

ANALYSIS OF THE UK'S LEGAL BASIS FOR MILITARY ACTION IN IRAQ

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I. Introduction

The invasion of Iraq and its aftermath has raised questions about the significance of customary international law and the UN Charter. There has been considerable debate about whether the war in Iraq spells the end of the UN as a means of resolving international crises, and about the effectiveness of the international legal system. This paper is a critical analysis of the legality of the Second Gulf War.

Under Article 2 (4) of the Charter, the threat or use of force in international relationships is generally prohibited and the only legal exceptions are twofold: authorisation by the UNSC and self-defence.

The British government claimed that Iraqi WMD were ready to be used in a short period of „45 minutes¹ and that Iraq had plans to use chemical and biological weapons which represented an imminent threat to the UK.² One distinctive argument presented by the coalition was the necessity of launching a pre-emptive attack as calculated self-defence rather than waiting for an enemy threat to materialise.³ This raised questions about whether Iraq represented an imminent threat to the UK and whether they were entitled to claim the right of self-defence to pre-empt this potential threat.

Under Article 51, a state can exercise its right of self-defence only when an attack occurs and until the UNSC takes the necessary measures but it is difficult to call

¹ „Iraq's Weapons of Mass Destruction: the Assessment of the British Government' UK Government, TSO, London 2002 <<http://www.number10.gov.uk/files/pdf/iraqdossier.pdf>> accessed 23 April 2007.

² „Full text of Tony Blair's statement to parliament on Iraq' *Guardian* (London 24 September 2002) <<http://www.guardian.co.uk/politics/2002/sep/24/foreignpolicy.houseofcommons/print>> accessed 22 March 2008.

³ „President Address to the Nation on Iraq' White House (19 March 2003) <<http://www.whitehouse.gov/news/release/2003/03/20030319-17.html>> accessed 28 March 2008; Ian Johnstone, „US-UN Relations after Iraq: The End of the World (Order) As We Know It?' (2004) 15 (4) EJIL 813, 830; Noel Cox, „The Consequences for the World Legal Order of the War on Iraq' (October 2003) *New Zealand Armed Forces Law Review* 11, 12.

the invasion of Iraq an act of self-defence. Were the conditions of self-defence present in the use of force against Iraq? Did Iraq start a direct armed attack against the UK? According to Burroughs, „Iraq has not attacked any state, nor is there any showing whatever that an attack by Iraq is imminent’.⁴ A present armed attack is a criterion for self-defence legitimacy according to Article 51, as Byers confirms: „in the absence of an attack, the [Council] alone can act’.⁵

The UK failed to show that Iraq posed an imminent threat to itself or any other state. The potential threat of an attack on the UK is an insufficient basis for military action against Iraq as self-defence.⁶ „Therefore, unless there is an Iraqi military offensive against the UK, it is unlikely that the UK would be able to make a case that military action against Iraq met the strict requirements of Article 51.’⁷ Robin Cook said, „there is no evidence that he [Saddam] has got any nuclear weapons with which to threaten us’.⁸ He also said, „no minister claimed that Saddam has [WMD] ready to be fired in forty-five minutes’.⁹ When Blix was asked if Iraq represented a threat, he replied that all agreed that Iraq possessed „very limited military capacities in comparison with 1991 and that Iraq is being monitored and very closely guarded by the inspectors’.¹⁰ In his answers to audience questions on MTV in March 2003, Blair accepted that they could not claim that Iraq posed an imminent threat to the UK.¹¹

We conclude that the UK was not under actual, present and direct armed attack from Iraq when it declared war on Iraq and that there was a lack of accurate evidence that Iraq represented an imminent threat to the UK or any other state. In addition, the crisis was being dealt with adequately by the Council at the time, which meant that the

⁴ John Burroughs and others, „The United Nations Charter and the Use of Force Against Iraq’ (2 October 2002) <<http://lcnp.org/global/Iraqstatemt.3.pdf>> accessed 24 April 2009.

⁵ Michael Byers, „Jumping the Gun’ (25 July 2002) 24 (14) *London Review of Books* <http://www.lrb.co.uk/v24/n14/byer01_.html> accessed 25 April 2009.

⁶ Noel Cox, „The Consequences for the World Legal Order of the War on Iraq’ (October 2003) *New Zealand Armed Forces Law Review* 11, 14.

⁷ Jackson Maogoto, *Battling Terrorism: Legal Perspectives on the Use of Force and the War on Terror* (Ashgate, 2005) 134.

⁸ Robin Cook, *The Point of Departure: Diaries from the Front Bench* (Pocket Books, London 2004) 203.

⁹ Robin Cook, *The Point of Departure: Diaries from the Front Bench* (Pocket Books, London 2004) 312.

¹⁰ „Aldouri: „It is for the accusers to prove otherwise’’ CNN (7 March 2008) <<http://edition.cnn.com/2003/WORLD/meast/03/07/aldouri.transcript/>> accessed 22 February 2008.

¹¹ „PM answers Iraq questions at MTV Forum’ (11 March 2003) <<http://www.number10.gov.uk/Page3250>> accessed 21 April 2009.

conditions necessary for the legal right to self-defence did not exist. Military action against Iraq, therefore, would be illegal under Article 51.

The UK government, after the failure to obtain a second resolution,¹² therefore sought advice from the Attorney-General, Lord Goldsmith, who first concluded on 7 March 2003 that there was insufficient authority for the invasion and that a further Council resolution was indeed necessary.¹³ Ten days later, he altered his advice and authorised military intervention without such a second resolution.¹⁴ This legal position was supported by the UK Foreign Office in their Memorandum of 17th March 2003.¹⁵

In the light of this, the study aims to examine the legality of the war and whether the UK violated the Charter when it invaded Iraq without a UN mandate. It aims to analyse whether Resolutions 678, 687 and 1441 were sufficiently a substantive factor to justify the invasion of Iraq.

The main questions are: did UNSC Resolutions 678, 687 and 1441 give the coalition authority to use force and was there no need for a further resolution?

II. Analysis of Lord Goldsmith's subsequent legal advice

In his second legal advice, Lord Goldsmith considered that military movement against Iraq would be lawful under existing Resolutions 678, 687 and 1441, which he

¹² See Bob Woodward, *Plan of Attack* (Simon & Schuster, NY 2004) 296-97; „Draft resolution on Iraq: text’ BBC News (24 February 2003) <<http://news.bbc.co.uk/1/hi/world/europe/2795747.stm>> accessed 12 December 2007; Sara Beck and Malcolm Downing, *The Battle for Iraq: BBC News Correspondents on the War against Saddam and a New World Agenda* (BBC Worldwide Limited, London 2003) 62-3; Micah Sifry and Christopher Cerf (eds), *The Iraq War Reader: History, Documents, Opinions* (Touchstone, NY 2003) 502; Sean Murphy, „Assessing the Legality of Invading Iraq’ (2004) 92 (4) *Georgetown Law Journal*, 98-106; „PM answers Iraq questions at MTV Forum [6 March 2003]’ the Prime Minister’s Office (11 March 2003) <<http://www.number10.gov.uk/Page3250>> accessed 4 April 2008; „Statement of the Atlantic Summit: A Vision for Iraq and the Iraqi People’ White House (16 March 2003) <<http://www.whitehouse.gov/news/releases/2003/03/20030316-1.html>> accessed 22 July 2007; „President Bush: Monday “Moment of Truth” for world on Iraq’ White House (16 March 2003) <<http://www.whitehouse.gov/news/releases/2003/03/20030316-3.html#>> accessed 23 July 2007.

¹³ „Attorney-General note to the PM; html version’ 7 March 2003 <<http://www.number10.gov.uk/Page7445>> accessed 6 July 2009; Philippe Sands, *Lawless World: America and the Making and Breaking of Global Rules* (Allen Lane, London 2005) 196.

¹⁴ „Heroes & Villains’ *Independent* (London 17 March 2008) 6; Alan Cowell, „Iraq Chief, Boasting of Poison Gas, Warns of Disaster if Israel Strikes,’ *New York Times* (NY 3 April 1990) A1, A8.

¹⁵ „Memorandum by the Foreign and Commonwealth Office’ 17 March 2003 <http://www.ico.gov.uk/upload/documents/library/freedom_of_information/notices/annex_c_-_memorandum_by_foreign_and_commonwealth_office_170303.pdf> accessed 3 July 2010.

said authorised the use of force.¹⁶ He argued that „[a] material breach of Resolution 687 revives the authority to use force under Resolution 678¹⁷ and that Iraq was in material breach of Resolution 687 as determined by Resolution 1441. He added that „all that Resolution 1441 requires is a report to and a discussion by the [Council] of Iraq’s failures, but not an express further decision to authorise force.’¹⁸

Lord Bingham, a former Lord Chief Justice, said the Attorney-General had given „no hard evidence’ that Iraq had defied Council resolutions „in a manner justifying resort to force’.¹⁹ According to Mackay, „[n]early all Foreign Office lawyers believed a second...resolution was required to make the war legal.’²⁰ At an academic level, a group of professors of international law signed a letter of protest to Blair which warned him against participating in the war without explicit UNSC authorisation.²¹ Failure to do so would „seriously undermine the international rule of law’.²² Eric Clive believed that the basis of legal advice from the Attorney-General appeared „to be unsound’.²³ He sent a petition to the Scottish Parliament expressing concern.²⁴ He said, „[i]n my view a war on Iraq without a new ... resolution expressly authorising the use of force would be illegal.’²⁵

¹⁶ Attorney-General, Lord Goldsmith „Legal basis for use of force against Iraq’ 17 March 2003, <<http://www.number10.gov.uk/output/page3287.asp>> accessed 17 October 2007; Philippe Sands, *Lawless World: America and the Making and Breaking of Global Rules* (Allen Lane, London 2005) 188-90.

¹⁷ Attorney-General, Lord Goldsmith „Legal basis for use of force against Iraq’ 17 March 2003, <<http://www.number10.gov.uk/output/page3287.asp>> accessed 17 October 2007.

¹⁸ Attorney-General, Lord Goldsmith „Legal basis for use of force against Iraq’ 17 March 2003, <<http://www.number10.gov.uk/output/page3287.asp>> accessed 17 October 2007.

¹⁹ „Iraq war „violated rule of law’’ BBC News (18 November 2008) <http://news.bbc.co.uk/1/hi/uk_politics/7734712.stm> accessed 5 July 2009. This was in a speech to the British Institute of International and Comparative Law in London.

²⁰ Neil Mackay, *The War on Truth* (Sunday Herald Books, Glasgow 2006) 233. This was confirmed by Wilmshurst when she testified before the Chilcot Inquiry on 26 January 2010. „Oral Evidence’ Iraq Inquiry (26 January 2010) <<http://www.iraqinquiry.org.uk/transcripts/oralevidence-bydate/100126.aspx>> accessed 3 February 2010.

²¹ „War would be illegal’ *Guardian* (London 7 March 2003) <<http://www.guardian.co.uk/politics/2003/mar/07/highereducation.iraq>> accessed 2 May 2007.

²² „War would be illegal’ *Guardian* (London 7 March 2003) <<http://www.guardian.co.uk/politics/2003/mar/07/highereducation.iraq>> accessed 2 May 2007.

²³ Scottish Parliament, Public Petitions Committee, Petition 619, Official Reaction 25 March 2003 and 25 June 2003 <<http://www.scottish.parliament.uk/business/petitions/docs/PE619.htm>> accessed 4 August 2008.

²⁴ Scottish Parliament, Public Petitions Committee, Petition 619, Official Reaction 25 March 2003 and 25 June 2003 <<http://www.scottish.parliament.uk/business/petitions/docs/PE619.htm>> accessed 4 August 2008.

²⁵ Scottish Parliament, Public Petitions Committee, Petition 619, Official Reaction 25 March 2003 and 25 June 2003 <<http://www.scottish.parliament.uk/business/petitions/docs/PE619.htm>> accessed 4 August 2008.

The UK legal position was that Iraq had been in breach of its obligations to disarm its WMD under Resolutions 687 and 1441, which they claimed in turn would give them the authority to use force in according to Resolution 678. This raises questions about the language of these resolutions, the background to their issue, the way in which the Council dealt with Iraqi breaches of Resolution 687 and the will of the voters on these resolutions. The study argues that the UK interpretation was inaccurate because the language of these resolutions on which they relied, the background of these resolutions, the intentions of their adopters and how the Council operated in facing Iraqi breaches of Resolution 687 prove that Resolutions 678, 687 and 1441 did not contain any authorisation of the use of force in 2003.

a. Resolution 678

Resolution 678 demands Iraq only implements resolutions preceding it, not the following resolutions. It called on Iraq to comply with Resolution 660 „and all its subsequent relevant resolutions’ and if Iraq did not comply, authorised the allies to use all necessary means to support Resolution 660 „and all subsequent relevant resolutions’.²⁶ The authorisation to use force contained in Resolution 678 was effective only when Iraq failed by 16 January 1991 to respond to previous resolutions and not to those issued after it. According to Clive:

The reference to subsequent relevant resolutions was to resolutions relevant to the Iraqi invasion of Kuwait and adopted after Resolution 660 and up to 29 November 1990. It cannot reasonably be read as authorising the use of war, at the sole discretion of individual Member States, to uphold any resolution passed after that date.²⁷

The Council rendered the use of force contingent on Iraq’s non-compliance with previous resolutions within a specific duration; that is, it decided to give Iraq a final chance to take certain action that would prevent the use of force and terminate the authorisation to use force. This permitted the use of force to compel Iraqi forces to leave Kuwait.²⁸ The allied forces in 1991 agreed that Resolution 678 did not authorise the use of force beyond a means to compel Iraqi forces to leave Kuwait, otherwise they

²⁶ UNSC Res 678 (29 November 1990) paras (1, 2) UN Doc S/RES/678.

²⁷ Professor Eric Clive, „The Petition by 60 Law Teachers in the Scottish Universities to Scottish Parliament on the Legality of Military Action against Iraq on 20 March 2003’ (18 March 2003).

²⁸ Thomas Dyhr, *Just War in Iraq 2003* (LLM thesis, University of Copenhagen 2003) 33.

would have continued on to Baghdad.²⁹ According to Powell, „resolution [678] made clear that the mission was only to free Kuwait’.³⁰ Former PM John Major said, „[o]ur mandate from the [UN] was to expel the Iraqis from Kuwait, not bring down the Iraqi regime ... To go further than our mandate would have been, arguably, to break international law’.³¹

The use of force had achieved its purpose, which was to compel Iraqi forces to leave Kuwait. Most Council member states which voted for Resolution 678 did not take into account that it might extend further than implementing the Council’s earlier resolutions to compel Iraqi vacation of Kuwait.³² The resolution aimed „to restore international peace and security’, not build or establish peace and security in the area.³³ This implies that the aim was the restoration of the situation prior to the Kuwait invasion rather than the creation of a new situation and a new Iraqi government, as happened in 2003.³⁴

Resolution 678 stated that authorisation to use force against Iraq in 1991 was to „[m]ember States co-operating with the Government of Kuwait’,³⁵ which questions whether the expression „[m]ember States co-operating with the Government of Kuwait’ was still in force when used in 2003. In 2003, Kuwait did not in fact inform the Council of its desire to involve the UK and its allies and the UK did not mention Kuwait’s appeal for assistance or that it had even intervened to help Kuwait.³⁶ Kuwait stressed to the Council that it „reaffirms that it has not participated and will not participate in any military operation against Iraq’.³⁷ The absence of an explicit request

²⁹ According to General Sir Peter De La Billiere, „[w]e did not have a mandate to invade Iraq or take the country over’. Peter De La Billiere, *Storm Command: Personal Account of the Gulf War* (Harper Collins Publishers Ltd, 1995) 309.

³⁰ Colin Powell, *A Soldier’s Way* (Arrow Books, 1995) 490.

³¹ Philippe Sands, *Lawless World: America and the Making and Breaking of Global Rules* (Allen Lane, London 2005) 190.

³² Sean Murphy, „Assessing the Legality of Invading Iraq’ (2004) 92 (4) *Georgetown Law Journal* 173, 181-86.

³³ Professor Eric Clive, „The Petition by 60 Law Teachers in the Scottish Universities to Scottish Parliament on the Legality of Military Action against Iraq on 20 March 2003’ (18 March 2003).

³⁴ Sean Murphy, „Assessing the Legality of Invading Iraq’ (2004) 92 (4) *Georgetown Law Journal* 173, 181-86.

³⁵ UNSC Res 678 (29 November 1990) para (2) UN Doc S/RES/678.

³⁶ Vernon Loeb and Bradley Graham, „Rapid Buildup in Gulf on Horizon’ *Washington Post* (Washington 20 December 2002) <<http://www.globalsecurity.org/org/news/2002/021220-iraq02.htm>> accessed 29 April 2009.

³⁷ UN Doc S/PV.4726 (26 March 2003) at 14.

from Kuwait for assistance against Iraq raises the question of whether or not the UK was included in the description of „[m]ember States co-operating with the Government of Kuwait’ contained in Resolution 678.

We conclude that the language of Resolution 678 did not extend authorisation to use force beyond driving Iraqi forces out of Kuwait, restoring peace and security to the area, and ensuring that Iraq implemented the resolutions preceding it and not the subsequent ones.

b. Resolution 687

The wording of Resolution 687 did not explicitly refer to operating under Resolution 678 and did not make Resolution 678 dependent on any conditions. In Resolutions 687, the Council stressed the sovereignty of Iraq,³⁸ which was an indication of its desire to protect that status. If the Council had intended to use force it would not have stressed Iraq’s sovereignty.

The resolution explicitly stated that Iraq’s implementation of its commitments would lead to cancellation of the sanctions,³⁹ which meant that the penalty for not implementing them would have been continuation of sanctions, not the use of force. Regardless of the reason for Resolution 687 and the absence of explicit authorisation to use force in the case the provisions were breached, it is indisputable the resolution referred to alternative measures to compel Iraqi compliance.

At the time of the issue of the resolution, it was commonly understood by the Council members that breaching the resolution would not lead to the unilateral or automatic use of force and that such a use of force required future Council authorisation.⁴⁰ If the material breach of Resolution 687 in the way that Resolution 1441 confirmed was the spark that led to the use of the authorisation mentioned in Resolution 678, then the use of force should have been limited to what was necessary

³⁸ Iraqi sovereignty was mentioned twice in Resolution 686 (1991), the first in its prelude and the second in paragraph 8 as well as in the prelude of Resolution 678 (1991).

³⁹ UNSC Res 687 (3 April 1991) para (22) UN Doc S/RES/687.

⁴⁰ UN Doc S/PV.2981 (3 April 1991).

and proportionate to correct the material breach, and no further. According to Joseph Murphy, „military action should be limited to the destruction of any [WMD]’.⁴¹

The Council was the only body that could decide whether there had been a material breach of Resolution 687⁴² and whether „such breach requires renewed use of force’.⁴³ The assessment of a breach is not for individual member states.⁴⁴ Resolution 687 represented a permanent ceasefire that did not allow the automatic use of force to meet any breach of the ceasefire.⁴⁵ Clive supported this, stating: „[t]here is nothing in Resolution 687 to say that a material breach of it revives the authority to use force under Resolution 678’.⁴⁶

Therefore, the use of force to meet the breaches of a ceasefire set down by the Council should have been asserted via a new resolution. Application of Resolution 687 did not mean that the Council had empowered member states to monitor the implementation of the resolution. On the contrary, Resolution 687 explicitly stipulates that the Council decided „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 area’.⁴⁷

We conclude that the UK interpretation of Resolution 687, to restore exercise of the authorisation mentioned in Resolution 678, contradicts the language of Resolution 687 and the intention of the voting member states.

⁴¹ Joseph Murphy, „De Jure War in the Gulf: Lex Specialis of Chapter VII Actions Prior to, During, and in the Aftermath of the United Nations War Against Iraq’ (1992) 5 *New York International Law Review* 71, 85.

⁴² Philippe Sands, *Lawless World: America and the Making and Breaking of Global Rules* (Allen Lane, London 2005) 188-90.

⁴³ John Burroughs and others, „The United Nations Charter and the Use of Force Against Iraq’ (2 October 2002) <<http://lcnp.org/global/Iraqstatemt.3.pdf>> accessed 24 April 2009.

⁴⁴ Philippe Sands, *Lawless World: America and the Making and Breaking of Global Rules* (Allen Lane, London 2005) 190.

⁴⁵ Scott Ritter, *Frontier Justice: Weapons of Mass Destruction and the Bushwhacking of America* (Context Books, NY 2003) 14-5.

⁴⁶ Professor Eric Clive, „The Petition by 60 Law Teachers in the Scottish Universities to Scottish Parliament on the Legality of Military Action against Iraq on 20 March 2003’ (18 March 2003).

⁴⁷ UNSC Res 687 (3 April 1991) para (43) UN Doc S/RES/687.

c. Resolution 1441

The UK interpretation of Resolution 1441 took into account all of the previous resolutions issued by the Council, including Resolution 678, which authorised use of force, as well as that contained in the first paragraph of Resolution 1441, which stipulated Iraq had „been and remains in material breach of its obligations under relevant resolutions, including Resolution 687’.⁴⁸ This meant, according to the UK interpretation, that the Council had implicitly decided to restore operating with the authorisation mentioned in Resolution 678 to compel Iraq to comply with the commitments imposed on it, especially those related to its disarmament. The UK interpretation was based on the thirteenth paragraph, which warned Iraq that it would face „serious consequences’⁴⁹ if it continued to breach the commitments contained in paragraphs two, three and five.⁵⁰ This inferred the potential use of force in accordance with the authorisation within Resolution 678.

The resolution did not contain any phrase that explicitly authorised the use of force. It emphasised the commitment of „all Member States to the sovereignty and territorial integrity of Iraq’.⁵¹ This meant that renewal of military operations with the authorisation of Resolution 678 was not included in Resolution 1441 because it contradicted the preservation of Iraqi sovereignty. Therefore, Resolution 1441 „clearly confirms that all Members of the [UN] respect the sovereignty and territorial integrity of Iraq and of all other States in the region’.⁵²

The Council's intention was to maintain the inspection programme and not set a deadline which meant that it did not grant any state the right to terminate this final chance or use force; that is, it did not allow renewal of operations with the authorisation contained in Resolution 678, either explicitly or implicitly.⁵³ In paragraph (12) of Resolution 1441, the Council decided:

... to convene immediately upon receipt of a report [from UNMOVIC and IAEA of any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations]... in order to consider the situation and the need for full compliance with all

⁴⁸ UNSC Res 1441 (8 November 2002) para (1) UN Doc S/RES/1441.

⁴⁹ UNSC Res 1441 (8 November 2002) para (13) UN Doc S/RES/1441.

⁵⁰ UNSC Res 1441 (8 November 2002) paras (2, 3, 5) UN Doc S/RES/1441.

⁵¹ UNSC Res 1441 (8 November 2002) UN Doc S/RES/1441.

⁵² UN Doc S/PV.4644 (8 November 2002) at 8.

⁵³ Thomas Dyhr, *Just War in Iraq 2003* (LLM thesis, University of Copenhagen 2003) 37.

of the relevant... resolutions in order to secure international peace and security.

The responsibility for following up Iraqi compliance or even using force if necessary was with the Council. The UK went further than Resolution 1441 required when they claimed that the language did not contain the necessity for obtaining Council authorisation. During the adoption of Resolution 1441, all of the Council members, including the UK,⁵⁴ understood that the resolution did not contain „hidden triggers’ or „automaticity’ for the unilateral use of force. The majority of Council members who had voted in favour of Resolution 1441 confirmed during the session that the resolution did not contain any automaticity of the use of force against Iraq and urged the necessity to return to the Council to obtain a new resolution by which authorisation for the use of force, if required, could be granted.⁵⁵ It was intended for the Council to decide what to do if Iraq failed to comply with the resolution.⁵⁶

We conclude that Resolution 1441 did not include any explicit or implicit implications that the Council granted any state authorisation to use force and did not apply the authorisation cited in Resolution 678. Even if the resolution had authorised the use of force without further recourse to the Council, what level of force did it authorise and for what purpose? It would not have covered regime change and the occupation of Iraq. In the final Council meeting which took place on 19 March, inspectors confirmed that no WMD had been found and expressed disappointment at not having been granted sufficient time.⁵⁷

If these resolutions granted authorisation for the use of force against Iraq as the UK claimed, why did they introduce a draft resolution and seek to obtain the support of the Council members to vote in favour of it? The submission was proof in itself that Resolution 1441 and earlier resolutions did not grant authorisation to automatically use force.⁵⁸ According to Sands, „[w]ithout a second Resolution explicitly authorising

⁵⁴ See UN Doc S/PV.4644 (8 November 2002) at 4-5.

⁵⁵ UN Doc S/PV.4644 (8 November 2002).

⁵⁶ UN Doc S/PV.4644 (8 November 2002); Sands (n 5) 193.

⁵⁷ „Selected Security Council Briefings’ UNMOVIC (19 March 2003) <http://www.un.org/Depts/unmovic/new/pages/security_council_briefings.asp#8> accessed 23 April 2007; Thomas Dyhr, *Just War in Iraq 2003* (LLM thesis, University of Copenhagen 2003) 16.

⁵⁸ Duncan Currie, „“Preventive War” and International Law After Iraq’ (22 May 2003) 11 <<http://www.globelaw.com/Iraq/Preventive%20War%20After%20Iraq.pdf>> accessed 25 April 2009.

the use of force ... in common with the majority of international lawyers to express an opinion, war on Iraq would be illegal'.⁵⁹

III. Conclusion

For the above reasons, the study concludes that the reasons given by the UK did not justify their military action. The UNSC resolutions 678, 687 and 1441 did not give any authority to use force against Iraq. In addition, the UNSC did not give the UK authority to carry out military action against Iraq. The UN inspectors' reports stated that there was no evidence that Iraq had WMD. Inaccurate and partial evidence was presented by the UK 'proving' that Iraq represented an imminent threat to them.

The study also concludes that Attorney-General Lord Goldsmith's second legal advice was incorrect, as it did not identify a sufficient justification for the use of force. This war therefore was illegal and in violation of customary international law and the UN Charter as well as the resolutions of the UN General Assembly. Consequently, it also represents a threat to international peace and security.

⁵⁹ Milan Rai, *Regime Unchanged: Why the War on Iraq Changed Nothing* (Pluto Press, London 2003) 55.

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