

Replies and Comments:

Kate Greenwood

For comments:

kate.greenwood@ruhr-uni-bochum.de

0049.234.3227935

On the web

<http://www.ifhv.de/>

Focus

“The people of the United States and our friends and allies will not live at the mercy of an outlaw regime that threatens the peace with weapons of mass murder. We will meet that threat now with our Army, Air Force, Navy, Coast Guard and Marines so that we do not have to meet it later with armies of firefighters and police and doctors on the streets of our cities.”

President Bush,
March 20, 2003

“Any attempt to intervene to change regimes by force is rejected, based on the premise that regime change is an internal affair of any state.”

President Mubarak,
March 19, 2003

<http://www.horstfischer.info/iraq.asp>
contains the full text of the above statements.

[such a right must] 'show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment of deliberation...[the act of selfdefence must also involve] nothing unreasonable or excessive'.

US Secretary of State, Daniel Webster, 1842
in response to the Caroline Incident.

Voting Saddam off the Island - Regime Change and International Law

Last October, clear differences on the scope of measures to be taken against Iraq emerged between the United States and the United Kingdom and others seeking Iraq's compliance with the Security Council resolutions for disarmament and destruction of weapons of mass destruction. The United States government stated that regime change was a desirable if not a necessary outcome. The more measured stance of the United Kingdom government was that full compliance with the Security Council Resolutions was its objective but that “Iraq would be a better place without Saddam Hussein” and they were determined to deal with the threat posed by Iraq's possession of Weapons of Mass Destruction. The position of the countries of the Gulf Cooperation Council was against intervention in regime change despite being most at risk by virtue of geography and having the most to gain from the removal of President Saddam Hussein.

All members of the UN are obliged under Article 2(4) of the Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. Any efforts which incorporate a regime change would need to be justified as a use of force authorised by the Security Council exercising its chapter VII powers under the Charter (For a discussion of the effect of Resolutions 678, 687 and 1441 see the Bofax #241) or as an exercise of the right of self-defence, including the rights to exercise collective self-defence.

Although the exercise of self-defence under Article 51 of the Charter is confined to responses to armed attacks, the customary international law of self-defence allows greater scope to a State to take preventative measures in anticipation of an armed attack. However questions arise as to whether the coalition parties have sufficient grounds to use force even on this basis. There is no request for assistance coming from Iraq's neighbours who feel directly threatened by the weapons of mass destruction and who support regime change. Further, the presence of a medium to long term danger does not justify the use of force in self-defence as such a threat should be addressed collectively under the mechanisms of the Charter. Although over eight thousand litres of Anthrax and one thousand tons of chemical warfare agents and their chemical precursors which were declared to UNSCOM were neither declared to UNMOVIC nor their destruction accounted for, the coalition could not convince other Security Council members that the threat justified immediate action beyond continuation of weapons inspection. The coalition must demonstrate an immediate danger in order to exercise collective self-defence and their measures must be necessary and proportionate. The most serious concern expressed by the UK parliamentarians was that there is no “clear and present danger” to the UK to justify such action under international law.

It has been argued that recent action has simply made a totally ruthless and unpredictable dictator more dangerous and created greater medium and long term threats to international security yet such effects still do not clear the threshold required in international law.

Precedents for regime change outside the framework of the Charter occurred in 1979. Vietnam, in response to threats to its security, sent forces into Cambodia to oust Pol Pot and his murderous Khmer Rouge regime. The move was criticised by both the Security Council and the General Assembly. In contrast, when Tanzanian forces entered Uganda and assisted Ugandan dissidents to depose Idi Amin and when French forces expelled the repressive Bokassa regime from what is now the Central African Republic, the U.N. chose not to condemn the intervention.

Unlike Kosovo where humanitarian intervention by coalition forces outside the strict operation of the Charter had broad support in the international community, the actions by the coalition has attracted widespread criticism. Subsequent disclosure of the facts may possibly justify the assessment of threat driving current coalition action but it is a high-risk strategy with the survival of international and regional security organisations and the rule of international law at stake.

Responsibility

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