

Regulating the Military Action in International Law: A Diplomatic Solution Approach - The Iraqi War

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Abstract: Debates about the role and relevance of international law in contemporary world have acquired new intensity in light of the U.S. coalition's decision to invade Iraq in March 2003 without a clear legal basis or even exhausting a diplomatic solution. Some have interpreted the lack of compliance in this case as proof of irrelevance of the U.N. Charter use of force paradigm. Motivated by certain debates, this paper takes a deeper look at how international law regulates the military action on the use of force operates in the broader context of international politics and in what ways it may affect political processes and outcomes in this highly sensitive area. Integrating and building on different perspectives, the first part of the paper explores the effect of using military action on Iraq. The second part then examines the role of international relations in the processes of shaping, justifying and evaluating the diplomatic solutions before using military actions. Eventually, this paper confirms that international law on regulating military action plays a significant role in contemporary international relations.

Keywords: Military Action, The Iraqi War, Diplomatic Solutions, Negotiations, Mediation, Investigation, International Arbitration, Regional Organizations

INTRODUCTION

Iraq borders the Arab States of Saudi Arabia, Syria, Kuwait and Jordan. Also, Iraq has incubated several civilizations since 6000 B.C.; Iraq has multiple ethnic groups unlike most of the Arab States. "The Iraqi people are tribal and secular in nature.

Their focus is on their family, more so than themselves. Their family achievements outweigh their personal accomplishments. The Iraqi population is over twenty-four million with 75% being Arabic, 20% Kurdish, and the remaining five percent a hodgepodge of other ethnicities. Ironically, the Sunni minority was the ruling power and Saddam Hussein was their most famous (infamous) member [1].

Islam is Iraq's State religion with 97% of the population being either Shi'a or Sunni; Iraqi faith is unquestionable. The Islamic belief is that God, or Allah, controls everything directly and in minute detail [2]. Iraq has gone through many wars in the last thirty years: the first Gulf War with Iran, the second Gulf War with the U.S. and coalition nations in 1990, and the third Gulf War with the U.S. in 2003 as well which will be discussed. "On January 29, 2002 in his first State of the Union address, former President George W. Bush named three countries as the "Axis of Evil." One of these was Iraq.

On October 10, 2002 the U.S. Congress adopted a joint resolution authorizing the use of force against Iraq. On March 17, 2003 in an address to the U.S. gives Saddam Hussein and his regime 48 hours to leave Iraq. Military operations against Iraq, conducted by the U.S [3]. and an allied Coalition, began at around 9:30 PM EST on March 19, 2003. This operation [4] was known in the U.S. as *Operation Iraqi Freedom* (OIF). By 1 May 2003, President George W. Bush declared Major Combat Operations over, signaling a transition to operations to stabilize Iraq and support its reconstruction. The U.S. began this transition in the spirit of a significant commitment—including 140,000 U.S. troops deployed to Iraq, plus civilian experts and U.S. contractors, who were to provide substantial support to their Iraqi counterparts in the fields of security, governance, and development [5]."

The Military Action against Iraq

The immediate goal of the war, as stated by the George W. Bush Administration, was to remove Saddam Hussein's regime, and destroy its ability to use weapons of mass destruction, or to make them available

to terrorists [6]. The broad, longer-term objective included helping Iraqis build a new Iraq that is prosperous and free [7].

The above sentiments were offered the American people, and the international community, by the Bush Administration. However, there is another argument that suggests the U.S. invasion of Iraq was its huge oil reserves, enough to last for the next a few decades. This trend to invade Iraq began in earnest, beside that; the U.S. will use the issue of human rights in Iraq as another pretext since the world public opinion began to draw criticism of this State relating to human rights issues. Taking into consideration that Iraq has acted against the international legitimacy, the Bush administration main concern was to find another source of oil in the easiest way possible, for this matter, the U.S. rushed to invade Iraq and set up an ally government to control its affairs. Now the question is: Why Iraq?

The answer is as follows:

1. After the 1990 blockade that is responsible for killing more than 300,000 children per year, Iraq has not been able to defend itself.
2. The security situation in Iraq provided the excuse of possession of weapons of mass destruction (WMD), and the former Iraqi President Saddam Hussein has used them against his own people; this pretext convinced the American public that invasion of Iraq was necessary.
3. There is the opinion that this war is more of a conflict between religious ideologies, and that the benefits of the U.S. and Israel combined to destroy Iraq and establish the alleged greater State of Israel between the Nile to the Euphrates.

Now, we turn to the question of what the U.S. reaped from this war.

1. In Economic Terms:

- The control of oil resources in the region and to provide an alternative resource other than Saudi and Venezuelan oil.
- The Monopoly of the U.S. companies over the oil industry in Iraq for decades.
- The benefits that the U.S. contract companies get for reconstruction, which explains the intent of U.S., forces to destroy the infrastructure of Iraq without justification.
- To open new markets for the U.S. industries, whether in Iraq or in the States of Southeast Asia after getting a foothold in the Middle East, which provides easy access to those areas.
- The opportunity to try and experience the various new weapons in an actual war.

2. In Political Terms:

- Confirm the strength of the U.S. to be the only superpower in the globe that controls and dominate the world as well as curtail the role of the U.N.
- Focus on the threat directed by Syria, Iran, and Saudi Arabia.
- To win a war after the failure of achieving the stated key objectives of the war in Afghanistan.
- To remove a large Arab force represented by Iraq that was a source of real danger to Israel, a U.S. ally.
- To obstruct any Arab efforts for decisions that enhance cooperation between the Arab States, and eliminate the role of the Arab League, this promotes the role of division and disagreement between these States and the extension and influence of the U.S. to control it all.

3. In Religious Terms:

- The Crusade war was not just an innocent slip mentioned by the U.S. former President George W. Bush, it was the major aim to fight the Muslims in order to humiliate, weaken them and colonize their States.
- Preparation of the Battle of Armageddon, in the land of Palestine, which constitutes the end of the world as a prelude to the coming of Christ the Savior, according to Christian beliefs.
- The Elimination of the Babylonian king (Saddam), who was mentioned in the prophecy of the children of Israel. And thus to achieve the Zionist dream of Greater State of Israel.
- Directly threaten Saudi Arabia to pressure it to change the religious orientation of the State and amend the human rights record, especially in the areas of women and the curricula in schools.
- Spreading the spirit of division and discord between the different Iraqi sects, Sunni, Shi'a, Christians, Kurds, and Turkmen.

In fact, Iraq for a long phase of time, even before the invasion, has had the worst human rights record among the Middle Eastern States; has the U.S. invasion offered any help in this regard? The answer is no.

“Turning to the legitimacy of the war, the question is whether Operation Iraqi Freedom was lawful in accordance with Article 51 of the U.N. Charter, which recognizes the inherent right of every State to self-defense and, in this respect, permits defensive military measures if a military attack happens. prior to the spring 2003 U.S. initiated war, no actual armed attack by Iraq had taken place, the U.S. invasion can be justified only as a case of preventive self-defense.

Thus, the use of force would be permissible only in the face of a threat where the necessity of self-defense is “instant, overwhelming, and leaving no choice of means, and no moment for deliberations [8].” “On the facts, therefore, the OIF was justified by preventive self-defense. In contrast, the justification of the war in Afghanistan was based on self-defense. In the eyes of the Iraqi people, however and the neighboring States, the U.S. mission in Iraq lacked from the onset, and yet lacks, legitimacy and credibility. Only by dramatically recasting the American role in the region shall such perceptions begin to change. Until then, the U.S. military operations in Iraq will continue to foment local resistance, radicalize neighboring populations, and discourage international cooperation [9].”

Within a larger context, the war in Iraq was not promoting international harmony and security. On the contrary, the war has threatened the peace and security in all given fields such as economical, security, political, and military fields. But has the withdrawal of the U.S. troops made the situation any better? Addressing that question, James Dobbins has concluded, “. . . if keeping U.S. troops in Iraq provokes further resistance, withdrawing them prematurely could provoke much worse: a civil war and a regional crisis of unpredictable dimensions [10].” But are we left with at

least one option? The answer to that is yes. It would have been far better for all concerned parties if the U.S. conducted a gradual withdrawal from Iraq. This could ease the tension, and the U.N. could handle the matter just as it has any prior conflict.

This solution will be valuable for at least the Iraqi sovereignty and possibly to reduce the bloody violence that started with the war over twelve years ago. “In a catastrophic way, the casualties in Iraq are extremely disturbing. So it is, too, with Washington’s war. The Iraqi people need have lost more compatriots to the scourge over the past years than Americans have in all incidents of their history combined. Allowing for its population’s smaller size, Iraq suffers every month—sometimes every week—losses comparable to those of the September 11, 2001, attack on U.S. soil [11].”

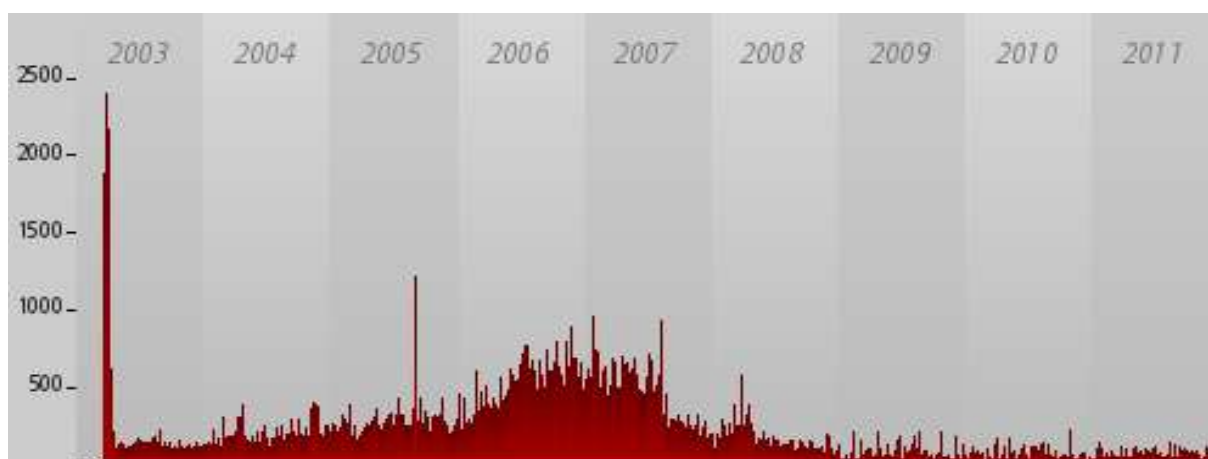
After over twelve years of war, the suggestion that the U.S. redefine its objective for being in any land and work as promptly as possible with the neighboring States and the Five Permanent States in the Security Council for a safe and successful peaceful means. The following charts depict the horrific casualties of the U.S. troops and the Iraqi civilians. These grim numbers are further proof of the failure in using military actions.

Table-1: Operation Iraqi Freedom, 2003 – 2010 [12]

Casualty Type	Total	Army	Navy	Marines	Air Force
Killed in Action	2,664	1,908	63	664	29
Died of Wounds	793	604	2	187	0
Died while in Action	7	7	0	0	0
Died while Captured	5	5	0	0	0
Hostile Deaths	3,469	2,524	65	851	29
Accident	543	392	18	120	13
Illness	88	69	8	6	5
Homicide	34	22	4	6	2
Self-Inflicted	202	167	4	29	2
Undetermined	12	10	2	0	0
Pending	17	6	1	10	0
Non-hostile Deaths	896	666	37	171	22
Total Deaths	4,365	3,190	102	1,022	51
Total Wounds in Action	31,651	21,970	633	8,623	425

Table-1: Following are the Chart and Graph of civilian death total 2003 – 2011 [13]

Year	Civilian Death
2003	12,079
2004	10,834
2005	15,034
2006	27,850
2007	24,677
2008	9,245
2009	4,681
2010	3,576
2011	4,087



The first argument represented by the U.S. that the use of military action against Iraq was as preventive self-defense; the second argument represented by Iraqi's who are trying to defend the sovereignty of their State that has been violated by the U.S. Between both arguments the number of casualties continue to rise, taking into account the large number of Iraqi refugees to Jordan, Syria, the U.S., and to some European States. There are other possible diplomatic solutions; instead of the use of military action, these solutions will be tested, analyzed and discussed in part two of this paper.

The Legitimacy of the war in Iraq, directs us to Security Council Resolution No. 1441 in 2002 [14] when the Security Council requested that Iraq cooperate with the Weapons of Mass Destruction inspectors, which are internationally prohibited weapons, but unfortunately, the United States and the United Kingdom rushed to invade Iraq and use military action before the completion of the inspection.

Keeping in mind that the General Assembly of the United Nations has declared and prohibited the use of military aggression with regard to Article 2 (4) of the United Nations Charter and set of resolutions such as the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the U.N.; [15] the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States; [16] and resolution on the Definition of Aggression [17]. These resolutions confirmed any ambiguity of the Charter's prohibition on the use of military actions or aggression.

The Security Council is the international recognized body to authorize any military action, the lack of the authorization of the Security Council to use military action against Iraq and the U.S. was not a victim of any armed attacks by Iraq, that leads to one point which is the invasion of Iraq by the U.S. is an

enormous violation of both the Charter of the United Nations and the international law principals.

The U.S's illegal invasion against Iraq led us to look into the aggression against Kuwait by Iraq. In support of the Kuwaiti cause, the U.S. sent troops to Kuwait to protect its sovereignty, which Iraq had breached. Can we apply the analysis here against the U.S. under the principles of international law? The answer should be yes. Other answers would lead us to believe there is a conflict of interests and the double standards utilized by one actor on the international arena, namely the U.S.

The U.S. was criticized for its failure to fulfill its legal obligations as an occupying power under the Geneva Conventions [18] of 1949. "The use of military force by one State against another without authorization from the Security Council is not a new occurrence. Since the creation of the U.N., States have used military force illegally in over fifty instances without the approval of the Security Council. [19]" "Security Council Resolution No. 1483 [20] made no mention of the illegality of the U.S. led invasion, and it gave no timetable for the restoration of Iraq's sovereignty or the withdrawal of foreign troops from Iraqi territory [21]."

The U.S. aggression against Iraq should be considered a scandalous violation of international law principals and the Charter of the U.N. for different points of views and are as follows:

- 1- There was no legal justification for the use of military action in Iraq.
- 2- Even if Iraq had weapons of mass destruction which are internationally prohibited weapons, any decision to punish a non-complying State Member of the U.N. should be decided by the Security Council itself.
- 3- The U.S. and the U.K. should not act on behalf of the UNSC.

- 4- A Member State of the U.N. should not violate well established international law principles; instead, a Member State should do its utmost to maintain international harmony and security.
- 5- A State Member should not breach the legitimacy of the rules that regulate the use of military action in international relations.

“The most notable assertion that the Iraq war is illegal has come from Kofi Annan, former U.N. Secretary General. Among those holding this view are A.M. Slaughter, who, first basing her opinion on the action of the Security Council in 2002, argued that the sending of troops into Iraq by the U.S. and the U.K.: “was illegal under international law but potentially legitimate in the eyes of the international community.” later concluded that “the invasion was both illegal and illegitimate.” Richard Falk stated in 2004 that “the illegality of recourse to war against Iraq in 2003 was clear. It was also clear before and after the war that there was no reasonable basis for invoking the illegal but legitimate formula used by the Independent International Commission for Kosovo to deal with an exceptional circumstance of humanitarian emergency [22]”. “Other scholars, notably British faculty members, in a letter to the editor of the Guardian (Manchester) dated March 7, 2003, wrote “on the basis of information publicly available, there is no justification under international law for the use of military force against Iraq [23].”

In many respects, the U.S. policy has proven over the decades its double standards; this policy if practiced long enough, it would possibly undermine the legitimacy of the U.S. in the international arena. “. . . the absolute right that the U.S. currently claims to make sovereign judgments on what is right and what is wrong, particularly in respect of the use of force, and to exempt itself with an absolutely clear conscience from all the rules that it proclaims and applies to others. . . . The Americans are absolutely against any encroachment on their own sovereignty but absolutely in favor of intervention against others. [24]”

Shashi Tharoor conveyed: “The worst fear on any of us is that we fail to navigate an effective way between the Scylla of being seen as a cat’s paw of the sole superpower and the Charybdis of being seen as so unhelpful to the sole superpower that they disregard the value of the U.N.” [25] Significantly, a preponderance of research today considers the Iraq War illegal. We consider essential points relating to the founding and purpose of the U.N. The founders recommended that it is an organization created to maintain the peace and security between and among nations; consider the following points:

1. The formation of a supreme body of legal experts specialized in studying all the resolutions on the Iraqi crisis issued by the Security Council to resolve the extent of its legitimacy and its conformity with the international law rules and the principles of justice set out in Article 1 (2) [26] of the U.N. Charter.
2. To use the opinion and decisions of International Court of Justice, and consider it as a Constitutional Court to examine the Security Council resolutions and test their compatibility with the rules of international law, on the basis of Article 65 (1) [27] of the Statute of the International Court of Justice. Also, to use the opinion and decisions of International Court of Justice, this can be achieved through activating the text of Article 96 (a) [28] of the United Nations Charter.
3. The non-governmental and governmental organizations should hold the Security Council responsible to preserve peace and security.
4. If the U.S. aggression against Iraq is found to violate the articles of the U.N. Charter and the international law norms, the international criminal responsibility can take several points as follows:
 - a. The breach of the U.N. Charter and the international law norms, according to the rulings of the International Court of Justice will subject the violating State to international accountability, which is under the jurisdiction of the International Court of Justice and international arbitral tribunals.
 - b. If it is determined there were violations of the U.N. resolutions, the military action should be considered a war crime, genocide and crimes against humanity that drives criminal liability which could fall under the International Criminal Court’s jurisdiction and in accordance with Article (6) [29] of the Statute of the Court.
 - c. The States that have not signed the Statute of the International Criminal Court, should be considered in accordance to the provisions of Article (146) of the Fourth Geneva Accord [30] signed by the U.S. gives the parties the right to establish a special international criminal court to look into the matter.
5. The legal and international media should shed light on these abuses and violations of the provisions of the U.N. Charter and international law to reduce the dominance of powerful States. The veto system that enjoyed by certain States (P-5’s) in the Security Council should be reviewed as well.

In conclusion, we emphasize the need for the UNSC to uphold its tasks as the international body accountable primarily for maintaining international peace and security. Furthermore, the stability, security, and justice in the Middle East in particular, will remain hard to maintain as long as the international policy-

makers practice double standards in adhering to U.N. resolutions and international law.

Diplomatic Solutions to Avoid the Use of Military Action

Diplomatic solutions are the best way to peacefully settle international conflicts result from the different views of one state another. The essence of these solutions is respect for the sovereignty of other States, and this emphasizes the principle that States should first attempt to solve their problems before resorting to use military force. The advantages of these solutions are that they could work for all States whether large or small. These solutions start as non-binding suggestions that all concerned parties should find means outside the scope of the law, or military force to resolve their differences.

For millennia, military force has been the principle means to resolve conflicts between and among States; however, human progress and intellectual development has begun finding non-violent ways to resolve conflicts. Thus, in this modern era, diplomatic solutions have emerged as alternatives to resolve disputes. Article 33 (1) of the U.N. Charter emphasizes: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice [31].

The diplomatic means to resolve contentious issues are many and varied; they can be among the States concerned, and without a third party mediator; or they can be carried out through a mediator State. Or an investigation for making a balance between those concerned States. A prominent figure is an important role in this settlement and in some disputes legal nature of the settlement may be conducted by resorting to arbitration or international adjudication. The General Assembly also corresponds to the U.N. Charter, which calls on "parties to any dispute" to "first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice [32].

The international community recognizes the principle of maintaining international peace and security. Member States in the U.N. are relying on ways to resolve international disputes by peaceful means. The most important solutions are the diplomatic means for the settlement of conflicts. We will analyze each solution and how important it is in addressing the use of military force. We will start with the first and most

important means of settling disputes, which is negotiation.

Negotiation is the first of the main channels through which States should go to remove any disagreements or tensions that may arise among them due to its flexibility. There is also mediation for peaceful efforts being made by a third party that is not a party to the dispute, also this approach helps both parties find a formula for a friendly arrangement and settlement of the conflict by any peaceful techniques agreed upon by the parties to the conflict. This approach is referred to in the Hague Conventions 1899-1907 [33] when those conventions invited States to use it in their mutual relations.

Mediation is explicitly stated in the Charter of the U.N., [34] the Arab League Charter, [35] and in the African Union Charter [36]. It is also mentioned in some of the charters of international and regional organizations. "Mediation is a method of facilitating dialogue, and achieving meaningful solutions and friendly resolution of disputes between States. The time for meaningful, sincere, and effective mediation between persons in authority and the leadership of a country must eventually come to pass [37].

In addition to negotiation and mediation, there is *Investigation*, which is another method of peace that can be used in international disputes; investigation may be initiated by conflicting parties that do not reach agreement through diplomatic channels. Investigation works through the formation of international committees so that these committees do not affect the interests of the States that result from the different points of view in assessing the facts of the case at issue.

Arbitration is a relatively recent procedure for peaceful settlement of international disputes. It is usually handled by a neutral Commission. Most of these Commissions are made up of five members. Each party appoints one member and the remaining four get appointed by mutual agreement of the parties from among nationals of other States. After discussing the four methods listed above, we shall consider the efforts of regional organizations.

The settlements within the scope of international organizations are an essential component, examples of these organizations, is the Organization of Islamic Conference, [38] which is an international organization with a membership of fifty-seven Muslim States, agreeing to participate in resources, and standardization efforts, and speaking in one voice to protect their interests, and ensuring progress and prosperity for their people and to all Muslims in the world. There is also the U.N. which is the center to

solve the problems facing humanity, and the African Union as a successor to the Organization of African Unity.

Diplomacy is the art and practice of conducting [negotiations](#) between representatives of groups or States. It usually refers to international diplomacy, the conduct of [international relations](#) [39]. Adnan Al-Bakri considered diplomacy as “a political process used by the State in implementing its foreign policy when dealing with other States and international personnel. It is about the States managing official relationships with each other within the international system [40].”

From these definitions we conclude that diplomacy is the practice for the conduct of foreign affairs of the State; it is a science, and also it is a deep study of the relationships between States and their mutual interests, and strives to be aware of the international treaties and Charters. It is also used to mean the management of international relations either by negotiation or by the entire process of making and executing foreign policy [41]. Diplomacy is essential for the maintenance and expansion of the world public order [42]. Now, we turn to examine the diplomatic solutions, already touched upon, to avoid the use of military force.

A- Negotiations

Before a State uses military force against another State, negotiations can produce feasible solutions between the States. Negotiating means a dialogue and discussion between the parties to an issue to reach agreement on those matters that are characterized by sporadic views. Negotiations may be handled by the heads of the contending States or Heads of Government, by Foreign Ministers or any other persons entrusted by them to do the job.

Negotiation is mutual understanding, communication, need satisfaction, compromise, settlement, a deal, persuasion, achieving consensus, practicing empathy, searching for alternatives, conflict management, winning, getting what you want from others, gaining favor from others [43]. Remarkably, Lewicki suggested that: “Since it does not adhere to certain formal procedures, and has successfully resolved many disputes, negotiation is considered the most expedient means to resolve conflicts. This interpersonal or inter-group process can occur at a personal level, as well as at a corporate or international diplomatic level. Negotiations typically take place because the parties desiring to create something new, which neither could do on his or her own, or to resolve a problem or dispute between them [44].”

The former U.S. President John F. Kennedy in his inaugural speech addressed negotiations as a tool and nations should not fear from it. We need to consider when two parties negotiate; their success depends on a set of combined factors, including the following:

1. Their goodwill, but if one of the parties is a violent group, there may be concerns about the goodwill of that group.
2. The seriousness in resolving the conflict and a firm desire to reach a solution to the conflict.
3. The nature of the conflict to be resolved.
4. The nature of the relationship between the conflicting parties.
5. The equality and parallelism between both parties.

Unfortunately, as often happens in the globe, there are substantial differences between set of practices and theories, many States throughout the globe absolutely refuse to negotiate with violent groups. Zartman Asserted that: “The official negotiator is faced with the task of giving a little in order to get the terrorist to give a lot, a particularly difficult imbalance to obtain given the highly committed and desperate nature of terrorists as they follow rational but highly unconventional tactics [45].”

If negotiation worked before for freeing prisoners, it should work for reducing military action. Marc Randazza has suggested, “Negotiations from this point of view can possibly solve the positional based objectives of freeing the captives or neutralizing the threat of future destruction [46].” If negotiators can understand each other culture this can lead to preferable results. Unfortunately, the U.S. government has not yet adopted such political broad-mindedness, which could promote more effective negotiations [47]. “National policy sometimes prevents negotiations with certain States. For example, the U.S. has vowed repeatedly not to compromise with specific States. It is true that a State must maintain its integrity in the face of such threats as military action, even if innocent lives are threatened. That does not mean, however, that the U.S. should not or will not ultimately negotiate, but that authorities will not immediately accept ransoming [48].”

There are two different arguments about negotiations between States:

- A. First Argument: it suggests that the negotiation can bring better results than using force. The points are as follows:
1. “Most States are not engaged in military action simply for the joy of it, nor for personal gain, but to endorse a particular political position [49].”
 2. “Any government’s primary responsibility is to save lives. History has shown that military action have little chance of succeeding. It is almost impossible

to defeat a State composed without unbearable restrictions on the freedom of the innocent. The promise of negotiations can be used as a bargaining tool to end violence [50].”

3. “Many of the States conflicts are the result of political disagreements that run back many years; religion is often fuelled by a historic culture of hatred and distrust. In such situations, it is imperative that someone take the first step in trying to resolve the historical causes [51].”
 4. “Refusing to negotiate can cloud the issue and by opening up negotiations, governments give each other the opportunity to present themselves and open their often un-democratic demands up to public scrutiny [52].”
- B.** Second argument: it suggests that negotiations with terrorist organizations will lead to legitimacy of these organizations:
1. “The political situation in which military action takes place is far more complex, and it is far less clear who is in the right and who is in the wrong. In such cases, the one most important fact is that killing people is immoral. By accepting military action as a political tool [53].”
 2. Many States have been unable to achieve their goals through democratic means and hence resort to military violence.
 3. “The threat of military action gives the States undue power at the negotiating table.

The Argument against negotiation was summed up by Neumann he asserted that: “Democracies must never give in to violence, and talks can destabilize the negotiating governments’ political systems, undercut international efforts to outlaw military action [54].”

Fisher and Jackson have suggested that: “There are no standards remedies that apply to all negotiating problems. On the other hand, if negotiations are going badly—if they seem to be stuck or to be going around in circles—it is often fairly easy to understand what may be going wrong. [55]” It is essential to use negotiations among each other as a last resort before they move to exercise military action since we have experienced that the use of military action to some extent has failed in Iraq.

B- Mediation

Mediation is a tool to generate and reach a settlement between two parties in a dispute with the involvement of a mediator who is not a party to the conflict.

On the definition of mediation, Alexander Nadja conveyed that: “In English-speaking jurisdictions there is considerable academic debate about the precise definition of mediation. Alone the question as to the

point at which mediation becomes conciliation or case appraisal, evokes a deluge of conflicting views. In legal contexts one often finds the terms, mediation and conciliation, used interchangeably [56].” Although acts of using military action should never go unpunished, this Part argues that negotiation, mediation, and conciliation eliminate military action more effectively [57]. It is an art by the mediator and has nothing to do with science. Political analysts to believe there will be no possibility of peace unless States engage in mediation.

Mediation has emerged explicitly in the United Nation’s Charter [58], and in the Charter of the League of Arab States [59]. Also in the African Union Charter [60] and it exists in some of the Charters of regional and international organizations. The mediation process allows the parties to “own” both the problem and the solution as they both assume responsibility for their actions and power over their future [61].

There are many important advantages to mediation; the most important advantages are as follows:

1. **Simplicity:** it is characterized for its flexibility and freedom of the parties and the mediator to mediate while abides by the law.
2. **Confidentiality:** confidentiality ensures that dispute stays as a secret between the parties and the mediator.
3. **Speed:** compared to other peaceful solutions, mediation is a quicker way to resolve a conflict.

The Mediator has an essential role through the process and the most important roles are as follows:

1. Helping to ease the intense by conveying a favorable climate for the negotiation process.
2. The mediator’s center of attention on the interests of the parties more than attitudes.
3. Uses active listening techniques and must be a role model and a trustworthy.
4. The mediator must be alert and advise the parties of the consequences if the parties fail to reach a viable agreement.
5. The mediator as a central point of the circle should encourage the parties to the conflict to make efforts to find a key answer to the issue.

Mediation skills can be very essential to the process; most important skills are as follow:

1. Mutual help and assistance, exchange of needed resources, effective communication, mutual influence, trust, and constructive management of conflict [62].
2. Listening to each party and revise in order to offer encouraging environment away from frustration.

3. There are always options and schemes by the mediator to the parties; and these options and schemes should be offered to both parties equally.

Oberman suggested several characteristics of mediators through the process: “(1) The capacity, authority, and intention of the parties to negotiate; (2) tools and interventions to use based on assessment of the situation; and (3) their (the mediators) own neutrality and impartiality regarding the outcome and their ability to balance power [63].” Mediators are always facilitative in their goal to assist parties in crafting agreement that work for them, and is ever aware of their potential to endanger understanding, empowerment, and mutual recognition [64].

Also, mediators need to explain clearly the boundaries of the processes they offer to support parties’ self-determination and mediator credibility [65]. The confidentiality in the mediation process is a very essential component. should rely on that confidentiality to reach a peaceful resolution.

Evaluating parties have described the traits of their effective mediators as: (1) the ability to identify problems and issues, (2) patience, (3) sensitivity, (4) listening with no pressure to settle, and (5) impartiality [66]. To some, mediation can be a last resort before using military action for the reason that such use can bring destruction and abuse of human rights. For others, the relationship between mediation and States is likely to be non-recursive. In turn, mediation can be used as a tool between governments before using military action.

After we examined the exercise of military action, we found that the use of military action has not reduced conflicts among States; the best common ground to reduce such acts can be by a peaceful solution such as mediation.

C. Investigation

After examining negotiations and mediation as means to achieve peace between States, there is another solution at the heart of these means; that is investigation. “Investigation is intended to clarify the matter and unravel the mystery surrounding the issue, either by a committee composed of two or more persons known to the conflicting parties called the fact-finding committee, which is responsible for all the causes of conflict and the motivations. This committee suggests the best solution to the conflict to help the parties dissolve the issues. The committee’s legal opinion is not binding on either party [67].”

Necessarily, investigation can help reduce such phenomenon, since the recognition of it as a natural phenomenon needs to be placed in its proper context,

which helps to understand it better. States when they are in conflict should investigate certain points to reduce the risk of using military action.

Investigation aims to find a more valid solution rather than using military action. The most essential points that should be investigated are as follows:

1. The ignorance among individuals, groups, and even the leadership of the State exercising violence.
2. Poverty and unemployment experienced by people sometimes created by the State in order to create genocide, or by a particular group that is loyal to the existing political system.
3. Injustice, aggression, and the use of cruelty against human beings, especially in the totalitarian regimes that have abolished fundamental human rights.
4. The demand of self-determination, which always faces rejection by closed political systems.
5. The lack of institutional systems and the absence of civil societies.

Identifying the purpose of the investigation will, to a significant degree, help determine the appropriate structure of the investigation [68]. Most contemporary conflicts among States arise when a cultural or ethnic group perceives itself to have been unjustly deprived of certain rights. The international community must take more responsibilities to conduct investigations between States.

Therefore, the international cooperation between the States through the international organizations can provide remedies. Investigation has worked in the past, so in the future, little data has been available. The bottom line is that to reduce military action, the international community must do a much better of a job of utilizing investigations. The best way to approach a State to investigate a situation we should consider the points as follows:

1. To end the political exclusivity by a State and stop the policy of repression which will lead to opening the doors of freedom in all aspects.
2. To address the economic and social imbalances and bridge the gap between the growing majority of the oppressed and downtrodden societies.
3. To give real independence to religious institutions, in order to exercise their roles effectively in education, and to address some aspects of the misunderstanding of religious concepts.
4. To stop the blind hostility against religions and recognize the importance of the role that can be played by religious movements to help reduce such phenomenon.
5. To be aware of supporting the secular extremism against religious extremism; both of them are

threats to society, and the growth of one provokes the other and enables it.

Many of the States that were previously widely considered as violent State, including those contained on the list of the U.S. State Department, have become key partners in the quest for peace, promotion of democracy, and refutation of violence. Although investigations and sitting at one table with other State may be uncomfortable for some, dialogue with States is sometimes unavoidable, if not unwise. Even if the investigations and negotiations between States bring no results, the fact that States have achieved enough facts and discussing would help to reach a better understanding of their desire.

D. International Arbitration

Military action can be faced with reprisal by recognized States. We have discussed the effects of the use of military action and some of the solutions to avoid using military action such as negotiations, mediation, and investigation. Here we shall discuss international arbitration. To the best of our knowledge, international arbitration is intended to resolve international conflicts that occur between parties through judicial rulings. These judicial rulings are issued through courts or tribunals chosen by the opponents, these courts or tribunals should apply the provisions of arbitral tribunal rules of law, and these rules are derived from international law or rules of law appropriate to the issue.

Thus, international arbitration is not different from international justice for the reason that both are aimed at resolving an issue with ease. Despite this similarity, however, there are clear differences between these two methods; arbitration is predominantly consensual or conventional, which means you cannot resort to it only through an agreement or consent of the parties contending.

Also, international arbitration is optional in nature. It is composed of judges selected, the parties to the disputants to choose the arbitrators between jurists and experts, unlike the judicial ruling issued by the international courts is strongly binding to the parties due to International Court of Justice under Article 94 [69] of the United Nations Charter. Basically, it is a leading method for the States and to come to a common ground in resolving the issue occurs. This method is not relying on any legal system; it is a way to stop the issue as its hope, and another way to avoid future issues, a very unique idea to try instead of using military force.

Since military action defined by most as a political violence, can we cure it through the same motivation or through political applications? Although

the U.N. instruments were based on the obvious premise, that military action can be a crime, there are also those who believe that acts of States when using military action embarked upon for certain “noble causes” are legitimate and should therefore not be punished [70]. If we were to take this opinion, then international arbitration can be one of the resorts as a peaceful solution instead of using military action. To defend this point furthermore: “In the preamble of the 1985 resolution on Measures to Prevent International Violence, the General Assembly reaffirmed “the legitimacy of their struggle, in particular the struggle of national liberation movements . . . under colonial and racist regimes and other forms of alien domination [71],” thereby suggesting that the armed operations of liberation movements ought not to be perceived as acts of violence [72].”

Article 33 of the United Nations Charter calls on parties to any dispute. . . to first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice [73].”

The time for meaningful, sincere, and effective mediation between persons in authority and the leadership of States must eventually come to pass [74]. Most of the military action acts carried out in the less developed States. Traditionally, the international legal response to military action has been marked by disagreements over an approach to define military action as well as conflicting attitudes about the legitimacy of political violence by organized groups [75]. The venerable proposal is to establish and consider the process of arbitration between States in the future conventions. No matter how military action is defined, it is still a phenomenon needs to be eliminated, but through international arbitration, the international arbitration has advantages and disadvantages as follows:

Advantages:

1. The Cost of using military action is more than arbitrating the issue. The semi-informal procedure used in arbitration brings about ease to both States in conflict.
2. Arbitration characterized as a quick process in a very effectiveness way.
3. Confidentiality of the process, so other States will not know of the process until the result.
4. States can discuss further issues for the future.
5. As mentioned before, the States can set an example and a reference to future arbitration with other States.

Disadvantages:

1. No matter how peaceful the process of international arbitration between the parties, antagonism remains between them.
2. Arbitration awards certain violence groups some legitimacy in the international community.
3. Arbitration might encourage more violence groups to request the same process.
4. Arbitration results and decisions might not be binding on both States.
5. Differences among cultures, religions, and customs may adversely affect the course of the international arbitrations between States.

L.C. Green proposed that: "Many groups have proclaimed that they are at war with the existing political and social life of individual States and with Western democracy itself. In war, lives are lost and democratic rights restricted. If the principle and the rule of law are to be upheld, and if the world is to be made less prone to violence in the future, losses may have to be accepted at the present time [76]." Green's proposal, to some extent, is agreed upon, but if we are left with peaceful means to reduce the military action phenomena, then the international community should consider them.

Moreover, and absolutely, international law cannot afford to allow military action to go unchecked [77]. All in all, if States in the past had adopted strategy based on their strength, and that of their allies, the strength of their enemies, the nature of the land, and various other factors, then those States would be compelled in the current era to add a new factor, which is cooperation with, and respect for international organizations and institutions.

E. Regional Organizations and Agencies Efforts

In spite of the many slogans about democracy and reform, the current international situation is experiencing a failure of international harmony and cooperation, so that the world today lives in a state of domination through the use of military action between States. This is an effort that has, and will continue to generate feelings of hatred and hostility across the world. How can the international situation settle down when there are uses of military action at work that threaten to destroy all the elements of stability and peace in the international balance?

Ian Brownlie in resolving conflicts has suggested that, "the problems must be characterized in accordance with the applicable sectors of public international law: jurisdiction, international criminal justice, State responsibility, and so forth [78]." The global situation is in need of reform and turns all the pages of hostility and hatred between all parties through the realization of the

wisdom and maturity far from the arrogance of power. To complete the image, there must be an ending of the military action in the international arena and raise the charge that violence is surrounded only by one religion, all these through the assistance of regional organizations to involve between States.

This reform normally will come only after the U.N. regains its prestige; that is if the international community wants to live in a world free of threat, destruction, and the excessive use of military action. The unilateral acts will not only bring international crises but it will definitely breach the international harmony and cooperation. The policy of relying on military action will continue to dominate international relations, and international rivalries will become distinctively characteristic of international relations, coupled perhaps with the exercise of force.

For the sake of humanity and respect for human rights and international peace and security, regional organizations [79] and regional agencies [80] should play the essential role of mediator between States. The regional organizations and agencies were created by the federation of wills of States. To serve the international community as it is defined in Article 57 (1) [81] of the U.N. Charter and with regard to the provisions set in Article 63 (1) [82] of the U.N. Charter, both articles support international cooperation in specialized fields such as the economic, social, and cultural. No doubt, regional organizations and agencies roles should be based on a clear and widely acceptable means to end conflicts among States. The role of regional organizations and agencies is to take the necessary measures to eradicate military actions thoroughly, and reject any steps that selectively and unilaterally abrogate any state's right of legitimate self-defense, or violate its sovereignty and territory.

Regional organizations can play a major intermediary role between states for the reason that these organizations are located geographically in the same place as the States. Further, for the reason that regional organizations have a better knowledge of geography, history, culture, and religion of these States than have other organizations, these organizations also are able to communicate with, and understand the States is much easier. "Regional mediators through their organizations have a responsibility of creating viable liaisons between States in order to reach peaceful solutions rather than resorting to the use of force.

Present international agreements contain too many ambiguities, and many States have not yet ratified some of the conventions [83].

To remedy this problem, the regional organizations can ignore these conventions by dealing directly with the States [84]. Therefore, regional, sub-regional and international organizations all have unique strengths and specialties; thus, a key to successfully combating military actions lies in our ability to leverage our comparative advantages [85]. "If for no other reason, regional organizations are closer to what is occurring in their regions and have a basic obligation to strengthen the capacity of their constituent States to deal with the growing threat that military action poses in the 21st Century. As regional organizations are becoming more active in drawing international attention to counter military action needs of our constituencies, the gaps are closing [86]."

Final Reflections

Generally, employing military action in international relations is among the methods that States around the globe have used to protect themselves against external threats to their sovereignty and territory, also to impose their will on other States in the international community. International precedents demonstrate that military action has been used to change unacceptable and harmful conditions; to settle international disputes and has been the justification as a manifestation of full sovereignty. Hence, the prohibition of the use of force is one of the most important principles through which international organizations attempt to achieve international peace and security. In the aftermath of World War I, States wishing to prevent another conflict of that horrific magnitude formed the League of Nations. But this organization proved unsuccessful in thwarting the exercise of force, after a number of civil wars in the 1930s.

World War II broke out in 1939 and endured until 1945. After that major conflict, States convened in San Francisco, California and formed the United Nations, an organization that still exists today. Recall that in the preamble to the U.N.'s Charter, to save the humans from wars and to reaffirm that fundamental human rights are the norm. Despite the nobility of these sentiments, in the years since the formation of the U.N., we have seen major conflicts, such as the Korean and Vietnamese Wars, numerous smaller conflicts across sub-Saharan Africa, the Bosnian War, and dozens of other conflicts, including current wars in Afghanistan, Iraq, Libya, and other regions today. These armed conflicts only prove the incessant breach of international peace and security and that the principle of prohibition of force is no longer adhered to, and as they have for thousands of years, States are still claiming the right to self-defense, sometimes as a ruse, to achieve a set of political, geographical, and economic objectives. The United States and its allies have relied on the use of military action to through the exercise of a range of acts

that violate the rules of international law, so we find that international law cannot discourage States in their use of military action.

Therefore, there is still a gap between theory and practice. In the crises that afflict the international community we find the U.N. paralyzed. The essence of the crisis affecting the U.N. is that the U.S. has begun to form with the U.N. and the international community. The U.S. becoming the sole superpower, without a competitor, marks the beginning of a new history of humanity, where the rule of law is based on might. This excludes traditional international law and imposes hegemony on the international community. The U.S. has ignored the U.N. and its policies of handling conflicts, and has resorted to using military force as it, unilaterally, deems necessary.

This move by the U.S. has weakened the U.N.'s credibility, and also, its role in maintaining international harmony and cooperation. The problem is not related to the validity and relevance of the reform of the U.N. Charter, but lies in the lack of response to the reform and the level of reform. It is important that the reform expands the membership of the U.N. Security Council and then find better standards of the veto within the U.N. Security Council.

Political realities of today require States to provide a stable political climate so that world peace is maintained across the globe, all without resorting to using military action to secure and maintain that peace. In turn this non-violent approach should facilitate human development and strengthen the efficacy of international law as it relates to freedom and human rights. The peaceful solutions discussed earlier can help to bring peace and security to the world. After all the blood that has been spilled through using military action in different places around the globe, the international community should give these solutions a try.

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