



US hopes for good faith in a legal approach

WRITING in *The Australian* late last month, Professor Amin Saikal argued that the US has invested in a "Judaeo-Christian" approach to the Middle East and is blind to Israel's confrontationalist policies. To keep the alliances with the Arab world that underpinned the collective self-defence of Kuwait in 1991, Saikal suggested the US should re-evaluate the ways it deals with Iraq as against the ways it deals with Israel. He perceives a double standard in the US taking a hardline approach against Iraq while setting a different standard for Israel.

However, understood from the framework of international law, there is no double standard in the conduct of American foreign policy vis-a-vis Iraq and Israel. First, it needs to be understood that the US does not see United Nations' resolutions as legitimations of conduct. Rightly so. The UN is not a law-making body, and its decades of anti-Israel bias have seriously dented its credibility as a participant in Middle East peacemaking.

Rather, and quite correctly, the US operates its foreign policy quite often to enforce what it sees as the requirements of public international law. That law does not forbid the use of force, even military force. Article 51 of the UN charter recognises that the law separates self-defence — a right that pre-existed the UN charter — from illegal aggression. Thus, force used in self-defence is permitted, and territory

American policy towards resolving disputes in the Middle East can be understood via international law

David Knoll

Lawyer

gained in an action of self-defence can be held by the victorious defender as a bargaining chip to achieve a durable peace. Before returning taken territory, the victorious defender is entitled to insist on terms that deter a repeat of the aggressive conduct. Israel captured the territory that it now holds in self-defence either against invasion or terrorist incursion. The territory is held as a bargaining chip in the peacemaking process in order to extract a secure and durable peace.

UN resolutions cannot take away the victorious defender's rights, and indeed the UN charter explicitly recognises this result in Article 51. Israel has no permanent right to keep the territory but equally need only give it up on terms that present a durable peace. Only when Israel's Arab neighbours appreciate the proper legal basis of the land-for-peace concept can any realistic exchange occur.

The law requires that negotiations to resolve disputes be conducted in good faith, and the US has placed pressure on both Israel and the Palestine National Authority to restore good

faith in keeping the unmet promises on both sides of the still significant divide. There is little doubt that neither Prime Minister Benjamin Netanyahu nor PNA president Yasser Arafat have kept the promises of Oslo and Cairo. But their negotiation is one between two parties who have committed in writing to pursue peace. They are far from a solution, but the peace brokers have not given up on them.

BY contrast, Iraq committed an act of illegal aggression against Kuwait, and the right of self-defence exercised collectively by allies was validly exercised in aid of Kuwait. Saddam Hussein, with criminal intent, has desperately attempted to rebuild an illegal chemical weapons arsenal.

Even at the height of the Palestinian intifada Israel's response to Palestinian stone throwing was never comparable to, say, Iraqi poison-gas attacks on the Kurds. The fifth Kurdistan war of 1974 left 50,000 killed and as many as 600,000 displaced persons.

One must not forget that it was Iraq that repudiated the Algiers agreement and invaded Iran, beginning one of the most horrific and incomprehensible wars in modern times. Following the end of the Iran-Iraq war and the poison-gas attacks, hundreds of Kurdish vil-

lages were destroyed and, again, approximately 100,000 Kurds displaced. The horrors of chemical weapons used by Iraq and the sheer numbers of people killed, wounded or displaced simply dwarf the impacts of the Israeli-Arab conflict.

The case of Iraq is in no way comparable to that of Israel. Iraq has proven itself a vandal State. It has a track record of using its weaponry for illegal aggression, and not in self-defence. Thus, the US is acting consistently by applying the same rules of customary international law to the dispute at the head of the Gulf as it does in the ongoing conflict between Israel and its Arab neighbours. American foreign policy seeks to punish illegal aggression by Iraq. Israel — not having committed illegal aggression in acquiring the territory that it now holds as a bargaining chip in peace negotiations — does not merit similar treatment.

Saikal attempts valiantly to defend Arab disdain at US foreign policy support for Israel. However, that support is not based on any double standard. It is based on that fundamental of civilised international behaviour, international law. And the sooner the Arab world appreciates that the US is not applying a double standard, the sooner meaningful peacemaking can occur in all parts of the volatile Middle East.

David D. Knoll is visiting fellow in international law, University of NSW School of Political Science.