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Stumbling Forward in Syria

By GEORGE BISHARAT*

On August 21 2013, a large number of Syrian civilians in a suburb of Damascus appeared in hospitals with symptoms of a possible nerve agent attack. Many—the precise number is disputed—died. Soon after, President Obama and Secretary of State John Kerry claimed to have evidence that the deaths were caused by deliberate use of chemical weapons by the Syrian government and announced their intention to attack Syria in response. In the face of public skepticism and resistance within Congress, President Obama then stated that he would seek congressional approval for a military strike against Syria. Congressional offices reported receiving unprecedented numbers of constituent messages that were almost uniformly opposed to the use of force against Syria, and the President teetered at the brink of a political defeat that threatened to cripple his presidency for the remainder of his second term.

President Obama was spared this ignominious end by the stunning intervention of Russia, whose foreign minister, Sergei Lavrov, seized on an apparently off-handed press conference remark by U.S. Secretary of State that Syria could spare itself attack only by agreeing to surrender its entire stock of chemical weapons. Russia proposed to facilitate exactly that, and within days the United Nations Security Council, with U.S. support, passed a resolution consecrating the Russian approach. Inspectors were rapidly dispatched to Syria to catalogue its chemical weapons stock and to initiate the complex process of neutralizing or destroying those weapons in the midst of a raging civil war.

Had President Obama proceeded with a military attack, it would likely have violated domestic law, and surely would have violated international law.

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Congressional approval for an armed attack on another state is required by the 1973 War Powers Resolution, which codified constitutional principles of the separation of powers and checks and balances. Per one constitutional scholar: "The president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation." The author? Barack Obama, as presidential candidate in 2007. Congress has typically not confronted American presidents who have employed force without its prior approval, including, most recently, President Obama in Libya. All U.S. presidents since the passage of the War Powers Resolution have maintained that the act is unconstitutional. But unchallenged violations do not in themselves negate a law, and Obama's 2007 statement remains fundamentally accurate, although not undisputedly so.

Yet congressional approval alone would have been insufficient to establish the legality of a U.S. attack. The United Nations Charter permits the use of force in only two circumstances: self-defense in the face of imminent attack; and when authorized by the Security Council to counter a threat to international peace. President Obama's admission that an attack would be "effective tomorrow, or next week, or a month from now" underscored that we faced no imminent attack from Syria. Nor was Security Council approval forthcoming.

President Obama asserted that an attack would advance our national security interests. Even were this true, it would provide no legal justification for our use of force. Many things might advance our national security interests that are flatly illegal, and were other nations to assert similar claims, we would properly reject them. The president also passionately appealed to the need to uphold international norms barring the use of chemical weapons. Yet on assuming office he declined to investigate Bush administration officials for numerous possible violations of international law, from launching an unjustified war on Iraq, to torturing prisoners held without process in black sites scattered across the globe. International norms against aggression and torture are just as strong as the norm against chemical weapons. U.S. officials (and president-elect Obama, who had won but not yet assumed office) likewise remained mute in the face of Israel's use of white phosphorous in densely populated parts of the Gaza Strip in Operation Cast Lead 2008-2009, which inflicted terrible wounds on Gazan civilians.

Our president's pious appeal for respect for international norms rings hollow when it only rationalizes forceful intervention against Middle East regimes we regard as hostile to American, or to Israeli, interests. Selective application of international law will never win us credibility, nor can we persuasively defend some international norms by violating others.

Despite our government's ham-fisted approach to the crisis in Syria, some good—largely thanks to Russia's deft maneuvering—can still come of the situation. If disarming Syria of its chemical weapons becomes the first step in a move toward making the Middle East a region free of weapons of mass destruction, including nuclear weapons, that will inure to the benefit of all. Likewise, should political negotiations toward a peaceful resolution of the Syrian civil war—without the precondition that President Assad step down—bear fruit, that, too, would be a remarkably positive outcome of what began as a potentially disastrous miscalculation. Finally, if European and American publics have been empowered to rein in their leaders' penchant for military solutions over more difficult legal and political ones, that, too, would signify the turning of a corner toward a somewhat sunnier international scene, after some very bleak, dark, and violent years.
