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Crisis in the Gulf: Enforcing the Rule of Law

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BOOK REVIEWS

A book reviewer occupies a position of special responsibility and trust. He is to summarize, set in context, describe strengths, and point out weaknesses. As a surrogate for us all, he assumes a heavy obligation which it is his duty to discharge with reason and consistency.

Admiral H.G. Rickover

“The Iraqi Outlaw”

Moore, John Norton. *Crisis in the Gulf: Enforcing the Rule of Law*. New York: Oceana, 1992. 677pp. (No price given)

THIS WORK IS A COMPREHENSIVE tilling of the fertile field of “rule of law” issues that emanated from the Kuwaiti conflict. Few are better qualified for this undertaking than John Norton Moore, a distinguished scholar in national security law at the University of Virginia School of Law. Moore displays a passionate interest in his subject, in part because he was intimately involved in the Gulf conflict as a legal advisor to Kuwait’s ambassador to the United States.

The book begins with a thoughtful discussion of the global implications of the war, focusing on world order, self-determination, human rights, and the rule of law. Within that framework, in part two Moore tackles the unlawfulness of the Iraqi invasion, placing particular emphasis on Saddam Hussein’s violations of the laws of war. This section, which is written not unlike a legal brief, relentlessly details an incredibly long list of Iraqi actions that violated the United Nations Charter, regional agreements, armed conflict conventions, arms control treaties, and international rules pertaining to human rights. Part three addresses the legality of the coalition’s response to Iraqi aggression. This analysis, which is only one-third the length of the list of Iraqi wrongdoing, is easily followed, since its format traces chronologically the escalating measures mandated against Iraq by the Security Council. Along the way, however, the author takes the time to refute the dangerous argument that a nation’s inherent right of self defense under customary law as well as under the conventional law embodied in Article 51 of the UN Charter may be lost simply because of the resolutions that the Security Council passed while dealing with this crisis.

The text of Charter Article 51 does imply, and perhaps expects, that individual or collective self-defense measures will be unnecessary after the Security Council has taken the necessary measures to restore the peace. This possible reading of the text does not, however, provide a basis under international law for concluding that a state's "inherent" right of self defense evaporates just because the Security Council takes "some" action regarding a particular aggression. Indeed, only the most compelling circumstances would justify the conclusion that a sovereign state has relinquished as fundamental a right as its right of self defense. If any nation wanted to give up its right of self defense, such a desire would clearly have to be expressed in the most explicit terms. Therefore it is inconceivable that the states ratifying the UN Charter intended to extinguish their self-defense rights through a speculative reading of the ambiguous language of Article 51.

The fourth part of this work is devoted to an assessment of Iraq's arguments in support of its actions against Kuwait. The assertion that a legitimate Kuwaiti claimant group invited Iraq into Kuwait is rightfully dismissed, virtually without discussion. Another argument was that the conflict arose from long-festered territorial claims and border disputes. This point held merit for Moore and is given careful attention. One cannot take seriously Iraq's claim to all of Kuwait's territory; after all, when Kuwait was admitted into the United Nations in 1963, no member state voted against recognizing it as a sovereign state with defined territory. But other territorial disputes can not be dealt with summarily. For example, Iraqi claims to the offshore islands of Warbah and Bubiyan have surfaced from time to time, fueled by Iraq's perceived need for ocean access through the Persian Gulf. Moore, who advised the representative of the State of Kuwait in the UN Iraq-Kuwait Boundary Demarcation Commission, presents extensive evidence intended to refute Iraq's historical claims to the islands. Given the author's relationship to Kuwait, it is no surprise that he finds little that is persuasive to support Iraq's position. In any event, legal arguments are now largely moot, for on 3 April 1991 the Security Council expressly endorsed the boundary agreements entered into between Kuwait and Iraq in 1932 and 1963 respectively. These agreements, *inter alia*, allocate Warbah and Bubiyan to Kuwait. While Iraq might legitimately question whether passing such a resolution was appropriate for the UN Security Council, the fact remains that there is virtually no international community support for Iraq's claims to the two islands. Indeed, the only real issues for the two countries to resolve are the precise, not the general, location of all their boundary lines. The case presented in *Crisis* is overwhelming that there was no justification based on territorial disputes under international law for an armed attack by Iraq against Kuwait.

Another major Iraqi argument was the alleged continuing Israeli aggression against Arab nations. Moore endeavors to destroy systematically this contention, beginning with details on the condemnation by the Arab League of the invasion

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of Kuwait. The fact that troops from nine of the most important Arab countries participated in coalition operations against Iraq strongly undercuts any attempted linkage by Iraq to overall Arab-Israeli differences. In any case, the argument is futile. Even if such linkage were established, an armed attack by Iraq against Kuwait would not be justified under well settled rules of international law.

A final Iraqi assertion was that it was only doing to Kuwait what the United States had done to Grenada, Panama, El Salvador, and other states. There are intellectually honest differences of opinion among reputable international lawyers about the legitimacy of the use of force by the United States in several recent instances. At a minimum such bona fide arguments ought to remind responsible leaders in all nations that a carefully developed self-defense rationale under international law is required before resorting to force. But again, Iraq's legal case would not be bolstered even if there were unlawful U.S. actions to cite. Two wrongs do not equal one right, even under the most jaundiced view of international law.

Part five graphically portrays the materials that Moore garnered as a passenger on the first "freedom flight" to Kuwait City shortly after the defeat of Iraqi forces and the end of hostilities. His most vivid initial impression was the thick cloud of smoke from the more than five hundred oil well fires deliberately set by Iraqi forces. This act of "environmental terrorism" was inexcusable, but, according to Moore, an even greater tragedy was the cruel treatment by Iraqi soldiers of Kuwaiti citizens—between six and eight thousand were killed. The dramatic impact of this book is greatly enhanced by the author's personal interviews with survivors of the Iraqi occupation and by his first-hand observations of the extensive and often wanton destruction of Kuwait City.

The author next focuses on enforcement mechanisms: reparations, war crimes, trials, and reprisals. With respect to reparations, Saddam Hussein refused the demand contained in Security Council Resolution 687 that Iraq accept, in principle, its liability under international law for damages resulting from the invasion. The civil liability of the Iraqi government is still unresolved, and the author points out that Iraqi sales and other commercial transactions may be subject to legal processes and even harassment wherever they occur, around the world. Not surprisingly, Moore also supports the convening of war crimes trials to hold Saddam Hussein and others personally accountable for their criminal actions in Kuwait. He traces the measures taken by the United Nations to establish the Nuremberg and Far East International military tribunals after World War II, and he offers a halfhearted review of the principal arguments for and against war crimes trials. In reality, Moore cannot bring himself to present very persuasive arguments against trying such individuals as Saddam Hussein. He charges that skeptics are victims of "old thinking" and that "new thinkers" see the deterrent value of trials for high-level national leaders who have committed

crimes against the peace or grave breaches of the laws of war. The chapter ends with a provocative, but all too short (two-page), discussion on practical considerations in the use of reprisals.

A brief, final, substantive chapter is addressed to war powers issues under the U.S. Constitution. In the Kuwait case, academic interest in this continuing separation-of-powers debate is limited by the fact that on 12 January 1990 Congress passed a resolution expressly authorizing the use of military force against Iraq. Notes at the end of the chapter should satisfy the curiosity of any who wish to research in greater depth Moore's well articulated and documented views on war powers issues.

The author concludes with an eight-page analysis of the requirements of peace as well as of war prevention. Moore is at his professional best when he synthesizes complex factual patterns and trends into a coherent legal framework. Moore has deeply held views, which he fully discloses and forcefully defends. The reader is not left to guess where he stands, and he yields no ground to his opponents. *Crisis* must be seen for what it is—a condemnation of the “outlaw” Saddam Hussein and an appeal for a stronger rule of law in the world. Nearly half the text is devoted to invaluable reference materials, including fascinating pictures taken by the author of Kuwaiti oil wells burning full blast. There is a comprehensive compendium of the most important UN documents on the Gulf War, as well as of papers substantiating Kuwait's territorial claims and, most interestingly, previously little known documents pertaining to Iraq's 1932 request for admission to the League of Nations. These documents provide persuasive evidence that the frontiers of Iraq and Kuwait were fixed, for all practical purposes, at that time.

This book is a valuable source of information on the Kuwaiti conflict for international lawyers. One possible criticism is that Moore obviously loathes Saddam and the crimes he and his followers committed; therefore more persuasive arguments on behalf of these “villains” will have to be found elsewhere. In addition, the materials on the territorial claims of Kuwait may be covered in disproportionate detail. Overall, however, I recommend *Crisis* to anyone interested in a spirited promotion of the rule of law and its comprehensive application to Iraq's atrocities and aggression against Kuwait. Moore's most important contribution is that he has made the rule of law the centerpiece for evaluating a “model” case of warlike conduct in the contemporary world.

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