

A black and white photograph of a woman in profile, facing right. She is wearing a military helmet and a large headset with a microphone. The lighting is dramatic, with strong highlights on her face and the headset, and deep shadows elsewhere. The background is dark and out of focus.

THE OFFICER

July / August 03 Volume 15 Issue 5
£4.00 US\$7 €6 Saudis Riyals 25

Women and War

A History from WWI
to the Present Day

Why we are There

War Graves

Operation Iraqi Freedom: Legitimate or not?



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on international security

As soon as the military fighting in Iraq was over, the political fight started over the legitimacy of 'Operation Iraqi Freedom'. Marcel de Haas tackles the problem from a perspective of international relations and international law.

On 19 March 2003 American and British Forces invaded Iraq to end the regime of Saddam Hussein. A month later the war was largely finished and the dictatorship removed. What will be the future of Iraq and of international cooperation within organisations such as the UN, NATO and the EU? This article attempts an explanation on the basis of the UN Charter and the often-quoted Security Council Resolution 1441.

International law

In assessing the legitimacy of the use of force, we should take a look at the internationally accepted judicial principles of using violence, as laid down in international law. The Charter of the UN is regarded as the leading document of international law. The Security Council of the UN (UNSC) is the primary body of ensuring international security.

According to the Charter the

objectives of the UN are, amongst others, to maintain international peace and security, to strengthen universal peace and to encourage respect for human rights and for fundamental freedoms for all. With regard to the use of force, the UN Charter is quite explicit: the use of force is prohibited, with the exception of use of force by the UNSC or in self-defence.

Another important aspect which should be taken into account is the ban on UN interference in domestic affairs of a state, which is described in the so-called non-intervention or sovereignty principle. Specific measures of maintaining or restoring peace and security are explained in two chapters of the Charter. Chapter 6 describes pacific settlement of disputes, which are to a large extent in the field of diplomatic mediation and negotiations. Chapter 7 mentions enforcing action with respect to threats to and breaches of the peace, as well as to acts of aggression. These measures are for instance (economic) sanctions and the use of military force. The UNSC declares these decisions in its resolutions.

The Gulf War of 1991 and its aftermath

The Iraqi invasion of Kuwait in August 1990 was a breach of international peace and security. In reaction to this the UNSC, in accordance with Chapter 7, decided to use enforcing measures against this act of aggression. The outcome was that US-led coalition forces, acting under the auspices of the UNSC, in 37 days of air power action and 100 hours of ground operations ended the Iraqi occupation of Kuwait in January and February 1991.

Considering the non-intervention principle, the corresponding resolutions did not allow the coalition forces to get rid of the aggressive regime in Baghdad. However, UNSC Resolution 687 did specifically make clear that a ceasefire would be based on acceptance of and full compliance by Iraq with the provisions of that resolution, including the (disarmament) obligations on Iraq contained therein.

In the following 12 years, it became more and more clear that Saddam Hussein did not care about these disarmament obligations. In verifying Iraq's compliance with the disarmament commitments, UN weapons inspectors were obstructed, manipulated and finally, in December 1998, removed from the country. Not only in the West, but also in UN circles, suspicion grew that Iraq was continuing the production of Weapons of Mass Destruction, which later would be referred to in UNSC Resolution 1441.

After the terror attacks of 11 September 2001 the USA, supported by Britain, found Saddam Hussein's behaviour was a reason to increase the pressure on Iraq to comply with the UNSC resolutions of 1990/1991. Furthermore, the USA made a case for the option to use force, preferably by the UN, if Iraq continued its policy of violating its disarmament obligations.

UNSC resolution 1441

On 8 November 2002, the UNSC unanimously adopted the well-voiced Resolution 1441. In addition to an enumeration of breaches of the resolutions of 1990 and 1991, the UNSC explained in this resolution that further non-compliance of the ceasefire condition, the disarmament clause, was unacceptable.

For an assessment of the legitimacy of the US-British attack on Iraq, two aspects of '1441' are of vital importance. First, 1441 mentioned that the UNSC acted under Chapter 7 of the UN Charter and recalled that Iraq would face 'serious consequences' as a result of continued violations of its obligations. In doing so, the UNSC opened the door for enforcing action if it deemed this necessary.

Second, 1441 decided that Iraq was to provide a currently accurate, full, and complete declaration of all aspects of its programmes of Weapons of Mass Destruction, delivery vehicles and other aspects, no later than 30 days from the date of 1441.

There has been much discussion on the following reports of the UN weapons inspection commission. However, one thing was clear; Iraq

'Resolution 1441 opened the door for enforcing action if the UNSC deemed this necessary'

Opposite: Iraqi workers, assisted by the plant of 32 Regiment, Royal Engineers, part of 7 Armoured Brigade, extinguish an oil pipeline fire. Below: Local Afghan Girl in Kabul. Corporal Neil Jamieson 29 from Aberdeen, is copied by some Afghan children whilst on foot patrol in Kabul.



'International law had failed and action was left to the remaining superpower, the USA'



did not deliver a *full and accurate* declaration of its arms programme within that period.

Politics and the 2003 Gulf War

Two of the permanent members of the UNSC, Russia and France, were in favour of prolongation of the UN weapons inspections. However, their intentions were not purely idealistic in the field of conflict prevention. Their motives were also related to longstanding economic and military cooperation with Iraq. In their efforts for the continuation of the weapons inspections' work they were supported by China and Germany. However, the USA and the UK considered the use of military force, as a result of prolonged breaches of 1441, inevitable.

At this point the weakness of international law was demonstrated. A national judicial system, such as the British one, is a closed circuit. When a court has pronounced its verdict this is binding. The judge cannot be overruled by, for instance, the Executive. However, international law is law between states. States are sovereign, they have the sole right to determine if and which part of their national authority they will transfer to an international body, such as the UN. The international arena is

anarchistic: there is no overall authority. Therefore states determine whether they should adhere to international law.

Subsequently, in the case of Iraq, France, Germany, Russia and China did not wish to carry into effect the 'serious consequences' of 1441 following Iraq's continued non-compliance. Next, without permission of the UNSC, the USA and Britain decided unilaterally to go forward with the use of force against Iraq, in order to implement these consequences according to Chapter 7 of the Charter.

Although, strictly speaking, this unilateral action clashed with the non-violence and non-intervention principles of the UN Charter, it was understandable as other powers in the UNSC ran away from their responsibilities for international peace and security regarding Iraq. Once again, these powers allowed Saddam Hussein to get away with UNSC resolutions, which were binding elements of international law.

These developments demonstrated that international power play and game plan could overrule international law. In this respect it should not be forgotten that for a number of decades Iraq had formed a threat, not only in this region, in waging wars against Iran, Kuwait

and the Kurds, but also on a global level with its weapon programmes. It was deplorable that in this case the UNSC failed to take its responsibility and consequently international law failed and action was left to the remaining superpower, the USA. Within a month after the US-led coalition forces started the invasion of Iraq, Iraqi forces were defeated, Hussein's regime collapsed and Baghdad was taken.

Consequences for international cooperation

This Iraq war showed an unprecedented split in the Western camp. Until then in the UNSC the dividing line was usually drawn between the Western, democratic camp and other more totalitarian states, such as Russia and China. Russia's President, Vladimir Putin, ingeniously made use of the division amongst Western powers to improve Russia's international position. He did so by encouraging an ad-hoc coalition of Russia, Germany and France in, if necessary, vetoing the UNSC attempts of the USA and Britain to adopt a resolution on using force. Although since then leaders of both sides in the Western camp have regularly stated that differences were solved, it is quite

likely that this split will continue to influence international security politics, for instance in deciding upon UN military operations.

This discord among Western powers has also seriously affected NATO. Nowadays NATO acts as a regional organisation in charge of maintaining or restoring peace and security, for instance in the former Yugoslavia and in Afghanistan. These fundamental differences will not promote decision making and thus effectiveness of the security policy of the alliance. In spite of the reassuring statements mutual relations are structurally damaged in NATO.

During the past couple of years the EU has developed ambitious plans for a security and defence policy with a military force to implement it. France has always endeavoured to play a leading role in Europe's (military) policy. After Iraq, France even strengthened this wilful course together with her partners – Germany, Belgium and Luxembourg – in its position regarding Iraq.

This coalition-of-four announced a number of plans to reinforce an independent European defence force, for instance by creating a headquarters. These plans have a tendency of being unrealistic. With the exception of France, the coalition partners constantly cut their defence budgets. If this European defence force is to act independently from the USA, this would demand huge investments in command-and-control systems, strategic air- and sealift capacities, as well as communications and intelligence equipment.

When these nations in NATO do not live up to the agreed demands of this alliance, these ambitious plans for an independent European defence force seem to be a utopia. Furthermore, since these plans have been developed without the participation of the other EU member states, this policy of the coalition-of-four might further complicate the already backbreaking development of the common foreign and security policies of the EU.

Thus, the 'case of Iraq' has intensively damaged cooperation of Western powers in international forums, which also affects the enhancement of international peace and security.

The future of Iraq

In the present situation, in which the military operation in Iraq to a large extent is completed, from a point of view of international law it seems fair to have Iraq's future resolved by the international community: the UN. The UNSC adopted a resolution in which the USA and Britain were bestowed with considerable powers to control Iraq during the phase of transition between Saddam Hussein's regime and a new, democratically chosen Iraqi government.

It is understandable that the USA wishes to maintain a firm grip on further developments in Iraq, in order to prevent one dictatorship being succeeded by another. However, the next Iraqi government should not necessarily be pro-American. More importantly, the new government should refrain from extremist (Islamic) and totalitarian foundations and should have the support of a majority of the population.

In overseeing such a constructive development, the USA should proceed with transferring as many elements as possible of the peace-building to the UN and its dedicated organisations. 'Peace-building' forms one of the instruments of the UN concept for management of international security, which were written down in 'The agenda for peace' and its supplement in the first half of the 1990s.

According to this concept the following measures should now be taken in the aftermath of the conflict: humanitarian aid, disarmament, rebuilding governmental institutions, restoration of law and order, repatriation of refugees, elections and protection of human rights. The implementation of this action plan demands cooperation between both the parties involved. The USA should speedily transfer increasingly more of these tasks to the UN. After its failure to act decisively in military affairs, the UN should now show its responsibility to carry out peace-building action in Iraq. Thus, the USA together with the UN can create the conditions necessary for enhancing a better future for the Iraqi people and a stable security for the region.

'The USA should speedily transfer tasks to the UN. After its failure in military affairs, the UN should now show its responsibility to carry out peace-building'

Opposite: The UN was handicapped in Bosnia by never having sufficient troop levels. Despite promises very few countries contributed what they said they would
Below: The UN can work alongside national contingents as shown below in Sierra Leone



