UNIVERSITY OF AKUREYRI
DEPARTMENT OF HUMANITIES AND SOCIAL SCIENCES
FACULTY OF LAW, 2011

Iceland and "The Coalition Of The Willing"

Was Iceland's Declaration of Support Legal According to Icelandic Law?

By, Hjalti Ómar Ágústsson
13 May 2011

Department of Humanities and Social Sciences
BA Thesis

UNIVERSITY OF AKUREYRI
DEPARTMENT OF HUMANITIES AND SOCIAL SCIENCES
FACULTY OF LAW, 2011

Iceland and "The Coalition Of The Willing"

Was Iceland's Declaration of Support Legal According to Icelandic Law?

By, Hjalti Ómar Ágústsson
13/5/2011

Instructor: Rachael Lorna Johnstone

Department of Humanities and Social Sciences
Final Thesis Towards a BA Degree in Law (180 ECTS Credits)

Declarations:

I hereby declare that I am the sole author of this thesis and that it is the product of my own research.

_____

Hjalti Ómar Ágústsson

It is hereby certified that in my judgment, this thesis fulfils the requirements for a B.A. degree at the Department of Humanities and Social Sciences.

_____

Dr. Rachael Lorna Johnstone

Abstract

In a press briefing in the United States Department of State on 18 March 2003, Iceland's name appeared on a list of nations who were willing to support in one way or another an invasion into Iraq without explicit Security Council support or authorization. These states are commonly known as "The Coalition of the Willing". Consequently Iraq was invaded on 20 March 2003 by four member states of the Coalition.

The invasion was justified based on a combination of Security Council resolution 1441 and prior resolutions which together were interpreted as giving implied authorization, and on anticipatory self-defense based on Article 51 of the UN Charter. The legality of the invasion has been contested as being a violation of international law and the Charter in particular. This thesis does not purport to bring the issues surrounding the legality of the invasion to a conclusion, the main justifications and criticisms thereof are discussed in the first half of the thesis rather to emphasize the complexity of the matter.

The legality of the Icelandic government's decision to join the Coalition according to Icelandic law is the main focus of this thesis and the latter half of the thesis is dedicated to that issue. In a statement by Prime Minister Davíð Oddson, published by the White House 26 March 2003, Iceland's support is said to involve access to Keflavík Airport and flyover authorization in addition to political and humanitarian support. This raises questions as to whether the decision involves a servitude on Icelandic territory which can only be authorized by Althingi according to Article 21 of the Icelandic Constitution, and whether the duty consult with the Committee on Foreign Affairs, as prescribed in article 24 of law nr. 55/1991 on Althingi's procedure, was fulfilled.

It is the conclusion of this thesis that Althingi and the Committee on Foreign Affairs should both have been consulted and since they were not the decision was illegal according to Icelandic law.

Útdráttur

Á blaðamannafundi þann 18 mars 2003 í bandaríska utanríkisráðuneytinu birtist nafn Íslands á lista yfir lönd sem viljug voru að styðja með einhverjum hætti innrás í Írak án leyfis Öryggisráðs Sameinuðu Þjóðanna. Þjóðir þær sem á þessum lista birtust eru yfirleitt kallaðar "The Coalition of the Willing" eða "Bandalag hinna viljugu". Í framhaldi af þessu réðust fjórar af þjóðum hins nýstofnaða bandalags inn í Írak þann 20. mars 2003.

Innrásin var réttlætt með vísan í ályktun 1441 frá Öryggisráði Sameinuðu Þjóðanna ásamt með eldri ályktunum. Byggt var á því að þegar ályktun 1441 væri lesin með eldri ályktunum þá væri í því samhengi falið óbeint leyfi til innrásar. Auk þess var byggt á sjálfsvörn gegn yfirvofandi hættu, reist á 51. gr. Stofnsáttmála Sameinuðu Þjóðanna. Lögmæti innrásarinnar hefur verið dregið í efa og hefur hún verið talin brjóta í bága við alþjóðalög og þá sérstaklega Stofnsáttmálann. Hér verður ekki reynt að sýna fram á með beinum hætti hvort innrásin sjálf var lögmæt eða ekki heldur verða lagalegar réttlætingar þær sem gefnar voru fyrir innrásinni og gagnrýni á þær ræddar í fyrri hluta þessa rits til að sýna fram á hve marslungið mál þetta er.

Seinni hluti rits þessa er tileinkaður stuðningi íslenskra yfirvalda við innrásina í Írak og lögmæti þeirrar ákvörðunar. Samkvæmt yfirlýsingu frá Davíð Oddsyni þáverandi forsætisráðherra sem birt var af Hvíta Húsinu 26. mars 2003 kemur fram að stuðningur Íslands felist í aðgangi að Keflavíkurflugvelli og íslenskri lofthelgi auk pólitísks stuðnings og stuðnings við mannúðarstarf. Þetta vekur upp spurningar um hvort að þessi ákvörðun feli í sér kvaðir á íslenskt land eða landhelgi sem samkvæmt 21. gr. stjórnarskrárinnar skal bera undir Alþingi og hvort þeirri skyldu ráðherra að

ráðfæra sig við utanríkismálanefnd samkv. 24. gr. laga nr. 55/1991 um þingsköp Alþingis hafi verið fullnægt.

Niðurstaðan er sú að ákvörðunina hefði átt að ber undir bæði Alþingi og utanríkismálanefnd og þar sem hvorugu skilyrðinu hafi verið fullnægt hafi stuðningsyfirlýsingin verið ólögmæt samkvæmt íslenskum lögum.

TABLE OF CONTENTS

1 Introduction

On March 20th 2003 multinational forces under US and UK leadership called "The Coalition of the Willing" invaded Iraq. On May 1st US president George Bush made a speech onboard the USS Abraham Lincoln which symbolized the end of the invasion under a banner saying "Mission Accomplished."[1]

The invasion did not come out of the blue and had been months in the planning, in fact it might be argued that an invasion of Iraq had been on the agenda for a large group of very influential forces in the USA for some years before March 2003.[2] The driving forces behind the invasion were the US and the UK governments led by George W. Bush and Tony Blair respectively. The US government was especially keen on invading Iraq and refused to bow to international pressure or accept any other measures proposed by the United Nations Security Council (Security Council) which was split in its position on Iraq. In lieu of Security Council consensus for support, the US and the UK scrambled for political support from individual states for a military action without a specific Security Council authorization.

In a daily press briefing on 18 March 2003 State Department spokesman Richard Boucher listed 30 states as part of a "Coalition for the Immediate Disarmament of Iraq" including Iceland.[3] This seems to have gone largely unnoticed in Iceland at the time perhaps due to the fact that Althingi was in recess preparing for parliamentary elections. However, in a White House press release on 27 March 2003 all 49 members of the Coalition including Iceland were listed.[4] This list came as some surprise to the people of Iceland and to some members of the Icelandic cabinet as well. The presence of Iceland on this list of willing

[1] Jarret Murphy, 'Text of Bush Speech: President Declares End To Major Combat In Iraq' *CBS News* (1 May 2003) <http://www.cbsnews.com/stories/2003/05/01/iraq/main551946.shtml> accessed 23 March 2011

[2] Robin Cook, *The Point of Departure* (1st edn Simon and Schuster, London 2003) 49

[3] U.S. Department of State. 'Daily Press Briefings, 18 March 2003' (U.S Department of State Archive, Daily Press Briefings, 18 March 2003, State Department Spokesman Richard Boucher briefed,) <http://www.state.gov/documents/organization/18912.asx> accessed 29 March 2011; Transcript available at: Washington Hyper File, East Asia Edition, 18 March 2003 under: Briefings, Department of State, http://wfile.ait.org.tw/wf-archive/2003/030318/epf202.htm accessed 29 March 2011

[4] The White House, President George W Bush,. 'For Immediate Release, 27 March 2003,' (List of Coalition Members 27 March 2003) <http://georgewbush-whitehouse.archives.gov/infocus/iraq/news/20030327-10.html> accessed 29 March 2011

nations was met with much controversy in Iceland as well as elsewhere and raised questions of the legitimacy of this decision and whether it was acceptable that one or two members of the government could make such a decision without including democratically elected representatives.

The subject of this BA-thesis will be to get to the bottom of whether the decision to join The Coalition of the Willing and support the invasion taken by Prime Minister Davíð Oddsson (Oddsson) and Foreign Minister Halldór Ásgrímsson (Ásgrímsson), was legal according to Icelandic law. The initial object will be to; analyze the process behind the decision and how democratic institutions were involved and if there is a protocol for such decisions in Icelandic law.

Although the subject of the thesis will be to determine the legality of the *decision to support* the invasion in regard to Icelandic law, the controversy regarding the legitimacy of the invasion itself must be addressed. The Thesis will therefore start with some discussion on the War in Iraq and the legality of the invasion according to international law, especially the UN Charter's Chapter VII. The second part of the thesis will address the legality of the decision to support the invasion according to Icelandic law. The main focus will be on the Constitution, the Committee for Foreign Affairs and Eiríkur Tómasson's legal opinion for Halldór Ásgrímsson.

2 Prelude to War on Iraq

2.1 Coalition of the Willing

The "Coalition of the Willing" was a term used for those countries that were willing to support in one form or another the USA's invasion of Iraq without the explicit authorization of the Security Council. The number of states which constituted the Coalition varied somewhat in its early days and went from being 30 states on 18 March 2003,[5] to 49 states on 27 March 2003.[6] The varying nature of the support each state provided was underlined in a White House release from 27 March 2003 where it says that: "Contributions from Coalition member nations range from: direct military participation, logistical and intelligence support, specialized chemical/biological response teams, over-flight rights, humanitarian and reconstruction aid, to political support."[7] As it turned out only 2 states provided real military assistance to the US and UK, namely Australia and Poland.[8]

2.1.1 Iceland's Support

In a White House release dated 26 March 2003 Prime Minister Oddsson is quoted in a declaration of support from 18 March 2003 stating that Iceland's support would include: "[f]irst of all, [...] flyover authorization for the Icelandic air control area. Secondly, the use of Keflavik Airport, if necessary. In third place, we will take part in the reconstruction of Iraq after the war ends. Fourthly, we expressed political support for Resolution 1441 being enforced after four months of delays."[9]

Essentially this means that Iceland was committed to political support, post-invasion contributions and authorizing access to Icelandic airspace and territory. However in a memorandum sent to Foreign Minister Ásgrímsson on 18 March 2003 it is confirmed that

[5] U.S Department of State Archive, *Supra* note 3
[6] The White House, George W Bush, *Supra* note 4
[7] Ibid
[8] Tarcisio Gazzini, *The Changing Rules on the Use of Force in International Law* (Melland Schill Studies in International Law, Manchester University Press, Manchester 2005) 78
[9] The White House, President George W Bush. 'For Immediate Release, 26 March 2003' (Declarations of support from Coalition States) <http://georgewbush-whitehouse.archives.gov/infocus/iraq/news/20030326-7.html> accessed 29 March 2011

Iceland has made it clear that its support is only political, and that it is not clear what it means to be on the Coalition list.[10] Another Foreign Ministry memo from 19 March 2003 clearly states that no one knows, not even the US government, what it means to be on the list or what it will be used for, and attempts to get answers to these questions have been unsuccessful.[11]

2.1.2 Doubts Regarding Actual "Willingness"

The Coalition was heavily criticized in the media and doubts were raised as to the *de facto* support provided by the states involved. One reporter called it the "Coalition of the billing – or unwilling" and listed the means that the USA had at its disposal to buy, threaten or intimidate states to side with them on the issue of Iraq.[12] At the time the US government was planning the withdrawal of its forces from the Keflavík base much to the Icelandic government's dismay.[13] Iceland's support may have been intended as a bargaining chip in an effort to persuade the US not to withdraw their forces along with their 260 million dollar a year contribution to the base and their contribution as a large employer.[14] If the decision was intended as a bargaining chip it was unsuccessful since the US base in Keflavík was shut down in the Fall of 2006.

The Coalition seems to be a slightly haphazard group of states most, like Iceland, providing little support beyond moral and political. There is some evidence that suggests that those responsible for declaring support were not all aware that they were adding their states to an official list of supporters for an invasion not explicitly sanctioned by the Security

[10] Utanríkisráðuneytið. 'Íraksmálið staðan 18. Mars 2003' (Gögn utanríkisráðuneytisins varðandi stuðning Íslands við Íraksstríðið 2002-2003, Skjal 35) <http://www.utanrikisraduneyti.is/utgefid-efni/iraksskjol2002-3/> accessed 21 April 2011; The Foreign Ministry released part of the documents relating to the Iraq issue on 11 November 2010. This is from document nr. 35 but there is no indication as to who wrote it or where it came from

[11] Utanríkisráðuneytið. 'Utanríkisráðuneytið: minnisblað' (Gögn utanríkisráðuneytisins varðandi stuðning Íslands við Íraksstríðið 2002-2003, Skjal 40) <http://www.utanrikisraduneyti.is/utgefid-efni/iraksskjol2002-3/> accessed 21 April 2011

[12] Laura McClure. 'Coalition of the billing – or unwilling' *Salon.com* (12 March 2003) <http://dir.salon.com/story/news/feature/2003/03/12/foreign_aid/index.html> accessed 30 March 2011

[13] 'Stefnt að viðræðum í náinni framtíð' *Morgunblaðið* (24 July 2003) 26

[14] Árni Helgason, 'Framkoma Bandaríkjamanna sögð valda Íslendingum vonbrigðum' *Morgunblaðið* (18 March 2006) 4

Council. The Solomon Islands were listed as supporters of the invasion on 27 March 2003 and promptly issued a statement that it had never agreed to be added to any list even if they had agreed to authorize the use of their ports and airfields.[15] Costa Rica was also removed from the list in 2004 after the country's Constitutional Court had declared the support to be in violation of the Constitution.[16] Furthermore a Dutch report headed by WJM Davids former president of the Dutch Supreme Court (the Davids report) states that the Netherlands presence on the list of the Willing was a mistake due to lack of communication between the Dutch Ministry of Foreign Affairs and the Dutch ambassador in the US.[17] It further stated that the Dutch government had made it clear that the support was only political, not military, a distinction which the US government treated with some lack of respect.[18] The support of the Coalition members then seems, at least to some extent, to have been somewhat exaggerated and misinterpreted. However, as stated in the Davids report, this support, real or not, benefited the US politically on a global level.[19]

Some Icelanders have advocated that Iceland be removed from the Coalition and in 2007 Foreign Minister Ingibjörg S. Gísladóttir proclaimed triumphantly, and mistakenly, that Iceland was no longer on that list.[20] The whole purpose of the Coalition was to gather political and moral support to justify an invasion in to Iraq without a UN mandate. Although it would have been a clear statement with some force in March or April 2003, it is hard to see what purpose it would serve to withdraw Iceland's name from the list of Coalition states four years after the invasion or what actual effect it would have. Support was given and the

[15] Alan Perrott, 'Coalition of the Willing? Not us, say Solomon islanders' *The New Zeeland Herald* (27 March 2003) <http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=3300727> accessed 30 March 2011
[16] 'Costa Rica Drops Out of Coalition' *The New York Times* (10 September 2004) <http://www.nytimes.com/2004/09/10/international/americas/10costa.html?_r=3> accessed 30 March 2011
[17] WJM Davids, MGW den Boer, C Fasseur, T Koopmans, NJ Schrijver, MJ Schwegman and AP van Walsum, 'Rapport Commissie Van Onderzoek Besluitvorming Irak' (Uitgeverij Boom (Amsterdam 12 January 2010) 517 para 12.
[18] Ibid, para 13
[19] Ibid
[20] Magnús Halldórsson. 'Ísland ekki á lista yfir vígfúsar þjóðir' *Fréttablaðið* (12 September 2007) p. 6

invasion took place, any retroactive removal of that support is not possible nor will it change or remove Iceland's legal, moral and political responsibility.

2.2 The UN Charter and the Use of Force

The United Nations were founded in the wake of two World Wars and the atrocities that armed conflict between states had brought to the world. The general aim of the UN is not hard to discover. In the preamble to the UN Charter and in its first two articles the words "peace" and "peaceful" appear 11 times.

2.2.1 The Purposes and Principles of the UN

The UN's objectives are clearly defined in Article 1 of the UN Charter. They are:

> [t]o 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.[21]

In light of the horrible events leading up to the foundation of the UN this emphasis on peace is hardly surprising. These principles of promoting peace are further emphasized in Article 2 which sets out the principles in accordance to which the Member States and the organization shall act. Paragraph 4 says that "[a]ll 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."[22]

Chapter VI of the Charter sets out in Articles 33 to 38 the principles of Pacific Settlement of Disputes. The main principle is that in the event of the parties to a dispute failing to reach a peaceful solution, resolution must be sought through the Security Council and the International Court of Justice.[23] Dr. Hans Blix former UNMOVIC chairman and weapons inspector in Iraq in a testimony given to the Iraq Inquiry in the UK summed it up quite nicely:

---

[21] UN Charter (24 October 1945) 1 UNTS , 1(1)
[22] Ibid, 2(4)
[23] Ibid, 33-38.

> I had always seen and still see the UN Charter as a fundamental progress in the international community when it says that states are not allowed to use force against other states' territorial integrity, etc. -- with two exceptions. One is the self-defense against an armed attack and the other is when there is an authorisation from the Security Council […][24]

Chapter VII deals with situations where there is a threat to international peace and security.

2.2.2 Chapter VII

The main principle of Chapter VII again is that all decisions for use of force, save for self-defense, must go through the Security Council.[25] The conventional view according to Tom J Farer is that:

> [c]harter Articles 2(4) and 51, together with the entirety of Chapter VII (Articles 39-51), divide the universe of force into three parts: force authorized by the Security Council under Chapter VII as a means of terminating a threat to the peace, breach of the peace, or act of aggression; force employed in self-defense against an armed attack and aggression.[26]

Articles 39 to 50 deal with force authorized by the Security Council and Member States involvement in enforcing The Security Council's decisions. Article 43 of the Charter was supposed to set up a standing UN army, provided by the Member States, which would be deployable by the UN when necessary.[27] However Member States were reluctant to provide troops for such an army and it therefore never materialized.[28] This lack of bite has been addressed through the process of the Security Council authorizing Member States to use force on its behalf based on Chapter VII.[29] The legality of this process is not clear and it has opened a window for states acting based on "implied authorization."[30] There is concern that this principle may weaken the UN,[31] and Tarcisio Gazzini emphasises that for states to rely on implied authorization they must "demonstrate beyond any reasonable doubt the will of the

---

[24] John Chilcot, 'Hans Blix, Oral Evidence' (*The Iraq Inquiry*, 27 July 2010) <http://www.iraqinquiry.org.uk/media/51945/20100727-blix-final.pdf> accessed 14 April 2011
[25] UN Charter, *Supra* note 21, 39-50
[26] Tom j. Farer. 'The prospect for International Law and Order in the Wake of Iraq' (2003) 97(No. 3) American Journal of International Law 621, 621 footnote 2
[27] UN Charter *Supra* note 21, 43
[28] Christine Gray, *International Law and the Use of Force*,(Foundations of Public International Law, 2nd edn Oxford University Press, Oxford 2004) 195
[29] Christine Gray, Ibid, 252, and; Tarcisio Gazzini, *Supra* note 8, 43
[30] Christine Gray, Ibid, 264, and; Tarcisio Gazzini, Ibid, 92
[31] Christine Gray, Ibid, 280

Security Council to authorize, in accordance with its own voting procedure, the resort to force."[32] The issue of self-defense is addressed in article 51.

2.2.3 Article 51

Article 51 deals with the issue of individual or collective self-defense and reads:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.[33]

The Article is clear on that for self-defense to be justified it must be a response to an "armed attack". However the matter is not quite that simple and practice reveals that states have little tolerance for provocations on land, air and sea around their borders.[34] There is also debate on State responsibility for non-state actors with links to their territory and a case in point would be the Taliban regime in Afghanistan and Al Qaeda.[35] The concept of "anticipatory" or "pre-emptive" self-defense is also an issue that has been debated but the idea has not got many supporters among Member States.[36] In fact prior to 9/11 the concept of self-defense was generally interpreted narrowly and most States seem to still favour that interpretation.[37]

For self-defense to be acceptable the threat and response must fulfill certain criteria. The threat must be immediate,[38] the response must be necessary to halt aggression which means that other measures would be ineffective, and the response must be proportionate to the objective which is to prevent further attacks.[39] Further discussion on this matter is ample material for a thesis of its own and will not be pursued here. However, as Christine Gray warns in her book: if the principles of imminence, necessity and proportionality are

[32] Tarcisio Gazzini, *Supra* note 8, 95
[33] UN Charter *Supra* note 21, 51
[34] Tarcisio Gazzini, *Supra* note 8, 133-139
[35] For further discussions see; Christine Gray, *Supra* note 28, 168, and; Tarcicio Gazzini, *Supra* note 8, 76
[36] Christine Gray, Ibid, 130; Tarcisio Gazzini, Ibid, 149
[37] Christine Gray, Ibid, 133
[38] Tarcicio Gazzini, *Supra* note *8*, 191
[39] Ibid, 193-199, and Christine Gray, *Supra* note 35, 167

abandoned for vague concepts of deterrence and prevention "then there are no limits on self-defense".[40] As a result states would not need to rely on The Security Council's authorization for military actions to the same extent as they do now which might in turn result in negative implications for world peace.

It stands to reason that if Article 51 is to be interpreted widely and the principle of anticipatory self-defense was to be accepted as a discretionary measure for individual states, the function of the UN Charter as a means to control use of force would be considerably weakened. Not least if, as John Yoo has suggested, States should be able to resort to force based on what they could have "reasonably understood the facts to be at the start of hostilities"[41] and that nations should act against "rogue" states in self-defense on the notion that they might someday have access to WMD.[42] This would essentially mean that States could attack anyone at all based on information from intelligence agencies which may very well have agendas of their own not necessarily aimed at promoting world peace or general wellbeing.

2.3 United Nations Security Council Resolution 1441

The Coalition invasion of Iraq was justified on collective self-defense (the USA) and Iraq's failure to comply with Security Council resolution 1441 from 8 November 2002,[43] which the Coalition interpreted as justifying the revival of resolution 678 from November 1990,[44] based on implied authorization from the Security Council.[45]

[40] Christine Gray, Ibid, 167
[41] John Yoo. 'International Law and the War in Iraq' (2003) 97(No. 3) American Journal of International Law 563, 567
[42] Ibid, 575
[43] S.C. Res. 1441, UN Doc S/RES/1441 (8 November 2002)
[44] S.C. Res. 678, UN Doc S/RES/0678 (29 November 1990)
[45] Christine Gray, *Supra* note 35, 270

2.3.1 Resolutions 678 and 687

Resolution 678 authorized the use of force in the first Gulf war, Operation Desert Storm. However resolution 687 from 3 April 1991,[46] which stipulated the conditions of the cease-fire in the first Gulf-war including: disarmament; weapons inspections and prohibition of any activity that could be linked to the production of chemical, biological or nuclear weapons,[47] suspended resolution 678. Resolution 1441 states that Iraq had been in breach of resolution 687 and affords Iraq a final opportunity to comply with its obligations. Paragraph 4 states that the Security Council:

> *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;[48]

Paragraphs 11 and 12 state that upon receiving reports about Iraq's failure to comply with the conditions of the resolution from "the Executive Chairman of UNMOVIC and the Director-General of the IAEA"[49] the Security Council will convene immediately in order to consider the situation. Furthermore paragraph 13 emphasizes that Iraq has been repeatedly warned and that continued violations of its obligations will have serious consequences for Iraq. However the Security Council "[d]ecides to remain seized of the matter",[50] indicating that the matter is very much still under the authority of the Security Council and that should any further steps be taken, they would be taken by the Security Council not individual states.[51] Again Hans Blix puts things into perspective:

> I think that when Condoleezza Rice [...] said that the military action taken was simply upholding the authority of the Security Council, it strikes me as something totally absurd. [...] they knew that three permanent members, the French and the Chinese and the Russians, were opposed to any armed action, and they were aware that they could not get a majority for a resolution that even implied the right to military action. To say then

[46] S.C. Res. 687, UN Doc S/RES/0687 (3 April 1991)
[47] Ibid paras 8 – 13
[48] S.C. Res. 1441, *Supra* note 43, para 4
[49] UNMOVIC stands for: *The United Nations Monitoring, Verification and Inspection Commission*, and IAEA stands for: *The International Atomic Energy Agency.*
[50] S.C. Res. 1441, *Supra* note 43, para 14
[51] Thomas M Franck, 'What Happens Now? The United Nations After Iraq' (2003) 97(No. 3) American Journal of International Law 607, 613

> that yes, the action upheld the authority of a council that they knew was against it I think strikes me as going against common sense.[52]

2.3.2 Hidden Triggers and Automaticity

Resolution 1441 was adopted by a unanimous vote at the SC 4644th meeting in New York, after a lengthy discussion and preparation. The discussion revolved among other things around what the appropriate response should be if Iraq continued to violate its obligations. All fifteen members commented on their votes and on the Resolution and most of them were adamant that the resolution contained no "hidden triggers" or "automaticity" that would allow individual states to unilaterally take action against Iraq. Almost all of them mention this safeguard in the resolution in some way. The French representative Mr. Levitte said:

> … in the event that the Executive Chairman of [UNMOVIC] or the Director General of [IAEA]) reports to the Security Council that Iraq has not complied with its obligations, the Council would meet immediately to evaluate the seriousness of the violations and draw the appropriate conclusions. France welcomes the fact that all ambiguity on this point and all elements of automaticity have disappeared from the resolution.[53]

Mr. Aguilar Zinser from Mexico said: "[w]e reiterate the belief reflected in the agreed text that the possibility of the use of force is valid only as a last resort, with prior explicit authorization required from the Security Council."[54] Mr. Mekdad from the Syrian Arab Republic said he voted for the resolution based on assurances from the US, the UK, Russia and France that it would not be used as a pretext for striking against Iraq and further stated that: "[t]he resolution should not be interpreted, through certain paragraphs, as authorizing any State to use force. It reaffirms the central role of the Security Council in addressing all phases of the Iraqi issue."[55]

It is very clear both from paragraphs 11 through 14 of resolution 1441 and the summary record of the 4644th meeting that it was supposed to be safeguard which ensured a peaceful resolution of the Iraq situation or at least that all measures taken against Iraq would go through the UN. In fact the US and the UK governments tried their utmost to secure a

[52] John Chilcot, *Supra* note 24, 25
[53] Security Council Meeting 8 November 2002, (S/PV.4644, 8 November, 2002) 5
[54] Ibid, 6
[55] Ibid, 10

second Resolution that would allow them to invade Iraq with a UN mandate.[56] Those efforts were to no avail and as a result Coalition forces invaded Iraq 20 March 2003 without a second Security Council Resolution.

2.4 The Project for the New American Century

The whole debate on the legality of the 2003 invasion is coloured by the underlying desire of the US to invade Iraq. The UN charter promotes peace and security which if achieved should benefit all Member States. The idea is that certain acts of aggression by individual groups or states warrant armed response through the UN. However any use of force, except for self-defense, must be authorized through the Security Council[57] and some reluctance to resort to armed force is natural given the aim of the Charter. Leading up to the invasion it was clear to all that the US was dedicated to invading Iraq. One does not have to look very far for evidence of this desire.

In 1997 the Project for the New American Century (PNAC) was established. In a Statement of Principles from June 1997 the aim of this organisation is made clear. According to the Statement the aim is to "shape a new century favourable to American principles and interests."[58] The Statement further reads that in order for the US to accomplish that aim:

> we need to accept responsibility for America's unique role in preserving and extending an international order friendly to our security, our prosperity, and our principles.
>
> Such a Reaganite policy of military strength and moral clarity may not be fashionable today. But it is necessary if the United States is to build on the successes of this past century and to ensure our security and our greatness in the next.[59]

In a letter from PNAC to President Clinton on Iraq, dated 26 January 1998, the group make their intentions regarding Iraq quite clear. They worry that should Hussein acquire WMD "a significant portion of the world's supply of oil will all be put at hazard"[60] and they conclude:

---

[56] 'Draft Resolution on Iraq: Text' *BBC News* (24 February 2003) <http://news.bbc.co.uk/2/hi/europe/2795747.stm> accessed 10 May 2011.
[57] UN Charter *Supra* note 21, 2(4)
[58] Elliott Abrams and others. 'Statement of Principles' (*Project for the New American Century* 3 June 1997) <http://www.newamericancentury.org/statementofprinciples.htm> accessed 21 April 2011
[59] Ibid.
[60] Elliott Abrams and others. 'Letter to President Clinton on Iraq' (*Project for the New American Century* 26 January 1998) <http://www.newamericancentury.org/iraqclintonletter.htm> accessed 21 April 2011

> We believe the U.S. has the authority under existing UN resolutions to take the necessary steps, including military steps, to protect our vital interests in the Gulf. […] American policy cannot continue to be crippled by a misguided insistence on unanimity in the UN Security Council.
>
> We urge you to act decisively. […] If we accept a course of weakness and drift, we put our interests and our future at risk.[61]

This might at first glance seem somewhat akin to a conspiracy theory. However when the signatories to these letters are examined a clear picture emerges. Signatories to both letters include: John Bolton who served as the Undersecretary of State for Arms Control and International Security under George W Bush; Paul Wolfowitz who served as U.S. Deputy Secretary of Defense under George W Bush and Donald Rumsfeld who served as US Secretary of Defense under the same. In addition to these three the Statement of Principles is signed by, among others: Jeb Bush (brother of President George W Bush and son of Former President George Bush Sr.), Dan Quayle (Vice President to George Bush Sr.) and Dick Chaney (Vice President at the time of the Iraq invasion). Further research into signatories to these documents reveal that a large number of them were employed as advisors and members of the Bush administration's high ranking staff.[62] The fact that an invasion into Iraq was on the agenda long before 11 September 2001 and 20 March 2003 makes the academic acrobatics that have been used to justify the invasion all the more suspect.

2.5 Legality of the Invasion

The legality of the invasion is disputed to this day although Secretary General Kofi Annan said it was illegal according to UN charter in an interview in September 2004.[63] The arguments are quite complex and due to lack of space these arguments will not be discussed in any depth here. However some mention must be made of the main arguments and counterarguments for the invasion to underline the unique character of this matter.

---

[61] Ibid
[62] 'Project for the New American Century' (*Source Watch*) <http://www.sourcewatch.org/index.php?title=Project_for_the_New_American_Century> accessed 21 April 2011
[63] Owen Bennett-Jones. 'Excerpts: Annan Interview' *BBC News* (16 September 2004) <http://news.bbc.co.uk/2/hi/middle_east/3661640.stm> accessed 12 April 2011

The main argument for legality, and the one used by all Coalition members active in the invasion, was that it was justified based on Iraq's failure to comply with Security Council Resolutions already adopted and therefore no new resolution was needed. This argument was set forth very concisely by the UK Attorney General Lord Goldsmith on 17 March 2003 and goes as follows:

> 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:
>
> 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.
>
> 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.
>
> 3. A material breach of resolution 687 revives the authority to use force under resolution 678.
>
> 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.
>
> 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.
>
> 6. The Security Council also decided in resolution 1441 that, if Iraq failed at any time to comply with and cooperate fully in the implementation of resolution 1441, that would constitute a further material breach.
>
> 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.
>
> 8. Thus, the authority to use force under resolution 678 has revived and so continues today.
>
> 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. 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.[64]

This is a very interesting argument which has since been taken further by some writers on the subject. This argument does however leave out some major aspects of the resolutions. It leaves out the fact that the weapons inspectors were to report on the process and it was then up to the Security Council to decide whether there was a breach and how to respond and that

[64] Peter H Goldsmith 'Legal Basis for Use of Force Against Iraq' (*Number10.gov.uk, The Official Site of the Prime Minister's Office*, 17 March 2003) <http://webarchive.nationalarchives.gov.uk/+/http://www.number10.gov.uk/Page3287> accessed 13 April 2011

the Security Council still remained seized of the matter.[65] This argument is all the more interesting considering that on 30 July 2002 Lord Goldsmith had suggested in a letter to Prime Minister Blair that all use of force would have to be explicitly authorized by the Security Council and his conclusion was:

> that in the absence of a fresh resolution by the Security Council which would at least involve a new determination of a material and flagrant breach, military action would be unlawful. Even if there were such a resolution, but one which did not explicitly authorise the use of force, it would remain highly debatable whether it legitimised military action – but without it the position is, in my view, clear.[66]

Moreover as late as 30 January 2003 Lord Goldsmith's view on Resolution 1441 was that "it does not authorise the use of military force without a further determination by the Security Council, pursuant to paragraph 12 of the resolution."[67]

John Yoo expresses the view that Resolution 1441 triggered Resolutions 678 and 687 and therefore Iraq's violations and proliferation of WMD's violated the conditions of the ceasefire stipulated in Resolution 687 which gave the Coalition its authorization.[68] In light of the discussion and the care that was taken during the drafting of Resolution 1441 not to include any "triggers" which would authorize automatic use of force without a second resolution, this interpretation seems rather farfetched. Moreover the behaviour of the US and the UK leading up to the invasion weaken this argument. If no second resolution was needed and if it was so obvious then it is hard to understand why the US and the UK went to so much trouble trying to secure one.

Yoo furthermore expresses the view that the UN is not really a part of the ceasefire but that it is between Iraq and Kuwait and the UN Member States of the Gulf war coalition and therefore no further UN authorization is needed.[69] This argument does not seem very

---

[65] S.C. Res. 1441, *Supra* note 43, Paras 11, 12 and 14
[66] John Chilcot, 'Lord Goldsmith, Advice to the Prime Minister Regarding Iraq, 30 July 2002' (*The Iraq Inquiry*, 30 June 2010) <http://www.iraqinquiry.org.uk/media/46499/Goldsmith-note-to-PM-30July2002.pdf> accessed 3 May 2011
[67] John Chilcot, 'Lord Goldsmith, Minute to the Prime Minister Regarding Iraq, 30 January 2003' (*The Iraq Inquiry*, 30 June 2010) <http://www.iraqinquiry.org.uk/media/46496/Goldsmith-note-to-PM-30January2003.pdf> accessed 3 May 2011
[68] John Yoo, *Supra* note 41, 568
[69] Ibid

plausible since Operation Desert Storm was in fact a UN authorized mission based on UN resolutions. Thomas M. Franck disagrees completely with Yoo and expresses the opinion that the ceasefire is indeed between the UN and Iraq and as such can only be negated by the UN, not by individual states acting on their own.[70] Tarcicio Gazzini has described the argument that the invasion was justifiable based on existing resolutions as "entirely unconvincing."[71]

The second justification, which was used only by the US was that of anticipatory or pre-emptive self-defense. This principle has been highly criticized as being too vague and open-ended and in fact opening the door to use of force in a myriad of circumstances.[72] Christine Gray wrote that the innovative doctrine of pre-emptive self-defense, which had been widened by the Bush Government to include using force where no attack had occurred nor was imminent, was very controversial and "regarded with considerable suspicion by most other states".[73] Miriam Shapiro has referred to the doctrine as preventive rather than pre-emptive since it aims at eliminating some generalized threats from materializing rather than dealing with imminent, specific threats.[74] In any case the argument for self-defense was based on Iraq holding WMD and connections to Al Qaeda, neither of which has turned out to have much merit which makes the whole argument very weak.[75]

The subject of legality will not be led to a conclusion in this thesis. The purpose of this discussion has been to show the complexity and controversy surrounding the matter and

[70] Thomas M Franck, *Supra* note 51, 612
[71] Tarcisio Gazzini, *Supra* note 8, 79
[72] Ibid, 200
[73] Christine Gray, *Supra* note 35, 175
[74] Miriam Shapiro, 'Iraq: The Shifting Sands of Preemptive Self-Defense' (2003) 97(No. 3) American Journal of International Law, 599
[75] David Hancock, 'Final Report: No WMD in Iraq: U.S. Report Expected to Cite Intentions, But No Stockpiles' *CBS News* (6 October 2004) <http://www.cbsnews.com/stories/2004/10/06/iraq/main647840.shtml> accessed 21 April 2011; Tony Karon, 'How Close Were Iraq and Al-Qaeda?' *TIME* (30 July 2003) <http://www.time.com/time/columnist/karon/article/0,9565,472023,00.html> accessed 21 April 2011; Mike Mount, 'Hussein's Iraq and Al Qaeda not Linked, Pentagon Says' *CNN* (13 March 2008) <http://articles.cnn.com/2008-03-13/us/alqaeda.saddam_1_qaeda-targets-of-iraqi-state-iraqi-state-terror-operations?_s=PM:US> accessed 30 April 2011

how any decision by Icelandic officials on the matter could not have been taken based on simple, self-evident premises.[76]

[76] For further readings on the legality of the Iraq invasion see: Miriam Shapiro. 'Iraq: The Shifting Sands of Preemptive Self-Defense' (2003) 97(No. 3) American Journal of International Law 599;
Tom J Farer, *Supra* note 26, 621; William H Taft IV, and Todd F Buchwald, 'Preemption, Iraq and International Law' ibid, 557

3 Iceland and Iraq

3.1 Established Procedure

This chapter will be very short. In fact it could be summed up like this: there is no established constitutional or administrative procedure specific to involvement in military action.

3.2 The Constitution

The whole Icelandic Constitution has only one article relating to foreign relations and that is Article 21 which states that "[t]he President of the Republic concludes treaties with other States. Unless approved by Althingi, he may not make such treaties if they entail renouncement of, or servitude on, territory or territorial waters, or if they require changes in the State system."[77] The president represents the executive branch in this context and articles: 11, 13 and 14 state that the President entrusts his power to the Ministers and that he is not accountable for executive acts.[78]

In comparison the conditions under which the executive branch in Denmark can deploy its forces is very clear. Only when under direct attack may Danish forces be used against foreign states without the Folketing's consent.[79] The Icelandic and the Danish constitutions branch out from the same original source and are therefore closely related. Denmark is furthermore a close ally and neighbour with strong historical connections to Iceland. In fact article 21 was an adaptation of a similar article in the Danish Constitution from 1915 and was included in the Icelandic Constitution when Iceland got control over its foreign affairs from Denmark in 1920.[80] Neither the concept of war nor the article on foreign affairs got much notice or discussion during the debate on Iceland's declaration of independence and the Constitution in 1944 and the article stands as it did in 1920.[81]

[77] Stjórnarskrá lýðveldisins Íslands Lög nr. 33/1944, art 21
[78] Ibid, arts: 11, 13 and 14
[79] Danmarks Riges Grundlov, Lov nr. 169 af 5.6.1953, § 19, para 2
[80] Björg Thorarensen, 'Gerð Þjóðréttarsamninga og meðferð utanríkismálaí Íslenskri stjórnskipun' in Guðrún Pétursdóttir (ed), *Skýrsla Stjórnlaganefndar 2011, 1. bindi* (Stjórnlaganefnd, Reykjavík 2011) 321, 322
[81] Ibid.

Denmark did join the Coalition and provided some material assistance as well as moral and political support. The decision went through prescribed administrative channels in Denmark and Foreign Minister Per Stig Möller drafted a motion which was passed in the Folketing on 21 March 2003.[82]

The difference between Iceland on one hand and Denmark on the other in matters of military activities is of course quite obvious. The latter has armed forces whereas Iceland has not. Obviously this makes all the difference when it comes to the constitutions of these states. Iceland's involvement in warfare or any process thereto related was not specially addressed during the discussions surrounding Iceland's constitution in 1944 nor has it been addressed since directly.

3.3 Discussions on Iraq in Iceland

Foreign relations are in general conducted by the executive branch of government. Agreements and obligations that do not directly, either through the constitution or other enacted legislation, require consultation with the legislator can be made by members of the executive so authorized. Iceland is no different from other states in this regard and Eiríkur Tómasson (Tómasson) law professor at the University of Iceland emphasized this in his Opinion on the legality of the decision to support the invasion given at the behest of Ásgrímsson in 2004 who was then Prime Minister.[83]

As noted above, Article 21 of the Constitution stipulates which conditions require Althingi's consent. There is further restriction in that all expenditures of the state must be approved by the Althingi.[84] Article 1 of the Law governing the Icelandic foreign service clearly states that it is responsible for foreign affairs including: politics; security; foreign

[82] Folketingsbeslutning om dansk militær deltagelse i en multinational indsats i Irak. Folketinget (1) AX004896 cl 2002/1 BSV 118

[83] Eiríkur Tómasson, 'Lögfræðiálit um lögmæti þeirrar ákvörðunar þáverandi forsætisráðherra og utanríkisráðherra frá 18. mars 2003 að styðja áform Bandaríkjanna, Bretlands og annarra ríkja um tafarlausa afvopnun Íraks' in (Lögfræðiálit Unpublished, Reykjavík 2005); Exerpts from the opinion can be found in: 'Stuðningur við afvopnun Íraks var í samræmi við Íslensk lög' *Morgunblaðið* (25 January 2005) 27

[84] Stjórnarskrá, *Supra* note 77, art 41

trade; culture and where not otherwise stipulated in legislation, the Foreign Service handles all agreements between Iceland and other states.[85] Article 3 of the same Law states that the Ministry of Foreign Affairs is responsible for all such affairs.[86]

Finally there is the Parliamentary Committee on Foreign Affairs (the Committee) which is set up by Law number 55/1991 *on Althingi's procedure*. The Committee has nine members who are selected by the D'Hondt method[87] which secures that the majority of the Committee represents the majority in Althingi while also securing representation of the minority.[88] Article 24 of the Law says that the Committee *must* be consulted on all major foreign affairs issues whether Althingi is in session or not.[89] It must be borne in mind that the Committee on Foreign Affairs is a political body which represents the political landscape at any given time. At this time in Icelandic politics the party chairmen, in this case Oddsson and Ásgrímsson were *de facto* the government and legislature since almost all bills that went through the Althingi were government bills and decisions in government were taken by and large by the party chairmen alone.[90]

3.3.1 Althingi

Most of the discussions on Iraq that took place in Althingi were initiated by the opposition, not by the two ministers who eventually made the decision to support the invasion. It is interesting to note that in his speeches on the Iraq issue, Foreign Minister Ásgrímsson repeatedly expresses his view that a peaceful solution was the main aim and for that purpose more time might be needed.[91] He also made it quite clear that it was essential that any

[85] Lög nr. 39 um Utanríkisþjónustu Íslands frá 16. apríl 1971, Lög nr. 39/1971, art 1
[86] Ibid, art 3
[87] Lög nr. 55 um þingsköp Alþingis frá 31. maí 1991 og með síðari breytingum, Lög nr. 55/1991, art 68
[88] Sydney Elliott. 'The D'Hondt System Explained' *BBC News* (28 November 1999) <http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/91150.stm> accessed 3 May 2011
[89] Lög nr. 55/1991, *Supra* note 87, art 24
[90] Vilhjálmur Árnason, Kristín Ástgeirsdóttir and Salvör Nordal, 'Um íslenska stjórnmálamenningu' in Sigríður Benediktsdóttir, Tryggvi Gunnarsson and Páll Hreinsson (eds), *Siðferði og starfshættir í tengslum við fall íslensku bankanna 2008; Skýrsla Rannsóknarnefndar Alþingis, Aðdragandi og orsakir falls íslensku bankanna 2008 og tengdir atburðir* (Rannsóknarnefnd Alþingis, Reykjavík 2010) 179
[91] Vefútgáfa Alþingistíðinda 2002-2003 'Afstaða ríkisstjórnarinnar til hernaðarátaka í Írak' (B-mál 372, 128. löggjafarþing) Halldór Ásgrímsson's speech 27 January 2003, at 15:22:26, on the Government's Position on

decision should go through the Security Council.[92] This position was confirmed in his speech on his report on foreign affairs on 27 February 2003 where he concludes that inspectors must be granted more time and that Iceland is in favour of a peaceful solution with war as a last resort.[93]

It is also interesting that both Oddsson and Ásgrímsson spoke on 12 March and neither one gave any clear indications that the Icelandic government would support an invasion not sanctioned by the Security Council,[94] however Oddsson had never explicitly ruled out such support and had indicated on several occasions, most notably in his opening address to Althingi on 2 October 2002, that if the Security Council was not up to the challenge of dealing effectively with the perceived threat from Iraq, other measures could not be precluded.[95]

On 10 May 2003 Icelanders went to the voting polls and to allow members to prepare for the election Althingi went into recess on 14 March 2003. This effectively made all further discussion on the matter impossible in that forum for the time being. However, on all major foreign affairs issues the Committee must be consulted whether Althingi is in session or not.

3.3.2 Discussion in the Foreign Affairs Committee

When trying to assess the extent of discussion on the Iraq issue in the Committee one runs into some obstacles. Article 24 of Act 55/1991 which defines the role of the Committee states that, if so requested by either the Minister or the Committee president, members are bound by

---

Armed Intervention in Iraq, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=372> accessed 15 April 2011

[92] Ibid, at 15:25:46, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=372> accessed 15 April 2011

[93] Vefútgáfa Alþingistíðinda 2002-2003 'Skýrsla utanríkisráðherra um utanríkismál' (B-mál 445, 128. löggjafarþing) Halldór Ásgrímsson's speech 27 February 2003, at 10:51:47, Foreign Minister's report on Foreign Issues, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=445> accessed 15 April 2011

[94] Vefútgáfa Alþingistíðinda 2002-2003 'Þingsályktunartillaga um hernaðaraðgerðir gegn Írak' (B-mál 495, 128. löggjafarþing) Halldór Ásgrímsson's speech12 March 2003, at 10:35:12, on the Left Green Party's proposal on military action against Iraq, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=495> accessed 17 April 2011; Vefútgáfa Alþingistíðinda 2002-2003 'Þingsályktunartillaga um hernaðaraðgerðir gegn Írak' (B-mál 495, 128. löggjafarþing) Davíð Oddsson's speech12 March 2003, at 10:47:01, on the Left Green Party's proposal on military action against Iraq, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=495> accessed 17 April 2011

[95] Vefútgáfa Alþingistíðinda 2002-2003 'Stefnuræða forsætisráðherra og umræða um hana' (B-mál 129, 128. löggjafarþing) Davíð Oddsson's speech 2 October 2002, at 19:50:54, Prime Minister's Opening Statement on Government Policy, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=129> accessed 18 April 2011

confidentiality and through custom it has become so that all matters discussed are confidential.[96] It is therefore very difficult to find any reliable information on the subject.

In a statement by Ásgrímsson issued 17 January 2005,[97] at which time he was Prime Minister, he emphasized that the issue of Iraq had been discussed in the Committee on several occasions during the winter of 2002-2003. He furthermore pointed out that a proposal from the Left Green Party stating that, the Icelandic government should oppose any military action against Iraq and not participate in any such action,[98] was discussed in the Committee on 12 March 2003. Ásgrímsson also pointed out that this proposal was discussed in Althingi later that same day during which he had said that it was now apparent that the majority of Althingi did not rule out the use of force, which is quite an odd statement considering that the issue had never been formally discussed in Althingi nor had any vote been cast on the matter. Ásgrímsson further stated that in a cabinet meeting led by him in the absence of Oddsson on 18 March 2003 the Iraq issue was discussed. Following that meeting, Ásgrímsson and Oddsson decided to support military action to disarm Hussein led by the US and the UK. Interestingly Ásgrímsson does not explicitly say in his statement that the decision to support the invasion was discussed in the cabinet meeting, only that the Iraq issue was discussed and that the decision was taken after that meeting, not based on it.

Guðni Ágústsson (Ágústsson) who was Minister for Agriculture at the time and vice chairman of the Progressive Party led by Ásgrímsson, states in his autobiography that in the cabinet meeting in question it had been agreed that in the event of an invasion, the NATO forces would have access to Icelandic airspace and the Keflavík airport as they always had

[96] Vefsíða Alþingis 'Tilkynningar, Bókun utanríkismálanefndar 28. janúar 2005' <http://www.althingi.is/vefur/frett.html?nfrettnr=507> accessed 18 April 2011
[97] Vefsíða Forsætisráðuneytisins 'Yfirlýsing forsætisráðherra vegna umræðu um Íraksmálið' (Frétt nr. 9/2005 17. janúar 2005), <http://www.forsaetisraduneyti.is/frettir/nr/1698> accessed 18 April 2011
[98] Vefútgáfa Alþingistíðinda 2002-2003 'Tillaga til þingsályktunar um að ríkisstjórnin beiti sér gegn áformum um innrás í Írak og að Ísland standi utan við hvers kyns hernaðaraðgerðir gegn Írak' (þskj. 807 - 491. mál, 128. löggjafarþing) <http://www.althingi.is/altext/128/s/0807.html> accessed 18 April 2011

during such operations.[99] Ágústsson and other members, he claims, were still acting under the impression constantly given by Ásgrímsson that all decisions regarding the use of force would have to go through the Security Council and Ágústsson claims to have been shocked when he heard on the radio that the Coalition had invaded Iraq without a Security Council mandate and that Iceland was a member of the Coalition.[100]

In an article by reporter Sigríður D Auðunsdóttir (Auðunsdóttir) in *Fréttablaðið* on 21 January 2005 she quotes some statements and conversations that allegedly took place in the Committee meetings on 19 February and 21 March 2003.[101] According to her sources the first meeting on the subject took place on 19 February 2003 and on that occasion Ásgrímsson stated that the weapon inspectors should be given more time and a peaceful solution should be sought or that the Security Council would take further measures. Ásgrímsson had therefore given two possible scenarios for a solution; Iraq's disarmament through the Security Council or further action taken by the Security Council, at no point was the third possibility that Iceland would support an invasion outside a Security Council mandate mentioned.[102] According to Ásgrímsson, the decision to add Iceland to the Coalition had taken place in conversations between officials in the Prime Ministry and the Foreign Ministry on 18 March 2003,[103] six days after the issue had last been discussed within the Committee, and was then conveyed to the US ambassador.[104]

In a statement from the Committee issued on 28 January 2005 it says that it is customary that all matters discussed in the Committee are confidential and the leak reported in Auðunsdóttir's article is deplored.[105] The content of the article is not refuted. In fact the statement criticizes strongly the breach of confidentiality that had taken place and states that

[99] Sigmundur E. Rúnarsson, *Guðni af lífi og sál, saga þjóðar, manns og stormasamra stjórnmála* (Veröld, Reykjavík 2007) 348
[100] Ibid
[101] Sigríður D. Auðunsdóttir. 'Skyndileg kúvending' *Fréttablaðið* (21 January 2005) 6
[102] Ibid.
[103] Ibid.
[104] Forsætisráðuneytið, *Supra* note 97. This is verified by document 35 of Iraq files made public by the Foreign Ministry on 11 November 2010, see *Supra* note 10.
[105] Vefsíða Alþingis, *Supra* note 96

since confidential information seems to have found its way into the press, access to minutes from the Committees meetings would be restricted even further.[106]

In an article in *Morgunblaðið* from 22 March 2003 the majority in the Committee is reported to have issued a statement saying that the Iraq issue was adequately discussed in the Committee and that the declaration of support did not constitute a change in policy.[107] In light of the political constitution of the Committee it is almost unthinkable that its majority would have issued statements that were politically troublesome for their leaders. Moreover, this statement seems to never have been publicly released and in spite of extensive research has not been uncovered.

Judging by Ásgrímsson's speeches in Althingi, the surprise by which the decision took members of the government as well as the Committee, and leaks from within the Committee it seems that not only was the decision to support an invasion without a Security Council mandate never discussed in the Committee nor Althingi, but moreover that Ásgrímsson repeatedly stated that the Icelandic position was one of more time for inspectors and a solution through the Security Council. In fact Tómasson in his legal opinion, which was based on material from Ásgrímsson himself, finds it necessary to distinguish between an *issue* and a *decision* in his effort to justify not consulting the Committee.

3.4 Legal Opinion by Eiríkur Tómasson

As mentioned above Eiríkur Tómasson law professor at the University of Iceland was asked by Ásgrímsson to give an Opinion on the legality of the decision to support the invasion and he produced his conclusions on 23 January 2005.[108] His conclusion was that the decision was fully within the legal authority of Ásgrímsson and Oddsson. In his Opinion Tómasson distinguishes the decision into three parts; the decision to grant political support to the invasion; giving access to Icelandic airspace and Keflavík airport; and commitment to

[106] Ibid
[107] Árni Sæberg, 'Minnihluti utanríkismálanefndar telur að þingsköp hafi verið brotin' *Morgunblaðið* (22 March 2003) 2
[108] Eiríkur Tómasson, *Supra* note 83

Humanitarian aid and aiding in the restructuring and rebuilding of post-war Iraq.[109] In Tómasson's view none of these decisions are of such nature as to demand Althingis participation. Furthermore he concludes that since it is only major *issues* that must be discussed in the Committee not major *decisions*, the discussion that took place on 19 February 2003 was enough to fulfill the duty to consult the Committee.[110] Tómasson's separation of the decision into three different aspects, while convenient for the sake of addressing the issue of legality, should not draw attention from the fact that all three aspects are a part of one decision, not three separate decisions.

3.4.1 Political Support

The authority of ministers to make a decision to give political support to a foreign nation without the consent of Althingi can hardly be disputed according to Icelandic law. There is simply nothing in the law that demands that Althingi must be involved. There is on the other hand a duty to involve the Committee. The justification given by Tómasson as to why the Committee needed not be consulted when the decision was made is twofold.

3.4.1.1 Definition of "Major Foreign Affairs issue"

The first justification is based on the fact that there is no definition of what constitutes a major issue in foreign affairs and it is therefore always up to the Ministers to evaluate what does. However acknowledging this is a far stretch from accepting that Ministers can arbitrarily decide what constitutes a major issue and what does not. The decision to give political and inevitably moral support to an invasion without a Security Council mandate and which is bound to cost human casualties cannot reasonably be considered a minor decision.

In fact Ásgrímsson himself called the issue of Iraq the "world's biggest concern" in his report on foreign affairs on 27 February 2003.[111] It is hard to imagine how the step from diplomatic efforts to disarm Iraq to a full-blown invasion could have reduced the Iraq issue

[109] The issue of Humanitarian aid and post-war commitment will not be discussed further in this thesis
[110] Eiríkur Tómasson, *Supra* note 83.
[111] Vefútgáfa Alþingistíðinda, *Supra* note 93

from being the "world's biggest concern" to a minor issue not worthy of discussion in the Committee. All decisions to involve Iceland in an invasion into a foreign country, no matter what the involvement is, must be considered a major Foreign Affairs issue. In fact it is hard to imagine what constitutes a major issue if this one does not.

3.4.1.2 The Difference between an "Issue" and a "Decision"

The second justification is based on the assumption that the decision to support an invasion that was not authorized by the Security Council was not an issue in itself. Rather it was only a minor aside in the issue of Iraq which had already been discussed within the Committee and that such a wide interpretation of the duty to consult as to demand this decision be discussed in the Committee is not customary.[112] Tómasson also points out that in the past, decisions to support other military actions have not been discussed in the Committee.

Both these views are debatable. First, this interpretation of the duty to consult the Committee would in fact render the whole process redundant. When dealing with major foreign affairs issues that do not demand Althingi's involvement, the Committee is the only representative of the electorate.[113] If this interpretation of article 24 is adopted then the government can without much effort avoid consulting the Committee on controversial issues by simply addressing some minor aspect of the issue in the Committee and leave it at that. In fact Tómasson says that by discussing the matter on 19 February *the duty* to consult the Committee *was fulfilled*.[114] This indicates that consulting the Committee is only a formality to go through before decisions are made, something to check off the list so to speak. The fact is that between discussions in Althingi, bills and proposals are often sent to the relevant committees for evaluation and discussion and during that process amendment proposals can be made which Althingi then votes on.

[112] Eiríkur Tómasson, *Supra* note 83
[113] Björg Thorarensen, *Supra* note 80, 325.
[114] Ibid.

The political majorities in the committees can in their treatment of proposals that are time sensitive simply suffocate them as was the case with the Left Green Party's proposal on Iceland's position on the Iraq issue mentioned above,[115] which the majority of the Committee refused to deliver to Althingi for further discussion and consequently still officially remains as a matter for the committee.[116] The process of consulting committees therefore serves the further purpose of keeping the people's representatives informed. In a functioning democracy it is possible that the proposal's fate would have been different had the Committee known that the government planned to support an invasion without a Security Council mandate. In any case, treating the duty to consult the Committee as a mere formality is to disrespect the democratic aspect of foreign policy decision making and goes against the whole purpose of the Committee. Considering the political nature of the Committee it is unlikely that consulting it generally will make much difference, but obviously that has no bearing on whether or not it should be consulted.

There is a distinction to be made between this decision and other decisions to support military operations. This is the first and only time Iceland has lent its support to military action outside of its role as a Member State to an international treaty. The decision to support an invasion that was neither built on Security Council nor NATO mandate cannot reasonably be seen as a minor development in foreign policy and even in the narrowest interpretation of the *duty to consult* it would qualify. It must be borne in mind however that there is no legal obligation for the Government to get an approval from the Committee for its decisions, only to consult with it.[117] That should in no way affect the duty to consult.

[115] See *Supra* note 98.
[116] Vefútgáfa Alþingistíðinda 2002-2003. 'Hernaðaraðgerðir gegn Írak' (mál 491 þingsályktunartillaga, 128. löggjafarþing, þingskjal 807), Left Green Party's Proposal on military actions against Iraq, <http://www.althingi.is/dba-bin/ferill.pl?ltg=128&mnr=491> accessed 19 April 2011.
[117] Björg Thorarensen, *Supra* note 80, 325

3.4.2 Icelandic Airspace and Keflavík Airport

Article 21 of the Constitution clearly states that "[t]he President of the Republic concludes treaties with other States. Unless approved by Althingi, he may not make such treaties if they entail renouncement of, or servitude on, territory or territorial waters […]."[118] In Tómasson's opinion it was not necessary to consult Althingi because the decision did not entail any further servitude on Icelandic territory than the Defense Agreement between Iceland and the US already did.[119] While this may be *de facto* true it may not be true *de jure.* It must be borne in mind that this was not an authorization for the US to access Icelandic territory as a member of NATO or the UN but as an individual state acting on its own.

The defense *Agreement between the United States and the Republic of Iceland* (the Defense Agreement) was legalized in Iceland on 19 December 1951 with Law nr. 110/1951.[120] Although it is an agreement between Iceland and the USA it is important to remember that it is an agreement between two NATO Member States in their capacity as such and that is very clear in the Defense Agreement. It provides for authorization for servitude on Icelandic territory and airspace for two separate purposes; the defense of Iceland as a Member State of NATO according to article 1 of the Defense Agreement and; according to Article 8, the defense of the North Atlantic and other Member States according to conditions set forth in articles 5 and 6 of the NATO treaty. Article 1 of the Defense Agreement reads:

> "The United States on behalf of the North Atlantic Treaty Organization and in accordance with its responsibilities under the North Atlantic Treaty will make arrangements regarding the defense of Iceland subject to the conditions set forth in this Agreement. For this purpose and in view of the defense of the North Atlantic Treaty area, Iceland will provide such facilities in Iceland as are mutually agreed to be necessary."[121]

[118] Stjórnarskrá, *Supra* note 77, art 21
[119] Eiríkur Tómasson, *Supra* note 83
[120] Lög nr. 110 um lagagildi varnarsamnings milli Íslands og Bandaríkjanna og um réttarstöðu liðs Bandaríkjanna og eignir þess frá 19. desember 1951 og með síðari breytingum, Lög nr. 110/1951, art 5; See English translation of the defense agreement at: Yale Law School: Lillian Goldman Law Library. 'Defense of Iceland: Agreement Between the United States and the Republic of Iceland, May 5, 1951' (The Avalon Project, Documents in Law, History and Diplomacy) <http://avalon.law.yale.edu/20th_century/ice001.asp> accessed 19 April 2011
[121] Ibid, art 1

This is therefore not an agreement that allows for the use of Icelandic territory by US forces for any and all purposes they see fit. In Article 8 of the Defense Agreement reference is made to articles 5 and 6 of the NATO treaty.[122] These articles clarify: that in case of one Member State being attacked, all of them will act in unison in collective self-defense;[123] and the conditions that have to be met for an attack to warrant a NATO response.[124] Article 8 of the Defense Agreement states that should the conditions described in articles 5 and 6 of the NATO treaty be fulfilled then "the facilities, which will be afforded in accordance with this Agreement, shall be available for the same use."[125]

The servitude accepted by Althingi was therefore with a very precise aim. The US was granted access to certain territories and airspace in an effort to secure the countries defenses or as a part of a collective self-defense action based on Articles 5 and 6 of the NATO treaty and Article 51 of the UN Charter. It is important to note that this only refers to a NATO operation based on Article 51, not just any operation. This is an agreement between Iceland and the US as NATO partners, not in any other capacity. Any servitude on Icelandic territory, including the use of Airports and airspace, which goes beyond that which is explicitly stated in the Defense Agreement, would naturally need to be discussed in Althingi according to the Icelandic Constitution. Since the decision to grant the US access to Icelandic territories cannot reasonably be justified by reference to the Defense Agreement and it was not discussed and agreed to in Althingi, it appears that Oddsson's authorization to access Icelandic territory was unconstitutional. Whether the US forces actually used Keflavík airport and Icelandic territories and facilities for the purpose of the Iraq invasion is irrelevant to this conclusion since according to the Constitution it is the decision itself which must be addressed by Althingi, not the consequences.

[122] Ibid, art 8
[123] The North Atlantic Treaty, (Washington D.C. 4 April 1949), art 5
[124] Ibid, art 6
[125] Lög nr. 110/1951, *Supra* note 120, art 8

4 Conclusions

4.1 The Invasion

The Coalition of the Willing was a mixed group of states rallied by the US to, among other things, gather; military; material, logistical and political support to an invasion into Iraq which was not authorized by the Security Council. The Coalition did not give legal validation to the invasion but gave the impression that the US had broad support in the international community. However, there were doubts as to the actual willingness of the states and there were indications that states were: bribed, bought, leaned on, intimidated and bullied into declaring support[126] and in reality only 4 states took active part in the invasion itself: the US, the UK, Poland, and Australia. It is a fact that the US was planning to withdraw all their forces from Iceland at this time which may have affected the Icelandic government's decision. In addition to political support Iceland granted the US access to Keflavík Airport and Icelandic airspace.

As Dr. Blix put it, the idea that an invasion which the Security Council was clearly divided on with members holding veto powers being opposed, was somehow implicitly authorized by that same Security Council, goes against common sense.[127] Furthermore the summary record of the 4644th meeting of the Security Council, from 8 November 2002, clearly show that resolution 1441 was not intended to authorize automatic use of force at the discretion of individual states. The importance of the Security Council's authorization is very important in light of the fact that the resolution has a hint of a "catch 22" within it. The resolution demands that Iraq declare every aspect of "[...]its programmes to develop chemical, biological, and nuclear weapons […]"[128] and "[...]that false statements or omissions in the declarations submitted by Iraq […] shall constitute a further material breach

[126] Laura McClure, *Supra* note 12
[127] John Chilcot, See *Supra* note 24, 25
[128] S.C. Res. 1441, *Supra* note 43, Para 3

of Iraq's obligations […]."[129] Asked by Sir Roderic Lyne of the Iraq Inquiry whether he felt that Iraq could have been reasonably expected to meet the requirements of the Resolution Dr. Blix replied; "Yes, except that it was very hard for them to declare any weapons when they didn't have any."[130] The arguments that the invasion could be justified based on prior Security Council Resolutions and that it could be justified on anticipatory self-defense have turned out to be very weak. Arguing that an invasion on which the Security Council was thoroughly divided was somehow authorized by the same Security Council does not only rest on weak legal foundations but moreover goes against common sense.

The UN were formed to promote peace and to regulate the use of force in state relations. The UN Charter sets out the criteria for use of force in Chapter VII. Under all conditions the use of force by UN Member States must be sanctioned by the Security Council. The only exception to this principle is set out in Article 51 of the Charter which allows for individual or collective self-defense in case of an armed attack.

For self-defense to be justified an attack must be imminent and the response must be necessary and proportional to the threat. There is further the matter of anticipatory self-defense which is a very sensitive matter and a wide interpretation of the right to anticipatory or pre-emptive self-defense results in near unrestrained discretion for individual states as to when the use of force according to article 51 is acceptable which would *de facto* render the rest of Chapter VII and indeed the Charter itself a rather weak instrument.

The Davids Report concluded that the invasion was not legal according to international law and stated that:

> The Security Council resolutions on Iraq passed during the 1990s did not constitute a mandate for the us-British military intervention in 2003. Despite the existence of certain ambiguities, the wording of Resolution 1441 cannot reasonably be interpreted […] as authorizing individual Member States to use military force to compel Iraq to comply with the Security Council's resolutions, without authorization from the Security Council.[131]

[129] Ibid, Para 4
[130] John Chilcot, *Supra* note 24, 20
[131] WMJ Davids, *Supra* note 17, 530, Para 18

The legality of the invasion was, is and will be highly contested. Some have argued that it was based on implied authorisation based on prior Security Council Resolutions and others have argued that it was justified based on anticipatory self-defense and both views have been heavily criticized. However the point of this exercise has been to express the unique qualities of the invasion and the controversy surrounding it on international level. There was nothing straight-forward about it nor was it just another day in international relations.

4.2 Decision to Support the Invasion

With regard to the Constitution and Althingi as regards political support there was no need for the Ministers to consult Althingi. There is however doubt as to whether the decision went through the administrative procedure demanded by law.[132] The Committee on Foreign Affairs must be consulted on all major foreign affairs issues. However, the role of the Committee in foreign matters is not clear and historically ministers have had a great deal of discretion as to which matters have been discussed in it.[133] The matter is further confounded by the fact that the Committee's consent is not needed for decisions made by Ministers nor is there any body which is authorized to review their decisions.[134]

Nonetheless it cannot reasonably be concluded that the decision to support an invasion could be construed as a minor foreign affairs issue, especially considering the controversy and division within the Security Council which the issue had caused. Nor can it reasonably be concluded that by discussing some aspects of an issue within the Committee the duty to consult has been met regardless of how matters develop. Discussing one aspect of an issue and then making a decision based on criteria never discussed means that the government can effectively exclude the Committee from all major decisions.

Furthermore the idea that the distinction between an *issue* and a *decision* makes not consulting the Committee acceptable is very odd. In most cases serious issues will be

[132] Lög nr. 55/1991, *Supra* note 87
[133] Björg Thorarensen, *Supra* note 80, 325
[134] Ibid

discussed in the Committee precisely because a future decision is necessary, it is always the decision which is the issue. It is true that the decision does not need to be agreed to by the Committee, however that does not negate the duty to consult. Consulting with the Committee is not a formality, it is as it stands the only venue for democratically elected representatives in Iceland to influence many matters of foreign policy and is essential in the democratic process.

The Iraq issue had been discussed briefly in the Committee but never under the pretext of supporting an invasion without a Security Council mandate. It would therefore seem that the process of the decision to give political support to the invasion did not meet the conditions necessary according to Icelandic law.

As regards the question whether the decision to give flyover authorization and access to Keflavík Airport was legal the conclusion is that it was not. According to Article 21 of the Icelandic Constitution Ministers may not make agreements that "entail renouncement of, or servitude on, territory or territorial waters".[135] Authorizing flyovers and the use of Keflavík airport entails servitude over Icelandic territory. The argument that the Defense Agreement between Iceland and the US authorizes this servitude does not hold up to scrutiny. The Defense Agreement is made between Iceland and the US in their capacities as NATO Member States and authorizes servitude for limited purposes, namely the defense of Iceland and the collective self defense in prescribed conditions of NATO Member States as NATO Member States. It does not give the US *carte blanche* access to Icelandic territories and facilities described in the Agreement. The Agreement does in no way authorize the use of Icelandic territories or facilities to invade other countries outside of a NATO mandate.

The Constitution is clear on the matter and it is only reasonable that even the slightest hint of doubt as to whether ministers have the mandate to make such an agreement must be interpreted in favour of consulting with democratically elected representatives of the people.

[135] Stjórnarskrá, *Supra* note 77, art 21

The decision to grant access to Icelandic territories and facilities was not authorized by Althingi as demanded by the Constitution and was therefore illegal.

5 In Closing

As a part of the preparations for the Constitutional Assembly (stjórnlagaþing) which was supposed to start work last February, a random selection of nearly 1000 people from all around Iceland and from all walks of were gathered for a day in Reykjavík (þjóðfundur). These individuals represented a cross-section of Icelanders of voting age and their mission was to put together a mosaic of values and ideas for the Constitutional Assembly to refer to.[136] One of the issues discussed was "Peace and International Co-operation" and under that heading, suggestions made by the Assembly all indicated that the representatives saw Iceland's future as a neutral peace-loving and peace promoting state that does not support other states military actions.[137] There are further clear references to Iceland's decision to support the Iraq invasion. One suggestion was that ministers may not be able to unilaterally decide on issues regarding wars, and another that all decisions to support wars must go through a national referendum.[138]

A Constitutional Committee (stjórnlaganefnd) was set up by the same law as the Constitutional Assembly and is responsible for making suggestions as to how the Constitution may be improved. In a chapter on international relations it suggests that Althingi should be more involved in foreign affairs and any declarations of support for wars against other states must go through Althingi.[139] It remains to be seen what the newly appointed Constitutional Council (stjórnlagaráð) will do with the suggestions made by the Constitutional Committee and there remains also the question of how Althingi will treat the Council's suggestions. There is no reason not to take this further and allow the people to have

[136] Lög nr. 90 um stjórnlagaþing frá 25. júní 2010 og með síðari breytingum, Lög nr. 90/2010, Ákvæði til bráðbirgða
[137] Stjórnlaganefnd. 'Þjóð til þings: Þjóðfundur 2010 um stjórnarskrá Íslands' (Suggestions from the National Assembly on the Icelandic Constitution from 6 November 2010) <http://www.thjodfundur2010.is/nidurstodur/tre/> accessed 22 April 2011
[138] Ibid
[139] Guðrún Pétursdóttir, Aðalheiður Ámundadóttir, Ágúst Þ. Árnason, Björg Thorarensen, Ellý K. Guðmundsdóttir, Njörður P. Njarðvík and Skúli Magnússon, 'Skýrsla Stjórnlaganefndar 2011 1. bindi' (Stjórnlaganefnd Reykjavík 6 April 2011) 159, 162

their say in matters of war. Modern technology makes it relatively easy to send such matters to a national referendum.

Recent events in Libya suggest that the issue of supporting invasions and military actions abroad is very much an issue that needs to be addressed. In any case the Constitutional Assembly made it clear that the process through which the decision to support the 2003 invasion into Iraq went through is unacceptable and both the Assembly and the Constitutional Committee have suggested that the process needs to be more democratic. It will be interesting in the years ahead to observe how radically this process will be changed, if it will be changed at all.

Bibliography

Books

Cook R, *The Point of Departure* (1st edn Simon and Schuster, London 2003)

Gazzini T, *The Changing Rules on the Use of Force in International Law* (Melland Schill Studies in International Law, Manchester University Press, Manchester 2005)

Gray C, *International Law and the Use of Force* (Foundations of Public International Law, 2nd edn Oxford University Press, Oxford 2004)

Rúnarsson SE, *Guðni af lífi og sál, saga þjóðar, manns og stormasamra stjórnmála* (Veröld, Reykjavík 2007)

Articles and Reports

Thorarensen B, 'Gerð Þjóðréttarsamninga og meðferð utanríkismála í Íslenskri stjórnskipun' in Pétursdóttir G (ed), Skýrsla Stjórnlaganefndar 2011, 1. bindi (Stjórnlaganefnd, Reykjavík 2011)

Farer TJ, 'The prospect for International Law and Order in the Wake of Iraq' (2003) 97(No. 3) American Journal of International Law 621

Franck TM, 'What Happens Now? The United Nations after Iraq' (2003) 97(No. 3) American Journal of International Law 607

Shapiro M, 'Iraq: The Shifting Sands of Preemptive Self-Defense' (2003) 97(No. 3) American Journal of International Law 599

Stromseth JE, 'Law and Force after Iraq: A Transitional Moment' (2003) 97(No. 3) American Journal of International Law 628

Taft WH and Buchwald TF, 'Preemption, Iraq and International Law' (2003) 97(No. 3) American Journal of International Law 557

Yoo J, 'International Law and the War in Iraq' (2003) 97(No. 3) American Journal of International Law 563

Investigative Reports

Árnason V, Ástgeirsdóttir K, and Nordal S, 'Um íslenska stjórnmálamenningu' in Benediktsdóttir S, Gunnarsson T, and Hreinsson P, (eds), Skýrsla Rannsóknarnefndar Alþingis; Aðdragandi og orsakir falls íslensku bankanna 2008 og tengdir atburðir, 8. bindi: Siðferði og starfshættir í tengslum við fall íslensku bankanna 2008, (Rannsóknarnefnd Alþingis, Reykjavík 2010) 179

Davids WJM, den Boer MGW, Fasseur C, Koopmans T, Schrijver NJ, Schwegman MJ, and van Walsum AP, 'Rapport Commissie Van Onderzoek Besluitvorming Irak' (Uitgeverij Boom Amsterdam 12 January) 517

Pétursdóttir G, Ámundadóttir A, Árnason ÁÞ, Thorarensen B, Guðmundsdóttir EK, Njarðvík NP, and Magnússon S, 'Skýrsla Stjórnlaganefndar 2011, 1. bindi' (Stjórnlaganefnd Reykjavík 6 April 2011) 159

Letters, Statements, Declarations and Legal Opinions

Abrams E, and others, 'Letter to President Clinton on Iraq' (*Project for the New American Century*, 26 January 1998) <http://www.newamericancentury.org/iraqclintonletter.htm> accessed on 21 April 2011

Abrams E, and others, 'Statement of Principles' (*Project for the New American Century*, 3 June 1997) <http://www.newamericancentury.org/statementofprinciples.htm> accessed on 21 April 2011

Chilcot J, 'Lord Goldsmith, Advice to the Prime Minister Regarding Iraq 30 July 2002' (*The Iraq Inquiry*, 30 June 2010) <http://www.iraqinquiry.org.uk/media/46499/Goldsmith-note-to-PM-30July2002.pdf> accessed on 3 May 2011

Chilcot J, 'Lord Goldsmith, Minute to the Prime Minister Regarding Iraq 30 January 2003' (*The Iraq Inquiry*, 30 June 2010) <http://www.iraqinquiry.org.uk/media/46496/Goldsmith-note-to-PM-30January2003.pdf> accessed on 3 May 2011

Chilcot J, 'Hans Blix, Oral Evidence' (*The Iraq Inquiry*, 27 July 2010) <http://www.iraqinquiry.org.uk/media/51945/20100727-blix-final.pdf> accessed on 14 April 2011

Tómasson E, ‘Lögfræðiálit um lögmæti þeirrar ákvörðunar þáverandi forsætisráðherra og utanríkisráðherra frá 18. mars 2003 að styðja áform Bandaríkjanna, Bretlands og annarra ríkja um tafarlausa afvopnun Íraks’ (Lögfræðiálit, Unpublished Reykjavík 2005)

Goldsmith PH, ‘Legal Basis for Use of Force against Iraq’ (*Number10.gov.uk, The Official Site of the Prime Minister’s Office*, 17 March 2003) <http://webarchive.nationalarchives.gov.uk/+/http://www.number10.gov.uk/Page3287> accessed on 13 April 2011

The White House, President George W Bush ‘For Immediate Release, 26 March 2003’ (Declarations of support from Coalition States) <http://georgewbush-whitehouse.archives.gov/infocus/iraq/news/20030326-7.html> accessed on 29 March 2011

The White House, President George W Bush ‘For Immediate Release, 27 March 2003’ (List of Coalition Members 27 March 2003) <http://georgewbush-whitehouse.archives.gov/infocus/iraq/news/20030327-10.html> accessed on 29 March 2011

U.S. Department of State ‘Daily Press Briefings, 18 March 2003’ (State Department Spokesman Richard Boucher briefed) <http://www.state.gov/documents/organization/18912.asx> accessed on 29 March 2011

Utanríkisráðuneytið ‘Íraksmálið staðan 18. Mars 2003’ (Gögn utanríkisráðuneytisins varðandi stuðning Íslands við Íraksstríðið 2002-2003, skjal 35) <http://www.utanrikisraduneyti.is/utgefid-efni/iraksskjol2002-3/> accessed on 21 April 2011

Utanríkisráðuneytið ‘Utanríkisráðuneytið: minnisblað’ (Gögn utanríkisráðuneytisins varðandi stuðning Íslands við Íraksstríðið 2002-2003, skjal 40) <http://www.utanrikisraduneyti.is/utgefid-efni/iraksskjol2002-3/> accessed on 21 April 2011

Vefsíða Alþingis ‘Tilkynningar: Bókun utanríkismálanefndar 28. janúar 2005’ <http://www.althingi.is/vefur/frett.html?nfrettnr=507> accessed on 18 April 2011

Vefsíða Forsætisráðuneytisins. Frétt nr 9/2005 17. January 2005, ‘Yfirlýsing forsætisráðherra vegna umræðu um Íraksmálið’ <http://www.forsaetisraduneyti.is/frettir/nr/1698> accessed on 18 April 2011

Newspaper Articles and Internet Citations

Auðunsdóttir SD, 'Skyndileg kúvending' *Fréttablaðið* (21 January 2005) 6

Bennett-Jones O, 'Excerpts: Annan Interview' *BBC News* (16 September 2004) <http://news.bbc.co.uk/2/hi/middle_east/3661640.stm> accessed on 12 April 2011

'Costa Rica Drops out of Coalition' *The New York Times* (10 September 2004) <http://www.nytimes.com/2004/09/10/international/americas/10costa.html?_r=3> accessed on 30 March 2011

'Draft Resolution on Iraq: Text' *BBC News* (24 February 2003) <http://news.bbc.co.uk/2/hi/europe/2795747.stm> accessed 10 May 2011

Elliott S, 'The D'Hondt System Explained' *BBC News* (28 November 1999) <http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/91150.stm> accessed on 3 May 2011

Halldórsson M, 'Ísland ekki á lista yfir vígfúsar þjóðir' *Fréttablaðið* (12 September 2007) 6

Hancock D, 'Final Report: No WMD In Iraq: U.S. Report Expected To Cite Intentions, But No Stockpiles' *CBS News* (6 October 2004) <http://www.cbsnews.com/stories/2004/10/06/iraq/main647840.shtml> accessed on 21 April 2011

Helgason Á, 'Framkoma Bandaríkjamanna sögð valda Íslendingum vonbrigðum' *Morgunblaðið* (Reykjavík 18 March 2006) 4

Karon T, 'How Close Were Iraq and Al-Qaeda?' *TIME* (30 July 2003) <http://www.time.com/time/columnist/karon/article/0,9565,472023,00.html> accessed on 21 April 2011

McClure L, 'Coalition of the billing – or unwilling' *Salon.com* (12 March 2003) <http://dir.salon.com/story/news/feature/2003/03/12/foreign_aid/index.html> accessed on 30 March 2011

Mount M, 'Hussein's Iraq and Al Qaeda not Linked, Pentagon Says' *CNN* (13 March 2008) <http://articles.cnn.com/2008-03-13/us/alqaeda.saddam_1_qaeda-targets-of-iraqi-state-iraqi-state-terror-operations?_s=PM:US> accessed on 30 April 2011

Murphy J, ‘Text of Bush Speech: President Declares End to Major Combat in Iraq’ *CBS News* (1 May 2003) <http://www.cbsnews.com/stories/2003/05/01/iraq/main551946.shtml> accessed on 23 March 2011

Perrott A, ‘Coalition of the Willing? Not us, say Solomon islanders’ *The New Zeeland Herald* (27 March 2003) <http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=3300727> accessed on 30 March 2011

‘Project for the New American Century’ *Source Watch* <http://www.sourcewatch.org/index.php?title=Project_for_the_New_American_Century> accessed on 21 April 2011

‘Stefnt að viðræðum í náinni framtíð’ *Morgunblaðið* (24 July 2003) 26

Stjórnlaganefnd ‘Þjóð til þings: Þjóðfundur 2010 um stjórnarskrá Íslands’ <http://www.thjodfundur2010.is/nidurstodur/tre/> accessed on 22 April 2011

‘Stuðningur við afvopnun Íraks var í samræmi við Íslensk lög’ *Morgunblaðið* (25 January 2005) 27

Sæberg Á, ‘Minnihluti utanríkismálanefndar telur að þingsköp hafi verið brotin’ *Morgunblaðið* (Reykjavík 22 March 2003) 2

Washington Hyper File, East Asia Edition, 18 March 2003 under: Briefings, Department of State, <http://wfile.ait.org.tw/wf-archive/2003/030318/epf202.htm> accessed 29 March 2011

Yale Law School: Lillian Goldman Law Library. ‘Defense of Iceland: Agreement Between the United States and the Republic of Iceland, May 5, 1951’ (The Avalon Project, Documents in Law, History and Diplomacy) <http://avalon.law.yale.edu/20th_century/ice001.asp> accessed on 19 April 2011

UN Resolutions and Documents

United Nations Charter, 24 October 1945, 1 UNTS

S.C. Res. 678, UN Doc S/RES/0678 (29 November 1990)

S.C. Res. 687, UN Doc S/RES/0687 (3 April 1991)

S.C. Res. 1441, UN Doc S/RES/1441 (8 November 2002)

Security Council Meeting, 8 November 2002 (S/PV.4644, 8 November, 2002)

Parliamentary Papers (Icelandic Althingi)

Vefútgáfa Alþingistíðinda 2002-2003. 'Hernaðaraðgerðir gegn Írak' (mál 491 þingsályktunartillaga, 128. löggjafarþing, skjal 807) <http://www.althingi.is/dba-bin/ferill.pl?ltg=128&mnr=491> accessed on 19 April 2011

Vefútgáfa Alþingistíðinda 2002-2003 'Tillaga til þingsályktunar um að ríkisstjórnin beiti sér gegn áformum um innrás í Írak og að Ísland standi utan við hvers kyns hernaðaraðgerðir gegn Írak' (þskj. 807 - 491. mál, 128. löggjafarþing) <http://www.althingi.is/altext/128/s/0807.html> accessed on 18 April 2011

Vefútgáfa Alþingistíðinda 2002-2003 'Stefnuræða forsætisráðherra og umræða um hana' (B-mál 129, 128. löggjafarþing) Davíð Oddsson's speech 2 October 2002, at 19:50:54, Prime Minister's Opening Statement on Government Policy, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=129> accessed 18 April 2011

Vefútgáfa Alþingistíðinda 2002-2003 'Afstaða ríkisstjórnarinnar til hernaðarátaka í Írak' (B-mál 372, 128. löggjafarþing) Halldór Ásgrímsson's speech 27 January 2003, at 15:22:26, on the Government's Position on Armed Intervention in Iraq, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=372> accessed 15 April 2011

Vefútgáfa Alþingistíðinda 2002-2003 'Afstaða ríkisstjórnarinnar til hernaðarátaka í Írak' (B-mál 372, 128. löggjafarþing) Halldór Ásgrímsson's speech 27 January 2003, at 15:25:46, on the Government's Position on Armed Intervention in Iraq) <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=372> accessed on 15 April 2011

Vefútgáfa Alþingistíðinda 2002-2003 'Skýrsla utanríkisráðherra um utanríkismál' (B-mál 445, 128. löggjafarþing) Halldór Ásgrímsson's speech 27 February 2003, at 10:51:47, Foreign Minister's report on Foreign Issues, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=445> accessed 15 April 2011

Vefútgáfa Alþingistíðinda 2002-2003 'Þingsályktunartillaga um hernaðaraðgerðir gegn Írak' (B-mál 495, 128. löggjafarþing) Halldór Ásgrímsson's speech12 March 2003, at 10:35:12,

on the Left Green Party's proposal on military action against Iraq, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=495> accessed 17 April 2011

Vefútgáfa Alþingistíðinda 2002-2003 'Þingsályktunartillaga um hernaðaraðgerðir gegn Írak' (B-mál 495, 128. löggjafarþing) Davíð Oddsson's speech12 March 2003, at 10:47:01, on the Left Green Party's proposal on military action against Iraq, <http://www.althingi.is/dba-bin/bferil.pl?ltg=128&mnr=495> accessed 17 April 2011

Icelandic Law

Stjórnarskrá lýðveldisins Íslands nr. 33/1944

Lög nr. 110 um lagagildi varnarsamnings milli Íslands og Bandaríkjanna og um réttarstöðu liðs Bandaríkjanna og eignir þess frá 19. desember 1951 og með síðari breytingum

Lög nr. 39 um Utanríkisþjónustu Íslands frá 16. apríl 1971

Lög nr. 55 um þingsköp Alþingis frá 31. maí 1991 og með síðari breytingum

Lög nr. 90 um stjórnlagaþing frá 25. júní 2010 og með síðari breytingum

Other Sources

Danmarks Riges Grundlov 1953, Lov nr. 169 af 5.6.1953

Folketingsbeslutning om dansk militær deltagelse i en multinational indsats I Irak, Folketinget (1) AX004896 cl 2002/1 BSV 118

The North Atlantic Treaty, Washington D.C. 4 April 1949