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## The Case against Kerry

By Stephen Zunes

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President Obama's selection of John Kerry as the next secretary of state sends the wrong signal to America's allies and adversaries alike. Kerry's record in the United States Senate, where he currently chairs the Foreign Relations Committee, has included spurious attacks on the International Court of Justice, unqualified defense of Israeli occupation policies and human rights violations, and support for the U.S. invasion and occupation of Iraq, thereby raising serious questions about his commitment to international law and treaty obligations. Furthermore, his false claims about Iraqi "weapons of mass destruction" and his repeated denials of well-documented human rights abuses by allied governments raise serious questions about his credibility.

In the 1980s, during the early part of his Senate career, Kerry was considered one of the more progressive members of the U.S. Senate on foreign policy. His record included challenging the Reagan administration's policies on Central America, providing strong leadership during the Iran-Contra investigation, opposing U.S. support for the Marcos regime in the Philippines and other allied dictatorships, and supporting the nuclear freeze, among other positions supporting peace and human rights.

More recently, however, Kerry became a prominent supporter of various neoconservative initiatives, including the invasion and occupation of Iraq, undermining the authority of the United Nations, and supporting Israeli militarism and expansionism.

### Opposition to International Law – Iraq War

Kerry was an outspoken supporter of the Bush Doctrine, which declares that the United States has the right to unilaterally invade foreign countries, topple their governments, and occupy them indefinitely if they are deemed to pose even a hypothetical threat against the United States. In 2002, he voted against an unsuccessful resolution authorizing the president to use force against Iraq only if the United Nations Security Council permitted such force under the UN Charter and instead voted for an alternative Republican resolution, which authorized President Bush to invade that oil-rich country unilaterally in violation of the UN Charter.

The October 2002 war resolution backed by Kerry was not like the 1964 Gulf of Tonkin resolution regarding Vietnam, where there was no time for reflection and debate. Kerry had been briefed by the chief UN weapons inspector and by prominent scholars of the region, who informed him of the likely absence of any of the alleged “weapons of mass destruction” and the likely consequences of a U.S. invasion, but he voted to authorize the invasion anyway. It was not a “mistake” or a momentary lapse of judgment. It demonstrated Kerry’s dismissive attitude toward fundamental principles of international law and international treaties that prohibit aggressive war.

Kerry and his supporters claim he does not really reject international law. They note that, in voting to authorize the invasion of Iraq, Kerry stated at that time that he expected President Bush “to work with the United Nations Security Council and our allies . . . if we have to disarm Saddam Hussein by force.” He then promised that if President Bush failed to do so, “I will be the first to speak out.”

However, Senator Kerry broke that promise. When President Bush abandoned his efforts to gain United Nations Security Council authorization for the war in late February 2003 and pressed forward with plans for the invasion without a credible international coalition, Kerry remained silent. Indeed, when President Bush actually launched the invasion soon afterwards, Senator Kerry praised him, co-sponsoring a Senate resolution declaring that the invasion was “lawful and fully authorized by the Congress” and that he “commends and supports the efforts and leadership of the President . . . in the conflict with Iraq.”

Unlike the hawkish senator from Massachusetts, most Democrats in Congress voted against authorizing the invasion. For example, Senator Robert Byrd introduced a resolution in the fall of 2002 clarifying that authorizing an invasion of Iraq would not diminish Congress’ Constitutional authority to declare war and that no additional authority not directly related to a clear threat of imminent, sudden, and direct attack on the United States could be granted to the president unless Congress authorized it. Senator Kerry voted against it, saying “Every nation has the right to act preemptively if it faces an imminent and grave threat.”

Senator Kerry’s embrace of unilateralism and his rejection of the United Nations system was further illustrated in his attacks on former Vermont governor Howard Dean—who had been a rival for the 2004 Democratic presidential nomination—for arguing that a genuine international coalition should have been established before the United States invaded Iraq. Kerry claimed that such multilateralism “cedes our security and presidential responsibility to defend America to someone else” since it would “permit a veto over when American can or cannot act.” Dean’s call

for the United States to work in broad coalitions, insisted Kerry, is “little more than a pretext for doing nothing.”

Even after the Bush administration acknowledged that there were no “weapons of mass destruction” or WMD programs, Kerry said he would have voted for the war anyway because of the oppressive nature of Saddam Hussein’s regime and the fact that Iraq could potentially make WMDs in the future. What is disturbing about this is that there are scores of oppressive governments around the world that could conceivably pose some kind of threat at some time in the future. Kerry apparently believes that the president should have the power to go after any of them right now.

Even conservative analysts like Mickey Edwards, a former Republican congressman from Oklahoma and later a lecturer at Princeton University’s Woodrow Wilson School, criticized what he called Kerry’s “recklessly prowar positions,” arguing that Kerry’s criteria for going to war were “wildly aggressive.” Correctly referring to Kerry as an “uber-militarist”, Edwards observed, “I know of no leading American ‘hawk,’ not even among the most militant of the neocons, who has said he or she would have supported going to war if it were absolutely known that the perceived ‘imminent threat’ did not exist.”

It appears that Kerry has not changed his hawkish view. As recently as November 2011, Kerry voted against a resolution which would have repealed the 2002 authorization for the use of force in Iraq.

Kerry basically rejects the UN Charter and the whole basis of the post-World War II international legal system, which is based on the notion of collective security and the illegality of any nation launching an aggressive war. In Kerry’s view, powerful nations like the United States can invade any country they want if they determine that it might hypothetically pose some kind of threat someday in the future. To have someone with this extremist position as secretary of state sends a message to the international community that little has changed since the Bush administration.

### **Opposition to International Law – Israel**

Iraq is not the only example of Kerry’s hostility toward international law, however. An outspoken supporter of the policies of a series of right-wing Israeli governments in the occupied territories, Kerry has defended the Israeli re-occupation of sections of the West Bank; Israel’s ongoing violation of a series of UN Security Council resolutions; Israel’s policy of assassinating suspected militants and other Palestinian leaders; former rightist Prime Minister Ariel Sharon’s proposed annexation of vast stretches of occupied Palestinian territory in order to incorporate illegal Jewish settlements into Israel; moving the U.S. embassy from Tel Aviv to Jerusalem; opposing Palestinian self-determination or UN recognition of statehood outside of parameters agreed to by Israel’s right wing government; and the Israeli government’s construction of an illegal separation wall deep inside occupied territory (in defiance of a recent near-unanimous ruling by the International Court of Justice, which led Kerry to strongly criticize the UN’s judicial body).

Kerry defended Israel's 2010 attack on an unarmed humanitarian flotilla in international waters, during which they killed nine crewmen—including a 19-year-old American citizen—despite the attack's violation of international maritime law. Despite the ships being inspected prior to leaving the port of a NATO ally, Kerry justified the fatal raid on the unarmed ships on the grounds that Israel had every right "to make sure weapons are not being smuggled in."

In the face of international outcry at Israeli's 2006 war on Lebanon and 2008-2009 war on the Gaza Strip, Kerry joined Republican Senate colleagues in co-sponsoring resolutions unconditionally supporting the attacks. Reports from Amnesty International, Human Rights Watch, the United Nations, and others condemned both Israel and the Arab militias for apparent war crimes, but Kerry insisted that Israel's actions constituted legitimate self-defense and were perfectly legal. Kerry also attacked a well-documented 575-page report by the UNHRC, led by a team of reputable international jurists, which presented evidence of war crimes by both Hamas and Israel during the 2008-2009 fighting. Kerry insisted that attacks by Israel (which were responsible for over 800 civilian deaths) were perfectly legal, attributing the entire fault to Hamas (which was responsible for three civilian deaths). Despite longstanding international legal conventions against bombing civilian-populated areas, Kerry insisted that Israel's entire military operation constituted legitimate self-defense.

Kerry's hostility toward international humanitarian law came into particular focus in 2004, when he launched a series of attacks against the International Court of Justice. That summer, the World Court issued a unanimous (save for the U.S. judge) advisory opinion that Israel—like all countries—is bound by international humanitarian law and that the separation barrier being built inside the occupied West Bank was illegal.

In response, Kerry cosponsored a Senate resolution "supporting the construction by Israel of a security fence to prevent Palestinian terrorist attacks, condemning the decision of the International Court of Justice on the legality of the security fence, and urging no further action by the United Nations to delay or prevent the construction of the security fence." Kerry's resolution claimed that "the International Court of Justice is politicized and critical of Israel" since "The United States, Korea, and India have constructed security fences to separate such countries from territories or other countries for the security of their citizens." Kerry's comparison, however, fails to note that the other barriers, unlike Israel's, were placed along internationally recognized borders and were therefore not the subject of legal challenge. The Court explicitly affirmed Israel's right to construct the barrier on their border, just not in foreign territory under Israeli occupation. Rather than displaying a bias against Israel, the World Court has actually been quite consistent: In the only other two advisory opinions issued by the ICJ involving occupied territories (South African-occupied Namibia in 1972 and Moroccan-occupied Western Sahara in 1975), they also ruled against the occupying power.

In the case of the occupied West Bank, however, Kerry insisted, that the World Court "do[es] not have jurisdiction" and that any legal challenges to the route of the wall should go through the Israeli judiciary "and we should respect that process." In other words, Kerry takes an extreme position, effectively saying that legal matters involving international humanitarian law in territories under foreign belligerent occupation should be addressed solely by the courts of the occupying power. Part of this may be that he doesn't even recognized territory invaded by U.S.

allies as occupied. Kerry's Senate resolution against the World Court decision, had it passed, would have marked the first time either house of Congress has passed a resolution that refers to the West Bank not as an "occupied" territory but as "disputed." This distinction is important for two reasons: the word "disputed" implies that the claims of the West Bank's Israeli conquerors are as legitimate as the claims of Palestinians who have lived on the land for centuries, and disputed territories—unlike occupied territories—are not covered by the Fourth Geneva Convention and many other international legal statutes.

Despite rationalizing for his support for the invasion of Iraq on the grounds that Iraq was violating a series of UN Security Council resolutions, when U.S. allies have defied UN Security Council resolutions, Kerry has defended them. For example, he has supported Israel's annexation of occupied East Jerusalem, which Israeli forces seized in June 1967, despite a series of UN Security Council resolutions demanding that Israel rescind its annexation (such as resolutions 262 and 267). He has also opposed efforts to block Israeli efforts to colonize large sections of the West Bank, despite a series of resolutions calling on Israel to withdraw from these illegal settlements (such as resolutions 446, 452, 465, and 471).

Thus, in John Kerry's world, the United States alone can decide which United Nations Security Council resolutions to enforce and how they are enforced. No less than President Bush, Kerry seeks to effectively overturn the post-World War II international system based upon the rule of law and collective security in order to forcibly impose a Pax Americana.

### **Credibility Problems**

A U.S. secretary of state, even one as far to the right as John Kerry, must not be perceived as dishonest. Repeatedly being caught making blatant falsehoods in the face of overwhelming evidence to the contrary does not give America's chief diplomat the kind of credibility our country needs to conduct relations with foreign nations.

Unfortunately, Kerry's credibility has repeatedly been put into question by his willingness to either fabricate non-existent threats or naively believe transparently false and manipulated intelligence claiming such threats exist—such as when he chose to ignore a plethora of evidence from weapons inspectors and independent arms control analysts who said that, prior to his vote authorizing the invasion of Iraq in October 2002, Iraq had already achieved at least qualitative disarmament.

In a speech on the Senate floor immediately prior to the vote, Senator Kerry categorically stated that Saddam Hussein was "attempting to develop nuclear weapons." However, there appears to be no evidence to suggest that Iraq had had an active nuclear program for at least eight to ten years prior to the U.S. invasion. Indeed, the International Atomic Energy Agency (IAEA) reported in 1998 and subsequently that Iraq's nuclear program appeared to have been completely dismantled. To justify his claims of an Iraqi nuclear threat, Senator Kerry claimed that "all U.S. intelligence experts agree that Iraq is seeking nuclear weapons." The reality, of course, was that much of the U.S. intelligence community was highly skeptical of claims that Iraq was attempting to acquire nuclear materials, and this fact was widely circulated in academic journals, the mainstream media, and in intelligence reports.

In addition, despite being briefed to the contrary by former chief UN weapons inspector Scott Ritter and other arms control experts, Senator Kerry stated unequivocally that “Iraq has chemical and biological weapons.” He even claimed that most elements of Iraq’s chemical and biological weapons programs “are larger and more advanced than they were before the Gulf War.” He did not try to explain how this could be possible, given the limited shelf life of such chemical and biological agents and the strict embargo against imports of any additional banned materials that had been in place since 1990. The Massachusetts senator also asserted that authorizing a U.S. invasion of that oil-rich country was necessary since “these weapons represent an unacceptable threat.”

However, despite inspections by the United Nations Monitoring and Verification Commission (UNMOVIC) and subsequent searches by U.S. forces, no chemical or biological weapons have been found.

Senator Kerry’s fabrications about Iraq did not stop there. He made similarly ludicrous claims that “Iraq is developing unmanned aerial vehicles (UAVs) capable of delivering chemical and biological warfare agents, which could threaten Iraq’s neighbors as well as American forces in the Persian Gulf.” In a cynical effort to take advantage of Americans’ post-9/11 fears, Kerry went on to claim that “Iraq has some lethal and incapacitating agents and is capable of quickly producing and weaponizing a variety of such agents, including anthrax, for delivery on a range of vehicles such as bombs, missiles, aerial sprayers, and covert operatives which could bring them to the United States homeland.”

Again, no such Iraqi UAVs or other systems capable of delivering chemical and biological weapons have been found.

To this day, Kerry’s Senate office has refused to provide me or any other independent analysts access to the supposed intelligence that supposedly said Iraq had these supposed WMDs and delivery systems that were supposedly such a threat that we supposedly had to invade. He did, however, presumably see the polls that showed that the only way the American people would support a war on Iraq would be if Iraq was a threat to the United States, which may have influenced his decision to make that claim.

Kerry claims that under the circumstances present in October 2002, when he and his congressional colleagues made the fateful decision to grant President Bush unprecedented war-making authority, “any president would have needed the threat of force to act effectively.” Kerry went on to say, “The idea was simple: We would get the weapons inspectors back in to verify whether or not Iraq had weapons of mass destruction.” This is an extraordinarily misleading statement, however. Saddam Hussein had finally agreed to unconditional unfettered United Nations inspections as demanded by the UN Security Council on September 16, nearly four weeks prior to Kerry’s vote authorizing the U.S. invasion.

Kerry has also demonstrated a tendency to make things up to rationalize war crimes by U.S. allies. For example, to explain civilian deaths caused by Israeli air strikes and other military operations in Lebanon and the Gaza Strip, he co-sponsored resolutions accusing Hamas and Hezbollah of deliberately using civilians as “human shields.” Subsequent human rights reports

noted that Hamas and Hezbollah were guilty of other violations of international humanitarian law, but found no cases of either group deliberately holding civilians against their will as a deterrent from enemy attacks. Kerry's office has refused to reply to a series of inquiries asking the senator to provide examples of where and when Hamas or Hezbollah ever used human shields.

Kerry insisted that a United Nations report ignored how the Israelis supposedly went to great lengths to avoid civilian casualties by dropping leaflets and sending robo-calls to Palestinian homes warning them of impending attacks. In reality, the report examined these claims in detail, but concluded that many of the calls and leaflets were sent out too late or were too vague to enable civilians to reach safety. Furthermore, Israeli calls for civilians to flee to downtown Gaza City led those who heeded such advice right into the line of Israeli fire, as when the Israelis attacked the UN compound and school with mortars and phosphorous bombs where hundreds of fleeing residents had sought refuge. The UNHRC report confirmed the conclusions of previous investigations that there were no legitimate military targets in the area.

There are quite a few other examples of Kerry's willingness to make things up to support controversial actions by the Israeli government. For example, back in 2004, when Palestinian president Yasir Arafat was repeatedly calling for a resumption of peace negotiations but was being rejected by Israel's right-wing prime minister Ariel Sharon, Kerry insisted that it was Arafat who was refusing to "take part in a peaceful process."

Similarly, during an interview on *Meet the Press*, Kerry justified Israel's assassination policy by saying that "The moment Hamas says, 'We've given up violence. We are prepared to negotiate,' I am absolutely confident they will find an Israel that is thirsty to have that negotiation." In reality, the Israeli government has repeatedly stated that, even if Hamas made such a statement, they would not negotiate with the Islamic group. Furthermore, Israel's assassination policy has included more than just terrorists: it has included community leaders such as Isaac Saada, a teacher at a Catholic high school in Bethlehem who was working with Israeli colleagues in developing a joint curriculum in conflict resolution, and Shaden Abu Hijleh, a Palestinian social worker and nonviolent activist in Nablus. A special UN investigation, headed by a prominent Jewish American professor of international law, concluded that Israel has utilized "a seemingly random hit list" in its assassinations.

## **Imperial Hubris**

Kerry has repeatedly demonstrated an incredible level of hubris and arrogance regarding American military power. Indeed, in supporting the invasion and occupation of Iraq, Kerry apparently worked on the assumption that the United States could get away with an indefinite occupation of a heavily populated Arab country with a strong history of nationalism and resistance to foreign domination.

Similarly, his attacks on those with more moderate views raise questions as to whether he has the temperament to be secretary of state. For example, in 2003, when Governor Dean proposed that the United States take a more "even-handed role" as the chief mediator in the Israeli-Palestinian conflict, "bring the sides together" in a "constructive way," and "not point fingers" at who is to

blame, Kerry not only insisted Dean was wrong for suggesting it, but made the bizarre assertion that such an approach “would throw this volatile region into even more turmoil.”

Kerry has also made a habit of accusing those who do not support his right-wing agenda as somehow being soft on terrorism. In 2004, Kerry attacked UN Secretary General Kofi Annan for backing the UN General Assembly’s decision to ask the ICJ to consider the legal questions involved in Israel’s separation barrier, claiming that doing so casts doubt on the chief UN official’s opposition to terrorism.

Kerry was particularly hostile towards those who refused to support Bush’s war in Iraq and those who believed the United Nations should take the lead in the post-war effort of stabilization and reconstruction. In 2004, when the newly elected government of Spain announced that it would fulfill its longstanding promise to withdraw its forces from Iraq unless the mission was placed under the United Nations, Kerry responded by saying, “I call on Prime Minister Zapatero to reconsider his decision and to send a message that terrorists cannot win by their act of terror.” Not only did Kerry believe that the Bush/Cheney administration was somehow more trustworthy than the international community in resolving the serious problems besetting post-war Iraq, Kerry was arguing that if a government disagreed with him and insisted that there be a UN mandate in place before participating in the occupation of a foreign country, they were somehow appeasing terrorists.

When Barack Obama was running for president in 2008, he promised to not just end the war in Iraq, but to end the “mindset” that led to the war. However, in nominating John Kerry to be his next secretary of state, it appears that mindset is alive and well.