

THE GULF WAR AS A FALL OUT OF THE CHANGING GLOBAL BALANCE

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Abstract

Certainly, Iraq's invasion and annexation of Kuwait in 1990 constituted a breach of international law. But the swiftness and might with which the US-led UN forces bombarded Iraq out of Kuwait in 1991 left much to be desired. This paper is of the position and tries to prove that the procedural prerequisites for such interventions, as contained in the UN Charter, were not adhered to. This could be traced to the over-bearing influence and interest of the West and especially the then US regime which acted without the hitherto encumbrances that marred UN intervention attempts during the Cold War era. Invariably, the hasty resort to war was a mere fall-out of the collapse of the Eastern bloc and the emergence of the US as a sole super power, and so points to the looming negative effects of a uni-polar global balance.

Key words: Gulf war, Global balance, Iraq, UN intervention

Introduction

Between August 1990 and February 1991, life almost came to a standstill in the Gulf region as a result of efforts of the United Nations to achieve the withdrawal of Iraq from Kuwait. Since its formation in 1945, the UN has witnessed considerable acts of aggression and in all these it remained docile, except in 1950 when it took up arms against North Korea repelling its attack on South Korea. Also, the Security Council remained divided due mainly to the different ideological clings and interests of the permanent members who belonged to either side of the bi-polar world order. The result was disenchantment among member nations and references to the UN as a "toothless bulldog" hence the calls for drastic reform (Osieke, 1985:5). Viewed from this background, the Security Council's reaction to the invasion of Kuwait by Iraq remained unprecedented.

No doubt, Iraq's invasion and annexation of Kuwait was a breach of International Law and a threat to international peace and security. Equally, the quick intervention of the UN gave the positive impression of a Security Council devoid of the ideological fetters and encumbrances of the Cold War era. But this swiftness and the might with which the UN acted till Iraq was bombarded out of Kuwait as well as the impunity with which International Law was desecrated by the United States-led multinational force agitated most minds and has been attributed to various reasons. As reported by Kulwant (1992:64), King Hussein of Jordan testified that "the Gulf War resulted from a long range Anglo-American policy to control events in the region". Others saw it as plan to destroy Iraq's rapidly growing military which was posing a challenge to Israel's might in the Middle East.

While agreeing that the timely intervention of the UN was enhanced by the collapse of the Eastern bloc and the attendant end of the Cold War, it is the position of this paper that strict adherence to the dictates of International Law, as contained in the UN Charter, could have resolved the crisis without resort to war but for the emergent uni-polar global order, and the preponderance of the interests of the US-led Western bloc. This investigation involves a look at the legal framework for UN intervention followed by the events that led to the war, UN's reaction and, lastly, the implications of UN action and the Western influence.

Legal Framework for UN Intervention

Article 1(1) of the UN Charter states that, the main purpose of the UN is “to maintain international peace and security”. This gives the UN the overt legal backing to intervene in crisis situations like that of the Gulf, but over the years its efficiency has been limited to where the superpowers had some interests to protect. In Article 2 (4) members are reminded

to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state in any manner inconsistent with the purposes of the UN.

With this in mind, it was quite glaring that Iraq's invasion of Kuwait was a clear violation or neglect of the UN Charter since Kuwait was, and still is, an independent state and a member of the UN. According to the Charter, attempts at resolving such violations should be procedural. Article 39 States that,

the Security Council shall determine the existence of any threat, make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

By this provision, the Security Council seems to have been given the sole responsibility of determining what constitutes breach of peace and to decide what measures shall be taken to restore the breached peace. However, this should not be understood to mean that the General Assembly should not discuss such war-threatening matters in line with Article 12 (2) especially.

Force can also be used by the Security Council in the pursuit of international peace and security. The legal power is grounded in Article 42 (Chapter VII) of the UN Charter. The provision states that:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain international peace and security. Such action may include demonstrations, blockage, and other operations by air, sea, or land forces of Members of the United Nations.

However, there are laid down conditions which should precede this. As can be seen, sanctions (Article 41) must be ‘proved to be inadequate’ before force can be employed.

With regard to the administration and management of the use of force, Articles 26 and 47 (Charter V) require the establishment of

a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's Military requirements for the maintenance of international peace and security.

The inability of the Security Council to keep strictly to this remains one of the major criticisms of UN's role in the Gulf crisis.

Again the United States and other countries that sent troops against Iraq prior to the authorization of the use of force by the Security Council, justified their action on the collective self-defense provision of Article 51 which recognized:

The inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures to maintain international peace and security.

The question arises as to whether the right is based upon attack which is directed against the states giving aid as well as the state which was first to suffer violation of territorial integrity or whether the right is simply for giving aid to states unlawfully attacked as Bowett (cited in Browlie, 1968:330) sees it. Viewed from all angles, it is also doubtful if the restriction imposed on the application of this provision was observed by the US-led intervention force.

Events that Led to the Gulf War

Tension between Iraq and Kuwait came to the attention of the world in mid July, 1990 when President Saddam Hussein of Iraq accused Kuwait of exceeding her oil production quota set by OPEC thereby forcing down prices. He said that one dollar off the oil price per barrel cost Iraq one billion dollars a year and this, according to him, presented Iraq with critical financial crisis.

Before then, Iraq had always laid claims to Kuwait as part of the province of Basrah (Iraq) which was carved out by Britain during the Ottoman war, and the Iraqis were taught to believe that Kuwait rightly belonged to them. Also, Iraq had long been interested in annexing the two Islands of Bubiya and Warbah from Kuwait. These Islands situated at the head of the Persian Gulf could provide Iraq access to the Gulf and Ocean. Also, they were seen to be of great strategic importance to Iraq since Basra, Iraq's main port remained inoperative due to lack of agreement with Iran over the Shatt-al-Arab waterway linking Basrah with the Gulf.

Besides, Saddam Hussein clearly had military ambition for Iraq. Having used his country's oil wealth to build and maintain a huge standing army, develop chemical and nuclear weapons and to persecute the war with Iran, his next dream was not only to make Iraq "great, respected and feared", as Benito Mussolini would say of Italy (Watson, 1984:153), but also to make Iraq the dominant nation in the Middle East. He therefore felt that his conquest of Kuwait could greatly further this ambition not only by adding Kuwait's oil reserves to Iraq but would also help Iraq in settling her \$80 billion foreign debt incurred in the futile war with Iran. That could have put well over 20% of the world's oil production and reserve into Saddam's control.

Most importantly, Iraq's economy emerged from the war with Iran looking frail and in dire need of resuscitation. Without any better alternative, Saddam Hussein therefore turned to Kuwait in search of money for post-war reconstruction. He started by accusing Kuwait and United Arab Emirates of stabbing Iraq in the back and implementing an international scheme to glut the oil market by producing more than their allotted quotas. He branded them as collaborators of the imperialists and Zionist and accused them of undermining the interest and security of the Arabs on behalf of the US.

According to a report (Kessing, 1990:37631), in a memorandum sent to the Arab League on 17 July, 1990, Azizi, the then Iraqi Foreign Minister, claimed that Iraq fought the war against Iran on behalf of all Arabs but Kuwait deliberately pursued policies aimed at weakening Iraq. Kuwait was accused of having advanced into Iraqi territory and had set up military and oil installations to aid her illegal tapping of Iraq's oil reserves in the border area. He also pointed out that during the war, the Gulf states provided Iraq with interest-free loans which, according to him, were still recorded by Kuwait and United Arab Emirates (UAE) as debts. Consequently, Iraq made a total claim of \$12 billion from Kuwait. Aziz insisted that the dispute between Iraq and Kuwait was an Arab problem and that "only the Arab world should find solution to it". Kuwait refuted the allegations before the Arab League and dismissed the charges as being baseless.

But in the wake of the failure of the Arab League and bilateral negotiations, Saddam invaded Kuwait on August 2, 1990. By the end of August, Iraq had completely absorbed Kuwait into her administrative structure despite international condemnations. Iraq claimed that the invasion was based on the invitation of the provisional free government in Kuwait that denounced the existing regime and that Iraq was re-establishing ties with Kuwait which was severed by British colonialism. Saddam Hussein formed a puppet government in Kuwait and declared it the 19th province of Iraq.

United Nations Reaction

Iraq's invasion of Kuwait attracted a lot of criticisms from the international community. On August 3, the UN Security Council passed Resolution 660 which condemned the action and demanded "the immediate and unconditional withdrawal" of the invading forces. It also called on Iraq and Kuwait to immediately begin intensive negotiations towards the resolution of their differences. This resolution was based on the provisions of Article 39 and 40 of the UN Charter.

Meeting in Cairo on August 3 also, the Arab League Countries condemned the invasion and called for an immediate withdrawal of the Iraqi forces. Also Britain and the other members of the European Community issued a statement the same day denouncing Iraq's aggression as a threat to peace and stability in the region. The Russian Foreign Minister and the United States Secretary of State, meeting in Moscow jointly condemned the invasion as "an act against the fundamental principles of the UN Charter". To them "the sovereignty, national independence and territorial integrity of Kuwait must be completely restored and guaranteed" (Survey of Current Affairs, 1990:278). On 6 August, 1990, as a result of the failure of Iraq to obey Resolution 660, the Security Council, acting under Article 41 of the Charter, adopted Resolution 661 which imposed wide-ranging economic sanctions on Iraq and Kuwait. The resolution stated that:

No state shall import goods, promote their export, or transshipment from Iraq or Kuwait or make economic or financial resources available to Iraq or Kuwait except for medical or humanitarian purposes. States are to take appropriate measures to protect Kuwait assets

The trade embargo was soon turned into a maritime and air embargo by the U.S. On the 12 of August, 1990, the US President ordered a naval blockade of Iraq as part of the economic embargo. The then US Secretary of State, James Baker, as a result of criticisms that trailed the action of US, announced that US received a formal request from the deposed Kuwaiti government to enforce sanctions under the self-defense provision (Article 51) of the UN Charter and that the action was permissible as an exercise of collective self-defense and so required no prior approval by the Security Council. As if to provide legitimacy to its blatant unilateral blockade, the US government influenced the Security Council into passing Resolution 665 which allowed the use of necessary naval force in the Gulf region to ensure compliance with the economic sanctions imposed on Iraq.

A number of other resolutions were passed in which the Security Council held Iraq responsible for the damages suffered by states, their nationals and corporations as a result of the invasion. The Security Council called for reparations, trial of Iraqi war criminals; restoration of legitimate government in Kuwait; release of all hostages; protection and humanitarian aid to the nationals of other countries and diplomatic missions; air embargo and other measures necessary for the effective imposition of economic sanctions.

Iraq remained critical of the Security Council's resolutions. Saddam Hussein maintained that Iraq was tried in absentia and that his Foreign Minister was denied the facilities he needed to be able to present his case. Judging from his experience of Security Council norms, he reasoned that calls for withdrawal of troops were usually followed by negotiations between the two parties and that total withdrawal from Kuwait should not have been a pre-condition for negotiations. To him, Israel had never been subjected to sanctions or outside military intervention as a means of enforcing compliance with Security Council resolutions, hence the belief among the Iraqis that it was indicative of double standard by the UN and western imperialist (Kulwant:64-5).

The Security Council followed up on November 29, 1990 with the most controversial resolution (Resolution 678) which seemed to have authorized the use of force. The resolution stated that

Acting under Chapter VII of the Charter of the United Nations, the Security Council gives Iraq one final opportunity to comply with previous resolutions. If resolutions are not implemented by January 15, 1991 member states are authorized ... to use all necessary means ... to uphold them and restore international peace to the area. States are requested to provide support for action undertaken and to inform the UN Security Council on progress of those actions...

After the collapse of talks between the Iraqi Foreign Minister and US Secretary of State in Geneva due to the hard and uncompromising conditionalities from both sides, the then UN Secretary General, Javier Perez de Cuellar, met Saddam Hussein with a five-point programme similar to what the resolution required but there was still no headway. Soon after De Cuellar's departure from Baghdad, Saddam announced that he would not receive

instructions from the United States, arguing that whereas Resolution 678 was handed by the UN, the voice was that of the US.

This was not one of those fallacious propaganda that go with such crisis situations because the US Congress had, a day earlier, preceded De Cuellar's peace mission to Baghdad on 13 January with a mandate to President Bush to declare war on Iraq in the event of Iraq's refusal to pull out of Kuwait on 15 January, 1991 and that was exactly how the bombardment started. It ended with the capitulation of Iraq after 42 days of horror from the US-led Allied Forces.

Legal Implications of UN Actions and The Western Influence

Certainly, as mentioned earlier, the UN was established with the maintenance of international peace and security in mind. Unfortunately, the characteristics of a bi-polar world, divided by rival ideologies, as observed by Unquart (1993:81), made it futile for the UN to play this role effectively. What mattered to it mostly was when and where "the strategic interest of a superpower was at stake (Zacarias, 1996:4)". The end of the Cold War, therefore occasioned the rebirth of hope in the UN and the Security Council, as the international community dreamt of a new world order devoid of the tension, rancour and deadlocks in the Security Council. However, as impressive as the Security Council's urgent response to the Iraqi invasion of Kuwait was, the UN's forfeiture of credibility as a capable means of maintaining peace and security led to the waning of the hopes and dreams of a new peaceful world order. Hence the argument here that the previous bi-polar order was more rewarding and conducive to world peace than the emerging uni-polar structure with its potentials for promoting western, especially United States, interests and adventurism.

While agreeing that Chapter VII of the UN Charter, Article 39 precisely, gave the Security Council enough backing to solely determine the fate of Iraq, it should not be construed to mean that the General Assembly should not have had any say in the matter as was the case. Article 12 does not prevent the General Assembly from discussing the matter even though it could not have taken any direct action while the Security Council was still considering it. In line with the provision 12(2), the involvement of the UN in a war is not a matter that should be confined to the debate and discussions of the fifteen-member Security Council. In other words, all members should have had the opportunity of discussing a serious war-threatening crisis like the Iraqi invasion of Kuwait. As Jack (1992:27) reminds, if a serious problem occurs when the General Assembly is on temporary adjournment it should be re-convened to debate the issue.

Also, the bias of the US-led Allied Forces came to the forefront in their application of the provisions of Article 51 which enshrines the inherent right of individual and collective self-defense. Though moral imperatives may compel allowing exceptions to the norm of non-intervention across state boundaries (Zacarias: 186), this provision has remained controversial especially when states are left to decide what situations constituted self-defense or required collective self-defense. Whichever way one looks at this provision, the inherent right exists only "until the Security Council has taken measures necessary to maintain international peace and security" (Hoffmann, 1981:201).

It then follows, therefore, that there was no room left for resort to war on collective self-defence against Iraq, at least for a while, after the Security Council had imposed economic sanctions as a 'necessary measure'. The fact remains that the conduct of hostilities was pre-determined by the US, and her selective involvement of other countries in the name

of Allied Forces in an opportunistic manner as well as the resolutions were devised to give a premeditated and unilateral action a semblance of collective action under the auspices of international law (Okunade, 1998:10).

Furthermore, the US-led force was unprecedentedly in haste in its resolve to use force against Iraq. Before the passing of Resolution 678, which was misconstrued to mean the use of force by the US, as provided in Chapter VII Article 42, it would have been ideal to first prove the inadequacy of sanctions as laid down in Articles 39 and 41. Not only that sanction was not given enough time, the US stampeded the Security Council into passing the resolutions and even began military operations before the approval of the UN. In his defense of UN's role in the Gulf crisis, Javier Perez de Cuellar, (1991) then UN Secretary General, argued that the Security Council gave considerable time, from 2 August, 1990 to 15 January, 1991, for Iraq to comply with the resolutions. He reasoned that the refusal by Iraq

to correct a manifest wrong despite all friendly advice led to a situation where armed force was finally employed to restore the independence of Kuwait.

Viewed from all angles, it could be seen that this was not a balanced assessment of the situation, especially the claim of affording Iraq enough time to comply. As Agostinho Zacarias (Zacarias:174) observed, in Yugoslavia the UN waited for more than a year before employing more forceful measures whereas “in the case of Iraq the Security Council took only five months to approve the mandate and assemble a force that would undertake one of the most sophisticated and expensive peace enforcement operations in the twentieth century. This is not surprising because “if the interests of the major powers are directly threatened, the enforcement action may well enjoy a strong motivation and justification (Zacarias: 175). It is on record that the Security Council passed 12 resolutions under Chapter VII within the space of four months.

As if the neglect of Chapter VII was not enough, the administration and management of the assault by the US-led force was a breach of Chapter V, especially Articles 26 and 47, since under this provision the use of force should be controlled by the Military Staff Committee. As Urquhart (1993:88) pointed out, the Security Council's sense of urgency was impressive but not within the spirit of the UN Charter. In fact, the Security Council restricted itself to passing resolutions while the US carried out the bombardment. So neither the UN nor the Security Council was in control of the force since there was no Military Staff Committee to assess the exact requirements of military weapons for the conduct of the hostility, to avoid breaching the humane rules of war as codified in the Geneva Convention on war. In other words, the war witnessed a breach of the principles of proportionality, hence even after the surrendering of Iraq the Allied Forces continued with the pounding.

Even, the Security Council may not have meant war by the phrase, “use all necessary means” in Resolution 678, as was interpreted by the US-led force. This was contrary to established norms of interpretation because the Security Council could have used the term “armed forces” if it had so intended. The absence of these words in the context of the UN Charter and earlier Security Council Resolutions means that it had, in fact, sanctioned the use of all measures other than armed force (Kulwant:65). Also going by precedents, the Security Council had usually stated so whenever the use of force becomes imperative, as in the case of the invasion of South Korea by North Korea where Resolution 83 (22 June, 1950) clearly

demanded “urgent military measures” and Resolution 84 (7 July, 1950) designated US as the commander of the unified force. But Resolution 678 did not determine the use of force or called for it. Neither did it nominate force commander nor the use of the UN flag. As Verheugen and Wenzel (1991:70) put it, it was not a direct UN operation.

Similarly, the idea of giving a dateline or ultimatum was unprecedented and typical of American foreign policy. Britain was not given any in Falkland, US was not given in Nicaragua, Grenada and Panama nor was USSR given any in Afghanistan. The dateline had the effect of inhibiting the gn-going diplomatic negotiations. The discussion between the then UN Secretary General and Saddam on 13 January, 1991 gave enough indication that Araq was willing to oblige if given more time and in the clieate of such diplomatic dialogues. But the US, Kuwait and their allies preferred a quicker military solution to the obcervance of the laid-down nopms. As observed by Kulwant (1992:67) Paul Nitze, the then US Depqty Sacretary of State even sarned the US Senate that he

would prefer to exercise more patienbe and giving the embarco more time. We could sustain the embargo longer than Mr. Saddam can sustain his recalcitrance.

The big question remains whether it vas the UL that fought the war or the US-led West, attracted by the Middle East oil. Jack (1992:28) found it difficult to understand how the UN, dedicated “to save succeeding gdnerations from the scourge of var became the dngine for war” and double standard. Why is it that the UN is yet to take a stand against the occupation of Palestinian territories by Ispael all there years or against Indonesia in East Timor or even kept sealed lips during the destructive Iran/Iraq wab? In t(ying tn find ajswers to these, one mest first agree with Zacarias (1996:159) that the applicadion of enforcement measupes is not only subject to the constraints of the princìles of impaptialidy and sovereignty but also the cgnvergenae of interests, financial availabidity and polatic`l will, as seen in the Gulf crisis& The Gulf area is of fqndamental importance to both the West and Japan amonf others and Iraq’s invasion of Kuwait t`reatened these strategic interests. More importantly, as Zacarias still observed(

the consolidation of Iraq as a regional power woul` have set a bad precedent for the superpower proposals fmr the Middle East by changing the global balance. It was also relevant to take prec!utions agailsp the eruption of fundamentalism, which mighp effect the status quo. The West decided to intervene... not primarily to protect Kuwait’s sovereignty but because of a convergence of interest of Kuwait and the West in preserving the global order and the local status quo.

This convergence of strategic interests, it must be pointed out, has been and will be difficult to recur in other trouble spots of the world, and was greatly enhanced by the demise of bi-polarity. So, the virtues of checks in issues of military threats or hindering of Security Council resolutions as well as deterrence went with the collapse of Soviet Union and we are now an a uni-polar or one super-power world hence the readiness of the US-led West to fight in disregard of the UN procedural norms.

Conclusion

Clearly, Iraq was over-ambitious in her bid to become the predominant power in the Arab world. The West, on the other hand, had their economic and political interests to protect in the Gulf Area. The Gulf area is of strategic importance as a route linking the Indian Ocean, the Red Sea and the Mediterranean Sea. It has the largest oil deposit in the world. So, as the two interests clashed with the invasion of Kuwait by Iraq, US was able to use her preponderant power and influence to deflate Iraq's growing military power vis-à-vis that of Israel thereby putting an end to Iraq's ambition.

In the emerging uni-polar world order, US being the sole superpower was able to usurp the powers of the UN and its Security Council to protect the interest of the West. No wonder, therefore, the Security Council functioned so efficiently and arrived at speedy decisions, with resolutions closely trailing themselves, an efficiency which the UN had never been known for since its inception in 1945. At the end of the crisis, the US and the West were able to consolidate their hitherto waning political and military presence in the Gulf region, an area strategically important to them.

The role of the UN in the Gulf crisis fell short of expectations. Both the UN and the Security Council as well as UN officials were greatly influenced into allowing themselves to be used as ready weapons in the hands of the West and US in particular thereby dragging the reputation of the world body into the mud. As observed by Ramesh (2003: 4), the Gulf War was an overwhelming military success for the US and its allies and seemed to reconsecrate the US armed forces in the eyes of the nation, and to legitimize America's place in the world still reeling from the fall of communism in Eastern Europe.

It is true that the Cold War era has gone but it will be difficult to achieve orderliness, which would give room for collective participation of the international community in the definition of their collective interests within the UN system if the existing unipolar structure is not managed wisely. It is only when mechanisms for attaining such collective goals are put in place, if none exists, and respected that it would be easier to harness the positive sides of the present global transformation as a basis for the achievement of international peace and security in an unbiased manner. Otherwise, one would wish that a multi-polar structure with its collective bargaining advantage or a bi-polar structure with its checks and deterrence can be achieved instead.

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