

International legal experts regard Iraq war as illegal

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Prominent international legal experts regard the US-British invasion of Iraq as a clear breach of international law. Earlier this month the International Commission of Jurists (ICJ) in Geneva expressed its “deep dismay that a small number of states are poised to launch an outright illegal invasion of Iraq, which amounts to a war of aggression.”

According to the ICJ, such “a war waged without a clear mandate from the United Nations Security Council would constitute a flagrant violation of the prohibition of the use of force.” The commission emphasises that Security Council Resolution 1441 does not authorise the use of force. The ICJ standpoint contradicts that of US President Bush, who has continually sought to use this resolution as the basis for war.

The ICJ added: “The competency of the Security Council to authorise the use of force is not unlimited. It may only do so to ‘maintain or restore international peace and security.’” The evidence presented by the governments of the United States, the United Kingdom and Spain is “less than convincing,” the ICJ declared.

On March 20 the ICJ once again issued a statement and condemned the attack on Iraq as “a great leap backward in the international rule of law.”

The ICJ was founded in 1952 in Berlin and in its early years concentrated on denouncing breaches of human rights in the Soviet Union and Eastern Europe. The commission later broadened its work beyond the framework of the Cold War, and today consists of 60 experts on international law and human rights from all over the world. It has autonomous national sections in a total of 97 countries with affiliations to legal organisations in 70 countries. It is one of the most prominent international legal organisations.

Many other prominent experts on international law

have joined the ICJ in denouncing the aggression against Iraq as illegal. At the centre of their argument is the general ban on force stipulated in the Charter of the United Nations, for which there are just two exceptions: self-defence against an armed attack and a definite decision on the part of the Security Council. Neither of these provisions is applicable to the war against Iraq.

The rule governing self-defence applies only when an enemy attack has already taken place or is imminent. There is no legal sanction for a preventive war. Should a state regard itself as threatened by another a state, although no hostilities have taken place, the threatened state is obliged to call on the Security Council—the only body authorised to legitimise military action in such a case.

A prominent German professor of state and international law, Dietrich Murswiek, wrote in the *Süddeutsche Zeitung*: “The standpoint put forward in the press that by giving orders for an attack without a mandate from the Security Council Bush is operating in a ‘grey area’ is false. Without express allowance through a new resolution, the war against Iraq is a banned war of aggression—a crime from the standpoint of international law.”

Murswiek warns that the US is establishing a precedent with far-reaching repercussions. “When Bush says he is not required to ask anybody’s permission, this cannot just be attributed to the arrogance that comes with power. There is a legal issue at stake... If this standpoint becomes established and becomes a new rule of international law, then the general ban on force will have been done away with in a practical sense.”

Either, according to Murswiek, “every state can wage war against any other state that it regards as ‘rogue,’ which means there will be no more international security, or the right to wage a preventive war is

regarded as the exclusive right of the US, which puts an end to the principle of equal national sovereignty of all states.”

Together with many other legal experts, Murswiek explicitly refutes the position that Security Council Resolution 1441 allows the US to wage war. The resolution threatens Iraq with “serious consequences” if it does not accede to UN demands. According to the director of the Max Planck Institute for International Law, Rüdiger Wolfrum, this formulation is far too vague to justify the use of force. In the final analysis, it is only the Security Council that can make such a decision. The majority of its members however, have made clear that the resolution does not justify the waging of war.

The International Commission of Jurists agrees with this stance. Resolution 1441 did not authorise the use of force, according to Secretary-General Louise Doswald-Beck. She said, “The bottom line is that nine members of the Security Council, including the five permanent members, need actively to support the use of force. Such support is blatantly lacking.”

The legal experts are clear that there is no authority that could force the US government to abide by international law. Nevertheless, the dispute about the legitimacy of the Iraq war is not just an academic issue. It is quite possible that serious political problems could emerge for a number of governments.

The German constitution, for example, expressly forbids, under threat of punishment, any support for a war of aggression. The German government could be legally called to account for allowing the use of German airspace and territory by the US military.

In light of this danger, the government has been careful to avoid claiming that the US war is illegal. In a recent television address on the war, German Chancellor Gerhard Schröder said simply that the war was “not justified.” Government speaker Bela Anda avoided the issue of the legitimacy of the war by commenting merely that it was not serious to answer the question simply with a “yes” or “no”.

The open breach of internationally recognised legal principles by the US government makes one thing above all clear: the post-war order, characterised by relatively stable and peaceful relations between the great powers, is over. Or, in the words of the jurist Murswiek, “The Iraq war could be the first step

towards a fundamental transformation of the international legal situation.”



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