

# LECTURE SIX

## THE USE OF FORCE

**Restraints on the use of force in international law.** The degree to which states can legally resort to force in international relations. Historically it is essential to emphasise the fragility of International society especially before 1918 when the law was very weak with decentralised state decision making and where the accent was on auto interpretation.

### Concepts of restraint.

These involve the notions of retortion, reprisals, intervention and self defence. These rules are necessarily weak and attempt to distinguish between *Bellum justum* and *Bellum injustum* ie justified and unjustified wars. Contrast the terms *Jus Ad Bellum*, the right to go to war with *Jus In Bellum* regarding rights during war

### Hague Conference . 1889 - 1907

Art 3 A *Jus Ad Bellum* requires a reasoned declaration of war or ultimatum and conditional declaration of war.

Retortion : Retaliation against unfriendly but legal act by another unfriendly but legal act. e. g. State 1 denies access to State 2's citizens and State 2 retaliates resulting in a break off of diplomatic relations.

Reprisals : Retaliation . an illegal act replied to by an illegal act. The first act justifies second. There is a requirement for Letters of MARQUE & REPRISAL. there can be a Peaceful or Pacific Blockade but there must be no interference with egress or ingress of third party Power Ships.

The Hague Convention No2 1907, The Porter Convention provided a right of forceable reprisals for recovery of debts limited.

**The Nautila Negotiation** 1928 In 1915 three Germans killed in an accident Nautila Portugese Post & German S.W. Africa Germany attacked outposts Portugese evacuated . native uprising in Angola . Arbitration . 1928 : Before the hearing Germany acted by way of Reprisals Tribunal ruled no right of reprisals which needed

- 1) Previous illegal act
- 2) Request for regress and
- 3) Action by way of reprisals must be reasonable.

Under present law of United Nations Charter Article 2 (4) there is a prohibition on use of force in reprisals

Intervention is the dictatorial interference with domestic and foreign affairs of a state which affect the state's independence. Such acts are illegal unless justified as a reprisal or for protection of nationals abroad or self defence or authorised under treaty e.g. 1903 Treaty of Havana where the United States could interfere with Cuba to ensure it's independence.

There may also be humanitarian interference e.g. Turkey in 1970'ies whether sanctioned or not and as in Rwanda 1994 though not used in Chechnya in 1994 though Western Disapproval of Yeltzin's conduct expressed.

## LECTURE SIX

### Self Defence and Necessity

Necessity may justify but does not necessarily excuse the act in question. The act is not strictly a right unlike self defence. There is no need for a prior illegal act. There may well be circumstances where compensation must be paid.

**1797 Neptune Case UK & US.** Vessel with provisions bound for France captured by the UK and sold for less than market price. The UK was threatened by shortages. Held illegal capture "necessity to justify the act must be absolute, irresistible and actual".

**Russian Indemnity Case 1912 P.C.A.** Obligation to carry out treaties if the very existence of the state threatened. Compare where observance of the duty is self destructive.

**Hoff or Rebecca Case.** A vessel was forced into Port by necessity to avoid sinking. The vessel was immune from local jurisdiction.

**Compare Self Preservation .** Dudley & Stephens charged with murder & cannibalism following a shipwreck. They acted under instinct, but not as of right. No state has the right to protect itself from an attack by annexing a mid way state e.g. Germany 1914 - Belgium 1939 - Poland.

**Self Defence :** International Customary Law : See the Webster / Fox Note United States to United Kingdom Minister regarding **The Caroline Incident .** 1837 Indian Rebellion : It must be remembered that preventive action in foreign territory is justified in the case of an incident of overwhelming self defence, leaving no choice of means and no moment of deliberation. Aid was given to rebels over the frontier representing a Canadian incursion into United States where boats were used and sent over the Niagara Falls with passengers. See also the plea of self defence at the Nuremburg Trials by Nazis who claimed they had to obey orders or die themselves.

Against what kind of act is self defence permitted ?

- (1) Illegal acts or omissions (compare necessity) such as war or allowing territory to be used by bandits, where the illegal act is attributable to a subject of International Law.
- (2) Acts by individuals, ships or aircraft which deprive the home state of diplomatic protection
- (3) Corresponding acts of ships/aircraft/individuals which have no state to protect them i.e. pirates - Jolly Roger.

Circumstances where self defence applicable

The problem must be Compelling ie vital or important rights must be threatened. The Need must be instant. This excludes the prevention of remote future events - i.e. preventative action and retaliation and events unlikely to be repeated i.e. the 1 off situation The Degree of measure that can be taken is any action required to repel invasion of rights. The standard of conduct required is light. The party must be left with no choice of means and no moment of deliberation. Is there a margin of discretion in European law ?

**The Lotus Case 1927 P.C.I.J.** Dissenting opinion . Moore, United States judge . no state is authorised to interfere with navigation on high seas : unless self defence.

**The Louis .** French slave trader . high seas . Right does not exist in peace only for repelling injury or as a measure of self defence.

**The Mary Lowell 1879** Spain arrested The Mary Lowell on the high seas carrying arms to insurgents . Cuba . condemned vessel . Held . acting in self defence. The claimants had forfeited the right to protection under the United States flag.

**The Virginian Incident 1873.** Crew summarily executed. U.S. and U.K protested : dropped when discovered the United States flag flown illegally

See Whiteman's digest of International Law. 513 - 514 Regarding SLOVENIJA & the Western Breeze incident.

**The Gulf of Pontkin.** Harris 661 In 1964 in North Vietnam, torpedo boats attacked United States warships on the high seas. In retaliation the United States bombed the two bases and oil stores. Justified by United States as the right of self defence. Exerpt from British Council in UN : In the light of the fact that there were 65

## PUBLIC INTERNATIONAL LAW

attacks out at sea and the repeated nature of attacks the U.S had the right to take action to PREVENT recurrence of such attacks. Preventive action is part of the United State's act and is clear and consistent with article 51. But is it ? Compare this with International Customary Law where it is clearly permitted.

*Cuba Blockade.* Harris 659 : 22nd October, 1962 Kennedy quarantined offensive weapons being shipped to Cuba from Russia identified by United States spy planes which had identified nuclear silos on Cuba a state in the United States' back yard : On the 23rd The Security Council decided to take no action.

A Lebanese ship containing a Soviet cargo was checked and many ships were sent elsewhere. On 21st November the quarantine ended. A State Department statement said the quarantine was based on a collective judgment which was not considered not contravene Article 6 adopted by a regional organisation (but a regional organisation cannot take any but self defence action ) considered in line with United Nations Charter (not true) and claimed articles 10, 11 and 51 complied with ( how ? ). Harris quotes a U.S Representative as saying that a quarantine not a legal position and involved the survival of states which is not a question of law !

The Nuremburg Judgement expressly endorsed the Webster dicta as rules of International Customary Law. The right of self defence is always subject to Judicial Review.

### War Periods

Art 12 - 16. The right to resort to war is subject to specific conditions and sanctions for breach. Compare the League & The Pact of Paris 1928 & The Briand / Kellog Pack which was concluded outside League and survived it as rules of International Customary Law. It condemned resort to war for solution of discord and renounced the use of war as an instrument of national policy. Under it's express declarations it reserved the right to act in self defence which 1) Can war be used for vindication of I.L. in case of aggression (cf National Policy) and 2) Can one use force less than war ?

Consider what would be the effect on the U.N. Charter's Drafting on a Nuremburg type tribunal if the following are required : viz planning, initiation, waging a war of aggression, crimes against peace and the methods of attributing responsibility for such crimes to individuals which in Nuremburg were based on Article 6 of the charter of the 2nd world war tribunal. In 1946 The United Nations Assembly resolution was adopted, but how useful are the criteria ? Who started IRAQ / IRAN war ? In the event of conflict both parties often blame each other - eg with the breach of truces and ceasefires.

Art 2(4) Principles of United Nations and purposes : "All members shall refrain ..... use or threat of force ..... in any manner inconsistent with the purposes of United Nations". Absolute prohibition of force.

Regarding collective security see Chapter 7 UN Charter and especially article 51.

It is unlikely that 2(4) will work without chapter 7 and equally unlikely 51 works unless the prevention mechanism of chapter 7 works. If sanctions etc. don't work then self defence action is allowed.

Regarding Art 2(4) two questions arise. 1) Is the use of force still legally possible ? and 2) Is neutrality possible under the charter ?

The use of force to quell international disturbances is unaffected. Compare where there is a rebellion as with the coloureds in South Africa where there are international connotations. Under Arts 51, 53, 106 & 107 force is still allowed. Regarding enforcement action see Chapter 7 and see the use of force during peace keeping operations under the UN charter of security council peace forces.

### Article 51 . Collective security

- 1) Is there a right of self defence without a prior attack as with Cuba. If one waits for attack especially if nuclear, it may be too late ! How much of a threat was there to the US from Nicaragua in 1986 ?
- 2) Is preparation for attack covered ? Hoped to replace old alliances - with International Security force : justified by collective self defence e.g. N.A.T.O. and W.A.R.S.A.W. Pact.
- 3) How to determine who is attributable for a direct attack ? from outside and within Irregular forces . Sporadic attack. What constitutes an armed attack ? e.g. six man raiding force ?

## LECTURE SIX

- 4) Must the armed attack proceed self defence ? Can one have anticipatory self defence -preemptory strike . e.g. Destruction of Nuclear power plant in Iraq by Israel : Bush/Blair Iraq War.

When acting under Article 51, act first and report to security council later and continue to act in self defence until security council takes action to resolve the conflict. The Iraq/Iran conflict showed that the system is not working.

Compare the powers under Article 53 Chapter 8 for regional disputes which can be used only when so authorised by security council.

Corfu Channel Case 1949 : Especially p. 228 - 234, 35, 36 : Facts . May 1946 British Warships in Albanian coastal waters fired on October 2nd. British war ships hit a mine suffering damage and death. The Royal Navy swept channel for mines. In December the U.K raised the issue with the security council in reference to the I.C.J. regarding 1) the extent of responsibility of Albania 2) the Legality of the British in sailing up the channel and 3) the Legality of British in mine sweeping

Held : Albania responsible. Whilst the UK violated Albanian sovereignty in sweeping channel the object of sailing by UK was to test Albania's claim to sovereignty. Albania returned by fire. " The United Kingdom mission was designed to affirm a right unjustifiably denied by Albania" and thus justifies self defence

Whilst the "British crews were at action stations at time" that Albania was firing which was not unreasonable. There were four British ships. There was political tension. The UK's intention was to test Albania's intentions and was a demonstration of United Kingdom force. Which could only be justified if within Art 51 which depended on Albania's firing.

The sweeping of channel was a British attempt to show Albania had laid the mines and a method of self protection or self defence. Between states respect of territorial sovereignty is essential to international relations but was not justified.

The Court recognises Albania's responsibility for failure to act to clear channel .... but British act violated Albania's sovereignty. This declaration is, of itself, appropriate satisfaction establishing an International Tort. A Declaration - non monetary compensation. Note that the British got substantial damages.

### *M.P.A. Nicaragua (1986) I.C.J.*

Issue of the lawfulness of a response to the imminent threat of armed attack not raised paragraph 194 - court expressed no view on the issue - therefore no guidance under International Law on pre-emptive actions .

Self defence where an armed attack has already occurred Conditions of self defence element of necessity : of proportionality : state acting in self defence must be a victim of an armed attack.

What is an armed attack ? Includes sending of armed bands by a state to territory of another, if, because of its scale and effect, it would have been classified as an armed attack, not a frontier incident, if carried out by regular armed forces. Para 194 – 195 but armed attack does not include assistance to rebels - armed weapons and logistical support.

May be regarded as a threat or use of force or amount to intervention and interference internal. Collective self defence : para. 199 : International Customary Law .

No rule permitting collective self defence in absence of request by a state regarding itself as a victim of armed attack : Principle of Non - Intervention : Para. 205 . Content status as a rule of International Law court considered whether recent state action showed a general right of intervention - direct or indirect - with or without force - in support of internal opposition - whose cause appeared worthy - by reason of political and moral values . Para 209 - held . no such right exists. Court not concerned in de-colonisation process. Counter Measure to Intervention para 210 :

NO OPINION by court as to what reactions are lawfully open to a state interfered with by another state - possibly using force, but less than an armed attack - Ruled - under I.C.L. and the charter, states do not have a right of collective armed response to less than armed attack

# PUBLIC INTERNATIONAL LAW

## Reprisals

Under International Customary Law an illegal act followed by a refused request redress results in a right to reprisals

Article 2 (4) United Nations Charter. Reprisals are illegal but self defence is permitted though the Nicaragua case shows it may not always be defence

When there is a raid such as that on the 26 -11-87 by Palistinians into Israel who shot 6 Israelis dead it is always likely Israelis will respond but such action is not covered by concept of self defence since the danger is passed. Under International Customary Law the action would be a deterrent and thus self defence.

Bowett points out that in such circumstances unless the security council provides real protection then self help is inevitable even if illegal and as such the law of reprisals is likely to lose its normative value. Thus regarding Guerilla action - reprisals to discourage further attacks - though not strictly self defence since there is no immediate prospect of further attack. Is the destruction of guerilla bases a proportionate measure ? There is an element of anticipatory self defence.

There has been a change of attitude by United Nations : e.g. U.S. air strike against Libya resulted in UN condemnation but no firm action by United Nations.

Article 53 . Chapter 8 . security council . regional : enforcement under its authority . enforcement action . Compare the use of force under 51 - act first - report - continue - and 53 - state may not act until authorised by security council.

Article 106 . Big five . under special agreements via 43 - can consult together regarding joint action on behalf of the organisation to maintain order, peace and security . Does not use security council itself.

Article 147 Now Obsolete but is neutrality still possible under the charter when does an obligation under Article 2 Para. 5 arise : Agree to give United Nations every assistance in ANY action it takes in accordance with the present charter - or shall refrain from giving assistance to any state against which the United Nations is taking Preventive or enforcement action. Where Article 2 (5) is involved any treaty obligations are over-ridden by Article 103 : In case of conflict United Nations obligations prevail.

### When Article 2 (5) Comes into Play

- 1) When the security council is acting : Obligation 2 (5). When United Nations action is being taken : Most important form of United Nations action . Ch7 Action regarding breach of peace . acts of aggression . Recommendations and decisions under Article 39 included. Under Article 41 - Economic and diplomatic sanctions are a form of United : Nations action. Military sanctions security council recommendations e.g. KOREA
- 2) Ch 6 : Law and Order . power of recommendation . not acting under a UN activity.2 (5) Not applicable.
- 3) Article 51 . Acting . Not United Nations but individual victim : therefore 2 (5) Not applicable
- 4) Article 53 : Acts authorised by security council. S 2 (5) involved.
- 5) Article 106 : Joint action : S 2 (5) comes into play.
- 6) Article 107 : Obsolete - action is not by U.N : neutrality : is possible : 2 (5) Not applicable.

**Conclusion.** If neutral action O.K. under Ch 6 Art 86 but not Chapter 7, 53 and 146.

In practice (Brownlie 14 - 5) the Council may determine the existance of a threat to peace and aggression & decide what action under 41 and 42 - military and economic !

See Article 43 . all members undertake to help United Nations . ..... and Art 39.If no agreement the result is a blocked action of veto and resort to a secondary method of "Uniting for Peace" under a General Assembly Resolution.

## LECTURE SIX

### Applications of 41 & 42

Unlike Article 16 of the old system under Chapter 7 there is no criteria for deciding when a breach of peace arises. The opinion and vote alone count resulting in an unbridled discretion as to whether action amounts to a breach of peace or act of aggression.

"N. & S. KOREA" & the UN : Events were only possible because the Soviets were absent. Three security council resolutions : 25th, 27th June. 7th July 1950.

- 1) 25th June . Determines that this action constitutes a breach of peace (Article 39) calls for an immediate cessation of hostilities - and authorisation of N.Korea to withdraw to 38th parallel, and calls on all members to render assistance (Article 2 (5)).
- 2) 27th June recommended members of United Nations to furnish assistance to South Korea to repel attack - secure peace -
- 3) 7th July ... welcomes prompt support given by members .... notes members assistance .... recommend unified command under United States .... and use United Nations flag .... and United States to supply force to United Nations.

Compare the action under Chapter 7 - and Article 43 .... recommend .... against obligation to aid .....

### 1965 - Southern Rhodesia : U.D.I. Resolutions

- 1) 12th November, 1965 - Resolution - referred to United Nations by United Kingdom as responsible power - in Rhodesia 10 - 0 - 1 non vote - anti apartheid - illegal racist minority - call not to render assistance to it

N.B. no finding of breach of peace etc. . condemnation. Interim resolutions - regarding embargoes.

- 2) 9th April, 1966 - gravely concerned at reports that substantial quantity of oil would get to Rhodesia - via Portugese enclave - assists illegal regime. Determines that the resulting situation represents a breach of peace. No reference to Article 39 - call upon Portugese not to permit oil to be pumped to Rhodesia . pursuant to invocation under Article 39 and therefore mandatory not to receive oil for Rhodesia.
- 3) All states to divert vessels reasonably believed to be heading for Byra : Clear mandatory legal obligation under International Law. Call upon United Kingdom to prevent use of force if necessary to prevent arrival of vessels at Byra - can arrest vessel if it discharged oil : Established the Byra Patrol

16th December, 1966 . concern council's efforts and United Kingdom's failed to end regime in Rhodesia acting in accordance Article 39 and 41 determines situation threatens international peace : all states must prevent (under 41) ..... economic sanctions.

Designed to prevent import of chrome Para. 3 ... reminds members that failure to implement is a breach of Article 25. "members agree to accept and carry out .....

Reason : United States dragged its heels regarding chrome Para. 7 ... regarding Article 2 .... Non United Nations states urged to follow Para. 2 regarding economic sanctions.

Article 2. Para. 6 ... shall ensure non United Nations states act in accord with United Nations ... HOW ? Problematical ! to oblige third parties ... can't be done under treaty law. Therefore only URGE

### South Africa Resolutions

3rd November, 1977 Adopted on grounds that position in South Atlantic threatens international security. First time sanctions under Chapter 7 imposed on a member state

Praetorian crack down on anti-apartheid groups in South Africa . Forbade provision of arms to South Africa.

### Security Council Resolution 598

Article 39 and 40. To prevent aggravation - call upon parties to .....without prejudice ... failure to comply Seven years of war . followed by United Nations resolution . gentle approach no arms embargo : no enforcement : collective security system is patently not working

# PUBLIC INTERNATIONAL LAW

## Uniting for Peace Resolution

Article 24 . Primary responsibility for Peace . United Nations . actions may be blocked 27 (3) - veto power.

Alternative system : General Assembly Resolution Adopted 1950 - preamble - initiative for negotiations for armed forces belongs to security council (never used) - Designed to ensure United Nations has means of maintaining international peace ... considers? that failure to do so does not relieve member states of their obligations or the United Nations of its responsibility under the charter to maintain international peace and security (recognises Article 43 - and security council useless ) -

Resolves - If security council, because of lack of unanimity (veto) fails to exercise Article 24 primary responsibility - in any case where there appears to be a threat to peace and security (viz. Article 39) The general assembly shall consider the matter with view to making recommendations and collective measures including use of armed force to maintain peace and international security.

Not mandatory . co-ordinates powers of individual states : no new powers

### Subsequent Actions Under the Resolution

**Coercitive and peace keeping operations.** The United Nations can exercise peace keeping force - and raise finance ONLY the security council can mount an enforcement action.

**Peace Keeping Organisation** - can only be mounted if invited by or consented to by host nation . e.g. Egypt . and Suez . Invited United Nations. Only use of force permitted for peace keeping force is self defence . lightly armed force . Depend on respect of United Nations force : Monitor situation . not as a fighting army

**Gutterige** : United Nations in a Changing World P 35 Re the Congo 1960'ies Independence from Belgium United Nations invited in. Position complicated attempt by Cattanga to succeed. Mercenary forces . needed to be expelled.

**Para. 4** . Authorise Secretary General to take measures to detain and deport all foreign mercenaries not under United Nations flag i.e. powers against the breakaway Cattanga Province forces

### FURTHER READING

Schwarzenberger & Brown Manual Ch 7

Schwarzenberger : Volume 2 Ch 2 & 3

Schwarzenberger : Fundamental Principles Ch 6

Brownlie : International Law & the Use of Force by States.

Harris : Cases & Materials Ch 11

Caroline & McLeod Incidents 1837-442 : Moore 2 Digest Of I.L. s217

Nautila Incident 1928 2 UNRIAA p1011 : Green p679

Nuremberg Judgement. IMT 1946 Cmnd 6964 Green 707

Corfu Channel ICJ 1949 p4 Green p228

Hague Convention on limitation of the employment of force for the recovery of contract debts (Porter Convention) 1907 Scott. Hague Conventions 89.

League of Nations Covenant 1919 Arts 12, 13, 14, 15, 16, 17.

Kellogg Pack : General treaty for the Renunciation of War Paris 1928. Harris p639

Iran US Hostage Crisis Settlement : 20 ILM 1981 p223, 412 & 551.

Resolutions of the UN General Assembly.

Affirmation of the Principles of International Law recognised by the Charter and the Judgment of the Nuremberg Tribunal 11 Dec 1946 A/Res/95(1) UN Year Book 1946-47 p254.

Uniting for peace : 3.11.1950 UN Year Book 1950 p193 : Harris p691

Declaration on principles of I.L. concerning Friendly Relations and Co-operation among states in accordance with the UN Charter 24.10.1970 Brownlie Documents p32.

Definition of Aggression. 14.12.1974 69 AJIL 1975 p480

UN Security Council Debate Nicaraguan Government v U.S. 25 ILM 1986 p1337

## LECTURE SIX

### United Nations S/RES/1441 (2002)



## Security Council

Distr.: General 8 November 2002 Resolution 1441 (2002) Adopted by the Security Council at its 4644th meeting, on 8 November 2002 : *The Security Council*,

*Recalling* all its previous relevant resolutions, in particular its resolutions 661 (1990) of 6 August 1990, 678 (1990) of 29 November 1990, 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991, 688 (1991) of 5 April 1991, 707 (1991) of 15 August 1991, 715 (1991) of 11 October 1991, 986 (1995) of 14 April 1995, and 1284 (1999) of 17 December 1999, and all the relevant statements of its President,

*Recalling also* its resolution 1382 (2001) of 29 November 2001 and its intention to implement it fully,

*Recognizing* the threat Iraq's non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles poses to international peace and security,

*Recalling* that its resolution 678 (1990) authorized Member States to use all necessary means to uphold and implement its resolution 660 (1990) of 2 August 1990 and all relevant resolutions subsequent to resolution 660 (1990) and to restore international peace and security in the area,

*Further recalling* that its resolution 687 (1991) imposed obligations on Iraq as a necessary step for achievement of its stated objective of restoring international peace and security in the area,

*Deploring* the fact that Iraq has not provided an accurate, full, final, and complete disclosure, as required by resolution 687 (1991), of all aspects of its programmes to develop weapons of mass destruction and ballistic missiles with a range greater than one hundred and fifty kilometres, and of all holdings of such weapons, their components and production facilities and locations, as well as all other nuclear programmes, including any which it claims are for purposes not related to nuclear-weapons-usable material,

*Deploring further* that Iraq repeatedly obstructed immediate, unconditional, and unrestricted access to sites designated by the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA), failed to cooperate fully and unconditionally with UNSCOM and IAEA weapons inspectors, as required by resolution 687 (1991), and ultimately ceased all cooperation with UNSCOM and the IAEA in 1998,

*Deploring* the absence, since December 1998, in Iraq of international monitoring, inspection, and verification, as required by relevant resolutions, of weapons of mass destruction and ballistic missiles, in spite of the Council's repeated demands that Iraq provide immediate, unconditional, and unrestricted access to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), established in resolution 1284 (1999) as the successor organization to UNSCOM, and the IAEA, and regretting the consequent prolonging of the crisis in the region and the suffering of the Iraqi people,

*Deploring also* that the Government of Iraq has failed to comply with its commitments pursuant to resolution 687 (1991) with regard to terrorism, pursuant to resolution 688 (1991) to end repression of its civilian population and to provide access by international humanitarian organizations to all those in need of assistance in Iraq, and pursuant to resolutions 686 (1991), 687 (1991), and 1284 (1999) to return or cooperate in accounting for Kuwaiti and third country nationals wrongfully detained by Iraq, or to return Kuwaiti property wrongfully seized by Iraq,

*Recalling* that in its resolution 687 (1991) the Council declared that a ceasefire would be based on acceptance by Iraq of the provisions of that resolution, including the obligations on Iraq contained therein,

*Determined* to ensure full and immediate compliance by Iraq without conditions or restrictions with its obligations under resolution 687 (1991) and other relevant resolutions and recalling that the resolutions of the Council constitute the governing standard of Iraqi compliance,



## PUBLIC INTERNATIONAL LAW

*Recalling* that the effective operation of UNMOVIC, as the successor organization to the Special Commission, and the IAEA is essential for the implementation of resolution 687 (1991) and other relevant resolutions,

*Noting* that the letter dated 16 September 2002 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General is a necessary first step toward rectifying Iraq's continued failure to comply with relevant Council resolutions,

*Noting further* the letter dated 8 October 2002 from the Executive Chairman of UNMOVIC and the Director-General of the IAEA to General Al-Saadi of the Government of Iraq laying out the practical arrangements, as a follow-up to their meeting in Vienna, that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA, and expressing the gravest concern at the continued failure by the Government of Iraq to provide confirmation of the arrangements as laid out in that letter,

*Reaffirming* the commitment of all Member States to the sovereignty and territorial integrity of Iraq, Kuwait, and the neighbouring States,

*Commending* the Secretary-General and members of the League of Arab States and its Secretary-General for their efforts in this regard,

*Determined* to secure full compliance with its decisions, *Acting* under Chapter VII of the Charter of the United Nations, **S/RES/1441 (2002)**

1. *Decides* that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq's failure to cooperate with United Nations inspectors and the IAEA, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991);
2. *Decides*, while acknowledging paragraph 1 above, to afford Iraq, by this resolution, a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council; and accordingly decides to set up an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions of the Council;
3. *Decides* that, in order to begin to comply with its disarmament obligations, in addition to submitting the required biannual declarations, the Government of Iraq shall provide to UNMOVIC, the IAEA, and the Council, not later than 30 days from the date of this resolution, a currently accurate, full, and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons, ballistic missiles, and other delivery systems such as unmanned aerial vehicles and dispersal systems designed for use on aircraft, including any holdings and precise locations of such weapons, components, subcomponents, stocks of agents, and related material and equipment, the locations and work of its research, development and production facilities, as well as all other chemical, biological, and nuclear programmes, including any which it claims are for purposes not related to weapon production or material;
4. *Decides* that false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq at any time to comply with, and cooperate fully in the implementation of, this resolution shall constitute a further material breach of Iraq's obligations and will be reported to the Council for assessment in accordance with paragraphs 11 and 12 below;
5. *Decides* that Iraq shall provide UNMOVIC and the IAEA immediate, unimpeded, unconditional, and unrestricted access to any and all, including underground, areas, facilities, buildings, equipment, records, and means of transport which they wish to inspect, as well as immediate, unimpeded, unrestricted, and private access to all officials and other persons whom UNMOVIC or the IAEA wish to interview in the mode or location of UNMOVIC's or the IAEA's choice pursuant to any aspect of their mandates; further decides that UNMOVIC and the IAEA may at their discretion conduct interviews inside or outside of Iraq, may facilitate the travel of those interviewed and family members outside of Iraq, and that, at the sole discretion of UNMOVIC and the IAEA, such

## LECTURE SIX

interviews may occur without the presence of observers from the Iraqi Government; and instructs UNMOVIC and requests the IAEA to resume inspections no later than 45 days following adoption of this resolution and to update the Council 60 days thereafter;

6. *Endorses* the 8 October 2002 letter from the Executive Chairman of UNMOVIC and the Director-General of the IAEA to General Al-Saadi of the Government of Iraq, which is annexed hereto, and decides that the contents of the letter shall be binding upon Iraq;
7. *Decides* further that, in view of the prolonged interruption by Iraq of the presence of UNMOVIC and the IAEA and in order for them to accomplish the tasks **S/RES/1441 (2002)** set forth in this resolution and all previous relevant resolutions and notwithstanding prior understandings, the Council hereby establishes the following revised or additional authorities, which shall be binding upon Iraq, to facilitate their work in Iraq:

- UNMOVIC and the IAEA shall determine the composition of their inspection teams and ensure that these teams are composed of the most qualified and experienced experts available;

- All UNMOVIC and IAEA personnel shall enjoy the privileges and immunities, corresponding to those of experts on mission, provided in the Convention on Privileges and Immunities of the United Nations and the Agreement on the Privileges and Immunities of the IAEA;

UNMOVIC and the IAEA shall have unrestricted rights of entry into and out of Iraq, the right to free, unrestricted, and immediate movement to and from inspection sites, and the right to inspect any sites and buildings, including immediate, unimpeded, unconditional, and unrestricted access to Presidential Sites equal to that at other sites, notwithstanding the provisions of resolution 1154 (1998) of 2 March 1998;

- UNMOVIC and the IAEA shall have the right to be provided by Iraq the names of all personnel currently and formerly associated with Iraq's chemical, biological, nuclear, and ballistic missile programmes and the associated research, development, and production facilities;

- Security of UNMOVIC and IAEA facilities shall be ensured by sufficient United Nations security guards;

- UNMOVIC and the IAEA shall have the right to declare, for the purposes of freezing a site to be inspected, exclusion zones, including surrounding areas and transit corridors, in which Iraq will suspend ground and aerial movement so that nothing is changed in or taken out of a site being inspected;

- UNMOVIC and the IAEA shall have the free and unrestricted use and landing of fixed- and rotary-winged aircraft, including manned and unmanned reconnaissance vehicles;

- UNMOVIC and the IAEA shall have the right at their sole discretion verifiably to remove, destroy, or render harmless all prohibited weapons, subsystems, components, records, materials, and other related items, and the right to impound or close any facilities or equipment for the production thereof; and

- UNMOVIC and the IAEA shall have the right to free import and use of equipment or materials for inspections and to seize and export any equipment, materials, or documents taken during inspections, without search of UNMOVIC or IAEA personnel or official or personal baggage;

8. *Decides* further that Iraq shall not take or threaten hostile acts directed against any representative or personnel of the United Nations or the IAEA or of any Member State taking action to uphold any Council resolution;

9. *Requests* the Secretary-General immediately to notify Iraq of this resolution, which is binding on Iraq; demands that Iraq confirm within seven days of that notification its intention to comply fully with this resolution; and demands **S/RES/1441 (2002)** further that Iraq cooperate immediately, unconditionally, and actively with UNMOVIC and the IAEA;

10. *Requests* all Member States to give full support to UNMOVIC and the IAEA in the discharge of their mandates, including by providing any information related to prohibited programmes or other aspects of their mandates, including on Iraqi attempts since 1998 to acquire prohibited items, and by recommending sites to be inspected, persons to be interviewed, conditions of such interviews, and data to be collected, the results of which shall be reported to the Council by UNMOVIC and the

## PUBLIC INTERNATIONAL LAW

IAEA;

11. *Directs* the Executive Chairman of UNMOVIC and the Director-General of the IAEA to report immediately to the Council any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations, including its obligations regarding inspections under this resolution;
12. *Decides* to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security;
13. *Recalls*, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations;
14. *Decides* to remain seized of the matter.

**S/RES/1441 (2002)**

**Annex**

**Text of Blix/El-Baradei letter**

**United Nations Monitoring, Verification      International Atomic Energy Agency and Inspection  
Commission**

**The Executive Chairman**

**The Director General**

8 October 2002

Dear General Al-Saadi,

During our recent meeting in Vienna, we discussed practical arrangements that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA. As you recall, at the end of our meeting in Vienna we agreed on a statement which listed some of the principal results achieved, particularly Iraq's acceptance of all the rights of inspection provided for in all of the relevant Security Council resolutions. This acceptance was stated to be without any conditions attached.

During our 3 October 2002 briefing to the Security Council, members of the Council suggested that we prepare a written document on all of the conclusions we reached in Vienna. This letter lists those conclusions and seeks your confirmation thereof. We shall report accordingly to the Security Council.

In the statement at the end of the meeting, it was clarified that UNMOVIC and the IAEA will be granted immediate, unconditional and unrestricted access to sites, including what was termed "sensitive sites" in the past. As we noted, however, eight presidential sites have been the subject of special procedures under a Memorandum of Understanding of 1998. Should these sites be subject, as all other sites, to immediate, unconditional and unrestricted access, UNMOVIC and the IAEA would conduct inspections there with the same professionalism.

H.E. General Amir H. Al-Saadi Advisor

Presidential Office Baghdad

Iraq

**S/RES/1441 (2002)**

We confirm our understanding that UNMOVIC and the IAEA have the right to determine the number of inspectors required for access to any particular site. This determination will be made on the basis of the size and complexity of the site being inspected. We also confirm that Iraq will be informed of the designation of additional sites, i.e. sites not declared by Iraq or previously inspected by either UNSCOM or the IAEA, through a Notification of Inspection (NIS) provided upon arrival of the inspectors at such sites.

Iraq will ensure that no proscribed material, equipment, records or other relevant items will be destroyed except in the presence of UNMOVIC and/or IAEA inspectors, as appropriate, and at their request.

UNMOVIC and the IAEA may conduct interviews with any person in Iraq whom they believe may have information relevant to their mandate. Iraq will facilitate such interviews. It is for UNMOVIC and the

## LECTURE SIX

IAEA to choose the mode and location for interviews.

The National Monitoring Directorate (NMD) will, as in the past, serve as the Iraqi counterpart for the inspectors. The Baghdad Ongoing Monitoring and Verification Centre (BOMVIC) will be maintained on the same premises and under the same conditions as was the former Baghdad Monitoring and Verification Centre. The NMD will make available services as before, cost free, for the refurbishment of the premises.

The NMD will provide free of cost: (a) escorts to facilitate access to sites to be inspected and communication with personnel to be interviewed; (b) a hotline for BOMVIC which will be staffed by an English speaking person on a 24 hour a day/seven days a week basis; (c) support in terms of personnel and ground transportation within the country, as requested; and (d) assistance in the movement of materials and equipment at inspectors' request (construction, excavation equipment, etc.). NMD will also ensure that escorts are available in the event of inspections outside normal working hours, including at night and on holidays.

Regional UNMOVIC/IAEA offices may be established, for example, in Basra and Mosul, for the use of their inspectors. For this purpose, Iraq will provide, without cost, adequate office buildings, staff accommodation, and appropriate escort personnel.

UNMOVIC and the IAEA may use any type of voice or data transmission, including satellite and/or inland networks, with or without encryption capability. UNMOVIC and the IAEA may also install equipment in the field with the capability for transmission of data directly to the BOMVIC, New York and Vienna (e.g. sensors, surveillance cameras). This will be facilitated by Iraq and there will be no interference by Iraq with UNMOVIC or IAEA communications.

Iraq will provide, without cost, physical protection of all surveillance equipment, and construct antennae for remote transmission of data, at the request of UNMOVIC and the IAEA. Upon request by UNMOVIC through the NMD, Iraq will allocate frequencies for communications equipment.

Iraq will provide security for all UNMOVIC and IAEA personnel. Secure and suitable accommodations will be designated at normal rates by Iraq for these personnel. For their part, UNMOVIC and the IAEA will require that their staff not stay at any accommodation other than those identified in consultation with Iraq.

On the use of fixed-wing aircraft for transport of personnel and equipment and for inspection purposes, it was clarified that aircraft used by UNMOVIC and IAEA staff arriving in Baghdad may land at Saddam International Airport. The points of departure of incoming aircraft will be decided by UNMOVIC. The Rasheed airbase will continue to be used for UNMOVIC and IAEA helicopter operations. UNMOVIC and Iraq will establish air liaison offices at the airbase. At both Saddam International Airport and Rasheed airbase, Iraq will provide the necessary support premises and facilities. Aircraft fuel will be provided by Iraq, as before, free of charge.

### **S/RES/1441 (2002)**

On the wider issue of air operations in Iraq, both fixed-wing and rotary, Iraq will guarantee the safety of air operations in its air space outside the no-fly zones. With regard to air operations in the no-fly zones, Iraq will take all steps within its control to ensure the safety of such operations.

Helicopter flights may be used, as needed, during inspections and for technical activities, such as gamma detection, without limitation in all parts of Iraq and without any area excluded. Helicopters may also be used for medical evacuation.

On the question of aerial imagery, UNMOVIC may wish to resume the use of U-2 or Mirage overflights. The relevant practical arrangements would be similar to those implemented in the past.

As before, visas for all arriving staff will be issued at the point of entry on the basis of the UN Laissez-Passer or UN Certificate; no other entry or exit formalities will be required. The aircraft passenger manifest will be provided one hour in advance of the arrival of the aircraft in Baghdad. There will be no searching of UNMOVIC or IAEA personnel or of official or personal baggage. UNMOVIC and the IAEA will ensure that their personnel respect the laws of Iraq restricting the export of certain items, for example,

## PUBLIC INTERNATIONAL LAW

those related to Iraq's national cultural heritage. UNMOVIC and the IAEA may bring into, and remove from, Iraq all of the items and materials they require, including satellite phones and other equipment. With respect to samples, UNMOVIC and IAEA will, where feasible, split samples so that Iraq may receive a portion while another portion is kept for reference purposes. Where appropriate, the organizations will send the samples to more than one laboratory for analysis.

We would appreciate your confirmation of the above as a correct reflection of our talks in Vienna.

Naturally, we may need other practical arrangements when proceeding with inspections. We would expect in such matters, as with the above, Iraq's co-operation in all respect.

*(Signed)*

Hans Blix  
Executive Chairman  
United Nations Monitoring,  
Agency Verification and Inspection Commission

Yours sincerely,

*(Signed)*

Mohamed ElBaradei  
Director General  
International Atomic Energy