

International Appeal by Lawyers and Jurists against the "Preventive" Use of Force

We the undersigned lawyers and jurists from legal traditions around the world are extremely concerned about conflicts in the Middle East regarding the suspected proliferation of weapons of mass destruction, and the possibility that force may be used in response to this situation.

The development of weapons of mass destruction anywhere in the world is contrary to universal norms against the acquisition, possession and threat or use of such weapons and must be addressed. However, the "preventive" use of force currently being considered against Iraq is both illegal and unnecessary and should not be authorized by the United Nations or undertaken by any State.

General principles of international law hold that:

- peaceful resolution of conflicts between States is required,
- the use of force is only permissible in the case of an armed attack or imminent attack or under UN authorization when a threat to the peace has been declared by the Security Council and non-military measures have been determined to be inadequate,
- enforcement of international law must be consistently applied to all States

In further enunciating and applying these principles, we believe that the use of force against Iraq would be illegal for the following reasons:

Peaceful resolution of conflicts required

i) The United Nations Charter and customary international law require States to seek peaceful resolutions to their disputes. Article 33 of the Charter states that "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice."

ii) Under Article 51 of the Charter, States are only permitted to threaten or use force "if an armed attack occurs" and only "until the Security Council has taken measures necessary to maintain international peace and security."

iii) In the case of an act of aggression or a threat to the peace, the United Nations Security Council is also required under the Charter (Article 41) to firstly employ "measures not involving the use of armed force." Only when such measures "would be inadequate or have proved to be inadequate" (Article 42) can the Security Council authorize the use of force.

No act of aggression or evidence of imminent threat of such act

iv) In 1991 the Security Council responded to an actual invasion of Kuwait by Iraq by authorizing all means necessary to restore the peace. In the current case, however, there has been no indication by Iraq that it intends to attack another country and no evidence of military preparations for any such attack. In addition, it is generally recognized that Iraq does not have the military capability to attack the key countries in dispute, i.e. the United States and the United Kingdom.

No precedent for preventive use of force

v) There is no precedent in international law for use of force as a preventive measure when there has been no actual or imminent attack by the offending State. There is law indicating that preventive use of force is illegal. The International Military Tribunal sitting at Nuremberg rejected Germany's argument that they were compelled to attack Norway in order to prevent an Allied invasion (6 F.R.D. 69, 100-101, 1946).

vi) The Security Council has never authorized force based on a potential, non-imminent threat of violence. All past authorizations have been in response to actual invasion, large scale violence or humanitarian emergency.

vii) If the Security Council, for the first time, were to authorize preventive war, it would undermine the UN Charter's restraints on the use of force and provide a dangerous precedent for States to consider the "preventive" use of force in numerous situations making war once again a tool of international politics rather than an anachronistic and prohibited action. If the use of force takes place outside the framework of international law and the UN Charter, the structure and authority of international law and the UN Charter which have taken generations and immense human sacrifice to establish, would be severely undermined into the foreseeable future.

Consistency under international law must be maintained

viii) International law must be consistently applied in order to maintain the respect of the international community as law and not the rejection of it as a tool of the powerful to subjugate the weak.

ix) Security Council Resolution 687, setting forth the terms of the ceasefire that ended the Gulf War, acknowledges that the elimination of Iraq's weapons of mass destruction is not an end in itself but "represents steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction."

x) The International Court of Justice has unanimously determined that there is an obligation on all States to "pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control." (Legality of the Threat or Use of Nuclear Weapons, ICJ 1996). Meaningful steps need to be taken by all States to this end,

and States wishing to enforce compliance with international law must themselves comply with this requirement.

xi) Action to ensure the elimination of Iraq's weapons of mass destruction should be done in conjunction with similar actions to ensure elimination of other weapons of mass destruction in the region - including Israel's nuclear arsenal - and in the world – including the nuclear weapons of China, France, India, Pakistan, Russia, United Kingdom and the United States.

Alternative mechanisms are available to address concerns

xii) The UN Security Council has established a number of mechanisms to address the concerns regarding Iraqi weapons of mass destruction. These include diplomatic pressure, negotiations, sanctions on certain goods with military application, destruction of stockpiles of weapons of mass destruction and inspections of facilities with capabilities to assist in production of weapons of mass destruction. Evidence to date is that these mechanisms are not perfect, but are working effectively enough to have led to the destruction and curtailment of most of the Iraqi weapons of mass destruction capability.

xiii) Mechanisms are available to address charges against Iraq and the Iraqi leadership of serious human rights violations, war crimes, crimes against peace and crimes against humanity. These include domestic courts utilizing universal jurisdiction, the establishment by the Security Council of an ad hoc international criminal tribunal, use of the International Criminal Court for any crimes committed after July 2002, and the International Court of Justice.

The use of force by powerful nations in disregard of the principles of international law would threaten the fabric of international law giving rise to the potential for further violations and an increasing cycle of violence and anarchy.

We call on the United Nations and all States to continue to pursue a path of adherence to international law and in pursuit of a peaceful resolution to the threats arising from weapons of mass destruction and other threats to the peace.

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