

Submission to the Chilcot Inquiry in accordance with the invitation for submission issued on 03 June 2010

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1. Introduction

This paper addresses aspects of the question of legality of the 2003 invasion into Iraq led by the United States of America (US) and the United Kingdom (UK). Aiming to provide guidance to the Chilcot Inquiry, it focuses on aspects of the arguments brought forward by the UK in relation to United Nations (UN) Security Council resolution 1441 (SCR 1441)¹. Specifically, this submission will comment on the significance of the phrase 'consider' in operational paragraph (OP) 12 of SCR 1441 in light of the controversy concerning the appropriate manner of interpretation for Security Council resolutions. For this, *inter alia*, subsequent statements made by members of the Security Council after the adoption of SCR 1441 will be taken into account.

The crux of the issue revolves around the meaning of the term 'consider'. One proposition is that it describes merely a procedural need for the Security Council to *discuss* the events, while an implied authorization to use force is included in SCR 1441. The opposite view suggests a requirement to *discuss and decide* what subsequent action should ensue, precluding a use of force without a second permitting resolution

The focus on this aspect of the resolution is warranted given the dramatic change of view of the Legal Adviser to the UK, Attorney General Lord Goldsmith QC from his initial advice at the end of 2002 /beginning of 2003 stating that a second UN SC Resolution was required to use force² and his opinion of 07 March 2003,³ and statement on 17 March 2003 in Parliament reversing this point.⁴

2. Analysis

2.1 The Vienna Convention on the Law of Treaties

The use of the term 'material breach', a general term of treaty interpretation, in SCR 1441⁵ hints at the possibility to apply the canons of interpretation laid down the 1969 Vienna Convention on the Law of

¹ S/RES/1441 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm> .

² See for instance the letter to Geoffrey Hoon, dated 28.03.2002. <http://www.iraqinquiry.org.uk/media/42845/goldsmith-hoon-letter.pdf>, or the note of the telephone conversation between the Foreign Secretary and the Attorney General on Tuesday, 12 November 2002, http://www.iraqinquiry.org.uk/media/43505/doc_2010_01_26_11_03_33_493.pdf .

³ http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/28_04_05_attorney_general.pdf and before that in a document dated 28.02.2003 http://www.ico.gov.uk/upload/documents/library/freedom_of_information/notices/appendix_6_disclosure_state_ment.pdf .

⁴ In response to Baroness Ramsay of Cartvale [HL2172] http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030317/text/30317w01.htm#30317w01_sbhd3 .

⁵ *Supra* n. 1, OP 1 and OP 4.

Treaties (VCLT).⁶ Significantly, Ireland, following the adoption of SCR 1441, specifically cited Article 60.3(b) of the VCLT.⁷

However, Security Council resolutions in general cannot be equated with treaties. These resolutions are decided by a limited number of States and consequently may not in accordance with Article 34 VCLT⁸ and the principle *pacta tertiis nec nocent nec prosunt*⁹ be seen as binding on all States. However, in accordance with Articles 24 and 25 as well as Article 103 of the UN Charter, Security Council resolutions do bind all member States.¹⁰ Therefore, they should more correctly be regarded as 'institutional' acts akin to executive acts with binding force by virtue of the UN Charter. To consider an application *mutatis mutandis*, it pays off to consider the methodology employed by international legal tribunals for the interpretation of Security Council resolutions.

2.2 Other methodology

In *Tadić*, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) was tasked with interpreting the Statute of the Tribunal which was adopted pursuant to a Security Council resolution. The ICTY laid emphasis on 'the object and purpose behind the enactment of the statute' and the 'intent of the Security Council',¹¹ before employing a method of 'logical and systematic interpretation' with a reference to the preparatory works of the Statute in form of the report by the Secretary General.¹² Later, it confirmed that 'the ICTY Statute is legally a very different instrument from an international treaty'.¹³ However, reference was also made to the ICJ's approach in its Advisory Opinion on *Competence of the General Assembly for the Admission of a State to the United Nations* concerning the interpretation of treaties, emphasizing the relevance of the natural and ordinary meaning of treaty provisions in their context.¹⁴ In *Milosevic*, the ICTY Statute seemed to be equated with a treaty, however, this occurred in the context of Article 27 VCLT concerning the preclusion of invoking national law in order to dismiss charges of wrongdoing under international rules.¹⁵

⁶ Vienna Convention on the Law of Treaties (1969), 1155 UNTS 331, 22 May 1969, *in force* since 27 January 1980. For a definition of material breach see Article 60(3) of VCLT. General treaty interpretation in accordance with Art. 31-33.

⁷ 4644th meeting, Friday, 8 November 2002, S/PV.4644, <http://www.globalissues.org/external/1441Speeches.pdf>.

⁸ *Supra* n. 6, Art. 34.

⁹ Translation into English: 'Treaties do not impose any obligations, nor confer any rights, on third States'.

¹⁰ Charter of the United Nations (1945), 892 UNTS 119, 26 June 1945, *in force* since 24 October 1945, available at www.un.org/aboutun/charter, Art 24, 25, 103.

¹¹ *Tadić*, Appeals Chamber, (IT-94-1-AP72). Decision on the Defence Motion for interlocutory Appeal on Jurisdiction (02 October 1995), (1996).

¹² *Ibid.* para 79.

¹³ *Prosecutor v Tadić*. (Appeals Chamber Judgement). IT-94-1-A. (1999), para 282.

¹⁴ ICJ Reports (1950), p. 8. *Ibid.* para 282, See also, *Prosecutor v Tadić* (Trial Chamber Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses) IT-94-1-T (1995) para 18 and *Prosecutor v Bagasora et al.* (Appeals Chamber Decision on the Admissibility of the Prosecutor's Appeal from the Decision of a Confirming Judge Dismissing an Indictment against Théoneste Bagasora and 28 Others) ICTR-98-37-A (1998) para 28 and *Prosecutor v Kanyabashi* (Appeals Chamber Decision on the Defence Motion for Interlocutory Appeal on the Jurisdiction of Trial Chamber I; Dissenting Opinion of Judge Shahabuddeen) ICTR-96-15-A (1999) para. 21.

¹⁵ *Prosecutor v Slobodan Milosevic*. (ICTY Trials Chamber III Decision on Preliminary Motions) IT-99-37-PT 92001), para 47.

Nonetheless, there does not seem to be one coherent approach that is followed by the ICTY in the interpretation of SC resolutions.

Clearer guidance is provided by the ICJ in its *Namibia* judgement stating

‘The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25 [of the *UN Charter*] the question whether they have been in fact exercised is to be determined in each case, having 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.’¹⁶

In practice, bearing in mind both the dicta of the ICTY and the ICJ, the resulting method is similar to considering the ‘ordinary meaning in light of the object and purpose’ in accordance with the VCLT. Nonetheless, it may be suggested that in this case, the object and purpose concern not so much that of the resolution alone but also those of the institution and its organs. It is therefore necessary to bear in mind the distinct nature of the UN as a whole, and more specifically the role of the Security Council.

2.2.1 The role of the Security Council and the object and purpose SCR 1441

Article 25 of the UN Charter stipulates that members ‘agree to accept and carry out the decisions of the Security Council in accordance with the [UN] Charter’. Article 24 unequivocally attributes the ‘primary responsibility for the maintenance of international peace and security’ to the Security Council. The Security Council in turn is bound to act ‘in accordance with the purposes and principles of the United Nations’ including in accordance with Article 1 ‘the suppression of acts of aggression, threats to the peace, and to bring about by peaceful means (...) settlement of international disputes or situations which might lead to a breach of the peace.’¹⁷

To determine the purpose of SCR1441, the text itself is an instructive starting point. It is significant to note that the word ‘peace’ is used four times, while no mention is made of the word ‘force’ or any accepted synonym such as ‘all necessary means’. The argument that an implicit reference akin to ‘all necessary means’ is contained in the warning against ‘serious consequences’ in OP 13 is not tenable. Similarly, announcements at the vote for SCR 1441 that -in case of failure by Iraq to comply- the Security Council will ‘face its responsibilities’ do not give weight to any such suggestion.¹⁸ Neither of these formulations has ever been understood as signifying that the Security Council had authorized force, especially given its inherent preference for peaceful solutions and responsibility for the maintenance of peace.

It is further evident from the statements following the unanimous adoption of SCR 1441 that the purpose of the resolution clearly was the ‘peaceful disarmament of Iraq’. The Secretary General makes use of the term ‘peace’ or ‘peaceful’ five times during his short speech, topped only by the

¹⁶ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*. Advisory Opinion. ICJ Rep.(1971) pp. 53, 161.

¹⁷ *Charter Supra* n 9, Article 25, 24, 103.

¹⁸ *Supra* n. 7, Kofi Annan, Secretary General, p.2, Negroponte (US) p.4.

representative of Mexico using the terminology seven times. Both the US and UK delegate make use of the words,¹⁹ as do all other delegates, mentioning the terms a total of 23 times.²⁰ *Contrariwise*, terminology relating to the 'use of force' occurs only where assurances are made that there is no 'automaticity' or 'hidden triggers' in SCR 1441.²¹

2.2.2 The meaning of the language

Examining the specific terminology of the resolution, the crucial question concerns the meaning of the word 'consider'. 'Consider' is derived from the Latin *con-siderare*, literally meaning to 'observe the stars (*sidus*-star) together (*con*)'. Jack Straw contemplates in his letter to Lord Goldsmith that the word 'consider' was chosen precisely because it covers a range of possibilities from 'look at thoughtfully' to 'contemplate doing something'.²² In English, different suggestions can be found as to its meaning.

*Black's Law Dictionary*²³ describes consider as meaning 'to fix the mind on, with a view to careful examination; to examine; to inspect²⁴ or 'to deliberate about and ponder over²⁵, or '(t)o entertain or give heed to', also suggesting a meaning of 'considered' akin to 'deemed, determined, adjudged, reasonably regarded'.²⁶ It is concluded that 'Evidence may be said to have been 'considered' when it has been reviewed by a court to determine whether any probative force should be given it.'²⁷

According to *The Concise Oxford Dictionary*, the term means to 'contemplate mentally, esp. in order to reach a conclusion, give attention to' or 'examine the merits of an action, a candidate, a claim etc'.²⁸ *The Shorter Oxford English Dictionary* suggests a similar meaning such as 'to view attentively, to survey, examine, inspect' also mentioning the possible meaning of 'to judge of'.²⁹ *Collins English Dictionary* proposes the meaning of 'to think carefully about or ponder on (a problem, decision, etc.); contemplate', and that, if followed by an object, the term should be regarded as meaning 'to judge, deem, or have as an opinion.' Only in 6th place is there a suggestion of an interpretation akin to the term 'discuss'.³⁰

Finally, Crabbs' work on English synonyms states that 'consider' is used for 'practical purposes'. Separating the term from similar verbs such as reflect or regard, it is suggested that '(i)t is necessary to consider what is proper to be done before we take any steps', because '(w)ithout any consideration we

¹⁹ Negroponte uses it 4 times, Greenstock twice, *Ibid*, p. 4 and 5.

²⁰ See the statements by the Secretary General, p. 2. Negroponte (US), p. 4, Greenstock (UK), p. 5, Lavrov (Russia) p.8, Tafrov (Bulgaria) p. 9, Wang Yingfan (China) p.13.

²¹ This assertion is repeated 9 times throughout the meeting, *Supra* n. 7.

²² Letter by Jack Straw to the Attorney General, dated 06 February 2003, http://www.iraqinquiry.org.uk/media/43520/doc_2010_01_26_11_05_30_485.pdf.

²³ Black's Law Dictionary, Revised 4th edition.

²⁴ *Eastman Kodak Co v. Richards*, 204 N.Y.S. 246, 248, 123 Misc 83. *Ibid*.

²⁵ *People v. Tin Sport Pub. Co.*, 291 N.Y.S. 449, 457, 160 Misc. 628. *Ibid*.

²⁶ *State v. District Court of Eighth Judicial Dist. in and for Cascade County*, 64 Mont. 181, 208 P, 952, 955. *Ibid*.

²⁷ *Taylor v. Gassett*, Tex. Civ. App, 269 S.W. 230, 233. *Ibid*.

²⁸ *The Concise Oxford Dictionary*, 9th edition, Clarendon Press, Oxford (Fowler H.W and F.G Howler (eds.)). 1995.

²⁹ *The Shorter Oxford English Dictionary* (on historical principles) Vol. I, Oxford University Press, NY. 1973. The mention of 'to judge of' appears in 5th place.

³⁰ *Collins English Dictionary – Complete and Unabridged*, HarperCollins Publishers 2003.

shall naturally commit the most flagrant errors'. Thus, 'there is more caution or thought in considering', and 'to consider is to bear in mind all that prudence and propriety suggests', because 'the consideration influences particular actions'.³¹

These dictionary entries suggest an interpretation that depicts a process to be followed, which will ultimately lead to a result in the form of a decision or at least evaluation of the question *considered*.

2.2.3 The discussion leading to the resolution

Next, in accordance with the ICJ dictum, the discussion leading to the conclusion of SCR 1441 shall be considered. It has repeatedly been argued that, if the Security Council had intended for a second resolution to be required allowing the use of force, SCR 1441 would have included such express language.³² However, this argument may also be reversed, supposing that the Security Council could have included an authorization for 'all necessary means', if it had intended for members to use force. Indeed, neither attempts for explicit wording requiring a second resolution as suggested in previous draft resolutions by France³³ and Russia,³⁴ nor attempts to include an authorization 'to use all necessary means' in SCR 1441 as contained in draft resolutions submitted by the UK and US³⁵ were successful.³⁶

A closer look at the statements by SC Members after the adoption of SCR 1441 however is telling. Despite the fact that the position seemed divided especially prior to and immediately after the outbreak of the war, with the US and UK arguing for its legality and France, China and Russia rejecting such arguments, the statements issued at the adoption of 1441 do not seem to exhibit similar discrepancies.³⁷

The representatives of the US and the UK, as well as those of France, Mexico, Bulgaria, Syria, Colombia and Cameroon confirmed that the resolution contained 'no hidden triggers' and 'no automaticity' as to the use of force.³⁸ Mexico specifically reiterated that for the use of force an 'explicit authorization by the Security Council was required'.³⁹ France, China, Ireland and Mexico further explicitly welcomed the strengthening of the role of the Council as well as the (sequential) two-stage approach which was

³¹ Crabbs, George, Crabbs English synonyms Routledge and Kegan Paul. London. 1982.

³² See for example letter by Jack Straw to Attorney General Goldsmith, or the testimony of Lord Goldsmith QC on 27.01.2010 to the Chilcot Inquiry, pp.76 ff

<http://www.iraqinquiry.org.uk/media/45317/20100127goldsmith-final.pdf>.

³³ French draft, 23 October 2002, <http://www.casi.org.uk/info/francedraftscr0210.pdf>.

³⁴ Russian Draft, 23 October 2002 <http://www.casi.org.uk/info/russiadraftscr0210.pdf>.

³⁵ 1. US/UK draft resolution of 2 October 2002, circulated but never formally tabled.

<http://www.casi.org.uk/info/usukdraftscr021002.html>, 2. US/UK draft resolution of 25 October 2002

<http://www.casi.org.uk/info/usdraftscr021025.pdf>, 3. US/UK draft of 05 November 2002

<http://www.casi.org.uk/discuss/2002/msg02002.html>.

³⁶ See Murphy, Sean D. *Assessing the Legality of the Invading Iraq*, 92 GEO. L. J. 173, 217 (2004).

³⁷ *Supra* n. 7.

³⁸ *Ibid*, Negroponte (US), p. 3; Greenstock (UK) pp. 4-5; Levitte (France) p. 5; Aguilar Zinser (Mexico) p.6, Tafrov (Bulgaria) p.9, Mekdad (Syria) p. 10, Wang Yingfan (China) p.13.

³⁹ *Ibid*. Aguilar Zinser (Mexico) p. 6.

established to confirm the control of the Security Council over the situation.⁴⁰ Mexico stressed that ‘the Council’s response will be defined on the basis of its own determination as to the existence of a threat to international peace and security.’⁴¹

Lending too much weight to the discussions may be controversial, seeing that not everything has been recorded or made accessible. However, China, France and Russia, three of the five permanent members of the Security Council, issued a public joint statement reaffirming the above contentions.⁴² Despite the fact that they are not in a privileged position regarding the interpretation of SCR1441, their understanding of the text is meaningful seeing that they were in a position to abort the draft resolution. In fact, France had vowed to veto any resolution permitting the use of force.⁴³ Similarly, at two open debates, held to provide a platform for States not members to the Security Council, the majority of States categorically rejected the proposal to use military force.⁴⁴

2.2.4 Other Charter provisions invoked

Returning to the advice by the ICJ, one further needs to consider any Charter provision invoked. The absence in the operative part of a reference to Article 39 to trigger the authorization to use force pursuant to Article 42, admittedly is at best of limited relevance, given the mentioning of the ‘threat to international peace and security’ in the preamble. However, the absence of any reference to Article 42 may indicate that the Security Council was indeed not acting under this provision. This impression is supported by the indirect reference to Article 2(4) of the UN Charter and the commitment ‘to the sovereignty and territorial integrity of Iraq’ that is also found in the preamble.

2.2.5 Other relevant circumstances

Taking into account the history of the Security Council resolutions using the term ‘consider’, it becomes clear that the commitment to ‘consider’ is not necessarily separate from the undertaking to ‘decide’. Concerning the situation in Haiti between 1993-1996, the term ‘consider’ was used in SCR 841, 873 and 875,⁴⁵ followed by a decision in SCR 940 authorizing member States to use ‘all necessary means’ to

⁴⁰ *Ibid.* Levitte (France) p. 5, Aguilar Zinser (Mexico) p.6, Wang Yingfan (China) p.1, Ryan (Ireland) p. 7.

See also Norway’s reference to the establishment of a procedure to be followed (p. 10) and Guinea’s support to the role of the Security Council (p. 11-12).

⁴¹ *Ibid.* Aguilar Zinser (Mexico) p. 6.

⁴² Iraq/UNSCR 1441 – Joint statement by the People’s Republic of China, France and the Russian federation , New York 8.11.2002 <http://www.ambafrance-uk.org/Iraq-UNSCR-1441-Joint-statement-by.html>

⁴³ France Vows to Block Resolution on Iraq War- U.S. Schedule Put at Risk By U.N. Debate, Washington Post, Jan.21 2003, By Glenn Kessler and Colum Lynch, Page A01,

<http://www.washingtonpost.com/ac2/wp-dyn/A19221-2003Jan20?language=printer>

⁴⁴ S/PV.4709 (2003); S/PV.4709 (2003) (Resumption 1), S/PV.4717 (2003); also SC/7685 and SC/7687.

Few States (Albania, Australia, Georgia, Japan, Latvia, Macedonia, Nicaragua and Uzbekistan) supported the use of force, but only after a Security Council authorization.

⁴⁵ S/RES/841(1993) para 10 (d) ‘consider and decide’, S/RES/873 (1993), para. 4 ‘consider urgently the imposition of additional measures’, S/RES/875(1993), para. 2, ‘consider further necessary measures’

<http://www.un.org/Docs/scres/1993/scres93.htm> . While it seems significant at first sight that SCR 841 uses the phrase ‘consider and decide expeditiously’, the reason for the inclusion of ‘decide’ seems to lie with the temporal

facilitate the departure of the military leadership from Haiti.⁴⁶ Similarly, in SCR 733, the Council was 'Considering the request by Somalia (...) to consider the situation'.⁴⁷ This was followed by a decision in SCR 794 authorizing 'all necessary means' to establish a secure environment for humanitarian relief operations.⁴⁸ Significantly, between 1993-2010, the term 'consider' has otherwise been sparsely used.⁴⁹ However, in SCR 985 on Libya and SCR 1591 concerning Sudan, the fact that the Security Council committed itself to 'consider the future of UNOMIL (UN Observer Mission in Liberia)'⁵⁰ and to 'consider further measures'⁵¹ respectively, also indicated processes at the end of which a decision was made.

Moreover, the fact that in OP 14 of SCR 1441 the Security Council 'decides to remain seized of the matter' adds to the impression that *any* further action concerning the situation was to be agreed upon by the Security Council. To hold otherwise would render its role essentially irrelevant, because it would have lost control over the situation. Such an interpretation must be regarded as absurd, particularly against the background of the international order as it exists today.

The use of force by States is clearly regulated by international law. It is prohibited by Article 2(4) of the UN Charter and is accepted as a peremptory norm of *jus cogens* character from which no derogation is allowed,⁵² except following an authorization of the Security Council in accordance with Article 42 or in exercise of the right to self-defence as defined by Article 51 of the Charter.⁵³ Any such right has to be construed narrowly and there is no accepted doctrine of implied authorization. Thus, conferring legitimacy on the invasion of Iraq by assuming that such an authorization was contained in SCR 1441 is not a tenable argument. The significance and consequence of any decision permitting the use of force is acknowledged by Greenstock when he states 'on a decision so crucial we should not rush into military action, (...) any Iraqi violations should be discussed by the Council'.⁵⁴

3. *Authoritative interpretation in case of doubt*

SCR 1441 contains ambiguous terminology and none of the approaches discussed have rendered a clear interpretation. The Russian delegate acknowledges 'the complicated nature of the compromise' and the fact that the 'wording is not ideal' in his statement to the Council.⁵⁵

scope of the undertaking to arrive at a decision in a short time, and therefore does not need to find special consideration here.

⁴⁶ S/RES/940 (1994), preamble, <http://www.un.org/Docs/scres/1994/scres94.htm>

⁴⁷ S/RES/733 (1992), preamble, <http://www.un.org/documents/sc/res/1992/scres92.htm>.

⁴⁸ SCR/RES/794(1992) para 10, <http://www.un.org/documents/sc/res/1992/scres92.htm>.

⁴⁹ The only other time the terminology 'consider the situation' was used is in 1948 in which the SC instructs a committee to 'consider the situation of southern Palestine'. S/RES/66 (1948).

<http://www.un.org/documents/sc/res/1948/scres48.htm> .

⁵⁰ S/RES/985 (1995), para 7. <http://www.un.org/Docs/scres/1995/scres95.htm> .

⁵¹ S/RES/1591(2005) para. 8. http://www.un.org/Docs/sc/unsc_resolutions05.htm .

⁵² *Case concerning military and paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits. Judgment of 27 June 1986.

⁵³ *Supra* n, 9, Arts. 42 & 51.

⁵⁴ *Supra* n. 7, Greenstock (UK) p 5.

⁵⁵ *Ibid.* LaFrov (Russia), p.8.

However, in cases of uncertainty as to the content of a rule or as in this case, the meaning of a SCR, the answer should be derived through procedural legitimacy. International law does not merely consist of substantive rules, but prescribes and regulates the procedures to be followed in order to arrive at what is perceived as a legal outcome.⁵⁶ The Charter contains both substantive and procedural rules precisely for this reason.

Significantly, the Permanent Court of International Justice stated in 1923, that 'it is an established principle that the right of giving an authoritative interpretation of a legal rule belongs solely to the person or body who has the power to modify or suppress it'.⁵⁷ This assumption is in line with the intention of the drafters of the Charter, who in 1945 held that the interpretation of the Charter should first of all be left to the institutional organs.⁵⁸

It is thus clear, that in the quest for the 'correct' interpretation of a seemingly unclear resolution, the first instance has to be the Security Council itself.

In exceptional circumstances the authority to interpret an institutional act by one of the UN organs may be delegated to another organ, for example the Secretary General.⁵⁹ Though not explicitly the case in this context, the opinion of Kofi Annan voiced at the meeting for the adoption of SCR 1441 clearly favoured the peaceful disarmament of Iraq.⁶⁰ He stressed the fact that 'this resolution is based on law, the collective effort and the unique legitimacy of the United Nations.'⁶¹

4. Conclusion

The claim that SCR1441 authorizes the use of force has to be evaluated against the coherence of existing law and current institutional settings. Such an evaluation cannot but lead to the conclusion that it is not a legally valid claim that authorizations to use force may be implied in Security Council resolutions based on the meaning of the term 'consider'. An explicit second resolution by the Security Council would have been needed to allow the use of force. A discussion *and* decision was clearly indispensable before *any* further action was undertaken, especially in case of uncertainty as to the meaning of SCR1441 and the term 'consider'.

⁵⁶ Compare Lowe, Vaughan: The Iraq Crisis-What now? (ICLQ Vol. 52, October 2003,),pp.859-871, pp.863-4.

⁵⁷ *Jaworzina*. Advisory Opinion, 06 December 1923, PCIJ Rep Series B, No 8, p.37.

⁵⁸ Report of Committee IV/2, 'Constitutional Interpretation as approved by the Committee, UN Doc 933 IV/2/42 (2) (1945). As cited in Papastavridis, Efthymios. 'Interpretation of Security Council Resolutions under Chapter VII in the Aftermath of the Iraq Crisis' *ICLQ*, Vol. 56, January 2007, pp.83-118, p. 91. In the *Expenses Case*, the ICJ followed a similar line of reasoning when it held that 'each organ must in first place at least determine its own jurisdiction'. *Certain Expenses of the United Nations*, (1962), ICJ Report, p. 297.

⁵⁹ Significantly this opinion was confirmed by later to be Legal Adviser to the UK government, Michael Wood. 'The interpretation of Security Council Resolutions' (2 *Max Planck Yearbook of United Nations Law*, 1998) pp.73-95.

⁶⁰ *Supra* n. 7, p.2.

⁶¹ *Id.*