THE 2003 IRAQ INVASION: THE LEGAL AND POLITICAL RAMIFICATIONS FOR THE 2003 UN STABILISATION FORCE OPERATION IRAQ AND FUTURE MILITARY OPERATIONS

*ALEXANDER KNOOPS**

1. INTRODUCTION: THE FACTUAL FOUNDATION FOR THE 2003 IRAQ INTERVENTION

On the 20th March 2003 a coalition of US and UK military forces invaded Iraq on the assumption that mass-destruction weaponry would be in possession of the then Saddam Hussein regime, yet concealed from the Western world.

* Professor of International Criminal Law at Utrecht University, the Netherlands; Lawyer at Knoops & Partners Advocaten, in Amsterdam, practicing as Defence Counsel before the ICTY, ICTR and SCSL; the author is also Major (reserve) of the Royal Netherlands Marine Corps.

International Studies Journal (ISJ), Vol. 5, No. 2, Fall 2008, pp. 1-20.

The political and legal justification of this forcible military intervention, not mandated by the UN, was premised upon intelligence information and purported to be reliable and accurate as to the presence of biochemical weaponry in Iraq.

After the liberation of Kuwait in 1991, Iraq entered into a cease-fire agreement supervised by the United Nations, part of which agreement was that Iraq unequivocally agreed to eliminate its nuclear, biological and chemical weapons programs and abscond from any support to international terrorism.(1)

In 2002 the US Congress and US Senate adopted a joint resolution to authorise the use of United States Armed Forces against Iraq on the basis of the "*Authorization for use of military force against Iraq Resolution of 2002*".(2)

This Joint Resolution reads, amongst others, that:

> *- Whereas the efforts of international weapons inspectors, United States intelligence agencies, and Iraqi defectors led to the discovery that Iraq had large stockpiles of chemical weapons and a large scale biological weapons program, and that Iraq had an advanced nuclear weapons development program that was*
>
> *much closer to producing a nuclear weapon than intelligence reporting had previously indicated;*
>
> *- Whereas Iraq, in direct and flagrant violation of the cease-fire, attempted to thwart the efforts of weapons inspectors to identify and destroy Iraq's weapons of mass destruction stockpiles and development capabilities, which finally resulted in the withdrawal of inspectors from Iraq on October 31, 1998;*
>
> *- Whereas Iraq's demonstrated capability and willingness to use weapons of mass destruction, the risk that the current Iraqi regime will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to*

international terrorists who would do so, and the extreme magnitude of harm that would result to the United States and its citizens from such an attack, combine to justify action by

the United States to defend itself;

Early on, in the Iraq Liberation Act of 1998 (US public law 105-338), the US Congress already held that Iraq's continuing weapons of mass destruction programs threatened vital interests of the United States as well as international peace and security. This Act also expressed the policy of the United States to support efforts "*to remove from power the current Iraqi regime and promote the emergence of a democratic government to replace that regime*."[3]

Noticeably, the use of force authorized by the US was clearly also meant to replace a hostile government for the US community.

The mentioned Joint Resolution, which passed in 2002 the US congress and Senate, affirms this policy, while repeatedly contemplating that Iraq poses a continuing threat in this regard, while saying that it continues *"... to posses and develop a significant chemical and biological weapons capability..."*[4]

The mentioned Resolution, referring to the US Constitution to take action in order to deter and prevent acts of international terrorism against the US, also relied upon UN Security Council Resolution 678 of 1990, which authorized the use of "all necessary means" to compel Iraq to cease certain activities that threaten international peace and security, including the development of weapons of mass destruction.

Despite the fact that the Resolution in Section 2 calls for *"a prompt and decisive action by the Security Council to ensure that Iraq abandons its strategy of delay, evasion and noncompliance and promptly and strictly complies with all relevant Security Council resolutions regarding Iraq",* it clearly meant to authorize the US president to unilaterally use the US Armed Forces against the continuous threat posed by Iraq, which threat, as

mentioned, was based on the assumption that Iraq *"had large stockpiles of chemical weapons and a large scale biological weapons program…"*

This article will further asses the legal foundation of the military intervention in 2003 by the US military in Iraq and the potential consequences for the military operations which succeeded this intervention, in specific the Stabilisation Force Operation in Iraq (SFIR) which was based on Security Council Resolutions 1483 and 1511 of 2003, to which operations several states contributed among which the Kingdom of the Netherlands and Canada. Particularly attention will be paid to the implications of the conclusions of the Select Committee on Intelligence of the United States Senate, which conclusions were endorsed in a report of 7 July 2004. This analysis also aims to be beneficial for future situations whereby unilateral use of force is succeeded by UN operations.

2. THE ABSENCE OF A PROPER FOUNDATION FOR THE IRAQ INTERVENTION IN RETROSPECT

An assessment of the relationship between the US military intervention in Iraq in 2003 and the subsequent military stabilisation operations in that region cannot be undertaken without reviewing the factual foundation of the prior intervention which review was administered *post facto*.

On 7 July 2004 the Select Committee on Intelligence of the United States Senate issued the *Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, in which the legitimacy of the Iraq intervention is evaluated. Out of the 117 conclusions, several clearly establish that there as no legal foundation for this intervention. In particular reference can be made to the following conclusions of the US Senate:

> *- Conclusion 1. Most of the major key judgments in the Intelligence Community's October 2002 National Intelligence Estimate (NIE),*

Iraq's Continuing Programs for Weapons of Mass Destruction, either overstated, or were not supported by, the underlying intelligence reporting. A series of failures, particularly in analytic trade craft, led to the mischaracterization of the intelligence.

- Conclusion 2. The Intelligence Community did not accurately or adequately explain to policymakers the uncertainties behind the judgments in the October 2002 National Intelligence Estimate.

- Conclusion 3. The Intelligence Community (IC) suffered from a collective presumption that Iraq had an active and growing weapons of mass destruction (WNW) program. This "group think" dynamic led Intelligence Community analysts, collectors and managers to both interpret ambiguous evidence as conclusively indicative of a WMD program as well as ignore or minimize evidence that Iraq did not have active and expanding weapons of mass destruction programs. This presumption was so strong that formalized IC mechanisms established to challenge assumptions and group think were not utilized.

- Conclusion 4. In a few significant instances, the analysis in the National Intelligence Estimate suffers from a "layering" effect whereby assessments were built based on previous judgments without carrying forward the uncertainties of the underlying judgments.

- Conclusion 10. The Intelligence Community relies too heavily on foreign government services and third party reporting, thereby increasing the potential for manipulation of U.S. policy by foreign interests.

- Conclusion 49. The statement in the key judgments of the October 2002 National Intelligence Estimate (NIE) that "Baghdad has biological weapons" overstated what was known about Iraq's

biological weapons holdings. The NIE did not explain the uncertainties underlying this statement.

- Conclusion 55. The National Intelligence Estimate misrepresented the United Nations Special Commission's (UNSCOIVI)1999 assessment concerning Iraq's biological research capability.

- Conclusion 58. The statement in the key judgments of the October 2002 Iraq Weapons of Mass Destruction National Intelligence Estimate that "Baghdad has . . . chemical weapons" overstated both what was known about Iraq's chemical weapons holdings and what intelligence analysts judged about Iraq's chemical weapons holdings.

- Conclusion 64. The National Intelligence Estimate accurately represented information known about Iraq's procurement of defensive equipment.

- Conclusion 90. The Central Intelligence Agency's assessment that Saddam Hussein was most likely to use his own intelligence service operatives to conduct attacks was reasonable, and turned out to be accurate.

Importantly, the US Senate also concluded that the intelligence community relied too heavily on UN information about Iraq's weaponry programs without developing its own sufficient unilateral collection of information.

The absence of a legal foundation for the Iraq intervention also echoes in conclusion 99, whereby it is held that "Despite four decades of intelligence reporting on Iraq, there was little useful intelligence collected that helped analysts determine the Iraqi regime's possible links to al-Qaida" In this regard, the US Senate observes that the pressure on part of the international intelligence community to prevent terrorism and terrorist attacks may have contributed to these false evaluations, saying in conclusion

102 that: “After 9/11, however, analysts were under tremendous pressure to make correct assessments, to avoid missing a credible threat, and to avoid an intelligence failure on the scale of 9/11. As a result, the Intelligence Community's assessments were bold and assertive in pointing out potential terrorist links”.

International peace support operations, when based upon chapter VII of the UN Charter, are predicated upon the need to protect international peace and security. However, in the case of the Iraq invasion the UN senate, in conclusion 106, arrives at the observation that “*The Intelligence Community (IC) did not take steps to clearly characterize changes in Iraq's threat to regional stability and security, taking account of the fact that its conventional military forces steadily degraded after 1990.*”.

As an overall conclusion, the US Senate, in its conclusion 116 holds that the “multiple Intelligence Community Weapons of Mass Destruction (WMD) site lists lack coherency.”

It can therefore be said that, indeed the factual foundation of the Iraq intervention was moot and as a result any legal argument in terms of acting out of self defence or anticipatory self defence, or even, if accepted, on the doctrine of pre-emptive military force.

3. THE LEGALITY AND LEGITIMACY OF THE USE OF FORCE UNDER INTERNATIONAL LAW.

3.1 INTRODUCTION

In order to properly understand the legality of the Iraq invasion, it is instructive to briefly look into the international war principles for unilateral military force as enforced by the US-UK coalition.

As a preliminary remark, one has to observe that the international law framework for the use of military force is in principle predicated upon a system of collectivity rather than on individual State military action.

This conservatism as to the use of inter-state military force is also embedded in the UN Charter. Article 51 of this Charter represents this view in that it in principle requires notice to the Security Council of the invocation of inter state self defence.

Under the principles of international law, two legal foundations emerge for the use of force by States. The first being the application of Article 51 of the UN Charter, which acknowledges the right to individual or collective self defence. This foundation also includes military force on the basis of Article 5 of the NATO treaty of 1949, which refers to this Article 51. The second foundation is constituted by an explicit authorization by the Security Council of the UN to endorse military force pursuant to Chapter VII of the UN Charter.

3.2 FIRST LEGAL FOUNDATION: USE OF FORCE PURSUANT TO ARTICLE 51 OF THE UN CHARTER

As to the *first* legal foundation, that of Article 51 of the UN Charter, unlike the second foundation, no explicit authorization by the security council is required.

Yet, Article 51 does inhere three other requirements in order to legitimately invoke this right ton individual or collective self defence:

a) First, a reporting duty on part of States to the Security Council

b) The effectuation of this right seizes to exist at the moment the Security Council itself undertakes the necessary measures in order to restore international peace and justice.

c) Article 51 requires that self defence complies with the criteria of necessity, proportionality, subsidiarity and immediacy

Article 51 of the UN Charter provides that the measures to endorse the right to self defence shall be immediately reported to the Security Counsel, this requiring that states invoke in this right – sometimes also referred to as a natural right – are obliged to report this immediately to the Security Council. In practise, advanced notice to the security council of invoking this right of

self defence might be problematic.(5)

Maybe that it is for this reason that the International Court of Justice, in the Nicaragua case(6), has ruled that this reporting duty to the security council is not part of customary international law. Yet the absence of such a report may be one of the determining factors when considering the legality of the use of force out of self defence.(7) Accordingly, it can be questioned whether failure to comply with this reporting duty affects the legality of such military force.(8)

Especially in the event the other requirements to invoke self defence are fulfilled (namely the requirements of proportionality, subsidiarity and immediacy) the absence of such a report does not by itself leads to a violation of Article 51.

For the purposes of the application of Article 51, an armed attack can also be undertaken by non state-actors, as also envisioned by Security Council resolution 1368 and 1373 of 2001, adopted directly after 9-11, in which the Security Council recognised the "inherent right of individual or collective self defence in accordance with the Charter", thus specifically referring to terrorist attacks.(9)

Noticeably, the Israeli aircraft raid in 1981 at the Iraqi nuclear reactor, was purportedly justified on the basis of a "state of war" between the two nations. In the absence of this qualification, one can question whether this raid was imbued with a legal basis in terms of self defence under Article 51.(10)

3.3 THE LEGALITY OF PRE-EMPTIVE STRIKES AND THE "BUSH DOCTRINE"

For the purposes of Article 51, the requirement of an "armed attack" has been interpreted rather restrictive, therefore excluding purely preventive measures other then interceptive military force to prevent an ongoing attack.(11) As a result, the concept of anticipatory self defense, although not vitiated by international law, is still one of ambiguity.(12) Although

international law clearly did not intend to leave it purely to the digression of every State to result to military force when perceived to be threatened by another State, Article 51 of the UN Charter could not lead to the "*reduction ad absurdum* that States invariably must await a first, perhaps decisive, military strike before using force to protect themselves"[13]

Therefore, the restrictions of Article 51 cannot be overstretched in that it could be expected from a State to passively await an armed attack when clear indications exist that such an attack is imminent towards its territory or citizens.[14]

That being said, it follows from these parameters that the new policy as introduced by the US President George W Bush, referred to as the *Bush Doctrine*, claiming that international law implies the right to pre-emptive self defence by States in order to counter sheer threats, especially by terrorists and imposed by the potential use of weapons of mass destruction, seems not to be in compliance with Article 51 of the UN Charter.[15]

In conclusion, anticipatory self defence, to be distinguished from the mentioned *Bush Doctrine*, still requires the existence of the criterion of an "armed attack", albeit it interpreted in the above mentioned manner. In all circumstances, the minimum requirements are that of "*demonstrable circumstances of extreme necessity*", which justifies the conclusion that the States right to ensure its survival is at stake.[16]

International law, in order for unilateral anticipatory self-defence to be legitimate, requires the existence on part of the State invoking this right, to submit conclusive and highly probabilistic evidence, rather then the invocation of this right as a principle.[17] Only the existence of highly persuasive evidence to support the claim to use force in anticipation of an armed attack rather then as a response, can make such an attack legal and legitimate under international law.[18]

The international community is probably more willing to accept such an invocation of the use of military force when it is convincingly established that an overpowering attack may be imminent and equate, for the purposes

of Article 51, such a imminent threat with an armed attack itself.

Accordingly, what matters is the level of intelligence and the objectivity and accuracy of such intelligence. This also counts for an imminent attack by terrorists or an attack by weapons of mass destruction. However, in the Iraq invasion of 2003 the main problem was the application of the available intelligence on the case at hand in terms of justification of the use of force.

When looking into the Iraq invasion in 2003, it can be disputed whether these interpretative parameters of Article 51 were met, at the least in retrospect, on the basis of both the findings of the United States Senate and the absence of a clear Security Council authorization. It can also be disputed whether resort to Article 51 can be had on the intention "to remove from power the current Iraqi regime and promote the emergence of a democratic government to replace that regime."[19] Seen from the same interpretative criteria for Article 51, such an military intervention falls outside the ambit of this provision.

Some States, among which the Kingdom of the Netherlands, although it did not military support the 2003 Iraqi invasion by the US, did politically support that invasion.[2] The question whether this equates responsibility for the military operation as such will be addressed later in this article.

3.4 SECOND LEGAL FOUNDATION: THE USE OF FORCE ON THE BASIS OF THE SECURITY COUNCIL AUTHORIZATION

When it concerns the application of the use of force on the basis of the *second* legal foundation, the question arises whether a UN Chapter VII resolution not explicitly authorizing the use of force, could nonetheless be interpreted as an implicit authorization to the use of the force. In principle this question should be not answered in the affirmative without looking into the exact context and nature of such a resolution. For instance, in the event such a resolution refers to "all necessary measures", the use of force does not seem to be excluded

Another question relates to whether the international community bears

the responsibility to protect the population of a State when that population suffers from a civil war, suppression, lawlessness, or any other abuse of human rights by its own government. During the UN summit of September 2005 a document was accepted, in which the principle of "Responsibility to Protect" was included.(21) This principle encompasses the endorsement of the responsibility of States to not only protect its own population against genocide, war crimes, ethnic cleansing and crimes against humanity; rather, this principle would, according to the UN, also justify military intervention on part of the international community in the mentioned situation of a civil war, suppression, and other human rights violations. As a derivative of this principle, the UN also accepts a response by military means. In paragraph 139 of the mentioned UN document, accepted by the General Assembly of the UN by Resolution 60/1, it is said that: "In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and

national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity."

This principle as set forth by the UN as of September 2005, was formulated in view with the situation in Darfur, in which region, despite the Security Council Resolution 1706 (calling upon collective action under VII of the Charter), the situation did not considerably improve.

The Dutch government, based upon this UN document and principle "responsibility to protect" expressed its view that even in situations whereby no consensus could be reached through a Security Council Resolution, military intervention could nonetheless be justified in the event of a potential humanitarian disaster.(22) An example hereof is the military intervention during the Kosovo crises in 1999, the legal basis thereof was heavily disputed, not withstanding the accepted need for humanitarian intervention.

One can observe that, seen from the system of international law as set

forth in paragraph 2.1 and 2.2 above, no clear legal foundation exists for this type of military intervention, namely the concept of forcible humanitarian intervention.

Projected onto the Iraq intervention of 2003, no explicit authorization under Chapter VII of the UN Charter did underlie the military intervention of the US-UK Coalition, nor did this Coalition rely on the principle of "Responsibility to Protect" as accepted by the General Assembly of the UN in September 2005. Therefore, the US intervention is deemed to be not in accordance with international law, seen from the perspective of this second legal foundation.

In particular, Chapter VII Resolution 1441 of the Security Council, determining that Iraq was in material breach of its disarmament obligations with respect to its refusal to cooperate with UN inspectors, does not seem to justify the military invasion in Iraq in 2003, absent clear authorization from the Security Council to use force.(23)

Furthermore, the US-UK Coalition was not able to obtain from the same Security Council a specific Resolution which included the axiom "all necessary means", thus authorizing the use of force against Iraq. Some authors argue that the mentioned legal clearance or approval from the security council was not required in view of the presence of a *de facto* "ongoing state of war" with Iraq seen from the first Iraq intervention in 1991 which led to a cease-fire. This cease-fire, according to this view, would not have affected the underlying state of war with Iraq.(24) As a result, no additional Security Council approval was required.

Another argument in order to canvas the view that such a resolution was not necessary, is based upon the argument that both in 1991 and 2003 the Coalition acted upon the right of collective self defence by virtue of Article 51 of the Charter and that this right was not erased by the cease fire in 1991.(25)

However, this view does not take away the fact that for specific UN peace support operations a separate and tailor made mandate is required in

order to legitimately enforce peace.

4. PEACE SUPPORT OPERATIONS AND THEIR MANDATES.

This paragraph will look into the question whether peace support operations, to which Stabilisation Operations belong, can be accompanied by use of force in order to endorse the underlying mandates. The previous paragraph has illuminated that only in the event of a Chapter VII operation, the use of military force may be justified. Accordingly, peace support operations should have a clear legal foundation, not only for the legality for the mission as such but also in particular when it concerns a *mandate* for the use of force.

The presence of an explicit UN mandate does by itself not equate with the presence of a legal foundation to use military force within another State. As mentioned, it will depend on the nature and context of such a mandate whether and to which extent the use of force may be applied within the boundaries of a peace support mission. UN peace support mandate primarily focuses on the political and military objectives of such a mission, whereas the use of military force is a different component therein.(26) In other words, depending on the underlying mandate for a peace support operation, the use of force spectrum may differ from operation to operation. In general it can be said that the intensity of the use of force administered by UN coalitions, may be higher in terms of Chapter VII missions, as opposed to VI missions.

Hence, the presence of a certain (UN) mandate, does not automatically justify the legality of military force.

5. UNLAWFUL USE OF FORCE AND ITS EFFECT ON ENSUING PEACE SUPPORT MISSIONS: THE IRAQI EXAMPLE

On the 22nd May 2003 the UN Security Council adopted its Resolution 1483

on the basis of which the mentioned Iraqi Stabilisation Force (SFIR) was founded in order to assist the US-UK coalition in the reconstruction of Iraq and the restoration and establishment of national and local institutions for representative governance.(27) This Stabilisation Force operated under the administrative responsibility of the US-UK Coalition until Iraq assumed its own governance over the country.

When reading the UN Mandate upon which the Stabilisation Force, formed by several UN members, relied, a causal relationship with the proceeding US military intervention in Iraq can be detected. Resolution 1483 starts by saying that "*Reaffirming also the importance of the disarmament of Iraqi weapons of mass destruction and of eventual confirmation of the disarmament of Iraq*".

This part of the preamble clearly relates to the assumption that underlied the US-UL military intervention namely the existence of weapons of mass destruction in Iraq. The Resolution also adopts the view that a military intervention is justified for the purposes of overturning a hostile regime in order to endorse accountability for crimes committed by a certain regime. In this regard, the preamble of the Resolution reads that: "*Affirming the need for accountability for crimes and atrocities committed by the previous Iraqi regime*".

For the UN, these observations apparently justify the conclusion that "*Determining that the situation in Iraq, although improved, continues to constitute a threat to international peace and security*", as well as the invocation of Chapter VII of the UN Charter.

Now that, at the least, a clear relationship can be found between the justification of the SFIR operation and the proceeding US-UK military intervention is made visible, the question arises whether the absence of a factual and legal foundation for the Iraq intervention may have repercussions for the legitimacy of the subsequent UN operation in Iraq. The following conclusions can be made:

a) The Security Council Resolutions authorizing this military

stabilisation operation under VII in Iraq factually and legally built upon the previous military invasion in Iraq in 2003.

b) The requirement of a proper mandate in terms of the second legal foundation for military intervention as set forth in paragraph 3.4, presupposes the any prior legal military action on the basis of which such a mandate or authorization is administered. In case such a mandate or authorization is predicated upon a preceding military intervention, assuming that this intervention was legally and factually in compliance with international law, while this assumption turns out to be false, it cannot be ignored that this will have ramifications for the particular mandate or authorization.

c) In the situation therefore that UN operations have a causal link with prior (unilateral) military intervention on part of certain states which intervention does not comply with the international law framework as set forth in paragraph 3 above, it is tenable that these UN operations similarly lack a proper factual and legal foundation.

d) Transposed upon the Iraqi intervention, especially in light of the conclusions of the US Senate, it can thus not be denied that the collective misapprehension that Iraq had an active and growing weapons of mass destruction program, also affects the subsequent UN operation. After all, the assumed terrorist threat on part of Iraq and assumed threat that Iraq would be capable to launch biological warfare formed the underlying tenet for the invasion and the threat to international peace and security. This predisposition also echoes in the mentioned UN Resolutions.

In conclusion it is thus highly questionable whether the SFIR operation bear a proper factual legal basis.

5. THE FUTURE OF UNILATERAL MILITARY INTERVENTIONS.

This article has given an overview of the history of the Iraqi military intervention of 2003 both politically and legally, while showing the reader

the contemporary principles of the use of force within international law. Applied to the Iraqi military intervention, this analysis has shown that the unilateral use of force by the US government is highly controversial. The intriguing question whether the absence of a proper legal and factual mandate for the use of unilateral military force on part of a State to counterbalance a potential terrorist threat or to overturn a hostile regime with the potential of launching attacks, also undermines future military missions which build upon the former intervention, was touched upon in this article.

The main conclusion of this assessment is that an affirmative answer to this question is probable. This is especially tenable when, such as is the case with regard to the SFIR operation, the subsequent mandate builds upon the factual and legal assumptions of the first military operation and invasion which led to the "occupation" of the invaded State.

The question arises what the exact consequences could be for the potential illegality of operations akin to SFIR? As noticed before, the Kingdom of the Netherlands, as well as other Western States, although not military supportive, did submit political support to the US-UK military intervention in Iraq. By adhering to Security Council Resolution 1483 and endorsing this resolution through contributing with military forces, those States certainly accepted responsibility for the preceding military operation in Iraq. There are no indications that those States themselves undertook their own intelligence and security assessment of the reliability and credibility of the intelligence information which led the US and the UK to the military intervention.

The system of international law does not have its own independent arbiters other then the Security Council itself and the International Court of Justice. It is not to be expected that these organs will be capable of addressing the intriguing question whether these observations can have legal consequences for those States who are not able or willing to investigate its own political processes which led to the unreserved execution of Resolution 1483.

Yet, it could be important that political processes be legally and factually reviewed in order to prevent future military operations under the umbrella of Chapter VII which turn out to have no proper factual or legal foundation. After all, States owe their military, part of such coalition forces, a clear mandate and explanation why they put their lives at risk during such operations. ❖

NOTES:

1. See *the Authorization for use of military force against Iraq Resolution of 2002* adopted by the US Congress and the US Senate; See Micah L. Sifry and Christopher Cerf, The Iraq War Reader, a Touchstone Book published by Simon and Schuster, New York 2003, at 378-383

2. Ibid.

3. Ibid.

4. Ibid.

5. See Yoram Dinstein, War, Aggression and Self-Defence, Fourth Edition, Cambridge University Press, 2005, at 216, 217

6. *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (Merits), [1986] ICJ Rep. 14, 94 at 121.

7. Ibid. para. 105

8. Dinstein, supra note 6, at 217, 218

9. Ibid. 207

10. Ibid 186

11. Ibid 208; see also Thomas M. Franck, Recourse to Force, Cambridge University Press, 2004, at 97-99

12. See Franck, supra note 12, at 107

13. Ibid., at 98

14. See Dinstein, supra note 6, at 208-213

15. Ibid., at 183

16. See Franck, supra note 12, at 105

17. Ibid., at 106, 107

18. Ibid., 108

19. See Joint Resolution, supra note 2

20. See "Notitie Rechtsgrondslag en Mandaat van missies met deelname van Nederlandse militaire eenheden", issued by the Kingdom of the Netherlands with respect to the legal foundation and mandate of the contribution of military forces during missions abroad.

21. Ibid.

22. Ibid.

23. See Dinstein, supra note 6, at 298

24. Ibid., at 298-300

25. Ibid., 300

26. See the mentioned memorandum of the Dutch government, supra note 20.

27. See also the ensuing Security Council Resolutions 1511 and 1546.