



## Presence of WMD in Iraq: Claims of USA Illegal and illegitimate

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Iraq became an independent Kingdom in 1932. It was claimed as “republic” in 1958, but in actuality a series of military strongmen have ruled the country since then, the latest being Saddam Hussain. Territorial disputes with Iran led to an inconclusive and costly eight year war (1980-88). In August 1990 Iraq seized Kuwait. But was expelled by US-led, UN coalition forces during January-February 1991. Following Kuwait’s liberation, the UN Security Council (UNSC) required Iraq to scrap all weapons of mass destruction and long range missiles and to allow UN verification inspection. The inspection and verification should have been done wholly under the supervision of UN impartially and to take it to logical conclusion but unfortunately it was taken over by USA and started imposing its will on UN which is evident by:

The Iraqi dictator must not be permitted to threaten America and the world with horrible poisons and diseases and gases and atomic weapons.

(George W. Bush, 7 October 2002)

I think unless the United Nations shows some backbone and courage, it could render the Security Council irrelevant.

(George W. Bush, 17 February 2003)

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It annoyed the world and also created differences over the issue in allied countries. It is now clear that there were no weapons of mass destruction in Iraq, despite repeated allegations by President Bush and other members of his administration. It was the Bush administration's impatience with the Security Council process and unwillingness to abide by its rules and regulations that led it to initiate an unauthorized attack on Iraq which is an open violation of international law and the war in Iraq is widely regarded throughout the world as illegal under international law.

The Bush administration spokespersons repeatedly pointed to an imminent threat that Iraq would use weapons of mass destruction against the United States or its allies, or would transfer these weapons to terrorist organizations. UN weapons inspectors in Iraq prior to the war reported that there were no weapons of mass destruction. The Bush administration, however, continued to assert that Iraq had such weapons, despite a lack of credible proof, and finally warned the UN inspectors to leave Iraq before the United States initiated what it called a "pre-emptive" war. Secretary of State Colin Powell, in his presentation to the United Nations Security Council, stated that the United States had knowledge of Iraqi weapons of mass destruction and proceeded to produce intelligence photographs of the sites where they were being manufactured and stored.<sup>1</sup> The assertions turned out to be false, despite extensive efforts by UN inspectors and US military personnel, no weapons of mass destruction were located in Iraq. This wholly discredited the numerous pronouncements by members of the Bush administration that they not only knew there were such weapons but even knew where they were located within Iraq.

The Bush administration was also adamant that there was a link between Iraq and the Al-Qaeda. The evidence establishing this link has also proved to be false or, at best, extremely tenuous. The other justification produced by USA for the war was that Saddam Hussein was a bad man and evil dictator; even though the United States supported him despite his poor human rights record when it believed that it served its interests to do so. It also did not make an effective case for the legality, or even the legitimacy, of an aggressive war initiated by USA without UN authorization.

The words of the US chief prosecutor at the Nuremberg Trials, Justice Robert Jackson are worth to be mentioned. Jackson was adamant that the true test of what was done at Nuremberg would be the extent to which the Allied victors, including the United States, applied these principles

to themselves in future years. Jackson stated “We must never forget that the record on which we judge these defendants is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our lips as well. We must summon such detachment and intellectual integrity to our task that this Trial will commend itself to posterity as fulfilling humanity’s aspirations to do justice.”<sup>2</sup> Jackson further clearly stated that aspirations to do justice included applying the law equally and fairly to all. “If certain acts in violation of treaties are crimes,” he stated, “they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us.”<sup>3</sup>

The UN Charter is clear that wars of aggression are prohibited. Article 2(4) states: “All 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.”<sup>4</sup> This prohibition on the use of force finds an exception in Article 51 of the Charter, which allows for the possibility of self-defence<sup>5</sup>.

It should be emphasized that this exception to the general prohibition against the use of force is valid only in the event of “an armed attack” and only “until the Security Council has taken measures necessary to maintain international peace and security”.

In the case of the US war against Iraq, there was no armed attack against the United States by Iraq, nor any substantiated threat of armed attack. There was no credible evidence that Iraq had any relationship to the 11 September 2001 deadly attacks against the United States. There was, therefore, no appropriate justification for the invocation of the self-defence exception to the UN Charter’s prohibition against the use of force. If the United States could proceed to war against Iraq on the basis of a claim of potential future attack, it would open the door to a broad range of assertions of potential future attacks by one country against another that would justify unilateral initiation of warfare, whether or not based on factual foundations. It would throw the international order into a state of chaos.

Following the first Gulf war, Iraq accepted a ceasefire contained in Security Council Resolution 687.<sup>6</sup> This resolution imposed certain

conditions on Iraq, including WMD disarmament obligations. In justifying the 2003 war in Iraq, Bush administration officials continued to rely upon the Security Council resolutions preceding and immediately following the 1991 Gulf war. US State Department Legal Advisers, for example, argued, “As a legal matter, a material breach of the conditions that had been essential to the establishment of the cease-fire left the responsibility to member states to enforce those conditions, operating consistently with Resolution 678 to use all necessary means to restore international peace and security in the area.”<sup>7</sup>

These officials further argued that the provision in Resolution 1441 indicating that Iraq was in “material breach of its obligations” to cooperate with UN inspectors on WMD inspections under previous resolutions, including Resolutions 678 and 687, allowed the United States legally to initiate its attack on Iraq.<sup>8</sup> In fact, however, Resolution 1441 offered Iraq “a final opportunity to comply with disarmament obligations”,<sup>9</sup> and Iraq was doing so. Iraq was cooperating with UN inspectors on these issues, and the arguments to the contrary, by Colin Powell and others in the Bush administration, have since been exposed as misrepresentations.<sup>10</sup> Most important, though, Security Council Resolution 1441 stated that the Security Council would remain seized of the matter, thus indicating that, without further Council authorization, there was no legal justification for the United States and its allies to proceed to war against Iraq<sup>11</sup>.

Despite the nearly universal understanding of the illegality of the war, it might be asked under what conditions it might nonetheless be considered legitimate, even if not legal. This line of enquiry takes into account the argument that the threat of a possible attack with weapons of mass destruction, particularly nuclear weapons, would allow for some bending of international law to fit the extreme dangers associated with such weapons. In response to this line of enquiry, it seems reasonable to suggest that evidence of the development of weapons of mass destruction, when combined with further evidence of *imminent intent to use such weapons*, could constitute a sufficient threat to justify pre-emptive war in an attempt to prevent the use of weapons of mass destruction.

It should be understood that, even if there had been weapons of mass destruction in Iraq, this alone would not have been a sufficient justification for pre-emptive war. The mere presence of weapons of mass

destruction would be insufficient to justify a pre-emptive war, let alone a preventive war. If the mere presence of weapons of mass destruction were sufficient, it would mean that any country possessing weapons of mass destruction would be a legitimate target of preventive attack by a potential enemy of that country. Such logic would push all states in the direction of preventive warfare and would substantially increase both the likelihood and the danger of such wars. It would allow for attacks against Israel on the basis of its secret but widely recognized nuclear weapons programme, for attacks by either India or Pakistan against the other, and for attacks by any of the nuclear weapons states against one another. This is, in part, why the International Court of Justice, in its 1996 Advisory Opinion on the legality of the threat or use of nuclear weapons, stated: "There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."<sup>12</sup>

The fact findings in Iraq that there were neither weapons of mass destruction nor links to extremist organizations, there was no reasonable justification, either in legality or in legitimacy, for the US-led war against that country. US leaders continue to make the claim that previous Security Council resolutions provide the necessary justification, but this is a poor argument that is not borne out by scrutiny of the earlier resolutions and, in any event, is overridden by the fact that the Security Council had decided in Resolution 1441 to remain seized of the matter.

Defenders of the Iraq war claim that the removal of Saddam Hussein by the rapidly diminishing "coalition of the willing" will make it possible for democracy eventually to take root in the country, and that a new Iraq will serve as a model to other countries in the region, transforming a troublesome but oil-rich part of the world into one that is stable, peaceful and democratic. This is an unlikely scenario, given the realities that have ensued as a result of the war.

Although many Iraqi citizens are pleased that Saddam Hussein was dislodged from power, the result of the Iraq war has been the death of some 100,000 innocent civilians, severe injury to tens of thousands more, and enormous destruction of the infrastructure of the country.<sup>13</sup> Iraqi society has been devastated by warfare and its citizens subjected to death, injury, torture and humiliating abuses such as were revealed at Abu

Ghraib prison. The price for regime change has been very high in terms of death and destruction. Iraq will now have to struggle with reestablishing itself as a sovereign state, finding its own means of governance in a post-Saddam and post-US occupation country. As part of this struggle, it will have to come to terms with its relationship to the United States, which undoubtedly seeks to ensure special privileges with Iraq with regard to Iraqi oil supplies and the continued presence of US troops in the region, particularly on newly established US military bases in Iraq itself. Of course, the United States has also paid a price for the war in terms of its financial costs, currently estimated at over US\$200 billion, the death and injury of its soldiers.

A second area of equally severe costs of the war against Iraq is its unfortunate implications for world order in the twenty-first century and the loss of credibility in world community. If the US proceed of aggressive war under false pretences against Iraq is allowed to stand without some form of international sanction against the United States and its leaders, it bodes ill for the continuation of the world order system established after World War II to prevent “the scourge of war”.<sup>14</sup> Clearly, the United States is a key actor in the international system and, with its overwhelming military and economic power, it is not easy for the international community to stand up for principles of international law against US actions that violate the UN Charter. Yet the continued viability of the Charter demands principled action by the members of the United Nations even in the face of US pressure. One extremely important principle of law is that no person or nation stands above the law. Law can be respected and ultimately enforced only when it applies to all, equally and alike. The US-led invasion of Iraq, under false pretences and without UN Security Council approval, is a direct challenge to the principle of prohibition on the use of force in the UN Charter. Had the Security Council actually authorized the US attack on Iraq, it would have undermined the credibility of the United Nations itself, including its commitment to the basic principles of its own Charter.

Throughout the world, there have been an ongoing series of inquiries into international crimes committed by US and coalition leaders in initiating and conducting the war against Iraq in the form of international people’s tribunals.<sup>15</sup> These tribunals, in the spirit of the Bertrand Russell War Crimes Tribunals during the Viet Nam war, are amassing evidence of international crimes and will be reporting these to the public throughout

the world. This is an important initiative of civil society, and it promises to help educate people and governments about the dangers and criminal nature of wars of aggression as well as crimes committed in the conduct of the war. Something more is needed, however, than leaving this matter to be dealt with only by civil society. The United Nations, for the health and integrity of the organization, also needs to initiate its own inquiry into the nature of the US war against Iraq. This could be done either in the General Assembly or by a committee of selected representative members of the United Nations and brought back to the General Assembly. Further recommendations by the General Assembly could include a call for reparations to the Iraqi people, prohibitions on the United States profiting from its aggression, the disgorgement of profits already obtained, and the trial and punishment of responsible US and coalition leaders for their actions.

An early act of the Bush administration was to “unsign” the treaty establishing an International Criminal Court (ICC).<sup>16</sup> Under the Bush administration, the United States has been hostile to the ICC, arguing that it did not want to subject US military personnel to the dictates of this international court. In light of the US circumvention of international law in its initiation of an aggressive war against Iraq, it becomes clearer that US leaders were seeking to give themselves greater degrees of freedom to commit serious violations of international criminal law without being subjected to the jurisdiction of the court.

No country, even the most powerful, should be immune from international law. The United Nations owes it to itself and to the principles for which the organization stands not to allow the law to be violated without, at a minimum, drawing public attention to the violations. Although a report by the United Nations on illegal actions by a member state might upset the government of that state, it would also help to draw the attention of the people of that country to illegal acts being committed in their name. This would bear some resemblance at the international level to the truth aspect of the Truth and Reconciliation Commission that was successfully used in South Africa after apartheid ended and Nelson Mandela was released from prison to become president of that country.<sup>17</sup> It would be useful for a UN committee examining the violations of international law in the US-led war against Iraq also to look carefully into the more than a decade of sanctions imposed upon Iraq and the results of those sanctions in terms of human life and suffering of innocent parties.

The world continues to stand at a crossroads. In one direction is a continuation of the status quo based on double standards related to weapons of mass destruction; in the other direction is a world in which international law applies to all countries, even the most powerful. The world's countries, acting through the United Nations, must find a way to end double standards relating to weapons of mass destruction and, at the same time, to fulfil the promise of the Nuclear Non-Proliferation Treaty to achieve total nuclear disarmament through the phased elimination of all nuclear arsenals. Prohibitions already exist on chemical and biological weapons, but the international community must find a way to ensure the viability of these prohibitions through robust inspection and verification mechanisms. In the short run, the war against Iraq has alerted the world to the dangers of a breakdown of accepted international norms and prohibitions against aggressive war. In the longer run, however, the resolution of this problem will require the strengthening of the United Nations itself and the ending of current double standards applied to the possession of weapons of mass destruction. The starting point for addressing this problem is for the United Nations to take responsibility for reviewing and evaluating what happened leading to the war against Iraq and to draw attention to violations of the UN Charter that occurred when the United States and its coalition partners proceeded to invade and occupy Iraq without authorization by the Security Council. In doing so, it is likely that the inescapable conclusion will be that the US-led war was neither legal nor legitimate.

The Iraq war has been a step backward for international law, has harmed the authority of the UN Security Council and has undermined the credibility of the United States in the eyes of the world. The United Nations is faced with the dilemma of reasserting the post-World War II emphasis on ending the "scourge of war" in the face of a disturbing pattern of unilateralism, exceptionalism and disregard for international law displayed by the United States. The international community, acting through the United Nations, needs to establish effective limitations on unilateral action by all states and to censure and apply sanctions to any country, including the most powerful, that defies the dictates of international law. At a minimum, the UN General Assembly should conduct a thorough review of the circumstances leading to the initiation of war against Iraq, and determine authoritatively whether that war was conducted legally with reference to international law.

This matter cannot be left in the hands of the UN Security Council since the United States, as a permanent member, would exercise its veto power to prevent such a review from going forward. If the General Assembly deems it appropriate, it can turn to the International Court of Justice for an advisory opinion on the matter. The UN report or advisory opinion of the Court should be made public and widely disseminated. The General Assembly should make proposals on preventing aggressive wars in the future and on the circumstances in which humanitarian interventions are appropriate. Were the United Nations thoroughly to review the matter and issue a strong report, it is possible that the international community could learn from what has happened and attempt to control such unauthorized and costly interventions more effectively in the future.

#### Notes and References

1. "U.S. Secretary of State Colin Powell Addresses the U.N. Security Council", 5 February 2003, <[http://www. Whitehouse. gov/news/ releases/ 2003/ 02/ 20030205-1.html](http://www.Whitehouse.gov/news/releases/2003/02/20030205-1.html)>.
2. Quoted in Telford Taylor, *The Anatomy of the Nuremberg Trials* (New York: Alfred A. Knopf, 1992), p. 168.
3. Quoted in Ann Tusa and John Tusa, *The Nuremberg Trial* (New York: The Notable Trials Library, 1990), p. 81.
4. United Nations Charter, entered into force 24 October 1945, <[http:// www.un.org/ aboutun/ charter](http://www.un.org/aboutun/charter)>.
5. Ibid.
6. Security Council Resolution 687, 3 April 1991, 30 ILM 846 (1991).
7. William H. Taft IV and Todd F. Buchwald, "Preemption, Iraq and International Law", *American Journal of International Law*, Vol. 97, No. 3 (July 2003), p. 559. The authors work for the US State Department: Taft is Legal Adviser to the US State Department; Buchwald is Assistant Legal Adviser for Political-Military Affairs.
8. Ibid., pp. 560-561.
9. Security Council Resolution 1441, operative paragraph 2 states: "Decides, while acknowledging paragraph 1 above, to afford Iraq, by this resolution, a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council; and accordingly decides to set up an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991)

and subsequent resolutions of the Council.”

10. “U.S. Secretary of State Colin Powell Addresses the U.N. Security Council”, 5 February 2003. Powell was later reported to have “told The Washington Post that he doesn’t know whether he would have recommended the invasion of Iraq if he had been told at the time that there were no stockpiles of banned weapons”: See CBS News, “The Man Who Knew”, 4 February 2004, <<http://www.cbsnews.com/stories/2003/10/14/60II/main577975.shtml>>.
11. Security Council Resolution 1441, operative paragraph 14 state’s: “Decides to remain seized of the matter.”
12. “Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons”, General Assembly Doc. A/51/218, 15 October 1996, p. 37.
13. Elisabeth Rosenthal, “Study Puts Civilian Toll in Iraq at Over 100,000”, *International Herald Tribune*, 30 October 2004.
14. United Nations Charter.
15. See, for example, “World Tribunal on Iraq - Platform Text”, Istanbul, 29 October 2003, <[http://www.brussels\\_tribunal.org/wti\\_platform\\_text.htm](http://www.brussels_tribunal.org/wti_platform_text.htm)>.
16. The Treaty Establishing an International Criminal Court entered into force on 1 July 2002. The treaty was signed by President Clinton on 31 December 2000. President Bush took the unprecedented step of “unsigned” the treaty in May 2002.
17. See Desmond Tutu, *No Future without Forgiveness* (New York: Doubleday, 1999).