

## The Attorney General's statement

[Attorney-General's statement appears in italics, commentary in bold.]

*"Authority to use force against Iraq exists from the combined effect of resolutions 678, 687 and 1441.*

*All of these resolutions were adopted under Chapter VII of the UN Charter which allows the use of force for the express purpose of restoring international peace and security."*

**First point to note is that most of the legal justifications which have been suggested by UK government ministers are implicitly ruled out.**

**This rules out the justification of self defence.**

**This rules out humanitarian intervention.**

**And it rules out the argument that Resolution 1441 authorises war.**

**The Attorney General is relying on what he says is the "combined effect" of past resolutions. This is how he attempts to make that argument:**

*"1. In resolution 678 the Security Council authorised force against Iraq, to eject it from Kuwait and to restore peace and security in the area."*

**Resolution 678 was adopted over 12 years ago on the 29<sup>th</sup> November 1990.**

**It is the only UN resolution passed about Iraq which expressly authorised the use of force against Iraq. This is why the Attorney General has tried to resurrect it.**

*"2. In resolution 687, which set out the ceasefire conditions after Operation Desert Storm, the Security Council imposed continuing obligations on Iraq to eliminate its weapons of mass destruction in order to restore international peace and security in the area."*

**Resolution 687 suspended but did not terminate the authority to use force under resolution 678."**

**Here, the Attorney General accepts that resolution 687 does not itself authorise the use of force. So resolution 687 cannot be used to justify the use of force.**

**In fact, the only proper and legal way to proceed if there is a breach of the ceasefire is to ask the UN – not the US or the UK – to decide how it should be enforced.**

The argument is that the ceasefire "suspended" resolution 678 which is now somehow revived.

The Attorney General has omitted to mention other resolutions. For example, resolution 686 explicitly acknowledged that force authorised in resolution 678 could be used during the period required for Iraq to comply with the terms of the provisional ceasefire. But resolution 687 does not include such an authorisation. It follows that the authorisation for the use of force in 678 CANNOT BE REVIVED.

*"3. A material breach of resolution 687 revives the authority to use force under resolution 678."*

This argument has been succinctly dealt with by Rabinder Singh QC and Charlotte Kilroy in their opinion dated 23<sup>rd</sup> January 2003.

*"In our view, it is clear from the terms of Resolution 687, and from the context in which it was adopted that the formal ceasefire, once effected, terminated the authorisation to use force in Resolution 678, and that any steps to be taken for the implementation of Resolution 687 and to secure peace and security in the region were now once more a matter for the Security Council and not for the Member States."*

*"4. In resolution 1441 the Security Council determined that Iraq has been and remains in material breach of resolution 687, because it has not fully complied with its obligations to disarm under that resolution."*

Resolution 687 says 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 and to secure peace and security in the area." Thus, adopting 1441 is the Security Council's method of dealing with the disarmament issue. The Security Council also determined that it – not individual states - would deal with the matter.

*"5. The Security Council in resolution 1441 gave Iraq "a final opportunity to comply with its disarmament obligations" and warned Iraq of the "serious consequences" if it did not."*

It is accepted that "serious consequences" does not mean military force.

The Security Council has not agreed that Iraq has failed to disarm. France, Germany, Syria, Russia, Pakistan, Chile and China have, to differing degrees, stated that Iraq has begun to disarm or is in the process of disarming. They all want the weapons inspectors to be given more time.

*"6. The Security Council also decided in resolution 1441 that, if Iraq failed at any time to comply with and co-operate fully in the implementation of resolution 1441, that would constitute a further material breach."*

The Security Council decided that it would remain seized of the matter. There is no automaticity in resolution 1441. It does not authorise the use of force. Another resolution would be necessary. The UK did not ask for a further resolution authorising force because it knew it could not muster a majority of the Security Council, let alone a resolution that would not be vetoed.

*"7. It is plain that Iraq has failed so to comply and therefore Iraq was at the time of resolution 1441 and continues to be in material breach."*

This is very confused. Does it mean failed to comply with resolution 687 or 1441?

*"8. Thus, the authority to use force under resolution 678 has revived and so continues today."*

As above: Resolution 678 decides that the Security Council is seized of the matter and that the security council shall decide what steps to take in the event of a breach.

*"9. Resolution 1441 would in terms have provided that a further decision of the Security Council to sanction force was required if that had been intended."*

This is nonsense. Resolution 1441 operates within the terms of the UN Charter itself. The UN Charter states that it is for the Security Council alone to sanction force. Those are the rules and they do not need to be restated in every resolution.

*Thus, all that resolution 1441 requires is reporting to and discussion by the Security Council of Iraq's failures, but not an express further decision to authorise force.*

It does not follow from this that the UK can take military action to remedy what it perceives to be a breach of 1441 without explicit authority from the UN.

It is the UN Charter itself that requires explicit authorisation before any force is used.

The UK and the US has decided to go outside the UN because it cannot obtain a majority for its view. Russia, China, France, Germany, Syria, Pakistan, Chile and Cameroon all want to give the weapons inspectors more time.

Greenpeace Legal Unit  
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