

## Slaughterhouse-Six: Updating the Law of War

By Ed Morgan\*

### A. The Time and Place of the Law

International law has come unstuck in time. It has gone to sleep stressing a normative future based on state “obligations owed towards all the other members of the international community,”<sup>1</sup> and has awakened in a bygone world in which the state is “susceptible of no limitation not imposed by itself.”<sup>2</sup> The opposing time zones seem now to exist in unison. Thus, for example, the European Court of Human Rights, in examining the impact of the Torture Convention, can split 9:8 on whether national self-interest trumps universal rules of cooperation, or the other way around.<sup>3</sup> Likewise, England’s House of Lords can opine in the *Pinochet* case that, as between a reinvigorated national jurisdiction and the developing concept of universal one, “international law is on the move.”<sup>4</sup>

Nowhere is this temporal and normative see-saw more apparent than in the law of war. Generally speaking, the international community now regards the use of armed force to be circumscribed.<sup>5</sup> When fully explained, however, this can be

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<sup>1</sup> Prosecutor v. Furundzija, IT-95-17A-T (I.C.T.Y. 10 Dec. 1998), reprinted in 38 I.L.M. 317 (1999) (identifying emerging norms of *jus cogens*).

<sup>2</sup> The Schooner Exchange v. M’Faddon, 12 U.S. (7 Cranch) 116 (1812) (sovereign immunity in domestic courts).

<sup>3</sup> Al-Adsani v. United Kingdom, 34 Eur. Ct. H.R. 29, (2001) judgment of 21 Nov. 2001 (ECHR); see Markus Rau, *After Pinochet: Foreign Sovereign Immunity in Respect of Serious Human Rights Violations - The Decision of the European Court of Human Rights in the Al-Adsani Case*, 3 GERMAN L. J. No. 6 (1 June 2002), at <http://www.germanlawjournal.com/article.php?id=160>.

<sup>4</sup> *Ex parte Pinochet Ugarte* (No. 3), [1999] 2 All E.R. 97, 188 (per Lord Phillips, concurring).

<sup>5</sup> *But see*, W. Michael Reisman, *Coercion and Self-Determination: Construing Article 2(4)*, 78 AM. J. INT’L. L. 642 (1984) (“A sine qua non for any action – coercive or otherwise – I submit, is the maintenance of minimum order in a precarious international system.”); *See also*, *National Security Strategy of the United States*, <http://www.whitehouse.gov/nsc/nss.html> (“We will defend the peace by fighting terrorists and tyrants”); cf. Ebrahim Afsah, *Creed, Cabal, or Conspiracy - The Origins of the current Neo-Conservative Revolution in US Strategic Thinking*, 4 GERMAN L. J. No. 9, 901-923 (1 September 2003), at

posed as a product of state consent – *i.e.* a treaty rule under the U.N. Charter or a ‘crystallized’ emergent rule of international custom,<sup>6</sup> – or, alternatively, as a matter for which no consent is required – *i.e.* a fundamental principle or a “conspicuous example of a rule in international law having the character of *jus cogens*.”<sup>7</sup> Likewise, the use of force in self-defense is subject to great rhetorical fluctuation. It can enter a debate premised on the strict reading of article 51 of the U.N. Charter or the G.A. Resolution on Friendly Relations,<sup>8</sup> and exit the conversation as an ‘inherent’ or ‘natural’ right to liberate oneself that predates and swallows up any single instrument.<sup>9</sup> It is all new and old, tentative and foundational, anti-war and pro-defense, non-violent and highly coercive; the law has become, in the words of Kurt Vonnegut, “a trafficker in climaxes and thrills and characterization.”<sup>10</sup>

The novel for which this paper is named contains a number of themes that are surprisingly relevant to the international law of war. In the first place, of course, Vonnegut’s *Slaughterhouse-Five* is a 1960’s anti-war themed war story, drawing on the author’s own experiences during the Second World War<sup>11</sup> and the American experience of the then ongoing war in Vietnam and its related social turmoil.<sup>12</sup> Like the literature on warfare under Article 2(4) of the U.N. Charter,<sup>13</sup> Vonnegut is

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<sup>6</sup> Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), 1986 I.C.J. 14, ¶¶ 177, 183-185 (taking U.N. Charter article 2(4) into account in identifying newly emergent custom prohibiting armed force).

<sup>7</sup> International Law Commission, Codification of the Law of Treaties, 2 Y.B. Int’l.L.Comm. 247 (1966).

<sup>8</sup> Declaration Concerning Friendly Relations Among States, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028r, (1970).

<sup>9</sup> Nicaragua Case, *supra* note 6 ¶ 193 (“...the inherent right (or ‘droit naturel’) which any State possesses in the event of an armed attack, covers both collective and individual self-defence.”). 1 *Blackstone’s Commentaries* 125 (defining ‘natural liberty’ as “[t]he right which nature gives to all mankind..., on condition of their acting within the limits of the law of nature, and so as not to interfere with an equal exercise of the same rights by other men.”).

<sup>10</sup> K. VONNEGUT, JR., *SLAUGHTERHOUSE-FIVE* 5 (New York 1969).

<sup>11</sup> H. Bloom, *Introduction to KURT VONNEGUT* 1 (H. Bloom ed., Chelsea, 2000) (“On 19 December 1944, Kurt Vonnegut was captured by the Germans during the Battle of the Bulge; he was twenty-two years old. Sent to Dresden, he survived the firebombing of the city on February 13-14, 1945, in which 135,000 Germans were killed. That is the biographical context (in part) for the novel, *SLAUGHTERHOUSE-FIVE*, or *THE CHILDREN’S CRUSADE* (1969)”).

<sup>12</sup> J. Klinkowitz, *Kurt Vonnegut: Public Spokesman*, in *THE VONNEGUT CHRONICLES: INTERVIEWS AND ESSAYS* 70 (P.J. Reed & M. Leeds eds., Westport 1996) (“[T]he Dresden bombing is related in its victimization to bombings in Cambodia, Vietnam...”).

<sup>13</sup> See, e.g., T. Franck, *Who Killed Article 2(4)?*, 64 AM J. INT’L L. 809 (1970).

aware of the unenforceability of his cause. Indeed, the futility of regulating armed force is portrayed as cynically by Vonnegut as by any of international law's critics.<sup>14</sup> In the book's introduction one character quips to the author "Why don't you write an anti-*glacier* book instead?"<sup>15</sup>

More to the point is the fact that the novel presents an "erratic and disjointed narrative ... providing Vonnegut with a chance to escape the limits of chronology."<sup>16</sup> This technique will be compared with international law's tendency to mix and match its governing norms to its desired results, producing an ahistorical sense of "doctrinal confusion."<sup>17</sup> Moreover, *Slaughterhouse-Five* is characterized by the frequent intrusions of an authorial voice, at times Vonnegut's own and at other times one of his fictionalized alter-egos, all in an effort "to get at other topics that may lay beyond the compass of his setting."<sup>18</sup> This technique will then be compared with international law's tendency to defy objectivity, and its attempt to build a system of law out of the aggregated and subjective actions of the state parts that the system must govern.<sup>19</sup> Finally, Vonnegut's writing embodies an unusual combination of realism and fantasy, or fatalism and hopefulness; accordingly, his "despair is balanced by an optimistic faith in the possibility of... renewal."<sup>20</sup> This overall character will be juxtaposed with that of international legal discourse, which similarly despairs in the reality of being "law improperly so called"<sup>21</sup> while it constantly renews its fantasy of finding "trustworthy evidence of what the law really is."<sup>22</sup>

The international law laboratories in which this combination of disciplines and

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<sup>14</sup> L. Henkin, *The Reports of the Death of Article 2(4) are Greatly Exaggerated*, 65 AM. J. INT'L L. 544 (1971) (describing Thomas Franck as "pathologist for the ills of the international body politic").

<sup>15</sup> VONNEGUT, *supra* note 10, at 3.

<sup>16</sup> P. Freese, *Vonnegut's Invented Religions as Sense-Making Systems*, in Reed & Leeds, *supra* note 12, at 155.

<sup>17</sup> *Libman v. The Queen*, 1985 2 S.C.R. 178, ¶ 17 (Historically, English courts considering international law "have taken different stances at different times and the general result, as several writers have stated, is one of doctrinal confusion...").

<sup>18</sup> P.J. Reed, *Writer as Character: Kilgore Trout*, in Bloom, *supra* note 11, at 111.

<sup>19</sup> See, e.g., *Austro-German Customs Regime Case (Advisory Opinion)*, 1931 P.C.I.J. No. 41, 4, 12 ("Treaty [of Saint-Germain] imposed upon Austria, who in principle has sovereign control over her own independence, except with the consent of the council of the League of Nations.").

<sup>20</sup> L.R. Broer, *Images of the Shaman in the Works of Kurt Vonnegut*, in Bloom, *supra* note 11, at 102.

<sup>21</sup> Austin, *The Province of Jurisprudence Determined*, reprinted in HENKIN, ET AL., INTERNATIONAL LAW 11 (West 1980).

<sup>22</sup> *The Paquete Habana*, 175 U.S. 677, 700 (1900).

themes will be tested are the various conflicts in the Middle East. In particular, the paper explores the legal debate over two violent struggles: the U.S.- Iraq war in the spring of 2003, and the Palestinian-Israeli confrontation that began in the fall of 2000. For present purposes, the discussion will center on two international instruments which set out legal parameters for each of these two battlegrounds: Security Council Resolution 1441 pertaining to Iraq,<sup>23</sup> and Resolution 2002/8 of the U.N. High Commission for Human Rights pertaining to Palestine.<sup>24</sup> These resolutions, adopted by two arms of the United Nations within seven months of each other, seem to move the law of war in opposite directions – *i.e.* respectively toward and away from institutional control. In doing so, they are both riddled with interpretive enigmas. The Security Council Resolution, which, *inter alia*, put Iraq on notice of a potential armed attack, spawned debate over the language of “material breach,”<sup>25</sup> “final opportunity,”<sup>26</sup> and “serious consequences.”<sup>27</sup> For its part, the UNCHR Resolution, which, *inter alia*, confirmed the right of Palestinians to seek self-determination, engendered a substantial dispute around the phrase “by any available means.”<sup>28</sup>

The fundamental question of interpretation is whether the international law of war is now characterized by one pronouncement that authorizes only the most formal, institutionalized battles, and another that authorizes the most informal, unregulated attacks.<sup>29</sup> Having set the seemingly opposing resolutions in motion, can the world community guide the law’s apparently contradictory impulses, or are the

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<sup>23</sup> SCOR Res. 1441, U.N. SCOR., 57th Sess., S/Res/1441 (2002).

<sup>24</sup> UNCHR Res. 2002/8, U.N. CHR, 58th Sess., 39th meeting, (2002).

<sup>25</sup> *Id.*, article 1 (“Decides that Iraq has been and remains in material breach ...”).

<sup>26</sup> *Id.*, article 2 (“Decides ... to afford Iraq, by this resolution, a final opportunity to comply ...”).

<sup>27</sup> *Id.*, article 13 (“Recalls ... that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations”).

<sup>28</sup> E/CN.4/2002/L.16, U.N. CHR, 58th Sess., Comm. on H.R. Agenda Item 8, (draft of 9 April 2002) (“Affirms the legitimate right of the Palestinian people to resist the Israeli occupation by any available means ...”).

<sup>29</sup> For a review of the arguments on either side of the international law debate, see A. Ehlert, *Between Empire and Community: the United States and Multilateralism 2001-2003*, 21 BERKLEY J. INT.L.L. 721 (2003); R. Falk, *Rediscovering International Law After September 11<sup>th</sup>*, 16 TEMP. INT. & COMP. L. J. 359 (2002); H. Hannum, *Iraq, U.S. and the War on Terror: Bellum Americanum*, 27 FLETCHER J. WORLD AFF. 29 (2003); Craig Scott, *Iraq and the Serious Consequences of Word Games: Language, Violence and Responsibility in the Security Council*, 3 GERMAN L. J. No. 11 (1 November 2002), at <http://www.germanlawjournal.com/article.php?id=209>. For a constitutional law analysis of the U.S. use of military force in Iraq, see *Report: the Legality and Constitutionality of the President’s Authority to Initiate an Invasion of Iraq*, 41 COLUM. J. TRANSNAT’L L.15 (2002).

competing doctrines like so many Vonnegut characters, of whom Vonnegut himself has said that he "could only guide their movements approximately, since they were such big animals. There was inertia to overcome."<sup>30</sup> As international lawyers update the law of war to the latest conflicts, can the meaning of its rules be sufficiently fixed in time and space to play the role in world affairs that has come to be expected of it?<sup>31</sup>

#### B. The Non-Linear History of International Law

It is an understatement to say that, in the months preceding the U.S.-led invasion of Iraq, the meaning of Resolution 1441 was subject to debate. The prior negotiations over the wording of this Resolution had stretched for seven weeks through October and November of 2002. At the time, the United States, Britain, and Spain envisioned the statement about Iraqi disarmament as the final one before enforcement by way of military intervention,<sup>32</sup> harking back to the call for complete disclosure and dismantling of all Iraqi weapons of mass destruction contained in the resolutions passed at the conclusion of the first Persian Gulf War.<sup>33</sup> France, Germany, and Russia, on the other hand, envisioned that the Security Council would remain seized of the matter of assessing any Iraqi breach and authorizing further action.<sup>34</sup> The resulting language, as commentators have noted, was a resolution that papered over, but did not resolve, the fundamental difference in postures.<sup>35</sup>

The question for international lawyers was to determine what constituted compliance with the resolution's terms and what constituted a breach. The regime in Iraq had embarked on a campaign of positive internationalism in advance of the Security Council debates on the question, establishing a political environment which blended state self-interest with multilateral cooperation. Thus, in March 2002, Iraq was an active participant in the Arab League summit in Beirut, and there an-

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<sup>30</sup> K. VONNEGUT, JR., *BREAKFAST OF CHAMPIONS* 202 (New York 1973).

<sup>31</sup> On the relationship between international law and other modes of analysis of international relationships and defense policy, see T. Graham, Jr., *Is International Law Relevant to Arms Control: National Self-Defense, International Law, and Weapons of Mass Destruction*, 4 *CHI. J. INT'L L.* 1 (2003).

<sup>32</sup> *Senate Approves Iraq War Resolution*, 11 October 2002, at CNN.com.

<sup>33</sup> SCOR Res. 687, U.N. SCOR, 2981<sup>st</sup> meeting, April 1991 (requiring Iraq to "unconditionally accept the destruction, removal or rendering harmless" of its chemical, biological, and nuclear weapons programs).

<sup>34</sup> J. Leicester, *France, Russia Vow No Iraq War Approval*, Miami Herald, March 5, 2003, available at Herald.com; *France, Germany, Russia to Nix War Vote*, ABC News, March 5, 2003, available at ABCNEWS.com

<sup>35</sup> F. Kaplan, *Resolution Dissolution: How the U.S. and France Botched U.N. Resolution 1441*, Slate, March 6, 2003, at <http://slate.msn.com/id/2079746/>.

nounced for the first time a recognition of the sovereignty of Kuwait.<sup>36</sup> This was followed by a reopening of the Iraq–Saudi Arabia border and the signing of a free trade agreement between the two countries,<sup>37</sup> and the negotiation of generous oil and other economic concessions to the more needy states of the region.<sup>38</sup> While Baghdad was clearly out to protect its independence of action, it was equally out to demonstrate its mastery of the international circuit.<sup>39</sup>

More importantly, Iraq's level of compliance with the specific terms of Resolution 1441 itself could ambiguously straddle these two themes. As critics have noted, the "failure [of the Resolution] to sketch out so much as an outline of the disarmament process" effectively allowed Saddam Hussein to "manipulate, even to control, the Security Council's deliberations."<sup>40</sup> In other words, Iraq could be fully cooperative with the governing norms of international conduct, protecting its sovereignty while simultaneously bowing to Security Council superiority, and could accomplish this task by "throw[ing] the council a few crumbs of compliance – the destruction of a few missiles, the handover of a few documents, the issuance of a new decree... well within the provisions of 1441."<sup>41</sup>

Accordingly, the United States and other supporters of the resolution could argue with credibility that the governing international norm defined Iraq's minimal, if strategic disclosures as a breach,<sup>42</sup> while Iraq and other supporters of its sovereignty could argue with credibility that the governing international norm defined its minimal, if strategic disclosures as compliance.<sup>43</sup> The Iraqi government, it will

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<sup>36</sup> *L'Irak se réconcilie avec le Koweït et cherche des protections face à la menace américaine*, LE MONDE, 30 March 2002.

<sup>37</sup> Economist Intelligence Unit, *Country Report: Saudi Arabia*, 3 (November 2002).

<sup>38</sup> *Trade Volume to be Increased to \$310m by 2003*, Jordan Times, November 22-23, 2002.

<sup>39</sup> International Crisis Group, *Voices from the Iraqi Street*, Iraq Briefing, 3 (4 December 2002) ("The efficacy of this kind of [pre-war Iraqi] diplomacy is debatable. What is less so is that it demonstrates Baghdad's determination to avoid a confrontation that it knows may be its last.").

<sup>40</sup> Kaplan, *supra* note 35.

<sup>41</sup> *Id.*

<sup>42</sup> U.S. DEPARTMENT OF STATE, OFFICE OF THE SPOKESMAN, IRAQ ARMS DECLARATION HAS GAPS, OMISSIONS, POWELL CHARGES, (18 December 2002) *at*: [http://www.usembassy.it/file2002\\_12/alia/a2121801.htm](http://www.usembassy.it/file2002_12/alia/a2121801.htm) (last visited: 27 April 2004). ("Iraq was given an opportunity in UN Resolution 1441 to cooperate with the international community, to stop deceiving the world with respect to its weapons of mass destruction... We are not encouraged that they have gotten the message or will cooperate based on what we have seen so far in the declaration...").

<sup>43</sup> Iraq – Statement by Fr.-F.R.G.-Russ., Spécial France-Diplomatie: Irak, (5 March 2003), *at*: <http://special.diplomatie.gouv.fr/article69.html> (last visited: 30 January 2004) ("The destruction of the

be recalled, provided “enough details and diversions to keep scores of U.S. intelligence analysts busy for days and weeks, scouring for telltale signs of what has been left out.”<sup>44</sup> The standoff on this issue provided not only a high point of political gamesmanship,<sup>45</sup> but served as a testing ground for international law’s current definitions of state conduct.

To trace the course of those definitions, one might start with the post-War era’s first controversy over weapons of mass destruction – *i.e.* the 1950’s through 1970’s debate over atmospheric nuclear testing and the Nuclear Test Ban Treaty.<sup>46</sup> The International Court of Justice (ICJ) first turned its mind to the issue when France, which had not signed the multilateral treaty, issued a series of presidential proclamations to the effect that it would abide by the convention’s terms by shifting from atmospheric to underground testing of all nuclear devices.<sup>47</sup> When France later reneged on this commitment an action was brought by Australia and New Zealand, the two nearest neighbors to the French Polynesian atolls where the tests were conducted, asserting that the unilateral declarations were binding commitments that carried with them the force of law.<sup>48</sup>

In a landmark judgment, the ICJ opined that the purposefulness of the comments by the French head of state “confer[ed] on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration.”<sup>49</sup> The remarkable thing about the judgment is

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Al-Samoud missiles has started and is making progress; the Iraqis are providing biological and chemical information; the interviews with Iraqi scientists are continuing.”).

<sup>44</sup> H. Witt, *Iraq Disclosure Allows Hussein, Bush to Play for Time*, CHICAGO TRIBUNE, 7 December 2002, at: <http://www.macon.com/mld/macon/news/politics/4690146.htm> (last visited: 27 April 2004).

<sup>45</sup> “Saddam Hussein’s Games: Interview with Foreign Secretary, Jack Straw” SKY NEWS, Wednesday, 2 October 2002, at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarketXcelerate/ShowPage&c=Page&cid=1007029391629&a=KArticle&aid=1033555897233> (last visited: 27 April 2004).Xcelerate/ShowPage&c=Page&cid=1007029391629&a=KArticle&aid=1033555897233.

<sup>46</sup> Partial Test Ban Treaty, 1963, 480 U.N.T.S. 43; 1964 U.K.T.S. 3 (1964), in force 1963. For a history of the controversy over atmospheric nuclear testing by the United States in the area of Eniwetok Atoll in U.S. administered Trust Territory, which led to the initial discussions of a treaty to ban such testing, see 4 White 553 *et seq.* See also, *Resolution on Nuclear Tests on the High Seas*, SEA CONFERENCE RECORDS, vol. II, p. 24, 101 (1958) (referring the question of nuclear tests to the General Assembly “for appropriate action”).

<sup>47</sup> Office of the President of the French Republic, (8 June 1974), reprinted in D.J. HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 775 (5<sup>th</sup> ed., London 1998).

<sup>48</sup> Nuclear Test (Australia v. France; New Zealand v. France), 1974 I.C.J. Rep. 253.

<sup>49</sup> *Id.* at para. 43.

not that Australia and New Zealand won their claim; they could have rested on the familiar argument that by the 1970's the ban on sending up radioactive clouds was, although enshrined in a treaty, a crystallized custom to which all states, including France, were universally bound.<sup>50</sup> Alternatively, they could have attempted to construe the French presidential statements as a form of oral contract which, while falling short of the formal terms required under the Vienna Convention on the Law of Treaties,<sup>51</sup> nevertheless has legal force<sup>52</sup> and creates obligations capable of being recognized and enforced by international tribunals.<sup>53</sup> Either of these footings would have resolved the dispute on traditional lines emphasizing the sovereignty of states in creating classic forms of legal obligations and imposing them on themselves.<sup>54</sup>

What is noteworthy about the *Nuclear Test Case* is that the ICJ went out of its way to state that international law, like Vonnegut's Billy Pilgrim, lives in the future every bit as much as it lives in the present and the past. Indeed, legal doctrine was seen by the court as being a sort of pilgrim, actively seeking out its own understanding of the relevant norms of conduct. In formal terms, the case held that a properly manifested intention on the part of a state – especially where such intentions are “addressed to the international community as a whole”<sup>55</sup> – can in the right circumstances “confer... the character of a legal undertaking.”<sup>56</sup> The court was not how-

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<sup>50</sup> North Sea Continental Shelf (Germany v. Denmark; Germany v. Netherlands), 1969 I.C.J. Rep. 3, para. 72 (the Geneva Convention “has generated a rule which, while only conventional or contractual in its origin, has since passed into the general *corpus* of international law, and is now accepted as such by the *opinion juris*...).

<sup>51</sup> Vienna Convention on the Law of Treaties, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969); 63 A.J.I.L. 875 (1969), produced by the U.N. Conference on the Law of Treaties, pursuant to G.A. Resolutions 2166 (XXI) of 5 December 1966 and 2287 (XXII) of 6 December 1967.

<sup>52</sup> See International Law Commission Draft Articles, 1966, 2 Y.B.I.L.C. 10 (“The restriction of the use of the term “treaty” in the draft articles to international agreements expressed in writing is not intended to deny the legal force of oral agreements under international law...”).

<sup>53</sup> Legal Status of Eastern Greenland (Denmark v. Norway), 1933 P.C.I.J. Rep., Series A/B, No. 53 (Norwegian Foreign Minister's declaration of lack of interest in Greenland taken as enforceable agreement as to Danish sovereignty).

<sup>54</sup> G. Fitzmaurice, *The Foundations of the Authority of International Law and the Problem of Enforcement*, 19 MOD. L. REV. 1 (1956) (“The real foundation of the authority of international law resides similarly in the fact that the States making up the international society recognize it as binding upon them...”). Lotus (France v. Turkey), 1927 P.C.I.J. Rep. Series A, No. 10 (“The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law...”).

<sup>55</sup> Nuclear Test, *supra* note 49, at para 51.

<sup>56</sup> *Id.* at para 43.

ever, content to remain at the level of articulating new doctrinal developments, but rather dug underneath the novel ruling to explore the policy underpinnings of the international law of obligations. "Just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith,"<sup>57</sup> the court opined, "so also is the binding character of an international obligation assumed by unilateral declaration."<sup>58</sup>

In unearthing the foundational principle underlying the international rule of obligations, the ICJ pronounced a brand new point that was identical to one it had already pronounced a decade earlier. In the early 1950's, France's powers of taxation and customs enforcement in its colonial administration of Morocco were said by the Court to represent "a power which must be exercised reasonably and in good faith."<sup>59</sup> This novel proposition of the 1950's, in turn, reflected the International Law Commission's conclusion of the 1940's, where it held that, "[e]very State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law..."<sup>60</sup> Moreover, the I.L.C.'s supposedly new point echoed arbitral awards rendered in contests brought by the United States against Guatemala in the 1930's<sup>61</sup> and by Norway against the United States in the 1920's.<sup>62</sup> Indeed, the same point can be found in nineteenth century reports of the State Department, in which the prohibition on setting up domestic laws as a defense against international legal compliance was characterized as a requirement of the good faith "demands for the fulfillment of international duties."<sup>63</sup>

The development of this basic legal principle, in other words, has been distinctly non-linear. It starts at its own end point and then, like one of Vonnegut's living

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<sup>57</sup> On the principle of *pacta sunt servanda* see generally Chorzow Factory (Jurisdiction), [1927] P.C.I.J., Ser. A, No. 9, p. 21 ("*pacta* defined as "a principle of international law that the breach of an [international] engagement involves an obligation to make reparation in an adequate form."). See also the International Law Commission's Commentary on Article 2(2) of the U.N. Charter (good faith obligations), [1966] 2 Ybk. I.L.C. 211 ("...the principle of good faith is a legal principle which forms an integral part of the rule *pacta sunt servanda*.").

<sup>58</sup> Nuclear Test, *supra* note 49, at para 46.

<sup>59</sup> Case Concerning Rights of Nationals of the United States of America in Morocco (France v. U.S.), 1952 I.C.J. Rep. 176.

<sup>60</sup> International Law Commission, Declaration of Rights and Duties of States (1949), article 13, in HENKIN, ET AL., INTERNATIONAL LAW 114 (St. Paul 1982).

<sup>61</sup> See Shufeldt Claim (U.S. v. Guatemala), [1930], 2 U.N. Rep. Int. Arb. Awards 1079.

<sup>62</sup> See Norwegian Shipowners' Claims (Norway v. U.S.), [1922] 1 U.N. Rep. Int. Arb. Awards 307.

<sup>63</sup> Statement of Secretary of State Bayard, [1887] U.S. Foreign Rel. 751-753.

comets, appears periodically as its orbit demands.<sup>64</sup> Despite this methodology of repetition, the court in the *Nuclear Test Case* went out of its way to assert that, this time around, matters of good faith and international obligations have come to a decisive point. "Trust and confidence," the majority judgment inveighed, "are inherent in international cooperation, in particular in an age when this cooperation in many fields is becoming increasingly essential."<sup>65</sup> Ironically, the ICJ portrayed international doctrine as finally having come of age in 1974 in almost the same language that Chief Justice John Marshall employed to make the point in 1812. In the U.S. Supreme Court's seminal sovereign immunity case, international law was said to have finally moved from the "perfect equality and absolute independence of sovereigns." to a "common interest impelling them to mutual intercourse."<sup>66</sup> Like Vonnegut's Pilgrim, international legal doctrine seems able to live and re-live its entire lifespan at any given moment.

The notion of 'progress', for Vonnegut, moves both forward and backward in time. The middle aged Billy Pilgrim, at home in his Indiana basement, re-lives the lonely soldier of his youth, stranded as a captive in wartime Germany together with hostile fellow soldiers, and at the same time experiences a future captivity on the planet Tralfamador together with a Hollywood starlet who has been brought there to be his mate. Superficially, the combined convention of historical fiction and futuristic fantasy provides Vonnegut with his usual "series of narcissistic giggles;"<sup>67</sup> but at a more sardonic level, it provides a platform for a particularly black brand of humor. Indeed, it is through the black humor of the narrative that linear development is turned on its head. In illustration of the point, the crucifix given to Billy by his mother is said to provide him with a vehicle for "contemplat[ing] torture and hideous wounds at the beginning and the end of nearly every day of his childhood."<sup>68</sup> In other words, Billy is a pilgrim with no sense of progress or mission. As Vonnegut explains it, black humor is both the medium and the message of progress moving in reverse. "Freud gives an example: a man being led out to be hanged at dawn says, 'Well, the day is certainly starting well.'"<sup>69</sup>

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<sup>64</sup> K. VONNEGUT, JR., *SIRENS OF TITAN* (New York 1977) (scientist crashes space ship and becomes an orbiting telegraphic being, landing on Earth once every 59 days).

<sup>65</sup> *Nuclear Test Case*, *supra* note 48, ¶ 46.

<sup>66</sup> *The Schooner Exchange v. McFaddon*, *supra* note 2.

<sup>67</sup> K. VONNEGUT, *WELCOME TO THE MONKEY HOUSE* xvi (New York 1998), (quoting a *New Yorker* magazine review of *God Bless You Mr. Rosewater*). See also VONNEGUT *supra* note 10, at 19, where the book is described by Vonnegut himself as "short and jumbled and jangled".

<sup>68</sup> VONNEGUT *supra* note 10, at 38.

<sup>69</sup> Quoted in W.R. ALLEN, *CONVERSATIONS WITH KURT VONNEGUT* 56 (Jackson 1988).

Ask an international lawyer the direction of progress, and she will doubtless respond as the ICJ has responded: the law is progressive when it moves from sovereignty to cooperation, from the forceful self-help of individual nations to a peaceful, interconnected world.<sup>70</sup> Ask a Tralfamadorian, as Billy does, “how can a planet live at peace?” knowing that the world will be destroyed in a future experiment with new fuels, and he will answer that the future, past, and present, are simultaneous states of affairs. “The moment is structured that way,” Vonnegut’s aliens explain.<sup>71</sup> The fantasy and the ICJ, it turns out, share a remarkable combination of features. Both envision a peaceful present and an apocalyptic future, and both are able to reverse the imagery to envision an aggressive history and a passive conclusion. Likewise, both texts describe a self-interested race of aliens that are at the same time part of an interconnected world of peoples. Vonnegut and the ICJ both portray the world as a slaughterhouse and as an idyllic planet, and both see history culminating with the case of a Nuclear Test. In science fiction and in legal science, progress moves both forward and backward.

Returning to Iraq and the Resolution 1441 debate, the non-linear movement of international law is best illustrated by the work of U.S. National Security Advisor Condoleezza Rice. Writing some two months before the start of the war,<sup>72</sup> Rice contrasted the Iraqi government and its approach to weapons inspections and disarmament with the cooperative approach evidenced by the governments of South Africa, Ukraine, and Kazakhstan. Unlike those countries, which exhibited “a high level of political commitment to disarm, national initiatives to dismantle weapons programs, and full cooperation and transparency,”<sup>73</sup> Iraq demonstrated a tendency to stand on its rights in the face of U.N. inspections. Thus, for example, Rice accused the Iraqis of denying full overflight privileges for aerial inspections, insisting that government security personnel accompany scientists in interviews, describing the destruction of all VX nerve agents but providing no documentary proof, displaying shells that could potentially hold chemical warheads but revealing no actual chemicals, etc. In all, Rice contended, “instead of full cooperation and transparency,” Iraq demonstrated a high level political commitment to the *status quo ante*.<sup>74</sup>

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<sup>70</sup> W.M. Reisman, *supra* note 5 (describing the movement from the pre-U.N. Charter to the post-U.N. Charter law governing the use of force).

<sup>71</sup> VONNEGUT, *supra* note 10, at 117.

<sup>72</sup> C. Rice, *Why We Know Iraq is Lying*, NEW YORK TIMES, 23 January 2003, at [www.whitehouse/releases/2003/01/20030123-1.html](http://www.whitehouse/releases/2003/01/20030123-1.html).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* (placing the political stalemate on the shoulders of “Saddam Hussein and his son Qusay, who controls the Special Security Organization”).

Interestingly, much of what Rice takes aim at is the Iraqi government's legalistic defense.<sup>75</sup> In this view, while today's cooperative players in the community of nations "lead inspectors to weapons and production sites, answer questions before they are asked, state publicly and often the intention to disarm...";<sup>76</sup> Iraq, by contrast, exhibits a classical sovereigntist attitude by insisting on its right to remain silent.<sup>77</sup> In other words, the United States – the very personification of the argument for unilateral self-help toward disarming and deposing Saddam – argued strenuously for a cooperative, multilateralist approach toward disclosure and non-proliferation. At the same time, Iraq's defenders – the very embodiment of internationalism and the dominance of multilateral institutions over the individual state<sup>78</sup> – argued strenuously for the right of the state to insist on its privacy and the non-interference of the broader community of nations.<sup>79</sup>

In the Resolution 1441 debate, therefore, the cooperative position became 'retrogressive' while the sovereigntist position became 'progressive'. The non-linear development of legal norms allows for anything to happen, and for any argument to surface, at any given time. The United States 'discovered' good faith and cooperation much as it has been discovered every decade for at least a century; likewise, Iraq 'discovered' the defense of sovereignty much as it has been discovered since the dawn of international law. The reversed history, then, gave way to an inversed normative thrust in the positions taken by Rice and her adversaries. The answer to the ahistorical, counterintuitive law, of course, lies on Tralfamadore. The moment, the aliens would doubtless explain to any pilgrim in search of legal knowledge, is structured that way.

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<sup>75</sup> *Id.* Allegations of fraudulent conduct also form a fundamental part of the Rice complaint: "...Iraq has filed a false declaration to the United Nations which amounts to a 12,200 page lie."

<sup>76</sup> *Id.*

<sup>77</sup> Norwegian Loans Case (France v. Norway), 1957 I.C.J. 9 (no obligation to answer an international claim or accusation except "upon the determination by the Government accepting the Optional Clause...").

<sup>78</sup> See, e.g., *France: Give U.N. Weapons Inspectors Data*, NEW YORK TIMES, 8 January 2003, at [www.truthout.org/docs\\_02/011003B.fr.data.htm](http://www.truthout.org/docs_02/011003B.fr.data.htm) ("France asked Security Council members Wednesday to deliver 'specific information' about Iraqi weapons programs to U.N. inspectors – a request aimed at the United States and Britain who claim they have evidence of clandestine Iraqi programs.").

<sup>79</sup> TEHRAN TIMES, 27 January 2003 ("Only the people of Iraq have the right to determine their future and decide what kind of government they want."), at [www.worldpress.org/Mideast/918.cfm](http://www.worldpress.org/Mideast/918.cfm).

### C. The Law's Authorial Voice

The war in Iraq and the conflict between the Palestinians and Israel share the fact of violent engagement, but the two theaters seem to move in opposite political directions. To put the matter simply, while the former gave rise to a newborn occupation the latter struggles against an aging one.<sup>80</sup> The legal instruments addressing the use of force in these two confrontations are likewise mirror images of each other.

It is commonplace to note that article 2(4) of the U.N. Charter mandates pacifism as the governing international ethic, all else being equal.<sup>81</sup> This theme finds a place of prominence in the resolutions directed at the Israel-Palestine conflict meted out by international institutions,<sup>82</sup> the primary focus of which is on Israel's use of force. As a potential qualifier on article 2(4), the possibility has been mooted that there is a place in international legal discourse for military operations in cases of humanitarian<sup>83</sup> or human rights<sup>84</sup> concern. It is the extended debate over the use of force by Palestinians in their quest for self-determination,<sup>85</sup> however, that has most prominently tested the boundaries of official pacifism. The central legal question of the Middle East conflict now asks whether the occupation of territory designated for self-government by the civilian population residing there justifies an armed attack on the occupier.

Like Vonnegut in third person, Vonnegut in first person, and Kilgour Trout as the writer within the writer of Vonnegut's science fiction, the law's interpretive debates often display a fractured authorial persona. That is, the discourse over occupation

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<sup>80</sup> For a review of the U.S. and U.K.-led occupation of Iraq from the perspective of the Arab world, see *Iraq Under Occupation*, ALJAZEERA, at <http://english.aljazeera.net/NR/exeres/8245212D-39CC-4E6E-80FF-2E1F29F72BC5.htm>. For the view from the U.S. government, see *Iraq: Security*, U.S. Department of State, International Information Programs, at [http://usinfo.state.gov/mena/middle\\_east\\_north\\_africa/iraq/iraq\\_security.html](http://usinfo.state.gov/mena/middle_east_north_africa/iraq/iraq_security.html).

<sup>81</sup> U.N. CHARTER art. 2, para. 4, ("All members shall refrain in their international relations from the threat or use of force..."); See I. BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 275 (1963), (prohibition on force is centerpiece of law of the U.N. Charter).

<sup>82</sup> For a list of 65 Security Council resolutions condemning Israeli actions in the occupied territories from the 1950s to the 1990s, see *A List of United Nations Resolutions*, MIDDLE EAST NEWS AND WORLD REPORT, at <http://www.middleeastnews.com/unresolutionslist.html>.

<sup>83</sup> *Responsibility to Protect*, THE REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, at <http://www.dfait-maeci.gc.ca/iciss-ciise/report2-en.asp>.

<sup>84</sup> A. D'Amato, *Nicaragua and International Law: the 'Academic' and the 'Real'*, 79 AM. J. INT'L L. 657 (1985).

<sup>85</sup> On the acceptance of Palestinians as a self-determination unit, see G.A. Res. ES-7/2, U.N. GAOR, 7<sup>th</sup> Emergency Sess., Supp. No. 1, at 3 (1980).

and self-determination entails more than just disagreement over legal rights and wrongs; it reads as if the law speaks in alternatively objective and multiply subjective voices. Thus, for example, Morocco's occupation of Western Saharan territory can be any number of things at once: the benign factual background against which a United Nations-mandated referendum for self-determination takes place,<sup>86</sup> the singular illegal impediment to self-governance by the indigenous population,<sup>87</sup> and the legally sanctioned vehicle for liberation of Africa's last colony.<sup>88</sup> The law appears in much the same way as Vonnegut and his protagonist, Jonah, do in *Cat's Cradle*,<sup>89</sup> as author of the book and as author of a book within the book, both of whom are swallowed by the whale of an over-manipulated narrative containing hundreds of subtitles, caveats, and explanations.

It is no exaggeration to say that the UNHRC resolution on Palestine in April 2002 contained language designed to disguise an explosive debate. The session of the U.N. Human Rights Commission took place in the immediate wake of the fighting between Israelis and Palestinians in the refugee camp outside the West Bank town of Jenin,<sup>90</sup> which itself followed closely on the heels of the Passover bombing of the Park Hotel in Netanya in culmination of a string of violent events over the previous several months.<sup>91</sup> The first draft of Resolution 2002/8 expressly endorsed the use of

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<sup>86</sup> See Secretary-General's Report, S/22464 (1991); U.N. SCOR at 690, 29 April 1991 (establishing a United Nations Mission for the Referendum in Western Sahara - MINURSO).

<sup>87</sup> See Algiers Agreement, 5 August 1979 (Republic of Mauritania and Frente POLISARIO), at [www.wsahara.net/algiers.html](http://www.wsahara.net/algiers.html).

<sup>88</sup> See Declaration of Principles on Western Sahara by Spain, Morocco, and Mauritania (Madrid Agreement), 14 November 1975, at [www.wsahara.net/maccords.html](http://www.wsahara.net/maccords.html) ("...Spain will proceed forthwith to institute a temporary administration in the Territory, in which Morocco and Mauritania will participate in collaboration with the Djamaa (assembly of Saharawi notables)").

<sup>89</sup> KURT VONNEGUT, *CAT'S CRADLE* (New York 1967).

<sup>90</sup> For a description of the Jenin fighting, see *Sharon Vows to Fight On*, BBC NEWS, 10 April 2002, at [http://news.bbc.co.uk/1/hi/world/middle\\_east/1918861.stm](http://news.bbc.co.uk/1/hi/world/middle_east/1918861.stm); For political background, see *Palestinian Support for Suicide Bombers*, BBC NEWS, 28 June 2002, at [http://news.bbc.co.uk/1/hi/world/middle\\_east/2072851.stm](http://news.bbc.co.uk/1/hi/world/middle_east/2072851.stm); see also *The Battle of Jenin*, TIME, at <http://www.time.com/2002/jenin/story.html>; and for a brief legal analysis of the battle see *Law in the Fog of War*, TIME, at <http://www.time.com/2002/jenin/viewpoint.html>.

<sup>91</sup> For a summary of the indictment against several individuals accused of sending the suicide bomber, Abed Al Basat Uda, to his mission, see, *Indictment against terrorist involved in the terror attack at the Park Hotel in Netanya*, ISRAEL MINISTRY OF FOREIGN AFFAIRS, 3 July 2002, at [www.mfa.gov.il/](http://www.mfa.gov.il/)

MFA/Government/Communiques/2002/Indictment%20against%20terrorist%20involved%20in%20the%20terro.

force by Palestinians,<sup>92</sup> while the final draft was intentionally ambiguous. As enacted, the resolution edited out the crucial phrase “by all available means” that was taken to have sanctioned violence, but then inserted a reference to a previous General Assembly declaration in which armed force in pursuit of self-determination was authorized in virtually identical language.<sup>93</sup>

The interpretative debate that ensued was politically divisive. The change in wording between first and final drafts prompted Syria, Saudi Arabia, and other members of the Arab League to withdraw their sponsorship (but not their vote in favor) of the resolution as insufficiently supporting armed resistance. The identical change in wording prompted Spain, Ireland, and other members of the European Union to lend the resolution their support as properly condemning human rights violations.<sup>94</sup>

The Israelis and the Palestinians stressed, respectively, the veiled presence and the distinct absence of a reference to armed resistance. Ultimately, however, they seem to have come to an ironic agreement about the resolution’s meaning. During the course of the debate on the language of the document, the Israeli representative at the UNHRC opined that, “[t]he resolution legitimizes Palestinian aggression even with the removal of four words.”<sup>95</sup> For his part, the representative of Palestine at the debate chaffed at the suggestion that the wording had been manipulated;<sup>96</sup> however, seven months later he invoked the very principle that the Israelis had been contending was implicit in the resolution. In the wake of an attack by Palestinians on Israelis in the town of Hebron, Nabil Ramlawi, the permanent observer for Palestine at the U.N., wrote to the UNHRC reminding the members that the General Assembly and the Commission itself had authorized “[a]ll the forms of

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<sup>92</sup> Draft resolution of 9 April 2002, *supra* note 25.

<sup>93</sup> The final version of Resolution 2002/8 provides: “Recalling particularly General Assembly resolution 37/43 of 3 December 1982 reaffirming the legitimacy of the struggle of peoples against foreign occupation.” For the specific General Assembly reference, see G.A. Res. 37/43, 3 December 1982, at [http://domino.un.org/UNISPAL.NSF/0/bac85a78081380\\_fb852560d90050dc5f?OpenDocument](http://domino.un.org/UNISPAL.NSF/0/bac85a78081380_fb852560d90050dc5f?OpenDocument) (“Reaffirms the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and foreign occupation by *all available means, including armed struggle.*”) (emphasis added).

<sup>94</sup> K. Ramsay, reporter, “The International Movement Against All forms of Discrimination and Racism (IMADR),” Commission on Human Rights, 58<sup>th</sup> Sess., 12 April 2002 (voting on items 6 and 8, debate on Items II on the Questions of Civil and Political Rights).

<sup>95</sup> *Id.* at 4.

<sup>96</sup> *Id.* (“The resolution focuses on violations over the last year, and some refer to the current situation. It is not a political manipulation.”)

violence and the legitimate resistance of the Palestinian people against the Israeli military occupation of their territory...."<sup>97</sup>

The debate over armed resistance to foreign occupation is, first and foremost, a debate about the meaning and reach of the principle of self-determination.<sup>98</sup> The principle has been declared by the ICJ to be a legal right with "*erga omnes* character,"<sup>99</sup> and has even been debated as a possible rule of *jus cogens*;<sup>100</sup> nevertheless, there is still doubt as to the precise meaning of the term. There is, of course, an emergent consensus as to what self-determination does *not* mean, in that it includes situations of oppressive non-self-rule and excludes the non-oppressive variety.<sup>101</sup> As Vonnegut would say, legal rules, like artists, "should be treasured as alarm systems."<sup>102</sup> Beyond that, however, there is little agreement as to what the much-used phrase *does* mean. Billy Pilgrim, an optometrist by trade, is the vehicle through which Vonnegut must get the reader "[to] see a deep, surprising, and beautiful image of life".<sup>103</sup> To achieve such vision arising from the legal principle of self-determination is almost as unlikely as perceiving rational argument arising from the violence of war recounted in *Slaughterhouse-Five*.

The extent to which the law reflects the interest of the people within the self-determination territory seems as apt a place as any to illustrate the problem. International discourse on the point commences with a distinctly subjective voice, albeit one closely related to the objective narrative of the system itself. Judge Dillard, in his well known separate opinion in the *Western Sahara Case*,<sup>104</sup> posited the nexus

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<sup>97</sup> Letter from the Permanent Observer for Palestine to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights (Nov. 20, 2002), U.N. Economic and Social Council, Commission on Human Rights, 59<sup>th</sup> Sess., Provisional Agenda Item 8, Doc. E/CN.4/2003/G/17, 6 December 2002.

<sup>98</sup> See G.A. Res. ES-7/2 (1980), *supra* note 85.

<sup>99</sup> East Timor (Port. v. Austl.), 1995 I.C.J. 90, 102. *But see*, South West Africa (Eth. and Liber. v. S. Afr.), 1966 I.C.J. 6 (holding applicant states lack right or interest required to bring a claim alleging infringement of U.N. mandate for Namibian territory).

<sup>100</sup> See I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 513 (4<sup>th</sup> ed. 1990); *but see* J. CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 81 (1979).

<sup>101</sup> Reference re Secession of Qu9bec, [1998] 2 S.C.R. 217 (Supreme Court of Canada).

<sup>102</sup> K. VONNEGUT, JR., WAMPETERS, FOMA & GRANFALLOONS 238 (New York 1974)..

<sup>103</sup> J. Somer, *Geodesic Vonnegut; or, If Buckminster Fuller Wrote Novels*, in THE VONNEGUT STATEMENT 243 (J. Klinkowitz & J. Somer, eds., Delacore Press 1973).

<sup>104</sup> Advisory Opinion Rep.12 I.C.J. (1975).

between territorial rights and human rights as giving precedence to the latter: “[i]t is for the people to determine the fate of the territory, and not the territory the fate of the people.”<sup>105</sup> The court’s alter-ego on the subject of self-determination has been the Decolonization Committee, which has added its own distinctive point of view on the issue in the cases of Gibraltar and the Falkland Islands. The Committee has intervened in a surprising way,<sup>106</sup> engaging in a retroactive assessment of the disruptive effect of population shifts and thereby elevating the significance of territorial contiguity with a neighboring sovereign over the desires of the local population.<sup>107</sup>

The initial take on self-determination – Judge Dillard’s separate opinion – stands in the same relationship to the International Court of Justice as Kurt Vonnegut the first person character stands in relation to Vonnegut the omniscient author. When the biographical Vonnegut intrudes into *Slaughterhouse-Five* there is an instantly derogatory effect on the incorporeal narrative voice, as if the presence of a separate, corporeal identity undermines the authority of the story line. In Dillard’s case, he is both a part of the court’s majority and a scholar with his separate voice, articulating the stark way in which the doctrine of self-determination engages people rather than land. Indeed, his alternative, highly realistic dictum about people determining the fate of territory, makes a mockery of the antiquated discussion of *uti possidetis*, *terra nullius*, and other territorial rules pursued by the majority of the court.<sup>108</sup> The technique of mocking the omniscient author of which he is a part is mimicked by Vonnegut, albeit in a more sardonic, quasi-vaudevillian voice. At the very outset of *Slaughterhouse-Five*, Vonnegut, the first person character gives a separate opinion to the reader, exclaiming in frustration, “I would hate to tell you what this lousy little book cost me in money and anxiety and time.”<sup>109</sup>

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<sup>105</sup> *Id.* at 122.

<sup>106</sup> *Decolonization Committee, Cmnd.* 2632 at 14; G.A. Res. 2070, U.N. GAOR 20<sup>th</sup> Sess., Supp. No. 14, at 58 (1965) (encouraging a negotiated solution for Gibraltar as between Spain and the United Kingdom); G.A. Res. 2065, U.N. GAOR 20<sup>th</sup> Sess., Supp. No. 14, at 57 (inviting Argentina to participate in the Committee’s deliberations over the Falklands).

<sup>107</sup> In both the Gibraltar and the Falklands cases, the Decolonization Committee and the General Assembly have focused their analysis on a particular reading of paragraph 6 of the Declaration on the Granting of Independence to Colonial Territories and Peoples, G.A. Res. 1514 (XV), U.N. GAOR 15<sup>th</sup> Sess., Supp. No. 16, at 66 (1960) (“Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.”).

<sup>108</sup> *Supra* note 104, esp. para. 87 (“Western Sahara (Rio de Oro and Sakiet El Hamra) is a territory having very special characteristics...”).

<sup>109</sup> VONNEGUT, *supra* note 10, at 2..

The second take on self-determination – the Decolonization Committee’s preference of territory over people – comes as a legal alternative, or alter ego to the ICJ’s authorial voice. In the same vein, Vonnegut sets up his science fiction writer, Kilgour Trout, as the alternative authorial presence in his work. Vonnegut speaks through the persona of Trout much as the law speaks through the persona of the Committee, each being a pale creation of the figure or institution that spawned it. Indeed, the Committee’s actions in catering to the political whims of its members, cheapening its pronouncements in comparison with the weightier words of the international judiciary, finds sarcastic parallel in the low brow career of Vonnegut’s Trout. The science fiction works of Trout are said to lack intrinsic value, but Trout himself manages a difficult group of workers in a way that might be the envy of any Committee chair. “Not one of them has made money,” the reader is told. “So Trout keeps body and soul together as a circulation man for the Ilium Gazette, manages newspaper delivery boys, bullies and flatters and cheats little kids.”<sup>110</sup>

As a final matter, the entire question of self-determination has been addressed from the omniscient perspective of the General Assembly and the Security Council in the case of East Timor. Here the banal voice of institutional authority has opined that the self-determination of all peoples involved in conflicts over their governance must be given legal effect, whether they are characterized as colonies, states, or non-self-governing population groups.<sup>111</sup> The pronouncement seems to call out for a return to innocence, to a time of depoliticized, objective law.

In this cry for a simpler time, international law is reminiscent of Kilgour Trout as he appears in *Breakfast of Champions*,<sup>112</sup> dreaming of returning to his youth and receiving a second chance from his creator. “Make me young, make me young, make me young!”<sup>113</sup> he exclaims in a voice that, ironically, seems to resemble Vonnegut’s description of his own father. Of course, many people would like a second chance at life, the difference with Trout being that his creator, a novelist, can make it come

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<sup>110</sup> *Id.* at 166.

<sup>111</sup> G.A. Res. 3485, U.N. GAOR 30<sup>th</sup> Sess., Supp. No. 34, at 118 (1975) (calling on the people of East Timor to decide their own future); S.C. Res. 384, U.N. SCOR, 20<sup>th</sup> year, *Resolutions and Decisions*, at 10 (1975) (calling on Indonesia to facilitate self-determination in East Timor). See also, *Opinion No. 2*, Arbitration Commission, European Community on Yugoslavia, 92 I.L.R. 167 (1992) (“...the Republics must afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognized in international law, including, where appropriate, the right to choose their nationality.”).

<sup>112</sup> *Supra* note 30.

<sup>113</sup> *Id.* at 295.

true by starting a new story.<sup>114</sup> As a final stroke of indignity to the failed author, Vonnegut does make Trout young again three novels later in *Jailbird*,<sup>115</sup> but he places him in prison serving a life sentence. In similar fashion, many lawmakers would no doubt like to start from an empty legal slate; and, indeed, in the precedent-free world of international institutions the decision-makers can make it come true by starting a new story.<sup>116</sup> Like Vonnegut's author within the author, however, the legal pronouncements on self-determination are subject to a final indignity. The Security Council and General Assembly may start over with a clean doctrinal slate, but the law is banally repetitive, imprisoned by its own constructs even as it is liberated from them.

All of which explains how a field of law that increasingly contains the use of force within formally authorized settings, can endorse uninhibited attacks by irregular forces while eliminating their reference from its documents. The law has its own multiple personalities, each contaminating the other. Just as the Second World War firebombing of Dresden can be an appendix to a fantasy about Tralfamadorean notions of civilization,<sup>117</sup> so the UNHRC's embrace of liberation by any violent means can be an appendix to a fantasy about human rights. The documents speak for themselves in a chorus of contrary voices.

In a novel meant to come to grips with the mass death of war, one entire chapter of *Slaughterhouse-Five* is devoted to a television discussion about the death of the novel itself. During the course of the conversation, Billy Pilgrim, who is participating in the panel, expounds on his recent adventures in traveling through time and space with his half-nude Hollywood mate. Since one person's delusion is the next person's realism, the interjection – infecting reality with fantasy – makes sense from Billy's point of view but makes no sense from anyone else's. In much the same way, a hallucination about armed force begetting liberation can be injected into the doctrine of law restraining armed force, the law's authorship being composed of the relative voices of its characters. Since one people's oppression is the next people's liberation, the resolution – infecting pacifism with violence – makes sense from its

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<sup>114</sup> D. E. MORSE, *THE NOVELS OF KURT VONNEGUT: IMAGINING BEING AN AMERICAN* 104 (Westport 2003). (Trout is said to resemble Vonnegut's father, but as an author he is impotent to re-create Vonnegut (i.e. his erstwhile offspring) who, in circular fashion, is actually his creator.).

<sup>115</sup> KURT VONNEGUT, *JAILBIRD* (New York 1980).

<sup>116</sup> On the International Court of Justice's use and non-use of precedent *see*, *Certain Phosphate Lands in Nauru* Rep. 240 I.C.J. (1992).

<sup>117</sup> For a description of the relationship between 'reality' and 'fantasy' in Vonnegut, *see*, G. Meeter, *Vonnegut's Formal and Moral Otherworldliness: CAT'S CRADLE and SLAUGHTERHOUSE-FIVE*, in KLINKOWITZ AND SOMER, *supra* note 103, at 206.

supporters' point of view but makes no sense from anyone else's.

By making the extremes of fantasy and reality all but indistinguishable, however, these interjections threaten to expose, and to thereby kill, both the novel and the law. Reminding the audience of the relativity of reality undermines the enterprise of fiction; reminding the nations of the relativity of violence undermines the enterprise of law. Accordingly, Vonnegut tells us, Billy, the carrier of the message of narrative death, was "gently expelled during a commercial."<sup>118</sup>

#### D. The Burlesque of Legal Logic

The law of war is easy to update but difficult to understand. It travels backward and forward in time, with all of its contemporary themes found in statements of the past and all of its outmoded processes given prominence today. Collective international action regulated through institutional cooperation in warfare, and the sovereignty of a defensible and inviolable Iraq, inter-relate as time travelers in the politico-normative universe. At the same time, legal logic hides within multiple narrative personalities, and subjective and objective voices disguise and infect one another to form a doctrinally mixed-up chorus. Liberation from occupation, liberation pacifism, liberation from logic, all hide beneath the surface of resolutions aimed at advancing different meanings for Israelis, Palestinians, and others engaged with the Middle East.

The law of war has therefore become entangled in a temporal and interpretive battle of its own. Each pronouncement fights against either a relic from the past or its opposite contemporary number, and often can be seen fighting the war within itself. Legal logic, in other words, has become hidden among the clashing rules and the clashing nations. Like Vonnegut as author, it is almost unrecognizable "wearing dark glasses in the cocktail lounge of the Holiday Inn where he has assembled the chief characters for their violent interaction."<sup>119</sup>

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<sup>118</sup> VONNEGUT, *supra* note 10, at 206.

<sup>119</sup> C. Berryman, *Vonnegut's Comic Persona in Breakfast of Champions*, in BLOOM, *supra* note 11, at 63 (describing the climactic scene in *BREAKFAST OF CHAMPIONS* (1973), the novel immediately following *SLAUGHTERHOUSE-FIVE*).