

First appeared in The New York Times

March 18, 2003, page A33

Good Reasons for Going Around the U.N.

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With the news that the United States was abandoning its efforts to get United Nations approval for a possible invasion of Iraq, yesterday looked to be a very bad day for staunch multilateralists and critics of American policy.

That view is understandable, but incomplete, even after President Bush's speech last night made it clear that America would be going to war largely on its own. By giving up on the Security Council, the Bush administration has started on a course that could be called "illegal but legitimate," a course that could end up, paradoxically, winning United Nations approval for a military campaign in Iraq -- though only after an invasion.

The relevant history here is from Kosovo. In 1999, the United States, expecting a Russian veto of military intervention to stop Serbian attacks on ethnic Albanians in Kosovo, sidestepped the United Nations completely and sought authorization for the use of force within NATO itself.

The airwaves and newspaper opinion pages were filled with dire predictions that this move would fatally damage the United Nations as the arbitrator of the use of force. But in the end, the Independent International Commission on Kosovo found that although formally illegal -- the United Nations Charter demands that the use of force in any cause other than self-defense be authorized by the Security Council -- the intervention was nonetheless legitimate in the eyes of the international community.

So, how can United Nations approval come about? Soldiers would go into Iraq. They would find irrefutable evidence that Saddam Hussein's regime possesses weapons of mass destruction. Even without such evidence, the United States and its allies can justify their intervention if the Iraqi people welcome their coming and if they turn immediately back to the United Nations to help rebuild the country.

The United States will now claim authorization under Resolution 1441. Most international lawyers will probably reject this claim and find the use of force illegal under the terms of the Charter. But even for international lawyers, insisting on formal legality in this case may be counterproductive. The better way to understand what has happened is that neither side can command a majority without a veto. By leaving well enough alone, both sides can continue to claim to have the better of the argument over how best to disarm Iraq.

What is most important here is that the contending sides continue to regard United Nations approval as a necessary component of the use of force. Compare the decades of the cold war, when the Security Council sat on the sidelines. Or consider what much of the world expected to

happen back in August: that the United States would lead an invasion of Iraq without any reference to the United Nations at all.

The United Nations imposes constraints on both the global decision-making process and the outcomes of that process, constraints that all countries recognize to be in their long-term interest and the interest of the world. But it cannot be a straitjacket, preventing nations from defending themselves or pursuing what they perceive to be their vital national security interests.

No one understood this better than the founders of the United Nations themselves, who had seen from the experience of the League of Nations what can happen when the best is the enemy of the good. They established the United Nations as a political institution as well as a legal one.

What we are witnessing today is an unruly process of pushing and shoving toward a redefined role for the United Nations. Practices have to evolve without formal amendment. On Kosovo, a majority of the people, at least in the NATO countries, rejected a system that blocked a humanitarian intervention because of the political allegiances of a prominent Security Council member. In the next crisis, over East Timor, the council was once again able to reach a consensus and authorize a United Nations force.

That is the lesson that the United Nations and all of us should draw from this crisis. Overall, everyone involved is still playing by the rules. But depending on what we find in Iraq, the rules may have to evolve, so that what is legitimate is also legal.