



No. 15

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S.J. Res. 21 – Authorization for the Use of Force in Syria

Noteworthy

- The U.S. government has determined the Syrian regime carried out a chemical weapons attack in the Damascus suburbs on August 21, 2013—killing 1,429 people, including at least 426 children. President Obama has decided as Commander-in-Chief that the United States should take military action against Syrian regime targets. The President has further said he does not need the authorization of Congress to carry out that action, but he has sought congressional authorization for that use of force. This Joint Resolution authorizes the President to use force in limited ways related to Syria's chemical weapons attack and capabilities, while withholding authorization for putting boots on the ground for combat purposes.
- **Floor Situation:** By a vote of 10-7-1 (Senator Markey voting present), the Senate Foreign Relations Committee favorably reported out this resolution. Majority Leader Reid has moved to proceed to it.

Overview/Background

This resolution authorizes the President to use force as he determines necessary and appropriate in a limited and tailored way to: 1) respond to the Syrian government's use of weapons of mass destruction; 2) deter such future use; and 3) degrade Syria's capacity for such future use.

History

The Assad family has ruled Syria since Hafez al-Assad, a member of the Socialist Ba'ath Party and the minority Alawite sect, took power in a bloodless coup in November 1970. His son, Bashar al-Assad, took power upon his father's death in 2000.

The United States recalled its ambassador after Syria was implicated in the February 2005 assassination of former Lebanese Prime Minister Rafiq Hariri. In December 2010, President Obama announced the recess appointment of Robert Ford to be the U.S. Ambassador to Syria. At that time, Syria was a state sponsor of terrorism; a significant proliferation threat for weapons of mass destruction; transferring significant military items to Hezbollah; and continuing to destabilize Iraq by permitting its territory to serve as a transit point for foreign fighters entering Iraq. Unlike Egypt, where the people deposed a ruler favorably disposed to the United States, the Assad government consistently takes policy positions inimical to the United States. Syria is integral to Iran exporting its influence across the region. As the Director of National Intelligence testified to Congress earlier this year, "the fall of the Assad regime in Syria would be a huge strategic loss for Iran."

Taking after Egypt, Libya, and Tunisia in the Arab Spring of early 2011, people in Syria demonstrated against the Assad regime and called for the recognition of their rights. The regime responded forcibly to those demonstrations. President Obama issued Executive Order 13,573 in May 2011 sanctioning the President of Syria personally and other senior Syrian governmental officials. He expanded sanctions by Executive Order 13,582 in August 2011.

On August 18, 2011, President Obama called upon Assad "to step aside." On March 7, 2012, Secretary of State Clinton said it was only "a matter of time" before Assad fell. President Obama added, on August 20, 2012, that chemical weapons "being utilized" in Syria would cross a "red line." Vice President Biden reaffirmed that red line in March 2013.

During this time, Syrian opposition forces were making considerable advances on the ground against the Assad regime. Without actual support to bring President Obama's words into action, however, the Syrian government reportedly began "to turn the tide" in its favor. This change was due in part to the support of Russia. Russia (along with China) has vetoed three separate U.N. Security Council Resolutions on the matter, and has obstructed countless other attempts to increase pressure on Assad. Despite this, Secretary of State Kerry traveled to Russia in May of this year to seek support for an international conference on Syria.

In April of this year, Secretary of Defense Chuck Hagel said, "the U.S. intelligence community assesses with some degree of varying confidence that the Syrian regime has used chemical weapons on a small scale in Syria, specifically the chemical agent sarin." The White House issued a statement in June confirming the intelligence community assessment that the Assad regime used chemical weapons multiple times in the last year, estimating 100-150 people have died from such use.

The U.S. government then confirmed the Syrian regime used chemical weapons against its own people on August 21, 2013, killing 1,429 people, including at least 426 children. U.N. Secretary-

General Ban ki-Moon said on July 25, 2013, that more than 100,000 people have been killed in Syria.

Key Players

- About 90 percent of Syrians are Arab. About 74 percent of Syrians are Sunni Muslims, with the predominant minority religious communities being Alawites, Druze, and Christians. The Assads are Alawites. As Ambassador Robert Ford said in congressional testimony in April: “The Sunni majority is divided, fractious, and anxious to assert the rights so long denied them by the Assad regime.” The opposition to the Assad regime reflects this fragmentation.
- Free Syrian Army: a very decentralized coalition of armed groups with a secular orientation opposing the Assad regime, including Syrian Armed Forces defectors. It was formed in response to the violent crackdown on protesters throughout 2011.
- Syrian Opposition Coalition/Council (National Coalition for Syrian Revolutionary and Opposition Forces): the organized political opposition to the Assad regime formed at a meeting in Doha in November 2012. The United States has recognized it as the legitimate representative of the Syrian people since December 2012.
 - Ahmed Assi al-Jarba was elected President in July of this year, after the resignation of Moaz al-Khatib.
- Supreme Military Command: the re-organized unified military command structure outlined by the Syrian Opposition Coalition after a December 2012 meeting in Turkey.
 - It is led by Chief of Staff General Salim Idriss. Ambassador Ford told Congress in April: “General Idriss and those under his command have demonstrated a commitment to a tolerant and inclusive vision of Syria.”
- Jabhat al-Nusra (al Nusra Front): probably the most worrisome of Jihadist opposition groups. The State Department has designated it as a terrorist group, as an alias of al Qaeda in Iraq (AQI), saying “al Nusra has sought to portray itself as part of the legitimate Syrian opposition while it is, in fact, an attempt by AQI to hijack the struggles of the Syrian people for its own malign purposes.”
 - Other Islamist opposition groups in Syria include al-Sham and the Islamic State of Iraq. It is undeniable that Islamist opposition groups have gained a foothold in northern Syria and are expanding influence in other geographic areas and within the ranks of the opposition as well. Elizabeth O’Bagy of the Institute of War assesses this is more a “result of al Qaeda affiliates having better resources than an indicator of local support.” As the Director of National Intelligence testified to Congress, these jihadist groups “are starting to establish municipal services, providing humanitarian aid, food, hospitals, and sharia law courts.”

According to the Congressional Research Service: “Since unrest began in March 2011, no single leader or group has been able to fully establish itself as a universally supported representative of Syrians seeking to oust the Assad regime.”

The United States is providing non-lethal assistance to certain opposition elements, along with humanitarian assistance to those affected by the conflict. Moreover, in perhaps one of the least-covert covert actions of all time, it has been leaked that President Obama has decided to provide certain other support to Syrian opposition forces, which the Wall Street Journal reported has yet to arrive. CRS notes that some observers advocate for more robust assistance to certain opposition forces as a means of forcing the Assad regime to the negotiating table, while skeptics “argue that making opposition groups more formidable could intensify the fighting and risks empowering extremists.”

Secretary of State Kerry testified the Administration’s overall goal remains “a negotiated solution which results in the departure of Assad and the free choice of the Syrian people for their future.” But Defense Secretary Hagel testified that the use of force in this instance is not directed at “resolv[ing] the underlying conflict in Syria.” It does not appear anyone could articulate with confidence what the political-security environment in a post-Assad Syria looks like.

Domestic Legal Issues

President Obama maintains he does not need congressional authorization to use force against Syria. When he announced he would seek congressional authorization, he specifically said he “had the authority to carry out this military action without specific congressional authorization.” Then, the day after the first congressional hearings on the matter, he repeated, “I do not believe that I was required to take this to Congress.”

This is a far cry from the position of presidential candidate Obama. In 2007, he said the President did not have power under the Constitution to authorize the use of military force without congressional authorization “in a situation that does not involve stopping an actual or imminent threat to the nation.” He has not asserted Syria is about to attack the United States.

It is also a far cry from the rest of his relevant advisers on this point. In 2007, Senator Biden said it would be an impeachable offense for President Bush to take military action against Iran’s WMD programs without congressional authorization. In 2007, Senator Kerry co-sponsored a bill prohibiting the use of funds for military operations in Iran without specific authorization from Congress.

The Administration has not explained how President Obama has the authority to carry out this attack without congressional authorization, if President Bush did not have authority to address Iran’s WMD programs without the same authorization. Especially since Iran’s program is a far more direct threat to the United States and our interests than Syria’s use of chemical weapons.

When President Obama has been asked if he would carry out military action against Syria if Congress does not authorize such action, he has refused to rule out that option—instead reiterating he has the necessary authority to do so. In contrast, when the British Parliament rejected a motion supporting U.K. participation in military action against Syria, the Prime Minister specifically said he would respect the will of the British people as expressed by the Parliament and that there would be no British military intervention in Syria.

International Law Background

There are various competing international law principles at issue in this matter. The President appears to be grounding his argument in enforcement of an ill-defined norm against the use of chemical weapons in all contexts. He has said, “the world set a red line” against the use of chemical weapons “even when countries are engaged in war.”

International law is a regime of consent. For the most part, no state can be bound by a rule of international law unless it consents to that rule, either by treaty or recognition of a customary international law norm by conduct and practice.

The Administration refers to the 1925 Geneva Protocol banning the use “in war” of “poisonous or other gases” in support of its assertion that there is a norm against the use of chemical weapons. Syria is a party to that protocol. It would seem, however, fairly likely that the contracting parties at the time were seeking to govern relations in war between sovereigns, and unlikely they thought they were capturing any element of the domestic relationship between a sovereign government and the people it governed.

To be sure, the International Committee of the Red Cross asserts there to be today a “norm of customary international law” prohibiting the use of chemical weapons “in both international and non-international armed conflicts.” Yet it grounds that prohibition against the use of chemical weapons in non-international armed conflicts primarily in the Chemical Weapons Convention, which Syria has not signed.

Also at issue is the principle of non-intervention articulated in the United Nations Charter, among other places. States are to refrain from the use of force against the territorial integrity or political independence of another state. The Charter also compels states not to intervene in matters “essentially within the domestic jurisdiction of any state,” without Security Council authorization. To be sure, transgressions of these principles throughout the U.N. era are legion, such as U.S. action in Kosovo.

As President Obama has said, “under international law, Security Council resolution or self-defense or defense of an ally provides a clear basis for action.” He admits the United States is not “directly, imminently threatened” by what is taking place in Syria. He has gone on to say, however, that he is “comfortable going forward without the approval of a United Nations Security Council that, so far, has been completely paralyzed and unwilling to hold Assad accountable.” It is very similar to his position on domestic law that if the representative assembly will not act in ways he desires, he will take action on his own accord to accomplish those ends.

Resolution Provisions

Preamble

The resolution begins with many statements finding, among other things:

- Syria is in material breach of the laws of war, having employed chemical weapons against its civilian population;
- The abuses of the Assad regime have caused the deaths of more than 100,000 people, and led to more than two million refugees and 4.5 million internally displaced persons;
- The Syria Accountability Act of 2003 found Syria's WMD programs to threaten U.S. national security interests;
- Syria's use of chemical weapons are a grave threat to U.S. national security interests; and
- The President has the authority under the Constitution to use force in order to defend U.S. national security interests.

Section One – Short Title

This Joint Resolution may be cited as the Authorization for the Use of Military Force Against the Government of Syria to Respond to Use of Chemical Weapons.

Section Two – Authorization for Use of Force

This section authorizes the President to use force as he determines to be necessary and appropriate in a limited and specific manner against legitimate military targets in Syria only to:

1. respond to Syria's use of weapons of mass destruction;
2. deter Syria's use of such weapons to protect U.S. national security interests and protect allies and partners against the use of such weapons;
3. degrade Syria's capacity to use such weapons in the future; and
4. prevent the transfer of any weapons of mass destruction to terrorist groups or other actors within Syria.

It goes on to provide that the President must make certain determinations before using this authority, namely:

1. the United States has used all appropriate diplomatic and other peaceful means to prevent the deployment of weapons of mass destruction by Syria;
2. Syria has conducted one or more significant chemical weapons attacks;
3. military force is necessary to respond to Syria's use of chemical weapons;
4. it is in the core national security interest of the United States to use such force;
5. the United States has a military plan to achieve the goals articulated above as the reasons for the use of force, e.g., respond to Syria's use of weapons of mass destruction; and
6. the use of force is consistent with and furthers the goals of the U.S. strategy toward Syria, including achieving a negotiated political settlement to the conflict.

A relevant part of the War Powers Resolution enacts a default rule requiring the President to terminate the use of force in certain instances within certain time periods unless Congress has

enacted specific authorization for the use of force. This section of the Joint Resolution specifies it is intended to constitute that statutory authorization within the meaning of the War Powers Resolution.

Section Three – Boots on the Ground Limitation

This section limits the authorization provided in section two, saying it does not authorize the use of the U.S. Armed Forces “on the ground in Syria for the purpose of combat operations.”

Section Four – Sunset Provision

This section sets time limits for the authorization to use force. It shall terminate 60 days after enactment, except that the President may extend it for a single 30-day period if: 1) he certifies to Congress, not later than five days before the date of termination of the initial authorization, that the extension is necessary to fulfill the purposes of this resolution due to extraordinary circumstances and for ongoing and impending military operations; and 2) Congress does not enact into law a Joint Resolution disapproving the extension. If Congress chooses to entertain such a Joint Resolution, it is to be considered under certain expedited procedures.

Section Five – Statement of Policy

This section states it is U.S. policy to change the momentum on the battlefield in Syria, to create favorable conditions for a negotiated settlement that ends the conflict and leads to a democratic government in Syria.

It further states a comprehensive strategy in Syria should aim, as part of a coordinated international effort, to degrade the capabilities of the Assad regime to use weapons of mass destruction, while upgrading the lethal and non-lethal military capabilities of vetted elements of Syrian opposition forces, including the Free Syrian Army.

Section Six – Syria Strategy

Within 30 days of enactment, the President is to submit a strategy for achieving a negotiated political settlement to the conflict, elements of which include:

- the provision of all forms of assistance to the Syrian Supreme Military Council and other Syrian entities opposed to Assad that have been properly and fully vetted and share common values and interests with the United States;
- the provision of all forms of assistance to the Syrian political opposition, including the Syrian Opposition Coalition;
- efforts to isolate extremist and terrorist groups in Syria to prevent their influence on future Syrian governments;
- security coordination with allies and regional partners;
- efforts to limit the support of Iran and others for the Syrian regime;
- planning for securing existing chemical, biological, and other weapons supplies; and
- efforts to address the ongoing humanitarian challenges presented by refugees and internally displaced persons.

Section Seven – Congressional Notification and Reporting

This section requires the President to notify Congress of the use of this authority, keep Congress fully and currently informed of its use, and submit reports on its use, including progress achieved toward the objectives outlined, the costs of operations, and an assessment of the impact of the operations on Syria’s chemical weapons capabilities.

Section Eight – Rule of Construction

This section provides that section two is not to constitute an authorization for the use of force or a declaration of war except to the extent it authorizes military actions under the conditions, for the purposes, and for the limited time provided.

Administration Position

The Obama Administration has yet to issue a Statement of Administration Policy pertaining to this Joint Resolution.

Cost

There is no Congressional Budget Office estimate for this resolution. When asked at a House Foreign Affairs Committee meeting what this action would cost, Secretary of Defense Hagel responded: “we have looked at the different costs, depending on the different options. ... We have given some ranges on this. It would be in the tens of millions of dollars, that kind of range.”

Possible Amendments

There is no consent agreement at this time governing the consideration of amendments.