

# How far does the UK support the United Nations and respect the international rule of law?

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*The government's recent proposal for intervention in Syria was rejected by Parliament. The debate raised questions about the influence of international law on UK foreign policy, reviving a discussion that accompanied British military involvement elsewhere in the region – in Iraq, Afghanistan and Libya. In the [2012 audit](#) of UK democracy, **Stuart Wilks-Heeg**, **Andrew Blick**, and **Stephen Crone** found that the UK's professed commitment to international law and multilateral cooperation had been tested in the years since 11 September 2001.*



How strong a proponent of the international rule of law is the UK? Credit: United Nations (CC BY-NC-ND 2.0)

The commitment of particular states to the rule of law and organs of international cooperation is vital to their sustainability, since they lack sufficient autonomous existence. This commitment can be assessed both by the extent to which a state participates in agreements and institutions, its practical policy activity, and the interpretations it seeks to place on particular features of international law at given times. The underlying principle is whether a state uses such influence and power it possesses to pursue only its narrow perceived self-interests, or display genuine support for broader principles of legality.

The UK has a long history as an internationally active state. Indeed, so extensive are its commitments that the UK government itself [does not have a single complete list](#) of all the treaties to which it is a signatory. Through the formation of the UN in 1945, the UK took a leading role [in conjunction with the US](#) in the attempt to establish a firmer world legal order and was also more recently a central player in the creation of the ICC. As such, the UK government has long maintained its stance of commitment to the international rule of law.

In the UK, the constitutional position regarding the handling of treaty agreements comes closer to what is known as the [‘dualist model’](#) than the [‘monist model’](#). This arrangement means that international agreements are not

automatically integrated into domestic law, but can only be [directly enacted through Parliament](#). The courts can, however, consider customary international law and take it into account in their deliberations, but [national law always supersedes it](#). Parliament can also pass legislation contrary to international law which will be accepted as legal within the UK.

The non-statutory [Ministerial Code](#) describes the ‘overarching duty on Ministers to comply with the law including international law and treaty obligations’. Furthermore, the Foreign and Commonwealth Office asserts its intention to provide support to various international organisations including the UN and the Commonwealth. More recently, the current coalition government has [supported permanent UN Security Council \(UNSC\) membership](#) for Japan, India, Germany and Brazil, as well as African representation.

The [2002 Democratic Audit](#) found that the Labour administration, which took office in 1997, had provided valuable support to institutions of international cooperation including the UN; and had ‘shown a clear commitment to the international rule of law’. However, it noted that the UK was involved in territorial disputes with Spain over Gibraltar and with Argentina over the Falkland Islands, while it also expressed concerns about the position of the UK as ‘chief ally to the US’. Since then concerns intensified about the manner in which the UK pursued its longstanding strategic alliance with the US. The US has not always fully committed itself to the instruments and organs of international law and its response to events of 11 September 2001 was to harden this approach, including through the development of a doctrine of preemptive self-defence. [It has been argued](#) that the UK, in supporting the US in its endeavours, served to damage the authority of the UN and the international rule of law.

## Iraq

The most dramatic manifestation of this tendency was UK participation in the US-led invasion of Iraq in 2003. Already by this point, the Labour government under Tony Blair had engaged in various military actions, some of which, such as the intervention over Kosovo, [stretched existing understandings of international law](#). There was no clear final UNSC authorisation for the Iraq invasion, though the UK claimed that a combination of earlier resolutions gave it a legal basis. In particular the UK asserted that UNSC resolution 678, which had authorised the ejection of Iraq from Kuwait in 1991, could be revived and used as an authority for the invasion of Iraq, without need for a further specific resolution if Iraq failed to comply with UN requirements that it rid itself of weapons of mass destruction (see below).

### *Full text of public statement of [Attorney General's advice](#) on legality of the invasion of Iraq*

- 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 co-operate 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'.*

The argument offered by the UK government in defence of the legality of the invasion of Iraq has been widely disputed. [It has been argued](#) that Iraqi non-compliance with UNSC resolutions was not of an extent justifying military action and that the final decision about action should have been clearly taken by the UNSC, which it was not. The issue cannot be settled in the sense that it has not been heard by an international court, nor is it likely to be. However, it is notable that in an earlier (now declassified) [internal version of his advice](#) on the legality of the proposed invasion, which the Prime Minister received on 14 January 2003, the Attorney General, Lord Goldsmith, expressed the view that 'resolution 1441 does not revive the authorisation to use of force contained in resolution in the absence of a further decision by the Security Council'.

The Attorney General seemed to have shifted his position by the time he provided further advice on 7 March 2003, but was not as definitive as the public statement could be interpreted as suggesting. The earlier, more equivocal, views of the Attorney General on the operation were not only denied to MPs voting on the action and the public, but also the Cabinet who – according to constitutional doctrine – were collectively responsible for the decision to invade. There were difficulties in reconciling this approach with the statement in the [Ministerial Code](#) that when a summary of advice from law officers is included in Cabinet papers, 'the complete text of the advice should be attached'. This approach to the handling of legal advice was part of a broader technique pursued towards Iraq (and other issues) by Tony Blair. As Prime Minister he [sought to dominate decision-making](#) by working in small informal groups, who possessed access to detailed information not made available to full Cabinet and its more official sub-committees.

In addition to the invasion raising issues of international legality, the legal advice which the UK government received regarding the occupation of Iraq was unambiguous with regard to any attempts to restructure the Iraqi political or economic system. A [subsequent memorandum from the Attorney General](#), dated 26 March 2003, made it absolutely clear that 'a further Security Council resolution is needed to authorise imposing reforms and restructuring of Iraq and its Government'. Yet, the occupation that followed the invasion of Iraq on 19 March 2003, in which the UK participated, gave rise to exactly the sorts of wide-ranging political and economic reforms which Lord Goldsmith warned would be unlawful. There were, moreover, wider allegations of occupying forces, including those from the UK, engaging in actions which violated international laws and norms. Following the death of an Iraqi civilian, [Baha Mousa](#), in British custody in 2003, a British soldier was prosecuted in the UK under the International Criminal Court Act 2001 for war crimes.

## **Rendition**

Another area of controversy which arose from the UK alliance with the US involved suspicions that the UK had become involved in rendition. This issue was considered in a [report](#) co-produced by Democratic Audit in 2007. Describing the practice as 'the informal, international transfer of suspects to custody', the report noted that rendition had already been carried out before the terrorist attacks in the US of 11 September 2001. However, thereafter it became central to US counter-terrorist policy, including 'extraordinary rendition', involving individuals being tortured. Clear evidence has emerged during the last decade of the UK collaborating with the US in rendition. In view of these

issues, human rights pressure groups, such as Amnesty International and Liberty, have condemned rendition of all types and argued that it [clearly violates both UK domestic law and international law](#).

When the UK government [described its position regarding rendition](#) in 2009, the account it provided did not completely condemn such a policy, nor was there a complete denial that the UK might be implicated in it. The statement argued that the descriptions 'rendition' and 'extraordinary rendition' had not yet attained a widely acknowledged definition, but that the UK was opposed to 'any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law'. It went on to claim that if the UK were asked to help another country with rendition, and if its participation in doing so were within the law, it 'would decide whether or not to assist taking into account all the circumstances'. Furthermore, it stated that the UK had not and would not 'approve a policy of facilitating the transfer of individuals through the UK to places where there are substantial grounds to believe they would face a real risk of torture'.

## **Torture**

Broader claims have been made that the UK, as part of its efforts against international terrorism, has been complicit in torture. Concerns exist about the possibility that UK officials may have asked foreign intelligence agencies to torture and interrogate individuals; helped foreign intelligence agencies known to practice torture detain individuals; provided information for use in interrogations of individuals who have been subjected to torture; taken part in interrogating individuals who have been or might be tortured; been present when torture has taken place; and regularly received intelligence acquired through torture. [The government has also been strongly criticised](#) for resisting scrutiny of its activities in this respect.

*This post is based on extracts from the 2012 audit of UK democracy. For further discussion see section 4.2.2 [Support for UN and international law](#).*

**[Stuart Wilks-Heeg](#), [Andrew Blick](#), and [Stephen Crone](#) are the authors of the 2012 Democratic Audit report.**