



EJDM Europäische Vereinigung von Juristinnen und Juristen für Demokratie und Menschenrechte in der Welt e.V.

EALDH European Association of Lawyers for Democracy and World Human Rights

AEJDH Asociacion Europea de los Juristas por la Democracia y los Derechos Humanos en el Mundo

AEJDH Association Européenne des Juristes pour la Démocratie et les Droits de l'Homme dans le Monde

AEGDU Associazione Europea delle Giuriste e dei Giuristi per la Democrazia e i Diritti dell'Uomo nel Mondo

04/01/03

Prof. Monique CHEMILLIER- GENDREAU (Paris), Présidente d'honneur
Rudolf SCHALLER, avocat (Genève), Président
Thomas SCHMIDT, Rechtsanwalt (Duesseldorf), Secrétaire Général

European Lawyers warn: Stop the War against Iraq!

Appeal to the European Governments and the UN Security Council

USA plans illegal military attack

A war against Iraq that aims to abolish the Government or to destruct Iraq's weapons of mass destruction would mean a grave violation of international law, in particular of Art. 39 of the Charter of the United Nations. It would also violate Art. 2.4 of the Charter. Such violations have already committed through the perpetration of the air strikes in the "no-fly zones", which can be regarded as a non-declared war.

The USA can claim no justification under Art. 51 of the UN Charter, by way of self-defence. A right of preventive (anticipatory) self defence is not recognized in international law. As long ago as 1981 the UN Security Council condemned Israel unanimously for destroying the Iraqi nuclear power plants in Tuweitha (Tamuz I). It described this action as a violation of international law, and ruled that Israel had no right of preventive (anticipatory) self defence. Five years later the UN condemned the USA for bombing Tripoli as revenge for the attack on the West Berlin discotheque La Belle, describing it as a violation of international law. At that time the USA for the first time tried to justify their airstrike as being "preventive defence against terrorism". Such so called preventive defence actions are regarded in international law as aggressive actions

There exist only two exemptions from the absolute prohibition of the use of force in Art. 2. of the UN Charter: the right of self defence enshrined in Art. 51 of the UN Charter, and the right of the UN Security Council, in case of a threat to or breach of international peace and security, and in case of an aggression, to take mandatory action by way of carrying out or authorising military measures against other states.

At present there is no state in the world that could lawfully claim the right of self defence against Iraq. Iraq is not attacking any country, it does not threaten any attack and it is not preparing a war against any country. Furthermore, the USA has never presented any proof of links between the Iraqi Government and Al-Quaeda. Therefore Iraq cannot be considered to be a terrorist threat.

The UN Security Council in its resolution 1441 has obliged the Government of Iraq to provide to the UN Security Council an up to date, accurate, full, and complete declaration of all aspects of its programmes to develop weapons of mass destruction, and any holdings of such weapons. Meanwhile the Government of Iraq has provided the requested declaration. It now transpires that in an underhand manner the US Government has taken possession of these documents. The UN Security Council ought not to have allowed the USA as a party to a conflict to take hold of the original documents. The evaluation of the documents will be made more difficult by the possibility that these documents might have been changed by the USA.

Président
Rudolf SCHALLER, avocat
13, Boulevard Georges - Favon
CH - 1204 GENEVE
TEL: + 41 - (0)22 - 312 14 00
FAX: + 41 - (0)22 - 312 14 52

Secrétaire Général

Thomas SCHMIDT, Rechtsanwalt
Ross Str. 7
D - 40476 - DUESSELDORF
FON: + 49 - (0)211 - 444 001
MOBILFON: + 49 - (0)172 - 68 10 888
FAX: + 49 - (0)211 - 444 027
eMail: info@ejdm.de
www.ejdm.de

In the meantime doubts have been expressed whether the report of the Iraqi Government complies with the Resolution 1441. This would give the UN the possibility to insist on completion of the report. The incompleteness of the report however cannot be a reason to order or allow military sanctions under Art. 42 of the UN Charter.

Even if Iraq possessed weapons of mass destruction or the necessary knowledge or technology to produce such weapons, this could not justify a war against Iraq. There are numerous states that possess weapons of mass destruction, of atomic, biological and chemical nature. This has never been judged by the UN Security Council to be a violation of the UN Charter with the consequence of military sanctions. By their refusal to sign an amendment to the Convention against the spread of biological weapons the US government facilitates the spread of such weapons. In this context it should be noted that the USA as well as various member states of the European Union have tolerated in the past the export of the necessary technology for the production of weapons of mass destruction.

There is no support for such action from the UN Security Council.

Up to now there is no resolution of the UN Security Council that could justify a military intervention against Iraq. Under the present conditions a decision of the UN Security Council could not in any event justify any kind of military intervention. Also Resolution 1441 of the UN Security Council does not give a justification for a military intervention. It only recalls that Iraq will face serious consequences as a result of its continued violations of its obligations.

The legal preconditions for a military intervention according to Art. 42 of the UN Charter are not satisfied at the moment. The Security Council has no right to accept or to decide upon a military intervention against Iraq arbitrarily. Such a decision would require according to Art. 39 that it can find that there is a threat to international peace and security, a breach of the peace or an act of aggression.

Even a partial violation of the UN-Resolutions cannot be regarded as a threat to peace. Therefore if politicians assert, that all UN Member-States have to obey any decision of the Security Council which authorizes the USA for a military intervention against Iraq, they are gravely mistaken. In the case of a UN Security Council resolution according to Art. 42, each Government will have to consider thoroughly whether the decision is consistent with the UN Charter, the NATO Treaty and its own constitution.

The measures upon which the Security Council decides must be adequate to maintain or to restore peace and security in the world. Making war against Iraq would provoke the exact opposite. Peace in the world would be in much more danger than before. The opinion of the German government as well as that of other governments is entirely justified, when it refuses any support to a war against Iraq because of the destabilising effect of such a war in the Middle East. The same argument was recently presented by the British parliamentary commission. The EALDH demands therefore of each Government that it refrains from any support for this war.

The Security Council is also obliged to take a clear and unambiguous decision. There must be no repeat of the situation where the UN Security Council takes a decision which, without allowing military intervention, explicitly provides the basis for such an intervention by states which have, with ulterior motives, lobbied for the resolution. As far as this is concerned the UN Resolution 1441 also is not sufficiently clear.

There is no case for assistance according to Art. 5 NATO Treaty

The requirements for assistance according to Art. 5 of the NATO Treaty have not been satisfied. This would only be the case if a member state of NATO was suffering an armed attack by Iraq. For the moment no NATO state can claim that due to Art. 5 it is obliged to support a military intervention by the US government against Iraq. For this reason there is no justification for the participation of Soldiers of other NATO States on AWACS flights.

On the contrary, an aggressive military action of the US would be a violation of Art. 1 of the NATO Treaty, by which member states are obliged to settle any international dispute by peaceful means in such a manner, that international peace, security and justice are not endangered and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

Even if Iraq would attack Turkey if Turkey should decide to support the US aggression Turkey would be the aggressor and not Iraq. Therefore there cannot be any kind of moral obligation for NATO Member-States to assist the USA in its illegal military intervention.

Any support of the illegal war of the USA by other Governments is illegal itself

According to Art. 2.5 of the UN Charter, Governments are obliged to refrain from giving assistance to the USA and its illegal war against Iraq. They are also obliged to refuse the use of military bases and resources in their countries, as well as logistic support to military aircraft and the landing of military aircraft if these actions are part of aggressive actions by the USA.

In most European countries that country's constitution also forbids the respective government from giving assistance to the USA or any other country if it is undertaking illegal military measures against Iraq. According to the legal order of many European countries all actions which are a danger to international peace, in particular an aggressive war, are among the most heinous crimes, and attract severe punishment.

Any other obligations by individual states towards the USA or other states participating in the war have to be interpreted in conformity to the UN Charter, the NATO Treaty and its own constitution.

Weapons and soldiers of all European countries should be withdrawn from the area of conflict. This applies for example to the German tanks for detecting biological and chemical weapons which are based in Kuwait at present. It has also been argued that European states should not completely ruin their relationships with the USA. This is legally an unacceptable argument, and politically short sighted. As it happens, the war against Iraq is also criticized by many within the USA. Also the grant of fly-over rights for illegal military actions, the use of American bases in other countries, the transport of war material from third countries to the conflict area, the use of commando bases (like EUSCOM in Stuttgart-Vaihingen from where the illegal airstrikes against Libya were coordinated) and the use of communications and infrastructure systems must be refused to the USA by European governments.

All European Governments are therefore requested

1. To undertake to refuse any assistance by national or NATO military forces to any illegal military acts of the USA against Iraq; this concerns in particular any kind of military action of the USA without a preliminary decision of the Security Council according to Art. 42 of the UN Charter
2. To use all diplomatic measures to prevent the US from undertaking an aggressive war against Iraq
3. To refuse any kind of economic or logistic support for such an illegal action; this applies also to reconnaissance flights undertaken in the conflict area, even if the airplanes are under the NATO command
4. To start immediately to withdraw military material and soldiers from the conflict area
5. To demand the scrupulous application of and adherence to the UN Charter, to the Chapter VII mechanisms of the UN Security Council and to insist that after the evaluation of the reports delivered by Iraq a new decision of the UN-Security council has to be taken
6. To seek the adoption of an unambiguous resolution of the UN Security Council which condemns any kind of military act
7. To re-examine thoroughly the legality of any intervention according to Art. 42 and to decide upon the participation on such an intervention only after a decision taken by the national parliament
8. To grant asylum to all deserting soldiers of the war-making countries
9. To grant extensive protection in particular the right of asylum for all refugees from Iraq

January 2003