

Iraq - the Legality of War Issue

Military action against Iraq, now even without a second¹ UN resolution, would not be illegal under international law. While numerous Security Council resolutions culminating with Resolution 1441 have declared Iraq to be in breach on the matter of weapons of mass destruction this is not the only basis on which any permanent member of the Security Council would be empowered to act independently to maintain or restore international order and security.

When the UN Charter was adopted after the 2nd World War the surviving 'Great Powers'¹ deliberately withheld from themselves the constraints that were to bind other UN members. Their 'veto' not only precluded them from being bound by ill-considered or unacceptable Security Council decisions; it also reserved to them the right to act independently of the UN if they judged that to be in their vital national interests. Does anyone think that the USSR, as it was, or China now, ever thought otherwise? This has always been the reality of the UN 'security' system.

Australia, not being a permanent member of the Security Council, would normally be constrained by the absence of specific UN authorisations. But Australia was not constrained in the case of the Vietnam War. Nor in the case of the Korean War, which as it happened was not authorised by the Security Council either (though it was covered to some extent under the Uniting for Peace Resolution of the UN General Assembly). Kosovo is an example of intervention against a sovereign state on humanitarian grounds without UN cover (as would now apply to Iraq) - and accepted as a matter of international law. Does anyone now think that similar action would not have been justified in Rwanda and Cambodia with or without UN cover?

Beyond all that, Australia has the right to act first and foremost in its own self-defence¹. The US has decreed that Iraq represents a clear and present danger not only to US security but to world security. As a party to the ANZUS treaty Australia has obligations to the US which it could ignore only to its longer term prejudice - mindful that no one respects fair weather friends and allies.

Indeed, if the UN (like the League of Nations) shows itself to be ineffectual in dealing with delinquent states then it is reasonable to argue that responsibility for world security should lie with those states with the capacity and political will to seek it. This is the reality that should underlie any effective legal order.

While popular expressions about war are of course a feature of democracy and can be critical to the survival of governments, this is a separate matter from whether or not the US, Britain, and Australia, and their willing allies, would be acting illegally if in their judgment enforcement action against Iraq (and elsewhere) would be justified and necessary for world security.

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