

COMMENTARY

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International Law Constrains U.S. Action in Syria

By Phillip Carter

Two basic legal principles animate our current international system: states are sovereign, and they shall not, generally speaking, attack each other.

The United Nations charter reflects these two principles, and recognizes just two exceptions in its text: action taken pursuant to a UN Security Council resolution, and individual or collective self-defense. As the U.S. weighs action against the brutal Syrian regime, it must decide whether to abide by these laws, or abandon them in pursuit of some greater good to be gained through an arguably unlawful intervention in Syria.

For all its wanton disregard for the law, including but not limited to the use of chemical weapons and slaughter of civilians, the Syrian regime has not abdicated its sovereignty in a way that invites attack. Syria remains a sovereign state, which maintains relative control over its borders, economy, and population. As a matter of international law, the conflict within Syria is also an internal conflict. Despite its obvious horrors, the Syrian Civil War itself does not justify armed attack by outside states, anymore than the U.S. Civil War justified direct intervention by the British.

The first exception to the rule covers actions taken pursuant to a UN Security Council resolution. The US had this mandate in Libya, and for its recent actions in Afghanistan, Somalia and the first Gulf War, among others. However, because Russia and China plan to veto any intervention in Syria that comes before the Security Council, there appears to be no chance of obtaining UN sanction to act in Syria.

The second exception applies to cases of individual or collective self defense. Under this principle, Turkey, Jordan, Israel, Iraq, or Lebanon could respond directly to Syrian belligerent acts, as could their allies (such as NATO and the U.S.). However, despite the Syrian Civil War's spillover effects, and the occasional skirmish on the Turkish or Israeli borders, the war has arguably not yet created a *casus belli*.

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States have also long claimed a right under international law to pre-emptive self defense in cases of imminent attack. If the Syrian government indicated (by words or deed) that it planned an imminent attack on another state, that *could* justify an armed intervention. However, this theory suffers from a troubled past, not least because an extended version was used by the US to justify intervention in Iraq. This argument also relies heavily on proof of imminence and intent, which have been historically very hard to show.

Without a hard, legal justification under the UN Charter or another treaty, what remains is a softer, amorphous justification under the emerging legal norm of humanitarian intervention, or what some frame as the “responsibility to protect.” Under this theory, the U.S. will likely stitch together a case based on the horrors inside Syria, the need to enforce the Chemical Weapons Convention (which, problematically, Syria never signed), and the adverse regional security impacts of the Syrian Civil War, including refugee flows, weapons movements, and border instability. At best, as in Kosovo, this argument produces a war that is arguably unlawful but justifiable as a policy and political matter.

It may be tempting to dismiss these laws as undue constraints on American power and interest. However, doing so would be a mistake. Law has utility in foreign affairs beyond its mere codification of normative values. There are few slopes more slippery than that between peace and war. International laws, treaty obligations, and international institutions act as brakes on this slope, forcing nations to more carefully weigh the enormous costs and consequences of war, seek the consent and participation of stakeholders, and consider the broader principles and precedent at stake before embarking upon war. The Obama administration should slow the drumbeat for war, and more carefully build a legal foundation for armed intervention in the Syrian Civil War.

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