U.S. Says War Has Legal Basis
Reliance on Gulf War Resolutions Is Questioned by Others

By Peter Slevin
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The State Department's top lawyer said yesterday that legal authority from the U.N. Security Council exists for war against Iraq, even though the Bush administration failed to win explicit council approval for the use of force.

Iraq violated previous Security Council resolutions that endorsed the use of military action to enforce disarmament demands, said William Howard Taft IV, the department's legal adviser. He said Iraq's failure to comply with three council orders nearly 15 years apart was the principal legal justification for war.

The basis in international law for the use of force in Iraq today is clear," Taft told the National Association of Attorneys General, challenging critics who contend the opposite is true.

"There is clear authorization from the Security Council to use force to disarm Iraq," Taft said. "The president may also, of course, always use force under international law in self-defense."

Many foreign diplomats and prominent specialists disagree with the Bush administration's legal interpretation of a war launched to overthrow Iraqi President Saddam Hussein and eliminate weapons of mass destruction.

They contend council Resolutions 678 and 687, passed at the time of the Persian Gulf War, did not extend authorization to the present circumstances. They say that Bush and his advisers acknowledged as much this week when they abandoned an attempt to win U.N. endorsement when it became clear a majority of the council opposed the war.

"Under the current circumstances," German Foreign Minister Joschka Fischer said at the United Nations this week, "there is no basis in the U.N. charter for a regime change with military means."

Anne-Marie Slaughter, dean of Princeton University's Woodrow Wilson School of Public and International Affairs, said a large majority of specialists in international law believe explicit Security Council authorization is required to confer legality on such a military campaign. The White House, this group notes, tried and failed to achieve that.

In describing the administration's opinion, Taft pointed out that the Security Council itself declared Iraq in "material breach" of earlier resolutions when it voted unanimously in November to demand Iraq disarmament in Resolution 1441. In doing so, he said, the council backed the use of force authorized by the Gulf War resolutions, although council members who expected a follow-up vote before war strongly disagree.

As early as last fall's negotiations over Resolution 1441, a public split developed between the United States and other council members over the threat that would follow the demands on Hussein. Rather than threatening "all necessary means," a U.N. euphemism for the use of force, diplomats compromised on a warning of "serious consequences."

The distinction is significant to legal scholars who say the Bush administration knew council members were unwilling to offer authorization in advance. Secretary of State Colin L. Powell has often countered that foreign diplomats knew that "serious consequences" meant military action.

"Resolution 1441 then gave Iraq a final opportunity to comply, but stated specifically that violations of the obligations ... would constitute a further material breach," Taft said. "Iraq has clearly committed such violations, and accordingly, the authority to use force to address Iraq's material breaches is clear."

Taft told the attorneys general that Bush also is permitted to use force in self-defense under international law. The U.N. Charter says the self-defense rules apply when a nation is attacked, not when a country initiates a preventive war.