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## Perspectives on the Gulf War

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# PERSPECTIVES ON THE GULF WAR

JOHN NORTON MOORE, *CRISIS IN THE GULF: ENFORCING THE RULE OF LAW*. New York: Oceana Publishing, 1992. xliii + 633pp. & Index.

LAWRENCE FREEDMAN AND EFRAIM KARSH, *THE GULF CONFLICT, 1990–1991: DIPLOMACY AND WAR IN THE NEW WORLD ORDER*. Princeton: Princeton University Press, 1993. xix + 442pp. & Index.

*Reviewed by Majid Khadduri\**

These two works on the Gulf crisis, produced by three different authors — one, a lawyer, and the others, specialists in international affairs — should not be expected by readers to be on the same level in breadth and depth. While the book by John Norton Moore, a lawyer, is strictly legal in method and style, and is addressed primarily to readers well versed in international law, the other work, by Lawrence Freedman and Efraim Karsh, is lucid in style and broader in scope, and provides an excellent introduction to readers of Moore's legal piece, which lacks the historical and political backgrounds relevant to the legal problems, background which the author seems to have taken for granted.

## I. MOORE'S *Crisis in the Gulf: Enforcing the Rule of Law*

The work on the legal aspects of the Gulf conflict, entitled *Crisis in the Gulf: Enforcing the Rule of Law*, is from the pen of John Norton Moore, Professor of Law at the University of Virginia School of Law. A specialist in international law, Moore has published several studies on the subject and served as a counselor to various organizations, including the United Nations and the U.S. State Department. His special qualification for authoring a massive volume on the Gulf crisis, containing almost all the relevant documents on the subject, is his personal experience with the subject-matter of the book. Moore has served as a legal adviser to the Representative of the State of Kuwait in the United Nations Iraq-Kuwait Boundary Demarcation Committee, a body whose function was to demarcate the frontier between Kuwait and Iraq. He visited Kuwait following its liberation from Iraqi occupation and had at his disposal all the official documents relevant to the border issue.

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The purpose of Moore's book is to examine most of the essential legal problems that arose from the time Kuwait was invaded by Iraq on August 2, 1990, to the time of its liberation, seven months later. He addresses himself to a number of questions, such as: Was Iraq's action to invade Kuwait lawful or unlawful? If unlawful, what laws did Iraq violate?

Iraq's action, Moore argues, was a challenge to the rule of law. The response to the invasion came from both the regional and international communities. On what legal grounds, Moore inquires, was this response based? Iraq, in defending its actions, sought in vain to rebut the legal arguments made against it. Needless to say, the occupation of Kuwait was finally terminated by the enforcement of mandatory U.N. resolutions under chapter VII of the U.N. Charter.<sup>1</sup>

The invasion of Kuwait by Iraq created a complex set of legal problems. Did Iraq commit any crime during its occupation of Kuwait? Did it cause damage to Kuwait's people? Should Iraq be held liable to Kuwait for reparations? To all of these specific questions, Moore seeks to reply persuasively. However, this reviewer takes exception to some of Moore's answers.

The book opens with a short introductory chapter on Iraq's occupation of Kuwait, followed by another in which Moore demonstrates (with full citations from the U.N. Charter, treaties, and other international instruments) the unlawfulness of Iraq's actions. This reviewer has no quarrel with Moore's argument that Iraq had violated the norms of international law and the U.N. Charter by its invasion of Kuwait, as well as its subsequent annexation of the country as its 19th province. Indeed, the reviewer shares Moore's legal opinion and judgment.

Rather, this reviewer objects to Moore's use of harsh subjective terms, which are commonly employed by newspaper reporters, whom scholars are not expected to emulate. For example, he states that "a massive Iraqi force attacked Kuwait;"<sup>2</sup> he refers to Iraq's "brutal campaign;"<sup>3</sup> and he alludes to Iraq's use of "sulfuric acid and other horrors;"<sup>4</sup> and he comments that Iraq's acts were undertaken "in a sickeningly cynical manner."<sup>5</sup> With regard to Saddam Husayn, President of Iraq, Moore describes him as a "world-class thug[]." <sup>6</sup> These and several other statements in almost

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1. U.N. CHARTER ch. VII.

2. JOHN NORTON MOORE, *CRISIS IN THE GULF: ENFORCING THE RULE OF LAW* 3 (1992).

3. *Id.* at 3.

4. *Id.* at 4.

5. *Id.* at 5.

6. *Id.* at 7.

all parts of the book reveal emotional reactions which detract from the credibility of an otherwise serious scholarly legal work.

Nor are these statements all factually correct. Moore does not mention the numerical strength of the "massive" Iraqi force. (It has been reported in the press and by several writers as over 600,000.) The use of sulfuric acid which Moore attributes to Iraq has also been reported in the press. However, it has been revealed recently that the size of the Iraqi force that invaded Kuwait was highly exaggerated, as it hardly exceeded half the estimated number. Further, there is no evidence as yet that Iraq used any chemical or biological weapons in the Coalition War.

As stated above, this reviewer shares Moore's view that Iraq's invasion of Kuwait violated the U.N. Charter and other international instruments. However, there is also another international instrument which is directly relevant to the case of Kuwait. On February 8, 1980, Iraq proclaimed "The Arab National Declaration,"<sup>7</sup> creating an Arab Pact to renounce war among Arab countries (along the lines of the Kellogg-Briand Pact of 1928<sup>8</sup>), to which several Arab countries had acceded. Under article 2, the Arab Declaration states that "the use of armed forces by any Arab country against any other Arab country" is prohibited and "all disputes that may arise among Arab countries shall be settled by peaceful means."<sup>9</sup> By invading Kuwait, Saddam Husayn, who had himself proclaimed the Declaration a decade earlier, obviously violated the very instrument that called for the renunciation of force and the use of peaceful means for settlement of disputes among Arab countries.

Moore's second major critique of Iraqi actions concerns Iraq's disregard for almost all U.N. resolutions and its attempts to frustrate the efforts of countries that sought to enforce the U.N. sanctions. In its first and perhaps most important resolution, Resolution 660,<sup>10</sup> the Security Council demanded "that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990."<sup>11</sup>

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7. For a discussion of the Arab National Declaration, see MAJID KHADDURI, *THE GULF WAR: THE ORIGINS AND IMPLICATIONS OF THE IRAQ-IRAN CONFLICT* 119, 120 (1988) [hereinafter *THE GULF WAR*]. The text of this 1980 declaration is cited as the *National Declaration of President Saddam Hussein (February 8, 1980)*, in *THE IRAQ-IRAN CONFLICT* 167-70 (Nicola Firzli ed., 1981).

8. Treaty Providing for the Renunciation of War as an Instrument of National Policy, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57 (entered into force July 24, 1929).

9. Firzli, *supra* note 7, at 168 (citing the Arab National Declaration, art. 2).

10. S.C. Res. 660, U.N. SCOR, 45th Sess., 2932d mtg., U.N. Doc. S/RES/660 (1990), *cited in* MOORE, *supra* note 2, at 403.

11. *Id.*

On August 6, 1990, the Security Council imposed economic sanctions against Iraq because Iraq failed to withdraw from Kuwait.<sup>12</sup> On August 9, 1990, the Security Council reiterated the demand for withdrawal and denounced Iraq's annexation of Kuwait as "null and void" and demanded "that Iraq rescind its actions purporting to annex Kuwait."<sup>13</sup> A set of other resolutions dealing with several specific issues, such as the holding of foreign nationals in Iraq as hostages (August 18, 1990),<sup>14</sup> violence against foreign embassies (September 16, 1990),<sup>15</sup> and violations of human rights and the use of torture in Kuwait,<sup>16</sup> were also issued.

Because of concerns that economic sanctions might not succeed in inducing Iraq to withdraw from Kuwait, and despite attempts by several missions dispatched to Baghdad to persuade the Iraqi leadership to do so, the Security Council passed Resolution 678 (November 29, 1990).<sup>17</sup> This Resolution authorized the use of force under chapter VII of the U.N. Charter in the event that Iraq did not withdraw from Kuwait on or before January 15, 1991. The text of Resolution 678 (1991) reads as follows:

The Security Council, . . . [a]cting Under Chapter VII of the Charter,  
(1) Demands that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions, and decides, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of goodwill, to do so;  
(2) Authorizes Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the foregoing resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area.<sup>18</sup>

Moore has argued in favor of the lawfulness of all of the U.N. resolutions, particularly Resolution 678 which he defends with great enthusiasm

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12. This was accomplished by Security Council Resolution 661, S.C. Res. 661, U.N. SCOR, 45th Sess., 2933d mtg., U.N. Doc. S/RES/661 (1990), cited in MOORE, *supra* note 2, at 403, 404.

13. S.C. Res. 662, U.N. SCOR, 45th Sess., 2934th mtg., U.N. Doc. S/RES/662 (1990), cited in MOORE, *supra* note 2, at 406, 407.

14. S.C. Res. 664, U.N. SCOR, 45th Sess., 2937th mtg., U.N. Doc. S/RES/664 (1990), cited in MOORE, *supra* note 2, at 407.

15. S.C. Res. 667, U.N. SCOR, 45th Sess., 2940th mtg., U.N. Doc. S/RES/667 (1990), cited in MOORE, *supra* note 2, at 411.

16. See, e.g., S.C. Res. 674, U.N. SCOR, 45th Sess., 2951st mtg., U.N. Doc. S/RES/674 (1990), cited in Moore, *supra* note 2, at 416.

17. S.C. Res. 678, U.N. SCOR, 45th Sess., 2963d mtg., U.N. Doc. S/RES/678 (1990), cited in MOORE, *supra* note 2, at 420.

18. *Id.*

because it became the subject of criticism not only by several members of the Security Council, but also by lawyers and diplomats.<sup>19</sup> In his defense of Resolution 678, Moore argues that there were "two sufficient and independent legal bases for coalition nations to have assisted Kuwait in resisting and ending the illegal Iraqi aggression against Kuwait and in restoring the international rule of law."<sup>20</sup> First, he cites the Security Council authorization, pursuant to chapter VII, for the "use (of) all necessary means" by U.N. members to implement Resolution 660 (1990) and to restore international peace and security in the area.<sup>21</sup> Second, he argues that the United States and other members of the United Nations were requested by the Government of Kuwait to assist it, under "the right of individual and collective defence" of article 51 of the U.N. Charter.<sup>22</sup> The Amir of Kuwait had, indeed, requested in a letter to President Bush, dated August 12, 1990, that the United States (and Great Britain) exercise the right of individual and collective defense under article 51.<sup>23</sup>

The justification of Resolution 678 (1990) under article 51 was criticized, on both legal and political grounds, during discussions at the Security Council by the Iraqi representative, Abd al-Amir al-Anbari, a lawyer-diplomat, and several other members. According to al-Anbari:

On 25 October . . . I addressed the [Security] Council. I tried to focus its attention on the legal requirement which the Council must observe in adopting any resolution involving any use of force. . . . I believe the same argument applies today, . . . For under the Charter of the United Nations any use of force is deemed to be an act of aggression, save for three exceptional cases. The first case comes under Article 51 and involves self-defence. Here the use of force is limited to the period until the Security Council is seized of the matter. Beyond that, any use of force must be deemed to be an act of aggression. In the second case, the Security Council can act if sanctions adopted in accordance with Article 41 prove to be ineffective or unenforceable. In such a case, the Council can act collectively under Article 42 and can use force in accordance with a mechanism provided for in Article 43.

In other words, in this case only collective action under the command and control of the Security Council, in co-ordination with

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19. See, e.g., Burns H. Weston, *Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy*, 85 AM. J. INT'L. L. 516 (1991) (questioning minor U.N. supervision of U.N. sanctioned action).

20. MOORE, *supra* note 2, at 149.

21. *Id.*

22. *Id.* at 151.

23. The text of this letter is reprinted in *id.* at 152.

the Military Staff Committee, can lead to the use of force against any country, and no individual Member State may be authorized to lynch a particular country for any reason.

The third of the three cases to which I have referred arises under Article 106 of the Charter. When the Security Council fails to reach special agreements with Member countries to have forces of those countries put under Security Council command, the four countries signed the Moscow Declaration of October 1943, together with France, and in consultation with the Members of the United Nations, can undertake joint action against any country.

Those are the three exclusive cases in which the use of force may legally be authorized by the Security Council. Regrettably, however, the Council apparently thought that in this case the legal requirements were disposable niceties.<sup>24</sup>

Moore may or may not have seen the text of al-Anbari's speech, but he makes no reference to it at all. Instead, he makes comments in which he rejects Professor Abram Chayes's argument that once the Security Council has passed resolutions on any crisis, it automatically "has taken measures necessary to maintain international peace and security."<sup>25</sup> Moore argues that article 51 did not prohibit "further exercise of the right of individual or collective defense pursuant to the final sentence of Article 51."<sup>26</sup>

Had Moore seen al-Anbari's statement quoted above, he probably would have replied to al-Anbari's argument that any U.N. member acting independently, apart from collective defense measures under the Security Council, would be committing an act of aggression once the Security Council is seized of the situation. Moore's further remarks about Chayes's arguments are far-fetched and could hardly be considered interpretations of the U.N. Charter.<sup>27</sup>

In retrospect, the dozen resolutions<sup>28</sup> passed by the Security Council before the start of the Coalition War show that the role of the United

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24. THE KUWAIT CRISIS: BASIC DOCUMENTS 161-63 (E. Lauterpacht et al. eds., 1991).

25. MOORE, *supra* note 2, at 153.

26. *Id.* at 153-54.

27. *See, e.g., id.* at 155-56.

28. These resolutions are reprinted in MOORE, *supra* note 2, annex 3. They include: S.C. Res. 660, *supra* note 10; S.C. Res. 661, *supra* note 12; S.C. Res. 662, *supra* note 13; S.C. Res. 664, *supra* note 14; S.C. Res. 665, U.N. SCOR, 45th Sess., 2938th mtg., U.N. Doc. S/RES/665 (1990); S.C. Res. 666, U.N. SCOR, 45th Sess., 2939th mtg., U.N. Doc. S/RES/666 (1990); S.C. Res. 667, *supra* note 15; S.C. Res. 669, U.N. SCOR, 45th Sess., 2942d mtg., U.N. Doc. S/RES/669 (1990); S.C. Res. 670, U.N. SCOR, 45th Sess., 2943d mtg., U.N. Doc. S/RES/670 (1990); S.C. Res. 674, *supra* note 16; S.C. Res. 677, U.N. SCOR, 45th Sess., 2962d mtg., U.N. Doc. S/RES/677 (1990); S.C. Res. 678, *supra* note 17.

Nations in the liberation of Kuwait was unique. In the Iraq-Iran war, which lasted over eight years, the Iraqi and Iranian forces were at each other's throats in several pitched battles, yet the U.N. Security Council made no move to invoke the relevant articles under chapter VII of the Charter which would empower the Security Council to take action, as it did in the case of the Kuwait crisis.

In the Kuwait crisis, the Security Council moved so quickly and effectively that its action has been aptly considered unprecedented in the history of the United Nations. Nor were the penalties imposed on Iraq — the embargo, strict interdiction, and the bombing of Iraq's infrastructure during the Coalition War — proportional to the objectives of the U.N. Charter. The demands to change the Iraqi leadership and the indefinite inspection of Iraq's military installations were excessive and came close to violating the country's sovereignty and independence. As applied to Iraq, the economic sanctions seem to have hurt innocent civilians far more than the policymakers.<sup>29</sup> Moore holds different views about necessity and proportionality, as he seems to maintain that Iraq has committed no less damage in Kuwait than the U.N. economic embargo and military operations did in Iraq.<sup>30</sup>

Following his discussion of the enforcement of Resolution 678 (1990) and the liberation of Kuwait, Moore addresses several other issues. Some are not legal disputes such as, in his words, Iraq's "disinformation campaign" and the dispute over the pricing of oil within OPEC.<sup>31</sup> The disinformation campaigns were conducted by both sides, and Kuwait's campaigns were surely more effective in Western countries than the Iraqi campaigns. The oil pricing issue stemmed from differences on OPEC oil quotas assigned to each country by which Iraq, supported by Iran and Saudi Arabia, sought to abide, while Kuwait and the United Arab Emirates felt differently.

No less important is the question of Iraq's attempted linkage of the Gulf crisis with the Arab-Israeli dispute, to which Moore devotes a section.<sup>32</sup> He correctly states that "there is no such linkage in law."<sup>33</sup> It is

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29. See, e.g., *Report to the Secretary-General on Humanitarian Needs in Kuwait and Iraq in the Immediate Post-Crisis Environment by a Mission to the Area Led by Mr. Martti Ahtisaari, Under-Secretary General for Administration and Management*, U.N. SCOR, U.N. Doc. S/22366 (1991) (reporting "near apocalyptic" conditions in post-war Iraq); Louise Cankar, *The Gulf War, Sanctions and the Lives of Iraqi Women*, ARAB STUD. Q., Spring 1993, at 15) (recounting the difficult health and sanitary condition with which Iraqi women had to cope because of the Gulf War and U.N. sanctions).

30. See MOORE, *supra* note 2, at 156-67.

31. *Id.* at 189-90.

32. *Id.* at 223-26.

33. *Id.* at 223.

a political question, Moore argues, which Iraq raised in order to enhance its position vis-à-vis Kuwait.

There is, however, another side to the linkage question. As Tariq Aziz, Iraqi Deputy Premier, reminded U.S. Secretary of State James Baker III, at the meeting which they held in Geneva on January 9, 1991, the United States had applied two different "standards" in its dealings with the two disputes.<sup>34</sup> One may well argue that the circumstances were entirely different in each case, but in any dispute each side is entitled to be treated in accordance with the same standard under any system of law.<sup>35</sup>

Following the liberation of Kuwait, a score of pending legal problems reemerged, and a range of new issues arose, with which both Iraq and Kuwait had to contend. Moore could not possibly deal in his work with all of them. He has, however, dealt with some in which both sides were directly involved. Perhaps the most important of these problems was Iraq's claim to the sovereignty of Kuwait and settlement of the frontier dispute.

Moore became intimately involved in the demarcation of the frontier. This is a highly controversial problem, as Iraq has not only refused to accept the demarcation proposed by the U.N. Commission and approved by the Security Council, but it has also continued to claim the sovereignty, as well as the entire territory, of Kuwait as part of Iraqi territory. Moore unfortunately does not deal with the work of the demarcation committee, as he pays more attention to the controversy over Kuwait's sovereignty which he considers to be the basis of other Iraqi claims.

As Moore rightly argues, Kuwait is a country recognized as an independent State. It was admitted to the United Nations in 1963 and to the Arab League earlier in 1961. It was also recognized by Iraq in 1963 and by many other countries, including all Arab countries, as a sovereign and independent State. Iraq's claim, however, is based not on legal but on historical grounds.

Kuwait was simply a part of the province of Basra (today a southern province of Iraq) under Ottoman rule. Great Britain, which had entered into agreement with the Shaykh of Kuwait in 1898 to protect his country from foreign attack, considered it as an independent entity under its "protection" when the Ottoman Empire collapsed after World War I.<sup>36</sup> In

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34. For a discussion of, and excerpts from, the Baker-Aziz meeting, see MOHAMED HEIKAL, *ILLUSIONS OF TRIUMPH: AN ARAB VIEW OF THE GULF WAR* 284-94 (1992).

35. On other aspects of the linkage question, see Ibrahim Abu-Lughod, *The Politics of Linkage: The Arab-Israeli Conflict in the Gulf War*, in *BEYOND THE STORM: A GULF CRISIS READER* 183 (Phyllis Bennis & Michel Moushabeck eds., 1991) [hereinafter *BEYOND THE STORM*].

36. For a discussion of Iraq's historical claim to Kuwait, see MOORE, *supra* note 2, at 201-23. See also Majid Khadduri, *Iraq's Claim to the Sovereignty of Kuwait*, 23 N.Y.U. J.

1923, under the Treaty of Lausanne, Turkey renounced its claim to all the Arab territories that it might have inherited from the Ottoman Empire. As Iraq has recognized Kuwait's sovereignty, Iraq's claim to Kuwait as part of the province of Basra is necessarily reduced to a historical claim. History, however, has never been regarded under international law as valid evidence of legal rights. For this reason, Iraq's invasion and subsequent annexation of Kuwait in 1990 were violations of Kuwait's territorial sovereignty and independence, and contrary to the principles of international law and the U.N. Charter which prohibit resort to force for the settlement of disputes.

In its claim to the sovereignty of Kuwait, however, Iraq had raised, long before its invasion of Kuwait, the question of the legitimacy of the frontiers between the two countries on the grounds that, before Iraq had achieved independence, the frontiers between the two countries were laid down by the British authorities, and that after independence all attempts at reaching agreement on frontiers with Kuwait were never finalized. Kuwait, however, maintains that Iraq's recognition of its sovereignty in 1963, and its admission to the Arab League and the United Nations, imply the acceptance of the validity of Kuwait's existing frontiers.<sup>37</sup> True, Kuwait's frontiers with Saudi Arabia have been settled since 1922, under the Uqayr Conference and a treaty, signed and ratified by their rulers.<sup>38</sup> But the Iraq-Kuwait frontier is arguably not so settled. The instruments dealing with the Iraqi-Kuwaiti frontier, signed and ratified by Kuwait, have only been signed and not yet ratified by Iraq. Moore and a number of other writers, however, take the position that the agreements concluded by the British authorities with Kuwait, as well as the agreement of 1963, were valid and binding on Iraq.<sup>39</sup>

Before we examine the set of agreements relevant to frontiers, perhaps a little background would be useful. The first agreement dealing with Kuwait's frontiers and enlarging its territory may be found in the elaborate British-Ottoman Draft Convention of July 29, 1913, by virtue of which the city-State of Kuwait was defined in the form of "a semi-circle with the town of Koweit in the center" surrounded by Khawr al-Zubayr.<sup>40</sup> The islands of Warba, Bubiyan, and all other adjacent islands were included in this zone. As this Convention was not ratified when World War I broke out, Kuwait's territory did not include the islands.

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INT'L L. & POL. 5 (1990).

37. See Moore, *supra* note 2, at 204-07.

38. *Id.* at 216-17.

39. *Id.* at 202.

40. *Id.* annex 17 (reprinting excerpts from: Convention Respecting the Persian Gulf and Adjacent Territories, July 29, 1913, U.K.-Turk.).

After the war, Iraq passed under British control. In an exchange of letters between Sir Percy Cox, then High Commissioner for Iraq, and the Shaykh of Kuwait, in 1923, the frontiers were defined roughly as stated under the British-Ottoman Convention of 1913.<sup>41</sup> On the basis of this exchange of letters, the frontiers were set. But no formal action was taken by Iraq to either ratify or authorize Cox's action, and the agreement was never finalized. At the time, Great Britain was the Mandatory Power appointed by the League of Nations to "render[] . . . administrative advice and assistance," under article 22 of the League of Nations Covenant.<sup>42</sup> The British High Commissioner, on behalf of his government, would also advise the King of Iraq "on all important matters affecting the international and financial obligations" of the British Government, according to the Treaty of Alliance with Iraq (1922).<sup>43</sup>

Cox's standing vis-à-vis Iraq, accordingly, was only in an advisory capacity, and his exchange of letters could not be binding on Iraq. The letters in question were never discussed by the Council of the League of Nations, which recommended Iraq's candidacy for membership to the League Assembly in 1932. Nor was the frontier question ever raised during the discussion of Iraq's admission to League membership. No evidence thus exists to support Moore's opinion, as ratification was constitutionally required in order to be binding on Iraq.

Moore also opines that Iraq's recognition of Kuwait's sovereignty and the unratified agreement of 1963 confirm the validity of the frontiers as defined under General Nuri's exchange of letters in 1932.<sup>44</sup> The existence of the Minutes of a meeting between the Iraqi Premier and the Kuwaiti Foreign Minister in 1963, in which Kuwait's sovereignty and de facto frontiers were recognized, does not necessarily finalize the frontier agreement of 1963, because the Minutes of the meeting between the Iraqi Premier and the Kuwaiti Foreign Minister were neither approved by the Cabinet nor ratified by the head of State, so as to be binding on Iraq.<sup>45</sup> The sovereignty and independence of a country may be recognized by an exchange of letters or even by a declaration of the head of State or government, but frontiers must be defined and demarcated on the basis of an agreement acceptable to both sides in accordance with their own

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41. *Id.* at 216-17, 243 n.64.

42. LEAGUE OF NATIONS COVENANT art. 22, ¶ 4.

43. For the text of the Anglo-Iraq Treaty, see Treaty of Alliance Between Great Britain and Iraq, Oct. 10, 1922, art. 4, 35 L.N.T.S. 13, 15, reprinted in 2 J.C. HUREWITZ, *THE MIDDLE EAST AND NORTH AFRICA IN WORLD POLITICS: A DOCUMENTARY RECORD* 310-11 (1979).

44. MOORE, *supra* note 2, at 204-07.

45. The 1963 Agreed Minutes Between the State of Kuwait and the Republic of Iraq are reprinted in MOORE, *supra* note 2, annex 21.

constitutional procedures in order to be binding. In a peace treaty between Iraq and Kuwait, the frontier question might be resolved if its terms were freely negotiated. If its terms were ever imposed on either side, even by the United Nations, recurrence of frontier disputes would be exceedingly difficult to avoid.

## II. FREEDMAN AND KARSH'S *The Gulf Conflict 1990–1991: Diplomacy and War in the New World Order*

Lawrence Freedman and Efraim Karsh's work, like Moore's *Crisis in the Gulf*, is a book on Iraq's invasion of Kuwait.<sup>46</sup> Freedman, an authority on military strategy and nuclear weapons, is a professor of "War Studies" at King's College in London; and Karsh, author of several studies on Soviet relationships with the Middle East, is a lecturer at the same college. Both authors may be regarded as specialists in the international field. Unlike Moore's work, the subject of the Freedman-Karsh book is not, strictly speaking, a legal analysis of Iraq's invasion of Kuwait. Like Moore's book, however, *The Gulf Conflict* views the invasion as a challenge to the West and to world order, as defined and determined under the Charter of the United Nations. The authors of the two works agree that the primary purpose of the Western response to Iraq's action was to reestablish order and security by compelling Iraq to withdraw its forces through the mechanism of the United Nations.

While Moore deals with aspects of the Iraq-Kuwait relationships as State acts, Freedman and Karsh provide their readers with a more comprehensive account of the events in the region and their implications on both the regional and international planes. In brief, the story of the conflict, as dealt with in the Freedman-Karsh book, began when Iraq invaded Kuwait on August 2, 1990, and ended when Kuwait was formally declared liberated on February 9, 1991. Thus the period covered in their work is a little over six months. As the conflict was the product of longstanding disputes between Iraq and Kuwait, the two writers provide an introductory chapter on the origins of the conflict and a final chapter on its consequences.

The conflict is dealt with in detail, not only addressing the role of the Western powers that participated in passing the Security Council resolutions, but also with the role of countries that took part in implementing the resolutions, which led to the liberation of Kuwait. The two authors also provide a nearly complete account of the events in Iraq and the way

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46. LAWRENCE FREEDMAN & EFRAIM KARSH, *THE GULF CONFLICT, 1990–1991: DIPLOMACY AND WAR IN THE NEW WORLD ORDER* 41 (1993).

in which Iraqi forces administered Kuwait from the time Iraq occupied the country at the beginning of August 1990, to the time of liberation six months later. The Freedman-Karsh work is essentially narrative in scope and method and is less analytical than Moore's book. For students of international law who are not fully acquainted with the historical and political background of the Iraq-Kuwait dispute — indeed, for anyone who intends to read the two works — this reviewer advises reading the Freedman-Karsh book before Moore's work.

It is perhaps unnecessary to reiterate the critical comments made earlier on Moore's work which are on the whole also relevant to the work by Freedman and Karsh. Because the authors of the two books are Western writers, their treatment of the subject is from a Western perspective. There are, however, some important differences between the two works, as well as between the authors, which might be of interest to readers. Moore is more acquainted with Kuwait and its leaders, while his information about Iraq is limited. He also frequently uses rather harsh judgments reflecting the emotional views of Kuwaiti leaders. Freedman and Karsh, in contrast, are well acquainted with Iraq's history and political development and have provided much more useful information about Iraq (though not without highly critical remarks about Saddam Husayn) as both authors, especially Karsh (who has published a book on Husayn<sup>47</sup>), have used not only Western sources but also some (though more limited) source material from Iraq.

Saddam Husayn has been described by most Western writers, especially in the press and media, as a radical Pan-Arab leader, opposed to the West and Israel and an ally of the Soviet Union. The invasion of Kuwait, some held, was at the top of his agenda, as part of his ideological Pan-Arab program. Freedman and Karsh, are perhaps among the very few Western writers who argue that Iraq's dwindling oil income and Kuwait's refusal to assist Iraq financially, were among Iraq's primary motives, despite the fact that the claims to the islands of Warba and Bubiyan were long standing disputes. The two authors make it quite clear that Iraq's needs for reconstruction and development after the war with Iran were immediate drives and should be distinguished from the frontier and territorial disputes. Had Husayn's aim been to acquire the islands and modify frontiers, he would probably not have gone beyond the acquisition of these targets and his action might not have precipitated the "crisis in the Gulf."

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47. EFRAIM KARSH & INARI RAUTSI, *SADDAM HUSSEIN: A POLITICAL BIOGRAPHY* (1991).

As Freedman and Karsh rightly argue, the Ba'th Party regime in Iraq was and still is a secular regime; its aim was greater economic development of the country following Western patterns, and it stood opposed to the concepts of the Islamic Revolution of Iran and other fundamentalist movements. (It is important to note that only after the West rose in support of Kuwait, did Saddam Husayn appeal to fundamentalists as a weapon against Western powers.)

There are several other illuminating remarks to which Freedman and Karsh call attention; for example, the impact of the Iraq-Iran war on the Ba'th regime and on conditions in Iraq. True, Iraq nominally won the war with Iran, but the economic conditions in the country have considerably deteriorated after the war and thousands of prisoners of war were not released by Iran, contrary to Iraqi expectations.<sup>48</sup> In more than one visit to Baghdad after the war, it became quite clear to this reviewer that any nominal gain in the war with Iran did not diminish public frustrations with the country's neglected internal conditions. The author learned from persons in positions of authority about their frustrations with Kuwait's refusal to abide by the OPEC quotas and to limit oil overproduction.

Freedman and Karsh argue that Kuwait's policy of overproduction was based on "market pressures."<sup>49</sup> "Only by allowing prices to fall," they explain, "could oil recapture its share of the world energy market."<sup>50</sup> But the consequences of Kuwait's policy of overproduction adversely affected Iraq's financial position. Kuwait's insistence on pursuing such a policy despite Iraq's protests prompted the Iraqi leadership to suspect that Kuwait was deliberately encouraged by Western Powers (particularly the United States and England) to undermine Iraq's position in world financial markets.

Freedman and Karsh discuss in detail how the Western powers, slowly but effectively, came to the conclusion that they had to use force to compel Iraq to withdraw from Kuwait. Saddam Husayn, though prudent and calculating (as he is described by the two authors), was probably driven more by pride and frustration than by reason to settle his account with Kuwait by resort to force. This reviewer agrees with the two authors that at the outset, the Bush Administration sought to cooperate with Iraq as a moderate power which would stand against the radical revolutionary regime in Iran. But Congress, under the influence of pressure groups, sought to deny export trade with Iraq (even in nonmilitary commodities)

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48. On the Iran-Iraq war, see DILIP HIRO, *THE LONGEST WAR: THE IRAN-IRAQ MILITARY CONFLICT* (1991) and *THE GULF WAR*, *supra* note 7.

49. FREEDMAN & KARSH, *supra* note 46, at 41 (1993).

50. *Id.* at 41.

on the grounds of human rights violations and its alleged growing military build-up in chemical, biological, and nuclear weaponry.

Meanwhile, the press and media launched a vigorous campaign against Iraq, and the difference between facts and fanciful reports about the situation became difficult to distinguish. President Bush, on the basis of the "facts" provided by his intelligence agencies, began to take more seriously the damaging impact of the press reports on the forthcoming presidential elections. Husayn did not make it any easier for Bush (nor, indeed, for himself or his country) when he made highly critical speeches in early 1990, denouncing U.S. neocolonial and imperial policies in the Middle East. This response was partly because he did not fully understand how the press could indulge in such a high-pressured campaign against Iraq without the tacit encouragement of the U.S. Government, despite efforts to explain the nature and freedom of the Western press to him.

Freedman and Karsh seem to have considered the post-Gulf crisis following the liberation of Kuwait to be a new era. Some writers must have been disappointed with Bush's "New World Order," as it proved empty in content after the liberation of Kuwait. Freedman and Karsh, realizing that more profound changes were expected to be regional, devote a chapter, entitled "Saddam Survives," to the internal changes in Iraq. No comparable chapter is devoted to other countries, such as Kuwait, where profound changes have also occurred.

The authors deal with three major issues — the survival of Saddam Husayn, the *Shi'ite* uprising in southern Iraq, and the Kurdish rebellion in northern Iraq. True, the two revolts were suppressed partly by the Republican Guard and partly because of the lack of outside support due to Western concern about the dissolution of Iraq into three smaller States. But what is the solution for the *de facto* existence of three separate subunits? At present they are nominally held together, partly by Saddam Husayn's own leadership and partly by the refusal of the Western powers to allow the dissolution to take place. If Husayn disappears from the scene, is it likely that further uprisings in the North and South might be attempted? No substitute unifying leadership has yet emerged. The opposition leaders outside Iraq do not seem to have a significant following inside the country. The "problem," as the two authors see it, is Saddam Husayn, himself. In their view, he is now the only available leader who can keep the country united, but he is *persona non grata* to most Western leaders. No Security Council resolution has yet been contemplated to resolve the domestic "problem," in Iraq, in contrast to the mandatory resolutions that were rushed to deal drastically with the Gulf crisis without giving Arab leaders enough time to find a peaceful solution. The Iraqi people continue to pay the price for the Gulf War, the U.N. sanctions, and the ongoing

domestic problems.<sup>51</sup> One can but hope that the legal literature on the subject will begin to consider these key issues.

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51. See, e.g., Louise Cainkar, *Desert Sin: A Post-War Journey Through Iraq*, in BEYOND THE STORM, *supra* note 35, at 335 (describing living conditions in post-war Iraq); Penny Kemp, *For Generations to Come: The Environmental Catastrophe*, in BEYOND THE STORM, *supra* note 35 at 325; HARVARD STUDY TEAM, PUBLIC HEALTH IN IRAQ AFTER THE GULF WAR (May 1991); Eric Hoskins, *Making the Desert Glow: U.S. Uranium Shells Used in the Gulf War May be Killing Iraqi Children*, N.Y. TIMES, Jan. 21, 1993, at A25.