

IRAQ INQUIRY

Submission on the UK's legal basis for military action in Iraq

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1. The Committee of Inquiry, in drafting its report, would do a great service to international law if it were to use particular care in situating the legal problem. It is not appropriate to say that the interpretation to be given to certain Security Council resolutions determines *the legality* of the military action in Iraq. Such an interpretation can only seek to determine whether the UK was *authorised by the Security Council* to take such action.
2. The question of the *general legality* of such action is an issue within a complex and intensely controversial area of international law concerning *the use of force* in the international relations of States. If the International Court of Justice were called upon to determine the general legality of the Allied action in Iraq, it would have to situate it within the general UN Charter system for the control of the use of armed force, which includes, but is not limited to, the role and authority of the Security Council. The Court would not be limited to considering the justifications put forward by the parties before and during the military action.
3. When the Security Council takes up, as it were, a particular threat to international peace and security - such as, the development of weapons of mass destruction by Iraq -, it is an open question whether the Council becomes the only international forum for dealing with the whole of a much wider situation - such as, the general Iraqi threat to international peace and security in the Middle East. The essential purpose of the UN Charter is to respond collectively to such threats, in relation to which, the Charter says, the Security Council has *primary* responsibility.
4. Since the public debate at the time, and the legal debate in the Inquiry, have been so obsessively concerned with the precise meaning of Security Council resolutions - an intellectual exercise of staggering unreality -, it is inevitable that the Inquiry's report will rehearse at length - and, perhaps even, pass judgment on - that debate. But the great world-historical purpose of the UN Charter system will be poorly served if the devastating problem of the legality of the use of force by states is represented in the report as if it were merely a problem analogous to that of interpreting a contract or a will or an EU Directive.

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