

No Longer Fit for Purpose: Syria and the International Normative Architecture

Written by Ramesh Thakur

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RAMESH THAKUR, APR 24 2018

As the Syria crisis grows more complex and dangerous by the month, the international community's choices are between bad (Bashar al-Assad stays in power), worse (Assad is toppled and Syria joins Iraq and Libya with post-regime-change bloodbaths), and worst (open warfare involving local proxies and regional and major-power patrons). This is why, as President Barack Obama's National Security Adviser Susan Rice reminds us, there is more continuity than change from his to Donald Trump's administration: avoid mission creep; restrict the goal to defeating Islamic State in Iraq and Syria, not regime change in Damascus; avoid becoming entrapped in a wider war that would require a bigger and longer US military commitment; and draw a distinction between use of conventional and chemical weapons. Where they differ is on the threshold for the unilateral use of US military force. Obama preferred to lead from behind. Trump has led from the front as part of his agenda to make America great again. Obama recognised and tried to resist the default Washington foreign-policy establishment 'playbook' of 'militarized responses' to international crises. As Patrick Buchanan comments: 'The War Party that Trump routed in the primaries is capturing and crafting his foreign policy'.

In any stampede to war, critical question marks regarding facts must be substituted for excitable exclamation marks alleging atrocities. Allegations deserve extra scrutiny if they provide the alibi for unilateral military attacks. On 21 August 2013, a chemical weapon was used against civilians in the Damascus suburb of Eastern Ghouta. Key Western leaders jumped from the fact of their use to conclusions that they were used by the regime. Seymour Hersh argued that Obama cherry-picked facts and intelligence, presented assumptions as facts and omitted important intelligence pointing to the jihadist al-Nusra Front's capability to make and mount a chemical weapon attack with sarin gas. The road to war was blocked then by sceptics in the US Congress and the UK Parliament.

Held by the rebels at the time, Khan Sheikhun in Idlib province was attacked with chemical weapons on 4 April 2017, killing more than 80 people. Assad and Moscow denied responsibility. The US claimed that jets from the Shayrat air base had bombed the town and on 7 April it hit the base with 59 Tomahawk cruise missiles. The unilateral, non-UN authorised strikes were applauded by most Western and several other countries but in a BBC interview, former UK ambassador to Syria Peter Ford warned that Trump had 'given jihadis a thousand reasons to stage fake flag operations'.

On 14 April 2018, US, British and French forces bombed three chemical weapons facilities in Damascus in retaliation for the alleged use of chemical weapons by Syrian forces in Douma on 6-8 April that killed around 75 people. Russia's foreign ministry spokeswoman Maria Zakharova said that 'Damascus has neither the motive to use chemical weapons nor the chemical weapons themselves'.

In their totality, the events reflect five critical global governance shortcomings and in turn will exacerbate the pathology of a broken system of international order:

1. The White Man's Burden Has Morphed into a Duty to Bomb

First, they highlight the West's self-appointed but dubious and unsustainable role as the moral policeman of the

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world. State sovereignty is the bedrock principle of the contemporary global order. Erosion of the principle includes demands that government's domestic behaviour conform to international normative standards. But there is the matching demand that states' international use of force be constrained by international law. The international community has not elected Britain, France and the US to act as the arbiters and enforcers of domestic behaviour by other countries.

In justifying her decision to commit the UK to joining the US and France in the air strikes on Syria without UN authorisation, PM Theresa May said in Parliament on 16 April that the requirement for UN authorisation would effectively give Russia a veto on British foreign policy. May's unilateralism would cause complete anarchy in world affairs. Most US newspapers headlined their reports on the strikes with phrases such as 'US leads West's attacks on Syria in retaliation for Assad's use of chemical weapons'. A symmetrical equivalent would be that Russia fired missiles at selected targets in Riyadh and Russian media reported it as 'Putin punishes King Salman for war crimes in Yemen'.

The dominant British narrative of their civilising mission and role in fulfilment of the White Man's Burden in the heyday of colonialism is also at odds with the natives' own memories of rapacious and brutalising cruelty, including Churchill's responsibility for mass deaths by starvation in a famine because Indians did not deserve any better: see the accounts by Madhusree Mukerjee and Shashi Tharoor. The world is simply not going to accept such a role for the West today.

2. The World Lacks Effective Independent Criminal Investigative Agencies

The second facet of the broken international system is the lack of international criminal investigative and accountability mechanisms to ensure compliance with prevailing norms and humanitarian law that is credible, effective and timely. They would ensure punishment of perpetrators – of the use of prohibited weapons but also of aggression – while also deterring repeat of the abhorrent conduct by thugs and aggressors in the future.

All governments lie, albeit some more than others. Big powers pass information to international agencies selectively, being generous with evidence that supports their narrative and suppressing contradictory facts. Russia has alleged British culpability for a staged false flag operation. I don't believe their sense of public morality would permit the US or UK governments to stage a chemical weapon attack and I would need incontrovertible proof to be convinced otherwise. But they are not immune to being duped by such an attack executed by jihadists fighting Assad. Nor to dissembling in order to shift the blame from 'our' to 'their' proxies. As Scott Burchill reminds us, this is exactly what Washington did thirty years ago when Saddam attacked Kurds with chemical weapons in Halabja.

A recurring flaw of US foreign policy is the imperative 'to do something'. On 14 April the three allies gave in to this urge and bombed Damascus before investigators from the Organisation for the Prohibition of Chemical Weapons (OPCW) could confirm a CW attack had taken place and point the finger of criminality at those responsible. This is uncomfortably reminiscent of the rush to war in Iraq in 2003 without giving the UN weapons inspectors time to complete their job.

Not just Assad but Syrian rebels also have access to chemical weapons and both are capable of using them against civilians. A report by the Russian news agency TASS, dated 13 March, warned: 'Militants are preparing a provocation with the use of chemical agents in Syria to justify a massive US strike against Damascus' government neighborhoods, Chief of Russia's General Staff Valery Gerasimov said on Tuesday'.

On 13 April a group called the Veteran Intelligence Professionals for Sanity asked Trump to 'obtain and review actual evidence from the site of the alleged chemical weapon (CW) attack in Douma, Syria, before ordering any military action'. In particular:

One must... consider the possibility that the supposed chlorine gas attack at Douma may have been a carefully constructed propaganda fraud... In other words, Mr. President, this may be a bid to mousetrap you into a war that neither you nor your fellow Americans want nor need.

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The timing was certainly suspicious. The 2017 incident occurred within a week of America's UN ambassador Nikki Haley saying Washington would no longer focus on ousting Assad. The Douma attack occurred a week after Trump's announcement of an imminent US withdrawal from Syria. On 17 April US Senator Rand Paul and British Admiral Lord West, in separate interviews with the CNN and BBC, noted that on strategic logic the Syrian rebels stood much to gain and Assad had everything to lose by faking or using chemical weapons respectively. In a BBC Radio Scotland interview on 10 April, Ambassador Ford too expressed scepticism for similar reasons. Thus the call by the doubting Thomases was not to do nothing, but to decide on appropriate action after the OPCW had done its work, and compelling evidence was available to discount the possibility of a false flag operation by groups that were on the run on the battlefield and stood most to gain from Western military strikes on Assad.

The key missing ingredient is impartial investigations by an independent agency. However, as the example of Iraq showed, for those set on war, an independent investigation is an impediment, firstly on timing: they must await the findings before acting; and secondly on the risk of the 'wrong conclusion'. In 2002 the first director-general of the OPCW, the distinguished Brazilian diplomat José Bustani, tried to convince Iraq to sign the Chemical Weapons Convention so his organisation could certify it was free of chemical weapons. In a raw exercise of financial muscle, the US orchestrated his ouster because, as Bustani confirmed a decade later, his effort to place OPCW inspectors in Iraq to certify the absence of chemical weapons would have hampered the US determination to eliminate Saddam Hussein. The Administrative Tribunal of the International Labour Organisation subsequently held Bustani's removal to have been 'unlawful', observing that such an 'unacceptable violation' of the principles governing the tenure of international civil servants would render them 'vulnerable to pressures and to political change'.

3. The World Lacks an Effective International Enforcement Agency

The third lack is enforcement mechanisms and countries with core humanitarian values step in to fill the lacuna. The international community has proscribed the possession and use of chemical weapons. If they are used, who other than the West is going to do anything about it?

Unfortunately, the politics of a permissive environment for punishing heinous war crimes works against the requirements of a forensic examination that can provide the necessary proof of culpability. On 6 October 2017, the UN Human Rights Commission's independent inquiry commission pinned the blame for the CW attack in Khan Sheikhun on the Syrian Air Force. The OPCW-UN Joint Investigation Mission confirmed this finding on 26 October. Thus it took six months for independent investigations to confirm regime culpability. Had the US waited until then, Trump could not have mobilised support domestically or internationally for punitive raids long after the provocation had faded from public minds.

In striking Syria with missiles on 8 April, the US, UK and France argue they deployed their military power to uphold the international norm against the use of chemical weapons. The moral case depends on whether chemical weapons were indeed used and, if so, by whom. If by Assad and the strikes deter future use by him and other would-violators of the global norm, then – setting aside questions about Trump's capacity for moral reasoning – the strikes are anchored in a specific moral framework. But if the chemical weapons were used by rebels – who are no less unsavoury than Assad – with the goal of provoking US military attacks on Assad, then of course they will have the opposite effect, encouraging future uses by Syrian and other rebels anywhere in the world hoping to internationalise their civil wars in order to offset military weakness against government forces.

4. The Veto Produces International Paralysis

The fourth broken pillar is the veto clause that allows just one of the five UNSC permanent members (P5) to paralyse decision-making by the world's only duly-constituted law enforcement body. China and Russia have employed the veto on numerous occasions to block UNSC action against Syria whose savage civil war was the context in which Amnesty International concluded six years ago that the Security Council is 'tired, out of step and increasingly unfit for purpose'.

Since the uprising against Assad that began in 2011, around 500,000 people have been killed in total on all sides

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and, according to the UN High Commissioner for Refugees, around 14.5 million have been displaced internally, have fled abroad as refugees, or are living in hard-to-reach or besieged areas. With the complex internal sectarian divides intersecting with regional power rivalries, Arab–non-Arab divisions, Sunni–Shia tensions, and global US–Russia–China struggles for power, resources and influence, existing international institutions have proven totally inadequate to the magnitude of the challenge of coping with the multiple crises.

5. The UNSC Legal Competence is Compromised by Growing Illegitimacy

In the 1999 Kosovo war, most Western analysts concurred with the Kosovo Commission that it was illegal but legitimate. The NATO bombing of Serbia was illegal because it had neither been authorised by the UNSC nor was it a response to an armed attack on a NATO member. But it was held to be legitimate because its primary purpose was to halt humanitarian atrocities by the murderous Slobodan Milosevic.

The legality–legitimacy distinction now haunts the UNSC more broadly. It has the legal authority to bind the international community but is so badly out of alignment with the real world that its actions are increasingly illegitimate. Three of the P5 – the very three that bombed Syria – are Western. The 60 percent dominance is wildly out of proportion to their population and economic weight in world affairs. Another three elected members are also Western (presently, the Netherlands, Poland and Sweden). Six of the 15 – 40 percent – is grossly disproportionate to the UN membership and global population distributions.

On 14 April, the UNSC rejected a Russian resolution calling for condemnation of the air strikes by a vote of 3 (Russia, China, Bolivia)-8 (US, UK, France, Netherlands, Poland, Sweden, Kuwait, Ivory Coast-4 (Ethiopia, Kazakhstan, Equatorial Guinea, Peru). With the UNSC refusing ‘to rebuke their violation of its own charter’, asks Jeff Faux, a founder of the Economic Policy Institute in Washington, ‘who now is left to defend the international rule of law?’ This is the final measure on which the Syria crisis highlights the sorry state of world order arrangements.

Conclusion

The US, UK and French missile strikes do not prove that the P3 leaders are warmongers. The military action was limited in firepower, duration and choice of targets. The strikes signalled determination to punish Assad for violating publicly declared US red lines against the use of chemical weapons. By limiting the means, duration and targets, they equally deliberately avoided crossing Russia’s red lines. That said, giving in to the urge ‘to do something’ fails to clarify any broader and longer-term strategy in which the military action is anchored. Their strategic effect is the equivalent of pinpricks.

Great powers pursue imperial, not ethical, foreign policies and the US is today’s greatest power. In their effort to enforce international humanitarian law that prohibits the use of chemical weapons, Britain, France and the US violated the international law governing the use of force. The attacks show the impotence of the UN in checking war crimes by Syria *and* illegal use of force and breaches of international law by the major powers, from the strikes on Syria by the US, France and Britain to China’s defiance of the international tribunal’s ruling on its dispute with the Philippines, Russia’s invasion of Ukraine and annexation of Crimea, and the US, British and Australian invasion of Iraq.

In its judgment in 1946, the Nuremberg International Military Tribunal described aggression as ‘the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole’. The only body with the power to punish aggressors is the UNSC and the US, UK and France are three of its five permanent members. Should the OPCW investigation prove jihadist instead of regime culpability, there is no chance that the P3 will be held to international criminal account for the supreme international crime. The net effect might well be to devalue the role of law and norms in regulating state conduct and stimulating a remilitarisation of world affairs.

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