

The War is Illegal: Military Oath of Office and Unlawful Orders

By [Westpoint Graduates against the War](http://westpointgradsagainsthewar.org)

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Theme: [Law and Justice](#), [US NATO War Agenda](#)

OATH OF OFFICE AND UNLAWFUL ORDERS

The military oath taken at the time of induction or commissioning reads:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the regulations and the Uniform Code of Military Justice. So help me God"

There is...considerable evidence that Bush's plans are fundamentally illegal, from both an international and domestic perspective. If the war is indeed illegal, members of the armed forces have a legal and moral obligation to resist illegal orders, according to their oath of induction.

The Uniform Code of Military Justice (UCMJ) 809.ART.90 (20), makes it clear that military personnel need to obey the "lawful command of his superior officer," **891.ART.91 (2)**, the "lawful order of a warrant officer", **892.ART.92 (1)** the "lawful general order", **892.ART.92 (2)** "lawful order". In each case, military personnel have an obligation and a duty to only obey Lawful orders and indeed have an obligation to disobey Unlawful orders, including orders by the president that do not comply with the UCMJ. The moral and legal obligation is to the **U.S. Constitution** and not to those who would issue unlawful orders, especially if those orders are in direct violation of the **Constitution** and the **UCMJ**.

Among the international laws and treaties that a U.S. pre-emptive attack on Iraq may violate are:

The Hague Convention on Land Warfare of 1899, which was reaffirmed by the U.S. at the 1946 Nuremberg International Military Tribunals.

Resolution on the Non-Use of Nuclear Weapons and Prevention of Nuclear War, adopted UN General Assembly, Dec 12, 1980.

Convention on the Prevention and Punishment of the Crime of Genocide; December 9, 1948, Adopted by Resolution 260 (III) A of the UN General Assembly.

Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted on August 12, 1949 by the Diplomatic Conference for the Establishment of

International Conventions for the Protection of Victims of War.

Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques, 1108 U.N.T.S. 151, Oct. 5, 1978.

The Charter of the United Nations.

The Nuremberg Principles, which define as a crime against peace, “planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for accomplishment of any of the foregoing.”

For many of these treaties and others, see the Yale Avalon project at: www.yale.edu/lawweb/avalon/imt/imt.htm

Also see a letter to Canadian soldiers sent by Hamilton Action for Social Change at: http://www.hwc.org/link/hasc/letter_cf.html)

As Hamilton Action for Social Change has noted “Under the **Nuremberg Principles**, you have an obligation **NOT** to follow the orders of leaders who are preparing crimes against peace and crimes against humanity. We are all bound by what U.S. Chief Prosecutor Robert K. Jackson declared in 1948: [T]he very essence of the [Nuremberg] Charter is that individuals have intentional duties which transcend the national obligations of obedience imposed by the individual state.” At the Tokyo War Crimes trial, it was further declared “[A]nyone with knowledge of illegal activity and an opportunity to do something about it is a potential criminal under international law unless the person takes affirmative measures to prevent commission of the crimes.”

In a report written by Andrew Lichterman, John Burroughs, of the *Lawyers’ Committee on Nuclear Policy and the Western States Legal Foundation*, and Michael Ratner, President of the *Center for Constitutional Rights*, New York, and Jules Lobel, Professor of Law at the University of Pittsburgh entitled “The United Nations Charter and the Use of Force Against Iraq,” noted that:

“Under the UN Charter, there are only two circumstances in which the use of force is permissible: in collective or individual self-defense against an actual or imminent armed attack: and when the Security Council has directed or authorized use of force to maintain or restore international peace and security. Neither of those circumstances now exists. Absent one of them, U.S. use of force against Iraq is unlawful.”

The authors were specifically referring to **Article 51 of the UN Charter** on the right to self-defense. Nothing that Iraq has done would call that provision into effect. The report also states that:

“There is no basis in international law for dramatically expanding the concept of self-defense, as advocated in the **Bush Administration’s September, 2002 “National Security Strategy”** to authorize “preemptive” – really preventive – strikes against states based on potential threats arising from possession or development of chemical, biological, or nuclear weapons and links to terrorism. Such an expansion would destabilize the present system of UN Charter restraints on the use of force. Further, there is no claim or publicly disclosed evidence that Iraq is supplying weapons of mass destruction to terrorist.

The Bush administration's reliance on the need for "regime change" in Iraq as a basis for use of force is barred by **Article 2(4) of the UN Charter**, which prohibits "the threat or use of force against the territorial integrity or political independence of any state." Thus the rationales being given to the world, the American public, and the armed forces are illegal on their face.

For a copy of this report see www.lcnp.org/global/iraqstatement3.htm.

Other articles demonstrating the illegality of this war can be found at: <http://deoxy.org/wc/wc-ilaw.htm> and www.lcnp.org/global/SCIraqletter.htm.

It is important to remember that Saddam Hussein was an important "ally" during the 1980s and that many of the weapons that may be faced by our armed forces will bear a "Made in the USA" label. The issue here is not the "evil" of Saddam Hussein, nor the international community doing nothing, but an illegal march to war by the Bush administration.

In addition to the violations of international laws, which have been incorporated into U.S. law, the... attack on Iraq is a direct violation of national law as Bush claims that he has the authority to decide whether the U.S. will go to war or not. **The U.S. Constitution** is very explicit on this point. Only the Congress has the authority to declare war, **Article 1, section 8, Par. 11**. Congress does not have the right to give that power away, or to delegate that power to the president or anyone else. The President as the "Commander in Chief" (**Article 2, section 2, Par. 1**) can command the armed forces in times of peace and war, but he does not have the authority to declare the war or determine if that war is to occur, especially if he is engaged in illegal conduct in violation of the Constitution itself or his oath of office. **The Constitution** spells out very clearly the responsibility of the President and his oath, "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States." (**Article 2, section 2, Par. 8**). The President also has the primary duty to make sure "that the laws be faithfully executed," (**Article 2, section 3**).

Above text excerpted and edited from ***International Law: a duty to disobey all unlawful orders***, 9 March 2003, by Lawrence Mosqueda, Ph.D. <http://electroniciraq.net/cgi-bin/artman/exec/view.cgi/6/265/prINTER>

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