

# *Bombing Syria: Legality and Costs of Military Intervention*

*By: Memar Ayalew Demeke, 5Sep. 2013*

## **I. The Genesis of the Syrian Civil War**

The Arab uprising which first erupted in Tunisia reached into the territory of Syria on 15 March 2011 following a government crackdown against peaceful protest. Since President Bashar al-Assad took political power from his father, the regime has been criticized for discriminating the majority of the population from socio-economic opportunities, favoring the minority Alewite Islamic sect. Consequently, the people of Syria expressed their dissatisfaction about the weak performance and incompetence of Assad's authoritarian regime and demanded its immediate downfall. Yet, the regime responded brutally to the demands of peaceful demonstrators which lead to the unprecedented vertical (the destruction level of the conflict) and horizontal (the number of actors involved in and the geographically coverage of the conflict) escalation of the conflict in 2012. In fact, the regime initially tried to take a few popular measures in order to meet the legitimate demands of the people.

But, as the conflict escalated across the country, the Assad government failed to introduce satisfactory democratic reforms to the demand the public. Instead the Syrian security forces responded by attacking unarmed protestors with military-grade weapons. Peaceful demonstrators, then, choose to take up arms in order to fight the Assad brutal regime. The spread of violence has accelerated radicalization among the rebels, and the proportion of fighters with salafist or jihadist has increased significantly. As a result, the protest shifted towards armed resistance and militarization. The conflict also absorbed both regional and international actor and finally turned into a full-fledged civil war taking the shape of sectarian division.

Bashar al-Assad inherited from his father a "stable" repressive political system connected in a largely Alawit security establishment featuring elite, regime-military units, a multifaceted intelligence apparatus. The Alawites is a minority sect of Islam whose member includes President Bashar al-Assad only representing 12% of the Syrian population. It dominates inner circle of military leaders of the government. By and large the Alawites community remained

loyal to the Assad's regime fearing that they will be slaughtered in Sunni revenge killings if the regime totally loses control of political power. Thus, Assad able to maintained his political power by means of repressive system built by his predecessor.

Since the outbreak of the violence in Syria, according to the United Nations report, more than 100,000 people have been killed and a total of 7.8 million of others displaced. The civil war has also created a great humanitarian tragedy in the Middle East and nearly 2 million refugees fled to the neighboring countries such as Turkey, Iraq, Lebanon, Jordan and Egypt seeking shelter and protection.

## **2. Kosovo : A Model for Military Intervention in Syria**

The so called "international community" led by US was a major political payer in the political panorama in Kosovo/Yugoslavia in the late 1990s. Following the humanitarian crisis, mass killings and massive violation of human rights by Milosevic regime in 1990s, the "international community" decided to respond military to government's brutality under the doctrine of "humanitarian intervention". Indeed at the beginning of the conflict, the "international community" viewed the Kosovo crisis as an essentially domestic matter for Serbia to settle it through political and diplomatic means. Similarly, majority of the international actors have recognized the Syrian conflict as an internal matter at the beginning. The US was more effective in leading the effort to stop the increasing humanitarian disaster in Kosovo and bringing the conflicting parties into the negotiation table to achieve durable peace.

Armend R.Bekaji in his article "*The KLA and the Kosovo War: From Intra-State to Independent Country*" stated that the then US President George Bush had written to Milosevic in the early 1992 drawing a red line on Kosovo: "In the event of conflict in Kosovo caused by Serbian action, the United states will be prepared to employ military force against the Serbs in Kosovo and Serbian proper". Likewise, the Obama administration had set a red line for Damascus (use of chemical weapons) where the US will be forced to engage military. Surprisingly, the Syrian government crossed the red line and acted against century old international norms.

The UN General Assembly had issued a number of resolutions from 1992 to 1999 in order to galvanize the efforts of the international community to stop grave violation of fundamental human freedoms and mass killings in Kosovo. During 1998 and 1999 the UN Security Council also passed numerous resolutions referring to Chapter VII of the UN Charter, where by “impending humanitarian catastrophe” in Kosovo was viewed as a threat to international peace and security. However, none of these resolutions had stopped the slaughter of millions of people and the government brutality.

The breakdown of the UN Security Council to achieve consensus among its five permanent members and to develop a comprehensive working framework for military intervention in Kosovo created a fertile conditions for NATO to intervene in the situation militarily. The US intervention with its NATO allies in Kosovo was without the backing United Nations Security Council resolution. It was on 24 March 1999 that the NATO Alliance launched military airstrikes over Serbian/Yugoslav military and other installations. NATO’s bombing campaign over rump Yugoslavia went on for 78 days, until Milosevic’s regime capitulated. But the Milosevic’s regime intensified its persecution of the Albanian civilian population. The project of ethnic cleansing was unraveling with frightening pace. By the time the war was over, around 12, 000 Albanians had been killed, most of them were civilians; more than 3,500 were unaccounted for; 120,000 home had been pillaged and destroyed.

The legitimacy of NATO’s intervention in Kosovo had been the subject of intellectual’s debate. On the one hand, the Operation of Allied Forces in Kosovo was controversial because of the fact that NATO was intervening in the internal affairs of a country without the authorization of the United Nations. On the other hand, NATO leaders argued that their military intervention was legal and as per to the norms and customary practices of international law which allow intervention in cases of humanitarian disaster.

Some international law commentators argued that NATO’s intervention is illegal and against the principles of international law because NATO did not have the full approval of the UN Security Council and the military action was rejected by permanent members, particularly Russia and China. International Independent Commission for Kosovo emphasized in their report that “the NATO military intervention was illegal but legitimate

humanitarian intervention”. Nevertheless, there is a strong criticism on NATO military action and bombing of the civilian population which killed many civilian people.

Media outlets have been reporting that since the Assad regime has used chemical weapons on his own civilian population on 21<sup>st</sup> of August 2013, the Obama administration has been considering the 1999 NATO military intervention in Kosovo in order to use it as a module for its “limited” military operation in Syrian as a response to the Assad’s violation of serious standard of international law. According to US intelligence information, deadly chemical attacks in and around Damascus has killed more than 1,400 people, including more than 400 children. What makes the likely US military operation in Syria unique as compared to the Kosovo is that the intervention is not fully backed by global coalition, NATO’s members and EU allies like Britain and Germany.

Last week, members of the House of Commons in Britain voted against military involvement of the British force in the Syria. They argued that the evidences are not scientific and substantive. Needless to say, Labor Party opposition leader Ed Miliband rejected the motion presented by David Cameron saying “Evidence should precede decisions, not decisions precede evidence.” It is highly probable that US will go alone to take surgical airstrikes on Syria because of the UN Security Council incapacity to convince Russia and China. In fact, France, Turkey, Israel, Saudi Arabia and UAE expressed their willingness to assist the US led surgical operation on Syria.

Turkish Prime Minister Recep Tyyip Edrokan insists a Kosovo style of military operation in Syria aiming at toppling the regime in order to restore peace and stability in the region. He has been openly calling for the change of regime in Syria since the eruption of violence in the country. Moreover, Turkey with its regional allies such as Saudi Arabia and Qatar has been supporting the rebels operating inside Syria. Turkey’s policy towards Damascus is clear. It needs the immediate downfall of the Assad regime. To this end, it has been supporting and arming the rebels fighting the regime since the outbreak of the civil war.

### 3. How military intervention be legally justified in Syria?

The nature and applicability of international law is always a subject of debate among international lawyers. This debate largely stems from its nature. Its applicability has been contested given the fact that there is no a world government [central legitimate authority] in the international system which police the behavior of states. However, international law strictly prohibits the intervention of a state in the domestic affairs of other states. In this regard, Article 2 of the UN Charter states that “*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations.*” Nevertheless, the UN Security Council has the right to intervene as it sees that there is a threat to international peace and security.

The use of Mass Destructive Weapons (MDCs) or Atomic, Biological and Chemical (ABCs) weapons is strongly prohibited under customary international practices and moral judgments. Violation of high standard of international norms such as the use of chemical weapons against civilians has immediate legal consequences. Some states had been the victims of chemical weapons during WWI and WWII. For instance, Ethiopian was the victim of chemical weapons when the Fascist led Italian government had used it against Ethiopian people in 1935. Yet, the international community failed to punish Italy knowing that it was a serious violation of international customary practices, other than condemning and releasing strong statement against its use. Last week, one of the members of the House of Common in the British parliament mentioned the devastating effects of the use of chemical weapons against Ethiopian in 1935 to convince parliamentarians for the need to British military intervention in Syria.

The Geneva Protocol of 1925 prohibits the use of chemical and biological weapons in war. The Protocol was signed at a conference which was convened in Geneva under the framework of the League of Nations in 1925 and entered into force in 1928. Later, the international community agreed to set a mechanism to deter the use of MDWs and signed the Biological Weapons Convention (BWC) and Chemical Weapons Convention (CWC) in 1972 and 1993 respectively. More importantly, the CWC, in which Syria is one of the

signatory states, prohibits the development, production, stockpiling and use of chemical weapons and on their destruction. For example, Article 1(1) of the CWC noted that “*Each State Party to this Convention undertakes never under any circumstances: (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone; (b) To use chemical weapons; (c) To engage in any military preparations to use chemical weapons; (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.*”

According to the US government, the legality of their military intervention relies on the Geneva Protocol of 1925 and CWC in which Damascus is accused of violating the terms of the agreement. This is crimes against humanity. Based on the intelligence information the US government presented to the international community, President Assad developed, produced and made all the necessary military preparation to use it against his own people by violating long standing international norms. As a result, the legal justification of US unilateral military action on Syria is part of enforcing the terms of the Geneva Convention. In addition, it is also aims at minimizing the proliferation of ABCs/MDWs and to deter its future use by punishing.

The US and its allies are trying to make military strikes legal and legitimate under the banner of “humanitarian intervention”. As Washington clearly stated, the aim is not to topple the Bashar al-Assad regime or to support the coalition of opposition forces by directly involving into the civil war rather it focuses on destroying a number of command posts and regimes’ chemical weapons delivery facilities. In fact, the legality of US military intervention in the past in Kosovo (1999), Afghanistan (2001), Iraq (2003) and Libya (2011) without the backing UN Security Council is always controversial and issues of political debate. Nevertheless, the US governments had attempted to justify the legality of its intervention in Kosovo/Yugoslavia in 1999 referring international protocols.

Daniel H.Joyner, in his article “*The Kosovo Intervention: Legal Analysis and a More Persuasive Paradigm*” mentioned that the legal justifications officially employed to legitimize the Kosovo intervention centered on two main legal arguments. First, previous UN Security Council resolutions could be constructed to lend some authority to NATO’s military operation.

Secondly, the principles of general and customary international law provided for a right of intervention on the ground of “overwhelming humanitarian necessity.”

In 2011 America went to attack Afghanistan referring Article 51 of the UN Charter to use its inherent right of “pre-emptive self-defense” against terrorist training camps in Afghanistan. The US also invaded Iraq in 2003 under the pretext that Iraq possessed MDWs. Most people believed that the legality of NATO’s intervention in Libya which led to the downfall of Gaddafi and his eventual death is not controversial because of the fact that its intervention had got the blessing of the Arab League. I think military intervention under the umbrella of international laws is becoming a political business rather than a legal issue. Besides, the nature and applicability of international law has remained questionable.

#### **4. Costs of US unilateral military intervention in Syria**

It seems that the White House committed to take unilateral “limited” and “proportional” military action against the Assad regime. A year before President Obama drew a red line saying “the use of a bunch of chemical weapons will change my calculus”. Unfortunately, Assad acted by crossing the red line. Following Assad’s use of chemical weapons, Obama decided to take “limited” military action on Syria not only to degrade Assad’s regime capability to use chemical weapons but also to deter those states such as Iran, North Korea who are interested to test well established international norms. Most certainly, he made clear that the mission of the military action is to protect friends in the region like Israel, Jordan, Lebanon, Turkey and Iraq. But his decision has not yet been authorized by the Congress although a Senate Panel voted in favor of giving President Obama authority to use force against Syria. Likewise, the international community also remains deeply divided on the kind of action that should be taken on Syria to discourage the future use of MDWs.

Iran, Russia and China are reluctant to any US military intervention in Syria particularly in the Middle East generally in order to maintain the oil rich region under their control. Russia and China voted three UN Security Council resolutions against military intervention that could significantly paralyze the international community from ending human tragedy in Syria. It is apparent that Russia and China have been a main supplier of weapons to Syria’s military apparatus to pursue their national interests.

The primary interest of Russia in maintaining the Assad regime is geo-political and strategic in that it wanted to protect the oil rich region part of the world from US sphere of influence. It also wanted to protect its economic interests. Currently there are a large number of companies investing in and working on oil and natural gas exploitation in Syria. The Syrian civil war has presented Moscow with immense opportunity with a late honeymoon with the government in Syria, one of its most important allies during the Cold War years. Moscow has rejected military intervention in Syria saying there are no crystal clear and scientific evidences which compel the international community to use force against Assad regime.

Another strong regional ally of the Assad regime is Iran. According to Radha Iyengar and Brian Fishman, Iran has three distinct strategic reasons for financially and diplomatically supporting the Assad regime. The first reason is Iran views as a bulwark against the United States and Israel. US estimated that Hezbollah receives \$100 million in supplies and weapons per year from Tehran transported through Syria. Second, the Iran regime opposes setting a precedent for the right to protect; which argues that international community should intervene when a government deliberately attacks its own people. For Teheran the recent alleged use of chemical weapons by Assad against civilians is not convincing to call the intervention of the international community although it has blamed the regime for using the weapons. Finally, sympathetic Alawite control over a majority Sunni population constrains the influence of rival Saudi Arabia and borders Sunni-Arab parties in the Middle East. Therefore, Iran has a clear strategic interest, both for domestic stability and regional influence, to maintain the Alawite leadership in Syria. Iran also fears that Alawites may be persecuted by the rebels if the Assad regime loses control of political power. Above all, the leadership in Iran wanted the continuation of the civil war in order to divert the attention of the international community for its controversial unclear enrichment program.

Political analysts suggested that US unilateral “surgical/ targeted”, “limited” and “proportional” strikes could produce an explosive chain of reactions from Syria, Iran and Hezbollah. Syria may retaliate by launching long range missiles against Israel, long time US ally in the Middle East. Damascus has been repeatedly criticizing Tel Aviv for its invisible involvement in the civil war. Recently, according to US government, Israel has supplied “reliable” intelligence information to western powers especially to US that justify when and

how the Assad's regime use chemical weapons and thus could be the target of Syria's military attack. But it is unlikely for Damascus to launch a large-scale military operation and use chemical weapons against Israel, given the fragility of the Assad's military capability, unless he is determined to commit a suicide and surrender to western power. There is also an anticipation that Hezbollah may respond to the US military operation by launching missiles from Lebanon to Israel. US military action on Syria may also increase humanitarian crisis, create opportunities for development of terrorist safe havens inside Syrian and increase Iranian influence. There is no doubt that the likely US-French military coalition will drastically change the conflict map of Syria.

At this point in time, it seems very difficult to predict the kinds of political scenarios that will prevail in the region given the complexity of the Syrian civil war and the number of regional and international actors operating in the region with contradictory national interests. If Bashar al-Assad take a devastating retaliatory action, using chemical weapons against US allies in the region particularly Israel, with the support of Iran, Russia and Hezbollah, the whole security network of the regional and the world at large will deteriorate and fall apart. But it is unlikely for Assad to strike back against US military action using chemical weapons unless he is determined to die like Saddam Hussein and Gaddafi. Perhaps, Washington- Paris Coalition Vs Moscow-Teheran- Beijing diplomatic confrontation may contribute for further escalation of violence across the region. The situation will get worse if Assad reacts by intensifying persecution of his people as Milosevic did in Kosovo. In November 2012, President Bashar al-Assad in an exclusive interview with the RT tells the world that "The price of foreign invasion is going to be too big more than the world can afford. It will have a domino effect from the Atlantic to the Pacific. If the West invades Syria, nobody can tell what is next." But time will tell us the truth.

**N.B:** *Memar Ayalew Demek is lecturer of Political Science and International Relations at Addis Ababa Science and Technology University. He did his M.A in International Relations from Addis Ababa University and published a book titled: "The Role of Sub-Regional Organizations in Conflict Transformation in Africa: The Case of IGAD's Mediation Efforts in Somalia" in 2012. Currently he is studying Governance and Regional Integrations at Pan-African University, African Union Commission, in Cameroun, Yaoundé.*

**Contact address:** [ayalewmemar@gmail.com](mailto:ayalewmemar@gmail.com)