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**International
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Lawyers Against
Nuclear Arms**

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**LAWYERS URGE SECURITY COUNCIL: UPHOLD UN CHARTER AND
VALUES; RESIST ADOPTION OF USE OF FORCE RESOLUTION
AGAINST IRAQ; PROMOTE ALTERNATIVES TO WAR**

NEW YORK, NY & OAKLAND, CA – In a letter sent to the members of the United Nations Security Council, international law specialists urged the Security Council to uphold the UN Charter and resist the Bush Administration's rush to war against Iraq. The letter also highlights fundamental UN Charter principles of peaceful resolutions of disputes and non-use of force, and urges Security Council consideration of its wider regional and global responsibilities regarding disarmament and non-proliferation of weapons of mass destruction, including in the Middle East. The letter is signed by the Lawyers Committee on Nuclear Policy in New York City, and the Western States Legal Foundation in Oakland, California, the U.S. affiliates of the Lawyers Alliance Against Nuclear Arms. The letter begins:

“The Security Council has a responsibility to deal with threats to peace and security posed by the existence, proliferation, and potential use of weapons of mass destruction. As the Security Council addresses possible weapons of mass destruction programs in Iraq, we urge that as a member of the Council your government:

- 1) refrain from supporting any resolution that permits, or can be read to permit, *individual* member states to determine whether Iraqi non-compliance with disarmament requirements justifies use of force – this is a decision for the Security Council alone;**
- 2) ensure that any determination of Iraqi continuing non-compliance with disarmament requirements be made by the Security Council only after a reasonable period of time has been granted to Iraq to come into compliance, including time for inspections and data analysis;**
- 3) in the event of a Security Council determination of Iraqi continuing non-compliance, examine very closely, *as a separate matter*, whether use of force under authority of the Security Council is consistent with the UN Charter and is otherwise wise and moral;**
- 4) ensure consistency in Security Council actions regarding disarmament and non-proliferation obligations as to weapons of mass destruction on a regional and global basis, including by supporting establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery as referred to in Security Council resolution 1284 (1999) and other resolutions.”**

The letter explains that, “...Following the formal cease-fire recorded by Resolution 687 in 1991, there has been no Security Council resolution that has clearly and specifically authorized the use of force to enforce the terms of the cease-fire, including ending Iraq's missile and chemical, biological, and nuclear weapons programs. Such a resolution is required for renewed use of force. *It is the Security Council that has assumed responsibility regarding Iraq, and it must be the Security Council that decides, unambiguously and specifically, that*

force is required for enforcement of its requirements. Past Security Council resolutions authorizing use of force employed language universally understood to do so, regarding Korea in 1950.... and Kuwait, Somalia, Haiti, Rwanda, and Bosnia in the 1990s....”

The letter continues, “In setting policy towards Iraq, it is fundamental that the UN Charter, Article 2(3) and (4), gives priority to the peaceful settlement of disputes and the non-use of force. Article 2(4) barring the threat or use of force has been described by the International Court of Justice as a peremptory norm of international law, from which states cannot derogate.... *Given the values embedded in the Charter, despite its past record, Iraq must be afforded the chance to act on its present declared willingness to comply with Security Council requirements.* The burden is on those who claim use of force is justified....[G]iven those values, if use of force is decided upon, it must be done so by the Security Council acting collectively, clearly and unambiguously....”

The letter goes on, “*If and when, after Iraq has been afforded a reasonable period of time for compliance, the Security Council determines that Iraq is in continuing non-compliance, whether force is justified under the Charter and is otherwise advisable is a separate issue, which deserves very careful consideration.* The Security Council has never authorized force based on a *potential*, non-imminent threat of violence. All past authorizations have been in response to *actual* invasion, large-scale violence, or humanitarian emergency..... In determining whether a potential threat justifies an armed response, it is relevant that the only other basis for use of force under the Charter, Article 51, applies only ‘*if an armed attack occurs*’(emphasis added).... There is no precedent in international law for use of force as a *preventive* measure in response to a *potential* threat of violence. *Preventive war by states is not countenanced by the Charter or by international law predating the Charter, nor should it be a tool utilized by the Security Council....[I]f the Security Council authorizes preventive war, that will undermine the Charter restraints on states’ resort to force, including preventive war.*

The letter concludes by pointing out that.... “a country’s defiance of Security Council resolutions or of the will of the international community does not automatically trigger Security Council use of force.... Illustratively, South Africa resisted UN condemnation of apartheid over decades, and had a nuclear weapons arsenal. India and Pakistan have failed to comply with a recent Security Council resolution demanding that they end their nuclear weapons programs. India for decades has ignored a Security Council resolution calling for a UN-supervised plebiscite in Kashmir. Israel is in violation of several Security Council resolutions, and possesses nuclear weapons. The example of South Africa shows that a long-term strategy of international pressure can be effective. It appears reasonably possible that it could be effective with respect to Iraq as well, especially in combination with progress on other Middle East issues....”

According to **John Burroughs**, Executive Director of the Lawyers’ Committee on Nuclear Policy, “If the Security Council adopts a new resolution on Iraq, it should be limited to ensuring that inspections are effective. Any Security Council decision about whether Iraq has complied and whether war is justified should not take place until Iraq has been given a chance to cooperate with the inspections.” **Jacqueline Cabasso**, Executive Director of the Western States Legal Foundation added, “The Bush Administration’s unilateral headlong rush to war threatens not only unprecedented regional instability and potentially catastrophic loss of life, it threatens to do away with the existing international order. The Security Council has a solemn obligation to act in full accordance with the UN Charter and its values.”

Under the UN Charter, the Security Council has primary responsibility for the maintenance of international peace and security. The Council has 15 members; 5 permanent members and 10 elected by the General Assembly for two-year terms. The 5 permanent members -- the United States, the United Kingdom, the Russian Federation, France, and China -- are declared Nuclear Weapon States.

The full text of the October 8, 2002 letter to Security Council members is available upon request or on-line at www.lcnp.org/global/SCIraqletter.htm or <http://www.wslfweb.org/docs/sclet.htm>