

København 16/3 2004

Dear Prime Minister Anders Fogh Rasmussen

**Re: Legality of Iraq War**

As you may well be aware, the anniversary of the Iraq War is coming up at the end of this week. One year later, the legality of this war remains highly questionable. In May 2003 we wrote to you and other members of the so-called “Coalition of the Willing” that supported the United States-led invasion of Iraq in March 2003. The Bush administration led this invasion under its new doctrine of preventive war as laid out in the US National Security Strategy, published in September, 2002.

We noted at the time that the doctrine of preventive war was a clear break with the principles of the United Nations Charter and international law, which have for nearly sixty years constituted an international consensus that the use of military force outside the provisions of the Charter and international law is illegal and illegitimate. Secretary-General Kofi Annan, many governments, the International Commission of Jurists, and hundreds of legal experts stated strongly and clearly prior to the war that the attack on Iraq would be illegal and in breach of the United Nations Charter.<sup>1</sup>

The point of our letter, dated May 2003, was to ascertain the position of your government, which had declared itself a member of the “Coalition of the Willing”, with respect to the doctrine of preventive war and its compatibility with the United Nations Charter. The replies that we received, as well as public statements by many Coalition governments, relied on existing Security Council resolutions on Iraq and weapons of mass destruction, justifying the invasion on the basis of the ‘fact’ that Iraq had not complied with the international community’s demand to rid itself of such weapons.

This ‘fact’ seems now almost certainly to be untrue, and there is a growing body of evidence that this was well known to at least the US and UK governments at the time. No weapons of mass destruction have been found.

In light of these developments, we respectfully pose the following questions once again:

- (1) Does Denmark support the Bush doctrine of preventive war?
- (2) Does Denmark adhere to the provisions and principles of the United Nations Charter, and in particular articles 2(3), 2(4) and 51?
- (3) Does Denmark consider itself bound by the 4<sup>th</sup> Geneva Convention, Hague Regulations and Hague Convention for the Protection of Cultural Property and provisions of Protocol I to the Geneva Convention?

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<sup>1</sup> See attached list of list of some of these legal analyses, showing that the US/UK/Australian legal position is without foundation.

It is becoming clear that the legal position taken by the US, UK and other Coalition governments is completely without foundation. What has now emerged is the appearance that the US, UK and Australian governments ignored contrary legal advice from impartial lawyers, and instead adopted an unsupportable legal analysis to justify the invasion. The reality that permanent members of the Security Council acted not only illegally but also in full knowledge of the illegal nature of their actions is sobering and must be addressed to restore the integrity of our international institutions.

We respectfully request your government to take the following steps to help redress this dangerous situation.

Greenpeace is calling on all states to:

- Renounce the Bush doctrine of preventive war and the unilateral use of force outside the remit of the UN Charter;
- Return to adherence to multilateralism, international law and implementation of treaty obligations as the only true means to achieve real security for nations and their people;
- Ensure that non-proliferation and disarmament principles are applied universally and without discrimination.

We would be grateful, if you could confirm to us whether Denmark is willing to take these important steps.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lennart Dalèus', written in a cursive style.

Lennart Dalèus  
Executive Director  
Greenpeace

## Legal issues references

A summary of online legal opinions and other legal reference material on preventive war, the illegality of the Iraq war and post war analyses available on the internet follow. This summary does not include analyses in scholarly journals.

### Material on Preventive War

Peter Weiss, "Nuclear Weapons and Preventive War". November 2, 2003.

<http://www.globalpolicy.org/opinion/2003/1102nuclear.htm>. The ultimate paradox of nuclear deterrence: The weapon that is supposed only to dissuade countries from going to war is turning into a major reason for countries to go to war.

Hilary Charlesworth, "Is International Law Relevant to the War in Iraq and its Aftermath," 29 October 2003. <http://www.globalpolicy.org/empire/un/2003/1029charlesworth.pdf>. There is little doubt that preventive war is inconsistent with the Charter.

Nicole Deller and John Burroughs, "Jus ad Bellum: Law Regulating Resort to Force." Winter 2003. <http://www.abanet.org/irr/hr/winter03/lawregulatingresorttoforce.html>. Preventive war undertaken unilaterally by states also appears contrary to international law predating the Charter. Uniting for Peace Coalition, Petition for an Emergency United Nations Resolution on Iraq. 1 May 2003. <http://www.petitiononline.com/1May2003/petition.html>. Petition for General Assembly *inter alia* to declare that preventive and preemptive war violates international law and the principles and Charter of the United Nations.

Center for Economic and Social Rights (CESR), "Tearing Up the Rules:" The Illegality of Invading Iraq". March 2003. <http://www.cesr.org/iraq/docs/tearinguptherules.pdf>. US policy towards Iraq poses a direct challenge to the central purpose of the UN, in particular the Charter's prohibition on the use of preventive force.

Duncan Currie, "'Preventive War' and International Law after Iraq," 22 May 2003.

[http://www.greenpeace.org/international\\_en/multimedia/download/1/285773/0/paper\\_on\\_preventive\\_war\\_doctrine.pdf](http://www.greenpeace.org/international_en/multimedia/download/1/285773/0/paper_on_preventive_war_doctrine.pdf). The United States has put itself and the coalition of the willing apart from the permanent institutions and international law. States can choose multilateralism, the rule of law, and respect for international law, treaties and institutions or they can choose a unilateralist approach in which States pursue their own interests and accept the rule of economic and military power.

### Articles About the Illegality of the Iraq War

Law Professors for the Rule of Law. <http://www.the-rule-of-law.com/>

-317 Law Professors from 87 law schools: A US War Against Iraq Will Violate US and International Law and Set a Dangerous Precedent For Violence That Will Endanger the American People.

31 Canadian Law Professors say war is illegal. March 20, 2003.

<http://www.globeandmail.com/servlet/story/RTGAM.20030320.ulaww0320/BNStory/International>

Lawyers Committee on Nuclear Policy, International Appeal by Lawyers and Jurists against the "Preventive" Use of Force. The "preventive" use of force currently being considered against Iraq is both illegal and unnecessary. <http://www.lcnp.org/global/LawyersandJuristsAppeal.htm>.

Michael C. Dorf, Is the War on Iraq Lawful? 19 March, 2003.

<http://writ.news.findlaw.com/dorf/20030319.html> If the U.S. can take non-Security-Council authorized pre-emptive or preventive military action, then other countries can as well. Thus, regional powers fearing the rise of neighbouring rivals could decide that it is better to act against their future enemies before the threat fully materializes.

International Commission of Jurists, "ICJ Deplores Moves towards an Aggressive War on Iraq." 18 March 2003. [http://www.icj.org/news.php3?id\\_article=2770&lang=en](http://www.icj.org/news.php3?id_article=2770&lang=en).

Keir Starmer, "Sorry, Mr Blair, but 1441 does not authorise force." March 17, 2003.

<http://www.guardian.co.uk/Iraq/Story/0,2763,915579,00.html>.

Duncan E. J. Currie, Greenpeace: Analysis of the US Legal Position on the Use of Force Against Iraq: US justification of the use of force against Iraq is without legal foundation. 16 March, 2003. At <http://www.impeach-bush-now.org/Articles/CampaignMore/greenpeace.htm>.

CNN, "Annan targets U.S. stance". March 11 2003.  
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Mark Littman, QC "A Supreme International Crime". March 10, 2003.  
<http://www.guardian.co.uk/Iraq/Story/0,2763,910950,00.html>. Any member of a government backing an aggressive war will be open to prosecution.

Guardian, March 7 2003, "War would be illegal",  
<http://www.guardian.co.uk/Iraq/Story/0,2763,909314,00.html>. 16 senior scholars of international law stated that on the basis of the information publicly available, there is no justification under international law for the use of military force against Iraq.

Rabinder Singh and Charlotte Kilroy, "In the Matter of the Potential Use of Armed Force by the UK Against Iraq and the Draft US/UK Resolution Published On 24 February 2003", 3 March 2003.  
<http://www.publicinterestlawyers.co.uk/legaldocs/OPINION4.doc>. The Draft Resolution would not authorise the US and the UK to use force against Iraq if it were adopted.

Sydney Morning Herald, "Coalition of the willing? Make that war criminals." February 26, 2003.  
43 Australian legal experts said the war against Iraq would be a fundamental violation of international law and the United States doctrine of pre-emptive self-defence contradicts the cardinal principle of the modern international legal order and the primary rationale for the founding of the UN after World War II. <http://www.smh.com.au/articles/2003/02/25/1046064028608.html>

Rabinder Singh and Charlotte Kilroy, "In the Matter of The Potential Use of Armed Force by the UK Against Iraq, 23 January 2003.  
<http://www.publicinterestlawyers.co.uk/legaldocs/OPINION3.doc>. The UK cannot rely on the authorisation to use force in Resolution 678 to take military action against Iraq.

Prof. Vaughan Lowe, BBC mock judicial review, 19 December 2003.  
<http://www.inlap.freeuk.com/legal.htm#Extracts%20from%20Professor%20Vaughan%20Lowe's%20conclusions%20follow>. 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.

Jules Lobel, "Lawyers Statement on UN Resolution 1441 on Iraq." November 27, 2002.  
[http://www.fpiif.org/commentary/2002/0212lawyers\\_body.html](http://www.fpiif.org/commentary/2002/0212lawyers_body.html).

Mary-Ellen O'Connell, "UN Resolution 1441: Compelling Saddam, Restraining Bush".  
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Marjorie Cohn, UN Resolution 1441: Blackmailing The Security Council.  
<http://jurist.law.pitt.edu/forum/forumnew74.php>. Only the Security Council can authorize the use of armed force.

Rabinder Singh and Charlotte Kilroy, "In the Matter of the Potential" 15 November 2002, at  
<http://www.publicinterestlawyers.co.uk/legaldocs/OPINION2.doc>.

Rabinder Singh QC and Alison McDonald, Opinion: Legality of use of force against Iraq. 10 September 2002. <http://www.lcnp.org/global/IraqOpinion10.9.02.pdf>. The use of force against Iraq would not be justified under international law unless (a) Iraq mounted a direct attack on the United Kingdom or one of her allies and that ally requested the UK's assistance or (b) an attack by Iraq on the UK or one of its allies was imminent and could be averted in no way other than by the use of force.

Mary Ellen O'Connell, "The Myth of Preemptive Self Defence", August 2002,  
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## Post War Analyses

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Shane Darcy, "Through a Legal Lens - The Attack and Occupation of Iraq", December 13, 2003.

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Oliver Burkeman and Julian Borger, "War Critics Astonished as US Hawk Admits Invasion was Illegal". <http://www.globalpolicy.org/security/issues/iraq/attack/law/2003/1120hawk.htm>.

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Helena Smith, Greeks Accuse Blair of War Crimes in Iraq. July 29, 2003.

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United States would be best served by adhering to the UN Charter System

Rabinder Singh and Charlotte Kilroy, "In the Matter of the Legality of the Use of Force Against Iraq and the Alleged Existence of Weapons of Mass Destruction." 6 June 2003.

<http://www.publicinterestlawyers.co.uk/legaldocs/OPINION5.doc>. Evidence that WMD was exaggerated calls into question the factual foundation for the UK Attorney-General's view that the invasion was lawful in international law.

Hans Blix: "I cannot see that the action, in the way it was justified, was compatible with the UN Charter," Blix said, adding that it had undermined the Security Council's authority."

[http://www.news.com.au/common/story\\_page/0,4057,6880207%255E1702,00.html](http://www.news.com.au/common/story_page/0,4057,6880207%255E1702,00.html)

Amnesty International, Iraq: Memorandum on concerns related to legislation introduced by the Coalition Provisional Authority. 4 December 2003.

<http://web.amnesty.org/library/Index/ENGMDE141802003>

Hussein's Trial: Humanitarian Laws. December 16, 2003. Discussion of role of the U.S., the U.N. and international humanitarian law in the trial of Saddam Hussein.

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## Links

Links to Opinions on Legality of War Against Iraq:

<http://www.globalpolicy.org/security/issues/iraq/attack/lawindex.htm>

Links to Opinions on Legality of War Against Iraq: <http://www.robincmiller.com/ir-legal.htm>

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<http://www.lawyersagainsthewar.org>. Lawyers Against the War

<http://www.lcnp.org/index.htm>. Lawyers Committee on Nuclear Policy