

## International Law Matters, Part XI

Iraq: The War of Words in Washington and New York

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The war of words is not yet over. But Bush is still warmongering. The chicken hawks around him are still arguing for war. He would be much better off if he simply insisted on a new United Nations resolution with strict rules for the inspectors, not the old ones that Hussein contemptuously violated. No one would oppose them if they were a clear departure from the rules after 1991. They weren't effective then, and Hussein expelled the inspectors in 1998. Hans Blix knew or should have known that the old rules weren't working. Now he must get Iraq to agree to new stiffer rules with no escapes from inspection of Hussein's palaces. If this fails, the Bush Administration may then consider nonviolent options such as a tough embargo and quarantine of oil exports. Bush has simply not given any evidence that Iraq is a threat today.

The [Cuban Missile Crisis](#) of exactly forty years ago was a lesson for today. John Kennedy was President then and he imposed a quarantine on ships delivering nuclear missile to Castro's regime in Cuba. Analysts from the Pentagon studied what had already been delivered to Cuba and concluded that the cargo was deadly. Kennedy, rather than commit the U.S. to the 'first use' of American missile and a lethal exchange of nuclear weapons, chose to quarantine ships on their way to missile sites in Cuba. Krushchev chose to back down when Kennedy told the Soviets, on the 'hot line', that they wanted a quid pro quo. In exchange for the removal of missiles from Cuba, Kennedy agreed to study the possibility of removing some American missiles from Turkey. The crisis was over and the Soviet Union had a face-saving agreement from Kennedy. The Cuban Missile Crisis was not a use of a 'preemptive' strike doctrine. So it is not surprising that Bush walked away from claiming credit for its use by Kennedy.

National Security Advisor [Condoleezza Rice tried](#), and failed, to give the Bush administration's 'first-strike' policy an historical precedent by trying to show that it had been used in the Cuban Missile Crisis. Speaking at the President's National Security Strategy at the Waldorf Astoria Hotel in New York on October 1, 2002, she tried to establish that "Preemption is not a new concept. There has never been a moral or legal requirement that a country wait to be attacked before it can address existential threats. As George Shultz recently wrote, 'If there is a rattlesnake in the yard, you don't wait for it to strike before you take action in self-defense.' The United States has long affirmed the right to anticipatory self-defense -- from the Cuban Missile Crisis in 1962 to the crisis on the Korean Peninsula in 1994." Diplomacy, not preemptive strikes settled the Cuban Missile Crisis and the Korean conflict of 1994.

As of October 7, 2002, Congress has decided that debate will help with Iraq which has so far handled diplomacy with some finesse. Congress has somehow enacted a new draft of legislation giving Bush more military power than some members think he should have. The Bush Administration has so confused its missions that leaders abroad and supporters of his diversion into Iraq may legitimately question the decision to preemptively attack Iraq without some hard evidence of a threat from Baghdad. In his speech in Cincinnati on October 7, Bush did no more than offer the same evidence he had earlier offered. There was no new evidence, only more of the same dressed up in urgent clothing. In his speech Bush said, "Many people have asked how close Saddam Hussein is to developing a nuclear weapon. Well, we don't know exactly and that's the problem."

A preemptive strike against any new enemy weakens the defense of the United States. In this case, a preemptive strike against Iraq frees Russia to "launch a preemptive strike" against Chechnya. Bush may no longer scold Russia for selling a nuclear power plant to Iran; this is a market for Russian exports. Before the United States invokes Article 51 of the United Nations Charter-self-defense against an armed attack; if one occurs, it must first offer proof of an armed attack by Iraq. America need no longer look the other way when Russia violates the human rights

of Chechnyan citizens struggling for freedom from Russian imperialism, Bush seems to have forgotten that democracy cannot be imposed through military force. The Muslim world sees an American invasion of Iraq as a new form of imperialism. As such, no amount of talk will calm the Arab streets. This imperialism will surely destabilize already restive Islamic fundamentalists.

Furthermore, there is no evidence of an Iraqi armed attack against the United States. Since the Soviet invasion of Afghanistan in 1980, the United States has, on three separate occasions walked into Afghanistan and when Moscow withdrew, walked out, abandoning it to the Taliban and al Qaeda. The CIA left hundreds of Stinger anti-aircraft missiles behind. The United States has now walked out on the Northern Alliance and Afghani armed forces. They did virtually nothing to displace terrorists of al Qaeda except for providing Hamid Karsai with security in Kabul. But outside this capital city, the United States has no authority in some 95 percent of all Afghanistan. Where is the new government we agreed to encourage? Where are the peacekeeping forces outside of Kabul? One can hardly fault the new government, which the loya jirga approved Karsai, for thinking he has been abandoned by his former friend having left an unfinished mission. Osama bin Laden is still at large or as Bush put it "marginalized." Will he now invade Iraq and "marginalize" Saddam Hussein by walking away from the chaos of urban destruction left by armed attacks of American air power? Baghdad may be in ruins, and as many as a million civilians may be collateral damage.

To bring about a regime change, Iraq will have to surrender its dictatorship and his family from Tikrit, Hussein's birthplace, and the military elite will have to surrender en masse. However, there's got to be others willing and able to establish a new government free of Hussein's baneful reign of terror. Then the United States will have to oversee free and fair elections and a constitution with at least some of the same guarantees as in the Constitution of the United States. A constitutional democracy as a minimum must support freedom of the press, freedom from intrusive searches, equal protection, and due process of law. The new Iraq will not allow its president to declare war without the consent of Iraq's elected legislative body. After all, Iraq has invaded Iran followed by a war against Kuwait. In the Persian Gulf War of 1990-91 the United States walked away from dealing with Iraq except for some toothless resolutions from the United Nations Security Council. One may agree that Iraq is a loose cannon, but with a decade of work, it might come up with something like a democracy. The Western world may have to pay for it-an estimated \$200 billion.. Well, there is always all that oil which may make Vice President Dick Cheney drool. Major players in the international oil business gather in Houston in the week beginning on September 30, 2002. This first U.S. - Russian Commercial Energy Summit will decide what to do in post-regime change Iraq. There may be a reason for this meeting of oil tycoons. Russia's 5 million barrels per day in exports combined with its projected capacity of 4 million barrels a day would exceed Saudi Arabia's capacity of 8 million barrels a day, thus threatening price instability in the Persian Gulf. The number of barrels daily is only a rough total.

Even though President Bush has not announced his plans for invading Iraq, the public should study the possibilities. The hearings before the Senate Foreign Relations Committee are available via telephone during business hours in Washington at 1(202) 533-3232. On September 25, 2002, Senator Tom Daschle reacted angrily to a charge by Bush that "Democrats were not interested in the security of the American people." At a time when unity was critically important, Bush reacted naively to some Senate opposition. He also allowed Secretary of Defense Donald Rumsfeld to define the parameters of foreign policy. He stated the relations with Germany were poisoned by a comment from one of Chancellor Schroeder's colleagues that Bush was behaving "like Hitler." Since then Bush has refused to accept an apology from the Chancellor himself and that colleague has submitted her resignation. This conduct has at last shown Bush for the figurehead he is. Rumsfeld should have advised Bush to accept the fact of a resignation graciously, not truculently. The Oval Office is not the place for on-the-job-training.

The Middle East has always been a boiling pot of ethnicity and religion, mostly Islam and different branches thereof. The Persian Gulf War of 1991 was a defining period for the United States, but unfortunately its coalition armies stopped at a point that left it far short of an ideal

boundary. The armed forces might well have destroyed weapons still used by Iraq. Airpower alone could have acted forcefully, but an unidentified American official advised General Schwartzkopf to stop in place. As a result, Hussein not only retained weapons but forced the coalition to negotiate conditions of a cease fire.

From 1991 to 1998, Iraq was searched by coalition experts for some evidence of the presence of weapons of mass destruction. They never found any evidence of nuclear weapons, only evidence of attempts to acquire enriched uranium. In the war between Iraq and Iran (1980 to 1988) Saddam Hussein laid the foundation for the sanctions against Iraq imposed by the United Nations and the search authorized by the United Nations after the Persian Gulf War. They already knew about his unlawful use of chemical and biological weapons in that war against Iran, so they sought evidence of Hussein's nuclear weapons, if any. Apparently, no such evidence was discovered by the date the inspectors were sent packing by Iraq. While they were still looking for some evidence of nuclear weapons, some new boundaries were established. Saddam Hussein had attacked the Kurds north of the 36th parallel. The United States acted to prevent further harassment of the Kurds and to protect the Shia population living below the 33rd parallel. The fly-over boundaries were these lines of latitude with a neutral zone in the middle. The United States and Great Britain flew air patrols from Incirlik in Turkey and several air bases in Saudi Arabia and Kuwait, including the largest base at Prince Sultan in Saudi Arabia. This country has said it will continue letting the United States use this base, but only if the United Nations adopts a resolution supporting the Bush invasion of Iraq. Iran is an Iraqi neighbor and nervous about American intentions. At worst, its imperfectly educated clergy may urge opposition to the Bush invasion of Iraq.

Iraq, being a military dictator since 1963, is not just a nation with boundaries often drawn by others. Saddam Hussein is its so far unchallenged ruler as head of the socialist Ba'ath Party. Its current boundaries were established by Great Britain in 1921. The British wanted a ruler for this part of the Ottoman Empire which was divided after World War I. Turkey was the loser. A loosely organized referendum confirmed the British choice of monarch, a Saudi in need of a throne. The post-World War I treaties first promised an autonomous region to Kurds in northern Iraq bordering on Turkey, while the Treaty of Sevre eliminated this promise of new territory. Thus, Kurds harbor a deep hostility toward Iraq whose new ruler, King Faisal, was a member of the Saudi tribe. He was ousted by the Syrians who were interested in Arab nationalism. Coincidentally, the Ba'ath Party in Syria and its other branch in Iraq disliked each other. According to History of Islamic Studies by Ira Lapidus, "separate wings of the party govern the two states and are deeply hostile to each other. Each regime in practice identifies Arab nationalism with the fulfillment of the socialist goals of its own state."

Bush has announced he wants a regime change and expects to get it even if the United States has to act alone and, apparently without support from the United Nations. From the map attached to



this text, one may easily see what American Special Forces will encounter. Jordan, for example, shares a common border with Iraq. As of today, September 24, 2002, there are some 350,000 Iraqis within Jordan ready to move with the first sign of invasion. Their move, if any, seems unpredictable, but their identity may be a clue. A great many of these are refugees from various cities in

Iraq, but the rest of them come from various countries around the world, e.g., The Philippines, India, and Sri Lanka. However, if only 1 percent of these are Iraqi, their conduct would be both unpredictable and alarming.

Another nation shares a common border with Iraq. Turkey is a NATO partner of the United States and has been since 1949. Turkey would nominally oppose the creation of an autonomous Kurdish state from a land area partly carved out of Iraq and Turkey. For the moment, the Turks have a stake in how the United States fares after any invasion of Iraq. A little known fact is the existence of a festering dispute over water flowing through Turkey, Syria, and Iraq, via the Tigris and Euphrates Rivers. The streams feeding these rivers arise in Turkey, but both Syria and Iraq claim they are not getting their fair share of water. Saudi Arabia initially announced opposition to an invasion of Iraq. However its position was revised after September 12, 2002, when Bush appeared before the United Nations. Afterwards, Saudi Foreign Minister Prince Saud al-Faisal said it would allow the United States to use its bases for strikes against Iraq providing the action is endorsed by the United Nations.

Finally, Bush has said he will fix a date for invasion of Iraq "based on the latest intelligence reports" from the Central Intelligence Agency. Can anyone believe this? The CIA is still seething from the affront from Congress. It left the CIA out of the Homeland Security bill it is still discussing. Despite the hearings before the Senate Committee on Foreign Relations and the Armed Services Committee, we seem no closer to solutions vexing as they may be. As Lewis Lapham said in his article in the October issue of Harper's, "A government that must hold Senate hearings to discover whether it has a reason to go to war is a government that doesn't know the meaning of war."