General Articles

The Law of Use of Force at the Turn of the Millennia

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Contents

1. A Short Historical Excursion: From the Peloponnesian War to the Gulf Wars
2. The Charter Paradigm on the Use of Force
3. Terrorism and the Law on Use of Force
4. Specific Characteristics of Self-defence against Terrorist Attacks
5. Terrorist Organizations and States Supporting Them
6. Use of Force and Formalism versus Dynamism in International Law

This article is being written as the United States, Great Britain and their allies are preparing to invade Iraq to 'disarm' Saddam Hussein and to carry out a 'regime change' – an unfinished business that, in this author's opinion, should have been finished in 1991. Especially, since Security Council Resolution 678 of 29 November 1990 authorised States, in cooperation with Kuwait, to use all necessary means not only to uphold the previous Resolutions of the Council concerning Iraq but also 'to restore international peace and security in the area' (emphasis added). Saddam Hussein's regime is a permanent threat to peace and security and its containment by sanctions has only hurt Iraqi people, not the regime. At the same time, in London, Glasgow, Berlin, Paris, and Rome and in a host of other cities, millions of people participate in anti-war marches, but they are not protesting against North Korea's long-range missiles and pullout from the nuclear non-proliferation treaty and threats to South Korea, or Saddam Hussein continuing to present a threat to international peace and security. Millions in Western democracies are protesting against the policy of their democratically elected governments. Similar demonstrations against American and British imperialism were organised by the Iraqi regime in Baghdad. In a way, Western peaceniks involuntarily performed the role of

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1 SC Res.678, 29 November 1990.
what Vladimir Lenin in similar circumstances had called ‘useful idiots’ for the Iraqi regime. Lenin then, like Leonid Brezhnev in the 1970s and 1980s when the US was introducing medium range missiles in Western Europe or Saddam Hussein today, was utterly cynical. Most of those in Western democracies who demonstrate for peace are not only genuinely concerned what wars mean for peoples but they also have many valid questions to ask of their elected governments. One thing they lack, however, is the inside knowledge of the regimes that shamelessly exploit their genuine concerns. How to explain such contradictions and what can be done to resolve them are important political and even philosophical questions. However, for international lawyers today there is an urgent need of revisiting and reviewing some of the familiar notions of the law concerning use of force, since with terrorists and dictators like Saddam Hussein and Kim Chong-il of North Korea, force seems to the only language they understand.

1. A Short Historical Excursiou: From the Peloponnesiau War to the Gulf Wars

Depending on what one expects from international law, legal regulation of use of force (jus ad bellum) is either at the very centre of international law, or there is very little law in it since these matters are determined by politics only (i.e. by power-politics). In my opinion, the nature, content and effectiveness of this branch of law mirror the very nature and limits of this legal system, much more clearly than any other domain of international law. To help to grasp the essence of current confusion and trends in this area of international law, it is advisable to have a short but comprehensive overview of how international law’s attitude towards use of military force evolved.

Thucydides’ History of the Peloponnesian War demonstrates complete absence of any legal (or even legal-moral-religious) limits to recourse to war. As Thucydides writes, ‘the Athenians and the Peloponnesians began the war after the thirty-year truce’ since ‘Sparta was forced into it because of her apprehensions over the growing power of Athens’. This sounds quite familiar and contemporary since there seems to have been a violation of the balance of power that caused one party, Sparta, to ally with smaller Greek city-states to form the Peloponnesian League, which aimed to counter militarily the Delian League headed by Athens. But differently from today’s world, or even from yesterday’s, Greek city-states did not feel any need to

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