

POLICY BRIEFING

Syria: Weighing the risks

Abstract

Following two and a half years of bloody civil war in Syria, world leaders remain uncertain how to staunch a humanitarian calamity that has left more than 100 000 Syrians dead, 6 million displaced and immeasurable material damage and human suffering. China and Russia have incapacitated the United Nations, and the military conflict in Syria is escalating dangerously. The chemical attack on civilian targets near Damascus on 21 August has refocused the attention of the international community on the crisis, and the United States and France – supported by the Gulf states, Turkey and Israel – are calling for a targeted and limited military intervention to punish the Assad regime. Such action would have unpredictable consequences for the country, the region and world politics. It is unlikely that it would improve the dire situation of the Syrian people or foster a peaceful and democratic future for the country.

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1 Deepening humanitarian calamity

Despite the fact that more than 100 000 Syrians have died, over 30 % of the population displaced and the entire region overwhelmed by a humanitarian disaster, the international community has not taken decisive action to stop the crisis.

The civil war in Syria is currently the world's most serious humanitarian crisis. More than 100 000 persons have died since the beginning of the conflict. The death toll in Syria has risen vertiginously as the crisis has deepened. While 2 600 person died during the first six months of the conflict, the UN now estimates that more than 30 000 have been killed in the last six months.

The number of Syrian refugees has surpassed 2 million – 10% of the Syrian population – according to the UN High Commissioner for Human Rights (UNHCR). In addition, 4.25 million Syrians have been internally displaced¹. Even these numbers include only officially registered refugees. In the last two weeks, due to the threat of a military strike, an ever-increasing number of Syrian people have crossed the borders. According to UN estimates, another Syrian flees the country every 15 seconds. If the conflict continues, the tally of Syrian refugees is expected to rise to 3.5 million by the end of the year.

Authorities of the neighbouring countries are overwhelmed by the magnitude of the refugee crisis. Across the Middle East, in Lebanon, Iraq, Turkey and Egypt, the exodus of Syrian refugees has stretched resources, sparked political and sectarian tension, aggravated economic problems and altered local demographics. The challenges are becoming more serious as the crisis deepens and expands: Diseases, security hazards in the camps and other temporary shelters, and scarcity of food and basic services place a heavy burden on host states and international humanitarian organisations.

The situation on the ground in Syria is fluid. The regime is expanding the areas it controls by recapturing territories, especially in the central part of the country (Homs, Hama) and, at the same time, maintaining the ports of Latakia and Tartus (from where most of Alawite population comes) and the city of Suwayda in the South. South-western Syria, especially the town of Dara'a², is today a contested area, as are the cities of Homs, and Damascus. The rebel-held areas are mainly north and east of Aleppo as well as the cities of Idlib, and Deir al-Zour in the north-east of Syria.

Rebel-held areas are not, however, under a unified leadership, and fights between rebel groups such as the Kurdish militia, the Free Syrian Army and radical groups backed by al-Qaeda (including Jabhat al-Nusra) have taken place. The Syrian opposition is increasingly fragmented and polarised. After two and a half years of civil war, the likelihood of reconciliation is becoming weaker day by day.

The United Nations Security Council has treated the gross violations of human rights, including indiscriminate killing of civilians in Syria,

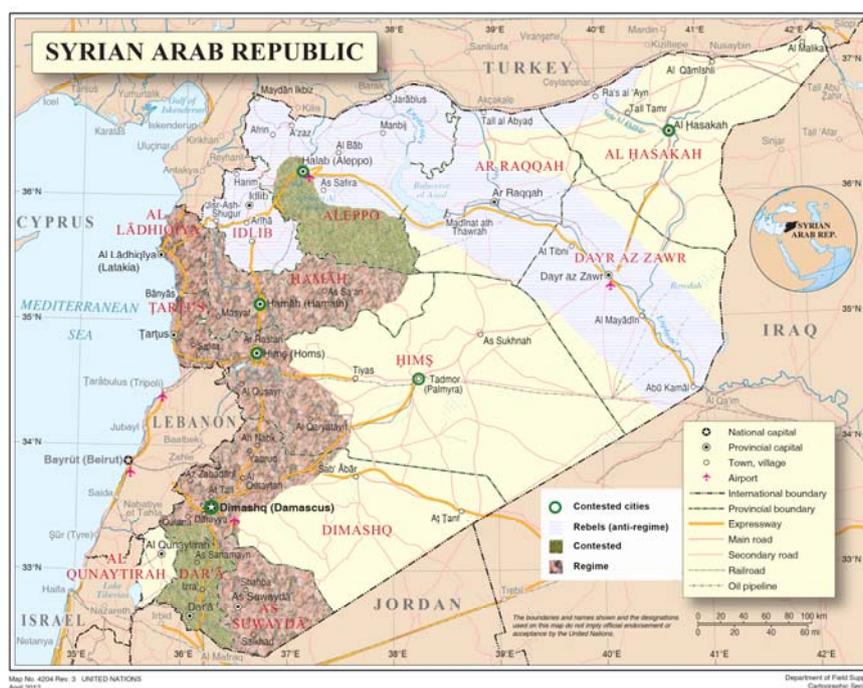
¹ <http://www.unhcr.org/522495669.html>

² <http://wwwnews.live.bbc.co.uk/news/world-middle-east-19285076>

The United Nations has been unable to respond due to the veto of Russia and China in the Security Council.

differently than it did the Libyan crisis in 2011 (UN SC Resolution 1973 (2011)). Crimes against humanity committed by the regime of Libyan leader Muammar Qadhafi before the intervention then served as the impetus to apply the principle of the Responsibility to Protect (R2P). In the case of Syria, owing to the fierce opposition of Russia and China, permanent members of the Security Council, the Security Council has not applied R2P in response to the crimes committed by the regime of Syrian President Bashar al-Assad.

Figure 1:
Map depicting the current situation on the ground



Source: United Nations, with additions by the Policy Department, DG Expo

2 Change of focus after the 21 August chemical attack

The focus of the international community has shifted since the chemical attack of 21 August, moving from an effort to broker a political settlement to a discussion about military strikes against Syria.

A chemical attack near Damascus on 21 August 2013 killed hundreds of people and shifted the focus of the international community from a search for a political settlement and concerted international action within the framework of a UN mandate (unsuccessful so far), to a debate about a targeted, limited strike against Syria by 'a coalition of the willing'.

The legal and political implications and risks of such a move are high for Syria, its neighbourhood and the wider international community. Yet a decision to refrain from intervening will also have consequences. The credibility of the US and its allies – states that, from the beginning of the crisis, described the use of chemical weapons as a red line' – may well suffer if they fail to act.

The United States and France have taken a leading role in advocating a firm military response to Assad based on evidence that his regime used chemical weapons – allegedly sarin – against its own people.

US President Barack Obama stated on 31 August 2013 that any US strikes would be limited in scope and duration and would aim to 'hold the Assad regime accountable for their use of chemical weapons or their

proliferation to terrorist groups who would do our people harm³’.

French President François Hollande, a firm supporter of military action, has said that he is working to persuade France's allies to join the coalition.

UN Secretary-General Ban Ki-moon has defended the primordial position of his organisation, arguing on 3 September 2013⁴ that the issue is larger than the conflict in Syria: ‘this is about our collective responsibility to mankind; I take note of the argument for action to prevent future uses of chemical weapons. At the same time, we must consider the impact of any punitive measure on efforts to prevent further bloodshed and facilitate a political resolution of the conflict’.

A full assessment of the evidence collected by UN weapons inspectors investigating chemical weapons attacks in Syria is a complex scientific process and could take up to three weeks.

The UN Secretary-General appealed to the international community to take decisions within the framework of the UN Charter.

The UN Secretary-General is steadfast in his position that the use of force is lawful only under a UN mandate.

3 Legal considerations

3.1 UN Security Council mandate

The war in Iraq ten years ago casts a heavy shadow over the legality of a possible strike against Syria.

Although it is highly probable that the US and some of its allies will proceed with targeted air strikes against Syria, this military intervention will be shadowed by the legacy of the war in Iraq. Ten years ago, the US and the UK invaded Iraq without gaining a second UN resolution, which many believed was necessary to validate an attack. As a result, many have argued the Iraq war was ‘illegal’. Western leaders are now under pressure not to make the same mistake in the case of Syria.

International law provides two unambiguous legal justifications for a military attack: a UNSC resolution authorising military action or Article 51 of the UN Charter, which concerns a state's right to self-defence.

It is widely accepted that international law provides only two clear and unambiguous legal justifications allowing one nation to attack another. The first is a UN Security Council resolution authorising military action. In the case of Syria, this will not happen because the permanent Security Council members Russia and China are ready to veto any resolution authorising military action against Assad, their ally. The second possible justification involves Article 51 of the UN Charter, which described an ‘inherent right of self-defence if an armed attack occurs against a member of the UN’. However, invoking Article 51 in this case would be extremely dubious, as the chemical attack on civilians near Damascus on 21 August 2013 hardly constitutes an attack on another state.

3.2 Conventions banning chemical weapons

The use of chemical (and biological) weapons and the development,

³ <http://www.whitehouse.gov/the-press-office/2013/08/31/statement-president-syria>

⁴ <http://www.un.org/sg/offthecuff/index.asp?nid=2967>

International regulations on the prohibition of the use of chemical weapons date back to 1925.

The 1993 Chemical Weapons Convention has substantially reinforced the international legal framework prohibiting chemical weapons.

production, stockpiling and transfer of these weapons are prohibited under international law⁵. The 1925 Geneva Protocol banned asphyxiating, poisonous or other gases and bacteriological methods of warfare. The Protocol has not been universally respected, however. These weapons have been used in interstate wars (e.g. Iran-Iraq), civil wars (e.g. Yemen) and terrorist attacks. These violations have provoked widespread international condemnation and, in some cases, criminal prosecutions. Syria acceded to the 1925 Geneva Protocol in 1968 but has admitted to possessing a stockpile of chemical weapons, which it claims are reserved for national defence, to be used only against foreign states launching an attack against Syria.

The 1993 Chemical Weapons Convention (CWC), which entered into force in 1997, extended the 1925 Protocol and prohibited the development, production, stockpiling, retention and transfer of chemical weapons, including their delivery systems. The Convention also addressed the issue of the destruction of these weapons. International verification measures are the responsibility of the Organisation for the Prohibition of Chemical Weapons (OPCW), based in The Hague, which provides technical assistance to states implementing the Convention's provisions. Each of the signatory states – 189 for the time being – has a national authority ensuring liaison and implementation and arranging international inspections. The OPCW has overseen the destruction of 80% of the world's known stockpiles of chemical weapons, and there are programmes in place to destroy most of the rest. Syria is one of the five states that have neither signed nor acceded to the CWC⁶.

The US has claimed that the Assad regime is breaching these international conventions⁷. However, these conventions do not authorise one nation to take military action against another solely because it has used chemical weapons.

The question has become one about enforcement, and whether one state may apply force to prevent the current regulations and 'norms' regarding chemical weapons from being broken⁸.

3.3 Responsibility to protect

A strike against Syria could only be legally justified as a

The US and its allies could also argue that an attack is warranted because a civilian population faces a 'humanitarian catastrophe' or as a result of 'the responsibility to protect' civilian populations under threat. According to

⁵ <http://www.icrc.org/eng/war-and-law/weapons/chemical-biological-weapons/overview-chemical-biological-weapons.htm>

⁶ <http://www.opcw.org/about-opcw/non-member-states/>

The other four states are: Angola, Egypt, North Korea and South Sudan.

⁷ Jay Carney, the White House spokesman, said on 26 August, that Syria is committing 'a clear violation of an international norm' by allegedly using chemical weapons against civilians.

⁸ Financial Times, 27 August 2013, J. Blitz, *Syria Crisis: can military action be legally justified?* <http://www.ft.com/intl/cms/s/0/2fc194ce-0f3a-11e3-8e58-00144feabdc0.html>

humanitarian intervention on the basis of a UNSC resolution.

international law experts intervening in a state's affairs is permissible in strictly defined situations in order to protect the lives of persons situated within the state – including persons who are not necessarily nationals of the intervening state. Such a right might evolve in cases of extreme humanitarian need.

The Kosovo crisis of 1999 constituted a humanitarian intervention without a UN mandate. The NATO bombing campaign in support of the repressed ethnic Albanian population in Kosovo was argued to be justified by 'humanitarian necessity'. The then UK Secretary of State for Defence stated in 1999 that, 'In international law, in exceptional circumstances and to avoid a humanitarian catastrophe, military action can be taken and it is on that legal basis that military action was taken'⁹.

Diplomats affirm that both the doctrine of 'humanitarian intervention' and the 'right to protect' are controversial. These appellations are widely contested, since these doctrines cannot be translated into military action without a United Nations Security Council resolution.

4 Domestic and regional implications

Military action against Syria might have broader repercussions for the entire region.

There exists a real risk that the crisis may escalate within the region or further abroad, with retaliatory actions by the Syrian regime, Iran or Hezbollah (notably against Israel). In a region close to boiling point, the prospect of proxy military struggles – among the world powers-allies of the regime and western countries in general – is unwelcome. The political, economic and diplomatic consequences of such a contest would be unpredictable.

Within the borders of Syria, military action will most probably lead the Assad regime to respond with harsher attacks against the rebels, triggering an even-more violent escalation of hostilities within the country.

The exodus of refugees is likely to continue regardless of a military strike, as such a strike would not significantly diminish the Assad regime's arsenal of conventional weapons.

The geographic location of Syria and its pivotal position in the region make it impossible for any neighbouring countries or regional actors to remain indifferent to the ongoing conflict. Due to differing geopolitical considerations, the positions and risk assessments vary significantly.

Arab countries are deeply divided on the question of military intervention.

Arab countries are divided on the issue of military intervention, as demonstrated by the final Resolution of the Arab League Extraordinary Session held on 27 August. The resolution condemns and denounces the use of chemical weapons by the regime against the population, but states that a military response is out of question. Nabil Elaraby, Secretary General of the Arab League, stated that only the UN – the official representative of

⁹ Shaw N. Malcolm, *International Law*, Fifth Edition, Cambridge University Press, Cambridge, 2003, pp. 1046-1047.

the international community – may authorise military action.

Egypt stands behind the Arab League resolution. Jordan, Lebanon, Tunisia, Iraq and Algeria have spoken against military intervention.

Israel, Saudi Arabia, Qatar and Turkey are in favour of intervention.

Saudi Arabia and Qatar, key supporters of the Syrian opposition within and outside the country¹⁰, hold the Assad regime accountable for the chemical attack and support military intervention in Syria. However, while Saudi Arabia is likely to support a US-led intervention¹¹, Qatar prefers a mandate from the UN Security Council but may well support a US-led intervention even without such a mandate¹².

Turkey, home to almost half a million Syrian refugees, has supported an international intervention in Syria by offering the US full cooperation, including the use of Turkish military bases.

Israel, the US's closest ally in the region, shares Saudi Arabia's position. Israel's argument is that not reacting to the use of weapons of mass destruction by the Assad regime might embolden Iran to do the same. Yet Israeli President Shimon Peres has also ruled out Israel's direct involvement in any intervention; for the time being, Israel favours a targeted and limited intervention which does not topple the Assad regime, for fear of the unpredictable consequences of a radical Islamist-led regime in Damascus.

Iran supports Assad and is firmly opposed to any military intervention.

Iran's Foreign Minister, Mohammad Javad Zarif, has affirmed that Iran does not consider the use of chemical weapons justifiable under any circumstances¹³. Yet Iran, Assad's principal supporter in the region, has said it is sceptical about whether the Syrian regime has in fact used these weapons. Tehran has not only backed the Syrian regime, but has also threatened to become involved if there were a foreign intervention¹⁴. Iran considers that a foreign military intervention in Syria would further stir instability, terrorism and radicalism in the region, and insists that resorting to force constitutes an illegal action and a threat to international peace and security. Tehran has stressed the necessity of resolving the crisis through dialogue and political negotiation.

Iran is likely to avoid direct confrontation with the US and its allies. As a result, despite Tehran's bellicosity, US-led strikes are unlikely to provoke Tehran to retaliate against Israel. Most experts affirm that the Assad regime is not prepared to open two fronts. That said, some form of retaliation against Israel might be carried out by Hezbollah with the support of Iran.

¹⁰ See QPI March 2013, "A bleak balance sheet: The second anniversary of Syria's civil war", <http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=91710>

¹¹ http://english.alarabiya.net/webtv.html#/videos/20130901_1800

¹² http://www.mofa.gov.qa/official_Statements.cfm?id=139

¹³ <http://www.mfa.gov.ir/?siteid=3&siteid=3&pageid=1997&newsview=8789>

¹⁴ <http://english.alarabiya.net/en/views/news/middle-east/2013/08/30/Iran-s-threats-in-the-midst-of-a-Syrian-crisis.html>

Lebanon is particularly vulnerable.

Military intervention may have unpredictable geopolitical consequences in the volatile region.

Figure 2:
Map showing the areas with Shia majorities in the Middle East

Lebanon remains vulnerable to spill-over from Syria. The Assad regime and its supporters may try to inflame the situation in Lebanon, polarise the population and stir sectarian tension. Any Hezbollah-led retaliation against Israel would have serious destabilising consequences on Lebanon.

While the beginning of a military intervention can be imagined, few can foresee its conclusion. Nothing ensures that a US intervention would signal the end of this war and the killing of civilians. The possibility that military action inadvertently strengthens Islamic extremists and criminals is apparent.

The war in Syria has sharp sectarian overtones. A military strike supported by major Sunni regional powers – Turkey and Saudi Arabia – against an Alawite regime supported by Iran, the Shia regional power, may ignite dangerous sectarian strife across the region.



Source: United Nations, with additions by the Policy Department, DG Expo

Military intervention is likely only to increase the misery of the citizens of Syria, who have already suffered beyond measure in an unprecedented massacre over the past two and a half years.

The domestic consequences of a military intervention are unpredictable but will in no case instantly improve the situation of the Syrian people.

If the balance of power within Syria changes and President Assad is toppled, an open war between factions may take place, not only between pro-regime and anti-regime elements, but also among different rebel groups and among regime supporters. The Syrian rebels are divided, with alarmingly brutal radical pockets within the opposition. Many supporters of the Assad regime are closely implicated in the recent atrocities. It will be next to impossible to establish a new government that proves stable and is recognised by all Syrians.

In the worst-case scenario, Syria could become a no-man's land, like

Afghanistan, or a failed, unstable and unmanageable state, like Iraq.

Foreign intervention without a holistic strategy for the future will not improve the situation. Nor will it seriously damage the regime's ability to continue waging war against civilians by conventional means.

5 A role for the European Union?

The European Union opposes a military strike without a UN mandate.

EU Foreign Ministers discussed Syria with US Secretary of State in Vilnius on 7 September 2013. High Representative Catherine Ashton distributed a statement following the Vilnius meeting that reflects the agreed position of the EU on the Syrian issue

The European Union has condemned the 21 August attack near Damascus as 'abhorrent' and a crime against humanity. Yet European Council President Herman Van Rompuy has also warned against a military strike, saying it would not help resolve the crisis. Van Rompuy has reiterated the importance of waiting until UN experts issue their report on their investigation into the attack.

The President of the European Commission José Manuel Barroso has stressed the importance of renewed diplomatic efforts and called for a second Syria peace conference in Geneva as the only way forward.

In an informal *Gymnich* meeting in Vilnius on 7 September 2013, EU Foreign Ministers met with US Secretary of State John Kerry and discussed the situation in Syria. Following the meeting, EU High Representative for Foreign Affairs and Security Policy Catherine Ashton made the following statement, which, as she said, 'reflects the agreed position of the EU, reflects the position agreed by all member states'¹⁵:

'On 21 August, a large-scale chemical attack was perpetrated in the outskirts of Damascus, killing hundreds of people, including many women and children. That attack constituted a blatant violation of international law, a war crime, and a crime against humanity. We were unanimous in condemning in the strongest terms this horrific attack.'

'Information from a wide variety of sources confirms the existence of such an attack. It seems to indicate strong evidence that the Syrian regime is responsible for these attacks as it is the only one that possesses chemical weapons agents and means of their delivery in a sufficient quantity.'

'In the face of this cynical use of chemical weapons, the international community cannot remain idle. A clear and strong response is crucial to make clear that such crimes are unacceptable and that there can be no impunity. We must prevent creating a dreadful precedent for the use of chemical weapons in Syria again, or elsewhere.'

'The EU underscores at the same time the need to move forward with addressing the Syrian crisis through the UN process. We note the on-going UN investigation on the 21st of August attack and further investigations on other chemical weapons attacks carried out in this conflict. It hopes a preliminary report of this first investigation can be released as soon as possible and welcomes President Hollande's statement to wait for this report before any further action. The EU urges the UN Security Council to unite in its efforts to prevent any further chemical attack. To that effect, it

¹⁵ http://www.eeas.europa.eu/statements/docs/2013/130907_01_en.pdf

encourages the UNSC to fulfil its responsibilities and take all initiatives to achieve this goal. The EU and its member states intend to play a full and active part in that context.

'The EU recalls the individual responsibility of the perpetrators of attacks of this type, who must be held accountable, and the role of the ICC in investigating and judging such acts.

'Only a political solution that will result in a united, inclusive and democratic Syria can end the terrible bloodshed, grave violations of human rights and the far-reaching destruction of Syria. An encompassing diplomatic process leading to a political solution is now more urgent than ever. The initiative for a "Geneva II" peace conference must move ahead swiftly. The EU is ready to provide all support needed to achieve a political settlement and work with partners and international actors, particularly the United Nations. 'The EU will uphold its commitment, as the largest donor, to provide aid and assistance to those in need due to the Syrian conflict. It will maintain its readiness to help the recovery, rehabilitation and transition in Syria, in accordance with the needs of the Syrian people.'

European positions on military intervention are divided.

Table 1:
European positions on
military intervention

NATO	Secretary General Anders Fogh Rasmussen calls for 'a tough response' but leaves the decision of whether to initiate a military intervention to individual NATO member states.
UK	Prime Minister David Cameron supports US President Barack Obama but is bound by the vote of the UK Parliament against military intervention. He may consult the Parliament once again if UN inspectors present evidence against Syrian President Bashar al-Assad.
Germany	No plans to join military action without an EU, NATO or UN mandate. Merkel has criticised China and Russia for undermining the authority of the UN.
Italy	Opposes a military intervention. (The same position is adopted by the Vatican.)
Poland	Against military engagement.
France	President François Hollande supports a military response to punish Assad's regime but 'will not act alone'.
Spain	Maintains a low profile on the question and advocates a common EU position.

The escalation of the crisis may also have serious economic consequences.

The conflict in Syria has the potential for major economic consequences, particularly by driving up the price of oil. The implications are generally greater for Europe than for the United States. Syria's oil output is minimal on a global scale, but the deeper involvement of Iran, a major oil producer, could lead to a major supply disruption in the oil market.

The spillover of the refugee crisis to Europe has been limited until now.

With so many million Syrian refugees, even Europe is likely to feel the burden. For now the influx remains very limited compared to that in the countries surrounding Syria. But this may well change.