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By [Stephen Zunes](#) , [Truthout](#) Published November 12, 2019
at [Truthout.org](#) and [OpEdNews.com](#)

Biden's Support of Iraq War Shows How He Would Run the White House

Biden's vote to invade Iraq was no "mistake," but an indication of his contempt for international law.

Supporters of presidential candidate and former Vice President Joe Biden are probably hoping that Democratic voters will see his key role in pushing through the Iraq War authorization as simply a "mistake" which should not be a factor in the 2020 presidential race. Indeed, Biden now claims that, "From the moment [the invasion] started ... I was opposed to the effort, and I was outspoken as much as anyone at all in the Congress" despite his statements at the time and subsequently that [he supported Bush's decision to invade](#) even after inspectors returned and no "weapons of mass destruction" were found.

Not only was Biden one of the [most important Democratic supporters](#) of the Iraq War, but that support says much about the kind of president he would be.

There have been many tragic consequences of the war for which Biden and others should be held accountable: the hundreds of thousands of Iraqis killed; the deaths of thousands of U.S. soldiers and the tens of thousands permanently wounded; the hundreds of billions of dollars drained from our national treasury; the social, economic and environmental damage inflicted upon Iraq; the misallocation of human and material resources away from real needs at home; and the resulting growth in Islamic fundamentalist extremism.

More importantly, however, is what the decision says about Biden's worldview, most critically his contempt for international law.

According to Article VI of the U.S. Constitution, international treaties signed by the president and ratified by a two-thirds majority of the Senate are to be treated as supreme law of the United States. Among these is the United Nations Charter, long recognized as the most important single document regulating the use of military force in the post-World War II era.

Biden defended his Iraq War vote on the grounds of enforcing UN Security Council resolutions being violated by Iraq. However, in articles 41 and 42 of the UN Charter, the signatory nations of the world agreed that no member state has the right to enforce any resolution militarily unless the 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 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 ongoing occupation of Kuwait in violation of a series of resolutions demanding withdrawal. When Iraq finally complied through its forced evacuation from Kuwait in February 1991, this resolution became moot.

Legally, the conflict regarding access for UN inspectors and possible Iraqi procurement of weapons of mass destruction had always been between Iraq and the UN, not between Iraq and the United States. Therefore, the United States had no legal right to act on the dispute unilaterally. Although UN Security Council Resolution 687, which demanded Iraqi disarmament, was the most detailed in the world body's history, no military

enforcement mechanisms were included. Nor did the Security Council specify any military enforcement mechanisms in subsequent resolutions. As is normally the case when it is determined that governments are violating all or part of UN resolutions, any decision about enforcement is a matter for the Security Council as a whole — not for any one member of the council.

While UN Security Council resolution 1441, passed in November 2002, warned of unspecified “serious consequences” if Iraq failed to comply with the UN disarmament and inspections regime, the resolution also made clear that only the weapons inspectors — not UN member states — had the authority to report Iraqi violations. In the lead-up to the March 2003 U.S. invasion, the inspectors did not report any Iraqi violations of serious consequence. Furthermore, the resolution stated that the Security Council “remains seized of the matter,” reiterating the fact that only the Council itself had the authority to approve the use of force.

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It is noteworthy, then, that Biden voted against an amendment sponsored by then-Sen. Carl Levin (D-Michigan) that would have authorized U.S. military action against Iraq if the UN Security Council approved the use of force and instead voted for the resolution that essentially authorized President George W. Bush to invade Iraq at the time and circumstances of his own choosing.

If Biden believes the United States can unilaterally claim the right to invade Iraq because of that country’s violation of Security Council resolutions, [other Council members](#) could logically also claim the right to invade other states that are in material breach of UN Security Council resolutions, such as Israel, Morocco, Turkey, Armenia, Pakistan and India. Biden’s insistence on the right of the United States to unilaterally invade foreign countries because of alleged violations of UN Security Council resolutions seriously undermines the principle of collective security and the authority of the UN, and thereby opens the door to international lawlessness.

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 the UN Charter allows a member state to use armed force is described in Article 51, which states that it is permissible for “individual or collective self-defense” against “armed attack ... until the Security Council has taken measures necessary to maintain international peace and security.” Since none of these criteria were met, the U.S. invasion was clearly a violation of the UN Charter, as acknowledged by the UN secretary general and the majority of member states. Biden’s support for the war, therefore, demonstrates his belief that the United States should not be bound by its international legal obligations.

There is a tradition in customary international law that does allow for a preemptive strike in self-defense, but this is only in an indisputable case of a clear and present danger, such as troops massing along a border poised for invasion, or missiles being loaded onto launchers in preparation for an attack. It does not, as Biden claims, give the United States the right to invade a country on the far side of the world based upon unsubstantiated allegations that that country might be developing weapons that might be passed on to terrorists that might someday be used against us.

A broad consensus of international legal scholars, [then-UN Secretary General Kofi Annan](#) and the overwhelming majority of the world’s governments recognized that a U.S. invasion of Iraq would be illegal. As a lawyer, as the head of the Senate Foreign Relations Committee, and as someone who repeatedly touts his knowledge of international affairs, it is hard to imagine Biden did not realize that invading Iraq would constitute serious war crimes. The fact that he did so anyway should raise alarm about the prospects of him becoming president.

The October 2002 war resolution essentially constituted a renunciation of the UN Charter's prohibition against such wars of aggression and an effective repudiation of the post-World War II international legal order. Biden's vote to authorize this illegal invasion, therefore, demonstrates his contempt for international law and is indicative that, as president, he would likely not hesitate to violate international legal norms in order to advance U.S. hegemony.

The biggest concern about Biden's support for the Iraq War, therefore, is not just that he made a series of demonstrably false claims about Iraq's unconventional weapons, weapons programs and weapons systems to justify the invasion. Even if he had been telling the truth, the war still would have been illegal.

Similarly, while his dismissal of the concerns expressed by the large numbers of scholars and diplomats familiar with the region who warned him that an invasion and occupation would lead to years of bloodshed, political instability, sectarian violence and growing extremism shows frighteningly bad judgement, the invasion would have still been illegal and set a very dangerous precedent.

Biden's support for the invasion seems to demonstrate a belief that the United States need not abide by its international legal obligations, including those prohibiting wars of aggression. As a result, his support for the invasion of Iraq is not simply a "mistake." It is very relevant and says a lot about what kind of president he would be.

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