

UN enforcement action against Iraq in the First Gulf War (1990-1991)

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1. Nearly all manifestations of life, and certainly all those found in the world of international relations, have their pluses and minuses. That is particularly true in the case of the enforcement action taken by the United Nations against Iraq in late 1990 and early 1991. Indeed, that is one of the central ideas of my talk; I will leave the assessment of whether this action as a whole, taking into account the various pros and cons, served the organization's primary purpose as set out in the first article of its charter, namely, to maintain international peace and security, for the end. To make it easier to follow what I am saying, allow me to briefly review the facts.
2. For reasons that it is not necessary to explain in detail here, but that, in the view of many analysts, had to do with the important energy source that is oil, on 2 August 1990, the troops of Saddam Hussein's Iraq invaded the Emirate of Kuwait and appropriated its territory. Faced with actions clearly prohibited under Article 2, paragraph 2, of the UN Charter, insofar as they constituted a use of force against the territorial integrity and political independence of a state, the Security Council met immediately. After condemning the acts and demanding that the invader withdraw from the occupied territory, as well as adopting economic sanctions under Resolution 661 of 16 August 1990, on 29 November of the same year it adopted Resolution 678. In that resolution, it reiterated its demand that Iraq leave the invaded territory and warned that, should it fail to do so by 15 January 1991, the states cooperating with the government of Kuwait would be authorized to use all "necessary means" to enforce the previous resolutions. As Iraq did not heed the resolution, on 17 August 1991, a US-led coalition of 34 states initiated hostilities against the country, in a move that the Pentagon called "Operation Desert Storm" and which Saddam Hussein called "the mother of all battles". This action led to the expulsion of Iraq from Kuwaiti territory, that is, to the restoration of the status quo prior to the invasion.
3. It is important to note that the armed action taken by the coalition was consistent with international law, insofar as it was supported by a Security Council resolution under Chapter VII of the UN Charter. The resolution could be adopted because none of the Council's permanent members vetoed it. In short, the then still existing Soviet Union voted in favour of the resolution, as did the US, the UK, and France. Although China abstained, according to accepted practice, an abstention is not the same as a veto.

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It is likewise worth recalling that, until this enforcement action was taken in the early 1990s, only between 1950 and 1952 were 19 UN member states, led by the US, able to legally fight, in that case against North Korea, under the Council's resolution of 27 June 1950. The Cold War was in full swing, but the resolution could be adopted because the Soviet Union had boycotted the Council session that day to show its disagreement with the fact that China was represented by the nationalist government of the Republic of China, that of Chiang Kai-shek, as opposed to that of the People's Republic of China. As is well known, the hostilities ended in 1953 with the signing of an armistice agreement that established a demilitarized zone four kilometres wide between the two Koreas.

Otherwise, from 1950 on, the threat or exercise of the privilege of veto by the permanent members, especially the Soviet Union, impeded the Security Council from exercising its function of maintaining international peace and security as set out in the San Francisco Charter.

4. Going back to the first Gulf War, the authorizing resolution of the Security Council of 29 November 1990 was possible as a result of the climate of global goodwill that, since late 1989, had followed the Cold War. On that occasion, the provision of the Yalta Conference of February 1945, corroborated at the San Francisco Conference, that armed actions aimed at maintaining international peace and security could only be undertaken by the UN in the absence of the opposition of any of the five permanent members of the Security Council, was restored. The effect of this provision was to grant each of these members the right of veto, the threat or exercise of which prevented the UN from carrying out its primary mission of maintaining international peace and security throughout the Cold War. In the case of the first Gulf War, which took place after the Cold War had ended, none of the permanent members opposed the authorization of the armed action against Iraq. Thus, the conditions established at Yalta and San Francisco were met.

From this perspective, UN action in the first Gulf War deserves a positive, or even very positive, assessment. This is primarily because of its results: the aggressor was punished and dissuaded from further aggression and Kuwait's sovereignty over the usurped territory was restored. In the atmosphere of widespread optimism that followed, there was talk amongst world leaders, especially between the leader of the US —the first President Bush— and the heads of state of its allies, of the emergence of a "New World Order", in which world peace and security would henceforth be guaranteed by the UN. Unfortunately, this did not turn out to be the case, but I will leave it to my fellow panellists to discuss and analyse this state of affairs.

5. What I would like to do now, in this order of ideas, is to offer a concise political assessment of the veto privilege insofar as it relates to the maintenance of international peace and security. It is a clearly favourable assessment, as in the absence of the right of veto, the Security Council would be able to authorize the use of armed force against a permanent member accused of an act of aggression or any other violation of Article 2, paragraph 2, of the UN Charter. Consider, for example, the Soviet Union's military interventions in Hungarian territory in 1956 or to suppress the Czechoslovakian people's yearnings for freedom in 1968. Had the Council authorized by majority vote an armed action against the Soviet Union, which was already a nuclear power by then, would the US, the UK or France have dared to carry out the intervention? I do not think they would have, and in this regard I

believe that the Yalta agreement to include the right of veto in the Charter was wise. It could be argued that this privilege, a genuine tribute to realism, is, ultimately, a safeguard of the organization's survival.

6. Returning again to the First Gulf War and the positive assessment of its results, the UN Secretary General at the time, the Peruvian diplomat Javier PEREZ DE CUELLAR, was less satisfied with how things had worked out, even claiming that "this is not the UN's war". This was because the enforcement action was carried out in a decentralized fashion, with virtually no monitoring or control whatsoever by the Security Council or any other UN body.

Several articles of the Charter (45, 46 and 47) do refer to the "Military Staff Committee", whose basic functions within the organizational structure of the UN, in accordance with the aforementioned articles, are to advise and assist the Security Council on all military questions and, quite specifically, on "the strategic direction of any armed forces placed at the disposal of the Security Council". However, as of the second decade of the 21st century, this Committee, created on 25 January 1946 by the Council's first resolution, has a merely formal or, if you will, virtual existence; although it holds meetings, it performs no actual functions whatsoever. And there is little reason to believe that this will change in the foreseeable future. It has been said, quite rightly, that this body is in a coma. Consequently, it is the state contributing the largest number of troops to the armed action in question that decides on the major strategic questions and how the operation will be carried out. In the few enforcement actions taken to date, this state has been the American superpower. In short, a state that wages war as it sees fit and, to a greater or lesser extent, in keeping with its own political and economic interests. That is precisely what happened in the use of force against North Korea in the early 1950s, as well as in the first Gulf War, and it will surely continue to be true of any future enforcement action authorized by the Security Council under Chapter VII of the Charter. From this standpoint, one can understand how some, such as Mr PEREZ DE CUELLAR, might express a certain dissatisfaction with the enforcement action taken against Iraq with the authorization of the UN.

7. Nevertheless, if one is to take a balanced and realistic look at the broader picture, it has to be said that the pros of the UN's military action in the first Gulf War outweighed the cons I have just mentioned, that is, that the hostilities were neither led nor controlled by a UN body but rather by the government of a superpower. And I have already said why I think so: because the aggressor was punished and dissuaded from further aggressions and the usurped territory was returned to Kuwait. International peace and security, the maintenance of which is the UN's ultimate and primary goal, came out ahead. Besides, any benefits the US might have obtained from spearheading the use of force in the first Gulf War as it saw fit and at its own convenience, might be regarded as compensation for its war effort, for the human and material losses sustained by its troops.

8. To conclude my talk, and in keeping with the general topic of this seminar, I should say that as head of the International Legal Office of the Spanish Foreign Ministry during the first Gulf War, I do not recall having received any requests for an opinion on the legality of the use of force to restore Kuwaiti sovereignty over the territory. I believe this was because the armed action's consistency with

the UN Charter was considered so clear and obvious that no specific legal opinion on the matter was required.