



INTERNATIONAL
COMMISSION
OF JURISTS

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AUSTRALIAN SECTION

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NEWS RELEASE

Attack on Iraq

“There is no justification in International Law for the United States of America’s proposed attack on Iraq. There is no right for any country to carry out ‘pre-emptive’ strikes,” said Mr Steve Mark, Chairman of the Council of the Australian Section of the International Commission of Jurists.

“There is no individual or collective right in international law to attack another State unless it is an act undertaken in direct self defence. The case for self defence from an imminent threat by Iraq has not been made out by the USA, Britain, Australia or any other country,” said Mr Mark.

“The primary role of the United Nations Organization is to promote international peace and security. We believe the United Nations does not have the legal power under its Charter to authorise an attack on a sovereign State that is not a legitimate exercise of self defence,” said Mr Mark. “The United Nations Security Council has never authorised pre-emptive aggression or invasion. Authorisation for military action has so far only occurred following invasion or attack, as in the first Gulf War,” said Mr Mark.

“The United Nations Security Council in its ‘responsibility for the maintenance of international peace and security’ is bound to ‘act in accordance with the Purposes and Principles of the United Nations’,” said Mr Mark. “Neither these Purposes and Principles, nor the express powers granted to the Security Council in Chapters VI, VII, VIII, and XII of the Charter of the United Nations, allow the Security Council to resolve to undertake aggressive war. The Security Council is bound to act in accordance with the United Nations Charter’s principles of peaceful settlement of international disputes and to refrain from threat or use of force against the territorial integrity of political independence of a State,” said Mr Mark.

“Australia has a significant, long standing and historical commitment to the United Nations. This commitment is among other things a legal commitment, by way of treaty, to support the United Nations and its agencies. Australia is bound to act in accordance with its obligations under the United Nations Charter and other applicable treaties. Australia therefore holds a special duty to encourage countries to adhere to correct international legal principles in any Security Council resolution,” said Mr Mark.

“Australia should await the precise terms of any further resolution of the United Nations Security Council before determining a course of action, and when it does, Australia should be mindful of its obligations under international law as to the conduct of armed conflict, at the same time taking into account Australia’s obligation to support decisions of the United Nations,” said Mr Mark.

For further comment and information, please contact Mr Steve Mark, Chairman, Council of the International Commission of Jurists on (02) 9377.1801 chair@icj-aust.org.au, or Mr David Bitel, Secretary General, International Commission of Jurists, Australian Section on (02) 9286.8700 sec-gen@icj-aust.org.au, or Mr Nicholas McNally, Treasurer, on (02) 9286.8189 treasurer@icj-aust.org.au

ADDENDUM

Excerpts from the
Charter of the United Nations

CHARTER OF THE UNITED NATIONS

CHAPTER I PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

...

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

...

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

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CHAPTER V

THE SECURITY COUNCIL

Functions and powers

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

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CHAPTER VII

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.