

**American Bar Association
Section of International Law
and Practice
Standing Committee on World Order
Under Law
Report to the House of Delegates**

Kuwait*

RECOMMENDATION

BE IT RESOLVED, That the American Bar Association condemns the unprovoked invasion and purported annexation of the Emirate of Kuwait by armed forces of the Republic of Iraq in violation of article 2 paragraph 4 of the United Nations Charter, the detention, mistreatment and forced removal of persons living in or transiting Kuwait, and closure of diplomatic and consular missions in Kuwait and unilateral withdrawal of the privileges and immunities of these missions, in violation of relevant conventions and principles of international law.

BE IT FURTHER RESOLVED, That the Association condemns the failure of Iraq to comply with all Security Council Resolutions adopted since decisions and recommendations of the UN Security Council, and other actions taken in conformity with the Charter of the United Nations to protect the sovereignty, independence and territorial integrity of states in the region, as well as the determination of the Security Council to ensure compliance by Iraq with the decisions of the Council, and recommends that the United States, together with the other Member States of the United Nations cooperating with the Government of Kuwait, use all necessary means including force as well as diplomacy to restore international peace and security in conformity with the principles and purposes, and other provisions, of the Charter of the United Nations.

REPORT

I. Explanation of Recommendation

The purpose of this recommendation is to place on record the views of the Association in regard to the invasion and occupation of the Emirate of Kuwait by

*This Recommendation and Report was adopted by the House of Delegates in February 1991. Numerous persons and committees were responsible for its careful drafting. However, Professor Louis B. Sohn deserves special credit for the success of the Recommendation and Report.

the Republic of Iraq and the actions of the United Nations and the member states in response to this act of aggression.

II. Background

A. IMPLEMENTATION OF GOAL VIII OF THE ASSOCIATION

Goal VIII of the Association is to advance the rule of law in the world, and in particular to provide leadership for the development of the rule of law through resolution of conflict between nations by peaceful means and not by use of force. The Association has always opposed acts of aggression in violation of the Charter of the United Nations.

B. IRAQ'S INVASION, ANNEXATION AND SPOILIATION OF KUWAIT

In the early morning local time of August 2, 1990, Iraqi troops invaded Kuwait. Iraqi forces quickly installed a "Provisional Free Government" of Kuwait, which proceeded to close all of the country's ports and airports, ban entry into and exit out of the country, impose a curfew, and cut telecommunications with the outside world. Once in Kuwait, Iraqi forces pushed toward Kuwait's border with Saudi Arabia. Kuwait immediately asked for United Nations assistance.

Iraq promptly annexed the territory of Kuwait in disregard of all its international obligations. It has systematically brutalized the inhabitants of Kuwait. Hospitals have been looted without regard for the sick. Parents have been tortured and executed in front of their children. Children have been tortured and executed in front of their parents. Third-country nationals residing in or transiting Kuwait or Iraq, including diplomatic and consular personnel, have similarly been brutalized in violation of the basic humanitarian norms; many of them were held hostage and used as human shields. Public and private property was seized, inhabitants were expelled, and Iraqi and other foreign nationals were settled in confiscated houses.

C. ACTIONS TAKEN BY THE UNITED NATIONS AND THE UNITED STATES TO TERMINATE IRAQ'S AGGRESSION AND RESTORE INTERNATIONAL PEACE AND SECURITY

Worldwide condemnation of Iraq immediately followed its unprovoked invasion of Kuwait. On the same day as the invasion, the Security Council of the United Nations convened in emergency session. The United States was joined by the Soviet Union, China, Great Britain, France and others in a 14-0 Security Council vote to condemn Iraq, and to demand its immediate and unconditional withdrawal from Kuwait.

Following requests from the Emir of Kuwait and King Fahd of Saudi Arabia, President Bush deployed United States forces to the Gulf to assist in the defense

of Saudi Arabia and other countries in the Gulf Region threatened by the Iraqi action, and provided support and assistance to the legitimate Government of Kuwait. In the following days and weeks, numerous other countries, including Great Britain, France, Canada, Australia and others sent forces of their own to the area. An Arab summit meeting voted to send a pan-Arab force to defend Saudi Arabia. By the end of October, at least 26 nations had sent troops to the area to contribute to this effort. A truly multinational defense force was thus established.

The United States has engaged in intensive efforts from the outset to resolve this crisis peacefully through diplomatic and other means short of use of force. All means provided for in article 33 of the Charter are available for that purpose, provided Iraq withdraws from Kuwait. United States efforts included multilateral diplomacy at the United Nations as well as bilateral diplomacy aimed at the creation of a global alliance to isolate Iraq from the rest of the world; the adoption of comprehensive economic sanctions and the related imposition of a naval interception operation; and the establishment of economic assistance and other forms of relief for countries whose citizens are most affected by the deleterious economic effect of the embargo.

The use of the United Nations as a vehicle for resolving this crisis has been critical. During the past four months, the Security Council in an unprecedented burst of activity has adopted ten resolutions responding to the invasion and occupation by Iraq.

- On August 2 the Security Council condemned the invasion of Kuwait and called for Iraq's immediate and unconditional withdrawal.
- On August 6 the Security Council affirmed the inherent right of individual and collective self-defense in response to the Iraqi invasion and occupation and imposed a series of broad economic sanctions against Iraq.
- On August 9 the Security Council declared the alleged annexation of Kuwait by Iraq "null and void" and declared "its determination to restore the authority of the legitimate Government of Kuwait."
- On August 18 the Security Council called for the immediate release of foreign nationals from Iraq and occupied Kuwait.
- On August 25 the Security Council authorized the use of force to intercept all maritime shipping going to or coming from Iraq or Kuwait carrying goods or commodities in violation of the economic sanctions.
- On September 12 the Security Council established guidelines for the provision of foodstuffs in humanitarian circumstances.
- On September 16 the Security Council condemned the aggressive acts perpetrated by Iraq against diplomatic premises and personnel in Kuwait and demanded that Iraq immediately protect the safety and well being of diplomatic and consular personnel and premises.
- On September 24 the Security Council authorized examination by the United Nations of requests for economic assistance by third states affected by the sanctions.

- On September 25 the Security Council strengthened the economic sanctions by clarifying restrictions with regard to aircraft flying to and from Iraq and Kuwait, and provided additional sanctions against Iraqi vessels.
- On October 29 the Security Council demanded that Iraq respect its obligations under international law towards Kuwait and third-country nationals, invited states to report on violations of international law committed by Iraq, and invited states to collect information on claims against Iraq for losses or injuries resulting from the invasion and illegal occupation of Kuwait.
- On November 29 the Security Council, in resolution 678, authorized Member States cooperating with the Government of Kuwait, unless Iraq fully implements the previous resolutions of the Council by January 15, 1991, to use all necessary means to implement these resolutions and to restore international peace and security in the area.

III. Recommended Action

It is recommended that the American Bar Association place on record its views regarding the invasion and occupation of Kuwait by Iraq and the actions of the Member States and the United Nations in response to that invasion and occupation. In doing so, the Association would encourage and support an understanding of, and respect for, the rule of law in the relations of states, and particularly the need for states to conform their conduct to the principles and purposes, and other provisions, of the United Nations Charter. The Draft Resolution accomplishes the following three purposes: (1) condemns the unlawful actions of Iraq; (2) expresses support for the actions of the United Nations in response to Iraq's aggression, and for the actions taken by the United States Government immediately following the invasion and subsequently to comply with the decisions and recommendations of the Security Council relating to this matter; and (3) encourages further action by the United Nations and by the United States to obtain Iraqi compliance with the decisions of the Security Council consistent with the principles and purposes, and other provisions, of the Charter.

Respectfully submitted,

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and

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