

# Will Trump Break International Law Over North Korea?

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*By Jonathan Power*

*We are soon going to have a clash between President Donald Trump and international law. This is predictable when one examines the presidential discourse over what to do about North Korea and its possession of nuclear-tipped rockets.*

He has threatened “fire and fury” which doesn’t sound like the opening words of the UN’s Charter:

“We the peoples of the United Nations determined to save succeeding generations from the scourge of war.....and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.....and for these ends to practice tolerance and live together in peace with one another as good neighbours.”

There should be no question that if the Charter is followed that Trump cannot legally make a pre-emptive strike, either one nuclear or conventional, unless war is imminent because of threatening moves by the antagonist.

He could only do it legally, as a self-defensive move, if North Korea was seen actually preparing for an attack – which can be judged from ultra-aggressive troop movements or the loading (which takes some time) of liquid fuel into rockets.

For Trump’s part he should stop doing things that provoke North Korea and make them feel that the US is practising for a preventive strike, such as holding military exercises close to its borders. That is not, as the Charter says, taking “effective measures for the prevention and removal of the threats to peace, and for the suppression of acts of aggression.”

Up until the end of the nineteenth century politicians were convinced that every state had the customary right to embark upon war whenever it pleased. Statesman would recite a host of justifications for war: to retrieve unpaid debts, territorial incursion, dynastic disputes, regional destabilization, the pacification and “civilizing” of colonies-to-be, honour etc.

Wars in this period were given legitimacy in political not legal terms.

Few go along with this today. War can *only* be for ‘self-defence’.

The US managed to persuade the member nations of the UN Security Council to approve the going to war with Iraq when it seized Kuwait to grab its oil fields. Legality was important to

President George H. W. Bush.

On the eve of the Second Gulf War his son, George W. Bush, brushed aside legality, refusing to accept calls to wait until the UN's arms inspector, Hans Blix, had ascertained whether Iraq possessed weapons of mass destruction. After the US/UK invasion when it became certain that Bush and the UK's prime minister, Tony Blair, had bent the evidence and Saddam Hussein had no weapons of mass destruction there was no effort by the UK/US to admit to wrongdoing.

With the UN's Anti-Torture Convention – which two previous conservative leaders of the US and UK, Ronald Reagan and Margaret Thatcher, decided to ratify – there was a legal dance by Bush and Blair to avoid its restrictions. Bush and Blair did not refute the Convention. They simply argued that torture was not torture as practised. Waterboarding and other forms of what most of us would describe as torture were no more than “enhanced interrogation”.

Later, Bush junior and President Barack Obama extended the ‘self-defence’ argument to the use of drones to pick off leaders of Al Qaeda. The Charter is clear: self-defence is only allowed in emergencies before the Security Council has had time to consider the crisis. Then, if the Security Council deems that a country has been attacked, it can use all the resources of itself and its allies to repel the invader.

North Korea is not creating such an emergency.

In an impressive and balanced new book, [\*“How To Do Things With International Law”\*](#) the American legal scholar, Ian Hurd, writes that the US and UK interpretation of ‘self-defence’ can “make the ban on war look more like an authorization of the use of force than a constraint upon it”.

This interpretation, writes Hurd, has evolved “under the influence of strong states”.

Nevertheless, the Charter's power and standing is still acknowledged in principle by the big powers and thus it is “more difficult for states to engage in wars of aggression, profit, the ‘defence’ of democracy, and humanitarianism.” At least we can say that these days certain categories of war are not acceptable, even by the big powers.

Bush rode over the UN Charter on one of its central points. So did President Bill Clinton when he invaded ex-Yugoslavia and later Kosovo in an attempt to end the murderous civil war and to roll back Serbian influence. So did President Vladimir Putin with his invasion of Crimea.

Bush, Blair, Clinton, Obama and Putin were all in the wrong. They didn't understand that international law is a necessary contribution to a stable and peaceful world.

Tragically, it is becoming obvious that Trump might well give it the hardest knock of all.

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Comments from Jan Oberg

This is a very important argument – that international law is law and should be respected by every and each actor. Also that the UN Charter is absolutely essential in both letter and spirit. Also that war can only be conducted in self-defence and that the criteria for that are

also precise and limited.

It's a pity, therefore, that the author makes a couple of much too simplifying references to what is actually quite complex issues.

It can certainly be discussed why Saddam Hussein invaded Kuwait but it can't be explained by arguing that it was to "grab its oil fields".

Clinton did not invade Yugoslavia (not ex-Yugoslavia) *and* Kosovo (Kosovo was part of Serbia which was a republic in Yugoslavia). He was the main responsible for bombing Bosnia-Herzegovina and the main supporter of the proportionately largest ethnic cleansing anywhere, namely of Serbs (who had lived there for 400 years) out of the Krajina-regions in Croatia. And as NATO's leader, he bombed Serbia's Kosovo province and Serbia itself, including Belgrade and Novi Sad. And saying that it was "to roll back Serbian influence" reveals a quite deficient understanding of these places and the overall Yugoslavia conflict formation.

Finally, the word "invasion" about Crimea is a bit of an exaggeration, particular given the history, the lease Russia had on the base complex there and the follow-up referendum. However, there is no doubt that Putin – and the other mentioned – were wrong. But we must know the right – precise – reasons why they were wrong. And they were certainly not equally wrong.

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