

No. 302E

29.01.2008

# BOFAXE



## Iran and the US – Will the Global War on Terrorism and Rouge States Continue?

### Autor und Nachfragen

Mag. iur. Andrej Zwitter

Marie Curie Fellow am Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht

### Nachfragen:

andrej.zwitter@rub.de

### On the Web

<http://www.ifhv.de>

### Focus

According to Bush Iran is the next on the list of rouge states (Bush, George W., *Address to a Joint Session of Congress*, 20. Sept. 2001). The US government is concerned that Iran could support terrorists with nuclear weapons ([www.whitehouse.gov/nsc/nsct/2006/sectionV.html](http://www.whitehouse.gov/nsc/nsct/2006/sectionV.html)). Recently the clash between five Iranian speed boats and three US navy ships gave again rise to the concern that a military invasion of Iran is more likely than thought (Spiegel Online, *Gefährlicher Zwischenfall im Persischen Golf - Bush-Regierung droht Iran*, 07. Jan. 2008).

The character of the Global War on Terrorism (GWOT) started with being a political rhetoric but it led to concrete consequences in law and practice. The term "GWOT" was first introduced by George W. Bush in an address to a joint session of Congress and the American people on September 20, 2001, nine days after the terrorist attacks on the World Trade Centre and the Pentagon. The military aspect of the GWOT is based on the primary premise that the occurring terrorist attacks against the United States and its allies constitute an act of aggression which would allow military measures. Bush "walked the talk" and the United States started with concrete measures, in particular the war against Afghanistan called "Operation Enduring Freedom" and the Iraq war.

In general, the UN-Charter is very clear about what the purpose of the UN and the duties of the states are in relation to peace. This goes beyond a mere prohibition of aggression. The most important purpose of the UN is (leg cit Article 1.1) to maintain international peace and security by collective measures of prevention with the priority to settle disputes or other situations, which might lead to a breach of the peace, by peaceful means and in conformity with the principles of justice and international law. This purpose of the UN is furthermore stressed when it comes to the principles of the UN which are legally binding obligations of the states. States shall refrain from the threat or the use of force in any manner which is inconsistent with the purposes of the UN (Article 2.4). And also the states should settle their disputes by peaceful means (Article 2.3). Additionally, the Security Council "[s]tresses that the essential responsibility for conflict prevention rests with national Governments, and that the United Nations and the international community can play an important role in support of national efforts for conflict prevention and can assist in building national capacity in this field and recognizes the important supporting role of civil society" (S/RES/1366 (2001), para. 2). That there was no Security Council resolution for directly justifying the Afghanistan war did not make the action of the US an unlawful self-defence. According to Article 51 of the UN-Charter nothing impairs the right to self-defence as long as the Security Council has not taken measures. This means *argumentum e contrario* that the state can use military measures of self-defence as long as the Security Council does not declare these measures unlawful; the state does not need an authorization of the Security Council. However, the injured state has to declare to the President of the Security Council that it has been attacked and that it will rely on self-defence in order to enable the Security Council to take measures (legally binding for all states) under Chapter VII of the UN-Charter. The right to self-defence of Art 51 only applies if an act of aggression occurs. Though it is disputed whether the definition of aggression annexed to the General Assembly resolution 3314(XXIX) is legally binding, it could be taken as a reference (in particular because the International Court of Justice [ICJ] considered it reflecting customary international law (see *Military and Paramilitary Activities in and Against Nicaragua*, 1986). Article 1 of the annex to the General Assembly resolution on the Definition of Aggression defines what constitutes an act of aggression: "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State [...]." According to Article 2 the prima facie evidence for an act of aggression is the use of armed force regardless of a declaration of war (Article 3). The ICJ decided in his *Nicaragua* judgment that certain gravity must be reached, which goes beyond a mere frontier incident carried out by regular armed forces, to constitute an act of aggression.

This leads to the conclusion that, first of all, the states are obliged to settle their disputes peacefully (a positive duty). This is further emphasized by the prohibition of aggression (a negative duty). The incident in the Persian Gulf did not reach the necessary threshold but it was a clear political statement of the US towards Iran on its duty to comply with the Security Council resolutions regarding its nuclear program and to take actively part in the GWOT.

### Verantwortung

Die BOFAXE werden vom Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht der Ruhr-Universität Bochum herausgegeben: IFHV, NA 02/33 Ruhr-Universität Bochum, 44780 Bochum. Tel: 0049234/3227366, Fax: 0049234/3214208.

Die BOFAXE werden vom Deutschen Roten Kreuz unterstützt. **Für den Inhalt ist der jeweilige Verfasser allein verantwortlich.**