

Sultan  
International Law  
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An exchange of letters, dated 19 June 1961, between the Sheik of Kuwait and the British political resident in the Persian Gulf marked Kuwait's accession to independence and terminated the Anglo-Kuwaiti agreement of 1899. Under that agreement, Britain had undertaken to protect Kuwait in order to forestall possible German and Russian moves in the Persian Gulf area. By the time the agreement was abrogated, however, British interest in Kuwait had assumed quite a different dimension.

By 1961, Kuwait was the largest crude oil producer in the Middle East and the third largest in the world (over 600 million barrels per year). Production and transport costs were low and Kuwait's reserves were estimated at between 15 and 25 percent of the then-proven world total. Kuwait's importance to Britain is demonstrated by the fact that by 1961 it was supplying about 40 percent of British imports of crude oil. Moreover, a large portion of the Sheik's enormous revenues were invested on the London market and the operations of the Kuwait Oil Company, in which the British government had a substantial interest, greatly benefited British sterling balances.

Thus, while the agreement of 19 June 1961 recognized Kuwait's "sole responsibility" for the conduct of its internal and external affairs, it also committed Britain to the continued protection of the Kuwait government.

One writer has commented at that time that "if its resources had been merely adequate," Kuwait would have had little to fear in assuming full independence but "the astronomical size of its wealth ...paradoxically, constituted the greatest threat to its independence." The

paradox, as it turned out, was that this very wealth constituted Kuwait's greatest protection, since none of the contenders for power in the Arab world could afford to see this rich prize fall into the hands of one of its rivals. This applied not only to Kuwait's covetous neighbors, Iraq and Saudi Arabia, but also to Egypt's strong leader, Nasser, whose view that the oil revenues of the Middle East should be used for the development of all the Arab world was well known.

Following the proclamation of Kuwait's independence, messages of congratulations poured in from the heads of other Arab states. The cable from Iraqi Prime Minister Kassem, however, contained no reference to Kuwait's independence but merely expressed satisfaction with the termination of the 1899 agreement which he branded as illegal. At a press conference on June 25, 1961, Kassem denounced the new agreement between Kuwait and the Britain, declared that Kuwait was an "integral" part of Iraq, and announced Iraq's intention to "liberate" this section of its territory. Since that time Iraq has never recognized the nation-state of Kuwait, even though almost every other nation has done so.

Various assessments of Kassem's motive have been offered and whether he would have resorted to force to advance his claims has been questioned. It seems logical to assume that Iraq sought to test the British reaction and above all to forestall attempts by others, i.e., Saudi Arabia and the U.A. R., to extend their control over Kuwait.

The first of the Arab states to respond to Kuwait's appeal for support against this Iraqi threat was Saudi Arabia which promptly dispatched its Chief of Staff to confer with the Sheik, and warned that any aggression against Kuwait would be considered as aggression against Saudi Arabia. Responses from the other Arab states were less

forthright.

During the last week of June, 1961, however, the entire situation changed. Amid rumors that Iraq was reinforcing its troops along the Kuwait border, the Sheik formally requested military assistance from Saudi Arabia. As a result, 100 Saudi Arabian paratroopers were sent to Kuwait. At that time, the Sheik also requested military assistance from the British, "in view of the military movements" undertaken by Iraq which were "such as to threaten the security of Kuwait." The Sheik further expressed confidence that the British would adopt "all measures" and would "muster their whole potential to ward off the aggressors." On July 1, 1961, the British announced that a force had been moved into Kuwait and placed at the Sheik's disposal "to afford him such assistance as he may consider necessary for the preservation of the independence of Kuwait." The announcement expressed the hope that the need "to make use of this force" would not arise and also declared Britain's intention to withdraw the force "as soon as the ruler considers the threat to the independence of Kuwait is over."

The British action had the effect of uniting the Arab League members on at least one point--the overriding necessity of obtaining the prompt withdrawal of British troops from Kuwait. This issue, was, however, inextricably linked with the question of Kassem's claims and Kuwait's demands for effective international guarantees of its security. On July 20 the League Council, over bitter Iraqi opposition took the decision which led to the withdrawal of the British troops, their replacement by an Arab League Force, and Kuwait's admission to the League. In time the League Force was withdrawn, but Iraq has never given up its claim to Kuwait.

During the summer of 1990, the military dictator of Iraq, Saddam Hussein, complained that Kuwait was depressing

the price of oil on the world market by producing well beyond its O.P.E.C. limit; the lower price made it more difficult for Iraq to repay the huge debt it had incurred during a recently completed ten year war with Iran. Hussein also accused Kuwait of "stealing" Iraqi oil by slant-drilling into a rich oil field near their common border. Finally, Hussein renewed Iraq's claim to all of Kuwait.

In mid-July, Hussein denounced Iraq's adherence to the Fourth Geneva Convention of 1949 relating to the protection of civilians during war or other military activities, citing "fundamental changes in the circumstances" between 1949 and the present. This decision was transmitted to the Swiss Federal Council on July 17, 1990. Switzerland is the "depository nation" that administers the multilateral treaty that has been ratified by almost every nation in the world.

On August 2, 1990, Hussein invaded and occupied all of Kuwait. One week later he absorbed Kuwait as the nineteenth province of Iraq "for all eternity," declaring that "the State of Kuwait no longer exists as, lacking territory, it does not satisfy one of the basic conditions of a nation. At the time of his annexation, the Sheik of Kuwait and his government, having fled, continued to function "in exile" in neighboring Saudi Arabia. To solidify this annexation, Hussein also decreed that "all former nationals of Kuwait are now and henceforth nationals of Iraq." Finally, as Kuwait "was no longer a State", he ordered all diplomatic legations in Kuwait City closed, placing troops around the ones that refused to comply with this order and prohibiting food from being delivered to them.

Subsequent to these events, United Nations representatives interviewed hundreds of Kuwaiti and foreign nationals as they streamed into refugee camps during September.

The testimony builds a horrifying picture of widespread arrest, torture under interrogation, summary execution, and mass extrajudicial killings in the wake of the invasion.

Hundreds of Kuwaitis are now believed to be held in detention centers, prisons, commandeered schools, and public buildings in both Kuwait and Iraq.

Refugees who had been briefly detained by the Iraqis in Kuwait before leaving the country reported that torture is routine in these facilities. They described soldiers breaking limbs, pulling hair, fingernails and toenails out, and beating prisoners senseless. Witnesses also reported the common use of electric shock torture.

On October 17 many refugees testified before the United States Congressional Human Rights Caucus in Washington D.C. They stated that Iraqi forces have arrested men, women, and even children found possessing opposition literature or the Kuwaiti flag or photographs of the Sheik of Kuwait." In fact, the mere possession of such items has become effectively a capital offense in Kuwait.

Others are said to have been arrested--and in some instances killed--for failing to demonstrate allegiance to Iraqi President Saddam Hussein.

Kuwaiti doctors arriving in Bahrain also told the international press that Iraqi soldiers had brought scores of dead youths into local hospitals following the invasion. The doctors said they were forced to issue death certificates in each case, stating that the victim had died in the hospital, even though many bodies contained bullet holes in the head or heart. Boys as young as 15 years old have been shot, their bodies then dumped in the street in front of their homes. Scores of hangings have been reported on the grounds of Kuwait University.

During this same period of time, the international press also reported that troops and other officials of Iraq engaged in the summary execution of civilians for numerous acts, among them trying to flee the country, hiding foreigners, and refusing to display Hussein's picture in their place of business. The press also reported that the invasion forces rounded up all foreign nationals from capital exporting countries (calling them "guests") and used them as "human shields" at possible military targets throughout Iraq. There also were reports that Iraq stripped Kuwait of a massive amount of physical assets, from street lights to hospital equipment, including removing newborn infants from incubators and throwing them on the floor to die.

The press also reported that Iraq refused all assistance to tens of thousands of laborers and their families from "third-world" countries in their efforts to leave Kuwait and return to their homeland, including refusal to exit Iraq at most convenient frontiers--forcing a long trek through the desert to Jordan resulting in much privation and considerable loss of life; that Iraq drafted Kuwaiti men from ages sixteen to forty into the Iraqi Army; and that Iraq tortured Kuwaiti nationals to obtain information about foreign nationals in hiding.

Between the invasion of Kuwait and the present time the United Nations Security Council passed thirteen Resolutions condemning all of these Iraqi's actions, ordering their immediate termination and demanding immediate evacuation from Kuwait. All Resolutions were by unanimous votes, except the last "use of force" Resolution where the vote was 12-2 (Cuba and Yemen), with one abstention (China).

Undertaking research into this problem you come across the attached materials.

What issues of international law do the above facts present? How will they probably be resolved? Why will they be resolved in that manner?

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## **MATERIALS**

CHARTER OF THE UNITED NATIONS San Francisco, June 26, 1945

### Article 2

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

### Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

### Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The

Security Council shall duly take account of failure to comply with such provisional measures.

#### Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

#### Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

### **"DEFINITION OF AGGRESSION" RESOLUTION G.A.res. 3314 (1974)**

The General Assembly,

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Deeply convinced that the adoption of the Definition of Aggression would contribute to the strengthening of international peace and security...

Calls the attention of the Security Council to the Definition of Aggression, as set out below, and recommends that it should, as appropriate, take account of that Definition as guidance in

determining, in accordance with the Charter, the existence of an act of aggression.

## Article 2

The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

## Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.

## Article 5

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.
2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.
3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

## **UNIVERSAL DECLARATION OF HUMAN RIGHTS**

Adopted and Proclaimed by General Assembly Resolution 217 A(III) of 10 December, 1948.

## Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent trust, non-self-governing or under any other limitation of sovereignty.

## Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

**NO. 41 CONVENTION (IV) RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS  
IN TIME OF WAR--SIGNED AT GENEVA (FOURTH GENEVA CONVENTION), 12  
AUGUST 1949.**

## Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

## Article 2

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

## Article 4

Persons protected by the convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

## Article 27

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof.

## Article 33

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.

## Article 34

The taking of hostages is prohibited.

#### Article 35

All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State.

If any such person is refused permission to leave the territory, he shall be entitled to have refusal reconsidered, as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose.

#### Article 48

Protected persons who are not nationals of the Power whose territory is occupied, may avail themselves of the right to leave the territory subject to the provisions of Article 35, and decisions thereon shall be taken in accordance with the procedure which the Occupying Power shall establish in accordance with the said Article.

#### Article 51

The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

#### Article 57

The Occupying Power may requisition civilian hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick, and then on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation.

The material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population.

## Article 147

Grave breaches shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

## Article 158

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council.