

Just War in Iraq 2003

Some legal problems *jus ad bellum* in international law derived from the US Government and coalition forces intervention in Iraq in March 2003.

Thesis submitted for the Master of Law degree at the University of Copenhagen.

Last printed 09/10/03 10:38

Address:

Thomas Juul Dyhr

Springbanen 99

2820 Gentofte

E-mail: *thomas@dyhr.com*

Phone: +45 222 1111 5

Abstract

This thesis concerns, from a strictly legal perspective, problems of armed conflicts *jus ad bellum*¹ arising from the multilateral intervention by the US Government and the coalition forces in Iraq 2003. The focus is on qualifying the US Government and coalition forces actions under international law by interpreting relevant resolutions, the United Nations Charter, the possible emergence of a right to intervention and an extension to the right of self-defence. Questions are raised in order to assess and evaluate actions as an enforcement of international law. This approach naturally excludes arguments where actions could be justified on moral or political grounds. The thesis leaves out the whole area of state responsibility and individual responsibility of crimes against peace and security.

In summary the discussions in the U.N. Security Council before the war clearly showed that peaceful means were not exhausted. After the start of the US charged military intervention a broad majority in the Security Council called for an immediate end to the conflict stating that the war violated International Law and the UN Charter². A presumption of illegality can be derived from international law if the use of force is not authorized by the U.N. Security Council and is not in self-defence. The U.N. Security Council compellingly remains the supreme authority in maintaining international peace and security. Consequently the *carte blanche* authority to use force in resolution 678 (1990) is submitted the Security Council. Some argue in favour of a right of anticipatory self-defence but no such right can arguably be derived from current international law.

The thesis suggests that even though the concept of *just war*³ has vanished from modern legal framework in international law of armed conflict, it could be argued that some countries, with the US as the pioneer, is trying to reclaim this legal figure to justify a unilateral intervention in Iraq 2003 in accordance with the new Bush doctrine⁴.

¹ The rights of states to start wars.

² U.N. Security Council meeting 4726 26.03.2003, SC/7705

³ Philosophers dating back to ancient Greeks have presented ideas of just causes for war, Von Clausewitz is by many considered to have introduced the concept of *just war* in international law. Hans Kelsen is by some considered a modern day representative of *just war* notions in legal theory.

⁴ National Security Strategy of the United States of America, September 2002

Contents

JUST WAR IN IRAQ 2003

ABSTRACT	2
1. SCIENTIFIC METHOD	6
A. Method	6
B. Theory	6
C. Source material	7
2. OBJECT AND REASONING	7
A. Object	7
B. Relevance	8
C. Approach	9
3. THE U.N. SECURITY COUNCIL BATTLE	10
A. Prologue	10
B. The disarmament process	10
C. The US case against Iraq	11
D. The last relevant resolution 1441 (2002)	12
E. Meetings in the U.N. Security Council before the war in Iraq	12
F. Meetings in the Security Council after the initiation of the war in Iraq	16
Pro - Authorized by Existing Resolutions	17
Contra - Violation of International Law	17
G. Epilogue	18
4. LEGAL PROBLEMS	19
A. The Use of Force	20
B. U.N. Authorization	20
C. The Right of Self-defence	20
D. Ramifications	21
5. JUST WAR	21

A. The Bush Doctrine	21
B. Peaceful Resolution	23
C. War Today	23
D. Interpretation of the rule of non-use of force	24
E. Reflections on the rule of non-intervention	25
F. Other principles of Peace regarding the use of force	26
G. Perspective	26
6. THE SLEEPING AUTHORIZATION IN RESOLUTION 678 (1990)	27
A. The US Government position	27
B. The Supreme Authority of U.N. Security Council	28
C. The U.N. Security Council is the Employer	28
D. Character and Interpretation	30
E. Resolution 678 (1990)	32
F. The Scope of Military Action	33
G. Time and Scope	34
H. The sleeping authorization	35
I. Negotiations in the U.N. Security Council	37
J. An Issue of Good Faith	38
K. State Practice and US State Practice	40
L. Volenti Non Fit Injuria	41
M. Remarks on arguments on Humanitarian Intervention	42
7. AN EXTENDED RIGHT TO SELF-DEFENCE	44
A. A View of Enforcement Action	45
B. Terrorist Acts	46
C. The concept of Self-defence	47
D. Article 51 Legal Technical Questions	47
E. Necessity and Proportionality	50
F. Anticipatory Self-defence	51
G. The Problems of Self-Help	53

8. ARGUMENTS TOWARDS A FINAL ASSESSMENT	54
APPLIED MATERIAL	59
Literature	59
Articles	60
Internet	62
Appendix	64

1. Scientific Method

A. Method

In this thesis classical legal reasoning from the continental European-Scandinavian tradition is used and applied to find, build and discuss legal arguments and apply legal tests of international law. There are of course differences in legal reasoning from one legal system to another. The continental European school of law traditionally relies more on strict interpretation of the printed letter of law than the Anglo-American tradition, which in turn relies on a great tradition of precedence in cases of law. It is submitted as a matter of opinion that even though these differences have led to very different and opposite legal points of view, the understanding of each school of law has never been lost in international law. There are many fine examples of diversity in practical legal thinking and argumentation from the elaborate rulings of the International Court of Justice to affirm this notion. The famous and elaborate ruling in the Nicaragua case⁵ is a good and relevant example.

B. Theory

In legal theory⁶ and argumentation of international law the fundamental concept of state sovereignty has given rise to different views⁷. This is especially the case when considering different subject matters in international law where argumentation forms differently depending on the specific notion of State sovereignty. According to Schrijver (1999) the U.N. Charter Article 2(7) makes room for an interpretation of what constitutes the essence of a State's jurisdiction in the light of prevailing conceptions at a given time. However, it is often too easily argued that sovereignty is an outdated notion, which should be discarded as soon as possible. Importantly and according to Schrijver (1999)⁸ it is still difficult to conceive of genuinely feasible alternatives to the sovereign State in international law.

The law of armed conflict in international law is by far regulated by treaties with the U.N. Charter as the single most important treaty regarding issues of *jus ad bellum*. As a legal binding expression of the free will of states, the U.N. Charter is an obligatory source of law. Article 103 of the U.N. Charter sets forth a complex

⁵ Nicaragua Case (Merits) Nicaragua v. United States I.C.J. Reports 1986, p.14

⁶ Maarten Bos, *A methodology of International Law* (1984) and Michael Byers "Conceptualizing the Relationship between Jus Cogens and Erga Omnes rules" (1997) 66 *NJIL* 211

⁷ This is especially the case in interpretation of principles and rules of international law.

⁸ See Schrijver (1999) *International Law FORUM du droit international* 1: 155-159, 1999.

principle of priority; “their obligations under the present Charter shall prevail.”⁹ The thesis takes the general point of view that in cases of conflict, rules derived from the principles of state sovereignty in international law will only supplement the UN Charter¹⁰. This view of source and priority of the U.N. Charter forms a legal basis for this thesis. It is submitted that this view is not in contradiction with Article 38 of the Statute of the International Court of Justice and the practice of the Court.

C. Source material

Conventional judicial principles have been applied regarding the handling of legal material. The discussion of most issues in this thesis is based on a number of articles on the Iraqi situation in journals of international law¹¹. Regarding the use of material such as press releases from the Security Council and other explicit non legal written material, great efforts have been made in order to remain true to the words used, the proposed meaning and the context to which they exists.

Much research for this thesis has been done on the Internet. The UN website has been an indispensable source of information. The only downfall is the limitation available online of material from the past. Regarding the selection of sources of non-legal material emphasis has been put to utilize the most credible and trustworthy ones such as the BBC.

2. Object and Reasoning

A. Object

The object of this thesis is a concrete and strictly legal investigation, analysis and assessment of some of the legal problems *jus ad bellum*¹² in connection with the U.N. and coalition forces intervention in Iraq in March 2003. The focus is on qualifying the US and coalition forces actions under international law by interpreting relevant

⁹ See Article 103 of U.N. Charter “Where the obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.” According to Dinstein (2001) p. 236-37, 280 and 282 “The meaning of Article 103 is controversial” but in relation to Article 2(4) “This is a direct outcome of the peremptory nature of the prohibition of the use of inter-State force as *jus cogens*.” Simma (2002) p. 1293-1302 referring to resolution 670 (1990) “the provisions of Article 103 of the Charter” p. 1296.

¹⁰ This view regards the Charter of U.N. as obligatory source of law with precedence in International Law. *Pacta sunt servanda*. See Nicaragua Case (Merits) Nicaragua v. United States I.C.J. Reports 1986, p. 84-88 para 178

¹¹ American Journal of International Law, European Journal of International Law and Nordic Journal of International Law is the primary sources.

¹² According to Dinstein (2001) p. 70 “the undisputed ability of international law to control the conduct of combatants in the course of war (*jus in bello*) proves that it can also restrict the freedom of action of belligerents in the generation of war (*jus ad bellum*).”

resolutions, the United Nations Charter, the possible emergence of a right to intervention and an extension to the right of self-defence.

Questions are raised in order to assess actions as an enforcement of international law. The thesis processes some specific problems with certain forms of interpretation of U.N. resolutions on the Iraqi situation, and deals with certain forms of legal argumentation in order to justify actions that are not explicitly approved by the U.N. Security Council.

The idea is to find and raise some legal problems and concerns. The process of finding and identifying legal problems in regard to the assessment of the multilateral intervention is an important aspect. Legal problems emerge on a continuous basis in the process. Problems and critique will sometimes be mentioned in passing or will be dealt with in depth, depending on the relevance for the main object and the space available.

The thesis does not pretend to be a comprehensive account of the legal issues and problems discussed in international law on the use of force *jus ad bellum*, on connected legal doctrines or on the Iraqi situation as a whole. The thesis will try to shed some light over important problems and present directed legal argumentation towards a final assessment. The strictly legal approach naturally excludes arguments where actions could be justified on moral or political grounds. The thesis leaves out the whole area of state responsibility and individual responsibility of crimes against peace and security.

Many modern conflicts consist of armed atrocities that often occur as civil wars or terrorists actions not unambiguously involving states. Issues of humanitarian relief have been raised and pursued in practice in spite of the rule of non-intervention in international law. Humanitarian rights have in the 90's been used as vehicle to justify interventions in international law. This thesis could in many respects be regarded as yet another fresh leaf on a tree in an ongoing debate of authorized and unauthorized interventions under the U.N. Charter and in international law. The focus here is however on the requirements for a lawful intervention other than humanitarian.

B. Relevance

The issue of the legality of the US charged intervention is of great legal and political relevance and value. The US intervention in Iraq has attracted huge attention in the media all over the world through 2003. From a legal perspective matters are not clear

and deserves careful and rigorous examination. From the reactions alone in 2003 in the U.N. Security Council the US led intervention is controversial from both political and legal perspective regardless of the good for the World that might eventually come out of it. After the Second World War the U.N. Charter lay down the corner stone of peace in form of a prohibition against unauthorized use of force in Article 2(4). The rule of non-use of force is a foundation of modern international law. The future of prohibition of the use force in Article 2(4) and the rule expressed in customary international law is of great importance. The intervention in Iraq gives rise to fundamental problems and concerns in international law.

C. Approach

The systematic approach evolves around the U.N. Charter's objective and purpose to maintain international peace and security in the world after 1945 together with the U.N. Security Council's authority and role as the gatekeeper of peace. This thesis emphasizes an initial examination of the events in the Security Council leading up to the beginning of hostilities, because the U.N. Security Council decisions, position and negotiations are of the utmost importance in order to determine the legality of the US charged intervention in Iraq in March 2003. A short precise and stringent presentation of legal problems serves as a legal pointer. It is important to discover the relevant legal foundation and make a tentative determination of the borders of *jus ad bellum* in order to resolve what in a legal sense justifies the threat or use of armed military force against another state today in international law. The notion of *just war* is examined. The legal analysis and assessment of the problem of 'authorization' according to the U.N. Charter to use armed military force against Iraq is the key to the issue of legality of the US charged intervention. Even though the US Government have not officially supported their actions legally under the doctrine of self-defence, indications to the fact are clearly present and quite a few legal scholars bring this argument out of bed¹³. Finally, is it possible to conclude with legal certainty or is the answer dangling in the wind as a *non-liquet* decision?

¹³ Ruth Wedgwood is one of the foremost American speakers; see Wedgwood (1998), (2000) and Franck (2001).

3. The U.N. Security Council Battle¹⁴

A. Prologue

After the unlawful Iraqi invasion of Kuwait¹⁵ in 1990, and after a decade of de facto non compliance from the Iraqi state by not living up to the peace terms as set forth in numerous U.N. resolutions¹⁶, the U.N. Security Council was under tremendous pressure in the months before the year change 2003 and the first following months in the new year to resolve the issue and put a stop to especially the unwillingness of the Iraqi state to comply with the U.N. Security Council demand for disarmament and destruction of the proclaimed mass destruction weapons whether it be biological, chemical, nuclear or even long range missiles as well as putting a stop to the Iraqi unwillingness to deliver the necessary proof for such actions to the U.N. inspectors and the Security Council.

B. The disarmament process¹⁷

The U.N. inspections being part of the disarmament process in Iraq started in 1991, immediately after the Gulf War¹⁸. The Inspections went on for eight years, until 1998, when the inspectors were withdrawn. For the nearly four following years there were no inspections. These were resumed at the end of November 2002¹⁹.

The fundamental aim of inspections in Iraq has been to verify disarmament. The successive resolutions adopted by the Council over the years have varied somewhat in emphasis and approach. In 1991, resolution 687 (1991), adopted unanimously as a part of the ceasefire after the Gulf war, had five major elements.

The first three related to disarmament. They called for declarations by Iraq of its programs of weapons of mass destruction and long-range missiles, verification of the declarations through the United Nations Special Commission (UNSCOM) and the IAEA, and supervision by these organizations of the destruction or the elimination of proscribed items and programmes. Resolution 687 (1991) like the subsequent

¹⁴ The introduction is a comprehensive and essential account of events in and around the Security Council leading up to the US lead intervention in March 2003 based on U.N. SC resolutions, press releases and other material on which the paper should be read.

¹⁵ U.N. resolution 660 (1990) determines that there 'exists a breach of international peace and security as regards the Iraqi invasion of Kuwait'.

¹⁶ More 60 resolutions has been passed by the U.N. Security Council on the situation between Iraq and Kuwait, ref. U.N. website.

¹⁷ See Zedalis (1998) for a discussion of fundamental problems relating to the U.N. Weapons Inspections in Iraq. See Fleck (2002) for problems of enforced verification.

¹⁸ Summary of the background for the inspections regime in Iraq given by Hans Blix on the U.N. Security Council meeting 4692 27.01.2003, see full separate statement <http://www.un.org/Depts/unmovic/Bx27.htm>

¹⁹ See resolution 1441 (2002).

resolutions required cooperation by Iraq, but this was often withheld or given reluctantly.

Inspection is a way of creating confidence in disarmament. Iraq did not appear to come to a genuine acceptance of the disarmament that was demanded of it. The twin operation “declare and verify” often turned into a game of hide-and-seek. As a result, the disarmament phase was not completed in the short time expected. Sanctions against Iraq remained and took a severe toll until Iraq accepted the “oil for food” programme. The gradual development of that programme mitigated the effects of the sanctions.

The implementation of resolution 687 (1991) nevertheless brought about considerable disarmament results. It has been recognized that more weapons of mass destruction were destroyed under this resolution than were destroyed during the Gulf War.

Large quantities of chemical weapons were destroyed under UNSCOM supervision before 1994. Iraq claimed with little evidence that it destroyed all biological weapons unilaterally in 1991. It is certain that UNSCOM destroyed large biological weapons production facilities in 1996. The large nuclear infrastructure was destroyed and the fissionable material was removed from Iraq by the IAEA. Resolution 1284 (1999) was adopted by the U.N. Security Council with 4 abstentions. This resolution was supplementing the basic resolutions of 1991. The following years the resolution provided Iraq with a somewhat less ambitious approach. In return for “cooperation in all respects” for a specified period of time, including progress in the resolution of “key remaining disarmament tasks”, it opened the possibility, not for the lifting, but for the suspension of sanctions. For nearly three years, Iraq refused to accept any inspections by UNMOVIC. It was only after appeals by the Secretary-General and Arab States, and pressure by the United States and other Member States, that Iraq declared, on 16 September 2002, that Iraq would again accept inspections without conditions.

C. The US case against Iraq

The United States (US) stated its case publicly against Iraq in a speech²⁰ made by the US president to the U.N. General Assembly in September 2002. With reference to the

²⁰ President’s Remarks at the United Nations General Assembly. New York 12. September 2002.

attack on the World Trade Center in New York 2001 and the numerous²¹ U.N. resolutions against Iraq and their obvious defiance to comply with these resolutions the US listed, in a number of allegations the just reasons for U.N. Security Council to take action, with force if necessary, if Iraq did not disarm and comply immediately. Among these reasons were severe violations of Human Rights, the lack of returning war prisoners, the Iraqi involvement with terrorism, their non-cooperative attitude towards destruction of weapons of mass destruction (biological, chemical and nuclear) and destruction of long range weapons in form of SCUD missiles.

D. The last relevant resolution 1441 (2002)

The unanimously adopted resolution 1441 (2002) from the 8th of November last year clearly holds Iraq in ‘material breach’ of disarmament obligations. It required the cooperation to be immediate, unconditional and active. The resolution contained many provisions that were enhancing and strengthening the inspection regime. Iraq is offered a final chance to comply and is instructed that weapon inspections must be resumed within 45 days. The resolution recalls repeated warnings of ‘Serious Consequences’ for continued violations.

It is important to note that in the adoption of resolution 1441 (2002)²² Mr. Negroponte of the US Government said: “The resolution we have just adopted puts the conflict between Iraq and the United Nations in context and recalls the obligations on Iraq and the authorities of Member States to enforce them.” But Mr. Negroponte later emphasized the nature of resolution 1441 (2002) by saying: “As we have said on numerous occasions to Council members, this resolution contains no “hidden triggers” and no “automaticity” with respect to the use of force. If there is a further Iraqi breach, reported to the Council by UNMOVIC, the IAEA or a Member State, the matter will return to the Council for discussions as required in paragraph 12”.

E. Meetings in the U.N. Security Council before the war in Iraq

On a meeting on the 27th of January 2003 the Security Council was briefed by chief U.N. weapons experts on the first 60 days of inspections in Iraq according to

²¹ Over 60 resolutions from 1990 have been adopted in the Security Council on the situation between Iraq and Kuwait.

²² U.N. Security Council meeting 4644 08.11.2002, S/PV.4644, see p. 3 for Mr. Negropontes statements.

resolution 1441 (2002)²³. Mr. Blix said “UNMOVIC shared the sense of urgency felt by the Council to use inspection as a path to attain, within a reasonable time, the verifiable disarmament of Iraq. Recalling that Security Council resolution 1441 (2002) had emphatically reaffirmed the demand on Iraq to cooperate”. Mr. Blix further said “it would appear that Iraq had decided in principle to provide cooperation on substance in order to complete the disarmament task through inspection”. Mr. Blix however also drew attention to some outstanding issues and questions.

The US Secretary of State Colin Powell briefed the U.N. Security Council on a meeting²⁴ the 5th of February 2003 referring to resolution 1441 (2002)²⁵ repeating many allegations against Iraq made by the US president in September 2002. Mr. Powell declared that the United States would not -- could not -- run the risk to the American people that Saddam Hussein would one day use his weapons of mass destruction. Iraq still posed a threat and it still remained in material breach. By failing to seize its one last opportunity to “come clean” and disarm, it had put itself in deeper material breach and closer to the day when it would face serious consequences for its continued defiance. Security Council resolution 1441 (2002) was written, not in order to go to war, but to try and preserve the peace and give Iraq one last chance, he said. Iraq so far is not taking that one last chance. It was “irrefutable and undeniable” that, by the standard set out in operative paragraph 4 of resolution 1441 (2002), which defines a further material breach as false statements or omissions in declarations and failure to cooperate fully in the implementation of the resolution, Iraq was now in further material breach.

Council members agreed that Iraq must comply with all relevant Council resolutions in their entirety and completely eliminate its weapons of mass destruction. Several States suspected that Saddam Hussein’s regime was withholding relevant information and concealing military capabilities, but urged more time to allow the inspectors to do their work before resorting to war.

The Executive Chairman of UNMOVIC, Dr. Hans Blix, and the Director General of the IAEA, Dr. Mohamed ElBaradei held a press conference²⁶ in Baghdad

²³ See U.N. Security Council meeting 4692 27.01.2003, press release SC/7644 and U.N. Security Council Resolution 1441.

²⁴ U.N. Security Council meeting 4701 05.02.2003, see SC/7658

²⁵ U.N. Security Council Resolution 1441

²⁶ Press Conference by the Executive Chairman of UNMOVIC, Dr. Hans Blix, and the Director General of the IAEA, Dr. Mohamed ElBaradei, in Baghdad, Iraq
<http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=383&SID=6>

on the 9th of February 2003. Hans Blix said, “These unresolved issues do not necessarily mean that there are weapons; it means we don't know, we'd like to know that they don't now exist.” On the Iraqi cooperation Hans Blix said, “The general statement would be that cooperation on process has been good”.

The 14th of February the U.N. Security Council held a meeting²⁷ on the situation on Kuwait and Iraq, where Hans Blix and Dr. ElBaradei were invited. The heads of the weapons inspections regime in Iraq reported to the Security Council that procedural cooperation in the disarmament process in Iraq had continued to improve in recent weeks, and to date they had found no weapons of mass destruction, but many banned weapons remained unaccounted for and that could only be resolved through Iraq's “immediate, unconditional and active” cooperation. Cooperation on substance required more than the opening of doors.□Hans Blix further stated that one must not jump to the conclusion that weapons of mass destruction existed.□But the possibility was also not excluded.□If they existed, they should be presented for destruction.□If not, credible evidence to that effect should be presented. A majority including France, China, Russia and Germany supported the continued inspection process.

In a meeting²⁸ held on the 7th of March the U.N. weapons inspectors report to the Security Council on progress in the disarmament of Iraq. The inspections that began on 27 November 2002, were mandated by the Security Council in resolution 1441(2002), and gave Iraq a “final opportunity to comply with its disarmament obligations” dating to 1991 and the end of the Persian Gulf war. Hans Blix reported to the Security Council that after a period of somewhat reluctant cooperation, there had been an acceleration of initiatives by Iraq since the end of January, including an acceptance that its Al-Samoud 2 missiles must be destroyed.

As to whether Iraq had cooperated “immediately, unconditionally and actively”, Hans Blix said that the Iraqi side had tried on occasion to attach conditions, but so far had not persisted in those or other conditions. The initiatives now taken by the Iraqi side, three to four months into resolution 1441, could not be said to constitute “immediate” cooperation. Mohamed ElBaradei highlighted the main divergent views on how to proceed with disarming Iraq of banned weapons.

Council members said that the time had not come for military action. They pressed for more time and strengthened inspections, aimed at Iraq's peaceful

²⁷ U.N. Security Council meeting 4707, 4708 14.02.2003, see S/PV 4708, SC/7664

²⁸ U.N. Security Council meeting 4714 07.03.2003, see SC/7682

disarmament. Others insisted that Iraq had not made the strategic decision to comply and that recent disarmament measures had occurred only as a result of the imminent threat of military force. Hans Blix added that while cooperation could and was to be immediate, disarmament, and its verification, could not be instant. Even with a proactive Iraqi attitude, induced by continued outside pressure, it would still take some time to verify sites and items, analyze documents, interview relevant persons, and draw conclusions.

That would not take years, nor weeks, but months. To address unresolved disarmament issues and to identify key remaining disarmament tasks, Hans Blix would submit a draft work programme to the Council this month. Mr. ElBaradei reported that, after three months of intrusive inspections, the Agency had found no evidence or plausible indication of the revival of a nuclear weapons programme in Iraq. There was also no indication that Iraq had attempted to import uranium since 1990 or that it had attempted to import aluminium tubes for use in centrifuge enrichment. Although the IAEA was still reviewing issues related to magnets and magnet production, he continued, there was also no indication that Iraq had imported magnets for use in the centrifuge enrichment programme. A draft resolution²⁹ from Spain, United Kingdom, Ireland and the US from the 7th of March 2003 including a paragraph “Acting under chapter VII of the U.N. charter” was rejected.

The U.N. Security Council held an important meeting (4717) on the 11th and 12th of March 2003 on the situation in Iraq and the progress of the U.N. Inspectors. On the request of non-aligned countries the Security Council hears views of larger UN membership on disarmament of Iraq³⁰. 28 speakers debated what many called a “rush to war.” Hans Blix reported that after a period of somewhat reluctant cooperation, there had been an acceleration of initiatives by Iraq since the end of January, including acceptance that its Al-Samoud 2 missiles must be destroyed.□At the same time, such initiatives three to four months into resolution 1441 (2002) did not constitute “immediate” cooperation. Resolution 1441 (2002) authorized the inspections, which began on 27 November. Unanimously adopted by the Council, the text gave Iraq a final opportunity to comply with its obligations to rid itself of chemical, biological and nuclear weapons, obligations that dated back to 1991, with the end of the Persian Gulf

²⁹ U.N. Security Council draft resolution: “Spain, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution”, 7.03.2003, see S/2003/215

³⁰ U.N. Security Council meeting 4717 11.03.2003, se SC/7685

War. A further resolution, submitted by the United States, the United Kingdom and Spain, but not yet pressed to a vote, would give the Iraqi leadership until 17 March to comply with its obligations. The Security Council³¹ heard from 53 speakers in two days on Iraq's disarmament. Some stress Iraq has not cooperated, but importantly most say inspectors need more time.

The 17th of March 2003 the Spokesman for Secretary-General Kofi Annan authorized the withdrawal of all remaining United Nations system personnel from Iraq³².

The U.N. Security Council held a meeting on the 19th of March 2003 on the Iraqi situation. In a press release³³ the importance of humanitarian aid for Iraq was stressed as Security Council members voiced different views on the disarmament process. The Council heard the Report of Chief U.N. Weapons Inspector Hans Blix. Germany said in regard to the Hans Blix work programme that it had provided clear and convincing guidelines on how to disarm Iraq peacefully in a short period of time. It was possible to disarm Iraq peacefully. Peaceful means had not been exhausted.

Because of differences mainly between the 5 permanent members in the U.N. Security Council up until the 19th of March 2003 a further resolution with a fixed time limit and sharpened conditions, or better, an explicit authorization to use force in the U.N. language failed in spite of several attempts.³⁴ Hans Blix had argued for more time to UNMOVIC. The general view was that France, Germany and Russia felt that peaceful means not had been exhausted, while the US and Britain felt otherwise. The latest relevant resolution was resolution 1441 (2002)³⁵.

F. Meetings in the Security Council after the initiation of the war in Iraq

On the 20th March 2003 the US and coalition forces attacked Iraq. After the start of hostilities a broad majority in the Security Council called for an immediate end to the conflict and stated that the war violated International Law and the UN Charter³⁶. Speakers called for a halt to aggression and immediate withdrawal of the US and coalition forces. The Iraqi representative said that the international community was

³¹ U.N. Security Council meeting 4717 12.03.2003, se SC/7687

³² U.N. Security Council press release SC/7693

³³ U.N. Security Council meeting 4721 19.03.2003, see SC/7696

³⁴ U.N. Security Council draft resolution: "Spain, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution", 7.03.2003, see S/2003/215

³⁵ U.N. Security Council resolution 1441 8 November 2002

³⁶ U.N. Security Council meeting 4726 26.03.2003, see SC/7705

well aware that the Security Council had not authorized the use of force by the United States and the United Kingdom. The Secretary -General of the U.N. said in that “all of us must regret that our intense efforts to achieve a peaceful solution, through the Council, did not succeed”.

Pro - Authorized by Existing Resolutions

The United States and the United Kingdom defended the military action as necessary to disarm Iraq and authorized by existing Council resolutions. The coalition simply acted to enforce relevant Council resolutions. The representative of the United States told the Council that responsibility for current hostilities in Iraq lay with the Iraqi regime, which had defied Council resolutions and refused to disarm for the past 12 years. It was necessary to first demonstrate to the Iraqi people that the United States sought to liberate, not to occupy. Second, Iraq must be disarmed from all nuclear, chemical and biological weapons production capacity. Third, its terrorist infrastructures must be destroyed. United States forces would stay as long as necessary to restore the sovereignty of Iraq to the Iraqi people. It had long been recognized that Iraq’s breach of obligations authorized the use of force. Resolution 1441 (2002) had found Iraq in material breach, and the use of force had been authorized under resolution 678 (1990). The war in Iraq was not a war against its people, he stressed, but against a regime that had defied the will of the international community for more than a decade. The use of force was authorized in the current circumstances under Security Council resolutions 678 (1990), 687 (1991) and 1441 (2002). A broad coalition of well over 40 States was supporting the action materially or politically.

Contra - Violation of International Law

In a press release from the U.N. Security Council meeting³⁷ held the 27th of March 2003, a week after the beginning of hostilities a broad majority of states stated that the war violates international law and U.N. Charter, many states called for a halt to what they described as “illegal aggression”. Many countries if not all expressed a concern for the present humanitarian situation in Iraq. The French representative said his country had tried to convince the Council that Iraq could be disarmed peacefully, and he regretted that military action had begun without Council authorization. The Russian Federation said, that the unprovoked military action against Iraq was a violation of international law and could not, in any way, be justified. The United States and the

³⁷ U.N. Security Council meeting 4726 27.03.2003, see SC/7707

United Kingdom had been unable to provide proof of their allegations regarding Iraq's weapons of mass destruction, or Baghdad's support for international terrorism. During the military action, no proof had been found to corroborate those accusations. The use of force to change the political regime in a sovereign State ran counter to the principles of the United Nations Charter and was a serious political mistake.

Liechtenstein was concerned that the Council and international law had been bypassed on a question of such magnitude and believed it had wider ramifications, which must be discussed. Iraq's representative said the United States and the United Kingdom wanted to put the humanitarian issue before the world to misguide it and distract it from the main issue of war. Iraq further pointed to the fact that Iraq had not crossed the Atlantic to attack the United States, had no link to the 11th September attacks and had no weapons of mass destruction. And finally Iraq's representative called on the Council to halt the war and restore peace.

G. Epilogue

In the aftermath of the multilateral intervention and occupation of Iraq serious questions have been raised about the foundations of war. The US Government did not succeed with their efforts in getting the Security Council to adopt a new resolution after resolution 1441 (2002) unambiguously authorizing the use of force against Iraq. The burden of proof to justify armed military actions in Iraq arguably lies with US and coalition forces as the aggressor. Serious doubts have been raised about the authenticity of many of the so-called proofs that served the US Government and allied forces allegations against Iraq. In a press release from U.N. Security Council meeting held on the 5th of June it is said that the "U.N. inspectors found no evidence of prohibited weapons programmes as of 18 March withdrawal". However further that a "new environment in Iraq with full access and cooperation, should allow establishment of truth about 'unaccounted for' items".

In the notes³⁸ for the briefing of the Security Council on the thirteenth quarterly report³⁹ of UNMOVIC on the 5th of June 2003 Hans Blix highlighted some points of which the following is number one: "The first point, made in paragraph 8 of the report, is that the Commission has not at any time during the inspections in Iraq found

³⁸ See "Notes for the briefing of the Security Council on the thirteenth quarterly report of UNMOVIC" by Hans Blix, Executive Chairman of UNMOVIC 5 June 2003, U.N. Website: <http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=529&SID=6#>

³⁹ Thirteenth quarterly report of the Executive Chairman of the United Nations Monitoring, Verification and Inspection Commission in accordance with paragraph 12 of Security Council resolution 1284 (1999) S/2003/580

evidence of the continuation or resumption of programmes of weapons of mass destruction or significant quantities of proscribed items – whether from pre 1991 or later.” And further in connection to the previous paragraph: “As I have noted before, this does not necessarily mean that such items could not exist. They might – there remain long lists of items unaccounted for – but it is not justified to jump to the conclusion that something exists just because it is unaccounted for”. Many of the proofs for US Government allegations that became an intimate part of a justification for the use of armed force against Iraq is unsubstantiated, others simply not true or in extreme cases falsifications. The alleged sale of nuclear material from Niger to Iraq as part of the Iraqi nuclear build up that played a major role in the documentation turned out to be a falsification. The CIA directly warned the US Government that claims about Iraq's nuclear ambitions were not true months before President Bush used them to make his case for war⁴⁰. Hans Blix is quoted to say to the Spanish newspaper El Pais “There is evidence that this war was planned well in advance”⁴¹. In summary today, months after the occupation of Iraq, no indisputable evidence of the Iraqi actual possession of any of the mentioned weapons of mass destruction or Iraqi Government significant ties to terrorist organizations involved in the 11th September incident has been found and brought forward to the international community⁴².

4. Legal Problems⁴³

In general it is of great legal significance to determine if the U.N. Security Council authorized the military action against Iraq. It could very well be argued that the U.N. Security Council did not adopt a new and needed resolution explicitly authorizing the armed military intervention in Iraq before the start of hostilities in March 2003. Resolution 1441 (2002) gave Iraq “a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council” and did not explicitly authorize the use force. However it could also be argued that the authorization to use force in Iraq has existed since the resolution 678 (1990). And a material breach of the cease-

⁴⁰ Stories from BBC NEWS: “White House 'warned over Iraq claim” <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/americas/3056626.stm> and “Bush under fire over Iraq claims”

<http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/3051963.stm>

“Iraq uranium claim sows confusion” <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/3061665.stm>

⁴¹ http://www.finalcall.com/artman/publish/Article_695.shtml

⁴² BBC 2003/07/07 “Q&A: The Iraq weapons row”

http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/politics/3051298.stm

BBC 2003/10/03 “US team finds no Iraq WMD” <http://news.bbc.co.uk/2/hi/americas/3157246.stm>

⁴³ See Links to Opinions on Legality of War Against Iraq <http://www.robincmiller.com/ir-legal.htm>

fire conditions in resolution 687 (1991) would revoke an authorization to use force. In resolution 1441 (2002) the Security Council “decides that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991).” Another important legal argument to consider is that of an extended right of self-defence opposed to the rule of non-use of force and non-intervention in international law. The US Government has repeatedly pointed to the terrorist attacks of September 11th 2001 in justifying a military strike under the concept of “anticipatory self-defence”. It is debatable whether there exist such an extended right to anticipatory self-defence under international law.

A. The Use of Force

What significance does the prohibition of the use of force have in Article 2(4) and in customary international law? The character and absoluteness of the rule of non-use of force raises a number of questions in international law. Does the possibility exist for the legally justified use of force in form of interventions outside the U.N. charter?

B. U.N. Authorization

What is the significance of the collective security mechanism in the U.N. Charter in regards to the Iraq case? What are the legal requirements for a lawful intervention in Iraq under the U.N. Charter? Was a new resolution authorizing the use of force needed before the US and coalition forces lawfully could go ahead with an enforcement action? What are the legal requirements for an enforcement of present U.N. resolutions against Iraq? What U.N. mandate existed before the invasion of Iraq in March 2003? What is the character of resolution 678 (1990)? Can the US Government use the authorization in resolution 678 (1990), 687 (1991) and 1441 (2002) as a legal basis for the US led multilateral intervention in Iraq?

C. The Right of Self-defence

What is the exact content and extent of the right of self-defence in the U.N. Charter and customary international law? Does the doctrine of self-defence include an extended right to anticipatory self-defence? Is it possible to legally justify the use of force in Iraq as an act of self-defence? Is the terrorist incident in September 2001 in the US a legal justifiable reason under the doctrine of self-defence? Can self-help, acts of deterrence or retaliation serve as legal arguments under international law?

D. Ramifications

What is the legal summarizing *jus ad bellum* of the Iraq situation? Is the US and coalition forces intervention, occupation of and regime change in Iraq lawful? What perspective does the Iraq situation give on future U.N. enforcement actions? Are the U.N. Charter and the rule of non-use of force reduced to a political letter of intent? What consequences do an unauthorized intervention in Iraq have in international law?

5. Just War

The concept of *just war* goes back in time. Historically many reasons have been given in order to legally justify war. The right to resort to war was regarded as legitimate attribute of state sovereignty⁴⁴. By the famous words of Niccolò Machiavelli “war is just which is necessary⁴⁵”. The belligerents found definite cause considered by themselves to be valid and sufficient justification for war⁴⁶. For centuries war was sanctioned by law in the international community as a way of asserting a state’s legal rights and for pursuing national interests⁴⁷. War was used as means of annexing the territory of neighbouring states; to acquire colonies; to force a change of government in another state; and to protect interests of nationals abroad.

Every state wanted a piece of the cake, and what they could not legally acquire they took with force if necessary and possible. The concept of ‘self-help’ was wide spread.⁴⁸ In reality there was no prohibition of war, so states were free to resort to war⁴⁹. The notion of *bellum justum* or *just war* was for obvious reasons hard to abolish in times of quest and colonialism up to and through the 19th century⁵⁰.

A. The Bush Doctrine⁵¹

The National Security Strategy of the United States of America⁵² today realizes the new situation of modern conflicts and terrorist threats. The Bush doctrine blatantly

⁴⁴ See Paenson (1989) p. 8.

⁴⁵ See Niccolò Machiavelli “Il Principi”, 1505 (<http://www.constitution.org/mac/prince00.htm>), see also Brownlie (1963) p.11.

⁴⁶ See Griffiths (2002) p. 303 with ancient references to “The Histories of Polybius”, Shuckburgh translation to English pp 171–74, 189 et seq; Aristophanes, “Lystrata”, Fittes translation to English pp. 41; Plato, “Laws”, i. 628B; vii. 803; viii. 829A. For medieval writers see: St. Augustine, “Questiones in Heptateuchum”, VI. 10b; Giovanni de Legnano, “Tractus de bello, de repesaliis et de duello”.

⁴⁷ Cassese (1988) p. 30.

⁴⁸ Cassese (1988) p. 31.

⁴⁹ Simma (2002) p. 114 note 3.

⁵⁰ According to Griffiths (2002) p. 303 “The consensus among states until comparatively recently was that the use of force was simply one of the legitimate tools available to a sovereign state in bringing its policy to fruition.”

⁵¹ Duncan E. J. Currie LL.B. (Hons.) LL.M. “‘Preventive War’ and International Law After Iraq” 2003 http://www.globelaw.com/Iraq/Preventive_war_after_iraq.htm

Tom J. Farer in “Beyond the Charter Frame: Unilateralism or Condominium?” *A.J.I.L.* (2002) Vol. 96, p. 359. And see Fitzpatrick (2003) regarding the US policy on terrorism.

advocates pre-emptive measurements against enemies of the USA. From the Bush doctrine p. 6 “While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting pre-emptively against such terrorists, to prevent them from doing harm against our people and our country⁵³”. Further “The United States has long maintained the option of pre-emptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction— and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively.⁵⁴” And finally “To support pre-emptive options, we will:... The purpose of our actions will always be to eliminate a specific threat to the United States or our allies and friends. The reasons for our actions will be clear, the force measured, and the cause just.⁵⁵”

The Bush doctrine of pre-emptive measurements arguably marks a departure from the principles of peace in the U.N. Charter⁵⁶. The US Government included Iraq on the “Axis of Evil” list in a clear strategy to overcome terrorist threats wherever they might emerge in a worldwide “War on Terrorism”⁵⁷. However, if no U.N. authorization to use force exists it is clearly outside the confinements of the U.N. Charter to act unilaterally against an enemy with military force when there is no imminent threat or attack - and consequently no case of self-defence according to Article 51 of the U.N. Charter. Cases could all too easily amount to acts of aggression. When unauthorized use of armed force is not justified in international law it falls under the ancient regime of *just war* where random national interests affect or break international law and peace.

⁵² National Security Strategy of the United States of America, September 2002 (NSS) “The Bush doctrine”

⁵³ NSS p. 6.

⁵⁴ NSS p. 15.

⁵⁵ NSS p. 16.

⁵⁶ According to Tom J. Farer in “Beyond the Charter Frame: Unilateralism or Condominium?”, *A.J.I.L.* (2002) Vol. 96, p. 359. “The Bush Doctrine, to the extent it implies unilateral action, cannot be contained within the UN Charter norms that have served as the framework of international relations for the past half century..”

⁵⁷ According to Fitzpatrick (2003) p. 261 the US “War on Terrorism” causes an “aggravation of US tendencies toward corrosive unilateralism and exceptionalism.”

B. Peaceful Resolution

The Briand-Kellog Pact⁵⁸ from 1929, in which the prior US Secretary of State was one of the main entrepreneurs, clearly expresses the principle of condemnation of the recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations to one another⁵⁹. The settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be shall never be sought except by pacific means⁶⁰. Even though it never has been clear whether the Briand-Kellog Pact prohibits the use of armed force short of war or war it self⁶¹, the idea and principle of a legal basis should remain clear, as to say that all conflicts should be sought resolved by peaceful means before resorting to war as a last option⁶².

C. War Today

Wars between States are today⁶³ unfortunately still a basic fact of international life and they are as old as states themselves⁶⁴. War is a feature of human behaviour and law is an important instrument for regulating human behaviour.⁶⁵ International laws and the legal perception of armed conflicts have fortunately changed in favour of more pacific views over time. In the 20th century with the introduction of the system in the U.N. charter to maintain international peace and security, things have changed from the right to initiate a *just war* to the prohibition of war. The prevention of war is the foremost problem of international politics and law. Public international law has increasingly been dedicated to the prevention of war⁶⁶. It is possible today to refer to a system of war prevention in international public law as a whole comprising⁶⁷ of:

- The prohibition of the use of force
- Collective measures to secure the prohibition of the use of force
- The obligation to resort to peaceful means of settlement of disputes
- Regulations of arms limitation and reduction

⁵⁸ See Griffiths (2002) p. 304-306, Dinstein (2001) p. 78-80.

⁵⁹ General Treaty for the Renunciation of War 1928, Article I.

⁶⁰ General Treaty for the Renunciation of War 1928, Article II.

⁶¹ See Harris (1998) p. 861 note 2

⁶² In 1934 the International Law Association resolved as follows: A signatory state which threatens to resort to armed force for the solution of an international dispute or conflict is guilty of a violation of the pact. Report of the 38th Conference of the International Law Association, Budapest (1934) p. 67 that introduces and includes the possible threat of armed force.

⁶³ The U.N. Security Council has in recent years dealt with quite a few international armed conflicts.

<http://www.un.org/documents/scres.htm>

⁶⁴ Paenson (1989) p. 2 § 1

⁶⁵ Simma (2002) p. 114 note 1

⁶⁶ Simma (2002) p. 114 note 1

⁶⁷ Simma (2002) p. 114 note 1

➤ Rules of peaceful change

The corner stone of peace is found in Article 2(4) of the U.N. Charter:

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations.”

D. Interpretation of the rule of non-use of force

The determination of the precise content and scope of Article 2(4) of the U.N. Charter is not without difficulties⁶⁸. In this thesis only questions in regard to the illegality of the use of force compared to the situation with Iraq is raised and examined. The scope and content of the prohibition of use of force is first of all determined by an interpretation of Article 2(4) in context with Articles 39, 51 and 53 of the U.N. Charter⁶⁹.

The U.N. General Assembly has in the Declaration of Friendly Relations⁷⁰ elaborated on the meaning and importance of fundamental principles in the U.N. Charter and international law including and not the least on the principle of non-use of force in Article 2(4). It is important to remember that customary international law is reflected in Article 2(4). Practice from the ICJ will as well enlighten the use, content and scope of Article 2(4). According to Article 31 of the 1969 Vienna Convention⁷¹ on the law of Treaties it is clear that provisions in the U.N. Charter must be interpreted in accordance with the treaty's objects and purposes, including the preamble.

Article 2(4) is a protection of states against the misuse of armed force from other states. It is an obligation of non-use of force in international law. In legal terms a prohibition of the threat or use of force. Its clear that Article 2(4) in the U.N. charter is no empty declaration of good intentions between states, but a binding legal obligation and peremptory rule for all member countries⁷² - That aims directly to the hole purpose

⁶⁸ There are a number of uncertainties, clarifications and questions of legal interest that needs answering in regards to Article 2(4) See Simma (2002) p.112-136 for examples.

⁶⁹ Simma (2002) p. 117 l.15

⁷⁰ General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in Accordance with Charter of The United Nations 1970

⁷¹ The US has not signed the Vienna Convention, but according to Byers (2002) p. 25 the United States in 1971 acknowledged that the Vienna Convention was an accurate codification of customary international law.

⁷² This legal principle of the prohibition of use of force is regarded as the least controversial example of *jus cogens* outside the law of treaties. It applies to the rest of non U.N. member countries in the world as well, see Nicaragua Case (Merits) Nicaragua v. United States I.C.J. Reports 1986, p.14

and intent of the U.N. charter to maintain international peace and security⁷³. Article 2(4) conforms to a general peremptory rule of prohibition of the use of force in customary international law having the character of *jus cogens*⁷⁴. The principle in Article 2(4) in the U.N. charter is the most obvious example of *jus cogens*⁷⁵ outside the law of treaties. The prohibition of force is widely known and legally recognized internationally by states, statesmen and international lawyers to be an obligation of a peremptory customary rule of international law. The rule of non-use of force in customary international law seems to close or at least narrow any gap outside the law of treaties in this area to the minimum. This peremptory rule of non-use of force would arguably lead to a restrictive interpretation when conflicting with other rules of international law outside the area of *jus cogens*. Derogation from the rule of non-use of force⁷⁶ is therefore not permitted, and the rule will only be modified by a subsequent norm of general international law having the same character⁷⁷. According to Brownlie (1963)⁷⁸ it is legally prudent to take this one step further and argue for a presumption of illegality if the use of force is not in self-defence or authorized by the U.N. Security Council.

E. Reflections on the rule of non-intervention

It is vital to remember the guiding principle of non-use of force with the principle of non-intervention. The rule of non-intervention according to Article 2(7) of the U.N. Charter has a much broader scope outside the use of force other than that of Article 2(4) of the U.N. Charter. In many ways the rule flows from the principle of state sovereignty in customary international law. Because an act of intervention often will have an element of force, the rule of non-use of force in Article 2(4) could to be considered a reflection of the non-intervention principle. The U.N. Declaration on Intervention⁷⁹ clearly states the principle of non-intervention in the first paragraph:

⁷³ Nicaragua Case (Merits) Nicaragua v. United States I.C.J. Reports 1986, p. 85 para 178 “provision essential to the accomplishment of the object and purpose of the treaty” referring to the Vienna Convention Article 60.

⁷⁴ Nicaragua Case (Merits) Nicaragua v. United States I.C.J. Reports 1986, p.14 “...contrary to customary international law, used direct armed force...” and later “the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*” with reference to Y.B.I.L.C. 1966, II p. 247.

⁷⁵ See Schaffer (1997) p. 67 on the concept of *jus cogens*.

⁷⁶ I.C.J. Reports 1986, p.14 uses the term “principle of non-use of force”.

⁷⁷ Vienna Convention on the Law of Treaties 1963 Article 53, 1155 U.N.T.S 331

⁷⁸ Brownlie (1963) p. 112 writes; “...the juridical bases existing since 1945 for the assertions that the use of force or threat of force otherwise than in self-defense or with the authority of an organ of the United Nations is illegal, and there is a presumption...”

⁷⁹ U.N. General Assembly “Declaration of the Inadmissibility of Intervention in Domestic Affairs of States and the Protection of their Independence and Sovereignty 1965”

“No state has the right to intervene, directly or indirectly, for any reason whatever, in internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements, are condemned”.

F. Other principles of Peace regarding the use of force

It is important to emphasize Article 2(3) of the U.N. Charter that advocates peaceful settlements of disputes: *“All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”*. Belligerents have a strong obligation in international law to resolve disagreements peacefully. These principles are emphasized in the U.N. Declaration on Friendly Relations⁸⁰. The effect of Articles 2(3) and 2(4) is that the use of force can only be justified as expressly provided under the Charter, and only in situations where it is consistent with the U.N.’s purposes⁸¹. According to Dinstein (2001)⁸² *“Article 2(4) is ‘inseparable’ from Article 2(3), and these two consecutive paragraphs must be perused together.”*

All significant mutual assistance agreements and regional security agreements⁸³ and many multilateral treaties in international relationships between states since 1945 are expressed in accordance to the U.N. Charter⁸⁴ and the principles of non-use of force.

G. Perspective

After Article 2(4) in the U.N. Charter there exists no inherent right of resorting to war as legitimate attribute of state sovereignty other than the right of self-defence according to Article 51. The U.N. Charter condemns⁸⁵ unauthorized armed military intervention and occupation of states, threatening the sovereignty and political independence of other States. It is an apparent breach and violation of the provisions of U.N. Charter and the rules of customary international law. According to the

⁸⁰ General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in Accordance with Charter of The United Nations 1970.

⁸¹ See Rabinder Singh and Alison Macdonald *“The Legality of use of force against Iraq”* 2002 On behalf of Peacerrights <http://www.lcnp.org/global/IraqOpinion10.9.02.pdf>

⁸² See Dinstein (2001) p. 82.

⁸³ Millar (1984) and Dinstein (2001)

⁸⁴ Brownlie (1963) p. 120

⁸⁵ See U.N. General Assembly *“Declaration of the Inadmissibility of Intervention in Domestic Affairs of States and the Protection of their Independence and Sovereignty 1965”* and the U.N. *“Declaration On Principles Of International Law Friendly Relations And Co-Operation Among States In Accordance With The Charter Of The United Nations”* <http://www.un.org/documents/ga/res/36/a36r103.htm>

Nicaragua case⁸⁶ and the Corfu Channel case “the principle of non-intervention involves the right of every sovereign state to conduct its affairs without outside interference.” Most importantly and according to Dinstein (2001)⁸⁷ “no State is authorized by the Charter to unilaterally undertake forcible measures in order to execute a judgment” of the U.N. Security Council.

Peaceful resolution in accordance with Article 2(3) must serve as an important guiding principle at all times.

This is the background on which the prohibition of force and the rule of non-intervention must be evaluated in regards to the US led intervention in Iraq. If the US Government in the eyes of the International Court of Justice cannot lift the legal burden of a lawful intervention in Iraq 2003 under international law - their actions might only be deemed just under the archaic regime of *just war*. The pounding question is how would the International Court of Justice consider the issue should it appear in front of the Court?

6. The Sleeping Authorization in Resolution 678 (1990)

A. The US Government position⁸⁸

The US Government argues that the authority to use force in resolution 678 (1990) in Iraq has existed unprecedented since 1990 until today. And a material breach of the peace conditions in resolution 687 (1991) will activate the sleeping authorization in resolution 678 (1990). The US Government thus in reality argues that there is no limitations imposed on the authorization to use force in resolution 678 (1990) in time or otherwise. Resolution 687 (1991) passed after the conclusion of the Gulf war in the spring of 1991 laid down the cease-fire conditions after Operation Desert Storm, including the establishment of no-fly zones⁸⁹, the destruction of Iraqi medium range missiles and weapons of mass destruction. The US Government argues that as soon as the Iraqi Government violated the cease-fire, then the cease-fire no longer exists. The US Government further argues that no fair argument exists that Iraq has not violated

⁸⁶ Nicaragua case I.C.J. Reports 1986, p.96 202. Corfu Channel case ICJ Reports 1949 p. 34. And see General Assembly resolution 2625 (XXV) Principles of International Law concerning Friendly Relations and Co-operation among States.

⁸⁷ See Dinstein (2001) Attempts to limit the scope of the prohibition in Article 2(4) p. 83-86.

⁸⁸ See Wedgwood (1998), (2000) and Anthony Aust “The Pro-Strike Argument”

http://www.bbc.co.uk/radio4/today/reports/archive/international/prostrike_argument.shtml

⁸⁹ Regarding the ‘no-fly’ zones and according to Dinstein (2001) p. 260-61 “it most be appreciated that the coalition forces had been acting in the course of an on-going war (in which hostilities had merely been suspended in a cease-fire).

the cease-fire. U.N. Security Council resolution 1441 from November 2002 states that Iraq must disarm or “suffer serious consequences”. Resolution 1441 (2002) explicitly recalls resolution 678 (1990) and all relevant resolutions subsequent to resolution 660 (1990) to restore international peace and security in the area. Resolutions 678 (1990), 687 (1991) and 1441 (2002) were all adopted under Chapter VII of the U.N. Charter that allows the use of force with the express purpose of restoring international peace and security.

B. The Supreme Authority of U.N. Security Council⁹⁰

From the U.N. Charter it is clear that the U.N. have an obligation towards the world to maintain international peace and security⁹¹. The primary task of the maintenance of international peace and security has been handed to the Security Council⁹². The U.N. Security Council’s decisions take the form of resolutions, which recommend, take measurement and make determinations on a wide range of topics and issues with different legal binding effect in order to maintain international peace and security.

Importantly Article 2(7) does not limit authorized armed enforcement actions under Chapter VII⁹³. Only the U.N. Security Council can authorize the use of armed force to enforce U.N. Security Council resolutions. The U.N. Security Council is the supreme authority in this area⁹⁴. According to the U.N. Charter Article 39 “*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 4 and 42, to maintain or restore international peace and security.*”

C. The U.N. Security Council is the Employer⁹⁵

According to Articles 43 and 47 of the U.N. Charter, the Security Council is responsible for the implementation of military measures provided for in Article 42 of the U.N. Charter. In regards to Article 42 and according to Dinstein (2001)⁹⁶ the

⁹⁰ See Gómez (2002) for the problems of U.N. Security Council authorizing the use of force.

⁹¹ According to Article 1 of the U.N. Charter the first and primary purpose of U.N. is to maintain international peace and security.

⁹² See Article 24(1) of U.N. Charter. And even thou the U.N. Security Council have a reporting duty it is independent from the U.N. General Assembly, see Article 12 of the U.N. Charter.

⁹³ See Dinstein (2001) p. 253 “The broad powers conferred on the Council in the province of collective security override, where necessary, the sovereignty of any UN Member State.”

⁹⁴ See Article 39 and 51 of the U.N. Charter comparatively.

⁹⁵ See De Wet (2002).

⁹⁶ Dinstein (2001) p. 268. There is an ongoing debate about this approach.

Security Council today resorts to the strategy of authorizing member states to use force in sharply defined situations on a voluntary basis⁹⁷. According to De Wet (2002)⁹⁸ the Security Council found a solution in the authorization of ‘willing and able’ states or regional organizations to execute military measures on its behalf. This instrument of the U.N. Security Council is not new⁹⁹. With an authorization to use force according to chapter VII the U.N. Security Council can now ask individual or groups of states to participate in an enforcement action.

In a model of delegated enforcement it is important to remember that the authority under chapter VII remains with the U.N. Security Council. According to Blokker (2000) there is “a preference for control by the Council over operations by ‘coalitions of the able and willing’ so as not to abdicate the authority and responsibility bestowed on it by the Charter”. According to Gray (2002) and the U.N. Secretary General regarding Operation Desert Fox in 1998 “only the Security Council could determine the legality of actions in the no-fly zones.” The delegation of power to the use of force is arguably specific and limited by the Security Council resolution and the Security Council authority. Most importantly the notion about surrendering full power and responsibility to individual states or groups of states corresponds badly with the U.N. Charter system to maintain peace and security as a whole¹⁰⁰. It would arguably be contrary to the U.N. Charter objectives if an authorization constitutes a ‘permanent mandate’ to Member States to use force at their own discretion.

According to Dinstein (2001)¹⁰¹ the legality of an enforcement action is entirely contingent on Security Council authorization. And unless a clear-cut go-ahead signal from the Security Council is received, a regional organization or single state can resort to lawful force only within the ambit of collective self-defence¹⁰². As long as there is no specific authorization from the Security Council to take enforcement action, no state or group of states is entitled to resort to forcible measures in a response to a mere threat to the peace¹⁰³. In any event the Council’s authorization of the enforcement

⁹⁷ This whole area of how to employ troops in practice on behalf the U.N. has over the years shown problematic and changes for improvements are definitely necessary.

⁹⁸ De Wet (2002) p. 2

⁹⁹ This U.N. instrument was first used in the Korean War in the 1950.

¹⁰⁰ See U.N. Charter and Article 39 in understanding with principles set forth the Article 31 of Vienna Convention on the Law of Treaties.

¹⁰¹ Dinstein (2001) p. 270.

¹⁰² See Article 53 of the U.N. Charter

¹⁰³ Dinstein (2001) p. 272. NATO did clearly not act within the confinements of the U.N. Charter in Kosovo incident in 1999.

action must be sought before and not subsequent to the operation¹⁰⁴. Most importantly and according to Dinstein (2001)¹⁰⁵ inaction by the Security Council does not amount to an authorization of enforcement measures. A subsequent ratification from the Security Council may approve actions and deem them lawful on a later date, but this will not remove the grave fact that the unauthorized use of force initially was illegal.

In regards to the incident in Kosovo with the intervention of NATO without the authority of the Security Council Henkin (1999) points out the dangers: “Unless a decision to authorize intervention in advance can be liberated from the veto, the likely lesson of Kosovo is that states, or collectivities, confident that the Security Council will acquiesce in their decision to intervene, will shift the burden of the veto: instead of seeking authorization in advance by resolution subject to veto, states or collectivities will act, and challenge the Council to terminate the action. And a permanent member favoring the intervention could frustrate the adoption of such a resolution”.

In conclusion and according to the U.N. Charter the Security Council convincingly remains the supreme authority in all respects regarding the task of maintaining international peace and security.

D. Character and Interpretation

The U.N. Security Council will normally authorize the use of force under the U.N. Charter in clear, explicit and unambiguous terms using expressions like “all necessary means”. According to Dinstein (2001)¹⁰⁶ the Security Council has put in motion ‘enforcement action’ by authorizing member states to use ‘all necessary means’ in several cases with a view to attaining a specific goal. The phrase has also been used when the U.N. Security Council authorized intervention in Rwanda, Bosnia, Somalia and Haiti. The language of a resolution is an important aspect in the interpretation but can hardly stand alone. The exact content is to be determined by an interpretation of the specific resolution. According to Byers (2002)¹⁰⁷ the Namibia Advisory Opinion¹⁰⁸ from 1971 is one of the few authoritative guides on interpretation of U.N. Security

¹⁰⁴ Dinstein (2001) p. 272.

¹⁰⁵ Dinstein (2001) p. 272, and see O. Schachter, “The Right of States to Use Armed Force”, 82 *Mich.L.R.* 1620, 1640-1 (1984).

¹⁰⁶ Dinstein (2001) p. 262, Resolutions 787 (1992), 713 and 757 relating to Yugoslavia, 794 (1992) Somalia humanitarian relief operations, 816 (1992) Airspace of Bosnia-Herzegovina, 929 (1994) civilians at risk in Rwanda, 940 (1994), 940 (1994) restoration of the legitimate Government in Haiti, 1264 restoring peace and security in East Timor.

¹⁰⁷ Byers (2002) p. 23.

¹⁰⁸ ICJ Reports (1971) 15, at 53.

Council resolutions: *“The language of a resolution of the Security Council should be carefully analyzed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, in regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council”*. According to Article 25 of the U.N. Charter *“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”*

Noteworthy is, that interpretation of resolutions where the intentions of each Security Council member have weighty significance could be misleading, if it is not guided by the object, purpose and cohesion with the U.N. Charter.

A resolution clearly receives its legal significance and mandate from the authority of U.N. Security Council. When Security Council decisions and resolutions coincide with the object, purpose and provisions of the U.N. Charter they could arguably be seen as extensions to existing treaty obligations. In accordance with the general rule of interpretation in Article 31(1) of the Vienna Convention¹⁰⁹ *“a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”*. The object and purpose of the U.N. Charter and the Security Council¹¹⁰ is clearly to maintain international peace and security. The preamble, Article 1 and Article 2(3) very clearly advocates the U.N. principles of peaceful resolution. The rule of non-use of force in Article 2(4) serves as a protection of the U.N. foremost object to preserve peace as far as possible. And according to Ratner (1999)¹¹¹ an underlying principle of the Charter is *“that force be used in the interest and under the control of the international community and not individual countries”*.

In summary interpretation of Security Council resolutions is a complex process where if necessary a number of factors have to be considered and weighed carefully, but this have to be done in close consideration with object and purpose of the U.N. Charter.

¹⁰⁹ See Vienna Convention on the Law of Treaties, 1969.

¹¹⁰ See Article 24(1) of the U.N. Charter.

¹¹¹ See Ratner (1999) p. 125.

E. Resolution 678 (1990)

The whole legal justification from the US Government for past and present use of force in Iraq evolves around the authorization given in resolution 678 (1990)¹¹². The wide authorization to use force in resolution 678 (1990) have some called a *carte blanche*. Wedgwood (1998)¹¹³ unsurprisingly argues in favour of automatic authorization of the use of force against Iraq. According to Blokker (2000) in resolution 678 “a true *carte blanche* is given which cannot be taken back; as a result the Security Council has almost fully relinquished its control”.

Resolution 678 (1990) authorizes member states cooperating with the Government of Kuwait to “*use all necessary means to uphold and implement resolution 660 (1990)*¹¹⁴ and all subsequent relevant resolutions and restore peace and security in the area”.

When the expression “all necessary means¹¹⁵” is examined in a joined interpretation of Articles 41 and 42 the given phrase could not be excluded to hold both articles within its understanding. Article 42 involving the use of force uses the expression “such action by air, sea, or land forces as may be necessary”, and the expression “necessary means” could be a short term for “all necessary means”. This is arguably a clear-cut authorization to use force in the U.N. language. Certainly it must have been clear for the Iraqi Government in 1990 that the authorization in resolution 678 (1990) involved the use of armed force if necessary. But importantly and according to Dinstein (2001) the authorization to use force in resolution 678 (1990) was a right of the collective self-defence according to Article 51 opposed to collective security.

The scope and extent of resolution 678 (1990) is by all means not clear. It could be argued that the U.N. Security Council should have been clearer in the authorization in resolution 678 (1990). Nothing should stop the Security Council to give a clear and precise authorization as done before in many other resolutions. It is submitted that a simple language interpretation of the authorization leaves unwanted room for interpretation of resolution 678 (1990).

¹¹² See Byers (2002) p. 23.

¹¹³ Wedgwood (1998) referring to a single Chinese statement, see note 28 UN Doc. S/PV.3858, at 14 (1998).

¹¹⁴ Resolution 660 (1990) determines the existence of a breach of international peace and security as regards the Iraqi invasion of Kuwait.

¹¹⁵ Resolution 816 (1993) uses the “all necessary measures” in the airspace of the Bosnia_Herzegovina.

The understanding of the authorization in resolution 678 (1990) must be based on an interpretation of relevant facts and law according to the Namibia Advisory Opinion¹¹⁶ and the general rules of interpretation. Noteworthy according to Dinstein (2001)¹¹⁷ is that “Any Security Council decision in conflict with a norm of *jus cogens* must necessarily be without effect” keeping in mind the character of Article 2(4).

F. The Scope of Military Action

The US and allied forces stopped their actions when they had repulsed the Iraqi enemy and liberated Kuwait back in 1990. Even though resolution 678 (1990) implemented a wide authorization to use force and the objective indicated in Resolution 678 “to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area” hardly gave any guidance whether to proceed to Baghdad after the Iraqi forces were repulsed from Kuwait. The US Government and coalition forces did not continue to Baghdad in 1991 because this was then considered outside the limitations of the given U.N. mandate. There was an international common consensus about the limitation of the U.N. mandate to proceed to Baghdad. It is important to remember that the territorial integrity or political independence of any state are protected essential rights according to the U.N. Charter and international law. The view is confirmed in resolution 687 (1991) “Affirming the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq”. The purpose was only to liberate Kuwait and to ensure peace and security in the region under international law.

According to Dinstein (2001):¹¹⁸ “At no time did the Security Council establish a United Nation force for combat purposes against Iraq”. According to Ratner (1999) “many states, including those fighting in the gulf war, declared that their sole purpose was to liberate Kuwait.” The U.N. mandate was by the US Government clearly not perceived in 1991 to include a full invasion, occupation and termination of the Iraqi government. The U.N. Secretary General¹¹⁹ has made it clear that resolution 678 (1990) was directed at a unique and specific situation. Those ‘unique demands’ relating to the invasion of Kuwait are no longer there. The Secretary General underline

¹¹⁶ ICJ Reports (1971) 15, at 53.

¹¹⁷ See Dinstein (2001) p. 282, for a discussion of the relationship between Article 25 and 103 of U.N. Charter p. 279-282 and for the prohibition of the use of inner-State force as *jus cogens* p. 93-98.

¹¹⁸ See Dinstein p. 243. (242-245)

¹¹⁹ See The United Nations Blue Book Series Vol. IX, *The United Nations and the Iraq-Kuwait Conflict 1990-1996* (1996), at 3.

how exceptional the U.N. considers the use of force, and how dependant the decision to use force was on the fact that Iraq had actually invaded Kuwait.

G. Time and Scope

It is in general clear that the use of force other than the right of self-defence requires explicit authorization under international law according to the U.N. Charter. As argued above the prohibition of force also establishes a rule of presumption¹²⁰ against the use of force. With a rule of presumption against the use of force there is a convincing argument for a narrow interpretation of any U.N. authorization of use of force. In compliance with the purposes of the U.N. Charter it is argued that all U.N. Security Council authorizations use of force are exceptions from a peremptory rule of non-use of force.

The time span of such an authorization to use force as in resolution 678 (1990) is not indefinite but is arguably subject to a time limit. U.N. authorizations must arguably be renewed from time to time depending on circumstances. A U.N. authorization can never be perceived as a *carte blanche* to use force unlimited in time – and appliance. Blokker (2000) convincingly argues that both the U.N. Charter system and principles of delegation reject *carte blanche* delegations and favours authorisations that respect the authority and responsibility of the Security Council in the United Nations collective security system. In line with this argument and according to Greenwood (1987) is the legal notion of time limitation behind the U.N. Security Council findings¹²¹ in the “Palestine Question” in 1951 concerning the legality of Egypt’s action against shipping passing through the Suez Channel. In the U.N. Security Council findings the parties lost belligerent rights after 2 and half years of armistice. The Egyptian practice was found inconsistent with a peaceful settlement between the parties. The U.N. Security Council findings in the “Palestine Question” supports the argument that even in a situation close to war after a short halt of hostilities the parties lose the belligerents rights¹²².

¹²⁰ Brownlie (1963) p. 112 writes; “...the juridical bases existing since 1945 for the assertions that the use of force or threat of force otherwise than in self-defense or with the authority of an organ of the United Nations is illegal, and there is a presumption...”

¹²¹ Greenwood (1987) p. 287 and U.N. Resolution 95 (1951) on “The Palestine Question”: “Considering that since the armistice régime, which has been in existence for nearly two and half years, is of a permanent character, neither party can reasonably assert that is actively a belligerent or requires to exercise the right of visit, search and seizure for any legitimate purpose of self-defense”

¹²² See Greenwood (1987) p. 288 that indirectly accepts this notion with reference to Feinberg.

The rule of proportionality argues in favour of considering an authorization to use force as a concrete time limited permit with a specific purpose. The authorization in Resolution 678 (1990) was passed more than 10 years ago in 1990 with a specific usage in mind – to free Kuwait. Circumstances have certainly changed. And once the cease-fire between the belligerents was in effect after the Gulf War according to resolution 687 (1991) it was up to the U.N. Security Council as the supreme authority to renew authorization of armed military force if necessary. This view of stoppage is confirmed by resolution 687 (1991): “Affirming the commitment of all Member States to sovereignty, territorial integrity and political independence of Kuwait and Iraq, noting the intention expressed by Member States cooperating with Kuwait under paragraph 2 of the resolution 678 (1990) to bring their military presence in Iraq to an end as soon as possible consistent with paragraph 8 of resolution 686 (1991)”. This is in fine compliance with the purpose of Article 1 of U.N. Charter to restore peace and security in the international community and avoid war.

H. The sleeping authorization

According to Byers (2002)¹²³ “The United States, and some authors from the United States, have argued that Resolution 687 suspended but did not terminate the authorisation provided by Resolution 678. Therefore, they claim, the United States are entitled to use force in response to Iraqi violations of Resolution 687 without further authorisation from the Council, on the basis that the violations constituted a 'material breach' that reactivated the earlier authorisation.”

Initially it was submitted that a material breach of any resolution does not in itself authorize unilateral use of force. According to Ratner (1999) if resolution 678 (1990) “is still extant, it should be interpreted narrowly and consistently with its object and purpose” – and the “sole purpose was to liberate Kuwait”. Byers (2002)¹²⁴ delves into the discussion of interpretation but diminish the implied authorization argument: “The argument relies on an interpretive approach that, unlike the passage from the Namibia Advisory Opinion, accords considerably more weight to the supposed purposes of the resolutions than to the ordinary meaning of their terms¹²⁵.”

¹²³ See Byers (2002) p.23.

¹²⁴ And according to Byers (2002) p.23 “the combined use of these two arguments - of material breach and implied authorisation - attracted widespread support, particularly from Western governments, when used to justify the 1991 intervention in northern Iraq and the 1992 establishment of the no-fly zones”.

¹²⁵ See Article 31(1) of the Vienna Convention of the Law Treaties, 1969.

The implied authorization argument is weak for several reasons¹²⁶, but most importantly and regardless of any existence of a standing authorization in resolution 678 (1990) it is not possible to evade the Security Council supreme authority according to Article 39 and the U.N. Charter by pushing matters around the council. This view is confirmed by the fact in resolution 687 (1991) which set out the terms of the ceasefire and resolution 1441 (2002) that both decide to remain seized of the matter.¹²⁷ The problem of “automaticity” occurred in the adoption of resolution 1154 (1998). Resolution 1154 (1998) ‘stresses’ in regards to the compliance of the disarmament process and the terms in resolution 687 (1991) that “any violation would have severest consequences for Iraq”. According to Blokker (2000)¹²⁸ the “US and the UK did not receive support for the view that UN members would have such an automatic right. The other members of the Council, including the other permanent members, emphasised the powers and authority of the Security Council and in some cases explicitly rejected any automatic right for members to use force. Sweden emphasised that 'the Security Council's responsibility for international peace and security, as laid down in the Charter of the United Nations, must not be circumvented'.”

In summary the Security Council cannot and has not relinquished all authority in the matter to use force in Iraq to an individual or a group of states in contradiction to the U.N. Charter. The notion in the case of Iraq that the authorization in resolution 678 (1990) is sleeping and wakes up like another mythological soldier whenever there is a need for it, outside the control of the U.N. Security Council, corresponds badly with the authority of the U.N. Security Council according to Article 39 and the argued “built in” limitations of Security Council authorizations. The notion arguably amounts to wishful legal thinking from the US Government and others in the coalition of the “free and willing” states¹²⁹.

¹²⁶ See Beyers (2002) p. 24-27 for the deficiencies of the purposive approach.

¹²⁷ Resolution 687 (1991) 'Decides to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the region.'

¹²⁸ See Blokker (2000) p. 559.

¹²⁹ The Danish Government subscribes to this point of view. <http://www.um.dk/udenrigspolitik/irak/jura.asp>

I. Negotiations in the U.N. Security Council

The US government publicly stated its intention to work for all necessary resolutions in the U.N. Security Council to resolve the Iraq situation¹³⁰.

It is clear from resolution 1441 (2002) and the discussions in the U.N. Security Council that Iraq is in a material breach¹³¹ regarding the disarmament process before and up to the US charged intervention was initiated on the 19th of March 2003. But it is equally clear from the negotiations in the Security Council and from resolution 1441 (2002) that the Iraqi Government is given a final chance to comply with the disarmament process. Resolution 1441 (2002) does not authorize the use of force against Iraq for the lack of compliance in the disarmament process. The Security Council explicitly “Decides to remain seized of the matter” in resolution 1441 (2002). Importantly and as already emphasized above in the adoption of resolution 1441 (2002) the US Government willingly acknowledged that the decision of using force to enforce the disarmament in Iraq in fact belonged to the Security Council.

The draft resolution from Spain, United Kingdom and US¹³² proposing a new time limit (17th March 2003) and a final opportunity for Iraq to demonstrate full, unconditional, immediate and active cooperation in accordance with its disarmament obligations under resolution 1441 (2002) was not adopted by the Security Council.

The US Government must as all other member states submit to Article 25 of the U.N Charter. Member States are obliged to cooperate¹³³ in the U.N. and in the Security Council. The US Government has to accept the fact that there was not sufficient support for a military enforcement of the disarmament process in the Security Council at the time of the events, and that the Security Council was clearly in favour of giving Hans Blix more time. The clearly expressed will of the Security Council was to wait and see before resorting to armed military intervention in Iraq. Furthermore as emphasized above it is important to note that neither the US Government or any other member of the U.N. is free to interpret the U.N. Charter and

¹³⁰ See US President George Bush “Presidents Remarks at the United Nations General Assembly September” 12, 2002

¹³¹ See Brownlie (1998) p. 107 on the peaceful settlement of disputes and p. 122 remedies for breaches of obligations.

¹³² See U.N. document “Spain, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution”, 7 March 2003, S/2003/215

¹³³ Cooperation is a governing principle in the U.N. Charter. According to Cassese Law (1986) on International Cooperation p. 151 “principles regulating ‘co-existence’ must be observed by any State, including mutually hostiles countries, lest the international community be paralyzed by dangerous rifts and eventually plunge into utter chaos.”

Security resolutions according to their own political agenda and act accordingly unilaterally.

After perusing the discussions and reactions in the Security Council earlier in this thesis it is clear that a new resolution concluding on the weapons inspections regime and possibly authorizing the use of force was indeed required.

The US Government argues in the Security Council that the intervention in Iraq on the 19th of March was a lawful enforcement of international law authorized by UN resolutions. A majority of other countries with France, Germany and Russia as the foremost speakers in the UN Security Council argues that the actions taken by the US Government is an illegal aggression against another state.

This view of ‘war of aggression’ against Iraq appears as a prerequisite from the first UN resolution 1483 (2003) after the US and coalition forces have conquered and occupied Iraq, where the resolution refers to ‘occupying forces’ as opposed to UN security forces or a similar regular UN term.

Even though the US led coalition managed to rally a considerable number of states behind the intervention in Iraq this only lessen the condemnation of violations of international law from a majority of states in the Security Council. The grave fact remains that a majority of states in the U.N. Security Council were against the US charged intervention in Iraq.

J. An Issue of Good Faith

Article 2(2) of the U.N. clearly states the principle “*that all members shall fulfil in good faith the obligations assumed by them in accordance with the present Charter*”. The U.N. declaration on friendly relations¹³⁴ elaborates on this issue and adds to the duty to fulfil in good faith obligations under the Charter and the generally recognized principles and rules of international law. According to Cassese Law (1986) “The principle aims at buttressing the binding force of international rules.¹³⁵” And further according to Cassese Law (1986)¹³⁶ “the principle of good faith plays an important role for unilateral acts as well.”

¹³⁴ The U.N. General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in Accordance with Charter of The United Nations 1970

¹³⁵ Cassese Law (1986) p. 153 referring to the Nuclear Tests case, ICJ Reports (1974) p. 268 “one of the basics principles governing the creation and performance of legal obligations, whatever the source, is the principle of god faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential.”

¹³⁶ Cassese Law (1986) p. 157.

Had it been clear that the US Government acted on an explicit authorization from the U.N. Security Council no legitimate concern could hardly be raised against the faith of US Government regarding the right of enforcement. Some have argued that the US Government made their position and intentions perfectly clear in the US president speech to U.N. General Assembly in September 2002. Secretary of State Collin Powell confirmed this stand in his speech to the U.N. Security Council on the 5th of February 2003 when he said “The United States will not and cannot run that risk to the American people. Leaving Saddam Hussein in possession of weapons of mass destruction for a few more months or years is not an option, not in a post September 11th world¹³⁷”.

The fact that there is no doubt about the US Governments intentions and position about an enforcement of the disarmament process in Iraq does not support a legal argument of good faith. It is important to remember that the US President in the U.N. Security Council said: “My nation will work with the U.N. Security Council to meet our common challenge. If Iraq’s regime defies us again, the world must move deliberately, decisively to hold Iraq to account. We will work with the U.N. Security Council for the necessary resolutions. But the purposes of the United States should not be doubted. The Security Council resolutions will be enforced – the just demand of peace and security will be met – or action will be unavoidable. And a regime that has lost its legitimacy will also lose its power¹³⁸”.

Following resolution 1441 (2002) and the debate in the Security Council until the start of hostilities in March 2003 the US Government must have come to realize the need for a new resolution authorizing the use of force in Iraq. As repeatedly pointed out the U.N. Security Council is the supreme authority in the matter of maintaining international peace and security and member states have to abide by their rules according to Article 25 and 39 of U.N. Charter.

In summary it is argued that the US Government not was acting in good faith in regards to having obtained a valid authorization to use force when they initiated the attack against Iraq on the 19th of March 2003.

¹³⁷ See paragraph 6 bottom last page “Secretary of State Addresses the U.N. Security Council”, February 5, 2003 <http://www.whitehouse.gov/news/releases/2003/02/20030205-1.html>

¹³⁸ See paragraph 5 bottom last page “President’s Remarks at the United Nations General Assembly”, September 12, 2002 <http://www.whitehouse.gov/news/releases/2002/09/20020912-1.html>

K. State Practice¹³⁹ and US State Practice

Some international lawyers have claimed that precedent for circumventing the Security Council was established when the US Government and NATO allies launched their air campaign against Serbia in 1999 without Security Council authorization.

According to Byers (2002)¹⁴⁰ “A traditional analysis would focus on a broad array of state practice and *opinio juris*. One would weigh the interventions in Iraq and Kosovo, together with any accompanying claims to legality and any similar interventions and claims elsewhere, against the responses of other states to these interventions, and against the responses to humanitarian crises more generally over a considerable number of years”. According to Byers (2002) a reduction in the time involved in customary international law would only constrain or obviate processes. Byers (2002)¹⁴¹ discusses a *sui generis* set of rules for the US but importantly find it very hard “to see how the United States could now become a persistent objector to the customary rules governing the use of force, given the long existence of those rules.” However Byers (2002) hint something in an unfortunate direction¹⁴².

The US has arguably a history in recent time of using pressure of different kinds against other states that is lawful¹⁴³ but also a history of resorting to force questionable under international law. It is well known that the US Government went to out on a limp in the case of Nicaragua and violated the principles non-use of force and non-intervention in international law. After the US Government withdrew from the International Court of Justice proceedings in the Nicaragua case the US Government with Secretary of State Schultz and President Regan publicly stated that the goal of the US policy was to overthrow the Sandinista Government of Nicaragua¹⁴⁴. This does not correspond well with claims made during the proceedings in front of the ICJ, that Nicaragua was engaged in an armed attack on its neighbours and that any military

¹³⁹ See Wedgwood (2002), Bothe (2002), Byers (1997), (2002), Gray (2002) and Griffiths (2002).

¹⁴⁰ Byers (2002) p. 28.

¹⁴¹ See Byers (2002) p. 38-39.

¹⁴² Byers (2002) p. 39 “Most importantly, acquiescence may also be likely with regard to the United States’ preferred approaches to the interpretation of at least some Security Council resolutions and treaties, the identification and assessment of at least some forms and instances of state practice, and the relationship between customary international law and at least some treaties. And it is this pattern of assertion and acquiescence in exceptional claims that might, in turn, eventually lead to changes in the underlying rules concerning interpretation and law-formation, if not generally, then at least in so far as they concern the United States. The end result could be that one set of legal processes pertain to the single superpower, and another set to all other states.”

¹⁴³ Unilateral political or economical sanctions are considered legal, even thou serious concerns could be raised depending on the their character, scale and effect. See Nicaragua case ICJ Reports (1986) 14, 245.

¹⁴⁴ See D’Amato (1987) p. 223 with reference to “President’s News Conference, N.Y. Times, Feb. 22, 1985, A10, and cols. 1, 3”.

activity by the US in response was within the excise of the inherent right to self-defence¹⁴⁵.

In summary current state practice and opinio juris does not support a change of the system in U.N. Charter and international law to maintain international peace and security in favour of the US led intervention in Iraq. The new Bush doctrine and the US Government worldwide 'War on Terrorism' compared with the Iraq case 2003 on the country indicate a US political agenda and practice in sharp contradiction with the U.N. Charter.

L. Volenti Non Fit Injuria

Large population groups in Iraq have without doubt suffered severely as a result of grave violations of humanitarian rights, imposed U.N. sanctions and cumbersome living conditions in a long time period of several wars. The US Government have in their argumentation indicated that actions would be on behalf of the Iraqi people as a liberator. Can the US Government consequently make a legal argument that it acted with the consent of the Iraqi people?

It is clear that except for self-defence according to Article 51, the U.N. Charter or customary international law warrants no right for an unauthorized unilateral armed military intervention.¹⁴⁶

Any state can engage in legal obligations with another state, and can consequently submit to a collective self-defence pact or submit to a peace treaty under the threat or use of force in times of war.

The validity of such an agreement relies on circumstances, terms and international law¹⁴⁷. But the principles of peace under international law will effect legal obligations. Determinations of 'consent to be massacred' are void. This appears a logical consequence of the principle endorsed in Article 52 in the 1969 Vienna Convention on the Law of Treaties, where a treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law in the U.N. Charter.

¹⁴⁵ See D'Amato (1987) p. 244 that collaborates with this view.

¹⁴⁶ See Article 2(4) and 2(7) of the U.N. Charter in conjunction.

¹⁴⁷ For a more comprehensive walkthrough of peace treaties, see Dinstein (2001)

However, there is an important distinction¹⁴⁸ between state and its people derived from state sovereignty. Only the Government is a legitimate represent of the Iraqi State. And it is clear that preservation of state territorial integrity and state political independence are protected rights in international law. There was no consent from the Iraqi state or government when the US and coalition forces invaded and occupied Iraq in March 2003. In the Nicaragua case from 1986 the ICJ¹⁴⁹ clearly stated that in international customary law there exists no general right of intervention in support of an opposition within another state. Such support constitutes a breach of the non-intervention principle in customary international law. And the use of force will clearly constitute a breach of the principle of non-use of force in international law according to Article 2(4).

Leaving arguments of humanitarian aspects out it is difficult to find legal ground in international law supporting intervention with consent from even a majority part of the Iraqi people excluding state Government in International law. Although theoretical doubts about the legitimacy of the Iraqi government could be raised, the problem of legitimate state representation is not relevant.

In summary the US government cannot rightfully make legal arguments that the multilateral intervention took place with the consent of the Iraqi people, because the argument has no legal basis in international law.

M. Remarks on arguments on Humanitarian Intervention¹⁵⁰

The humanitarian situation and violations in Iraq are part of the US Government case against Iraq in front of U.N. Security Council. A combination of factors as in the US case against Iraq should not hinder actions of Humanitarian Intervention. The general humanitarian situation in Iraq in the spring of 2003 could definitely be better. International sanctions and not least the Iraqi regime took a severe toll on the Iraqi people. The Iraqi Government has without doubt committed grave violations of human rights in Iraq. The ill treatment of and the genocide in the past of the Kurds in the

¹⁴⁸ It could be argued that this distinction between state and people is conflicting with the protection of basic human rights, but this distinction is fundamental for the present international public law. See debate about Humanitarian intervention.

¹⁴⁹ ICJ Reports 1986 p. 99 209

¹⁵⁰ See Brenfors-Maxe Petersen (2000), Harhoff (2001) and Rytter (2001) Resolution 688 (1991) that dealt with the humanitarian issues arising from situation in Iraq were not passed under Chapter VII in the U.N. Charter.

north and the marsh Arabs (Shia Muslims) in the south constitute crimes against humanity.

The ethnic conflict in Kosovo, the trial of Serbia's Slobodan Milosevic, have according to some created precedents in international law to intervene for humanitarian reasons outside the U.N. Charter¹⁵¹.

Noteworthy and according to Gray (1994)¹⁵² resolution 688 (1991) that dealt with the humanitarian issues arising from the situation in Iraq was not passed under Chapter VII in the U.N. Charter and therefore "clearly does not authorize forcible humanitarian intervention."

According to Article 2(4) and 2(7) of the U.N. Charter and according to the conventional view in customary international law, states cannot intervene in the affairs of other sovereign states. Could examples from the last decade in international law, where the use of force has been sought legally justified on the grounds of humanitarian reasons form a few legally sound islands anyhow? Furthermore, where does one find legally sound territory to justify and defend the use of force outside the U.N. Charter exceeding humanitarian intervention?

The legality of unauthorized humanitarian intervention outside the U.N. charter is questioned in a number of Articles and writings¹⁵³ in the legal community of international lawyers. Most importantly there was no proof of an imminent; grave or massive humanitarian situation in Iraq that called for the immediate intervention with the use of armed force in March 2003. Humanitarian issues in Iraq on the time of events could perfectly well had been continued to be addressed by international help organizations as elsewhere in the world.

Even Harhoff (2001)¹⁵⁴ who argues in favour of a right to Humanitarian Intervention under specific circumstances, will have to acknowledge that the Iraq case would not meet his unfolded legal requirements of imminent massive and outrageous violations of international humanitarian standards against civilians, regardless of their nationality, during an internal conflict in a state.

According to Rytter (2001) and other prominent legal examiners Humanitarian Intervention is not sanctioned pursuant to the U.N. charter and clearly constitutes a

¹⁵¹ See Wedgwood (2000).

¹⁵² See Christine Gray, "After the Ceasefire: Iraq, the Security Council and the Use of Force" 1994 BYIL 135, at 162.

¹⁵³ See Rytter (2001).

¹⁵⁴ See Harhoff (2001) p. 70-75.

breach of Article 2(4) from a strictly legal perspective¹⁵⁵. Rytter (2001) argues that “unauthorized humanitarian intervention has no legal basis in current international law: It is incompatible with Article 2(4) of the Charter, the defence of a state of necessity is not applicable and no doctrine of unauthorized humanitarian intervention has been established under customary international law”. And still other international legal researchers resort to arguments of ethical, moral and political reasoning in their quest to justify Humanitarian Intervention outside the U.N. charter.

How admirable and righteous unauthorized Humanitarian Intervention is or appears; it seems to squander the fact that there is no real legal basis in international law for this line of argumentation. In the case of Iraq there is no legal basis in international law for a humanitarian intervention without the explicit authorization of the U.N. Security Council. The US Government has wisely not tried to support actions publicly as an effort to legally justify Humanitarian Intervention.

7. An extended right to Self-defence

In the case against Iraq the US Government argues that Iraq poses a threat to the US because the Iraqi Government has relations to international terrorism and possess biological, chemical and nuclear weapons. The US Government links Iraq to the September 11th incident¹⁵⁶.

This raises the question if the US Government can justify actions in March 2003 against Iraq following the September 11th incident in 2001 as act of lawful self-defence under international law. The right of self-defence opens a series of legal questions. Is it possible to establish the necessary connection between the terrorists of September 11th and Iraq? Does the September 11th incident give the full right of self-defence under Article 51 of the U.N. Charter? Was the US exposed for a direct-armed attack that could justify self-defence under Article 51 of the U.N. Charter? And importantly is there an extended right of anticipatory self-defence in international law?

¹⁵⁵ See Rytter (2001) and Franck (1999) that refers to Bruno Simma “If the Security Council determines that massive violations of human rights occurring within a country constitute a threat to the peace, and then calls for or authorizes an enforcement action to put an end to these violations, a "humanitarian intervention" by military means is permissible. In the absence of such authorization, military coercion constitutes a breach of Article 2 (4) of the Charter. Further, as long as humanitarian crises do not transcend borders ... and lead to armed attacks against other states, recourse to Article 51 [self-defense] is not available.”

¹⁵⁶ See paragraph 6 bottom last page “The United States will not and cannot run that risk to the American people. Leaving Saddam Hussein in possession of weapons of mass destruction for a few more months or years is not an option, not in a post September 11th world” from “Secretary of State Addresses the U.N. Security Council”, February 5, 2003 <http://www.whitehouse.gov/news/releases/2003/02/20030205-1.html>

If such a right of anticipatory self-defence exists it would have to be in accordance with the general rules and principles governing self-defence in international law¹⁵⁷.

A. A View of Enforcement Action

According to D'Amato (1987) self-defence can be considered a kind of enforcement action¹⁵⁸. It's an immediate attempt to repel an unjustified aggressive use of force. Unless there is a violation of a norm of international law there can be no enforcement action. If the U.N. Security Council has not authorized the intervention in Iraq, then the only justification that seems open to the US Government is to claim that Iraq is violating international law by supporting terrorists.

An unprovoked terrorist attack supported by the government of another state is clearly illegal and a breach of the non-use of force and non-intervention provisions in international law. Every state has the duty to refrain from organizing, instigating, assisting or participate in terrorists acts inside another state or acquiescing in such organized activities, when the acts involves the threat or use of force¹⁵⁹.

The enforcement view raises many questions. Was the US Government entitled to carry out the enforcement of international law? If a clear connection between the terrorists who attacked the US in September 2001 and the Iraqi Government can be made and proven it would be a clear violation of international law by the Iraqi state. But would the existence of such a link justify under international law a full-scale armed attack, occupation and change of government in Iraq some 18 month after the terrorist act? Was the enforcement proportional to the harm? Was the enforcement of limited duration? Was there an attempt to use the enforcement to effect a change in the territorial integrity or political independence of Iraq?

In order for the enforcement line of legal self-defence to take effect all the legal tests must be passed. In the Nicaragua Case¹⁶⁰, the Court found that the condition 'sine qua non' required for the exercise of collective self-defence against Nicaragua was not

¹⁵⁷ See Openheim in "*Oppenheim's International Law*", 3rd edition 1991 p. 412.

¹⁵⁸ The enforcement of international law, see D'Amato (1987) p. 28-39

¹⁵⁹ See General Assembly "Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in Accordance with Charter of The United Nations 1970" principles of armed bands and terrorist acts and several U.N. resolutions on the subject matter.

¹⁶⁰ I.C.J Reports 1986 p. 14.

fulfilled. Even if the US activities were in strict compliance with the cannons of necessity and proportionality they would not thereby become lawful¹⁶¹.

B. Terrorist Acts¹⁶²

The U.N. has adopted several resolutions¹⁶³ on terrorism and is devoted to the task of extermination of global terrorism. The U.N. Security Council has adopted sanctions¹⁶⁴ against Osama Bin Laden¹⁶⁵ and the Al-Qaida terrorist organization together with the Taliban of Afghanistan. Al-Qaida was accredited for the misdeeds of 11th September in New York 2001. It is important to note that it is more than difficult to associate or identify Al-Qaida with one specific state or a specific group of states¹⁶⁶. Al-Qaida cells and Islamic fundamentalists sympathetic to the Al-Qaida terrorist network have been tracked down over most of the world. Except from the former Taliban regime in Afghanistan no state has officially acknowledged the Al-Qaida network. Some intelligence reports point in the direction of unofficial support from a select few states including Iraq, but no significant evidence to tie the Iraqi Government and Al-Qaida together has to this date been brought forward to the general public and international community.

The U.N. General Assembly “Declaration of the Inadmissibility of Intervention in Domestic Affairs of States and the Protection of their Independence and Sovereignty 1965” clearly lists terrorist acts in paragraph 2 as breach of the principle of non-intervention. The terrorists of the 11th September 2001 incident used civilian airplanes as firebombs against civilian and military installations, which surely is an obvious example of a ‘terrorist act’ illegal under international law.¹⁶⁷

¹⁶¹ I.C.J Reports 1986 p. 14. 237

¹⁶² See Fitzpatrick (2003)

¹⁶³ See U.N. Security Council resolutions 1267, 1333, 1363, 1373, 1390, 1438,1440,1450,1452

¹⁶⁴ U.N. Security Council Meeting 4452, SC/7274

¹⁶⁵ Some indications point in a slightly different direction towards another Islamic fundamentalist group in Pakistan, but arguably the Al-Qaida organization was most likely involved and behind the September 11th attacks. Osama Bin Laden first rejected any connection. BBC 14 September, 2001,

“Taliban defiant over Bin Laden”, http://news.bbc.co.uk/2/hi/south_asia/1543135.stm

BBC 18. September 2001, “Who is Osama Bin Laden?” http://news.bbc.co.uk/2/hi/south_asia/155236.stm

¹⁶⁶ Fitzpatrick (2003) p. 244 "The Afghan intervention raises interesting and difficult issues regarding state complicity in transboundary harm caused by non-state entities operating within the state's territory, and the use of force in response to such harm."

¹⁶⁷ The Principles of International Law concerning Friendly Relations and Co-operation among States lists terrorist acts as well as several U.N. resolutions (Security Council Resolutions 1368 and 1373).

C. The concept of Self-defence

Self-defence is the use of force designed to protect against, and repel, an invader who has invaded illegally¹⁶⁸. Customary international law and the law of treaties regulate the issues of use of force in self-defence¹⁶⁹. Article 51 of the U.N. Charter states the inherent right of self-defence: “*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*”

D. Article 51 Legal Technical Questions

What constitutes an *armed attack*?¹⁷⁰ The problem is that depending on the definition of an *armed attack* relatively small armed attacks and other minor atrocities can be made an excuse for a full scale armed retaliation and intervention into another state. The definition of what constitutes an armed attack is of the utmost significance for the effectiveness of the rule of non-use of force in international law.

The Nicaragua case stated: “There appears now to be general agreement on the nature of the acts which can be treated as constituting armed attacks¹⁷¹”. But the Nicaragua case is debated on this issue. According to the remarks of the dissenting Justice, Jennings¹⁷²: “It is of course a fact that collective self-defence is a concept that lends itself to abuse.” If the definition of an *armed attack* is not clear and unambiguous it will become difficult to successfully oppose attempts to justify any use of force committed by states as self-defence.

At present there is an ongoing legal debate about the definition of the term “*armed attack*” used in Article 51 of the U.N. Charter¹⁷³. Powerful states unsurprisingly including the US argue for a broader interpretation of *armed attack* - as

¹⁶⁸ If the US and coalition forces attack on Iraq is qualified to be legal under international law, the Iraqi resistance would become illegal, because it is illegal to resist a lawful enforcement under international law.

¹⁶⁹ See the Nicaragua Case (Merits) I.C.J Reports 1986 p. 17 paragraph. 34.

¹⁷⁰ Simma (2002) p. 794-796, Dinstein (2001) p. 237-39.

¹⁷¹ I.C.J Reports (1986) p. 93 para. 195

¹⁷² I.C.J Reports (1986) p. 533

¹⁷³ Simma (2002) p. 794-96

simply an *act of aggression*. But importantly the terms do not coincide¹⁷⁴. And the resolution on the Definition of Aggression (1974)¹⁷⁵ that defines an act of aggression does not provide any clarification on the subject matter of the expression *armed attack*.

The definition¹⁷⁶ is quoted by the International Court Justice in the Nicaragua case that defines an armed attack in the following way “...an armed attack must be understood as including not merely action by regular forces across international border, but also ‘sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to’ (inter alia) an actual armed attack conducted by regular forces, ‘or its substantial involvement therein’”¹⁷⁷.

Another problem of *states* occurs as well. Article 51 in the U.N. Charter does not explicitly mention states. But Article 3 in the “Definition of aggression from 1974” infer that only states can commit “acts of aggression.” This could in term suggest that there could be a potential legal problem if an aggressor in an *armed attack* could not be connected to another state as defined in international law. The problem is complex. It only seems logical that the inherent rights of self-defence must prevail against different forms of illegal aggressors whether or not it is possible to identify these on the spur of the moment. But importantly this refers to the approval of armed military force in self-defence in a situation of repelling an actual invading enemy not yet identified. The problem becomes fussy and debatable if it is only an imminent threat to the state territory by an unidentified enemy. The right of self-defence most naturally relies on identifying the enemy before striking back.

A completely different situation is clearly the case when the enemy attack has occurred and much time has elapsed before a counter attack is made against a possible responsible aggressor as in the case of Iraq. Franck (2001)¹⁷⁸ acknowledges that the right to use force in self-defence must be supported by credible evidence of an armed attack and of the attacker's identity. The US government must arguably demonstrate that Iraq is an attacking State¹⁷⁹.

¹⁷⁴ Simma (2002) p. 795

¹⁷⁵ General Assembly Resolution 3314 (1974)

¹⁷⁶ See Article 3 in General Assembly Resolution 3314 (1974)

¹⁷⁷ I.C.J Reports (1986) p. 93 para. 195

¹⁷⁸ See Franck (2001) p. 839-40.

¹⁷⁹ See Dinstein (2001) p. 237.

Do terrorist acts qualify? The Nicaragua case did not involve terrorist acts, but even though the terrorist acts are not explicitly mentioned irregular forces and bands seem close to terrorists in the U.N. Declaration on Friendly Relations¹⁸⁰. If terrorist acts in actuality amounted to “an actual armed attack conducted by regular forces” it is arguably difficult to exclude these from the definition of an *armed attack* in Article 51 on the sole basis of being *terrorist acts*. The question seems open for debate. According to Harris (1998)¹⁸¹ scale and effects must be significant. Isolated it could be argued that the 11th September attacks in themselves, even though they were illegal under international law, did not constitute a use of force serious enough to amount to an armed attack as conducted by regular forces against the US.

The Nicaragua case suggests a right to intervene, which might be resorted to in a case of intervention short of an armed attack¹⁸². The US Government could argue that it acted as if the US was in a state of war. When the Pentagon was bombed, the terrorists target was a military one. The loss of human life in the NY incident alone where immense and could easily be compared to the casualties of many a war in its first days. The US Government together with the rest of the world must have come to realize in relatively short time after the incident and much before the attack against Iraq that it was not subject of an armed attack from another state but a subject of a terrorist attack limited in time and scale.

In conclusion the September 11th terrorist attack against US according to the doctrine of self-defence in international law does not constitute an ‘armed attack’ on the US.¹⁸³

According to the above quote of the Nicaragua case a substantial involvement would qualify Iraqi involvement. A higher standard of something more than provision of weapons, logistical or other support has to be met¹⁸⁴ to establish a connection between the terrorists of September 11th and Iraq. According to Griffiths (2002)¹⁸⁵

¹⁸⁰ See “Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in Accordance with Charter of The United Nations 1970” that mentions organization of irregular forces or armed bands in close connection with terrorist acts.

¹⁸¹ See Harris (1998) p. 898 that dives into the question of “scale and effects” but leaves the answer in the air.

¹⁸² I.C.J. Reports (1986) p. 100 para. 210.

¹⁸³ In the opposite direction, see Ruth Wedgwood, “Responding to Terrorism: The Strikes against Bin Laden”, 24 Y.J.I.L. 559, 564 (1999).

¹⁸⁴ Nicaragua Case (Merits) Nicaragua v. United States I.C.J. Reports 1986, p. 104 para 194. “But the Court does not believe that the concept of “armed attack” includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in form of the provision of weapons or logistical support.”

¹⁸⁵ See Griffiths (2002) p. 328 in regards to Afghanistan case “one must question the legitimacy of the claim made by the United States and United Kingdom to be acting in collective self-defence of the United States in their joint action in Afghanistan. If the evidence, which has yet to be made public, shows that the involvement of the Taliban

referring to the Afghanistan case the support cannot be less than substantial. This seems more than difficult in the case of Iraq where there evidently is not even enough evidence to associate Al-Qaida to the Iraqi Government.

A completely different question would be whether the US could shoot down a foreign civilian airplane in self-defence even though it would cost the lives of many innocent people. If indeed the plane is used as a flying bomb by terrorist as in the 11th September incident, the aircraft would in effect be operating as a military aircraft¹⁸⁶. But it is submitted that the same basic considerations in regard to the definition of an *armed attack* would have to be contemplated in order to use self-defence as a legal argument. A more accommodating legal argument favouring such a decision could probably be found in the doctrine of necessity¹⁸⁷.

E. Necessity and Proportionality

The doctrine of self-defence does not permit an excessive response to an *armed attack*. This is formulated eloquently in the famous and often quoted Caroline¹⁸⁸ case of self-defence “Nothing unreasonable or excessive” in the self-defence action, “since the act, justified by the necessity of self-defence, must be limited by that necessity and kept clearly within it.” It is clear from the Nuclear Weapons¹⁸⁹ case that there is no change in that self-defence in international customary law is subject to the requirements of necessity and proportionality. And Article 51 opposes the same requirements as a treaty obligation¹⁹⁰.

The US Government led full scale attack, occupation and regime change in Iraq arguably hardly coincide with the principles of necessity and proportionality¹⁹¹ in international law, whether they are compared to the September 11th incident and threat of terrorism or as an enforcement of the U.N. weapons inspection regime.

in the Al Qu'aida is less than substantial, the US and UK are not entitled to use force against the state of Afghanistan."

¹⁸⁶ See Harris (1998) p. 242 with a reference to Korean Airlines Flight 007 Incident.

¹⁸⁷ The doctrine of necessity would only preclude wrongfulness, but not undo the breach of international law. See the U.N. initiatives on state responsibility.

http://www.un.org/law/ilc/texts/State_responsibility/responsibilityfra.htm

¹⁸⁸ The Caroline case Mr. Webster to Mr. Fox, see D'Amato (1987) p. 31, see Harris (1998) p. 894 f

¹⁸⁹ Legality of the Threat or Use of Nuclear Weapons case Advisory Opinion (1997) 35 I.L.M. 809 and 1343 para.

41

¹⁹⁰ Harris (1998) p. 896

¹⁹¹ Wedgwood (1998) recognizes that a suspension of the cease-fire conditions in resolution 687 (1991) and a resumption of the military operations to enforce its conditions are “subject to the requirements of necessity and proportionality.”

Remarkably it is now apparent that the US Government has lost considerable interest in the alleged main objective of finding weapons of mass destruction in Iraq.

Arguably and according to several indicators¹⁹² the US Government objective in Iraq was from the beginning of hostilities in mid March a much broader one – namely to topple the Iraqi regime. This incident was part of a deliberate US national security strategy in compliance with the Bush doctrine of pre-emptive measurements against the enemies of the US.

It is clear from the U.N Charter article 2(4) and from several resolutions on the Iraqi situation that both the ‘territorial integrity’ and ‘political independence’ of Iraq are protected fundamental rights of state. Neither the US Government nor the Security Council can dictate Iraq’s choice of government¹⁹³. A change of government simply cannot be considered absolutely necessary to disarm Iraq. The US occupation and hegemony in Iraq proposes another major problem. Consequently it is difficult to subscribe to the view that force was used in a manner and purpose consistent with the U.N. Charter. According to the Declaration on Friendly Relations¹⁹⁴ “*The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions the Charter*”.

F. Anticipatory Self-defence

The Nicaragua case left open whether there is a right to anticipatory self-defence¹⁹⁵. It could be argued that Article 51 of the U.N. Charter requires a state to take the first hit. And consequently it could be argued that Article 51 in itself excludes the right to anticipatory self-defence, but the question seems open for debate¹⁹⁶. The risk for abuse could undermine the restrictions of self-defence and ease violations of the rule of non-use of force.

¹⁹² Iraq was by the US Government included in the “Axis of evil” list of US enemy countries. The threat of a regime change was apparent in “President’s Remarks at the United Nations General Assembly”, New York September 12, 2002, excerpt: “And a regime that has lost its legitimacy will also lose its power.”

¹⁹³ See U.N. “Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States”, 1981 2(b) The sovereign and inalienable right of a State freely to determine its own political, economic, cultural and social system, to develop its international relations and to exercise permanent sovereignty over its natural resources, in accordance with the will of its people, without outside intervention, interference, subversion, coercion or threat in any form whatsoever; And the Nicaragua case ICJ Reports (1986) 14, pr. 202 and 209.

¹⁹⁴ General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in Accordance with Charter of The United Nations 1970

¹⁹⁵ I.C.J Reports 1986 Harris (1998) p. 898

¹⁹⁶ Harris (1998) p. 897-98 with references to Brownlie, Bowett and Henkin.

This apparent risk argues in favour of a narrow interpretation of Article 51 to exclude the right of preventive or anticipatory self-defence¹⁹⁷. Self-defence would then only be permissible after an attack already had been launched. This naturally raises some relevant concerns where war is imminent¹⁹⁸. Some authors like Professor Anthony Aust,¹⁹⁹ Franck (2001) and Wedgwood (2000) have argued for a right of anticipatory self-defence based on facts. A particular relevant example is the Israeli attack on an Iraqi nuclear reactor. Resolution 487 (1981) refers to Article 2(4) and "Strongly condemns the military attack by Israel in clear violation of the Charter of the United Nations and the norms of international conduct." In this case the doctrine of anticipatory self-defence was clearly rejected according to Cassese (2001)²⁰⁰. Cassese (2001)²⁰¹ concludes in light of Article 31 of the Vienna Convention on the law of treaties that it becomes apparent that such practice does not evince among states regarding the interpretation or the application of Article 51 with regard to anticipatory self-defence. According to Dinstein (2001)²⁰² the exercise of the right of self-defence in compliance with Article 51 is confined to a response to an armed attack. And Dinstein (2001)²⁰³ later convincingly argues: "Surely, if preventive war in self-defence is justified (on the basis of 'probable cause' rather than actual use of force), it ought to be exposed to no less – if possible, even closer – supervision by the Council."

The right to resort to armed force in self-defence in international law seems limited in time and forms a requirement of immediacy²⁰⁴. The U.N. Security Council findings in the "Palestine Question" between Israel and Egypt about rights of passage in the Suez Canal supports the argument that even in a situation close to war after a short halt of hostilities the parties loses the belligerents rights²⁰⁵. The Egypt advanced argument of self-defence was also rejected by the Security Council: "that practice can not in the prevailing circumstances be justified on the ground of necessary self-defence". Likewise it is more than difficult to establish the necessary connection in

¹⁹⁷ Simma (2002) p. 803

¹⁹⁸ See Bowett Reprisals involving recourse to armed force A.I.J.L. (1972) 66 that argues for the right of anticipatory self-defence in relation to an imminent attack that is consistent with general state practice.

¹⁹⁹ See Anthony Aust "The Pro-Strike Argument"

http://www.bbc.co.uk/radio4/today/reports/archive/international/prostrike_argument.shtml

²⁰⁰ See Cassese (2001) p. 310.

²⁰¹ See Cassese (2001) p. 309.

²⁰² See Dinstein (2001) p. 166.

²⁰³ See Dinstein (2001) p. 168 referring to the maxim of interpretation *expressio unius est exclusio alterius*.

²⁰⁴ See Nicaragua case (merits) p. 122-23 and Dinstein (2001) p. 212.

²⁰⁵ See Greenwood (1987) p. 288 that indirectly accepts this notion with reference to Feinberg.

time between the terrorist act in September 2001 in the US and the attack on Iraq in March 2003.

It is argued that as of now no clear documentation has been put forward that the Iraqi Government in fact in any way supported the very terrorists or terrorist organizations that committed the misdeeds on September the 11th in US. If the US attack on Iraq in it self is regarded as a retaliation of the terrorist attacks it could be argued that this is at minimum a violation of the principle of proportionality.

Noteworthy is that the US Government position and actions are in accordance to the Bush doctrine²⁰⁶ of pre-emptive measurements against the enemies of the USA and the US Government official policy of war on terrorism. According to Bothe (2003) the doctrine of pre-emptive strikes, formulated in the recent US National Security Strategy, would constitute an unacceptable right of anticipatory self-defence.

In conclusion the US Government²⁰⁷ actions in March 2003 cannot be seen as a lawful act of self-defence according to international law.

G. The Problems of Self-Help

It is asserted that the illegality of force as means of self-help still is accepted by international law as a basic norm²⁰⁸. This corresponds well with U.N. Charter Article 1 referring to “the suppression of acts of aggression”.

In accordance with the U.N. charter and the rule of non-intervention an unauthorized intervention, however small, constitutes a breach of international law. In the Corfu Channel Case²⁰⁹ the International Court of Justice condemned in general terms the United Kingdom’s acclaimed right of intervention to secure evidence in another state territory with the following statements: *“The Court cannot accept such a line of defence. The court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find place in international law. Intervention is perhaps still less*

²⁰⁶ See “National Security Strategy of the United States of America”, September 2002.

²⁰⁷ Even though the legality under international law is questionable, the case of Libya where the US in 1986 dropped bombs for a period of a couple of hours is an example of a more appropriate and proportional response to terrorist’s attacks.

²⁰⁸ Brownlie (1963) p.120-21

²⁰⁹ The Corfu Channel Case I.C.J Reports 1949, p.4.

*admissible in the particular form it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself*²¹⁰.

Even though some states exercise and some legal authors²¹¹ argue for the right of armed reprisals or even argues for the right of armed attacks as means of deterrence of future possible acts, no such right exist under international law. According to The U.N. Declaration of Friendly Relations, states have the duty to refrain from acts of reprisal involving the use of force²¹². This view is confirmed by I.C.J. in Nuclear Weapons²¹³ case, that clearly considers reprisals in times of peace as unlawful in international law.

It is therefore submitted that the US Government and coalition forces have no right in international law to seek satisfaction or vindication through the unauthorized use of armed force against Iraq. The US has to resort to peaceful means and plead its case within the frame of the U.N. Charter, not excluding bringing the case in front the International Court of Justice.

8. Arguments towards a Final Assessment²¹⁴

Article 2(4) in the U.N. Charter represents a corner stone in international law. Unmistakeable in international law is the peremptory rule of non-use of force, the rule of non-intervention and the rule of peaceful resolution.

The prohibition of the threat or use of force is the most direct effort to prevent war. If consistent state practice in clear violation of Article 2(4) in the U.N. charter is accepted unchallenged - there is a real danger of Article 2(4) eroding over relatively short time. The events in Iraq, the U.N. Security Council, together with the findings in this thesis points towards the fact that the corner stone of peace in Article 2(4) is losing ground to interpretations of the notion of *just war* for armed military intervention, occupation and regime change in other states.

²¹⁰ The Corfu Channel Case I.C.J Reports 1949, p.4 at p. 35 with reference to Brownlie (1963) p. 121

²¹¹ Harris (1998) p. 914-16 with a direct reference to Bowett A.J.I.L (1972) 66 and the conduct of the state of Israel.

²¹² See The U.N. General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in Accordance with Charter of The United Nations 1970 para. 6

²¹³ See para. 46 in the Legality of the Threat or use of Nuclear Weapons case (1997) I.L.M. 809 and 1343

²¹⁴ The research for this thesis shows that prominent legal scholars of international law support many of the findings in this thesis. The Governments of the US and the coalition forces have been reluctant to publicize in depth reports on the legal requirements for the intervention in Iraq. Michael Ratner and Jules Lobel article "The United Nations Charter and the use of force against Iraq" represents a good example of the many skeptical legal scholars. <http://www.lcnp.org/global/iraqstatement3.htm>
And see The Guardian 2003/03/07 "War would be illegal" with references to skeptical teachers of international law. <http://www.guardian.co.uk/Iraq/Story/0,2763,909314,00.html>

The present U.N. charter avoids the problems of self-help from individual states and in fact gives the international society a legal framework to work within in order to maintain international peace and security.²¹⁵ Some could argue that in a modern world of international war, civil war, humanitarian violations and explosive terror there is a need for freer possibilities for intervention by individual states or collective powers. In this respect is important to note that international law and the law of the U.N. Charter are not immune to democratically change. But will the change promote the main object of the U.N. Charter to maintain international peace and security? However the Iraq case demonstrates yet again a compelling need to address the deficiencies in the effectiveness of U.N. system.²¹⁶

The discussions in the U.N. Security Council clearly shows that the majority of Council Members felt that peaceful means was not exhausted when the US led coalition forces initiated the attack on Iraq the 19th of March 2003. And the discussions in the Security Council clearly showed the need for a new resolution unambiguously authorizing the use of force, a resolution the US Government failed to get adopted in the Council.

Resolution 1441 (2002) did not authorize the use of force. This is emphasized by the US Government's own admission to the fact²¹⁷.

The US Government and the coalition forces acted as the aggressor in Iraq in contradiction with the position of a majority of members in the U.N. Security Council. After the start of hostilities a broad majority in the Security Council called for an immediate end to the conflict and stated that the war violated international law and the UN Charter.

The burden of proof lies with US Government and the coalition of states to justify actions in Iraq in March 2003.

No indisputable evidence of the Iraqi actual possession of any of the mentioned weapons of mass destruction has been found. No significant ties between terrorist organizations involved in the 11th September 2001 incident in the US and the Iraqi Government has been found and brought forward to the international community.

In spite of the attempts from the US Government and coalition partners to push authority around the Security Council with claims of having received a *carte blanche*

²¹⁵ See Article 1 of the U.N. Charter and the whole U.N. system that comprises peace and security between states.

²¹⁶ See Henkin (1999) p. 826 with similar remarks about the NATO intervention in Kosovo in 1999.

²¹⁷ See above in this thesis with references to U.N. Security Council meeting 4644 08.11.2002, S/PV.4644, p. 3 for Mr. Negropontes statements.

in resolution 678 (1990) to use force if a breach of peace occurred, the U.N. Security Council remains the supreme authority in maintaining international peace and security.

It would be contrary to the U.N. Charter if interpretation and execution of Security Council resolutions were left to the discretion of individual states or groups of states circumventing the authority of the Security Council.

Even though the functioning of the U.N. Security Council was considered to be impaired - it will have no effect on the rules and principles of international law²¹⁸. The relevant provisions in the U.N. Charter remain in effect and all member states have to abide by their rule and the decisions made by the Security Council according to Article 25.

Consistent state practice does not support the US actions in Iraq. According to Ratner (1999) Council practice since the Cold War simply does not support any great need for a flexible reinterpretation of the Charter to support the actual behaviour of states²¹⁹.

If the U.N. Security Council on a later date approves the actions by the US and coalition forces regarding the use of armed force to invade, occupy and change the regime of Iraq, the actions on the time of initiation would still be questionable under international law, and therefore an object of righteous critique.

The US Government was arguably not acting in good faith according to the obligations of the U.N. Charter Article 2(2).

The US Government cannot rightfully make legal arguments that the intervention took place with the consent of the Iraqi people or rightfully use legal arguments of Humanitarian Intervention, because arguments has no basis in international law.

The doctrine of self-defence in international law does not apply. The distance in time between the events of September 11th 2001 and the attack on Iraq in 2003 is significant. The US actions in Iraq were not in compliance with canons of necessity and proportionality. The September 11th 2001 incident did not amount to an *armed attack* on the US. But most importantly and evidently there is not enough evidence to associate Al-Qaida to the Iraqi Government. Consequently the Iraqi involvement cannot be considered substantial as required by the doctrine of self-defence.

²¹⁸ See Brownlie (1963) p. 116 where there is a discussion about a situation where there is a significant lack of support to the U.N.

²¹⁹ See Ratner (1999) p. 127.

Accept from the alleged link to the September 11th incident Iraq has not threatened or used force against the US before the US led intervention in March 2003.

Even though Powerful states with the US as a pioneer argue in favour of a right of anticipatory or pre-emptive self-defence no such right can be derived from current international law.

The Bush doctrine of pre-emptive measurements against the enemies of the USA is arguably in sharp contradiction with current international law.

The U.N. Security Council did and does to this date not sanction the US charged countrywide occupation, regime change and hegemony in Iraq. It is a breach of the provisions of the non-use of force in Article 2(4), non-intervention in Article 2(7), peaceful resolution in Article 2(3) and a breach of the authority of the Security Council as expressed in Articles 39, 25 and Chapter VII.

Noteworthy and according to Charney (2001) the US claims to use force reflect an unfortunate failure by the United States to promote the objectives of the United Nations Charter, as well as the value of maintaining and strengthening the United Nations system.

Studies of Military Expenditures in Iraq since 1991 gives support to the notion that sanctions restrained Iraq's weapons development program and were much more effective than anticipated by the US Government²²⁰.

This thesis clearly indicates that no convincing juris prudence²²¹ exists or is likely to exist in order to provide a sound legal basis in international law for the US led unilateral intervention in Iraq in 2003. The legal arguments in favour of the US led intervention are few and fragile while many compelling arguments works to towards a rejection. In summary if the case of Iraq were to appear in front of the International Court Justice, the court would almost certainly rule against the US led intervention. The resolution on the Definition of Aggression from 1974 clearly states in Article 5 paragraph 1 that "*No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression*".

²²⁰ See David Cortright, Alistair Millar, George A. Lopez and Linda Gerber "Unproven The Controversy over Justifying War in Iraq" Joan B. Kroc Institute 2003

²²¹ See the US Government position from U.N. Security Council meeting 4726 27.03.2003, SC/7707 and articles "Attorney general: war is legal" The Guardian March 17. 2003, Greg Hunt "Yes, this war is legal" The Age March 19 2003 and Wedgwood (2000).

A war of aggression constitutes a crime against peace for which there is responsibility under international law²²².

Importantly the U.N. Secretary General Kofi Annan expresses very strong concerns in a recent speech²²³ to the U.N. General Assembly on the 23 of September 2003 in New York condemning the recourse to unilateral action and pointing out the risks in a departure from the U.N. system with unmistakable references to the US Government and coalition forces actions in Iraq.

In conclusion and even though the concept of *just war*²²⁴ has vanished from modern legal framework in the international law of armed conflicts, it could be argued that some countries, with the US as the pioneer, is trying to reclaim this legal figure to justify the multilateral intervention in Iraq 2003 in accordance with the new Bush doctrine²²⁵.

²²² Principle from the General Assembly resolution 2625 (XXV) Principles of International Law concerning Friendly Relations and Co-operation among States, and see draft of Responsibility Of States For Internationally Wrongful Acts. See Griffiths (2002) for a comprehensive answer to a crime of aggression.

²²³ The U.N. Secretary-General's address to the General Assembly, New York, 23 September 2003 Excerpt of the secretary General's speech: "Since this Organisation was founded, States have generally sought to deal with threats to the peace through containment and deterrence, by a system based on collective security and the United Nations Charter. Article 51 of the Charter prescribes that all States, if attacked, retain the inherent right of self-defence. But until now it has been understood that when States go beyond that, and decide to use force to deal with broader threats to international peace and security, they need the unique legitimacy provided by the United Nations. Now, some say this understanding is no longer tenable, since an "armed attack" with weapons of mass destruction could be launched at any time, without warning, or by a clandestine group. Rather than wait for that to happen, they argue, States have the right and obligation to use force pre-emptively, even on the territory of other States, and even while weapons systems that might be used to attack them are still being developed. According to this argument, States are not obliged to wait until there is agreement in the Security Council. Instead, they reserve the right to act unilaterally, or in ad hoc coalitions. This logic represents a fundamental challenge to the principles on which, however imperfectly, world peace and stability have rested for the last fifty-eight years. My concern is that, if it were to be adopted, it could set precedents that resulted in a proliferation of the unilateral and lawless use of force, with or without justification. But it is not enough to denounce unilateralism, unless we also face up squarely to the concerns that make some States feel uniquely vulnerable, since it is those concerns that drive them to take unilateral action. We must show that those concerns can, and will, be addressed effectively through collective action. Excellencies, we have come to a fork in the road. This may be a moment no less decisive than 1945 itself, when the United Nations was founded." <http://www.un.org/apps/sg/sgstats.asp?nid=517>

²²⁴ See Saine (1999) for a grand perspective of the recourse to war.

²²⁵ National Security Strategy of the United States of America, September 2002

Applied Material²²⁶

Literature

Broomhall (2003)	Bruce Broomhall	<i>International Justice And The International Criminal Court: Between Sovereignty and the Rule of Law</i>	Oxford University Press 2003
Brownlie (1963)	Ian Brownlie	<i>International Law and the Use of Force by States</i>	Oxford 1963
Brownlie (1998)	Ian Brownlie	<i>The Rule of Law in International Affairs</i>	Martinus Nijhoff Publishers 1998
BrownliePrinciples (1998)	Ian Brownlie	<i>Principles of Public International Law</i>	Oxford 1998
Cassese (1986)	Antonio Cassese	<i>The current regulation of the use of force</i>	1986.
Cassese Law (1986)	Antonio Cassese	<i>International Law in a Divided World</i>	Oxford 1986
Cassese (1988)	Antonio Cassese	<i>Violence and Law in the modern age</i>	Princeton University Press 1988
Cassese (2001)	Antonio Cassese	<i>International Law</i>	Oxford 2001
D'Amato (1987)	Anthony D'Amato	<i>International Law: Process and Prospect</i>	Transnational Publishers, Inc. Dobbs Ferry, New York 1987
Dinstein (2001)	Yoram Dinstein	<i>War, Aggression and Self-Defence</i>	Third edition Cambridge 2001
Encyclopedia (2000)	Rudolf Bernhardt	<i>Encyclopaedia of Public International Law</i>	North Hollad Publishing Company 1992-2000
Greenwood (1987)	Christoffer Greenwood	<i>The concept of war in modern international law</i>	International and Comparative Law Quarterly, Vol. 36 p.283-3061987.
Harris (1998)	D.J. Harris	<i>Cases and Materials on International Law</i>	Sweet & Maxwell London 1998
McCoubrey (1992)	McCoubrey and White	<i>International Law and Armed Conflict</i>	1992
Millar (1984)	T.B. Millar with Robin Ward	<i>Current International Treaties</i>	Croom Helm 1984
Paenson (1989)	I. Paenson	<i>Manual of the terminology of the law of armed conflicts and of international humanitarian organizations</i>	Bruylant Nijhoff 1989
Schaffer (1997)	Ellen G. Schaffer and Randall J. Snyder	<i>Contemporary Practice of International Law</i>	Oceana 1997
Simma (2002)	Bruno Simma	<i>The Charter of the United Nations a commentary</i>	Second edition Oxford 2002
Warbrick (1994)	Colin Warbrick	<i>The United Nations and the</i>	Routledge 1994

²²⁶ Ingrid Kost have compiled a comprehensive bibliography "Books and Articles in the Field of the Prevention and Peaceful Settlement of International Disputes Published in 2000–2001", 14 *Leiden Journal of International Law* 897–934 (2001).

Articles

Bederman (2002)	David J. Bederman	Collective Security, Demilitarization and 'Pariah' States	<i>EJIL (2002) Vol. 13 No. 1 121-138</i>
Bennoune (2002)	Karima Bennoune	'Sovereignty vs. Suffering'? Re-examining Sovereignty and Human Rights through the Lens of Iraq	<i>EJIL (2002) Vol. 13 No. 1 243-262</i>
Bennoune (2003)	Karima Bennoune	Self-Determination in International Law	<i>EJIL (2003) Vol. 14 No. 2 387-390</i>
Blokker (2000)	Niels Blokker	Is The Authorisation Authorised? Powers And Practice Of The UN Security Council To Authorise The Use Of Force By 'Coalitions Of The Able And Willing'	<i>EJIL (2000), Vol.11 No. 3,541-568</i>
Bothe (2003)	Michael Bothe	Terrorism and the Legality of Pre-emptive Force	<i>EJIL (2003) Vol. 14 No. 2 227-240</i>
Brenfors-Maxe Petersen (2000)	Martha Brenfors Malene Maxe Petersen	The Legality of Unilateral Humanitarian Intervention – A Defence	<i>NJIL 69: 449–499, 2000.</i>
Byers (2002)	Michael Byers	The Shifting Foundations of International Law: A Decade of Forceful Measures against Iraq	<i>EJIL (2002) Vol. 13 1 21-41</i>
Charney (2001)	Jonathan I Charney	The use of force against terrorism and international law	<i>AJIL (2001), Volume 95, Issue 4, p.835-839</i>
Damrosch (2002)	Lori F. Damrosch	The Permanent Five as Enforcers of Controls on Weapons of Mass Destruction: Building on the Iraq 'Precedent'?	<i>EJIL (2002) Vol. 13 1 305-321</i>
De Wet (2002)	Erika De Wet	The Relationship between the Security Council and Regional Organizations during Enforcement Action under Chapter VII of the United Nations Charter	<i>NJIL 71: 1–37, 2002.</i>
Fassbender (2002)	Bardo Fassbender	Uncertain Steps into a Post-Cold War World: The Role and Functioning of the UN Security Council after a Decade of Measures against Iraq	<i>EJIL (2002) Vol. 13 1 273-303</i>
Fitzpatrick (2003)	Joan Fitzpatrick	Speaking Law to Power: The War Against Terrorism and Human Rights	<i>EJIL (2003) Vol. 14 No. 2 241-264</i>
Fleck (2002)	Dieter Fleck	Developments of the Law of Arms Control as a Result of the Iraq-Kuwait Conflict	<i>EJIL (2002) Vol. 13 1 105-119</i>
Fox (2001)	Jonathan Fox	Religious Causes of International Intervention in Ethnic Conflicts	<i>International Politics 38: 515-532, December 2001</i>
Franck (1999)	Thomas M Franck	Lessons of Kosovo	<i>AJIL (1999), Volume 93, Issue 4, p.857-860</i>
Franck (2001)	Thomas M Franck	Terrorism and the rights of self-defense	<i>AJIL (2001), Volume 95, Issue 4, p.839-843</i>
Franck (2002)	Thomas M Franck	Inspections and their enforcement: A modest proposal	<i>AJIL (2002), Volume 96, Issue 4, p.899-900</i>

THOMAS J. DYHR

Geraci (1999)	Thomas A Geraci	War in the Gulf, 1990-1991: The Iraq-Kuwait Conflict and Its Implications	<i>AJIL</i> (1999), Volume 93, Issue 3, p.754-757
Gómez (2002)	Mariano J. Aznar-Gómez	A Decade of Human Rights Protection by the UN Security Council: A Sketch of Deregulation?	<i>EJIL</i> (2002) Vol. 13 No. 1, 223-241
Gray (2002)	Christine Gray	From Unity to Polarization: International Law and the Use of Force against Iraq	<i>EJIL</i> (2002) Vol. 13 No. 1 1-19
Griffiths (2002)	Richard L. Griffiths	International Law, the Crime of Aggression and the Ius Ad Bellum	<i>International Criminal Law Review</i> 2: 301-373, 2002.
Harhoff (2001)	Frederik Harhoff	Unauthorised Humanitarian Interventions – Armed Violence in the Name of Humanity?	<i>NJIL</i> 70: 65-119, 2001.
Henkin (1999)	Louis Henkin	Kosovo and the Law of "Humanitarian Intervention"	<i>AJIL</i> (1999), Volume 93, Issue 4, p.824-828
Howse (2002)	Robert Howse	The Road to Baghdad is Paved with Good Intentions	<i>EJIL</i> (2002) Vol. 13 No. 1 89-92
Krisch (1999)	Krisch, N.	Unilateral Enforcement of the Collective Will: Kosovo, Iraq and the Security Council	<i>Max Planck Yearbook of United Nations Law</i> 3, 59-103 (1999)
Malone (2001)	David Malone	Iraq: No easy response to "the greatest threat"	<i>AJIL</i> (2001), Volume 95, Issue 1, p.235-245
Mégret (2003)	Frédéric Mégret	Justice in Times of Violence	<i>EJIL</i> (2003), Vol. 14 No. 2, 327-345
Mundis (2001)	Daryl A Mundis	New mechanisms for the enforcement of international humanitarian law	<i>AJIL</i> (2001), Volume 95, Issue 4, p.934-952
Murphy (2003)	Sean D Murphy	Contemporary practice of the United States relating to international law	<i>AJIL</i> (2003), Volume 97, Issue 1, p.179-208
Murphy (2003)	Sean D. Murphy	International Law, the United States, and the Non-military 'War' against Terrorism	<i>EJIL</i> (2003) Vol. 14 No. 2, 347-364
Neuman (2003)	Gerald L. Neuman	Humanitarian Law and Counterterrorist Force	<i>EJIL</i> (2003), Vol. 14 No. 2, 283-298
Österdahl (1997)	Inger Österdahl	The Security Council and the Use of Force under Chapter VII of the UN Charter in Iraq (to protect the Kurds), in Bosnia, Somalia, Rwanda and Haiti	<i>NJIL</i> 66: 241-271, 1997. 241
Oudraat (2003)	Chantal de Jonge Oudraat	UNSCOM: Between Iraq and a Hard Place	<i>EJIL</i> (2002) Vol. 13 No. 1 139-152
Ratner (1999)	Jules Lobel, Michael Ratner	Bypassing the Security Council: Ambiguous authorizations to use force, cease-fires and the Iraqi inspection regime	<i>AJIL</i> (1999), Volume 93, Issue 1 p. 124-154
Ratner (2002)	Steven R Ratner	Jus ad Bellum and Jus in Bello after September 11	<i>AJIL</i> (2002), Volume 96, Issue 4, p. 905-921
Rytter (2001)	Jens Elo Rytter	Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond	<i>NJIL</i> 70: 121-160, 2001.
Saine (1999)	Abdoulaye S. Saine	The political economy of human rights: State sovereignty and humanitarian military	<i>International Politics</i>

		intervention in the post-Cold War era	<i>36:551-557(December 1999)</i>
Schrijver (1999)	Nico Schrijver	NATO in Kosovo: Humanitarian Intervention Turns into Von Clausewitz War	<i>International Law FORUM du droit international 1: 155-159, 1999.</i>
Simpson (2000)	G Simpson	The situation on the international legal theory front: the power of rules and the rule of power	<i>EJIL (2000) Vol. 11 No. 2 439-464</i>
Wedgwood (1998)	Ruth Wedgwood	The Enforcement Of Security Council Resolution 687: The Threat Of Force Against Iraq's Weapons Of Mass Destruction	<i>AJIL (1998), Volume 92, Issue 4, p. 724-728</i>
Wedgwood (2000)	Ruth Wedgwood	Unilateral action in the UN system	<i>EJIL (2000), Vol. 11 No. 2, 349-359</i>
Zedalis (1998)	Rex J. Zedalis	An Analysis of Some of the Principal Legal Questions Relating to U.N. Weapons Inspections in Iraq	<i>NJIL 67: 249-273, 1998.</i>

Internet²²⁷

U.N.

United Nations Security Council
<http://www.un.org/Docs/sc/>

Security Council Resolutions
<http://www.un.org/documents/scres.htm>

UN Security Council: Meeting Records, Resolutions, Presidential Statements, SC Press Releases (full text)
<http://www.un.org/Depts/dhl/resguide/scact.htm>

The Secretary-General's Statements
<http://www.un.org/apps/sg/sgstats.asp>

Charter of the United Nations
<http://www.un.org/aboutun/charter/>

International Law Commission: Vienna Convention on the Law of Treaties
<http://www.un.org/law/ilc/texts/treatfra.htm>

UN Documentation Centre
<http://www.un.org/documents/>

UN International Law
<http://www.un.org/Depts/dhl/resguide/specil.htm>

UNBISnet - UN Bibliographic Information System
<http://unbisnet.un.org/>

ICJ
<http://www.icj-cij.org/>

ICASES *List of all cases brought before the Court
<http://www.icj-cij.org/icjwww/idecisions.htm>

Statute of the International Court of Justice
<http://www.icj-cij.org/icjwww/basicdocuments/Basetext/istatute.htm>

Information Search

Links to Opinions on Legality of War Against Iraq

²²⁷ A selected list of Internet links to high-quality sources of information regarding the conflict in Iraq 2003.

<http://www.robincmilller.com/ir-legal.htm>

Lexis Nexsis

<http://www.lexis-nexis.com/>

Note: An indispensable source on newspaper articles and journals of international law. (LexisNexsis can be used through "Elektra" on the Royal Danish Library's website.)

The Danish Royal Library, Law Section

http://base.kb.dk/pls/fag_web/fag_www.om_faget?p_fg_id_nr=16000

RAVE "Public International Law"

<http://www.jura.uni-duesseldorf.de/rave/e/ev/ev1.htm>

Note: Great source of international law literature.

News

BBC "After Saddam"

http://news.bbc.co.uk/2/hi/in_depth/middle_east/2002/conflict_with_iraq/default.stm

Reference

Hastings Law Library's "International Legal News: The War in Iraq"

http://www.uchastings.edu/library/Library%20Information/News%20and%20FAQ/legal_news_iraq.htm

Note: Research site with references and links to other sites of relevance for the Iraq conflict.

Poul L. Boley Law Library's "War on Iraq"

<http://law.lclark.edu/~lawlib/iraq.htm>

Note: Research site with references and links to other sites of relevance for the Iraq conflict.

The International Law Dictionary & Directory

<http://august1.com/pubs/dict/index.shtml>

A Select few 'Danish language' sites

Danish Foreign Ministry "Irak konflikten"

<http://www.um.dk/udenrigspolitik/irak/>

Danish Foreign Ministry "Det juridiske grundlag for iværksættelse af militære forholdsregler mod Irak"

<http://www.um.dk/udenrigspolitik/irak/jura.asp>

Politiken "Irak"

<http://politiken.dk/VisArtikel.iasp?TemplateID=15516>

Humor

These Weapons of Mass Destruction cannot be displayed

<http://www.coxar.pwp.blueyonder.co.uk/>

Appendix

Resolution 678 (1990)
Resolution 687 (1991)
Resolution 1441 (2002)

which the Council will need to take further measures under the Charter;

11. *Decides* to remain actively and permanently seized of the matter until Kuwait has regained its independence and peace has been restored in conformity with the relevant resolutions of the Security Council.

B

12. *Reposes its trust* in the Secretary-General to make available his good offices and, as he considers appropriate, to pursue them and to undertake diplomatic efforts in order to reach a peaceful solution to the crisis caused by the Iraqi invasion and occupation of Kuwait, on the basis of resolutions 660 (1990), 662 (1990) and 664 (1990), and calls upon all States, both those in the region and others, to pursue on this basis their efforts to this end, in conformity with the Charter, in order to improve the situation and restore peace, security and stability;

13. *Requests* the Secretary-General to report to the Security Council on the results of his good offices and diplomatic efforts.

Adopted at the 2951st meeting by 13 votes to none, with 2 abstentions (Cuba and Yemen).

Decisions

At its 2959th meeting, on 27 November 1990, the Council decided to invite the representatives of Bahrain, Egypt and Saudi Arabia to participate, without vote, in the discussion of the question.

At the same meeting, the Council also decided, at the request of the representative of Egypt,¹¹² to extend an invitation to Mr. Engin Ansay under rule 39 of its provisional rules of procedure.

At its 2960th meeting, on 27 November 1990, the Council decided to invite the representative of Qatar to participate, without vote, in the discussion of the question.

At its 2962nd meeting, on 28 November 1990, the Council decided to invite the representatives of Bangladesh, the Islamic Republic of Iran and the United Arab Emirates to participate, without vote, in the discussion of the question.

Resolution 677 (1990)

of 28 November 1990

The Security Council,

Recalling its resolutions 660 (1990) of 2 August 1990, 662 (1990) of 9 August 1990 and 674 (1990) of 29 October 1990,

Reiterating its concern for the suffering caused to indi-

¹¹² Document S/21968, incorporated in the record of the 2959th meeting.

viduals in Kuwait as a result of the invasion and occupation of Kuwait by Iraq,

Gravely concerned at the ongoing attempt by Iraq to alter the demographic composition of Kuwait and to destroy the civil records maintained by the legitimate Government of Kuwait,

Acting under Chapter VII of the Charter of the United Nations,

1. *Condemns* the attempts by Iraq to alter the demographic composition of Kuwait and to destroy the civil records maintained by the legitimate Government of Kuwait;

2. *Mandates* the Secretary-General to take custody of a copy of the population register of Kuwait, the authenticity of which has been certified by the legitimate Government of Kuwait and which covers the registration of the population up to 1 August 1990;

3. *Requests* the Secretary-General to establish, in cooperation with the legitimate Government of Kuwait, an order of rules and regulations governing access to and use of the said copy of the population register.

Adopted unanimously at the 2962nd meeting.

Decision

At its 2963rd meeting, on 29 November 1990, the Council proceeded with the discussion of the question.

Resolution 678 (1990)

of 29 November 1990

The Security Council,

Recalling and reaffirming its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990 and 677 (1990) of 28 November 1990,

Noting that, despite all efforts by the United Nations, Iraq refuses to comply with its obligation to implement resolution 660 (1990) and the above-mentioned subsequent relevant resolutions, in flagrant contempt of the Security Council,

Mindful of its duties and responsibilities under the Charter of the United Nations for the maintenance and preservation of international peace and security,

Determined to secure full compliance with its decisions,

Acting under Chapter VII of the Charter,

1. *Demands* that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions, and decides, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of goodwill, to do so;

2. *Authorizes* Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the above-mentioned resolutions, to use all necessary

means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area;

3. *Requests* all States to provide appropriate support for the actions undertaken in pursuance of paragraph 2 above;

4. *Requests* the States concerned to keep the Security Council regularly informed on the progress of actions undertaken pursuant to paragraphs 2 and 3 above;

5. *Decides* to remain seized of the matter.

Adopted at the 2963rd meeting by 12 votes to 2 (Cuba and Yemen), with 1 abstention (China).

Decision

In a letter dated 21 December 1990,¹¹³ the President of the Security Council informed the Secretary-General as follows:

“By resolution 669 (1990), adopted at its 2942nd

¹¹³ S/22033.

meeting, on 24 September 1990, the Council, recalling its resolution 661 (1990) of 6 August 1990, entrusted the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait with the task of examining requests for assistance under the provisions of Article 50 of the Charter of the United Nations, and making recommendations to the President of the Council for appropriate action.

“By letters dated 19 and 21 December 1990,¹¹⁴ the Chairman of the Committee transmitted the recommendations of the Committee with regard to the following 18 States: Bangladesh, Bulgaria, Czechoslovakia, India, Lebanon, Mauritania, Pakistan, Philippines, Poland, Romania, Seychelles, Sri Lanka, Sudan, Tunisia, Uruguay, Viet Nam, Yemen and Yugoslavia.

“At consultations of the whole of the Security Council held on 20 December 1990, it was decided to inform you of the above-mentioned recommendations of the Committee pursuant to resolution 669 (1990) in connection with requests for assistance under the provisions of Article 50 of the Charter and to request you to implement the actions contained in the recommendations.”

¹¹⁴ S/22021 and Add. I.

THE SITUATION IN CAMBODIA

Decision

At its 2941st meeting, on 20 September 1990, the Council discussed the item entitled “The situation in Cambodia”.

Resolution 668 (1990)

of 20 September 1990

The Security Council,

Convinced of the need to find an early, just and lasting peaceful solution of the Cambodia conflict,

Noting that the Paris Conference on Cambodia, which met from 30 July to 30 August 1989, made progress in elaborating a wide variety of elements necessary for reaching a comprehensive political settlement,

Taking note with appreciation of the continuing efforts of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, which have resulted in the framework for a comprehensive political settlement of the Cambodia conflict,¹¹⁵

Also taking note with appreciation of the efforts of the countries of the Association of South-East Asian Nations and other countries involved in promoting the search for a comprehensive political settlement,

Further taking note with appreciation of the efforts of Indonesia and France as Co-Presidents of the Paris Con-

ference on Cambodia and of all participants in the Conference to facilitate the restoration of peace to Cambodia,

Noting that these efforts are aimed at enabling the Cambodian people to exercise their inalienable right to self-determination through free and fair elections organized and conducted by the United Nations in a neutral political environment with full respect for the national sovereignty of Cambodia,

1. *Endorses* the framework for a comprehensive political settlement of the Cambodia conflict¹¹⁵ and encourages the continuing efforts of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America in this regard;

2. *Welcomes* the acceptance of this framework in its entirety by all the Cambodian parties, as the basis for settling the Cambodia conflict, at the informal meeting of the Cambodian parties at Jakarta on 10 September 1990 and their commitment to it;

3. *Also welcomes* the commitment of the Cambodian parties, in full co-operation with all other participants in the Paris Conference on Cambodia, to elaborating this framework into a comprehensive political settlement through the processes of the Conference;

4. *Welcomes*, in particular, the agreement reached by all Cambodian parties at Jakarta¹¹⁶ to form a Supreme National Council as the unique legitimate body and source of authority in which, throughout the transitional period, the independence, national sovereignty and unity of Cambodia is embodied;

5. *Urges* the members of the Supreme National Coun-

¹¹⁵ *Official Records of the Security Council, Forty-fifth Year, Supplement for July, August and September 1990*, document S/21689, annex.

¹¹⁶ *Ibid.*, document S/21732, annex.

'5. Subject to prior notification to the Committee of the flight and its contents, the Committee hereby gives general approval under paragraph 4 (b) of resolution 670 (1990) of 25 September 1990 for all flights which carry only foodstuffs or supplies intended strictly for medical purposes. This procedure applies equally to the civilian and humanitarian imports referred to in paragraph 3, the supply of which is subject to the no-objection procedure laid down in paragraph 4.

'6. It notes with satisfaction that the Government of Iraq has assured Mr. Ahtisaari's mission that it would accept a system of monitoring of imports and their utilization. The Secretary-General is requested, in consultation with the Government of Iraq and the International Committee of the Red Cross, to arrange for such a system of on-the-spot monitoring to proceed in conjunction with the despatch of United Nations personnel to Iraq to supervise the effective utilization, for the benefit of the civilian population in all areas, of all imports to be established under the responsibility of the United Nations.'

"I have the honour to request that you bring the above-mentioned decision to the attention of all States."

In a letter dated 26 March 1991,⁵⁵ addressed to the President of the Security Council for the attention of members of the Council, the Secretary-General referred to the letter of 19 March 1991 from the President of the Security Council⁴⁷ and informed the President that he had, on 26 March 1991, designated Mr. Richard Foran, Assistant Secretary-General, Office of General Services, Department of Administration and Management, as the official responsible for coordinating the return of property from Iraq to Kuwait.

At its 2981st meeting, on 3 April 1991, the Council decided to invite the representatives of Iraq and Kuwait to participate, without vote, in the discussion of the item entitled "The situation between Iraq and Kuwait".

Resolution 687 (1991)
of 3 April 1991

The Security Council,

Recalling its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990, 677 (1990) of 28 November 1990, 678 (1990) of 29 November 1990 and 686 (1991) of 2 March 1991,

Welcoming the restoration to Kuwait of its sovereignty, independence and territorial integrity and the return of its legitimate Government.

Affirming the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq, and noting the intention expressed by the Member States cooperating with Kuwait under paragraph 2 of resolution 678 (1990) to bring their military presence in Iraq to an end as soon as possible consistent with paragraph 8 of resolution 686 (1991),

Reaffirming the need to be assured of Iraq's peaceful intentions in the light of its unlawful invasion and occupation of Kuwait,

Taking note of the letter dated 27 February 1991 from the Deputy Prime Minister and Minister for Foreign Affairs of Iraq addressed to the President of the Security Council⁴¹ and of his letters of the same date addressed to the President of the Council and to the Secretary-General,⁴⁰ and those letters dated 3 March⁵⁶ and 5 March⁵⁷ he addressed to them, pursuant to resolution 686 (1991),

Noting that Iraq and Kuwait, as independent sovereign States, signed at Baghdad on 4 October 1963 "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters",⁵⁸ thereby formally recognizing the boundary between Iraq and Kuwait and the allocation of islands, which Agreed Minutes were registered with the United Nations in accordance with Article 102 of the Charter of the United Nations and in which Iraq recognized the independence and complete sovereignty of the State of Kuwait with its boundaries as specified in the letter of the Prime Minister of Iraq dated 21 July 1932 and as accepted by the ruler of Kuwait in his letter dated 10 August 1932,

Conscious of the need for demarcation of the said boundary,

Conscious also of the statements by Iraq threatening to use weapons in violation of its obligations under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,⁵⁹ and of its prior use of chemical weapons, and affirming that grave consequences would follow any further use by Iraq of such weapons,

Recalling that Iraq has subscribed to the Final Declaration adopted by all States participating in the Conference of States Parties to the 1925 Geneva Protocol and Other Interested States, held in Paris from 7 to 11 January 1989,⁶⁰ establishing the objective of universal elimination of chemical and biological weapons,

Recalling also that Iraq has signed the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972,⁶¹

Noting the importance of Iraq ratifying the Convention,

Noting also the importance of all States adhering to the Convention and encouraging its forthcoming review conference to reinforce the authority, efficiency and universal scope of the Convention,

Stressing the importance of an early conclusion by the Conference on Disarmament of its work on a convention on the universal prohibition of chemical weapons and of universal adherence thereto,

Aware of the use by Iraq of ballistic missiles in unprovoked attacks and therefore of the need to take specific measures in regard to such missiles located in Iraq,

Concerned by the reports in the hands of Member States that Iraq has attempted to acquire materials for a nuclear-weapons programme contrary to its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968,⁶²

Recalling the objective of the establishment of a nuclear-weapon-free zone in the region of the Middle East,

Conscious of the threat that all weapons of mass destruction pose to peace and security in the area and of the need to work towards the establishment in the Middle East of a zone free of such weapons,

Conscious also of the objective of achieving balanced and comprehensive control of armaments in the region,

Conscious further of the importance of achieving the objectives noted above using all available means, including a dialogue among the States of the region,

Noting that resolution 686 (1991) marked the lifting of the measures imposed by resolution 661 (1990) in so far as they applied to Kuwait,

Noting also that despite the progress being made in fulfilling the obligations of resolution 686 (1991), many Kuwaiti and third-State nationals are still not accounted for and property remains unreturned,

Recalling the International Convention against the Taking of Hostages,⁶³ opened for signature in New York on 18 December 1979, which categorizes all acts of taking hostages as manifestations of international terrorism,

Deploring threats made by Iraq during the recent conflict to make use of terrorism against targets outside Iraq and the taking of hostages by Iraq,

Taking note with grave concern of the reports transmitted by the Secretary-General on 20 March⁵³ and 28 March 1991,⁶⁴ and conscious of the necessity to meet urgently the humanitarian needs in Kuwait and Iraq,

Bearing in mind its objective of restoring international peace and security in the area as set out in its recent resolutions,

Conscious of the need to take the following measures acting under Chapter VII of the Charter,

1. *Affirms* all thirteen resolutions noted above, except as expressly changed below to achieve the goals of the present resolution, including a formal cease-fire;

A

2. *Demands* that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters",⁵⁸ signed by them in the exercise of their sovereignty at Baghdad on 4 October 1963 and registered with the United Nations;

3. *Calls upon* the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on appropriate material including the maps transmitted with the letter dated 28 March 1991 addressed to him by the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations,⁶⁵ and to report back to the Council within one month;

4. *Decides* to guarantee the inviolability of the above-mentioned international boundary and to take, as appropriate, all necessary measures to that end in accordance with the Charter of the United Nations;

B

5. *Requests* the Secretary-General, after consulting with Iraq and Kuwait, to submit within three days to the Council for its approval a plan for the immediate deployment of a United Nations observer unit to monitor the Khawr 'Abd Allah and a demilitarized zone, which is hereby established, extending ten kilometres into Iraq and five kilometres into Kuwait from the boundary referred to in the "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters"; to deter violations of the boundary through its presence in and surveillance of the demilitarized zone and to observe any hostile or potentially hostile action mounted from the territory of one State against the other; and also requests the Secretary-General to report regularly to the Council on the operations of the unit and to do so immediately if there are serious violations of the zone or potential threats to peace;

6. *Notes* that as soon as the Secretary-General notifies the Council of the completion of the deployment of the United Nations observer unit, the conditions will be established for the Member States cooperating with Kuwait in accordance with resolution 678 (1990) to bring their military presence in Iraq to an end consistent with resolution 686 (1991);

C

7. *Invites* Iraq to reaffirm unconditionally its obligations under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,⁵⁹ and to ratify the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972;⁶¹

8. *Decides* that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

(a) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities related thereto;

(b) All ballistic missiles with a range greater than one hundred and fifty kilometres, and related major parts and repair and production facilities;

9. *Decides also*, for the implementation of paragraph 8, the following:

(a) Iraq shall submit to the Secretary-General, within fifteen days of the adoption of the present resolution, a declaration on the locations, amounts and types of all items specified in paragraph 8 and agree to urgent, on-site inspection as specified below;

(b) The Secretary-General, in consultation with the appropriate Governments and, where appropriate, with the Director-General of the World Health Organization, within forty-five days of the adoption of the present resolution shall develop and submit to the Council for approval a plan calling for the completion of the following acts within forty-five days of such approval:

- (i) The forming of a special commission which shall carry out immediate on-site inspection of Iraq's biological, chemical and missile capabilities, based on Iraq's declarations and the designation of any additional locations by the special commission itself;
- (ii) The yielding by Iraq of possession to the Special Commission for destruction, removal or rendering harmless, taking into account the requirements of public safety, of all items specified under paragraph 8 (a), including items at the

additional locations designated by the Special Commission under paragraph (i) and the destruction by Iraq, under the supervision of the Special Commission, of all its missile capabilities, including launchers, as specified under paragraph 8 (b);

- (iii) The provision by the Special Commission to the Director General of the International Atomic Energy Agency of the assistance and cooperation required in paragraphs 12 and 13;

10. *Decides further* that Iraq shall unconditionally undertake not to use, develop, construct or acquire any of the items specified in paragraphs 8 and 9, and requests the Secretary-General, in consultation with the Special Commission, to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with the present paragraph, to be submitted to the Council for approval within one hundred and twenty days of the passage of the present resolution;

11. *Invites* Iraq to reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, of 1 July 1968;⁶²

12. *Decides* that Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapon-usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above; to submit to the Secretary-General and the Director General of the International Atomic Energy Agency within fifteen days of the adoption of the present resolution a declaration of the locations, amounts and types of all items specified above; to place all of its nuclear-weapon-usable materials under the exclusive control, for custody and removal, of the Agency, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General discussed in paragraph 9 (b); to accept, in accordance with the arrangements provided for in paragraph 13, urgent on-site inspection and the destruction, removal or rendering harmless as appropriate of all items specified above; and to accept the plan discussed in paragraph 13 for the future ongoing monitoring and verification of its compliance with these undertakings;

13. *Requests* the Director General of the International Atomic Energy Agency, through the Secretary-General and with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General referred to in paragraph 9 (b), to carry out immediate on-site inspection of Iraq's nuclear capabilities based on Iraq's declarations and the designation of any additional locations by the Special Commission; to develop a plan for submission to the Council within forty-five days calling for the destruction, removal or rendering harmless as appropriate of all items listed in paragraph 12; to carry out the plan within forty-five days following approval by the Council and to develop a plan, taking into account the rights and obligations of Iraq under the Treaty on the Non-Proliferation of Nuclear Weapons, for the future ongoing monitoring and verification of Iraq's compliance with paragraph 12, including an inventory of all nuclear material in Iraq subject to the Agency's verification and inspections to confirm that

Agency safeguards cover all relevant nuclear activities in Iraq, to be submitted to the Council for approval within one hundred and twenty days of the adoption of the present resolution;

14. *Notes* that the actions to be taken by Iraq in paragraphs 8 to 13 represent steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons;

D

15. *Requests* the Secretary-General to report to the Council on the steps taken to facilitate the return of all Kuwaiti property seized by Iraq, including a list of any property that Kuwait claims has not been returned or which has not been returned intact;

E

16. *Reaffirms* that Iraq, without prejudice to its debts and obligations arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage - including environmental damage and the depletion of natural resources - or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait;

17. *Decides* that all Iraqi statements made since 2 August 1990 repudiating its foreign debt are null and void, and demands that Iraq adhere scrupulously to all of its obligations concerning servicing and repayment of its foreign debt;

18. *Decides also* to create a fund to pay compensation for claims that fall within paragraph 16 and to establish a commission that will administer the fund;

19. *Directs* the Secretary-General to develop and present to the Council for decision, no later than thirty days following the adoption of the present resolution, recommendations for the Fund to be established in accordance with paragraph 18 and for a programme to implement the decisions in paragraphs 16 to 18, including the following: administration of the Fund; mechanisms for determining the appropriate level of Iraq's contribution to the Fund, based on a percentage of the value of its exports of petroleum and petroleum products, not to exceed a figure to be suggested to the Council by the Secretary-General, taking into account the requirements of the people of Iraq, Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy; arrangements for ensuring that payments are made to the Fund; the process by which funds will be allocated and claims paid; appropriate procedures for evaluating losses, listing claims and verifying their validity, and resolving disputed claims in respect of Iraq's liability as specified in paragraph 16; and the composition of the Commission designated above;

F

20. *Decides*, effective immediately, that the prohibitions against the sale or supply to Iraq of commodities or products other than medicine and health supplies, and prohibitions against financial transactions related thereto contained in resolution 661 (1990), shall not apply to foodstuffs notified to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait or, with the approval of that Committee, under the simplified and accelerated "no-objection" procedure, to materials and supplies for essential civilian needs as identified in the report to the Secretary-General dated 20 March 1991,⁵³ and in any further findings of humanitarian need by the Committee;

21. *Decides* to review the provisions of paragraph 20 every sixty days in the light of the policies and practices of the Government of Iraq, including the implementation of all relevant resolutions of the Council, for the purpose of determining whether to reduce or lift the prohibitions referred to therein;

22. *Decides also* that upon the approval by the Council of the programme called for in paragraph 19 and upon Council agreement that Iraq has completed all actions contemplated in paragraphs 8 to 13, the prohibitions against the import of commodities and products originating in Iraq and the prohibitions against financial transactions related thereto contained in resolution 661 (1990) shall have no further force or effect;

23. *Decides further* that, pending action by the Council under paragraph 22, the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait shall be empowered to approve, when required to assure adequate financial resources on the part of Iraq to carry out the activities under paragraph 20, exceptions to the prohibition against the import of commodities and products originating in Iraq;

24. *Decides* that, in accordance with resolution 661 (1990) and subsequent related resolutions and until it takes a further decision, all States shall continue to prevent the sale or supply to Iraq, or the promotion or facilitation of such sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of:

(a) Arms and related *matériel* of all types, specifically including the sale or transfer through other means of all forms of conventional military equipment, including for paramilitary forces, and spare parts and components and their means of production for such equipment;

(b) Items specified and defined in paragraphs 8 and 12 not otherwise covered above;

(c) Technology under licensing or other transfer arrangements used in the production, utilization or stockpiling of items specified in paragraphs (a) and (b);

(d) Personnel or materials for training or technical support services relating to the design, development, manufacture, use, maintenance or support of items specified in paragraphs (a) and (b);

25. *Calls upon* all States and international organizations to act strictly in accordance with paragraph 24, notwithstanding the existence of any contracts, agreements, licences or any other arrangements;

26. *Requests* the Secretary-General, in consultation with appropriate Governments, to develop within sixty days, for the approval of the Council, guidelines to facilitate full international implementation of paragraphs 24, 25 and 27, and to make them available to all States and to establish a procedure for updating these guidelines periodically;

27. *Calls upon* all States to maintain such national controls and procedures and to take such other actions consistent with the guidelines to be established by the Council under paragraph 26 as may be necessary to ensure compliance with the terms of paragraph 24, and calls upon international organizations to take all appropriate steps to assist in ensuring such full compliance;

28. *Agrees* to review its decisions in paragraphs 22 to 25, except for the items specified and defined in paragraphs 8 and 12, on a regular basis and in any case one hundred and twenty days following the adoption of the present resolution, taking into account Iraq's compliance with the resolution and general progress towards the control of armaments in the region;

29. *Decides* that all States, including Iraq, shall take the necessary measures to ensure that no claim shall lie at the instance of the Government of Iraq, or of any person or body in Iraq, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Council in resolution 661 (1990) and related resolutions;

G

30. *Decides* that, in furtherance of its commitment to facilitate the repatriation of all Kuwaiti and third-State nationals, Iraq shall extend all necessary cooperation to the International Committee of the Red Cross by providing lists of such persons, facilitating the access of the International Committee to all such persons wherever located or detained and facilitating the search by the International Committee for those Kuwaiti and third-State nationals still unaccounted for;

31. *Invites* the International Committee of the Red Cross to keep the Secretary-General apprised, as appropriate, of all activities undertaken in connection with facilitating the repatriation or return of all Kuwaiti and third-State nationals or their remains present in Iraq on or after 2 August 1990;

H

32. *Requires* Iraq to inform the Council that it will not commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods and practices of terrorism;

I

33. *Declares* that, upon official notification by Iraq to the Secretary-General and to the Security Council of its acceptance of the above provisions, a formal cease-fire is effective between Iraq and Kuwait and the Member States cooperating with Kuwait in accordance with resolution 678 (1990);

34. *Decides* to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the region.

Adopted at the 2981st meeting by 12 votes to 1 (Cuba) with 2 abstentions (Ecuador, Yemen).

Decision

At its 2983rd meeting, on 9 April 1991, the Council decided to invite the representatives of Iraq and Kuwait to participate, without vote, in the discussion of the item entitled "The situation between Iraq and Kuwait: report of the Secretary-General on the implementation of paragraph 5 of Security Council resolution 687 (1991) (S/22454 and Add.1-3)".⁷

Resolution 689 (1991)

of 9 April 1991

The Security Council,

Recalling its resolution 687 (1991) of 3 April 1991,

Acting under Chapter VII of the Charter of the United Nations,

1. *Approves* the report of the Secretary-General of 5 and 9 April 1991 on the implementation of paragraph 5 of Security Council resolution 687 (1991);⁶⁶

2. *Notes* that the decision to set up an observer unit was taken in paragraph 5 of resolution 687 (1991) and that the unit can be terminated only by a further decision of the Council; the Council shall therefore review the question of its termination or continuation every six months;



Security Council

Distr.: General
8 November 2002

Resolution 1441 (2002)

**Adopted by the Security Council at its 4644th meeting, on
8 November 2002**

The Security Council,

Recalling all its previous relevant resolutions, in particular its resolutions 661 (1990) of 6 August 1990, 678 (1990) of 29 November 1990, 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991, 688 (1991) of 5 April 1991, 707 (1991) of 15 August 1991, 715 (1991) of 11 October 1991, 986 (1995) of 14 April 1995, and 1284 (1999) of 17 December 1999, and all the relevant statements of its President,

Recalling also its resolution 1382 (2001) of 29 November 2001 and its intention to implement it fully,

Recognizing the threat Iraq's non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles poses to international peace and security,

Recalling that its resolution 678 (1990) authorized Member States to use all necessary means to uphold and implement its resolution 660 (1990) of 2 August 1990 and all relevant resolutions subsequent to resolution 660 (1990) and to restore international peace and security in the area,

Further recalling that its resolution 687 (1991) imposed obligations on Iraq as a necessary step for achievement of its stated objective of restoring international peace and security in the area,

Deploring the fact that Iraq has not provided an accurate, full, final, and complete disclosure, as required by resolution 687 (1991), of all aspects of its programmes to develop weapons of mass destruction and ballistic missiles with a range greater than one hundred and fifty kilometres, and of all holdings of such weapons, their components and production facilities and locations, as well as all other nuclear programmes, including any which it claims are for purposes not related to nuclear-weapons-usable material,

Deploring further that Iraq repeatedly obstructed immediate, unconditional, and unrestricted access to sites designated by the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA), failed to cooperate fully and unconditionally with UNSCOM and IAEA weapons

inspectors, as required by resolution 687 (1991), and ultimately ceased all cooperation with UNSCOM and the IAEA in 1998,

Deploring the absence, since December 1998, in Iraq of international monitoring, inspection, and verification, as required by relevant resolutions, of weapons of mass destruction and ballistic missiles, in spite of the Council's repeated demands that Iraq provide immediate, unconditional, and unrestricted access to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), established in resolution 1284 (1999) as the successor organization to UNSCOM, and the IAEA, and regretting the consequent prolonging of the crisis in the region and the suffering of the Iraqi people,

Deploring also that the Government of Iraq has failed to comply with its commitments pursuant to resolution 687 (1991) with regard to terrorism, pursuant to resolution 688 (1991) to end repression of its civilian population and to provide access by international humanitarian organizations to all those in need of assistance in Iraq, and pursuant to resolutions 686 (1991), 687 (1991), and 1284 (1999) to return or cooperate in accounting for Kuwaiti and third country nationals wrongfully detained by Iraq, or to return Kuwaiti property wrongfully seized by Iraq,

Recalling that in its resolution 687 (1991) the Council declared that a ceasefire would be based on acceptance by Iraq of the provisions of that resolution, including the obligations on Iraq contained therein,

Determined to ensure full and immediate compliance by Iraq without conditions or restrictions with its obligations under resolution 687 (1991) and other relevant resolutions and recalling that the resolutions of the Council constitute the governing standard of Iraqi compliance,

Recalling that the effective operation of UNMOVIC, as the successor organization to the Special Commission, and the IAEA is essential for the implementation of resolution 687 (1991) and other relevant resolutions,

Noting that the letter dated 16 September 2002 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General is a necessary first step toward rectifying Iraq's continued failure to comply with relevant Council resolutions,

Noting further the letter dated 8 October 2002 from the Executive Chairman of UNMOVIC and the Director-General of the IAEA to General Al-Saadi of the Government of Iraq laying out the practical arrangements, as a follow-up to their meeting in Vienna, that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA, and expressing the gravest concern at the continued failure by the Government of Iraq to provide confirmation of the arrangements as laid out in that letter,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of Iraq, Kuwait, and the neighbouring States,

Commending the Secretary-General and members of the League of Arab States and its Secretary-General for their efforts in this regard,

Determined to secure full compliance with its decisions,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq's failure to cooperate with United Nations inspectors and the IAEA, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991);

2. *Decides*, while acknowledging paragraph 1 above, to afford Iraq, by this resolution, a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council; and accordingly decides to set up an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions of the Council;

3. *Decides* that, in order to begin to comply with its disarmament obligations, in addition to submitting the required biannual declarations, the Government of Iraq shall provide to UNMOVIC, the IAEA, and the Council, not later than 30 days from the date of this resolution, a currently accurate, full, and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons, ballistic missiles, and other delivery systems such as unmanned aerial vehicles and dispersal systems designed for use on aircraft, including any holdings and precise locations of such weapons, components, sub-components, stocks of agents, and related material and equipment, the locations and work of its research, development and production facilities, as well as all other chemical, biological, and nuclear programmes, including any which it claims are for purposes not related to weapon production or material;

4. *Decides* that false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq at any time to comply with, and cooperate fully in the implementation of, this resolution shall constitute a further material breach of Iraq's obligations and will be reported to the Council for assessment in accordance with paragraphs 11 and 12 below;

5. *Decides* that Iraq shall provide UNMOVIC and the IAEA immediate, unimpeded, unconditional, and unrestricted access to any and all, including underground, areas, facilities, buildings, equipment, records, and means of transport which they wish to inspect, as well as immediate, unimpeded, unrestricted, and private access to all officials and other persons whom UNMOVIC or the IAEA wish to interview in the mode or location of UNMOVIC's or the IAEA's choice pursuant to any aspect of their mandates; further decides that UNMOVIC and the IAEA may at their discretion conduct interviews inside or outside of Iraq, may facilitate the travel of those interviewed and family members outside of Iraq, and that, at the sole discretion of UNMOVIC and the IAEA, such interviews may occur without the presence of observers from the Iraqi Government; and instructs UNMOVIC and requests the IAEA to resume inspections no later than 45 days following adoption of this resolution and to update the Council 60 days thereafter;

6. *Endorses* the 8 October 2002 letter from the Executive Chairman of UNMOVIC and the Director-General of the IAEA to General Al-Saadi of the Government of Iraq, which is annexed hereto, and decides that the contents of the letter shall be binding upon Iraq;

7. *Decides* further that, in view of the prolonged interruption by Iraq of the presence of UNMOVIC and the IAEA and in order for them to accomplish the tasks

set forth in this resolution and all previous relevant resolutions and notwithstanding prior understandings, the Council hereby establishes the following revised or additional authorities, which shall be binding upon Iraq, to facilitate their work in Iraq:

- UNMOVIC and the IAEA shall determine the composition of their inspection teams and ensure that these teams are composed of the most qualified and experienced experts available;
- All UNMOVIC and IAEA personnel shall enjoy the privileges and immunities, corresponding to those of experts on mission, provided in the Convention on Privileges and Immunities of the United Nations and the Agreement on the Privileges and Immunities of the IAEA;
- UNMOVIC and the IAEA shall have unrestricted rights of entry into and out of Iraq, the right to free, unrestricted, and immediate movement to and from inspection sites, and the right to inspect any sites and buildings, including immediate, unimpeded, unconditional, and unrestricted access to Presidential Sites equal to that at other sites, notwithstanding the provisions of resolution 1154 (1998) of 2 March 1998;
- UNMOVIC and the IAEA shall have the right to be provided by Iraq the names of all personnel currently and formerly associated with Iraq's chemical, biological, nuclear, and ballistic missile programmes and the associated research, development, and production facilities;
- Security of UNMOVIC and IAEA facilities shall be ensured by sufficient United Nations security guards;
- UNMOVIC and the IAEA shall have the right to declare, for the purposes of freezing a site to be inspected, exclusion zones, including surrounding areas and transit corridors, in which Iraq will suspend ground and aerial movement so that nothing is changed in or taken out of a site being inspected;
- UNMOVIC and the IAEA shall have the free and unrestricted use and landing of fixed- and rotary-winged aircraft, including manned and unmanned reconnaissance vehicles;
- UNMOVIC and the IAEA shall have the right at their sole discretion verifiably to remove, destroy, or render harmless all prohibited weapons, subsystems, components, records, materials, and other related items, and the right to impound or close any facilities or equipment for the production thereof; and
- UNMOVIC and the IAEA shall have the right to free import and use of equipment or materials for inspections and to seize and export any equipment, materials, or documents taken during inspections, without search of UNMOVIC or IAEA personnel or official or personal baggage;

8. *Decides* further that Iraq shall not take or threaten hostile acts directed against any representative or personnel of the United Nations or the IAEA or of any Member State taking action to uphold any Council resolution;

9. *Requests* the Secretary-General immediately to notify Iraq of this resolution, which is binding on Iraq; demands that Iraq confirm within seven days of that notification its intention to comply fully with this resolution; and demands

further that Iraq cooperate immediately, unconditionally, and actively with UNMOVIC and the IAEA;

10. *Requests* all Member States to give full support to UNMOVIC and the IAEA in the discharge of their mandates, including by providing any information related to prohibited programmes or other aspects of their mandates, including on Iraqi attempts since 1998 to acquire prohibited items, and by recommending sites to be inspected, persons to be interviewed, conditions of such interviews, and data to be collected, the results of which shall be reported to the Council by UNMOVIC and the IAEA;

11. *Directs* the Executive Chairman of UNMOVIC and the Director-General of the IAEA to report immediately to the Council any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations, including its obligations regarding inspections under this resolution;

12. *Decides* to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security;

13. *Recalls*, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations;

14. *Decides* to remain seized of the matter.

Annex

Text of Blix/El-Baradei letter

**United Nations Monitoring, Verification
and Inspection Commission**

International Atomic Energy Agency

The Executive Chairman

The Director General

8 October 2002

Dear General Al-Saadi,

During our recent meeting in Vienna, we discussed practical arrangements that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA. As you recall, at the end of our meeting in Vienna we agreed on a statement which listed some of the principal results achieved, particularly Iraq's acceptance of all the rights of inspection provided for in all of the relevant Security Council resolutions. This acceptance was stated to be without any conditions attached.

During our 3 October 2002 briefing to the Security Council, members of the Council suggested that we prepare a written document on all of the conclusions we reached in Vienna. This letter lists those conclusions and seeks your confirmation thereof. We shall report accordingly to the Security Council.

In the statement at the end of the meeting, it was clarified that UNMOVIC and the IAEA will be granted immediate, unconditional and unrestricted access to sites, including what was termed "sensitive sites" in the past. As we noted, however, eight presidential sites have been the subject of special procedures under a Memorandum of Understanding of 1998. Should these sites be subject, as all other sites, to immediate, unconditional and unrestricted access, UNMOVIC and the IAEA would conduct inspections there with the same professionalism.

H.E. General Amir H. Al-Saadi
Advisor
Presidential Office
Baghdad
Iraq

We confirm our understanding that UNMOVIC and the IAEA have the right to determine the number of inspectors required for access to any particular site. This determination will be made on the basis of the size and complexity of the site being inspected. We also confirm that Iraq will be informed of the designation of additional sites, i.e. sites not declared by Iraq or previously inspected by either UNSCOM or the IAEA, through a Notification of Inspection (NIS) provided upon arrival of the inspectors at such sites.

Iraq will ensure that no proscribed material, equipment, records or other relevant items will be destroyed except in the presence of UNMOVIC and/or IAEA inspectors, as appropriate, and at their request.

UNMOVIC and the IAEA may conduct interviews with any person in Iraq whom they believe may have information relevant to their mandate. Iraq will facilitate such interviews. It is for UNMOVIC and the IAEA to choose the mode and location for interviews.

The National Monitoring Directorate (NMD) will, as in the past, serve as the Iraqi counterpart for the inspectors. The Baghdad Ongoing Monitoring and Verification Centre (BOMVIC) will be maintained on the same premises and under the same conditions as was the former Baghdad Monitoring and Verification Centre. The NMD will make available services as before, cost free, for the refurbishment of the premises.

The NMD will provide free of cost: (a) escorts to facilitate access to sites to be inspected and communication with personnel to be interviewed; (b) a hotline for BOMVIC which will be staffed by an English speaking person on a 24 hour a day/seven days a week basis; (c) support in terms of personnel and ground transportation within the country, as requested; and (d) assistance in the movement of materials and equipment at inspectors' request (construction, excavation equipment, etc.). NMD will also ensure that escorts are available in the event of inspections outside normal working hours, including at night and on holidays.

Regional UNMOVIC/IAEA offices may be established, for example, in Basra and Mosul, for the use of their inspectors. For this purpose, Iraq will provide, without cost, adequate office buildings, staff accommodation, and appropriate escort personnel.

UNMOVIC and the IAEA may use any type of voice or data transmission, including satellite and/or inland networks, with or without encryption capability. UNMOVIC and the IAEA may also install equipment in the field with the capability for transmission of data directly to the BOMVIC, New York and Vienna (e.g. sensors, surveillance cameras). This will be facilitated by Iraq and there will be no interference by Iraq with UNMOVIC or IAEA communications.

Iraq will provide, without cost, physical protection of all surveillance equipment, and construct antennae for remote transmission of data, at the request of UNMOVIC and the IAEA. Upon request by UNMOVIC through the NMD, Iraq will allocate frequencies for communications equipment.

Iraq will provide security for all UNMOVIC and IAEA personnel. Secure and suitable accommodations will be designated at normal rates by Iraq for these personnel. For their part, UNMOVIC and the IAEA will require that their staff not stay at any accommodation other than those identified in consultation with Iraq.

On the use of fixed-wing aircraft for transport of personnel and equipment and for inspection purposes, it was clarified that aircraft used by UNMOVIC and IAEA staff arriving in Baghdad may land at Saddam International Airport. The points of departure of incoming aircraft will be decided by UNMOVIC. The Rasheed airbase will continue to be used for UNMOVIC and IAEA helicopter operations. UNMOVIC and Iraq will establish air liaison offices at the airbase. At both Saddam International Airport and Rasheed airbase, Iraq will provide the necessary support premises and facilities. Aircraft fuel will be provided by Iraq, as before, free of charge.

On the wider issue of air operations in Iraq, both fixed-wing and rotary, Iraq will guarantee the safety of air operations in its air space outside the no-fly zones. With regard to air operations in the no-fly zones, Iraq will take all steps within its control to ensure the safety of such operations.

Helicopter flights may be used, as needed, during inspections and for technical activities, such as gamma detection, without limitation in all parts of Iraq and without any area excluded. Helicopters may also be used for medical evacuation.

On the question of aerial imagery, UNMOVIC may wish to resume the use of U-2 or Mirage overflights. The relevant practical arrangements would be similar to those implemented in the past.

As before, visas for all arriving staff will be issued at the point of entry on the basis of the UN Laissez- Passer or UN Certificate; no other entry or exit formalities will be required. The aircraft passenger manifest will be provided one hour in advance of the arrival of the aircraft in Baghdad. There will be no searching of UNMOVIC or IAEA personnel or of official or personal baggage. UNMOVIC and the IAEA will ensure that their personnel respect the laws of Iraq restricting the export of certain items, for example, those related to Iraq's national cultural heritage. UNMOVIC and the IAEA may bring into, and remove from, Iraq all of the items and materials they require, including satellite phones and other equipment. With respect to samples, UNMOVIC and IAEA will, where feasible, split samples so that Iraq may receive a portion while another portion is kept for reference purposes. Where appropriate, the organizations will send the samples to more than one laboratory for analysis.

We would appreciate your confirmation of the above as a correct reflection of our talks in Vienna.

Naturally, we may need other practical arrangements when proceeding with inspections. We would expect in such matters, as with the above, Iraq's co-operation in all respect.

Yours sincerely,

(Signed)
Hans Blix
Executive Chairman
United Nations Monitoring,
Verification and Inspection Commission

(Signed)
Mohamed ElBaradei
Director General
International Atomic Energy Agency