

# Unilateral Measures and the Concept of Opposability in International Law

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## Outline

### 1. Introduction

Distinction between unilateral *acts* and the unilateral *measures*

Concept of Opposability

A Normative Framework

Legal	opposable	non-opposable	illegal
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### 2. The Relevant ICJ Cases:

*Fisheries* case of 1951 (United Kingdom v. Norway): The Court employed the concept of opposability for the ten-mile rule for the baseline of the mouth of a bay and the straight baseline of the territorial waters.

*Fisheries Jurisdiction* case of 1974 (United Kingdom v. Iceland): The Court found in its judgment of 25 July 1974 that it was “bound to conclude that the Icelandic Regulations of 14 July 1972 establishing a zone of exclusive fisheries jurisdiction extending to 50 nautical miles ... are not opposable to the United Kingdom”.

### 3 . The Concept of opposability (as compared to legality)

- (1) The unsettled state of the applicable law
- (2) The causes of action: determination of the external effect
- (3) The scope of the normative effect: particular bilateral relationship

The component elements of opposability

- (1) Effectiveness and legitimacy
- (2) Good faith

### 4. A Shift of Applicable Law from the UN Charter to General International Law

- (1) Precedents: Korea (1950-53); Teheran (1980); Falklands/Malvinas (1982)
- (2) Article 2(4) as a “function” of Chapter VII of the Charter
- (3) Paralysis of *lex specialis* and the return to *lex generalis*

## 5. Legal Assessment of Unilateral Forcible Measures

NATO actions over Kosovo (1999): “Illegal but justified?”

Security Council resolution 1160 (Mar.31, 1998); 1199 (Sept. 23, 1998)

On-going, large-scale human rights violations and the failure of the Security Council to respond

Security Council resolution 1244 (June 10, 1999): *post hoc* legalization of the use of force by NATO

G-8 Summit and the reform of the Security Council

## 6. Conclusion

### Bibliography

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2. “The Relationship between the United Nations Charter and General International Law regarding Non-use of Force: The Case of NATO’s Air Campaign in the Kosovo Crisis of 1999”, *Liber Amicorum Judge Shigeru Oda*, Kulwer Law International, 2002, pp.1543-1553;
3. “Unilateral Responses to International Terrorism: Self-defense or Law-enforcement?”, in Sienho Yee & Jacque-Yvan Morin, eds., *Multiculturalism and International Law, Essays in Honour of Edward McWhinney*, Martinus Nijhoff, 2009, pp. 429-444.