



LAW views

Mr Bush's planet

BRIAN CLOUGHLEY

A Washington 'source' pronounced that the Baghdad government "may have trained [al-Qaeda] terrorists in germ and gas warfare". The Baghdad government may also have trained little green men from Planet Zog in bungee-jumping from full-size cardboard replicas of the Eiffel Tower on the banks of the Limpopo. Or it may have given advanced technical instruction to massed bands of banjo-playing Taliban limbo dancers in wiggling hula hoops while hopping on electronic pogo sticks. It is amazing what comes into the minds of the demented draft-dodgers in Washington who are intent on justifying, by any means possible, their intended lunatic blitzkrieg on Iraq.

Mr Donald Rumsfeld, the US Secretary of State for War on Iraq (who, to give him his due, is the only non-draft-dodger in the unpleasant coterie of Washington's rabid warmongers, having served as a Navy pilot in the Fifties) claimed that "senior members of al-Qaeda" have been in Baghdad "in recent periods". Mr Bush parroted this by declaring that "There are al-Qaeda terrorists in Iraq." Ms Condoleezza Rice, the national security adviser, said "There clearly are contacts between Iraq and al-Qaeda and Iraq that can be documented; clearly there is testimony that some of the contacts have been important contacts and that there's a relationship here.... And there are some Al-Qaeda personnel who found refuge in Baghdad." Ignoring her fractured language (little wonder we do not hear from her often: she and her employer make a good syntactical pair), we realise that a concerted message is being sent to the world, in that the link between the repulsive Mr Hussein and the repulsive (and elusive) Mr bin Laden must be proved because Mr Bush and his posse tell us so.

So this has just been discovered, has it? It is pure coincidence, we are asked to believe, that evidence of strong contact between Al Qaeda and Mr Saddam Hussein has been found at the very time when every country in the world except Israel and Britain welcomed Iraq's acceptance of UN inspectors on its soil.

Certainly, on 20 August, Mr Rumsfeld and Mr Ari Fleischer (the White House spokesman) and others in Washington claimed that Al Qaeda was strongly represented in Iraq. "There are many names you would recognise" said a "Defense official", and Mr Rumsfeld was more intriguing if less forthcoming. But nobody has been given any names we "would recognise" although Mr Rumsfeld said that at "a later date... it might make sense to discuss that [allegation] publicly." And it seems that the time for publicly distributed indisputable high-level rumour about Al Qaeda's association with Iraq came last week.

By chance it came when America and Britain were cobbling together a draft UN resolution in such robust, rigid and revengeful terms as would make it impossible for Iraq to accept it, which is the earnest desire and precise intention of Mr Bush and Mr Blair just as Herr Hitler imposed terms on

shortly-to-be-invaded countries, then upped the ante once they agreed to his demands. Just as last week's UN Security Council resolution requiring Israel to withdraw its tanks and swaggering soldiers from Palestinian sovereign territory was impossible for Israel to accept. (Among other actions Israeli soldiers daubed excrement on the walls of a room of children's paintings. This is recorded in a film by the redoubtable John Pilger, 'Palestine is Still the Issue', shown on British television. The Jews of Britain, who appear



to owe more allegiance to Israel than to their own country, have gone into hysterics about such behaviour being displayed. Their cousins in the United States will ensure that the film is never shown there.)

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refusal to obey UN Security Council resolutions and US reaction to Israel's rejection of equally binding international policy initiatives. Resolutions involving Israel are rarely passed because the US generally vetoes them, but this time all the US could do if it was not to be an international laugh-

ingstock was to abstain from voting. (Israel has withdrawn some troops from the immediate environs of Mr Arafat's compound, but there are still hundreds in the area.)

The difference between Israel's intransigence and Iraq's intransigence is remarkable only in that the former is endorsed by the United States and the latter condemned by the United States to the point of planned military aggression. The invasion of Iraq now appears to be 'justified' by flat and unsupported statements that the all-embracing, all-purpose, international terrorist organisation, Al Qaeda, is deeply involved with Mr Saddam Hussein.

Mr Rumsfeld has not only said that Al Qaeda senior members have been in Baghdad, he averred that the US has "credible information that Iraq and al-Qaeda have discussed safe haven opportunities in Iraq [and] reciprocal nonaggression discussions." How fascinating.

The United States has spent billions of dollars trying to find and kill its Number One Enemy, Mr Osama bin Laden. It has combed, bombed, rocketed and rummaged Afghanistan, killing scores of Afghan civilians and four Canadian soldiers in the process, and investigated all regional countries with sometimes risible results. But the entire US intelligence empire - a staggering combination of organisations with unlimited resources and devices of such sophistication as to make the most exotic sci-fi gadgets look like a manual typewriter - has not been able to inform its employer whether Mr bin Laden is alive or dead, never mind providing the White House with evidence of him living it up in one of Mr Hussein's 'palaces', about which Mr Bush's lip-smacking martial marvels seem so well informed.

How can Washington's bottom-guns and the draft-dodging buffoon dragons be so certain that "There are al-Qaeda terrorists in Iraq"? If the communications' intercepts (of mind-boggling scope), the sweeps by Special Forces, the round-the-clock imagery surveillance of the world, the spooks, the spies, the agents, the suborned politicians and bribed bureaucrats of a hundred countries - the combined, energetic, even frantic efforts of the mighty United States intelligence agencies - cannot provide hard information as to whether Mr bin Laden is alive or dead, then why should we believe that "Iraq and al-Qaeda have discussed safe haven opportunities in Iraq [and] reciprocal nonaggression discussions" as claimed by Mr Rumsfeld? If Mr Rumsfeld knows who they are and where they are, and exactly what these people discussed, and with whom, how come he does not know if Mr bin Laden is still on the planet? We know that Mr Bush is hell-bent on killing Mr Hussein ("he tried to kill my dad!"), but manufacturing drivel about a nexus between Al Qaeda and Iraq makes one wonder on which planet Mr Bush resides.

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LAW watch



Postcard from USA

The drums of war

KHALID HASAN

Most American presidents like to have a doctrine associated with their names, long after they have passed into history, along with their deeds, good and bad. The doctrine George W. Bush will be associated with will be the Doctrine of Preemption which, its high-sounding name notwithstanding means you strike before your enemy. In plainer words, don't wait to get hit: hit first.

While a case could perhaps be made for this particular strategy, it is less simple to establish to the satisfaction of an objective observer that a clear and present danger exists which necessitates and justifies preemptive action. That is where President Bush and his principal lieutenants have failed. Why would Saddam Hussein commit virtual suicide and risk the destruction of his regime and his country by mounting a chemical, biological or missile attack on the United States? Iraq is not the only country that possesses or is trying to attain certain kinds of weapons or weapons technology. There are many others. Why don't they pose a threat to the world while Iraq does?

Despite the effort by the mindless Right that peoples the key posts in the Bush administration to establish a link between Al Qaeda and Saddam Hussein, it has not been possible to do so. The whole world knows that Saddam Hussein is no friend or admirer of religious zealots, nor has fundamentalist thinking or jihadi culture been allowed to take root in Iraq. The Iraqi ministry of religious affairs and aqaf keeps a strict eye on what goes on and does not permit sectarian controversies to be spread from the pulpit. What Iraq thought about Ayatollah Khomeini and his retrogressive so-called "Islamic revolution" was best manifested through eight years of the bloody Gulf War. Iraq is a secular state. The polity of the Ba'ath Party is a secular polity. If anyone is to be held responsible for pushing Saddam Hussein into adopting religious symbols and multiplying the number of mosques in Iraq, it



"I know what I believe. I will continue to articulate what I believe and what I believe - I believe that what I believe is right."

Bushism?

is the United States.

There is little doubt that America is inexorably being pushed into a war that can only bring disaster. It will knock the bottom out of the ongoing US-led actions against Al Qaeda, or what remains of it, and overnight it will turn every Muslim country against the United States and its policies. If that indeed is the objective, then President Bush is on the right course. Through an unrelenting media onslaught, the average American has been convinced that "they hate us." For "they", please read "Muslims". What he has not been told that it is certain given the policies and actions of the United States that Muslims find unacceptable. The blind advocacy and support by the Bush government of Israel and all that it does can lead any reasonable person to only one conclusion. This week, at the United Nations, for instance, the United States abstained when it came to a vote on the brutal siege of Yassir Arafat's compound.

But there are voices of dissent. The saintly Jimmy Carter has spoken against war and former vice president Al Gore has come out of his hibernation to attack Bush on Iraq. Some idea of how unreasonable the advocates of war and the "Bushies" are can be had from a September 25 article by the Washington Post columnist Michael Kelly. "Gore's speech was one no decent politician could have delivered. It was dishonest, cheap, low. It was hollow. It was bereft of policy, of solutions, of constructive ideas, very nearly of facts - bereft of anything other than taunts and jibes and embarrassingly obvious lies. It was breathtakingly hypocritical, a naked political assault delivered in tones of moral condescension from a man pretending to be superior to mere politics. It was wretched. It was vile. It was contemptible. But I understand."

Anatoli Lieven, a British journalist currently in Washington said it best, "What we see now is the tragedy of a great country, with noble impulses, successful institutions, magnificent historical achievements and immense energies, which has become a menace to itself and to mankind."

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Star LAW review

Convention on the Law of the Non-Navigational Uses of International Watercourses

MOHAMMAD MONIRUL AZAM & Md. SAIFUL KARIM

WATER may become major cause or source of confrontation in this Century. Therefore, international co-operation and sound international legal regime should be developed relating to the uses and management of water resources specially international water courses in order to minimize the possibility of future confrontation in this regard. One of such attempt is Convention on the Law of the Non-navigational Uses of International Watercourses (hereinafter referred as watercourse convention).

Adoption of watercourse convention

Initially the International Law Commission drafted a treaty for the non-navigational uses of International watercourses as a result of United Nations General Assembly Resolution 2669 of December 8, 1970. The General Assembly finally adopted the Convention on May 21, 1997 by 103-3 vote with 27 abstention. This convention will come into operation only after 90 days elapse of the date of deposit of the 35th instrument of ratification, acceptance, approval, or accession. As of January 11, 2002 only 11 states have ratified the convention. The convention is divided into seven parts containing 37 articles: introduction, general principles, planned measures, protection prevention and management, harmful conditions and emergency situations, miscellaneous and final clauses. Additionally an annex set for procedure to be used in the event, when the parties to a dispute have agreed to submit to arbitration. This article will review some key provisions of the convention.

Objectives of the convention

International Watercourse Convention seeks to promote and implement the purposes and principles set forth in article 1 and 2 of the charter of the United Nations, taking into account the problems affecting many international watercourses resulting from among other things increasing demand and pollution. This convention affirming the importance of international cooperation and good neighbourhood and being aware of the special situation and needs of developing countries provides for the protection and the promotion of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generation.

Definition of keywords

This convention defines the key expressions - Watercourse, International Watercourse and Watercourse State. The most important of these is the definition of 'Watercourse', which defines broadly as "a system of surface water and ground water constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus" (Art 2.a). This definition not only accords with hydrologic reality but also calls the attention of state to the inter-relationship among all parts of the system surface and under ground water that's make up an international watercourse. International watercourse means a watercourse parts of which are situated in different states. However the uses of international watercourse for navigation is not within the scope of present convention [Art. 1(2)].

The present convention has following propositions regarding the pre-existing watercourse agreement and application of the present convention to the watercourse agreements among states-

It makes clear that the convention does not affect the rights and obligation of the parties to it under pre-existing agreements. [Art. 3 (1)]

The convention encourages parties to follow the general principle of this convention in their specific agreement without preventing them from departing from it.

Watercourse State may enter into one or more agreements to apply and adjust the convention to the characteristics and uses of particular international watercourse and part thereof. [Art.3(3)]

Watercourse states shall consult with a view to negotiating in good faith for the purpose of adjustment and application of the provisions of the present convention. [Art.3(5)]

No party can adversely affect uses of other state without the consent of that state. [Art. 3(4)]

Non-parties are protected by a provision stating explicitly that their rights and obligations would not be affected by a watercourse agreement between other states on a watercourse shared by parties and nonparties alike [Art. 3(6)]

Equitable and reasonable utilization

According to watercourse convention under Article 5, Watercourse State shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. 'Equitable and reasonable utilization' is a long established principle of customary international law governing uses of international watercourses. It is worth mention that the General Assembly accepted the new concept of 'equitable participation', which is embodied in paragraph 2 of the Article 5 of the watercourse convention. The basic idea behind this concept is that, to ensure 'reasonable and equitable utilization' riparian states must often cooperate with each other by taking affirmative steps, individually or jointly, with regard to the watercourse. Indeed, the International Court of Justice referred to the principle of equitable utilization several times in its judgement in Gabacikovo- nagymaros case.

Article 6 of the convention sets factors relevant to equitable and reasonable utilization, taking into account all relevant, factors and circumstances including-

Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;



The social and economic needs of the watercourse; The population dependent on the watercourse in each watercourse state;

The effects of the use or uses of the watercourse in one watercourse state on another Watercourse State;

Existing and potential uses of the watercourse;

Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect and

The availability of alternatives of comparable value, to a particular planned or existing use.

However in the application of above factors in determining what is reasonable and equitable use-

All relevant factors are to be considered together and a conclusion should be reached on the basis of the whole and

Concerned Watercourse state shall enter into consultations in a spirit of co-operation.

In particular, an international watercourse shall be used and developed by Watercourse State with a view to attaining optimal and sustainable utilization thereof and benefit therefrom, taking into account the interest of the watercourse concern, consistent with adequate protection of the watercourse.

General obligation

The most controversial and debatable provision of the entire convention was the inclusion of 'obligation not to cause significant harm'. Upstream states generally favoured the 'equitable utilization rule' while downstream states on the whole preferred the 'no harm rule'. Finally adopted wording represents

an attempt to strike a balance between these two rules. Several obligations scattered in the various parts of the convention are as follows -

Watercourse State shall in utilizing an international watercourse in their territories take all appropriate measures to prevent the causing of significant harms to other watercourse states. [Article-7 (1)]

Where significant harm nevertheless is caused to another Watercourse State, the state whose use causes such harm shall, take all appropriate measures to eliminate or mitigate such harm and where appropriate, to discuss the question of compensation. [Article-7(2)]

Watercourse states shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection on an international watercourse. [Article -8]

Water State shall on a regular basis exchange readily available date and information on the condition of watercourses. [Article-9(1)].

However the state parties may avoid this obligation on the ground of 'national security and defense'

Article 10 of the convention makes it clear that neither navigation nor any other kind of use automatically takes precedence over others. It recognizes however that an agreement or custom to the contrary would change this result. But the expression "vital human needs" in paragraph 2 of article 10, could become a loophole, enabling a state to justify its use on this ground even when the involvement of vital needs is highly debatable.

Before a watercourse state implements or permits the implementation of planned measures which may have a significant adverse effects upon other watercourse states, it shall provide those states with timely notification thereof. (Article -12). A water course State shall without delay and by the most expeditious means available, notify other potentially affected states and competent international organization of any emergency such as floods, breaking up of ice landslides, earthquake or from human conduct such as industrial accident originating within its territory [Art. 28]. A watercourse state shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons in accordance with its legal system, access to judicial or other procedures or a right to claim compensation or other relief [Article -32]

Protection, preservation and management of water-course

Part IV of the watercourse convention provides for the protection, preservation, and management of the international watercourse. Watercourse states shall individually and where appropriate jointly-

Protect and preserve the ecosystem of international watercourses [Art -20]

Prevent reduce and control the pollution of international watercourse that may cause significant harm to other watercourse state shall take steps to harmonize their Policy in this connection. [Art -21(2)]

Take measures to protect and preserve the marine environment. [Art -23] Take necessary measures to prevent the introduction of species, alien or new, into an international watercourse having detrimental effects of the ecosystem of the watercourse. [Art -22]

Article 33 of the convention sets forth the procedure of settlement of disputes by peaceful means.

Water has become key natural resource for future prosperity and stability. Water is also gaining strategic significance. The availability of water and access to its utilization are crucial to the economic well-being not only on individuals but also entire regions and are thus the corner stone of peaceful co-existence. Therefore the peaceful management of global watercourse must be organized. It is worth noting that the international watercourse convention adopted by a weighty majority of countries with only three negative votes indicating broad agreement in the international community on the general principle governing the non-navigational uses of international watercourses. These considerations also mean that if it does enter into force the convention will have significant bearing on controversies between states one or more of which is not a party to it. Even if the convention never enters into force, it is likely to prove of significant value. Because the most important elements of the convention such as - 'equitable utilization' 'no harm', 'prior notification' etc. are in large measure codification of existing norms and practices of customary international law governing non-navigational uses of international watercourses.

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RIGHTS column



Arsenic and other toxic metals in drinking water identified

Leading an international team of volunteer scientists, Dr. Bibudhendra Sarkar, a senior scientist at The Hospital for Sick Children (HSC), has identified high concentrations of toxic metals in Bangladesh's drinking water. This research is reported in the September online issue of the scientific journal Environmental Health Perspectives.

The team charted national scale maps of the concentrations of arsenic and 29 other toxic metals in Bangladesh's drinking water and found that 60 million people in Bangladesh are drinking water with unsafe levels of arsenic. Similar numbers are exposed to unsafe levels of manganese. The group is the first to evaluate multi-metal synergy in causing severe arsenic toxicity and its health effects in Bangladesh. Chronic arsenic poisoning can cause such conditions as melanosis, leuko-melanosis, keratosis, hyperkeratosis, nonpitting edema, gangrene, and skin cancer.

Their research has found that metals in Bangladesh's drinking water exceed World Health Organization (WHO) health-based guidelines and include arsenic, a carcinogen; manganese, a known mutagen also associated with neurological damage; lead, a possible carcinogen which causes health problems in humans; nickel, a carcinogen; and chromium, also a human carcinogen. Most samples taken also contained detectable concentrations of antimony, known to magnify arsenic toxicity.

In addition, the team concluded that the severity of chronic arsenic poisoning in Bangladesh might be magnified by a lack of selenium, and a lack of zinc. Selenium is an essential element that prevents the toxic effects of arsenic. Similarly, zinc is an essential element that promotes the repair of tissue damaged by arsenic.

The results of the mapping also suggest that ground water with unsafe levels of arsenic, manganese, lead, nickel and chromium may extend beyond Bangladesh's border into four adjacent and densely populated Indian states.

"It is essential that strategies to supply safe drinking water must be developed and quickly implemented to avoid a catastrophic health crisis in Bangladesh. Our results may allow scientists, policy makers and aid workers to initiate programs to assist the areas most affected by the toxic metals documented by these studies," added Dr. Sarkar, the principal investigator.

Courtesy: The Hospital for Sick Children, affiliated with the University of Toronto, is the largest paediatric academic health science centre in Canada and one of the largest in the world.