

Seminar Report

**A Report on the International Seminar on
"Peace, Security and International Law:
An Outlook into the Future"
St Petersburg, April 12, 2003**

K. Santhanam

Background

As Iraq War 2003 wound down with a surprisingly easy ride to Baghdad for President George W. Bush, the Heads of State of France, Germany and Russia held a summit meeting on April 11, 2003 in St Petersburg. Public statements after the summit indicate that they highlighted the need for the UN to play a 'central' role in post-war Iraq. Foreign Minister Igor Ivanov said on the eve of the summit that UN's authority "must be used to achieve a political settlement in Iraq within the shortest time possible."

This "centrality" of UN has been tossed around in the past fortnight and is in direct conflict with the US position that post-war governance/reconstruction would be enabled/handled by the victorious coalition. Paul Wolfowitz, US Deputy Secretary of Defense said that, "The UN can be an important partner. But it can't be the managing partner .It can't be in charge." Secretary of State Colin Powell said. "I am not sure what `central' means." Secretary-General Kofi Annan was 'invited' by the US Administration to send a representative to the meeting convened in Nasiriya on April 15, 2003 to explore ways for setting up a new Iraqi Government. He declined it and said that no UN official would attend the meeting until the roles of the UN and the Security Council are defined and resolved.

German Chancellor, G. Schroeder was conferred a D Litt Honoris Causa by the Academic Council of the Faculty of Law of the St. Petersburg State University on April 12, 2003 is the 300th anniversary of the founding of the city and a worthy occasion to honour a President who took the 'courageous' stand of opposing US 'unilateralism' in the Iraq War. The 'quickie' international seminar organized after the special convocation by the Russian Association for International Law and the

University to coincide with the summit is to be viewed against this background. The theme was "Peace, Security and International Law: An Outlook into the Future".

The three Heads of State made protocol-free short presentations in spartan surroundings to the 100-strong international gathering of lawyers, professors, former diplomats, international relations experts and security analysts. They stayed throughout the first session of about two hours when about 11 participants gave their opinions. This itself was a pleasant surprise given the fact that political leaders are, generally, ill at ease with scholars and make a hasty exit after reading from a prepared text. The session was interactive.

For a seminar organized at short notice, the gathering was quite impressive. There were about 40 foreign participants from 12 countries: France, Germany, USA, UK, India, Sweden, Italy, Netherlands, Turkey, Poland, Estonia, and Belgium. China was, oddly, missing.

Views expressed in the Seminar

French President, Jacques Chirac said that, a "dialogue between countries" is necessary and asked whether our vision of the future is one in which multi-polarity is to be followed or the world 'bows to the will' of one country. Isn't multi-polarity better in a complex inter-linked system of countries?

Russian President, Vladimir Putin echoed the sentiments of President Chirac and Chancellor Schroeder and generally conveyed the following points: a) multilateralism is important in managing world affairs; b) the centrality of the UN in conflict prevention and resolution should be recognised; c) the UN is a working instrument though improvements are needed; and d) international law needs to be respected, despite the case for amendment to keep pace with the times.

Dr V.S. Ivanenko, Head of the Dept of International Law at the University and Prof A.L. Kolodkin, President, Russian Association of International Law summarized some points from their 'common' report which said that: a) existing legal instruments were made for 'another period' and are inadequate for dealing with issues like regional armed conflicts, terrorism and organised crime; hence there is a need for improvements via the UN; b) there is a need to involve citizens in the decision-making process in application of military force; c) interference in the affairs

of a country without UN approval is impermissible; and d) the Kosovo and Iraq War episodes are illegal, unacceptable precedents.

The Russian legal perspective on Iraq War 2003, in draft form, was available. Its translation is given in Annexure # 1. Its 'common conclusions' about the Iraq War are:-

- It is not sanctioned by the Security Council, which is necessary according to Chapter 7 of the UN Charter.
- It is "unprovoked" and is, therefore, not an act of self-defence according to Article 51 of the Charter.
- It has been waged in violation of Resolution 687 (the section on non-violation of the Demilitarised Zone between Iraq and Kuwait) and Resolution 1441 (the necessity of UNMOVIC and IAEA reports with the determination of non-compliance with disarmament obligations by Iraq as the basis for further actions of the Security Council).
- Unilateral use of force by USA through a 'wide and free' legal definition of international terrorism is an unacceptable tendency in international affairs.

Dr Jan Denis Mouton (France) said that the world needs, now, a political organisation of a 'new type' to consider common political options. He suggested a 'Pan Europe' organisation. Dr Simon Peterman (Belgium) echoed this thought and added that EU should be in the Security Council now that it is enlarging.

Prof Theodore Schweissfort (Germany) criticised USA for breaking away from Article 51 of the UN Charter and said that its 'pre-emptive self defence' actions are illegal. He said that USA should return to international norms.

Dr Konstantin Khudoley (St Petersburg) said that the UN system was reasonably alright during the Cold War in preventing a direct conflict between USSR and USA. But the period also witnessed the Vietnam and West Asian wars. Regardless, the UN is very much needed today.

Prof Yuri Kolosov (Moscow) said that Article 51 is alright but evidence/information should be provided for justifying armed attack on one country by another. Secondly, applicability of the Article to States sponsoring terrorism or to non-State actors is open to question. Resolution 1368 which refers to 'any act of

terrorism' as constituting a threat to international peace and security is vague in formulation and open to different interpretations. As the law stands today, 'ethnic cleansing' is defined but not 'genocide'. Since USA has chosen to stay away from the International Criminal Court, there would be little or no incentives for other countries to join the Court. Further, Article 33 on peaceful resolution of disputes could be strengthened easily without recourse to any amendment; a mere protocol signed by the parties would suffice.

Prof Igor Kulashok (Moscow) said that international laws are more effective than national laws. It is necessary to 'stick to your own lanes/lines'. Driving a car at 10 kmph in the wrong lane is not necessarily safe or right. It could cause grievous injury to the driver. "It applies even if one is inside a tank".

Prof Celeste Wallender (USA) said that it is premature to bring the UN into Iraq because peace enforcement is in progress; peace keeping can follow only later. And, USA feels that the effectiveness and commitment of the UN are weak. "We have to be clear on what tasks are to be achieved effectively before discussing what instruments are to be used." Further, it is necessary that 'self-discipline' should go hand in hand with 'self-interest' of countries while balancing short-term benefits against long-term goals.

Prof B.C. Vershetin (International Court of Justice) highlighted the competence and jurisdiction aspects of international law. He recalled the role of Prof Martins of the St. Petersburg University who, in 1900, proposed a new 'Concord' at the Hague Conference and paved the way for conduct of international affairs between nations at the beginning of the 20th century. The world needs a new Concord.

Prof L.N. Galenskaya (St Petersburg) stressed the inadequacy of the international system in dealing with collateral damage and monetary compensation to civilian populations affected by recent conflicts, including those in Yugoslavia and Afghanistan. "Why should the rest of the world pay for reconstruction of Iraq when it has been deconstructed by USA and UK?" He also said, "We have swallowed the aggression of USA". The only recourse to such populations is to lodge claims in various courts. "It is easy to speak about humanitarian relief when one is not in the queue".

Prof K Rowny (Poland) said that there is still hope for the world from the rigidity of national postures as demonstrated in protection of the environment. A number of organizations and groups have challenged the theories of experts in International Relations and the practices of governments to push the agenda of Sustainable Development via Stockholm 1972, Rio 1992 and Johannesburg 2002. "Much remains to be done; but much has also been achieved. But countries can be goaded towards common goals." Also, international law should not be seen in isolation; lawyers and governments need to think and work out implementation mechanisms at a number of levels.

Prof Carl Cuttler (Florida) reminded the gathering that, "Public Relations is what we tell the world. Integrity is what we do when no one watches". He said that the UN has an opportunity. "If we care about each other, we can bring it about."

The author said that laws may be imperfect but they are important. There are persisting differences and doubts on the legality of the war on Iraq. The theory and practice of pre-emption with an "extended" concept of self-defence would need more international debate before acceptance as a tool in international security management.

Impressions

Though organized at short notice, the seminar captured well the legal and political aspects of the Iraq war. By design or default or the dead weight of legal logic, the overwhelming impression left is that the war is illegal and the 'regime change' policy undertaken by USA in Iraq through pre-emptive action bodes ill for the international order. Discussions were also focused on the right and legal procedures in the recovery and reconstruction phase.

Secondly, there was near-unanimity that the UN should be brought into the crisis as early as possible both in government formation and reconstruction. But a time frame was not mentioned.

During informal discussions with a wide spectrum of participants, the third impression created is that the divide between USA and Europe (especially France and Germany) - as well as Russia - could/should be quickly bridged. And, 'major powers' like India ought to be interested in the process of strengthening the UN system.

A Legal Perspective of the US Intervention in Iraq

On March 20, 2003 US, UK and their allies began military operations against Iraq and a number of legal points in support were presented to the world. These are listed and analysed below.

According to UN Security Council Resolution 687 of April 3, 1991, the situation in Iraq prior to the intervention comes under the purview of Chapter 7 of UN Charter (the Security Council ...shall determine the existence of any threat to the peace.... and shall make recommendations according to Chapter 7 etc). Therefore, actions of the international community towards Iraq should be according to Chapter 7 of the UN Charter.

One of the main features of this chapter is to provide international armed forces through UN Security Council approvals/sanctions to maintain or restore international peace and security. Chapter 7 of the UN Charter talks of 'necessary actions' to maintain or restore international peace and security through Articles 41-42 as well as Article 53 under Chapter 8. The Security Council did not authorise such sanctions against Iraq. Therefore, the enforcement actions of US, and UK are assessed to be in violation of international law.

UN Security Council Resolution 1441 of November 8, 2002 created and gave assignments to the UNMOVIC and IAEA for establishing necessary criteria for determining Iraq's compliance with obligations to destroy its WMD and means of delivery. The Commission did not submit any such result; moreover its work was not completed. Therefore, the actions of UK and US are considered to be in violation of UN Security Council Resolution 1441.

References made to Security Council Resolutions 660, 678, and 687 which were adopted in 1990-1991 and operational till now do not provide any legal possibility of invading Iraq and, therefore, are groundless.

UN Security Council Resolution 678 of November 29, 1990 authorised Member-States of UN to use 'all possible means' to restore the territorial integrity and sovereignty of Kuwait. On the basis of this resolution, 'Operation Desert Storm' was launched and Kuwait liberated from Iraqi troops.

Later, UN Security Council Resolution 687 of April 3, 1991, which has the Iraq-Kuwait conflict as the underlying, has acknowledged the adherence of Member-States towards the sovereignty, territorial integrity and political independence of Iraq. According to Article 33 of this Resolution, after Iraq officially informed the Secretary-General and UN Security Council, the official ceasefire between Iraq and the forces of the anti-Iraq coalition fighting at that time on Kuwait's side came into force. Iraq accepted its obligations. UN inspectors started working in Iraq (as a part of UNSCOM mandate) and the official ceasefire came into force. Consequently, from the legal point of view, the Iraq-Kuwait war was over and Kuwait's allies did not have any rights to continue military actions against Iraq. And this means, that any new military intervention cannot not take place automatically according to the desire of the anti-Iraq coalition but exclusively on the basis of UN Security Council decisions. No such decisions were taken (in this case); so from this perspective also, a violation of international law has taken place.

The next aspect of the legal explanation of events is related to the interpretation of the right to self-defence contained in Article 51 of the UN Charter. It is necessary to mention that the attempts made on a wide interpretation of this Article as providing a 'legal preventive self-defence' is baseless from the legal point of view. There is a precise definition of aggression in the documents of the General Assembly of UN and it should be understood that acceptable self-defence has to be according to this definition only. In order to prevent possible aggression, this interpretation of self-defence as a preventive intervention is illegal. Article 51 of UN Charter does not allow it: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security".

Moreover, it is important to mention that the intervention of allies in Iraq had an unprovoked character. Iraq did not commit any acts of aggression towards US, UK, or their allies. According to Article 9 of the Security Council Resolution 1441,

Iraq fully acknowledged its desire to accept the international inspectors of UNMOVIC and IAEA into the country and unconditionally cooperated in their work.

Therefore, Iraq did not commit any action which could be interpreted as an attack on US, UK and their allies after the adoption of Security Council Resolution 1441. So, resorting to Article 51 of the UN Charter on the right to self-defence by USA, UK and their allies is illegal. It should also be mentioned that USA did not report immediately to the Security Council with an explanation of its intervention in Iraq as an act of self-defence, as required by Article 51. Therefore, the statement of the actions in Iraq as being in self-defence is incompetent.

That Iraq is following the regulations of Security Council Resolution 1441 is proof in itself of progress in compliance because, according to Article 11 of the Resolution, the Director General of IAEA and the Executive Chairperson of UNMOVIC would have to report immediately to the UN Security Council any discovery of the violation of disarmament obligations by Iraq, There has been no emergency statement of this type made by them.

They had submitted only the required regular reports on the process of inspections to the UN Security Council. Current reports of the Executive Chairperson of UNMOVIC and the Director General of IAEA to the UN Security Council on Iraq which were submitted on March 7, 2003 as a joint finding gave a positive result on the level of cooperation by officials in Baghdad with the UN inspectors. The heads of UNMOVIC and IAEA mentioned the necessity to continue inspections. They did not mention the necessity for military pressures on Iraq.

The fact of violation of the demilitarised zone on the border between Iraq and Kuwait by USA and its allies has become an act of non-observance of international law. This zone (10 km from the border of Iraq and 5 km from the border of Kuwait) was set up under Security Resolution 687 of April 3, 1991. One of the purposes of setting up this zone was to prevent any hostile act from the territory of one State against another State. According to this Article, the UN Secretary-General should immediately report any case of serious violations of the demilitarised zone, to the Security Council.

Consequently, the common conclusion of the foregoing analysis of the military intervention of the US, UK and their allies in Iraq is as follows: -

- Firstly, it is not sanctioned by the UN Security Council; this is necessary according to Chapter 7 of the UN Charter.
- Secondly, it is unprovoked and, therefore, is not an act of self-defence according to the meaning of Article 51 of the UN Charter.
- Thirdly, it has been exercised in violation of the Security Council Resolutions, 687 (about non-violation of the demilitarised zone on the border of Iraq and Kuwait) and 1441 (about the necessity for compulsory reporting by the international inspectors about the non-observance of disarmament obligations by Iraq before further actions of the Security Council).

It should also be mentioned that the UN General Assembly Declaration (1970) on Friendship and Cooperation between States says, "None of the States or a group of States have a right to interfere directly or indirectly in the domestic or foreign affairs of another State. In consequence, a military intervention and all other forms of intervention or threats against a sovereign State or against its political, economic and cultural bases is a violation of international law". The unilateral actions of USA, UK and their allies need to be viewed in the light of this Declaration.

On the basis of what has been said above, the actions of USA, Great Britain and their allies fall under the definition of aggression according to the meaning of the UN General Assembly Resolution 3314 of December 14, 1974 from the legal point of view. According to this definition, aggression is the illegal use of force by a State against the sovereignty, territorial integrity or political independence of another State. It is explicitly stated in this definition, "bombardment by military forces of the territories of another state or the use of any weapon by a state against the territory of another state, will be taken as an act of aggression." It is also mentioned in the definition that, "any reasons of different character, political, economic, military or other, cannot be used as an excuse for aggression."

USA has made a request to close diplomatic missions of Iraq all over the world. This is illegal and does not correspond with international law. It is against the basic principles and rules of diplomatic relations between states.

USA does not conceal the fact that international law was violated by it. US officials (particularly, Secretary of State Powell) permitted himself to make a

statement in the Security Council that the Council has become an unnecessary and useless institution. And, therefore, USA will not follow its obligations to the Council.

The Bush Administration has also violated US national legislation, particularly the law of 1928, on prevention of war as a means of foreign policy.

The attempts of USA to substantiate its unilateral use of force by an extremely wide and free definition of the concept of international terrorism (while accepting the play of double standards on this question) is an unacceptable tendency for the international community. The scale and the progress of military actions in Iraq have placed statements of USA and its allies under doubt; eg. that their purpose is a war against international terrorism, against the spread of the weapons of mass destruction and for the aspiration to establish democracy. The last version of the annual "National Security Strategies of the USA", presented by President Bush in Congress towards the end of 2002 directly mentions US intentions to lay stress on the so called "concept of preventive attacks". Instead of the previous doctrines of 'containment' and 'deterrence', the unilateral use of force for achieving national interests has been officially declared and accepted in USA as the most effective method.

The main question on the agenda of the world today is concerning the international legal responsibility of the US towards the acts committed by it. The current policy of USA, in fact, falls under the actions of Chapter 7 of the UN Charter and can be taken under consideration accordingly by the UN Security Council.