

[COMMENTARY](#) / [WORLD](#)

Is America now becoming an international outlaw?

BY [RAMESH THAKUR](#)

THE HAGUE – A week has proven to be a long time in international politics. On Aug. 26, arriving in Europe, NATO military strikes on Syria seemed both inevitable and imminent to punish it for alleged chemical weapons use on Aug. 21. On Thursday, the British Parliament rejected, by a 285-272 vote, the government motion that would have paved the way for British participation. Prime Minister David Cameron said he would respect the vote. By Friday, the United States was looking decidedly lonely and exposed in its hard-line stance that military attacks were still necessary and could be launched without U.N. sanction.

When Barack Obama succeeded George W. Bush as U.S. president, the world, sick of the latter's triumphalist, in-your-face unilateralism, heaved a collective sigh of relief. How ironic then that Obama risks making the U.S. the biggest international outlaw of our times.

Consider four examples. The intensified use of drones to kill foreign-based enemies has been described in a joint study by Stanford and New York University law schools — two of the world's leading law faculties — as violating international law, international humanitarian law, international human rights law and possibly also U.S. law. The creation of an uber surveillance state that spies massively and routinely on millions of Americans and foreigners has stirred an angry backlash. The refusal to prosecute the torturers and their legal enablers from the Bush regime, while pursuing, prosecuting and persecuting whistleblowers of government malfeasance, shows a strange perversion of priorities in the land of the free and brave.

Then there is the gathering Syria crisis so eerily reminiscent of Iraq in 2003 that the reprise seems scarcely credible. Unlike Iraq a decade ago, there actually is a brutal civil war going on in which 100,000 people have been killed, including soldiers, militants and civilians. That chemical weapons were used seems undeniable. But we do not know which chemical agents were used, what the casualties were and, most critically, who used them.

Elements on both sides are callous enough to use chemical weapons on innocent civilians. Western powers insist they have proof of regime culpability. After the Colin Powell theater of 2003, that will not convince a skeptical Western and international public. They will demand hard evidence. As things stand, strategic logic suggests strongly that the regime had everything to lose and the rebels much to gain by using chemical weapons and pointing the finger of criminality at Syrian President Bashar Assad. But circumstantial evidence points powerfully to regime culpability: the scale of use, the types of rockets used to deliver them, the direction from which they were fired, etc.

Fortuitously, there is an expert U.N. inspection team in country that should be given the mandate and time to forensically establish the facts and attribute guilt. The U.N. Security Council would be as criminally wrong not to mandate them as to authorize military reprisal before they have reported.

Military action without U.N. authorization would violate international law. No foreign country has been attacked by Syria. Other than self-defense against armed external attack, only U.N. authorization provides legal cover for military strikes. The international community cannot be collapsed into the FUKUS (France, U.K. and U.S.) coalition of the willing.

The Kosovo precedent from 1999 is no help. Contrary to the dominant NATO view, majority world opinion is that at best, that operation was illegal but legitimate in the circumstances; at worst, it was both illegal and illegitimate. This despite the fact that NATO had a U.N.-endorsed partial enforcement role in the Balkans for several years before the 1999 intervention, and that the Balkans is on Europe's very borders.

Iraq in 2003 is the more relevant comparison, including a U.N. team that needs more time to complete its job on the ground.

The one significant development since 2003 is the unanimous adoption of the responsibility to protect (R2P) norm in 2005. As one of the main authors of the original R2P report in 2001, let me say two things. First, the use of chemical weapons does constitute a war crime and a crime against humanity, thereby triggering R2P which covers four atrocity crimes in all (the others being genocide and ethnic cleansing). The U.N. secretary general's special advisers were right to call attention to this. If use is

proven and guilt established, the U.N. as the custodian of our collective conscience must take appropriately tough action and hold the perpetrators criminally accountable.

But they failed to speak truth to power by not emphasizing, at a time when the FUKUS leaders were uttering public threats of military strikes unilaterally if necessary, that R2P action must be U.N.-authorized, in conformity with the U.N. Charter, and for civilian protection, not punishment. Not only did their statement lack even-handed balance. Worse, they risked becoming unwitting pawns (or Lenin's useful idiots) in the Western strategy of escalating the crisis to unilateral military strikes, and so delegitimizing the very norm they are tasked to uphold and promote. Those clamoring for war could use the sentence "All these crimes must be investigated immediately, and those responsible for committing them held to account" to their own hawkish ends.

We worked hard in 2001 to craft R2P to distinguish it from the deeply controversial NATO "humanitarian intervention" in Kosovo. We then spent many years convincing several skeptical governments that this was a change of substance, not just language. If NATO were to launch military strikes on Syria by misusing R2P language, they will kill R2P. They will also sow the seeds of NATO's own destruction, for it will have been transformed from the original alliance to protect members from an attack by the mighty Soviet Union, into an alliance to wage an aggressive war against a country outside Europe that has not attacked a single NATO member.

Fortunately, in a forceful speech at The Hague on Aug. 28, U.N. Secretary General Ban Ki-moon emphasized the importance of the Security Council process for military action to be lawful.

To increasing numbers, it is Western powers who appear addicted to acts of serial aggression across the Middle East. They do neither themselves nor the world any favors by Orwellian talk of enforcing international law. Only those who show fidelity to law in their own actions can enforce it on the outlaws.

One wonders at which point will the Nobel committee cry: "Enough! We want our peace prize back, Mr. Obama."

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