

Recent events in Iraq have sparked an extensive debate on the role international law plays in promoting peace and legitimizing war. When the board of the Ottawa Law Review read the open letter that appears below, we decided to publish it in order to draw the debate out of the popular press and into Canada's legal journals. The letter was drafted prior to the American and British actions in Iraq and is endorsed by 31 of Canada's international law scholars.

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 U.S. 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 U.S. and the U.K. 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 U.S and the U.K 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 U.S. 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 U.S. 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 U.S. 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.

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Les événements récents en Iraq ont suscité un débat sur le rôle que joue le droit international dans la promulgation de la paix et la légitimation de la guerre. Ayant pris connaissance de la lettre ouverte reproduite ci-dessous, le Conseil de rédaction de la Revue de droit d'Ottawa a décidé de la publier afin que ce débat dépasse le cadre de la presse populaire et s'inscrive dans les revues juridiques canadiennes. Cette lettre, rédigée avant les interventions américaines et britanniques en Iraq, est signée par 31 spécialistes canadiens du droit international.

L'intervention militaire en Iraq sans l'autorisation du Conseil de sécurité serait illégale

Au rédacteur en chef :

Nous, enseignantes et enseignants canadiens de droit international, désirons souligner notre profonde inquiétude face à l'intention affichée des États-Unis et de leurs alliés de recourir à la force contre l'Iraq, et ce, en dépit de l'opposition du Conseil de sécurité de l'ONU et de l'opinion de la majorité des nations et des peuples du monde. Nous croyons qu'une telle intervention constituerait une violation fondamentale du droit international et porterait gravement atteinte à l'intégrité de l'ordre juridique international qui existe depuis la fin de la seconde guerre mondiale. Nous appuyons donc les récents propos du premier ministre Jean Chrétien, voulant que le Canada n'appuiera pas l'utilisation de la force contre l'Iraq sans l'aval du Conseil de sécurité.

Même dans l'éventualité qu'une résolution du Conseil de sécurité autorise le recours à la force afin que l'Iraq se déporte de ses armes de destruction massive, celle-ci ne rendrait pas légitime l'objectif déclaré des États-Unis et du Royaume-Uni d'intervenir en Iraq dans le but d'y effectuer un « changement de régime ».

De toute évidence, l'Iraq ne respecte pas ses obligations internationales. Il ne fait aucun doute que le Conseil de sécurité de l'ONU est compétent pour exiger de l'Iraq le respect de ces obligations. Mais toute mesure de contrainte doit elle-même être licite.

La résolution 1441 du Conseil de sécurité donne à l'Iraq une « dernière possibilité » de coopérer avec les inspecteurs de l'ONU. Toute fausse déclaration ou omission par l'Iraq constituera une « violation patente » de ses obligations en vertu des résolutions antérieures du Conseil de sécurité. Dans un tel cas de « violation patente », le Conseil de sécurité doit se réunir, comme il le fait en ce moment, « afin d'examiner la situation ». Aucune mesure coercitive spécifique n'est autorisée par cette résolution. Au contraire, la résolution 1441 rappelle à l'Iraq les « graves conséquences auxquelles celui-ci aurait à faire face s'il continuait à manquer à ses obligations ». Cette disposition ne permet pas le recours à la force sans autorisation explicite supplémentaire. De par le fait que les États-Unis et le Royaume-Uni ont accepté de débattre de la question au Conseil de sécurité et tentent d'obtenir une nouvelle résolution, ils conviennent qu'une telle autorisation est nécessaire et que l'utilisation unilatérale de la force contreviendrait au droit international.

Les flagrantes violations des droits de la personne commises par Saddam Hussein sont bien documentées. Son régime est responsable d'horribles actes de torture, de meurtres, d'emprisonnements et même de génocide à l'endroit des Kurdes dans le nord et à l'égard des Shiites dans le sud. Son emploi d'armes chimiques contre les Iraniens lors du long conflit Iran-Iraq, ainsi que contre des civils