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## International Law, the UN and Middle Eastern Conflicts

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*The following is excerpted from a paper prepared for presentation at the 2003 convention of the State Bar Association (SBA) of Arizona. Two weeks before the event, however, SBA president Ernest Calderon banned the presentation following complaints he received that University of San Francisco Professor Stephen Zunes—who had been invited to prepare the paper six months earlier—was “anti-Israel” and “anti-American.” At no point was Professor Zunes given the opportunity to defend himself from these charges.*

*The SBA board upheld the decision the following week, claiming that Professor Zunes’s scheduled panel violated the SBA’s charter forbidding presentations that are “political or ideological in nature.” No one had actually read Professor Zunes’ paper, however, which was just being completed at that time. Neither the SBA president nor anyone on the SBA board has responded to requests as to why they took this unprecedented step of banning a scheduled presentation months after it had been placed on the program.*

*For feedback on the paper and more information on the SBA’s decision to bar its presentation from their annual meeting, contact Professor Zunes at [zunes@usfca.edu](mailto:zunes@usfca.edu)*

Ongoing terrorism and repression in the Middle East has led to enormous passion and divisiveness in the United States and elsewhere, where competing ideological and theological claims have made an objective understanding of the complex issues in these conflicts extremely difficult. International law, however, can rise above such ideologies and partisanship because—whatever its failings—it is based upon certain universal assumptions. International law can provide a single yardstick of behavior that does not assume that one side is “good” and the other side is “bad.” While international law, like constitutional law, can be subjected to a variety of interpretations, it is based upon certain universal principles of behavior rather than on the ideology or foreign relations of a particular government or movement.

Of the many aspects of international law that pertain to contemporary conflicts in the Middle East, I will focus primarily on those addressed in the United Nations Charter, particularly those related to the use of force, military conquest and occupation, and the role of the UN Security Council. I will focus on four contemporary cases: the United States and Iraq, Turkey and Cyprus, Morocco and Western Sahara, and Israel and Palestine.

**T**he United States, with support from Great Britain, invaded Iraq in March 2003. The Bush administration attempted to justify its invasion of Iraq based on the government’s violation of part of one section of UN Security Council Resolution 687 (and subsequent resolutions reiterating this section),

which required Iraq to cooperate fully with United Nations inspectors in ensuring that Iraq's weapons of mass destruction, delivery systems, and facilities for manufacturing such weapons were destroyed. It now appears that Iraq had indeed destroyed or otherwise rendered inoperable the proscribed weapons, delivery systems and facilities prior to the invasion. In the weeks and months prior to the invasion, Iraq had resumed cooperation with UN inspectors and what remaining violations may have still been in place were largely technical in nature and did not constitute a material breach of the resolutions.

In any case, the legal conflict regarding access for UN inspectors and possible Iraqi procurement of weapons of mass destruction was between two parties: the Iraqi government and the United Nations, not Iraq and the United States. Although UN Security Council Resolution 687 was the most detailed in the world body's history, no military enforcement mechanisms were specified. Nor did the Security Council specify any military enforcement mechanisms in subsequent resolutions.

The most explicit warning to Iraq regarding its non-compliance came in UN Security Council Resolutions 1154, passed in 1998, and 1441, passed in November 2002, which warned Iraq of "severe consequences" if it continued its refusal to comply. But in both cases the Security Council declared that it alone had the authority to "ensure implementation of this resolution and peace and security in the area" and that it "remained seized of the matter."

According to Articles 41 and 42 of the United Nations Charter, no member state has the right to enforce any resolution militarily unless the UN Security Council determines that there has been a material breach of its resolution, decides that all non-military means of enforcement have been exhausted and then specifically authorizes the use of military force. This is what the Security Council did in November 1990 with Resolution 678 in response to Iraq's occupation of Kuwait in violation of a series of resolutions passed that August. That resolution became moot, however, in March 1991 when Iraqi occupation troops were forced out of Kuwait. The UN never authorized the use of force subsequently despite enormous pressure from the United States and Great Britain to do so.

International law is quite clear about when military force is allowed. In addition to the aforementioned case of UN Security Council authorization, the only other time that any member state can use armed force is described in Article 51, which states that "individual or collective self-defense" is permissible against "armed attack ... until the Security Council has taken the measures necessary to maintain international peace and security." Iraq did not attack the United States, however.

Customary international law does allow for pre-emptive military action if there is a credible and imminent threat, such as an army massing along a border poised to invade. But the Bush administration claims that Iraq's possession of weapons of mass destruction required pre-emptive war did not qualify for this exception. Even putting aside the fact that the Iraqi regime had already destroyed all of its proscribed weapons and delivery systems some years earlier, there was no evidence to suggest that even if Saddam Hussein's government actually had such weapons that it had the ability or desire to launch an unprovoked attack against the United States or any other country. Scores of

countries currently possess chemical and biological weapons and at least eight countries currently possess nuclear weapons, yet no other country has tried to invade any one of these countries and overthrow its government in response.

There has been little debate in recent years about the nefarious nature of Saddam Hussein's regime, but this has never been a legal ground for invasion. When Vietnam invaded Cambodia in 1978 to overthrow the Khmer Rouge—a radical communist government even more brutal than Saddam Hussein's Iraq—the United States condemned the action before the United Nations as an act of aggression and a violation of international law. The United States successfully led an international effort to impose sanctions against Vietnam and successfully pushed the United Nations to recognize the Khmer Rouge as the legitimate government of Cambodia for more than a decade after their leaders were forced out of the capital into remote jungle areas. Similarly, in 1956, the United States challenged three of its closest allies—Great Britain, France and Israel—before the United Nations when they invaded Egypt in an attempt to overthrow the radical nationalist regime of Gamal Abdul-Nasser. The Eisenhower administration insisted that international law and the UN Charter must be upheld by all nations regardless of their relations with the United States.

Today, however, the Bush administration, supported by a large bipartisan consensus in Congress, has demonstrated that the United States is no longer willing to uphold such international legal principles and reserves the right to invade a foreign country, overthrow its government and place it under indefinite military occupation on the grounds that it might some day have the potential to threaten American interests.

**I**n August 1974, in reaction to a coup by right-wing Greek Cypriots, which was thought to threaten the island's Turkish minority, Turkish troops invaded the island nation of Cyprus. Within days, they seized the northern 40 percent of the country and executed a calculated policy of ethnic cleansing against the Greek-speaking population. The United Nations Security Council (UNSC) passed a series of resolutions calling on Turkey to withdraw its forces (UNSC Resolutions 353, 354, 360, 364, 367, 370, 391, 401, 414, 422 and 404), but the Turkish government refused to abide by these resolutions.

In 1983, the Turkish-occupied section declared itself an independent state, seceding from the Republic of Cyprus. The United Nations Security Council passed Resolutions 541 and 550 demanding that the declaration of an independent Turkish Cypriot state be rescinded. Turkey and the new Turkish Cypriot state ignored these resolutions as well.

Beginning in the late 1990s, the UN Security Council has passed a series of resolutions aimed only at reducing the quantity of Turkish occupation forces as a means of creating a more favorable climate for peace talks (UNSC Resolutions 1092, 1117, 1178, 1217, 1251, 1283, 1303, 1331, 1384 and 1416). These resolutions were also ignored.

In all three cases, the United States, Great Britain and France—unwilling to apply sanctions against a NATO ally—blocked the Security Council from enforcing its resolutions. Not surprisingly, a peaceful settlement of the conflict remained elusive for nearly three decades.

Despite the inability of the United Nations to act on its charter and enforce

its resolutions, the growing prosperity of the unoccupied 60 percent of the island relative to the Turkish-occupied north, Cyprus's inclusion in the European Union and Turkey's desire to eventually join the EU as well have finally led to UN-sponsored peace talks which could finally bring some resolution to the conflict.

**I**n November 1975, just prior to its scheduled independence from Spain, the country of Western Sahara (then known as Spanish Sahara) was invaded by its large northern neighbor, Morocco. Most of the population fled into exile in neighboring Algeria, where they remain in refugee camps administered by the Sahrawi Arab Democratic Republic (SADR), which is recognized by more than 75 nations as the legitimate government of Western Sahara.

The International Court of Justice had ruled the previous month that despite Morocco's claims of fealty to the sultan by nomadic tribesmen of Western Sahara in previous centuries, the right of self-determination remained paramount. There was little question among those familiar with the country, including a United Nations delegation that was sent to investigate the situation earlier that year, that the overwhelming majority of the population desired independence under the leadership of the nationalist Polisario Front.

The United Nations passed Resolutions 377, 379 and 380 calling on Morocco to respect the right of the people of Western Sahara to self-determination and to withdraw its forces. Morocco has ignored the resolutions, but has been protected from sanctions and other means of enforcement by threats of a veto by France and the United States, both close allies of the Moroccan monarchy. Meanwhile, Morocco has sent thousands of settlers into the territory in violation of Article 48 of the Fourth Geneva Convention, which prohibits occupying powers from transferring parts of its civilian population onto territories seized by military force.

Fighting between Moroccan occupation forces and guerrillas of the Polisario Front was suspended in 1991 as a result of a UN-sponsored ceasefire. This was supposed to have been the first stage of a UN-managed process that would have led to a referendum in which the people living in Western Sahara as of 1975 (and their descendents), including repatriated refugees living in Algeria since the Moroccan invasion (who constituted the majority of the indigenous population) would vote. But the Moroccans refused to fully cooperate with United Nations officials in the voter identification process and continued to suppress pro-independence activities in violation of a series of UN Security Council resolutions paving the way for the referendum (UNSC Resolutions 690, 725, 809, 973, 995, 1002, 1017, 1033 and 1056). Again, France and the United States blocked the Security Council from implementing any kind of enforcement mechanism.

The diplomatic stalemate appeared to be broken through the efforts of UN Special Envoy and former U.S. Secretary of State James Baker in September 1997 in an agreement between representatives of Morocco and the Polisario Front signed in Houston. The parties agreed on an identification process for voters and a code of conduct for the long-awaited plebiscite. But Morocco continued to refuse to cooperate with UN efforts at registering and identifying voters and other activities of UN peacekeeping forces, again in defiance of UN Security Council resolutions (UNSC Resolutions 1185, 1215 and 1359).

Meanwhile, France and the United States lobbied to circumvent the referendum process altogether, eventually convincing Baker to propose that Western Sahara become an autonomous region of Morocco with a referendum five years later that would determine the final status of the territory. Unlike the referendum proposed in the 1991 ceasefire agreement and the 1997 Houston Agreement, however, Moroccan settlers would be allowed to vote. Given that these settlers now outnumber the indigenous Western Sahara population, the result would likely be incorporation into Morocco.

Previous efforts at such an imposed solution were blocked by vigorous diplomatic efforts by Algeria and South Africa, two of the Polisario's closest allies. But France and the United States were able to convince a majority of the Security Council to adopt the new Baker Plan, adopted as UN Security Council Resolution 1513. The SADR government, seeing itself abandoned by the international community, reluctantly accepted the plan as the only means of ending nearly thirty years of occupation and exiled. Morocco, however, refused to accept the idea of granting even limited autonomy to the people of Western Sahara and rejected the resolution. Once again, however, the United States and France have blocked the UN Security Council from enforcing its resolution.

Unlike when Morocco invaded Western Sahara and Turkey invaded Cyprus, when Israel seized the Jordanian-controlled West Bank, the Egyptian-controlled Gaza Strip, the Golan region of Syria and the Sinai Peninsula of Egypt in June 1967 the United Nations did not call for an immediate withdrawal. While underscoring the principle enshrined in the UN Charter that no nation can expand its territory by force, UN Security Council Resolutions 242 and 338 made Israel's withdrawal from the occupied territories conditional on security guarantees from Israel's Arab neighbors that had been threatening to destroy the Jewish state since its establishment in 1948, which had emerged out of a partition plan approved by the UN General Assembly the previous year.

The Arab states and the Palestine Liberation Organization (PLO) initially rejected these Security Council resolutions, though there were indications that some of them were moderating this rejectionist stance as far back as the mid-1970s. By the early 1990s, it appeared that the PLO and virtually every Arab state was ready to accept the principle of land for peace. Even without an Israeli withdrawal from the West Bank, Gaza Strip and Golan Heights, Egypt signed a formal peace treaty with Israel in 1978 and Jordan signed a formal peace treaty in 1994. In March 2002, at the Beirut summit of the League of Arab States, a resolution endorsing a peace plan by Saudi Crown Prince Abdullah that essentially reiterated Resolutions 242 and 338—with an additional promise of full normal diplomatic relations—was adopted unanimously, though it was rejected by Israel.

Some supporters of the Israeli occupation claim that the resolutions spoke of "territories" rather than "*the territories*," implying that there is no obligation for a full Israeli withdrawal. By this interpretation, the return of the Sinai Peninsula to Egypt in 1981 thereby fulfilled Israel's obligations. But the resolution's text in French (besides English the other official language of the United Nations) does use the definite article. Furthermore, the authors of the original resolution—the American and British ambassadors to the UN—explicitly stated that they were

thinking only in terms of very minor and reciprocal adjustments of the jagged border that was based upon ceasefire lines in the 1949 armistice agreement.

The security guarantees called for in the resolutions were generally interpreted to mean promises of non-aggression by neighboring states, presumably enforced by some kind of combination of arms control, demilitarized zones, early warning systems and international peacekeeping forces. The United States and Israel have dramatically expanded this interpretation, however, now insisting that the resolution essentially requires that the physical safety of every Israeli citizen must be somehow guaranteed. In effect, the Israeli and U.S. governments argue that Israel is under no obligation to withdraw from the occupied territories unless there is a total halt of attacks by suicide bombers or other terrorists. Since most of these come from underground terrorist cells that are beyond the effective control of any government (particularly a disempowered Palestinian Authority under siege by Israeli occupation forces) and which explicitly want to sabotage the peace process through violence, this interpretation effectively means that the Israelis need not be obliged to withdraw.

There are other Security Council resolutions where ongoing Israeli violations are even clearer. These include Resolutions 446, 452 and 465, which require Israel to cease its colonization of the occupied territories through the establishment of Jewish settlements, which are illegal under the Fourth Geneva Convention.

Significantly, Article 7 of UN Security Council Resolution 465 forbids all member states from facilitating Israel's colonization drive. Given that the United States has largely been funding the construction of the so-called "bypass" roads and other infrastructure reinforcing Israeli settlements in the occupied territories, one could make the case that the United States is also in violation of this resolution.

Another series of UN Security Council resolutions deal with the status of Jerusalem. Israel is currently violating UN Security Council Resolutions 262, 267, 476 and 478, which call upon Israel to rescind its annexation of Arab East Jerusalem and surrounding areas seized in the early days of the 1967 war and to cease other activities that attempt to change the city's status. Article 5 of Resolution 478 calls upon all member states of the UN to accept this decision. But through a series of executive orders and Congressional resolutions, the United States has effectively recognized Israeli sovereignty over all of greater East Jerusalem.

Other resolutions currently being violated by Israel include UNSC Resolution 487, which calls upon Israel to place its nuclear facilities under the safeguard of the UN's International Atomic Energy Agency; UNSC Resolution 497, which demands that Israel rescind its decision to impose its domestic laws in the occupied Syrian Golan region; UNSC Resolution 573, which calls on Israel to pay compensation for human and material losses from its 1985 attack against Tunisia; and Resolutions 1402, 1403 and 1405, which require Israel to withdraw from occupied Palestinian cities on the West Bank. There are well over a dozen additional resolutions currently being violated that insist that Israel abide by the Fourth Geneva Conventions regarding the occupied territories, including ceasing its deportations and assassinations of Palestinians, its demolitions of Palestinian

homes and other forms of collective punishment, as well as controlling violence by settlers against the Palestinian population.

Regarding each one of these resolutions, the United States has blocked the UN Security Council from enforcing its resolutions.

The Bush administration and its supporters argued in the months prior to the U.S. invasion of Iraq that the failure of the Security Council to authorize an invasion to enforce its resolutions against Iraq undermined the UN's very credibility. But given the widespread and longstanding violations of UN Security Council resolutions by countries allied with the United States with apparent U.S. backing, this raises questions of whether these Iraqi violations really posed the unique threat to the UN's integrity as claimed.

For example, Daniel Patrick Moynihan, the U.S. ambassador to the UN under the Ford administration, bragged how he had made the UN "as ineffective as possible" in enforcing resolutions against Morocco and Indonesia when they refused to withdraw their occupation forces from small neighboring states they had invaded in late 1975. Similarly, Madeleine Albright, the Clinton administration's ambassador to the UN (and later Secretary of State), unilaterally declared in 1994 that UN resolutions dealing with Israel were no longer relevant.

The vast majority of the more than 90 UN Security Council resolutions that are currently being violated are being violated by governments that receive military, economic and diplomatic support from the United States. The United States has vowed to veto any resolution that would impose sanctions or other means of enforcing these resolutions. In addition, since the early 1970s, the United States has vetoed nearly 50 UN Security Council resolutions, more than all the vetoes by all other members during this same period combined.

Defenders of U.S. support for Turkish, Moroccan and Israeli occupations point out that the resolutions dealing with these American allies fall under Chapter VI of the UN Charter regarding the "Pacific Settlement of Disputes" while most of those dealing with Iraq fall under Chapter VII, "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." This does not mean that resolutions under Chapter VI are merely advisory, however. These are still directives by the Security Council and differ only in that they do not have the same stringent enforcement options, such as the use of military force. It is also important to note that the choice of which resolutions fall into which category has nothing to do with the severity of a given nation's violations of international law or the human impact of the country's transgressions as much as it does with the violator's relationship with major powers on the Security Council. For example, resolutions dealing with Indonesia's invasion and massacres in East Timor were placed under Chapter VI while a resolution addressing an extradition dispute between the United States and Libya was placed under Chapter VII.

It is perhaps ironic that the United States, the country more than any other responsible for establishing the United Nations and prevailing international legal conventions developed over the past century, is now seen by many to be the country most responsible for undermining them. More important, however, the politicization of the UN Security Council by the United States in order to

support the invasions and occupations of its Middle Eastern allies and its own invasion and occupation of Iraq has seriously undermined the authority of the United Nations and the international legal system, thereby threatening the very legitimacy of twentieth-century concepts of an international system based on agreed-upon legal principles and replacing it with a nineteenth-century notion of power politics.

This raises the question of whether the apparent unwillingness of the world's sole remaining superpower to consistently uphold international legal norms, particularly in the Middle East, is related to the recent rise of extremist groups from that region, which also violate international legal norms—such as through the use of terror against civilians—as a means of challenging the policies of the United States and its allies.

This underscores the notion that the international legal framework codified in the 1945 United Nations Charter under the leadership of the United States was not simply a normative construct of liberal idealists, but a strategic assessment that such a system was necessary to prevent international anarchy and protect the United States and its allies against threats to its national security.

President George W. Bush, Senator John Kerry and other American leaders of both parties, through their support of these occupations, are effectively rejecting this assessment. A new bipartisan consensus is emerging which argues that security comes not through a universal application of the rule of law, but through the unilateral application of superior military force. The coming years will determine whether this new paradigm will actually make the United States and the world safer.

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