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The chief military officer of a nation in the early stages of democracy is faced with a terrible dilemma: Does he follow the orders of a civilian president who may be recklessly leading his country into war with a neighboring nation, a war that he and other military leaders believe will end in defeat? Or does he defy the president's order to launch a preemptive attack and perhaps even resign in an effort to expose and stop what he believes is a suicidal governmental decision?

To make this decision, it is important to focus on certain crucial facts – he is the chief military officer of an "emerging democracy", he was "instrumental in transferring power to democratic civilian rule" and he has "sworn to uphold his country's new constitution". The primary question is whether the chief military officer will accept civilian control of the military in his country, or whether he will undermine civilian control and the principles of democratic rule. Only the military can ultimately protect a nation from foreign threats, but military rule can never be democratic. If he defies the president or resigns in protest, he will undermine his country's system of government. Only by obeying the valid orders of his country's civilian president can the chief military officer protect his country's emerging democracy, affirm civilian control of the military, and uphold his constitutional oath and obligations.

In deciding whether to launch the attack ordered by his president, the chief military officer must also consider the rules governing how decisions are made in his country. First, the president has been elected in the manner provided in his country's constitution and is authorized by the constitution to declare war. In addition, the constitution provides for civilian control of the military by designating the president as the commander in chief. The president has ordered him to launch an attack, and it is his constitutional duty as chief military officer to follow the orders of the president

acting as civilian commander-in-chief. All members of the government and the military have taken an oath to support and uphold the constitution, and the constitution authorizes the president to make such decisions.

Second, the military's objections to an attack were "stated clearly" and considered by the president before she made the decision to launch the attack. While he disagreed with the president's decision from a military perspective, the chief military officer fully presented the military's objections to the president and these objections were considered and overruled.

Third, the military outcome of this or any war is not certain. The consequences of starting a war with the powerful neighboring country might be disastrous as he and the other military commanders believe, but this does not make defeat a certainty. War has many surprises for both the victor and the vanquished. The democratic peoples of the chief military officer's country may fight harder and more willingly than the conscripted population of the neighboring country, which is ruled by "an aggressive despot given to bellicose rhetoric". Further, outside assistance could be solicited from other democratic nations that may offer logistical and technical assistance, or perhaps even military troops, to support an emerging democracy in a struggle against a despot. It is also possible that the civilian leadership is correct in believing that war is inevitable, so defying the president may simply be postponing a certain war. If the neighboring country's armies are superior, time may permit these armies to become even stronger and thereby make defeat even more certain.

The real-life situation that best compares to the hypothetical scenario in question is the Six Day War of 1967 between Israel, a democratic nation, and the Arab nations of Egypt, Syria, and Jordan. In the months leading up to the conflict, Egyptian President Gamal Abdel Nasser mobilized his military near the Israeli border and finalized an alliance with Syria and Jordan. Nasser also directed threatening rhetoric towards Israel. After completing the alliance with Jordan, Nasser said,

“Our basic objective will be the destruction of Israel. The Arab people want to fight.”

On the surface, the prospects for an Israeli victory in a conflict against the Arab nations looked grim. Egypt, Syria, and Jordan had Israel surrounded and the combined ground forces of the Arab nations greatly outnumbered the Israelis. The air forces of the two sides were more or less evenly matched with the Egyptian Air Force consisting of Soviet-made aircraft and the Israeli Air Force consisting primarily of aircraft supplied by France and the United States.

With the situation looking bleak, Israel launched a preemptive air strike on June 5, 1967. The attack was an unmitigated success. The Egyptian Air Force and the Royal Jordanian Air Force were both almost completely destroyed, and the Syrian Air Force was effectively neutralized as well. With clear air superiority over its enemies, Israel was able to rout the Arab armies in only six days.

While Israel’s success certainly does not guarantee that the chief military officer’s nation will be successful if it launches a preemptive attack on its neighbor, it does demonstrate that the mission is not guaranteed to fail, either.

Fourth, the consequences of not supporting the civilian president would almost certainly be disastrous for continued democratic rule in his country. If the chief military officer refuses to obey the president’s order, it would likely result in a military coup because his staff has assured him that if he refuses to obey the president, “the armed forces will follow him.” A military coup would mean the end of democratic rule in his country for an indefinite period of time and perhaps for generations. While the country’s survival is obviously of extreme importance, how people govern and live their lives is also important.

Fifth, there is the issue of the chief military officer’s obligations under international law and how those obligations may come into conflict with his duty to uphold his military’s chain of

command. The Nuremberg Trials after the Second World War established that there are such things as illegal orders, and that soldiers have an obligation not to carry out those orders. There were seven principles of international law established at Nuremberg, and in Principle VI, Section A – Crimes Against Peace, it was established that the “planning, preparation, or waging of a war of aggression” was a crime under international law. However, the phrase “war of aggression” was not defined in any of the Nuremberg Principles.

After years of confusion and controversy, the United Nations General Assembly issued Resolution 3314 in 1974 for the purpose of defining the term “aggression”. There are three Articles of Resolution 3314 that are especially relevant in this situation. First is Article 2, which states in pertinent part:

“The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances.”

Next is Article 3, Section A, which states that the following qualifies as aggression:

“The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.”

Finally, there is Article 7, which reads in part as follows:

“Nothing in this Definition, and in particular article 3, could in any way

prejudice the right to self-determination, freedom, and independence, as derived from the Charter.”

From these articles in Resolution 3314, we can interpret that the UN Security Council has the ultimate authority in deciding what constitutes a war of aggression, and that there are circumstances in which a preemptive attack can be justified. In addition, self-defense and the defense of liberty are among the “relevant circumstances” which can justify a preemptive attack according to international law.

Furthermore, since the UN Security Council is the authority on what constitutes a war of aggression, it would be wise to examine the precedent set by the Council’s past decisions concerning scenarios similar to the one in question. One such decision that should be examined is the Council’s reaction to the Six Day War of 1967, which again bears many similarities to the situation in question. On November 22, 1967, the Security Council issued Resolution 242 in response to the Six Day War. The Resolution did not condemn Israel for attacking preemptively nor did it sanction Israel in any way.

After examining the definition of aggression according to Resolution 3314 and the precedent set by the Security Council’s ruling in Resolution 242, it is clear that a reasonable case can be made to justify the legality under international law of the president’s order to attack. Since the order is not clearly or undeniably illegal, the chief military officer is obligated to respect the military’s chain of command and to follow the president’s order.

Ultimately, the chief military officer’s objections to the president’s order are based on uncertainties. It is possible that the president’s order to attack is a disastrous strategic error, but history has shown that the president’s strategy can be successful. Likewise, while one could argue that the president’s order violates international law, an equally strong argument can be

made to justify the legality of the order.

On the other hand, other high ranking military officials have assured the chief military officer that they will follow him, and not the president, should he choose to disobey the order to attack. While the end result of a war with a neighboring nation cannot be predicted with certainty, the result of disobeying the president's order can be predicted with certainty in this case – it would result in a military coup.

With this in mind, the chief military officer has no choice but to follow the president's order. He must accept the idea of civilian rule and abide by the democratic constitution that he was once instrumental in establishing. If democracy is destined to fail in the chief military officer's nation, he should at least let it fail (or succeed) on its own merits rather than taking the only course of action which guarantees its failure by toppling the government himself.