

Issues from Iraq war: the use of force –weapons of mass destruction – the UN

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by

HANS BLIX

Chairman of the international Commission on Weapons of Mass Destruction,

Former Executive Chairman of United Nations Monitoring, Verification and Inspection Commission for Iraq (UNMOVIC),

Director-General Emeritus of the IAEA

The war in Iraq and the reasons for it

The war in Iraq in 2003 raised vital political and legal issues, which I shall discuss. It led to political convulsions in the world, including the country that launched it, the United States. It liberated Iraq from a brutal dictator but led to chaos and bloodshed that still continues. No weapons of mass destruction (WMD) were eliminated because, contrary what the US and UK governments had said, there weren't any.

We now know that the evidence, which the US and UK governments advanced and which UNMOVIC and IAEA inspectors voiced doubts about before the war, was the result of poor intelligence, hyping by politicians and some pure fabrications.

We have become less certain, on the other hand, whether elimination of WMD was really the principal aim of the war. When the weapons were not found other, allegedly more successful, aims have been mentioned, such as

- bringing **democracy** in the Middle East;
- sending **warning signals** to Libya, Iran and the DPRK to stay away from wmd;
- making it possible to move US Middle East **troops** and **bases** from an un-hospitable and shaky **Saudi Arabia** to an Iraq turned friendly and allied.

These days, when oil prices have been rising and it is evident that a booming Asia will seek to buy more oil and gas from the Middle East and Central Asia one cannot avoid thinking that a significant but unstated motive for the war in Iraq in 2003 – as in the war in 1991 – was to protect a **flow of oil** that is vital to the US economy.

Indeed, this reflection and the growing signs of global warming should prompt us all to think seriously about the global – not just the US – need for a reliable and expanding supply of energy. If we don't, future global competition about fossil fuels, which now gives some 85% of the world's energy, will lead to new security problems. Use of wind power, solar cells, ethanol and energy saving will not be enough and fusion is far away.

In my view, the threat to our climate and the threat to our security require that we **revisit and revive the nuclear option**, which has much matured since it was pushed aside after the Chernobyl disaster in 1986.

As to Iraq, we would all like to **look forward** and wish the tortured country calm and reconstruction. I think the US was right early this year not to postpone the elections. We welcome that a government with voter support has emerged from them and hope that it can be broadened to become more representative. Yet, we cannot fail to see that **the turmoil and killing is not over**. The war achieved liberation from a very bloody regime, but it was also perceived by most of the **Moslem world** as a humiliation and the resentment is sharp.

The war also revealed **sharp differences** among nations in the world about what rules and policies governments should follow in our future living together on this globe. These differences have regard to

- **the use of force** and the relevance of the restrictions the UN Charter. Does the world accept that the US would be free unilaterally to decide on sending cruise missiles on Natanz in Iran or Nyonbyon in the DPRK, if the US perceives a “**growing threat**” from nuclear installations in these places?
- **the future role of the UN** and other global organizations. Most states in the world wish to strengthen these institutions. However, the US administration seems to deemphasize and downgrade multilateral cooperation. We hear President Bush saying that the United States is losing confidence in the UN – if it has not already done so.
- the ways in which we should tackle and **eliminate terrorism**;

- the ways in which we can move toward **disarmament**, especially nuclear disarmament; How can we make the atom yield lots of megawatts and no megatons?

As Chairman of an international **Commission on Weapons of Mass Destruction** I spend much time examining these interlinked questions: I am happy that Ambassador Marcos Azambuja is a member of the Commission. He is one of Brazil's wisest and most experienced diplomats.

Let me also note at this point that Brazil has played and continues to play a vital role in the field of disarmament and the building of a more peaceful and equitable world. Mr. Celso Amorim was instrumental in creating a new UN approach to the Iraq issue in 1999, an approach that was prematurely ended by the war in 2003. Had it been up to Brazil and to the two Latin American countries that were members of the Security Council in 2003 continued inspection in combination with a moderate amount of US armed pressure could have avoided the war.

Recently, Ambassador Duarte of Brazil has done very well in the important but thankless task of chairing the NPT review conference in New York. I shall come back to it.

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Terrorists and wmd

Past experience suggests that so far terrorist organizations have preferred weapons, which are much less difficult to handle, than WMD.

The risk that a **nuclear bomb** could be stolen or purchased is deemed to be low. Yet, to reduce it further the Americans and the Russians should dismantle all their small tactical nuclear weapons. They are not so big that they could not be carried away and they are dispersed in many stores.

To build the infrastructure to **enrich uranium or to produce plutonium** would almost certainly be beyond the capability of terrorist organizations. Theft of such material cannot be ruled out but the quantities seen so far on the black markets have been small and many measures have been taken to strengthen the control.

More serious is probably the risk of so called **dirty bomb** – one that is detonated by conventional means but contains radioactive material and contaminates an area by radiation. It would not cause a nuclear explosion but it might appeal to terrorists as it would give lots of publicity. It would be a weapon of terror and “mass disruption” rather than one of “mass destruction”. Yet, while the material needed for a dirty bomb is found in many places, such a weapons would be harder to handle than a ‘clean bomb’.

Last but not least, terrorists **do not live on clouds**. They must have their feet on the territory of some state. The way to prevent international terrorism goes through cooperation between states – police, banking, intelligence and the most basic way is to try to prevent a fertile ground for terrorism. **Political and social action** may be of vital importance to reduce grievances, which may stimulate terrorism. The armed action in Iraq in 2003 was meant to be a blow to terrorism. Regrettably it has so far come to **stimulate terrorism**.

States and WMD. The recent NPT review conference.

Let me now turn from non-state actors to **states**. There are today some 30.000 nuclear **weapons**, many of them on hair trigger alert and by far most of them in the US and Russia. Can the world get rid of these weapons and ensure no new ones are made by the US, Russia or anybody else? There are good news and bad news.

Latin-America was first in creating a **nuclear weapon free zone** and today the states in the whole Southern hemisphere are covered by nuclear weapon free zones. The problems are in the Northern hemisphere.

The global **Non-Proliferation Treaty** entered into force in 1970. It is built on a dual bargain, which taken together **aims at** a world wide **elimination** of nuclear weapons. It contains the **commitment by non-nuclear** weapon states parties not to acquire nuclear weapons; and the **commitment by the five first nuclear** weapon states to negotiate toward nuclear disarmament.

The NPT was concluded for an initial **period of 25 years** and it was **extended in 1995** without time limit after the non-nuclear weapon states parties had obtained a number of commitments from the nuclear weapon states parties. These commitments were confirmed in 2000. Some of the

most important were about bringing into force the Comprehensive Test Ban Treaty (**CTBT**) and about the negotiation of a Treaty to end the production of highly enriched uranium and plutonium for weapons (**FMCT**).

Regrettably, not one of the commitments made in 1995 has been fulfilled. The current **US** administration has simply declared that they are **not relevant** any more and actively discusses the development of **new types of nuclear weapons**. Even though it continues to adhere to an informal moratorium on testing, it rejects the Comprehensive Test Ban Treaty, which was signed by the Clinton administration. Renewed nuclear testing is a subject of active discussion in Washington.

The absence of any agreement and any result at the NPT review **conference, which recently closed in New York**, has caused much gloom about the treaty, but different governments are gloomy about different things and not much has been said the successes of the treaty. I shall try to give both sides.

Some point to the fact

- that the first five nuclear weapon states, listed in the NPT, the P 5, have been joined by **Israel, India and Pakistan**, which will not abandon their nuclear weapons and will not join the treaty;
- that **Iraq**, a party to the treaty, succeeded in developing a capability to enrich uranium without being caught by pre-Gulf War IAEA inspection and would have made nuclear weapons, if the Gulf War had not stopped it;
- that the **DPRK**, another party to the treaty, withdrew from the NPT and probably has by now developed some nuclear devices;
- that **Libya**, also a party to the NPT, without being detected by IAEA inspection, was acquiring enrichment capability and designs for weapons through the services and networks of Dr. Khan, the father of Pakistan's bomb;
- that **Iran**, likewise a party to the NPT, and likewise a customer of Dr. Khan, has been acquiring the capability to enrich uranium and might, be aiming at a nuclear weapons capability – or near capability;
- that more states or **terrorist groups** might seek to purchase or steal enriched uranium or plutonium to make nuclear weapons.

The success stories

While these disturbing facts are there it is only fair to note that the present gloom ignores a great deal of success:

- The NPT is the most widely adhered to arms control treaty and there are **no good reasons to suspect that any but those states, which I have mentioned, are aiming at present to acquire nuclear weapons.**
- Many states feel their security needs are covered through “**nuclear umbrellas**” within alliances or through other **assurances** and have no incentive to acquire the weapons;
- Especially after the global détente, many countries do not see any threats that would call for the development of such weapons; **the DPRK and Iran are probably exceptions;**
- It was an important success that Russia and the US helped to ensure that three states in the former Soviet Union – **Ukraine, Byelorussia and Kazakstan** – transferred to Russia the nuclear weapons, which were located on their territories;
- It was also very positive that **South Africa** dismantled its nuclear weapons and became the first state in the world to roll back from that status.

The picture is thus mixed. In 35 years the number of nuclear weapons states has grown from 5 to 8 or 9. **However, the world is not milling with would be proliferators. Iran and the DPRK are special cases. The pessimists** should perhaps be asked to put their fingers on a map and tell us where they see further dangers. **Syria? Saudi Arabia? Egypt?** I think in none of them. However, we must be aware that if the efforts were to fail, which seek to ensure that Iran and the DPRK move to a reliable non-nuclear weapon status, there could later be a risk of **domino effects** in the respective region;

When many **non-nuclear weapon states** today are **pessimistic** about the NPT and the nuclear issue it is primarily because they **do not see progress on nuclear disarmament among the P 5.** They feel they have kept their part of the NPT bargain but been cheated on the commitments made by the nuclear weapon states. The nuclear weapon states, they feel, say: Do as we say; don't do as we do!

In particular, they feel that the US, the sole military superpower, is simply moving further **away from the concept and mechanisms of cooperative security** represented by the United Nations and arms control regimes. They see the current US administration as demanding ever more controls of others and less limitations for itself. They see it as making the US a **global sheriff**, ready, if there are no willing allies, alone, to strike militarily **to uphold a world order approved** by Washington. It is tempting to interpret the recently published **US National Defense Strategy (March 2005)** in this vein. It states:

“The end of the cold war and our capacity to influence global events open the prospect for a new and peaceful state system in the world”.

There is not a word in this Defense Strategy about the UN or disarmament. Only in two passages does it refer to international organizations and then in a negative way. The first reads:

“Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism.”

The esteem for international organizations and judicial processes is evidently not very high when they are lumped together with terrorism and seen mainly as obstacles. The second reference is to a need to provide legal protection for US personnel against transfers to the International Criminal Court.

I confess current global discussions on disarmament and the US campaign against the UN – which is not echoed in any other state in the world -- make me **pessimistic for the short term**. The US administration remains on a unilateralist track. Treaty obligations, whether in the UN Charter or elsewhere, are seen as reducing its freedom of action and flexibility. It is determined to keep its soldiers immune to any international jurisdiction and its territory immune from missiles by a shield.

Yet, **for the long term I am optimistic**. Why? The world is so rapidly **integrating** in economic, financial and trade terms that war between great powers is becoming unthinkable. No one believes there could be a war between European states today. The European Union may be a slow motion vehicle and it certainly has hick-ups, but it remains a great and promising **peace project**.

Indeed, most states – and certainly the **great powers** – are becoming so **interdependent** and intertwined that while we may foresee that armed conflicts may continue in some regions and while civil wars will continue to occur, **war between great powers**, in my naïve view, will be **impossible**. The remaining risky flash point is Taiwan.

No state, however powerful, can any longer manage without global cooperation on the basis of multilaterally agreed rules and through international mechanisms and organizations, including the UN. Viruses of diseases like SARS, HIV or the avian flue do not stop at great power borders and global environmental threats, like the greenhouse effect, cannot be countered by a single state or a limited alliance of the willing. Global trade has multiplied and calls for cooperative international management.

*The use of force between states: are there any legal restraints?
The UN Charter.*

However, despite accelerating interdependence and continued global détente the prospects for disarmament and the development of global order through **common** efforts of co-operation within the UN system seem somewhat bleak at the current time.

In 2003 the war against Iraq was launched without any authorization by the UN Security Council and the current time the US administration stresses repeatedly in the cases of **Iran** and the **DPRK** that “all options are on the table”. There is no doubt that the US sees itself as free to use armed force again without any green light from the Security Council.

In the US presidential campaign last year the mere thought of a “**permission slip**” from the Security Council was ridiculed and at least one US government advisor has stated that outside the Constitution of the US there is no legal restraint on the US using force. On 13 November 2003 the then US Undersecretary of State for arms control and international security, Mr. Bolton, had this to say:

*“Our actions, taken consistently with Constitutional principles, **require no separate, external validation to make them legitimate.**”*

This, in his view, applied whether the action was about

“removing a rogue Iraqi regime and replacing it, preventing WMD proliferation, or protecting Americans against an unaccountable Court [the international criminal court]...”

Let us hope that the US administration will not authorize Mr. Bolton to express such a view on behalf of the United States. It is true that UN Charter rules on the subject of the use of force have often been violated. Nevertheless, one would expect some recognition of what was agreed in 1945, much thanks to the leadership of the United States.

The aim at San Fransisco was to introduce a system of **collective security**. In art.2:4 of the UN Charter members assumed the obligation not to use force against the territorial integrity or political independence of any state. The **Security Council** was given the power to intervene – if need be with military force – to stop threats or breaches of the peace. Nevertheless, art.51 recognized that when an armed attack occurred, states retained the ‘inherent’ right of **individual and collective self-defense**, until the Council has taken the necessary measures.

As we know, **during the cold war** the veto normally prevented the Security Council to take the ‘necessary measures’ and, as a result, the collective **security system of the UN Charter** was mostly inoperative. States had to find their security not through the UN but through the right to **individual or collective self-defense**, through alliances, non-alignment or neutrality.

The end of Communism brought détente and a new security situation

After the end of the Cold War and the collapse of Communism the security situation changed drastically. There was continued **détente** between all big powers and no significant territorial or ideological conflicts between them. The veto was by no means automatic.

The most important **joint UN action** made possible by the climate of détente was, of course, the authorization given to the broad alliance created by President Bush the elder to intervene **in 1991 to stop Iraq’s naked aggression** against and occupation of Kuwait. For some time the action gave hope to the world that détente and a new will of governments to cooperate would at long last bring the **collective security** system of the Charter to life. President Bush the elder spoke about **‘a new international order’**.

The discoveries in Iraq in 1991 undermined the confidence in the NPT

However, through the **IAEA inspectors** the world also discovered that Iraq, a party to the Non-Proliferation Treaty (NPT) had in fact, an advanced program for the enrichment of uranium and for the production of nuclear weapons. Later, UNSCOM inspectors brought evidence of a significant program for biological weapons.

These discoveries could not but **shake the confidence in the reliability of the NPT and the IAEA safeguards** verification system. When, in the same period, the earliest IAEA inspectors in North Korea concluded that the **DPRK** had not declared all the plutonium it had produced, questions were inevitably asked the effectiveness of Non Proliferation Treaty.

Although a significant strengthening of the IAEA safeguards was achieved through the adoption in 1997 of new protocols, the events seem to have weakened the US reliance on global arms control agreements. With the US emerging as the sole military superpower ideas grew stronger about a US policy of active unilateral **counter-proliferation**. The concept comprised options to use force - special armed operations. The Israeli bombing raid destroying the **OSIRAK** reactor in Iraq in 1981 is the example that comes to mind.

The many years during which Saddam Hussein was able to play **cat and mouse** with UN inspectors presumably further **eroded the US confidence** that international economic sanctions and inspection could ever bring credible assurance about the absence of any weapons of mass destruction.

When effective inspection resumed in November 2002 the US evidently chose to ignore that I and the UN inspections did not confirm the allegations made about WMD. It has been reported that my phone in New York was bugged. I wish they had at least listened to what I said...

Other **members of the Security Council did not ignore** what the inspectors said. They concluded that the inspections worked and should continue. What

was the hurry to use force? Despite tremendous pressure these members, including two Latin American states, stood fast.

I sometimes wonder **what the world would have thought of the Council** today, if it had authorized the war in March 2003? For that matter, what would the world have thought of international inspection, if we had endorsed the intelligence that claimed the existence of WMDs?

The lack of justifications

The main **political justification** for the war was that **Iraq had illegally retained weapons of mass destruction** and that these constituted a threat to the US, the UK and the world. However, the closer we got to the day of unleashing the armed action, the weaker and less credible the evidence looked. A contract between **Iraq and Niger**, for the import of uranium oxide and mentioned by President Bush in his state of the Union message, was shown to have been a forgery...

It is hard to resist the reflection that in terms of lives and suffering, property and money **the war was a very costly way of concluding that there were no WMD.**

The impact of the Iraq invasion on the collective security system of the UN

A big question is whether by the Iraq war in 2003 a lethal blow was inflicted on the **collective security system** of the UN Charter, the system that President Bush the elder had successfully brought into operation in 1991 through the Security Council authorized Gulf War.

As I have noted, article 51 of the UN Charter recognizes the right to individual and collective self-defense **“when an armed attack occurs”**. Such an attack had occurred in 1990 but not in 2003. However, the US national security doctrine of 2002 explained that in the **era of weapons of mass destruction** and terrorist groups, the US must be at liberty to take armed action in **anticipatory self-defense**, not only where it deems an attack **“imminent”** but also— as President Bush has said repeatedly – where it sees a **“a growing threat”**.

It must be recognized that any government would try to **prevent** an attack of the 9/11 type, if it learnt about it rather than sit and wait for it to occur.

However, there is a crucial problem with the claim of a right to **anticipatory self-defense**: Before an attack has taken place or is manifest, the knowledge about it is likely to depend upon **intelligence**. The Iraq affair does not give much confidence about national intelligence as a reliable basis for a decision on war. Poor intelligence and a claimed right to anticipatory self-defense is a scary combination.

What should the future role of international inspection be?

I have shown how a skeptic attitude to the effectiveness of international inspection is a part of a US skeptic attitude to arms control and disarmament regimes and part of the inclination to rely on its own military muscle.

Especially after the Iraq experience this negative attitude to international inspection looks like hurt pride. In the case of Iraq, UNMOVIC carried out 700 inspections at 500 sites. No **“smoking gun”** was found and US/UK evidence was increasingly rebutted. Of particular significance was that no WMD were found at any of the dozens of sites, which we inspected and which had been proposed to us by the intelligence agencies.

Continued international inspection would probably have led to continued containment of Iraq rather than war. It would have carried the modest cost of some \$ 80 million/year and required only 200 – 300 UN staff. Saddam would have remained – perhaps like a Castro or a Khadaffi.

Many lessons can be drawn from the Iraq affair. One is that **independent professional international inspectors** with the right to very intrusive inspections came much **closer to seeing the truth** than national intelligence. **National intelligence** is indispensable, not least in times of terrorism. It has enormous resources and can get access to information, which is not accessible to international inspectors. **International inspectors** have legal access to installations, facilities, which may not be accessible to intelligence, and they may bring information that intelligence cannot produce. Hence, professional international inspection with extensive rights of access, **supported, but not remote-controlled**, by intelligence, may be the best recipe. They must not be in anybody’s pocket.

States and WMDs

How should the world community tackle the risk of **states** acquiring **WMD**?

The first and foremost answer is that as states almost invariably are influenced by what they see as **perceived security interests**, when they look for nuclear or other WMD, it is obvious that foreign and security policies which **solve conflicts** and **dissolve tensions** globally and regionally are vital. They remove the incentives for weapons.

But such action – whether relating to Kashmir or the Middle East -- may take time and meanwhile other measures are needed, for instance, export bans, diplomatic carrots and sticks.

It is **Iran and North Korea (DPRK)** that today make us hold our breath. Both countries have acted in disregard of their safeguards obligations.

In both cases a number of states are at the present time seeking solutions **through negotiations**. This is welcome. The **war** that was waged **in Iraq is not a model** that many want to see followed. The states need to be induced voluntarily to relinquish weapons and fuel cycle capability and to accept effective inspection.

It is my belief that, to achieve this both in the case of Iran and the case of the DPRK, some **guarantees may need to be given about their security** against attacks from the outside. To do the opposite – to threaten them from time to time with military actions – may lead them to speed up rather than terminating any nuclear weapons programs they may have.

As regards the **DPRK** I submit it might be wise to make the **economic part** of the package attractive by constructing it in a way that would help the country to **gradually exit** without implosion from the system that has brought it to misery and starvation.

As regards **Iran**, let me first say that in my view it is not surprising that many countries in the world have suspected Iran of intending to move to nuclear weapons. Iran built infrastructure for the enrichment of uranium disregarding express obligations under its safeguards agreement with the IAEA. Although Iran assures the world that it intends to enrich uranium only to the level needed for its own power reactor fuel, it **could later** go to a concentration needed for weapons.

This is not, however, a full picture of the Iranian issue. It has been said by some critics that there is no justification for Iran as **an oil rich country** to build nuclear power plants. This, I think, is almost a colonialist argument. Why should not an oil rich country produce electricity by nuclear power and sell the oil it thereby saves for good income in the world market? The argument was never advanced against Mexico, nor was it advanced when the Shah was still in Iran and the US and other states competed with each other to sell nuclear infrastructure to the country.

The economic part of an agreement with **Iran** will need to cover trade and investment relations, perhaps support for WTO membership. Such chips seem, indeed, to be on the table as do some multilateral assurance of supply of uranium fuel at market prices for its civilian power reactors.

Both in the case of the DPRK and Iran an agreement, in my view, must aim at bringing the state into the community of states rather than making them pariahs – part of an ‘axis of evil’. Bringing them into the community of states is not to place any stamp of approval of their regimes. Pushing them to democracy should occur through other means than war.

The diplomatic game is still on – which is better than off. But time is running.

The way forward

This brings me to the end.

I confess I see dangers on the road. Further exploration of **new types of American nuclear weapons** will not, I think, induce others to disarm and to renounce weapons options that are technically open to them. There may be **more weapons** and conflicts rather than less down this road.

By contrast, a **resumption** of the kind of leadership that the US used to exercise in the arms control and **disarmament fields** would, I think, be greeted with **enthusiasm** by the whole world and could lead **all** away from WMDs and toward greater security. We would like to see the US again in the role of a **lead wolf** rather than the role of the **lone wolf or global sheriff**.

- Nothing would have a more positive effect in the field of disarmament than US ratification of a **comprehensive test ban**

treaty. It would be likely to have a positive domino effect, including China, India, Pakistan, Iran, Iraq and Israel. Continued non-ratification has potentially high costs.

- A greater reliance on independent and professional **international inspection** with broad rights to access on the ground and with some intelligence supplied by national authorities, would give governments, governing boards and the Security Council unbiased assessments.
- Lastly, as someone who was earlier responsible for international verification and inspection, let me **say that** in foreign affairs, as in medicine, successful operations must be based on correct diagnoses of the reality on the ground, not on artificially made virtual realities.