

Text of open letter submitted to the Globe and Mail (and in French translation to Le Devoir) on Friday March 14 and again on Monday March 17, 2003:

**Military action in Iraq without
Security Council authorization would be illegal**

To the Editor:

As Canadian teachers of international law we wish to express our deep concern that the US and its allies are planning the use of force against Iraq in defiance of the UN Security Council and the majority of the world's nations and people. We believe that such action would be a fundamental breach of international law and would seriously threaten the integrity of the international legal order that has been in place since the end of the Second World War. We support Prime Minister Jean Chrétien in his recent statements where he indicates that Canada will not support the use of force in the absence of Security Council authorization.

Even in the event that a Security Council resolution authorizes the use of force for the purpose of ridding Iraq of weapons of mass destruction this cannot legitimize the stated aim of the US and the UK to invade Iraq with the purpose of "regime change".

It is clear that Iraq has not met its international obligations with full compliance. There is no question that the UN Security Council has the authority to act in order to ensure that Iraq does comply. But this enforcement must itself be legal.

Security Council Resolution 1441 gives Iraq "a final opportunity" to cooperate with the weapons inspectors. Any false statement or omission by Iraq can be considered a "material breach" of its obligations under previous UN Security Council Resolutions. Where a "material breach" occurs the Security Council must meet and "consider the situation" as it is doing now. No specific enforcement action is authorized in this Resolution. Rather it is stated that Iraq "will face serious consequences" if it fails to comply. This does not allow for the use of force without further explicit authorization. Even the US and the UK by their actions in debating this issue in the Security Council, and in seeking a further resolution, acknowledge that a further resolution is required and that force cannot be used unilaterally without breaching international law.

Saddam Hussein's egregious abuse of human rights is well documented. His regime is responsible for horrendous levels of torture, imprisonment, murder and even genocide against Kurdish people in the north and Iraqi Shi-ites in the south. Hussein's use of chemical weapons against Iranians during the long Iran-Iraq war, and the use of similar weapons against Kurdish civilians in 1988, is well known. There is no doubt that Iraq is indeed ruled by a government that has a history of ruthless cruelty against its enemies and even against its own people.

There is no doubt that Hussein and the present regime in Iraq ought to be accountable under international law for their use of torture, violence and genocidal activities. But responsibility for imposing such accountability by way of force rests again, under international law, with the Security Council, not with states acting alone or even in

“coalitions of the willing” .

Nor is refusal by the Security Council to authorize the use of force the same as a “failure” or “inability” of the Security Council to discharge its responsibilities. France, Russia, Germany and other members of the Security Council have the legal right to ensure that force is not used unless all other avenues of peaceful resolution have been tried and failed. Members of the Security Council are legally obligated to use force only as a last resort. A resolution passed before all peaceful methods of dispute resolution have been exhausted may itself be illegal.

Finally, an unauthorized attack against Iraq cannot be justified as self-defence. While all states have the right to defend themselves against an armed attack, no such attack against the US or its allies has occurred or is even imminently threatened by Iraq. The so-called doctrine of “pre-emptive” self defence, recently advanced by the US as a justification for the use of force before any attack occurs or is imminent, is contrary to the UN Charter and international law.

Peace may be achieved in many ways. The rule of international law is crucial. Without the rule of law governing the strong as well as the weak our “new” world order will be little more than an empire of the powerful. Peace with justice is what the international legal order is supposed to guarantee. The principal guardian of this legal order is the United Nations however flawed and ineffective it may sometimes be. The cure for such flaws lies in increased support and respect for international organizations and the rule of law, not divisive and unilateral dismissal. Illegal action by the US and its allies would simply return us to an international order based on imperial ambition and coercive force. We condemn any such action in the strongest terms.

Yours truly,

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