Rice,” September 9, 2013, <http://www.whitehouse.gov/the-press-office/2013/09/09/remarks-prepared-delivery-national-security-advisor-susan-e-rice> (accessed September 11, 2013); and U.S. Mission to the United Nations, “Remarks by Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, on Syria at the Center for American Progress,” September 6, 2013, <http://usun.state.gov/briefing/statements/213901.htm> (accessed September 11, 2013).
 4. The R2P doctrine is based on two key principles: (1) National governments are responsible for preventing large-scale losses of life and ethnic cleansing in their own populations, and (2) in the event that a national government is unable or unwilling to prevent such atrocities, the international community, acting through the United Nations, has a responsibility to act and protect the suffering population, with or without the consent of the recalcitrant government. In 2011, President Obama stated that “when our interests and values are at stake, we have a responsibility to act. That’s what happened in Libya over the course of these last six weeks.” State Department legal adviser Harold Koh stated that Qadhafi “has forfeited his responsibility to protect his own citizens and created a serious need for immediate humanitarian assistance and protection, with any further delay only putting more civilians at risk.” See President Barack Obama, “Remarks by the President in Address to the Nation on Libya,” March 28, 2011, <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya> (accessed September 11, 2013); and Harold Hongju Koh, “Statement Regarding Use of Force in Libya,” remarks to American Society of International Law annual meeting, March 26, 2011, <http://www.state.gov/s/l/releases/remarks/159201.htm> (accessed September 11, 2013).
 5. Associated Press, “UN Says Syria Death Toll Rises Above 100,000,” July 26, 2013, <http://www.abc.net.au/news/2013-07-26/un-says-syria-death-toll-rises-above-1002c000/4844758> (accessed September 11, 2013).
 6. President Obama declared that the August 21 chemical weapons attack was “an assault on human dignity. It also presents a serious danger to our national security. It risks making a mockery of the global prohibition on the use of chemical weapons.... It could lead to escalating use of chemical weapons, or their proliferation to terrorist groups who would do our people harm.” President Barack Obama, “Statement by the President on Syria,” August 31, 2013, <http://www.whitehouse.gov/the-press-office/2013/08/31/statement-president-syria> (accessed September 11, 2013).
 7. As part of its assertion of an international prohibition on chemical weapons use, the Administration has highlighted the fact that the U.S. and 188 other countries “comprising 98 percent of the world’s population are parties to the Chemical Weapons Convention, which prohibits the development, production, acquisition, stockpiling or use of chemical weapons.” This is true, but it is not sufficient to be considered customary international law. The U.S. is among a handful of countries that have not ratified the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Under the Administration’s theory, the preponderance of support among other nations for those treaties would establish a binding obligation on the U.S.

Moreover, application of such a standard would be extremely impractical and arbitrary. For instance, if China gassed civilians in Tibet or North Korea conducted chemical weapons experiments in its gulags, the U.S. would almost certainly not intervene militarily. Claims of justification based on violations of an international norm are gravely weakened by selectivity.

U.N. Futility. The U.S. has sought for over two years to convince the U.N. Security Council to take action on Syria. Russia and China have vetoed three resolutions condemning the Syrian government since 2011. Russia has also blocked non-binding Security Council statements expressing concern over the humanitarian situation in Syria and others condemning use of chemical weapons generically. As observed by Ambassador Samantha Power:

Does anybody really believe that deploying the same approaches we have tried for the last year will suddenly be effective?... [I]t is naive to think that Russia is on the verge of changing its position and allowing the UN Security Council to assume its rightful role as the enforcer of international peace and security.⁸

Yesterday's naiveté, however, has become today's strategy. Russia seized upon impromptu remarks by Secretary of State John Kerry and proposed that Syria put its chemical weapons under international supervision. Syria quickly agreed to the proposal because it accomplishes what Russia and Syria have been seeking for weeks: It shifts the focus back to the U.N., where Russia's veto will ensure that nothing substantive is adopted.

The Russian strategy is likely to engage in lengthy debate over the details of the proposal, such as who would supervise the chemical weapons, how a

comprehensive account of chemical weapons would be tallied, how or if they would be destroyed, how to verify compliance, and what (if any) consequences would result from Syrian non-cooperation. With the Russian veto in play, there is little reason to believe that future negotiations in the Security Council will be any more fruitful than past efforts.

U.S. Interests Are Paramount. Although gaining support in the Security Council for U.S. action can be very useful, if U.S. interests are under threat, it is incumbent on the President to act regardless of Security Council approval or idealistic criteria such as those set forth under the R2P doctrine.

One positive outcome of the Syria debate was that the Obama Administration was forced to admit the disutility of the U.N. Charter. The Administration did not make even a pretense of the need for U.N. Security Council approval for military strikes. In congressional hearings, no Member has seriously argued that U.N. approval is necessary. Even President Obama dismissed the prospect for additional U.N. action as "hocus pocus."⁹

The President's recent reversal reveals that the hocus pocus of U.N. effectiveness has appeal to those seeking to avoid hard decisions. The President and his officials have continually emphasized the urgency of a U.S. response to Syria, but the decision to engage with the U.N. belies those statements. If U.S. interests are truly at stake, the President is doing harm to the nation by returning yet again to the U.N. dead end.

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8. Power, remarks at the Center for American Progress.

9. President Barack Obama, "Remarks by President Obama in Press Conference at G-20," September 6, 2013, <http://www.politico.com/story/2013/09/remarks-obama-g-20-96386.html#ixzz2eVrMYCa3> (accessed September 11, 2013).