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Legal Authority Exists For A Strike on Iraq, Expert Says

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Legal Authority Exists For A Strike On Iraq
By Ruth Wedgwood

It was not supposed to work this way. President George W. Bush's visit to the United Nations general assembly in September last year was designed to renew UN support for the project of disarming Iraq. And yet after six months' hard work, the Americans now have to punch their way out of a paper bag in order to go to war. Tony Blair, UK prime minister, has had to risk his political career to act as an ally. Saddam Hussein must chuckle at the west's imbroglio.

Unravelling this sad history is a matter for archivists. But tackling Mr. Hussein's regime remains a task for UN realists. The founding legal framework for action against Iraq remains intact and available to those who are willing to use it. Resolution 687 is the mother of all resolutions, setting out the requirements for post-Gulf-war Iraq. This 1991 resolution requires, in perpetuity, that Iraq give up its weapons of mass destruction and permit verification. Security Council resolutions are not yet so airy as to expire with the term of a particular secretary-general.

Resolution 687 designates Iraq's acceptance of this requirement as a continuing condition of the Gulf war ceasefire. Teeth are also supplied by resolution 678, authorizing the allies to expel Iraq from Kuwait and to use force in support of all "subsequent relevant resolutions" needed to restore regional peace and security.

So why was the Bush administration bothered to seek another resolution in November last year? The dithering over resolution 1441 consumed five weeks in the autumn, a harbinger of delays to come, and succeeded in threatening unspecified "serious consequences" if Mr. Hussein refused to comply. Odd as it may sound, the White House may have been a bit naive about UN politics, which are as rough-and-tumble as any other. It may well now wish that it had never gone down this path. But time-lag legitimacy may also come to its rescue, if intervention in Iraq is greeted with huzzahs by the Iraqis. Logic will also be on America's side, for the status quo is not sustainable.

Sanctions cannot be imposed indefinitely, since the regime diverts the "oil for food" monies and smuggles \$3 billion in oil a year. Withdrawal of the west from the no-fly zones would mean the genocidal demise of the Marsh Shia in the south and the Kurds in the north. And we cannot keep 225,000 soldiers in the desert in order to sustain the persuasive power of the inspectors. In any case, the Iraqi dictator is audacious enough to turn biological and chemical agents into weapons even with the inspectors there.

Kofi Annan, UN secretary-general, recently remarked that the use of force against Baghdad without a second (really 18th) resolution would not be "in conformity" with the UN Charter. But Mr. Annan could also have observed that we have been there before. The Charter has never worked quite as the founders supposed.

In 1950 Dean Acheson, U.S. secretary of state, went to the general assembly to obtain an additional resolution on the Korean invasion, fearing a Russian veto in the Council, even though the assembly is explicitly forbidden from making recommendations on matters on the Council's docket. In the 1990s, west African states, including Nigeria and Mr. Annan's Ghana, gallantly intervened in the civil wars of Liberia and Sierra Leone. The Security Council did not bother to authorize this before the fact. NATO's campaign against Belgrade to prevent ethnic cleansing in Kosovo also lacked a Security Council trigger resolution, because of Russia's threatened veto.

When Mr. Annan was asked in 1998 whether another Council resolution would be needed for operation Desert Fox in Iraq, he said only that the U.S. should "consult" its Council partners.

Mr. Annan followed up in 1999 with an eloquent address on purpose versus procedure and intervention versus sovereignty. Are we really procedural classicists, valuing desultory process over substance? Would we prefer, asked the secretary-general, that other countries sit by passively in the face of a genocide if the Council fails to act?

Multilateralism comes in varied forms. A coalition of the willing is one form, regional organizations another. The aegis of a far-sighted Security Council is perhaps the broadest. But the credibility of the UN will depend on having its founding mandates respected by the tyrants who kill their own people and annex their neighbors. It does not promote multilateralism to let Mr. Hussein off the hook.

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