

The Legality of U.S. Armed Interventions and Prospects for Peace and Democracy in the Middle East

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Introduction

Reference to the events of 11 September 2001 has now become a conventional introduction to all debates relating to world order, regional, and international security. The Middle East, which has always played a pivotal role in world affairs, has become once again the focus of attention among politicians, policymakers, and strategists.

Almost two years have elapsed since the September 11 terrorist attacks, and during this rather short period of time, the world has witnessed the collapse of the Taliban in Afghanistan and the Ba'athist regime of Iraq. These changes have taken place by forceful means and armed intervention—not quite within the purview of the legal principles of the UN Charter and

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other accepted norms of international law, devised to govern the world and to maintain international and regional peace and security.

The United States, as the main target and victim of recent terrorist attacks, has thus far embarked on a number of measures, including a “strategy of preventive defense” and “forceful democratization” of the region, with the objective of securing its long-term interests and to change the anti-American sentiments in the Middle East.

The main contentions of this paper are that: a) the U.S. armed interventions in the Middle East lack a credible legal basis; and b) the United States has so far failed to achieve its aims and seems not to be capable of doing so in the future. The main policy recommendations that emanate from my contentions as follows: In order for the United States to overcome the mounting problems it faces in the world and the Middle East, it should aim its strategy toward the Middle East at three levels:

- *at the domestic level*, it has to acquire the necessary persuasive force to convince the U.S. public of the logic and legality of its interventions;
- *at the international level*, through a process of widening the scope of alliance and partnership with other world powers, rectifying the picture of arrogant and selfish U.S. unilateralism; and finally,
- *at the regional and operational level*, by pursuing a triple-function policy aimed at credibility building, mutual understanding of cultures and values, and last, but not least, conquering hearts and souls of the people.

The end of the Cold War, September 11, and the new international disorder

The end of the Cold War and the collapse of the Soviet Union and the communist apparatus as the main enemy and contestor of Western liberal values brought the bipolar international system, imbued with some sort of

institutional paranoia, to an end. But soon after, the second Persian Gulf crisis ushered in a new era of turmoil and upheaval. Surprisingly, on 11 September 1990 this new situation was characterized as an opportunity to establish a “new world order” by President George Bush, in a speech before the United State Congress. He described the new order in a world devoid of threat and terror, with opportunities for international cooperation, justice, peace, and security.

Almost a decade later, on 11 September 2001, terrorist attacks on the World Trade Center and the Pentagon were characterized by President George W. Bush as war against the United States. Upon this declaration, Article 51 of the UN Charter on individual and collective self-defense, and later Article 5 of the North Atlantic Treaty were invoked as the appropriate legal instruments for a quick response to terrorist action against the United States. Article 51 of the Charter (which is the last article of chapter VII, relating to “action with respect to threat to the peace, breach of peace, and acts of aggression”) recognizes the “inherent right” for states, individually or collectively, to take action against an aggressor, “until the Security Council has taken measures necessary to maintain international peace and security [. . .]”. With respect to the legality of invoking the issue of self-defense in this case, a number problems remain to be settled.⁽¹⁾ First, there is little doubt that the United Nations Charter was not drafted to include individuals causing aggressive actions against states; and second, terrorists responsible for the attacks were individuals belonging to various countries, which presumably had no control on or information about the wrongdoers. The following section delves more deeply into the above points.

Legal basis of armed intervention to combat terrorism

Much has been written to date on the legal issues arising out of the U.S. military interventions in Afghanistan and Iraq after September 11. In this paper, I focus only on some overlooked points that may be of interest.

On 28 September 2001, the UN Security Council adopted Resolution

1373 on steps to be taken to combat international terrorism. Deciding under chapter VII of the Charter, the Security Council decided that all states (not just UN member states) shall prevent and suppress the financing and all support of terrorist acts. The Security Council further reaffirmed the inherent right of individual and collective self-defense as recognized by the Charter. However, this statement should not be interpreted as Security Council approval of the use of armed force as a response of “self-defense” to the events of September 11. The resolution further stated the Security Council determination to “take all necessary steps” to ensure the full implementation of the resolution. Although this paragraph is interpreted like UN Security Council Resolution 678, “use of all necessary means” to restore international peace and security after the Iraqi invasion of Kuwait in 1990, Resolution 1373 did not authorize states to take the steps necessary to implement it. Instead, it stands as a warning that the Security Council is ready to take further steps, which presumably could lead to giving authorization to some forms of armed intervention as a limited self-defense. It should be logically construed that further approval of the Council would be required.

The United States, conscious of the fact that further debate in the Security Council might end up to inhibiting its plan of action, preferred not to wait for further permission. This is true in both Afghanistan and Iraq. In the case of Iraq, unlike the situation in Afghanistan, where some sort of consensus existed among NATO members and the world as a whole, the United States failed to convince even its close allies in Europe, much less the international community—especially the Arab and Muslim nations—on engaging in war. This snag further pushed the United States to opt for a unilateral policy, which became fertile ground for proliferation of anti-American sentiments throughout the world and serious discontent and cleavage among U.S. allies and close partners.

Legal justification for broadening the scope of terrorism

Shortly after the September 11 terrorist attacks, President Bush declared that there would be no distinction between the terrorists and those who harbor them or give financial support to their activities.⁽²⁾ This contention is open to a variety of legal and political interpretations that are likely to entail further military action and intervention in the volatile Middle East and Persian Gulf regions. Should this declaration be put into operational plan without the specific permission of the Security Council and outside the purview of the UN Charter and other conventional and customary principles of international law, we should expect serious consequences in future social, political, and economic dealings in the Persian Gulf.

The United States should be very cautious with respect to imposing its interpretation of terrorism and how to cope with it, especially in the Middle East. Furthermore, it should avoid a double-standard policy, as with the selective labeling of terrorism, leaving aside some actions and including some others arbitrarily. For the United States to take action against third parties it labels “terrorist” it must first prove that the targeted state has committed an internationally wrongful act (that is, breach of an international legal obligation).

Furthermore, in order to invoke Article 51 of the UN Charter on self-defense, once a breach of treaty is established, the countermeasures must be proportionate and may not legally involve the use of armed forces to topple a de jure or de facto government in power.

Legally speaking, a state’s responsibility may be engaged with respect to individual (non-state actors) terrorists who have taken refuge in its territory. However, this merely means the state involved, has an international legal obligation to prosecute or extradite the offender(s). In such a situation, a breach of obligation on the part of the so-called supporting or harboring state would only entitle the victim of terrorist attack (in this case, the United States) to take proportionate countermeasures, not involving the use of force against the offending state.

Under international law, “ the conduct of a person or group of persons shall be considered an act of State . . . if the person or group of persons is in fact acting on the instruction of, or under the direction or control of, that State in carrying out the conduct.”⁽³⁾ This is to say that only if terrorist actions can be attributed to a state may Article 51 of the Charter be used, still subject to the limitations stated above.

Forceful democratic change: Implications for the Middle East

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The strategy of “ democratization” of the Middle East, based on the Wilsonian assumption that democratically elected governments do not wage war, has long proven inadequate-if not totally baseless. One example is the United States itself, which is supposedly a prototype of Western liberal democracy, but has shown a very high propensity for war, armed conflicts, and military interventions since the end of World War II. In the last crisis in the Middle East, on the problem of Iraq’s weapon of mass destruction (WMD), the United States has gone so far as to break with its long-time allies in order to pursue its unilateral policies in the region. Indeed, this will not help U.S. national interests in the long run; neither this will promote the cause of democratic change in the Middle East. Quite to the contrary, this policy is apt to distort international views of the United States and will make life more and more difficult for U.S. soldiers and diplomats on foreign soil.

Democracy is a multifaceted phenomenon, and democratic changes, in order to be effective, must start from within by taking into account all dimensions of cultural, social, and political life. In other words, a forceful attempt to change the structure of society from outside, through promoting values and norms not in line with the indigenous culture will provoke negative sentiment and resistance by the people. The case of Iraq is a typical one. People who abhorred the dictatorial regime of Baghdad and applauded its collapse through U.S. intervention, soon after the fall of Saddam expressed similar hatred and discontent about their “savior.” U.S.

policymakers and strategists should not be surprised by this misfortune. Muslim peoples are very suspicious of foreigners who try to impose their will to them, even with good intentions. Similar policies were applied successfully to Japan and Germany after World War II by the United States, but it did not work in Afghanistan and Iraq, and very probably will not work elsewhere in the region. Persistence in such policies may only deepen the divergence and animosity between Americans and local governments on the one hand, and raise anti-American sentiment among the people, which would only benefit the totalitarian regimes now in power.

Either outcome could be detrimental to U.S. economic and strategic interests in the Middle East, especially in the Persian Gulf. Thus, it seems that peaceful change initiated from within and compatible with local norms and values, and legitimately supported by the international community without hindrance from outside powers, may best benefit the United States and the region as a whole.

Concluding remarks and policy suggestions

In light of what has happened in the Middle East since September 11, how shall we judge the present situation and prospects for peace, security, and democracy in the region? Is the world as a whole a safer and more stable place now than before the terrorist attacks? Is the United States, as the leading world power, more secure, and are U.S. soldiers, diplomats, and average U.S. citizens around the globe more liked and welcomed? Are U.S. interests more protected and the American flag more respected than before? Is Middle East stability and security more reliable and the ground for establishing a just and durable peace in the Arab-Israeli conflict more fertile? Unfortunately, answers to most of these questions are not encouraging and do not lead to optimism. A common-sense approach says that bad policy leads to bad results. Good intentions are not sufficient. Appropriate policy and actions, along with adequate understanding of the domestic, regional and international environment, are the prerequisites of good strategy. An

unfavorable outcome should suggest that the policy is defective and therefore should not be pursued at all costs.

Failure of U.S. strategy and policy in the Middle East is not just because of its disregard of the basic principles of international law and explicit provisions of the United Nations Charter on peace, security and arbitrary use of force in international relations. It is mainly due to the arrogance implied by U.S. unilateral action and its lack of understanding of the cultural affinities of the Muslim world.

Social and political science tend to overlook the emerging factors rooted primarily in the religious reawakening and struggle for identity in the Middle East. The emergence of new, previously neglected actors, in the forms of fundamentalists, Muslim zealots, stone throwers, homicide and suicide attackers, and the so-called terrorists, has indeed changed patterns of relations among nations. This ought to, of necessity, change our perception of the world.

Today, an almost infinite number of variables play upon the patterns and structure of international, regional, and domestic order and stability. Simplistic projections of the future of international relations, peace, alliances, progress, democracy, and political order are doomed, because no adequate and reliable schema for comprehensive analysis of the situation, with a view to increasing predictability, as yet exists.

To emerge as a potent world power capable of changing both patterns and structure of the emerging order, the United States has to aim its strategy and policies towards the Middle East at three levels:

- ***at the domestic level***, it has to acquire the necessary persuasive force to sway public opinion toward approving its actions and interventions throughout the world.
- ***at the international level***, it has to rectify its arrogant and selfish attitude of unilateralism (considering itself above international law) through a process of widening partnership, taking into account the interests of other world powers.

- *At the operational level in the Middle East*, it has to pursue concurrently a triple-function policy: a) credibility building; b) understanding the subtleties of Muslim communities and cultures, and c) conquering the hearts and souls of the people.

Taking over foreign lands and territories by force, even when legitimate and legal, is much easier than conquering hearts and souls of peoples long subjugated by tyrannical regimes. ❖