

Canadian law professors declare US-led war illegal

Henry Michaels
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The US-led coalition's war against Iraq is illegal, declared 31 Canadian professors of international law at 15 law faculties in an open letter issued Wednesday, just before US President Bush announced that the war had commenced.

A US attack "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," the letter stated.

The attack would violate the UN Charter, which forbids countries to wage war except in self-defense or when authorized by the UN Security Council to preserve or restore international peace.

The professors condemned the war "in the strongest terms" and pointed to its militarist and colonial character: "Illegal action by the US and its allies would simply return us to an international order based on imperial ambition and coercive force."

The US and British governments have claimed that their invasion is justified by UN Security Council Resolution 1441 and two old Security Council resolutions authorizing force to end the Iraqi occupation of Kuwait and setting out the terms of the cease-fire after the Persian Gulf War of 1991. The 1991 resolution required Iraq to rid itself of weapons of mass destruction.

John Currie, a University of Ottawa law school professor and one of the drafters of the letter, described these arguments as fatally flawed. The 1991 resolution stated that the Security Council "decides to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution." The Security Council—not the United States, Britain or other council members acting on their own—must decide on further use of force, Professor

Currie said.

The Bush and Blair governments abandoned their efforts to secure a new UN resolution on Monday, after failing to win any more than four out of fifteen votes. They also faced vetoes by France and Russia and public opposition by Germany and several other members of the council.

This opposition has legal implications because Security Council members "have the legal right to ensure that force is not used unless all other avenues of peaceful resolution have been tried and failed," the professors said in their letter.

The signatories included Liberal Party MP Irwin Cotler, a McGill University law school professor and one of Canada's best-known experts on international law. Cotler told the media that the US could not claim to act in self-defense unless it was clear it was about to be attacked by Iraq. Cotler represents the same party as Canadian Prime Minister Jean Chrétien, but Chrétien and other cabinet ministers have refused to condemn the war as illegal.

The International Commission of Jurists (ICJ), based in Geneva, has likewise charged the US and Britain with planning "an illegal invasion" of Iraq, amounting to a war of aggression. The ICJ comprises 60 of the world's top jurists on international law and humans rights. Louise Doswald-Beck, the commission's secretary-general, said the UN prohibition against the use of force, other than in self-defense, had been enshrined in the UN charter "for a good reason: to prevent states from using force as they felt so inclined."

Legal experts in the United States and Britain have also declared the war illegal. In January, 315 teachers of law from 87 law schools across the US stated that a US war, unleashed without the approval of the UN Security Council against a country that has not attacked

the United States, would itself be an unlawful act, in defiance of America's treaty obligations and a violation of US and international law.

The statement declared: "Our Constitution provides that treaties signed by the President and ratified by the Senate are part of the 'supreme Law of the Land'. The United Nations Charter, which our nation wrote in large part, and signed and ratified as a treaty in 1945, provides that—except in response to an armed attack—nations may neither threaten nor engage in warfare without the authorization of the UN Security Council. President Bush swore to uphold and defend the Constitution. Yet he advocates a right to ignore our treaty obligations and to visit the scourge of war upon Iraq, with or without the approval of the United Nations."

In Britain, a large majority of international lawyers last week rejected the Blair government's claim that UN Resolution 1441 provided legal authority for an attack on Iraq

Resolution 1441 warns of "serious consequences" of an Iraqi failure to disarm, a formulation that falls far short of allowing UN member states to use "all necessary means"—the traditional UN euphemism for armed force. "The phrase 'all necessary means' was unacceptable; France and Russia would have vetoed it," noted Professor Nicholas Grief, barrister and head of the school of finance and law at Bournemouth.

In a legal opinion for the Campaign for Nuclear Disarmament, Rabinder Singh QC and Charlotte Kilroy said Resolution 1441 did not authorize the war for two other main reasons. First, as a matter of principle international law precludes UN member states from relying on any implied authorization to use force. Second, the use of force without "clear collective authorization" would be in conflict with the fundamental principles of the UN charter and in violation of international law.

Articles 41 and 42 of the UN Charter make clear that war is a matter of last resort. International law traditionally allows for preemptive strikes, but only in the event of an imminent threat. Legal scholars said Iraq posed no such a threat, particularly with the presence of UN weapons inspectors in the country.

Vaughan Lowe, professor of public international law at Oxford University, commented on the two other UN resolutions cited by Bush in his Monday night speech

issuing a 48-hour ultimatum to Iraq. Lowe said UN Resolution 687, agreed at the end of the 1991 Gulf War, overrode 678—the Kuwait war resolution—and was effectively part of cease-fire negotiations involving a coalition that no longer existed. In any event, Resolution 687 did not authorize the use of force.

Professor Lowe added that Bush and Blair had further "muddied the waters" legally by speaking of toppling Saddam Hussein. There was no precedent in international law for using force to change a regime, a proposition that Lowe labeled "dangerous."



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