

DID 1441 AUTHORISE WAR?

The draft US/UK resolution does not explicitly authorise war, but British officials 'say that it provides "water-tight" legal authority for war', and this is the general impression one receives through the British media. 'It would trigger the serious consequences threatened in resolution 1441.' (*Telegraph*, 25 Feb., p. 1) The phrase 'serious consequences' is reported almost universally as 'diplomatic code' for military action, thus authorising war.

This is a lie. Professor Vaughan Lowe, Chichele Professor of Public International Law at Oxford University, and a practising barrister was asked by the Radio 4 *Today* programme to consider the legality of war on Iraq in Dec. <www.bbc.co.uk/radio4/today/reports/international/iraq_hearing.shtml>:

He said, 'The statement in paragraph 13 of the Resolution [1441] that "the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations" is a simple statement of what the Security Council has done in the past. **It cannot in my opinion possibly be interpreted as an express or implied authorization to States unilaterally to take military action against Iraq in the future.**

'Certainly, paragraph 13 amounts to an implied threat of "serious consequences" if Iraq breaches its obligations in the future. **But nothing in paragraph 13 suggests that the consequences would be decided upon and taken by anyone other than** the body that has, under the procedure established in the immediately preceding paragraphs 11 and 12, been given responsibility for deciding how to respond to material breaches: that is, by **the Security Council itself.**

'Equally, the simple fact that Resolution 1441 does not expressly forbid the use of armed force plainly cannot itself amount to an implied authorisation to use force... Most Security Council resolutions do not expressly forbid the use of force: no-one would argue that they therefore all authorise it.'

'My conclusion, therefore, is that under present circumstances it would be contrary to international law for the United Kingdom to engage in military action against Iraq, or assist any other State in taking such action, unless it was expressly authorised to do so by the United Nations Security Council.' Thus sinks the new resolution. The US and Britain are engaged in a last push for an illegal war of aggression.

(Please see also *ARROW Anti-War Briefings 25: Material Breach / 28: Second Resolution / 31 Key Tasks* for important background to the US/UK resolution.) <[j-n-v.org](http://www.j-n-v.org)> 0845 458 2564
ARROW BOOK *War Plan Iraq: Ten Reasons Against War On Iraq* by Milan Rai (Verso, 2002)
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A LAST PUSH FOR WAR

The US/UK Struggle For War Not Inspections ARROW Anti-War Briefing 33 (27 February 2003) WAR PLAN IRAQ Update Number 12

PEACE IS WAR

'The Prime Minister will launch a "last push for peace" alongside the tabling of a new UN Security Council resolution this week,' No. 10 said on 22 Feb: 'The commitment to a further resolution underlines our determination to explore every means possible to deliver a peaceful outcome. If we go to war, it is because we have to disarm Saddam.' (*Observer*, 23 Feb., p. 1)

'Hearing that what Britain and the US have now embarked on is the "final push for peace" makes you wonder whether those at the heart of government have read George Orwell's *1984*... there is every sign that war rather than peace is what the British government is now preparing for.' (Donald Macintyre, columnist, *Independent*, 25 Feb. 2003, p. 18)

The 'tabling' or presentation of their draft resolution 'marked the beginning of what U.S. and British officials characterized as the final push to win council backing for a decision to go to war.' (*Washington Post*, 25 Feb.)

THE DRAFT WAR RESOLUTION

Shortly before it was presented, the draft US/UK resolution was still expected to declare Iraq to be in "material breach" of its disarmament obligations, and to warn that it would face "serious consequences". (*Sunday Telegraph*, 23 Feb., p. 28) Then, 'London appeared to have persuaded Washington to opt for a simple text without specifying "serious consequences" if Saddam fails to comply.' (*Sunday Times*, 23 Feb., p. 1) And the draft resolution also no longer says that Iraq is in 'further material breach' of its obligations.

'The draft resolution would provide no explicit authority to conduct a war. It simply states that the council "decides that Iraq has failed to take the final opportunity afforded to it in Resolution 1441." It places several critical phrases in the preamble, including a finding that Iraq is in further "material breach"—or violation—of its disarmament obligations and warning Iraq of

“serious consequences” if it does not disarm. Those phrases have been viewed as triggers for military action. By putting them in the preamble, they would carry **no legal weight** but would serve the purpose of signaling Washington’s intent to undertake military action.’ (*Washington Post*, 25 Feb., p. A01)

Actually, the draft does not find Iraq in “further material breach”. It says that ‘in its resolution 1441 the [Security] Council decided that false statements or omissions in the declaration submitted by Iraq pursuant to that resolution and failure by Iraq at any time to comply with, and co-operate fully in the implementation of, that resolution, would constitute a further material breach’. It also ‘finds’ that the declaration did contain ‘false statements and omissions’ and that Iraq ‘has failed to comply with, and co-operate fully in the implementation of, that resolution’. But the conclusion is not actually drawn.

There is only one ‘operative’ or legally-binding paragraph in the new draft resolution. It says simply that the Security Council ‘Decides that Iraq has failed to take the final opportunity afforded to it by resolution 1441.’

‘U.S. and British officials said the resolution was worded this way to provide Britain and other countries with “legal cover” to participate in a U.S.-led war while providing opponents of war with the “political cover” to assure their constituents that they never authorized military action.’ (*Washington Post*, 25 Feb., p. A01)

‘It does not give explicit authorisation for military action and does not even say that Iraq is “in material breach” of last November’s resolution 1441... The wording is deliberately vague... A senior figure said: “The resolution is quite light. We wanted to activate the serious consequences without being in your face about it. The Americans were quite clear that legally they do not need a resolution at all. But politically we want a chance for the Security Council to remain in control.”’ (*Telegraph*, 25 Feb., p. 1)

‘In an attempt to win over waverers, the US and Britain have abandoned hopes of a resolution that would explicitly authorise war and opted instead for a watered-down version that reiterates much of the last UN resolution on Iraq, 1441.’ A British official said, ‘The Americans’ original language was quite tough on requiring the words “material breach” and so on. We said you simply have to refer back to resolution 1441, otherwise you’re simply not going to get the nine votes.’ (*Guardian*, 25 Feb., pp. 1, 5) So, ‘the operative paragraph contained no ultimatum and no explicit threat of war.’ (*FT*, 25 Feb., p. 8)

‘The question was whether wavering Council members could sign up to a text that, while likely to be seen as legal justification by the US for military action, they could argue was a simple statement of fact, with no endorsement for war.’ (*FT*, 25 Feb., p. 8) But it is not a simple statement of fact.

IRAQ HAS NOT FAILED TO SEIZE THIS OPPORTUNITY

The US is determined on war. Inspections are an obstacle to war, therefore they must be denigrated and shut down as soon as possible. US Secretary of State Colin Powell said a month ago, ‘The question isn’t how much longer do you need for inspections to work. **Inspections will not work.**’ (*Independent*, 23 Jan., p. 1)

Iraqi co-operation with inspectors is an obstacle to war. Therefore it must be rubbished. President Bush has sought to dismiss Iraqi compliance: ‘Saddam Hussein can now be expected to begin another round of **empty concessions**, transparently false denials. No doubt he will play a last minute game of deception. The game is over.’ (*Telegraph*, 7 Feb., p. 1)

‘All the war rhetoric from London and Washington has obscured the real concessions already made by Iraq,’ points out columnist Mary Dejevsky. (*Independent*, 26 Feb., p. 18) Some of these were set out in the Security Council on 14. Feb. by French Foreign Minister Dominic de Villepin, in a speech which won applause from ambassadors: ‘Real progress is beginning to be apparent: Iraq has agreed to aerial reconnaissance over its territory; it has allowed Iraqi scientists to be questioned by the inspectors without witnesses; a bill barring all activities linked to weapons of mass destruction programs is in the process of being adopted, in accordance with a long-standing request of the inspectors; Iraq is to provide a detailed list of experts who witnessed the destruction of military programs in 1991.’ (<www.un.int/france/>)

Not to forget inspectors’ ready access to Presidential palaces.

If we want to test Iraqi compliance, we must follow the procedure laid down in UN Security Council Resolution 1284, which asked inspectors to draw up the ‘**key remaining disarmament tasks**’ for Iraq, saying that ‘**what is required of Iraq for the implementation of each task shall be clearly defined and precise**’. (<www.un.org/Depts/unmovic/> This was a resolution proposed and championed by Britain, with US support.

Now France is trying to get the Security Council to implement this resolution. A new Franco-Russo-German memorandum asks for the drafting of the ‘key disarmament tasks’ to be ‘speeded up’: ‘The key remaining tasks shall be defined according to their degree of priority. What is required of Iraq for implementation of each task shall be clearly defined and precise. Such a clear identification of tasks to be completed will oblige Iraq to cooperate more actively. It will also provide a clear means for the Council to assess the co-operation of Iraq.’ (24 Feb. 2003, <<http://www.un.int/france/>>)

How can Iraq have failed the disarmament test?

How can you fail someone when you haven’t even written the examination paper, let alone presented it to the person being tested, or given clear a timetable for when it should be finished?