

THE IRAQ CRISIS AND INTERNATIONAL LAW



Edited by
Richard Falk and David Krieger

Nuclear Age Peace Foundation

January 2003

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A Briefing Booklet

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“We must make clear to the Germans that the wrong for which their fallen leaders are on trial is not that they lost the war, but that they started it. And we must not allow ourselves to be drawn into a trial of the causes of the war, for our position is that no grievances or policies will justify resort to aggressive war. It is utterly renounced and condemned as an instrument of policy.”

*Supreme Court Justice Robert L. Jackson
Chief US Prosecutor at the Nuremberg Tribunal*

Preface

This briefing booklet considers the legal, moral, and strategic arguments related to President George W. Bush's threats to initiate a preemptive war against Iraq, with or without an eventual authorization by the UN, as well as the US Government approach to nuclear weapons policy.

It is the major conclusion of this briefing booklet that the policies of the Bush Administration directed at Iraq have involved illegal threats of international force, as well as preparation and planning for a war that is contrary to the letter and spirit of the United Nations Charter. To the extent that the UN Security Council supports this turn toward aggressive war, the UN is discrediting itself as an organization committed to war prevention. Such a disregard of the Charter also involves flagrant violations of international law rules that govern recourse to war and the use of force in international relations.

President Bush and his principal advisors have claimed that the terrorist attacks of September 1, 2001 give the United States expanded authority to deal with hostile forces on an anticipatory basis. Such claims may in exceptional circumstances be justified, but need to be considered on a case-by-case basis. With regard to Iraq, the case for anticipatory attack is exceedingly weak and the burden of persuasion has not been nearly sustained.

The North Korean acknowledgement of a nuclear weapons program greatly complicated the Iraqi policy, both by highlighting American double standards in addressing the challenge of nuclear proliferation and in amplifying suspicions that the war threats directed at Iraq have more to do with exerting control over the Middle East than counter-proliferation.

Considering that the United States is the preeminent military power in the world, with a global navy, military bases in more than 60 countries, and a major program underway to militarize space, it is of particular importance that it respect the rules of international law governing the use of force. As Lord Acton famously noted, "power corrupts, and absolute power corrupts absolutely." Without the countervailing power of other states, it is only the voluntary observance of international law that can impose limits on the exercise of US power at this time.

With an arsenal of nuclear weapons at the disposal of American leaders, the rest of the world can only tremble at the prospect of a United States that is undeterred by other states and is advocating a new statecraft freed from the constraints of international law. And in a world that is increasingly globalized, what is bad for others is bound to be disastrous for ourselves.

Given the passivity of the political opposition in the United States and the unwillingness of America's cold war allies to challenge Washington's foreign policy, it is up to the American people to display vigilance in defense of peace and justice. It is not enough for US citizens to be content with the rule of law at home. We need to insist also that when our government acts beyond its borders that it respect international legal commitments and the guidance of a United Nations free from geopolitical manipulation.

Richard Falk and David Krieger
January 2003

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Security in the Post 9/11 World

By David Krieger, December 2002

The Bush administration's approach to security in the post 9/11 world is built on military strength, and is composed of the following elements: increased military expenditures, the pursuit of global military dominance, indefinite reliance on nuclear weapons, the development and deployment of missile defenses and the threat to initiate preemptive wars in the name of security. There was a time, when nations fought nations and armies battled against armies, when this strategy might arguably have been relevant, but in the post 9/11 world it is a dysfunctional strategy that is certain to fail.

Military force is too blunt an instrument for providing security against terrorists. One need only look at the results of the US-led war against Afghanistan. Military force could topple the Taliban regime, but it could not capture or kill the leading terrorists purported to have initiated the 9/11 attacks. In the process of prevailing over the Taliban, which hardly required the world's most advanced military force, many innocent civilians were killed, undoubtedly resulting in new sympathies and new recruits for the terrorist forces aligned in their hatred toward the policies of the United States.

Mr. Bush has named Iraq, Iran and North Korea as an Axis of Evil, certainly a provocative statement which, combined with Bush's stated willingness to engage in preemptive war, is likely to elicit steps by these nations to protect themselves against possible attacks by US forces. The Bush administration is already well advanced in its plans to wage war against Iraq. It is worth contemplating that such a war against Iraq would be the first war ever fought for nuclear disarmament, ironically pursued by a country with 10,000 nuclear weapons against a country with no demonstrated nuclear weapons.

Would a war against Iraq make US citizens more secure? There is every reason to believe that it would make US citizens far less secure. Such a war, rightly or wrongly, would be perceived in the Arab world as reflecting the double standards that allow the US to turn a blind eye to Israel's arsenal of some 200 nuclear weapons while being willing to attack an Arab country for pursuing the same path. A US-led war against Iraq would require a bloody battle to topple Saddam Hussein, and would undoubtedly result in more hatred and determination by terrorists, old and new, to attack US citizens where they are most vulnerable.

A war against terrorism is not a war that can be won on the battlefield because there is no battlefield. It is not a war that can be won by throwing more money at the military or by building the most dominant military force in the world (we already have that). Nuclear weapons certainly will not be able to deter terrorists, particularly since they are virtually unlocatable. Nor will missile defenses be of any value against terrorists, who will use low-tech stealth approaches to go under the high-tech missile defenses. And the threat of preemptive war by the US will only provoke other countries to seek clandestinely to develop their own deterrent forces.

In sum, the Bush administration's approach to providing security in the post 9/11 world is a strategy not only destined to fail, but to make matters far worse than they already are. Achieving security in a world of suicidal and determined terrorists requires a new approach, something other than the Rumsfeld doctrine of "find and destroy the enemy before they strike us."

This new approach to security must be built on the power of diplomacy and aid rather than on military power. It must be built on policies that reverse inequities in the world and seek to provide basic human rights and human dignity for all. These policies must adhere to international law, and end the double standards that have helped to produce extreme misery in much of the Arab world. In the 21st century there must be dignity for all, or there will be security for none.

Iraq and North Korea: Meeting the Challenge of Nuclear Weapons Proliferation

By Richard Falk and David Krieger

President Bush has adopted very different policies toward Iraq and North Korea, despite having provocatively labeled both countries part of the "Axis of Evil," along with Iran. He has repeatedly threatened war if Iraq does not divulge and eliminate its purported weapons of mass destruction, has been moving US troops into the Gulf region to demonstrate the seriousness of his intent, has engaged in threatening practice bombing runs over Iraqi territory, and has been illegally arming and inciting opposition forces to initiate a civil war in Iraq. But, with regard to North Korea, which has now admitted to having a nuclear weapons program and is known to have advanced delivery systems, Bush has made clear that he prefers to rely on diplomacy over military action.

Iraq appears to be cooperating with the UN weapons inspectors, while North Korea has asked the inspectors to leave its country and has given notice of its intent to withdraw from the Non-Proliferation Treaty, as is its legal right, in order to pursue, if it chooses, a nuclear weapons program free from treaty restraints. Why, then, is war the prospect for Iraq and diplomacy for North Korea?

Bush seeks to justify the distinction by insisting that Iraq poses special dangers because it has invaded neighboring countries in the past and has previously used non-nuclear weapons of mass destruction. This distinction, however, seems dubious, especially given past US policies. Iraq invaded Iran in 1980 at the urging of the US, and the US was fully aware of Iraq's use of chemical weapons in its war against Iran and against the Kurds. At the time the US was supporting Iraq and even supplying it with many of the components needed to produce chemical and biological weaponry. When Iraq invaded Kuwait in 1990, the US ambassador at the time sent mixed signals, telling Saddam Hussein that its dispute with Kuwait was a matter of only regional concern.

The two aggressive wars initiated by Iraq during Saddam's rule both involve a measure of US complicity. Iraq has not acted aggressively toward neighbors during the past decade. Iraq fully understands that if it were to threaten or use weapons of mass destruction at this point it would face almost certain annihilation, and nothing in Saddam Hussein's career, however brutal, suggests such irrationality. Indeed, the Baghdad regime has always given highest priority to its own survival and to that of the Iraqi state.

The Bush administration has set itself up as the arbiter of who is and who is not allowed to possess weapons of mass destruction. This is not a strategy likely to succeed without giving American foreign policy a militarist character that includes being constantly prepared for warfare in remote parts of the world. In recent years, the US failed to stop India and Pakistan from developing and possessing nuclear weaponry. Nor did it act to prevent Israel from developing its own nuclear arsenal, and even appears to have supported Israel's program in various ways. At a minimum, the US certainly turned a blind eye toward this dangerous addition to the nuclear weapons club. Bush has chosen to continue these policies, which predate his presidency, despite his seeming preoccupation with nuclear proliferation.

The Arab world is keenly aware that the US has adopted very different standards for Iraq and North Korea, and also with respect to Iraq and Israel. There is no acceptable explanation of this double standard other than the strategic opportunism of Washington.

Is the real rationale for the policy that the US doesn't want unpredictable leaders to develop nuclear arsenals? Doubtful, because North Korea, Pakistan and Israel each currently have unpredictable leaders.

Is the policy that the US will only allow its allies to develop nuclear arsenals? Also doubtful, because North Korea, India and Pakistan are not properly regarded as allies, although Pakistan has temporarily shifted its alignment due to pressure from Washington in the aftermath of September 11th.

Is the policy that the US will use the suspected development of weapons of mass destruction as an excuse to intervene in a country that sits on large oil reserves? One cannot help feeling that oil is a major economic and strategic interest that helps explain why the Bush administration seems so intent on waging war against Iraq as a prelude to regime change. There may be other political and strategic motivations as well, including the desire to assert regional dominance in the Middle East and eliminate a troublesome leader.

We believe that the US government needs to develop a consistent policy on weaponry of mass destruction that applies to all nations. President Bush's pursuit of a diplomatic solution with North Korea seems like the right course of action, especially if compared to its approach to Iraq.

The US Government needs to enter into negotiations with North Korea, rather than seeking to isolate it. The United States must also be willing to offer security assurances as well as much needed development assistance to the people in North Korea in exchange for the North Koreans forgoing their nuclear option. It would be diplomatically constructive for the US to encourage the establishment of a Northeast Asian Nuclear Weapons Free Zone that covers the two Koreas, Japan, Taiwan, and that portion of Chinese and US nuclear forces deployed in Northeast Asia. It would also be helpful to support reunification discussions between Seoul and Pyongyang.

With regard to Iraq, the Bush administration should also be willing to enter into negotiations. The UN inspectors, after all, have already reportedly visited well over 200 Iraqi sites, selected on the basis of intelligence leads, and have so far found no evidence of prohibited weaponry. If the Bush administration has information, as it repeatedly has claimed, that Iraq has violated the UN mandate on eliminating its weapons of mass destruction, it has an obligation to provide this information to the UN inspectors so that they can carry out their work. In the event that Iraq is cleared by the UN inspectors with respect to nuclear and other weapons of mass destruction programs, the US should end its sanctions against Iraq and certainly end the bombing of the No-Fly Zones that it established in Iraq more than a decade ago without any authorization by the Security Council.

To be consistent in its efforts to control the spread of weapons of mass destruction in the Middle East, the Bush administration should put pressure on Israel to eliminate its nuclear arsenal. Resolution 687, calling for Iraq's nuclear disarmament, makes note of the calls to create a Middle East Nuclear Weapons Free Zone and Weapons of Mass Destruction Free Zone. The US should seek to realize these goals, and this will not be possible unless Israel's nuclear arsenal is dismantled. As a major donor of military aid to Israel, the US is in a position to exert a benign influence on Israel's policy on these issues that will be helpful in the pursuit of regional stability and a just peace throughout the Middle East.

The US has wrongly treated the Nuclear Non-Proliferation Treaty as a one-way street for more than 30 years. From the outset the treaty was negotiated as a two-way street. The non-nuclear weapons states gave up their right to acquire or develop nuclear weapons in return for a solemn promise by the nuclear weapons states to engage in good faith negotiations for nuclear disarmament. The US, as well as other nuclear weapons states, has not upheld its part of the bargain, which is a "material breach" of the treaty. It has also been unacceptable to other countries, particularly those that feel threatened by US foreign policy.

Consistency, however, is not enough. Non-proliferation is increasingly being revealed as a dead-end that is not capable of protecting the peoples of the world against the dire possibility of a nuclear war. If the US really wants to put an end to the threat of nuclear proliferation, it must demonstrate that it has the political will to propose and engage in serious negotiations for the total elimination of all nuclear weapons in the world, including its own, as called for almost 35 years ago in the Non-Proliferation Treaty.

War is not a solution to preventing the proliferation of nuclear weapons. The only approach with some chance of success depends on a demonstrable political will to achieve a world free of nuclear weapons and other weapons of mass destruction. When the US demonstrates this political will, the inspection procedures and institutional structures to guard against cheating can be established, tested and gradually implemented. Only at that point can the world begin to breathe more easily.

Moving in this direction will require a sea change in the strategy of the US Government, but it is the only policy that will have the consistency and international support needed to succeed, and is by far the best way to reduce the threat of nuclear catastrophe. Until the United States is prepared to forego its own nuclear weapons option, preventing others from doing what we have been doing for more than half a century will seem like an extreme version of moral hypocrisy. It is time for Americans to realize that reliance on nuclear weapons is incompatible with our most fundamental moral and legal obligations as well as with preventing and reversing nuclear proliferation.

Law Triumphs over Force: For the Moment U.N. Iraq Resolution Does Not Authorize Use of Force

By David Krieger and Devon Chaffee, November 9, 2002

After months of pressure from the United States, its most powerful member, the Security Council unanimously passed a resolution on Iraq that falls far short of the authorization sought by the US for use of force against Iraq. Security Council Resolution 1441 on Iraq's weapons of mass destruction was passed Friday, November 8, 2002. It outlines a rigorous inspection regime as a "final opportunity" for Iraq to comply with its disarmament obligations. The regime gives enhanced authority to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and International Atomic Energy Agency (IAEA) inspectors in their attempts to verify disarmament within Iraq. Under the resolution Iraq is to confirm its intention to comply with the new regime within seven days and provide a detailed declaration of all aspects of its weapons of mass destruction program within 30 days.

The resolution makes no mention of the use of force should Iraq fail to comply with the enhanced requirements. After strong insistence by council members such as France, Russia and Mexico, the final resolution states that the Security Council remains seized of the matter and would convene to consider an Iraqi breach of the new inspection regime. The resolution also contains a clear reference to the commitment of all UN members to the sovereignty and territorial integrity of Iraq. The clear intent of the resolution is not to automatically authorize force in the event of a material Iraqi breach. The United States would be in breach of the United Nations Charter should it decide to take military action without further Security Council approval.

Though Iraq has been singled out by the Security Council in the recent resolution, the principles behind the resolution of complete disarmament of weapons of mass destruction, verification and absolute transparency, are clearly applicable to all countries that possess or seek to acquire these weapons, including the five permanent members of the Security Council. In accord with the Nuclear Non-Proliferation Treaty, nearly all countries have clear obligations to end proliferation efforts and to disarm (only India, Israel, Pakistan and Cuba are not yet parties to this treaty, and Cuba has indicated its intention to join).

The Security Council resolution has been successful in containing the calls for war against Iraq by the United States and Great Britain insofar as both countries have lauded the resolution and agreed to allow the Security Council to consider violations before they would wage a military attack. Also, in recent comments the Bush administration has shifted its stance and is referring to disarmament more than regime change as the principal U.S. objective in Iraq.

The Bush administration has previously made statements that it did not intend to allow the United Nations to interfere with its intentions towards Iraq. Recent Congressional elections may have bolstered the president's confidence in this unilateralist position.

Bush was recently quoted in the Washington Post as stating, "I don't spend a lot of time taking polls around the world to tell me what I think is the right way to act. I just got to know how I feel." Such statements are presumably meant to indicate that contrary international opinion will not prevent him from taking military action against Hussein. The new Security Council resolution does, however, tie Bush's hands from using force against Iraq absent further approval by the Security Council.

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Subverting the UN

*By Richard Falk and David Krieger
(Published in The Nation, November 4, 2002)*

As a healthy response to the Bush Administration's war policies, the number of people taking to the streets in protest is increasing with each step toward war. These protesters realize that they do not want the United States to initiate a pre-emptive and illegal war, but perhaps they do not yet realize that they are also fighting to retain an international order based on multilateralism, the rule of law and the United Nations itself.

To save the UN from the Administration's destructive and radical unilateralism, other key nations will have to stand up to its bullying. France, Russia and China, because of their veto power in the Security Council, could withhold legal authority for America to proceed to war. Whether they will exercise this power, given the pressure they're under from the Administration, remains to be seen. But if one or more of them does so, the Administration would be faced with acting in direct contravention of the Security Council, with a probable serious erosion of Congressional and public support. If it were to go ahead with war, it could deliver a death knell not only to Iraq but also to the UN itself. It is emblematic of U.S. global waywardness that it is necessary to hope for a veto to uphold the legitimacy and effectiveness of the UN as a force for peace but to also be concerned that Administration threats of unilateral military action could render the veto ineffective and thereby the role of the Security Council largely meaningless.

The United States was instrumental in forming the UN and was a strong supporter of the organization until the Reagan presidency, when that Administration's hostility toward the UN became pronounced. Reagan's indictment of it as dominated by Third World concerns was largely rhetorical and symbolic but included calls for budgetary downsizing and withdrawal from UNESCO because of its alleged corruption and anti-American bias. In the Bush I presidency this antipathy was connected with U.S. global economic interests; the Administration used American muscle to close down the Center on Transnational Corporations as a favor to multinationals. This confrontational approach was briefly reversed by Bush Senior's use of the UN to mandate war against Iraq in 1991 to oust it from Kuwait. At the time, Bush surprised the world by sounding briefly like a second coming of Woodrow Wilson with his call for "a new world order" centered upon reliance on the collective security mechanisms of the UN Security Council to meet the challenges of aggression. When the dust settled at the end of the Gulf War, however, the White House realized that it did not want such global responsibilities or to build such expectations about an enhanced UN role. The language of a new world order was deliberately, as one high-level official then expressed it, "put back on the shelf."

Bill Clinton's 1992 presidential campaign seemed to offer prospects for enhanced recourse to the UN to address humanitarian challenges of the sort that were arising in the Balkans and sub-Saharan Africa. But as President, Clinton contributed to the post-cold war decline of the UN by abruptly reversing course on Somalia in 1993 after eighteen Americans were killed in the Black Hawk Down incident. Rather than accept responsibility for that debacle, the Clinton Administration blamed the UN. That Administration also turned its back on UN pleas for a commitment to stop genocide in Rwanda a year later, when a small contingent of UN troops could have prevented the mass murders there. The Clinton security team further sabotaged a Rwanda intervention by threatening to halt U.S. funding for UN peacekeeping operations if the UN took on new peacekeeping commitments.

The Clinton White House expressed only lukewarm support for the UN role in Bosnia, while undermining support for UN action by providing arms to the Croats and Muslims. In Iraq, the Administration undermined and corrupted the UN inspection process by using U.S. inspectors to conduct espionage. Clinton disappointingly celebrated the fiftieth anniversary of the UN by delivering an uninspired speech notable for its Wall Street calls for "downsizing" and "doing more with less," and by turning increasingly to NATO to carry out what it deemed humanitarian interventions, culminating in the NATO war in Kosovo and Serbia in 1999. This war on behalf of the Kosovars was notable for the absence of any UN authorization, for the use of

force and a deliberate US decision to circumvent the UN in anticipation of Russian and Chinese vetoes.

But while the Clinton Administration did serious damage to the UN, the Bush presidency—with its repudiation of even minimal multilateralism, its hostility to existing arms control treaties, its rejection of the Kyoto Protocol on global warming and its efforts to undermine the International Criminal Court—created a pattern of anti-UN diplomacy never before seen in Washington. It represents a view that American power and resources should serve exclusively national strategic interests.

Since September 11, the Bush team has selectively used the UN to build a united front against global terrorism, specifically against Al Qaeda. Such an initiative led to a degree of formal multilateralism in the war in Afghanistan but has run into resistance since. In the months after Bush's 2002 State of the Union address—which first outlined the "axis of evil" approach to the post-Afghanistan challenge and which made no reference whatsoever to the UN—Bush, in speech after speech, gave the impression that "regime change" in Baghdad was a matter of White House discretion. It was then that establishment realists, most prominently Brent Scowcroft and James Baker, sounded the alarm. The Bush war planners seemed quickly to realize that this time they had pushed unilateralism too far even for their Republican constituency, let alone their overseas allies. Congress and the UN were brought into the act, with obvious ambivalence, and the Administration shifted its overt call from "regime change" to "disarmament" via "coercive inspection." Both Congress and the UN Security Council are being asked to underwrite this approach, and Congress has already capitulated.

There are two main ways to ruin the UN: to ignore its relevance in war/peace situations, or to turn it into a rubber stamp for geopolitical operations of dubious status under international law or the UN Charter. Before September 11, Bush pursued the former approach; since then—by calling on the UN to provide the world's remaining superpower with its blessings for an unwarranted war—the latter.

Also damaging are the evident double standards and hypocrisy of the U.S. call for enforcement of UN resolutions against Iraq, given consistent U.S. unwillingness to do anything to implement the stream of Security Council resolutions directing Israel to withdraw from occupied Palestinian territories, to dismantle illegal settlements and to apply the Geneva Conventions governing military occupation. Ironically, Security Council Resolution 687, cited by Bush in his justification for war against Iraq, also recalls the objective of establishing a nuclear weapons-free zone in the Middle East and of working toward making the region free of all weapons of mass destruction. While these are clearly worthwhile objectives, no mention is made by the Bush Administration of Israel's longstanding possession of nuclear weapons.

While the United States engages in such hypocrisy, it is attempting to use UN resolutions improperly to justify an illegal pre-emptive war against Iraq. Resolution 687, which welcomed the restoration of Kuwaiti sovereignty and set forth peace terms after the Gulf War, says nothing about the conditions under which additional force could be used against Iraq. Rather, it concludes by stating that the Security Council "decides to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the region." Thus, any unilateral U.S. enforcement action without Security Council approval would be illegal. If the Bush Administration pushes a resolution authorizing force through the UN Security Council, it will demonstrate only that it has succeeded in bending the organization to its will—in effect subverting the UN the same way it subverted the integrity of the U.S. Congress. It is doubly ruining the UN by its domineering posture and through its repeated assertion that if the UN resists, it will act unilaterally. The worst aspect of the Bush II legacy may be its vicious undermining of multilateralism and international law in general, and of the United Nations in particular.

A Bleak Day for America

By David Krieger, October 12, 2002

October 11, 2002 was a bleak day for America, and for all Americans. Congress, in its fear and conformity, voted to grant authority to the President to conduct a preemptive war against another nation. Congress joined the President in assuming an imperial mantle, granting powers above and beyond our obligations under international and domestic law.

Would that Congress had heeded its wiser and saner voices, such as Senator Robert Byrd, who cautioned restraint and warned that the vote to authorize the rush to war undermined our Constitution. Only Congress has the power to declare war under the U.S. Constitution. It cannot legally give this power over to the president.

“We are at the gravest of moments,” Senator Byrd told his colleagues. “Members of Congress must not simply walk away from their Constitutional responsibilities. We are the directly elected representatives of the American people, and the American people expect us to carry out our duty, not simply hand it off to this or any other president. To do so would be to fail the people we represent and to fall woefully short of our sworn oath to support and defend the Constitution.”

International law, as imbedded in the United Nations Charter, allows for war under two tightly circumscribed conditions. First, a nation may engage in force for self-defense when an attack occurs or is imminent, but only if there is not time to take the matter to the United Nations Security Council and only until the United Nations Security Council assumes control of the situation. Second, a nation may engage in force when duly authorized by the United Nations Security Council after all efforts to secure the peace by peaceful means have failed.

Despite the congressional vote of false authority to the President, neither of these conditions of authorization to engage in war has been fulfilled. There is no evidence that an attack by Iraq on the United States or any other nation is imminent. Nor have the peaceful means to resolve Iraq’s compliance with earlier Security Council resolutions calling for dismantlement of weapons of mass destruction been pursued since the United Nations, under pressure from the United States, pulled its inspectors out of Iraq four years ago. Iraq has indicated its willingness to resume inspections, but the Bush administration has been reluctant to take Yes for an answer and accept their offer of compliance.

September 11th will be remembered in America as the tragic day terrorists made evident the vulnerability of even the world’s most powerful nation. October 11th should be remembered as the day that Congress meekly and uncourageously gave to the President of the United States the illegal authority to commit preemptive war. Such war, in the context of World War II called “aggressive war,” is what Nazi and Japanese leaders were held to account for at the Nuremberg and Tokyo trials following World War II.

Such war is far from the proud traditions of America dating back to its Declaration of Independence. This is not the way that America should be leading the world, for it will result in international chaos, instability and increased insecurity. Now it is up to ordinary Americans to take to the streets and by their presence make it known in Washington and throughout the world that the American public does not support putting the face of Saddam on the innocent children of Iraq; nor does it support high-altitude bombing and other of acts of aggressive warfare in the name of a false and Orwellian peace.

The Bush Administration's Assault on International Law

By David Krieger

(Published in World Editorial & International Law, September 29, 2002)

A war initiated by the United States to oust Saddam Hussein from power in Iraq under the present circumstances, and without UN Security Council authorization, would be tantamount to a “war of aggression,” an international crime for which high-ranking leaders of the Axis countries during World War II were held to account at the International Military Tribunals at Nuremberg and Tokyo.

The chief U.S. prosecutor at the Nuremberg trials, U.S. Supreme Court Justice, Robert Jackson, described such war as “the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.” Thus, the seriousness of the international law violation that such a war would entail would exceed the seriousness of the Iraqi violations that the Bush administration has cited to justify it. Such a war would also symbolize the complete reversal of official U.S. policy toward international law since World War II.

In the immediate aftermath of the allied war against Nazi and Japanese aggression, the United States led other nations in establishing the United Nations Charter “to save succeeding generations from the scourge of war,” and in founding the United Nations “to maintain international peace and security,” “to take effective collective measures for the prevention and removal of threats to the peace,” and “to bring about by peaceful means” settlements of international disputes.

A war against Iraq at this time, whether initiated by the United States alone or with authorization from the U.N. Security Council, would violate these founding UN principles by permitting an unprovoked major war to occur, most likely with massive loss of life and the threat of wider conflict and conflagration.

Furthermore, because the law of the UN Charter is less than ideal—reserving permanent Security Council membership to the great powers, including the United States, with veto authority over the council’s resolutions—a U.S.-imposed Security Council resolution authorizing the use of force against Iraq would highlight and exacerbate the U.N.’s weaknesses, and would constitute a major setback to its fundamental goals and aspirations.

If noncompliance with UN resolutions and secret weapons programs were legitimate grounds for the Security Council to authorize force, then the United States, if it were consistent, would be preparing a force-authorizing resolution for its own invasion, as well as for invasions of other permanent members of the Council, and of Israel, India, Pakistan, and others. If the Security Council, however, manages to withstand U.S. pressure to authorize an invasion, and if, as it has threatened, the Bush administration invades Iraq without such authorization, the damage to international law would be equally great, given that the United States would be demonstrating its contempt for the UN Charter and the United Nations in the clearest possible terms.

As the chief architect of the UN Charter, and as the world’s most powerful nation—militarily, economically, and politically—the United States has a special responsibility to uphold the founding principles of the United Nations, and to lead the world, not repeatedly to war, but in setting international precedents and developing global models for the peaceful resolution of conflict consistent with the rules, principles, and procedures of the UN Charter.

With such leadership, the world could then turn its attention to broader applications of international law to other areas of profound concern, including global warming, preserving the oceans, protecting human rights, raising standards of living for the world’s poor, ending global starvation, ending the global arms bazaar, ending the Israeli-Palestinian conflict with a just solution, and ending the threat of nuclear war—issues for

which the Bush administration has shown only hostility. The alternative is international anarchy, irreversible environmental degradation and destruction, the proliferation of weapons of mass destruction, and perhaps also a proliferation of wars unconstrained by the principles of a peaceful world order that the United States helped establish a half-century ago. Even the Bush administration's efforts to reduce the terrorist threat to the United States would likely be damaged by an unprovoked war against an Arab state in the Middle East.

International law is essential in the twenty-first century because powerful technologies and integrated economies cannot be constrained by national boundaries. The adverse effects of pollution, disease, and weapons of war are uncontrollable without standards contained in law. The sanctity of the earth's biosphere, including human survival, has become dependent upon the strengthening of these standards. Sadly, however, the United States under the Bush administration has initiated an intense assault on international law in order to pursue short-term and short-sighted interests that avoid, evade, ignore, or violate the standards painstakingly developed by the international community, including the United States, over many decades.

If the United States continues to shirk, even denounce, its responsibilities to uphold international law across a range of global problems and concerns, it will tear open the fabric of world security and international cooperation, and leave the future of the human race, including the United States, in extreme peril.

War on Iraq: Not the President's Decision

By Richard Falk & David Krieger, September 18, 2002

It took the public expression of doubts by Brent Scowcroft, a former national security adviser to presidents Gerald Ford and George Bush, to initiate finally a national debate on the merits of preemptive war against Iraq. Before Scowcroft spoke out it was nearly impossible to be heard above the drumbeats of war being orchestrated from the White House. Scowcroft was careful to couch his criticism in ultra-pragmatic terms relating to the dangers of undertaking such a war at this time and its likely diversion of energy from what he rightly depicts as America's number one security priority, the continuing challenge posed by al-Qaida. Persuasively, also, Scowcroft downplays the regional threat posed by Saddam Hussein, and is highly skeptical about Iraq's purported links to Sept. 11 or to terrorism generally. Scowcroft relies for political closure on an American call for a renewal of inspections, this time on an unrestricted (anytime, anywhere, no permission required) basis. If refused by Iraq, then Scowcroft appears to accept the logic of preemptive war.

This diminishes greatly the overall force of his argument, and provides the Bush planners with a way to shore up their support, especially in Washington—namely, by insisting on unrestricted inspection arrangements with such a wide ranging intrusion on Iraqi sovereign rights that Baghdad would have no choice but to refuse.

Scowcroft's doubts have been echoed by other Republican stalwarts, including House Majority Leader Dick Arme y.

Most unexpectedly, it is from Arme y that we hear for the first time objections to launching a preemptive war against Iraq based on international law. The highly conservative Congressional leader asserted that an attack on Iraq would violate international law and would not be consistent with what we have been as a nation or what we should be as a nation.

This is such an obvious reality that it is an extraordinary commentary on the passivity of the Democratic Party that such a principled concern about Bush's war talk had to wait upon the words of a leading Republican lawmaker.

Finally, with such rumblings coming from prominent and conservative members of his own party, President Bush could no longer turn a blind eye to doubts and criticisms directed at his plans for preemptive war against Iraq. He even acknowledged that skepticism was coming from some very intelligent people, promised to consult, and called these dissenting voices part of a healthy debate.

Unilateralist Ways

But in the same breath, the president resumed his unconstitutional and unilateralist ways by saying, "But America needs to know, I'll be making up my mind based upon the latest intelligence and how best to protect our own country plus our friends and allies."

Doesn't Bush realize that the U.S. Constitution does not vest war-making powers in the office of the presidency? Doesn't he realize the founders deliberately, with the greatest care, placed a decision of such gravity in the hands of the Congress?

And even if this condition were to be satisfied, formidable legal obstacles to war would still remain. It would still be constitutionally necessary for the United States to show respect for validly ratified international treaties, including the United Nations Charter.

It does not seem to us possible, given these considerations, to launch a preemptive war against Iraq without violating both the U.S. Constitution and international law.

Although we welcome and agree with the pragmatists who warn about the dire consequences that would likely follow upon initiating war against Iraq, we side with the principled opponents of war against Iraq, relying not only on international law, including the U.N. Charter, but also on the moral and religious guidelines contained in the just war doctrine.

Guilty of Aggressive War

From these perspectives, under present conditions, it is clear that if the United States goes ahead and wages war against Iraq it will be guilty of what international lawyers call aggressive war, which was one of the principal charges leveled against surviving Axis leaders at the Nuremberg and Tokyo war crimes tribunals after World War II.

The main argument put forward by the Bush administration for the war is that the United States cannot stand aside while a brutal and expansionist Iraqi regime is acquiring nuclear and other weaponry of mass destruction.

Iraq, their argument continues, would then be in a position to transfer such weaponry to al-Qaida and other terrorist groups, as well as threaten Israel and the Gulf countries, which hold a large share of the world's oil reserves.

As Scowcroft and others have pointed out, however, Saddam Hussein, for all his evils, has not had a record of cooperating with terrorist groups, much less al-Qaida.

It would be clear to Saddam Hussein that any provocative action would lead to the annihilation of Iraq as well as his personal destruction. Baghdad has been deterred over the course of the last decade, and there is every sound reason to think that deterrence and containment will work in the years ahead.

Unlike Iraq, al-Qaida cannot be deterred by threats of retaliatory force since it has no territorial base. The U.S. government should give its highest priority to guarding against al-Qaida gaining possession of weapons of mass destruction. Unfortunately, in this regard, the United States is failing to provide adequate support to assuring the control of the Russian nuclear arsenal.

Going to war against Iraq would produce the one set of conditions in which Saddam Hussein, faced with certain death and the destruction of his country, would have the greatest incentive to strike back with any means at his disposal. These would include the arming of al-Qaida or the launching of such weapons as Saddam Hussein possesses against U.S. troops and Israel.

Several constructive alternatives to war exist that are both consistent with international law and strongly preferred by America's most trusted allies, and at the same time address those security concerns about future Iraqi behavior that seem valid.

These include the resumption of responsible weapons inspections under U.N. auspices combined with multilateral diplomacy and a continued reliance on non-nuclear deterrence. By responsible weapons inspections we mean those that an international inspectorate deems necessary to achieve confidence that weapons of mass destruction are not possessed or being developed by Iraq.

This approach is very different from the Scowcroft "anytime, anywhere" image of an acceptable inspection capability, which would almost certainly be rejected by Iraq, thereby reopening the door to the initiation of war that would still be unwarranted, imprudent and illegal. In contrast, the resumption of responsible inspections could also lead to an improving diplomatic atmosphere, especially if coupled with ending the sanctions that have had such a cruel impact on Iraqi civilian society for more than a decade and the ending of frequent U.S. and British bombing missions in the no-fly zones in northern and southern Iraq. Diplomacy and international inspections successfully addressed comparable concerns about North Korea's pursuit of a nuclear weapons capability.

Principle and Prudence

It is time for the public debate on Iraq policy to raise these issues of principle and prudence, and to recognize that American leadership in the world will be much more respected, and in the end effective, if it does everything in its power to avoid war, and to strengthen the role of international law, including its insistence that international disputes be settled by peaceful means. It has never been more crucial for American citizens and our friends abroad to raise their voices for peace and to resist the counsels of war.

Opposing the President's Call for 'Relentless War'

By David Krieger, September 12, 2002

In an article reflecting on the anniversary of September 11, President Bush wrote, "in an instant, America was transformed from a nation at peace to a country at war. We were called to defend liberty against tyranny and terror. And we have answered that call with the might of our military and the spirit of a nation inspired by acts of heroism."

I am in complete accord on two issues. Yes, there was a horrendous attack on two major structures that symbolize our country's economic and military power, the World Trade Center and the Pentagon, costing thousands of innocent lives. And yes, there was genuine heroism shown by those who resisted the terrorist attacks and by the emergency workers who sacrificed selflessly for the victims of September 11.

But was America, as Bush claims, instantly transformed from a nation at peace to a country at war? If it was transformed in this way, it is because this is the direction in which Bush and his advisors transformed it. Becoming a country at war meant to the Bush administration an opportunity to expand US military forces while constricting civil liberties for ordinary Americans. Starting with his candidacy, Bush has pressed for increasing funding for the military. The September 11 attacks, along with a frightened and compliant Congress and American public, provided the opportunity to do so.

We responded to September 11 with the might of our military, which pummeled Afghanistan and attacked al Qaeda training camps, leading to a regime change in Afghanistan. But all of this military might has failed to apprehend Osama bin Laden, the individual purported to be responsible for the attacks. Has the use of this military might against Afghanistan truly made us any more secure?

Bush and his military team have not spent much time addressing the reasons that the terrorists chose to attack symbols of American economic and military power. They have simply used the blunt instrument of military force to strike out at a regime viewed as dangerous. The United States under the Bush administration appears more like a helpless flailing giant than a country basing its responses on reason, law and morality. The Bush administration seems oblivious to the decent respect for the opinions of Mankind referred to by the founders of our nation in the Declaration of Independence.

Our attacks against Afghanistan have resulted in the deaths and injuries of thousands of innocent Afghans due to our high-altitude bombing. Our response to September 11 has probably killed more innocent Afghans than the number of innocent persons who died in the terrorist attacks. But our President tells us we are a country at war, and dismisses the deaths of the innocent people we kill as collateral damage.

This will be a long war, Mr. Bush tells the American people, and unprecedented challenges await us. It will be a long war because we are failing to take necessary steps to achieve peace. It will be a long war because we are led by an administration that has no vision of peace or of a better world for others. It has no vision and few resources for alleviating poverty, or for building schools instead of tanks. It has no vision of preserving the environment and natural resources for future generations because it is intently focused on goals that merely serve corporate interests. It has no vision of halting arms sales, an area where the U.S. remains indisputably number one in the world. Nor does it have a vision of bringing nuclear and other weapons of mass destruction under control. We are an empire and empires require double standards. Thus, this will be a long war.

The concepts of war and defense have often been confused in the minds of Americans, and appear particularly confused in the minds of Bush and his advisors. Through most of our nation's history, we had a War Department, but in 1947 the name of this department was changed to the Department of Defense, one suspects largely for purposes of public relations. Commenting on this change, novelist Joseph Heller astutely observed that since switching the name to Department of Defense, we have never again been in danger of war, only of defense.

Now we are in danger of perpetual war. The United States under the Bush administration is leading the world in exactly the wrong direction, away from international law and toward increasing reliance on military force. Although no connection has been found between Iraq and the terrorist acts of September 11, Bush and Cheney are eager to wage war against Iraq to overthrow Saddam Hussein because Hussein may have weapons of mass destruction. But other countries, including dictatorships, actually have weapons of mass destruction. Possession of weapons of mass destruction has never been the litmus test for launching a pre-emptive and aggressive war. If we considered the elimination of nuclear weapons truly important, perhaps we would model the behavior we seek for others.

It is highly unlikely that Saddam Hussein would attempt to inflict injury on citizens of the United States even if he had weapons of mass destruction unless, of course, he was attacked by the United States. Such an attack would put American soldiers in harm's way of Hussein's arsenal, and give Hussein the right under international law to act in self-defense. This right would still not include using weapons of mass destruction, although he might still choose to use them illegally when confronted by overwhelming U.S. force.

Bush has called for our government to wage an effective and relentless war against terrorists. Perhaps we should think instead of waging peace against the terrorists, acting with such justice and decency in the world that we would again be viewed as a positive model.

How does a country wage peace? There are some seeds of an answer in Bush's advice to the American people: "Overcome evil with acts of goodness. Love a neighbor. Reach out to somebody in need. Feed someone who is hungry. Teach a child to read." These were Bush's suggestions for what Americans can do to help in the war on terror. But imagine if these suggestions were followed by our country in our policies toward the rest of the world. What if America sought to overcome evil with acts of goodness, rather than military might? What if America reached out to people everywhere who were in need of food, shelter, health care and education?

Americans must choose the direction they wish to take. If left to make the choice itself, the Bush administration will lead the United States into a potentially devastating war against Iraq, which will undoubtedly increase the already simmering hatred toward the United States in most of the poorer areas of the world. The only way that Mr. Bush can be derailed from the perpetual war he seeks to wage is if the American people make their voices heard so clearly and persistently that Congress will have no alternative but to stand up to the President and say No! If the American people choose to docilely follow Mr. Bush into war against Iraq, we should not be surprised when the next front of the war returns to America in the form of increased terrorism.

The Rush to War

By Richard Falk

(Published in The Nation, August 19, 2002)

The American Constitution at the very beginning of the Republic sought above all to guard the country against reckless, ill-considered recourse to war. It required a declaration of war by the legislative branch, and gave Congress the power over appropriations even during wartime. Such caution existed before the great effort of the twentieth century to erect stronger barriers to war by way of international law and public morality, and to make this resistance to war the central feature of the United Nations Charter. Consistent with this undertaking, German and Japanese leaders who engaged in aggressive war were punished after World War II as war criminals. The most prominent Americans at the time declared their support for such a framework of restraint as applicable in the future to all states, not just to the losers in a war. We all realize that the effort to avoid war has been far from successful, but it remains a goal widely shared by the peoples of the world and still endorsed by every government on the planet.

And yet, here we are, poised on the slippery precipice of a pre-emptive war, without even the benefit of meaningful public debate. The constitutional crisis is so deep that it is not even noticed. The unilateralism of the Bush White House is an affront to the rest of the world, which is unanimously opposed to such an action. The Democratic Party, even in its role as loyal opposition, should be doing its utmost to raise the difficult questions. Instead, the Senate Foreign Relations Committee, under the chairmanship of Democratic Senator Biden, organized two days of hearings, notable for the absence of critical voices. Such hearings are worse than nothing, creating a forum for advocates of war, fostering the illusion that no sensible dissent exists and thus serving mainly to raise the war fever a degree or two. How different might the impact of such hearings be if respected and informed critics of a pre-emptive war, such as Hans von Sponeck and Denis Halliday, both former UN coordinators of humanitarian assistance to Iraq who resigned in protest a few years back, were given the opportunity to appear before the senators. The media, too, have failed miserably in presenting to the American people the downside of war with Iraq. And the citizenry has been content to follow the White House on the warpath without demanding to know why the lives of young Americans should be put at risk, much less why the United States should go to war against a distant foreign country that has never attacked us and whose people have endured the most punishing sanctions in all of history for more than a decade.

This is not just a procedural demand that we respect the Constitution as we decide upon recourse to war—the most serious decision any society can make, not only for itself but for its adversary. It is also, in this instance, a substantive matter of the greatest weight. The United States is without doubt the world leader at this point, and its behavior with respect to war and law is likely to cast a long shadow across the future. To go legitimately to war in the world that currently exists can be based on three types of considerations: international law (self-defense as set forth in Article 51 backed by a UN mandate, as in the Gulf War), international morality (humanitarian intervention to prevent genocide or ethnic cleansing) and necessity (the survival and fundamental interests of a state are genuinely threatened and not really covered by international law, as arguably was the case in the war in Afghanistan).

With respect to Iraq, there is no pretense that international law supports such a war and little claim that the brutality of the Iraqi regime creates a foundation for humanitarian intervention. The Administration's argument for war rests on the necessity argument, the alleged risk posed by Iraqi acquisition of weapons of mass destruction, and the prospect that such weapons would be made available to Al Qaeda for future use against the United States. Such a risk, to the scant extent that it exists, can be addressed much more successfully by relying on deterrence and containment (which worked against the far more menacing Soviet Union for decades) than by aggressive warmaking. All the evidence going back to the Iran/Iraq War and the Gulf War shows that Saddam Hussein responds to pressure and threat and is not inclined to risk self-destruction. Indeed, if America attacks and if Iraq truly possesses weapons of mass destruction, the feared risks are likely to materialize as Iraq and Saddam confront defeat and humiliation, and have little left to lose.

A real public debate is needed not only to revitalize representative democracy but to head off an unnecessary war likely to bring widespread death and destruction as well as heighten regional dangers of economic and political instability, encourage future anti-American terrorism and give rise to a U.S. isolationism that this time is not of its own choosing!

We must ask why the open American system is so closed in this instance. How can we explain this unsavory rush to judgment, when so many lives are at stake? What is now wrong with our system, with the vigilance of our citizenry, that such a course of action can be embarked upon without even evoking criticism in high places, much less mass opposition in the streets?

The New Bush Doctrine

By Richard Falk

(Published in The Nation, July 15, 2002)

President Bush's June graduation address to the cadets at West Point has attracted attention mainly because it is the fullest articulation, so far, of the new strategic doctrine of pre-emption. The radical idea being touted by the White House and Pentagon is that the United States has the right to use military force against any state that is seen as hostile or makes moves to acquire weapons of mass destruction—nuclear, biological or chemical. The obvious initial test case for pre-emption is Iraq, whose government the United States is continually threatening to overthrow, either on the model of the displacement of the Taliban in Afghanistan or by some other method. Washington's war plans have evidently not been finalized, and whether the intimations of war—despite the numerous objections voiced by neighboring governments and European allies—are to be taken literally is still unclear.

What is certain, and scary, is the new approach to the use of international force beneath the banner of counterterrorism and in the domestic climate of fervent nationalism that has existed since September 11. This new approach repudiates the core idea of the United Nations Charter (reinforced by decisions of the World Court in The Hague), which prohibits any use of international force that is not undertaken in self-defense after the occurrence of an armed attack across an international boundary or pursuant to a decision by the UN Security Council. When Iraq conquered and annexed Kuwait in 1990, Kuwait was legally entitled to act in self-defense to recover its territorial sovereignty even without any UN authorization. And the United States and others were able to join Kuwait in bolstering its prospects, thereby acting in what international lawyers call collective self-defense.

Back in 1956, when the American commitment to this Charter effort to limit the discretion of states to the extent possible was still strong, the U.S. government surprised its allies and adversaries by opposing the Suez war of Britain, France and Israel because it was a nondefensive use of force against Egypt, despite the provocations associated at the time with Nasser's anti-Israeli, anti-Western militancy. This legal commitment had evolved by stages in the period after World War I, and when the surviving leaders of Germany and Japan were prosecuted for war crimes, "crimes against the peace" were declared to be even worse than atrocities committed in the course of the war. The task of the Charter was to give this concept as clear limits as possible.

Pre-emption, in contrast, validates striking first—not in a crisis, as was done by Israel with plausible, if not entirely convincing, justification in the 1967 war, when enemy Arab troops were massing on its borders after dismissing the UN war-preventing presence, but on the basis of shadowy intentions, alleged potential links to terrorist groups, supposed plans and projects to acquire weapons of mass destruction, and anticipations of possible future dangers. It is a doctrine without limits, without accountability to the UN or international law, without any dependence on a collective judgment of responsible governments and, what is worse, without any convincing demonstration of practical necessity.

It is true that the reality of the mega-terrorist challenge requires some rethinking of the relevance of rules and restraints based on conflict in a world of territorial states. The most radical aspects of the Al Qaeda challenge are a result of its nonterritorial, concealed organizational reality as a multistate network. Modern geopolitics was framed to cope with conflict, and relations among sovereign states; the capacity of a network with modest resources to attack and wage a devastating type of war against the most powerful state does require acknowledgment that postmodern geopolitics needs a different structure of security.

Resolution 1441: Washington Strong-Arms the Security Council

By Phyllis Bennis, November 8, 2002

Anti-war forces in the U.S. and around the world can claim the United Nations Security Council inspections resolution as a partial victory. The resolution does not endorse the use of force, it redefines the Iraq crisis, at least in the international arena, as one of disarmament, not overthrow, and it will at least delay a U.S. attack. It gives us a powerful tool to fight for U.S. accountability to multilateralism and the UN. But it still reflects the heavy-handed domination of the U.S. over the UN and the rest of the world, and ultimately sets the terms for war.

The real victory lies in the fact that the Bush administration felt it necessary to go to the United Nations at all. Only last summer the Pentagon's "chicken hawks" appeared to have derailed any UN-based strategy for Iraq. But the Joint Chiefs of Staff remained skeptical of war; polls showed less than a quarter of Americans supported attacking Iraq without the UN; and hundreds of thousands of protesters filled the streets. Washington's closest allies, from Germany to Mexico and even Tony Blair's own Labor Party, railed against growing U.S. unilateralism. The superhawks didn't want this resolution, but they lost.

That the anti-UN Bush administration took eight weeks to negotiate the terms of resolution 1441, reflects the enormous international and domestic opposition to the Bush administration's planned war for oil and empire. The UN resolution puts additional pressure on Washington to at least appear to be acting in concert with the international community; a solo war will be a much harder sell. While the Republican sweep of the mid-term election certainly further empowered the administration's most unilateralist voices, the diminishing public support in the U.S. for a solo attack, bolstered by the UN resolution, serves as a brake on that trajectory.

The U.S. made some significant diplomatic concessions to win support for its text. But back-room deals with France and Russia regarding oil contracts in a post-war Iraq were a big part of the picture.

Every Council ambassador, even the British, speaking after the unanimous vote, made clear the resolution provides no authorization for war. French Ambassador Jean-David Levitte said it requires a Council meeting in the event of Iraqi non-compliance. "France welcomes the elimination from the resolution of all ambiguity on this point," he said. Mexico's Ambassador, Adolfo Aguilar Zinser, was probably the most direct. Force is only valid, he said, "with the prior, explicit authorization of the Security Council."

For almost every country on the Council the vote was less about constraining Iraq, than about constraining the U.S. Whether they succeed or not, the ambassadors' words place them on the side of the international anti-war forces.

Nothing in the resolution gives Washington the right to determine whether Iraq is in "material breach" of its obligations, nor to decide what to do if there is such a breach. But Washington claims exactly those rights. And nothing in the resolution text explicitly rejects that claim, or reasserts the UN Charter's clear statement that only the Council as a whole has the authority to make such decisions, not the U.S. alone

There is no evidence that the Bush administration has any intention of basing its go-to-war decision on what the UN resolution actually says, or even on what the inspectors find or don't find. If they are looking for a pretext, the super-tough inspection requirements provide plenty. In Colin Powell's words, "Independent of the outcome of negotiations in the council, in the end there will be a resolution that leaves the authority and the right to the U.S. President to act in selfdefense for the American people and our neighbors."

It's all too familiar. In early 1998, at another moment when the United States was gearing up for war against Iraq, Secretary General Kofi Annan went to Baghdad and negotiated a last-minute agreement with Saddam

Hussein. The agreement was designed to resolve problems with the arms inspections and to stave off the threat of a U.S. war. When Annan came back to New York, the Security Council crafted a new resolution endorsing his agreement. Then-US ambassador to the UN Bill Richardson demanded that the resolution call for "severest consequences" if Iraq should violate the agreement in the future; under pressure, the Council agreed. The Clinton Administration still wasn't happy. It was geared up for war, and the resolution meant recalling bombers, fighter jets and troops.

And there was a serious disagreement over just what "severest consequences" meant. The Russian ambassador even coined a word—"automaticity"—to describe what the phrase did not mean. Severest consequences, according to virtually the entire Security Council, did not give any state the automatic right to move on its own against Iraq. Like most Council resolutions, this one ended with the statement that "the Council remains seized of the issue." In UN diplo-speak, that means the issue remains on the Council's agenda, and under Council authority.

So on March 2, 1998, after the resolution passed, a parade of ambassadors emerged from the Security Council chamber, one by one, to insist that their resolution did not include "automaticity." It did not, they said, authorize any country—including the United States—to launch a unilateral military strike against Iraq. Ambassador Richardson came last. Dismissing his predecessors' insistence that the resolution did not authorize a military strike, he shrugged and told the press, "We think it does." Months later, without UN authorization, the United States and Britain devastated Iraq in the four-day mini-war of bombs and cruise missiles known as Desert Fox.

Warnings of "severe consequences" are again included in UN resolution 1441. "Automaticity" has now become part of UN jargon, and in November 2002 Council ambassadors again asserted strongly that the new resolution has no "automaticity" for military action. But the diplomats of the Bush Administration, like their Clinton-era predecessors, disagree with the rest of the Security Council; once again they "think it does."

Yes, we've still been there before. In 1990, in the run-up to Desert Storm, George Bush Senior bribed and threatened virtually every country on the Security Council to force them to vote to authorize the US war. The Administration cajoled poor countries with cheap Saudi oil and dangled arms packages before governments like Ethiopia and Colombia, whose access to US military support had been cut because of wars and human rights violations. U.S. diplomats went to China and said "name your price" to avert a veto—and then fulfilled Beijing's wish list for post-Tiananmen Square diplomatic rehabilitation (with the announcement of a White House visit by the Chinese Foreign Minister) and new development aid (in the form of a \$114 million World Bank assistance package). China abstained. When Yemen, the only Arab country on the council, voted against the war, a U.S. diplomat said, "That will be the most expensive 'No' vote you ever cast." And Washington cut off its entire \$70 million U.S. aid package to Yemen.

This time around it was the impoverished island nation of Mauritius that emerged as the latest poster child for U.S. pressure at the UN. The ambassador, Jagdish Koonjul, was recalled by his government for failing to support the original U.S. draft resolution on Iraq. Why? Because U.S. aid to Mauritius, provided under the African Growth and Opportunity Act, requires that the recipient "does not engage in activities contrary to U.S. national security or foreign policy interests."

Despite some cosmetic concessions, it looks as if almost every country on the Council made the pragmatic determination that if Washington goes to war, they want to be part of it. They may have little interest in actually participating, but they want to be on board the crusade. Their thinking seems to be that in the era of a sole superpower, being sidelined from an illegal pre-emptive war -- a war which Congressman Jim McDermott called a war for "oil, power and the blandishments of empire" -- is somehow more dangerous than signing on to such a war.

There are other options for the UN. There is an alternative to the U.S.-dominated and vetoparalyzed Security Council. The "Uniting for Peace" precedent allows the General Assembly to step in when the Council is unable to take appropriate action on an issue involving international peace and security. The first

use of this precedent was at the outset of the Korean War, when the United States, exploiting a moment of Soviet absence from the Council, maneuvered to move the question onto the General Assembly agenda, claiming that the Council was paralyzed. The Assembly, then overwhelmingly in thrall to the United States, quickly endorsed the U.S. war. Since then, the precedent has been used for more appropriate goals, including Assembly efforts to investigate and condemn Israeli violations of the Geneva Conventions by settlement activities in the occupied Palestinian territories.

A new effort to involve the General Assembly in the Iraq crisis would reclaim the real relevance of the United Nations—standing defiant of Washington's unilateralism, upholding international law, and at the center of the growing international challenge to the legitimacy of Bush's war.

Phyllis Bennis has been a writer, analyst and activist on Middle East issues for 25 years. She is currently a fellow of the International Institute for Policy Studies and the Transnational Institute in Amsterdam.

Appendix A

United Nations Security Council Resolution 1441

with line-by-line analysis in bold by Phyllis Bennis, November 2002

Security Council Resolution 1441

S/RES/1441 (2002) 8 November 2002

Adopted by the Security Council on 8 November 2002

Adopted unanimously

The Security Council,

Recalling all its previous relevant resolutions, in particular its resolutions 661 (1990) of 6 August 1990, 678 (1990) of 29 November 1990, 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991, 688 (1991) of 5 April 1991, 707 (1991) of 15 August 1991, 715 (1991) of 11 October 1991, 986 (1995) of 14 April 1995, and 1284 (1999) of 17 December 1999, and all the relevant statements of its President,

Recalling also its resolution 1382 (2001) of 29 November 2001 and its intention to implement it fully,

Recognizing the threat Iraq's noncompliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles poses to international peace and security,

Recalling that its resolution 678 (1990) authorized member states to use all necessary means to uphold and implement its resolution 660 (1990) of 2 August 1990 and all relevant resolutions subsequent to Resolution 660 (1990) and to restore international peace and security in the area,

Further recalling that its resolution 687 (1991) imposed obligations on Iraq as a necessary step for achievement of its stated objective of restoring international peace and security in the area,

Deploring the fact that Iraq has not provided an accurate, full, final, and complete disclosure, as required by resolution 687 (1991), of all aspects of its programmes to develop weapons of mass destruction and ballistic missiles with a range greater than one hundred and fifty kilometres, and of all holdings of such weapons, their components and production facilities and locations, as well as all other nuclear programmes, including any which it claims are for purposes not related to nuclear-weapons-usable material,

Deploring further that Iraq repeatedly obstructed immediate, unconditional, and unrestricted access to sites designated by the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA), failed to cooperate fully and unconditionally with UNSCOM and IAEA weapons inspectors, as required by resolution 687 (1991), and ultimately ceased all cooperation with UNSCOM and the IAEA in 1998,

Deploring the absence, since December 1998, in Iraq of international monitoring, inspection, and verification, as required by relevant resolutions, of weapons of mass destruction and ballistic missiles, in spite of the Council's repeated demands that Iraq provide immediate, unconditional, and unrestricted access to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), established in resolution 1284 (1999) as the successor organization to UNSCOM, and the IAEA, and regretting the consequent prolonging of the crisis in the region and the suffering of the Iraqi people,

Deploring also that the Government of Iraq has failed to comply with its commitments pursuant to resolution 687 (1991) with regard to terrorism, pursuant to resolution 688 (1991) to end repression of its civilian popu-

lation and to provide access by international humanitarian organizations to all those in need of assistance in Iraq, and pursuant to resolutions 686 (1991), 687 (1991), and 1284 (1999) to return or cooperate in accounting for Kuwaiti and third country nationals wrongfully detained by Iraq, or to return Kuwaiti property wrongfully seized by Iraq,

Recalling that in its resolution 687 (1991) the Council declared that a ceasefire would be based on acceptance by Iraq of the provisions of that resolution, including the obligations on Iraq contained therein, Determined to ensure full and immediate compliance by Iraq without conditions or restrictions with its obligations under resolution 687 (1991) and other relevant resolutions and recalling that the resolutions of the Council constitute the governing standard of Iraqi compliance,

Recalling that the effective operation of UNMOVIC, as the successor organization to the Special Commission, and the IAEA is essential for the implementation of resolution 687 (1991) and other relevant resolutions,

Noting the letter dated 16 September 2002 from the Minister for Foreign Affairs of Iraq addressed to the Secretary General is a necessary first step toward rectifying Iraq's continued failure to comply with relevant Council resolutions,

Noting further the letter dated 8 October 2002 from the Executive Chairman of UNMOVIC and the Director General of the IAEA to General Al-Saadi of the Government of Iraq laying out the practical arrangements, as a follow-up to their meeting in Vienna, that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA, and expressing the gravest concern at the continued failure by the Government of Iraq to provide confirmation of the arrangements as laid out in that letter,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of Iraq, Kuwait, and the neighbouring States,

Commending the Secretary General and members of the League of Arab States and its Secretary General for their efforts in this regard,

Determined to secure full compliance with its decisions,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq's failure to cooperate with United Nations inspectors and the IAEA, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991);

This language is specifically designed to set the stage for a U.S. military attack. Being in "material breach," if determined by the Council, is a precursor to the Council authorizing military enforcement. The assertion that Iraq "has been and remains" in material breach is part of the U.S. effort to claim a continuing authorization of the use of force. If the U.S. were serious about determining Iraqi compliance or non-compliance, it would ask the UN inspectors to return immediately to Iraq, and only after they finished their work and reported to the Security Council would the Council make a determination regarding compliance or breach. Washington's insistence on this term is a major part of the French and Russian opposition to the U.S. proposal.

2. 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;

This language was inserted to soften earlier drafts' references to "serious consequences" so close to the beginning of the resolution. Some countries, and some U.S. commentators, have claimed that the reference to "full and verified completion" is designed as a "carrot" for Iraq regarding the lifting of economic sanctions, which is supposed to follow the full and verified completion of disarmament. However, given the explicit U.S. position that sanctions will remain as long as Saddam Hussein is in power, and given that the resolution does not specifically assert anything regarding the sanctions, it is a very weak carrot at best.

In fact, the reference to a "final opportunity" to comply represents a clear threat of military attack.

3. Decides that, in order to begin to comply with its disarmament obligations, in addition to submitting the required biannual declarations, the Government of Iraq shall provide to UNMOVIC, the IAEA, and the Council, not later than 30 days from the date of this resolution, a currently accurate, full, and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons, ballistic missiles, and other delivery systems such as

unmanned aerial vehicles and dispersal systems designed for use on aircraft, including any holdings and precise locations of such weapons, components, sub-components, stocks of agents, and related material and equipment, the locations and work of its research, development and production facilities, as well as all other chemical, biological, and nuclear programmes, including any which it claims are for purposes not related to weapon production or material;
This seems to be an effort to insure Iraq's inability—regardless of intent—to comply with these very stringent terms. This is asking Iraq to essentially do the initial work of the inspection team itself, cataloguing its entire WMD programs as well as programs never included in the earlier demands. The original inspections mandated in resolution 687 did not include, for example, "delivery systems, such as unmanned aerial vehicles and dispersal systems designed for use on aircraft, including any holdings and precise locations of such weapons" etc. Resolution 687 also included only long-range missiles, with a range over 150 km, not "all" ballistic missiles. The terms are significantly stricter here.

4. Decides that false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq at any time to comply with, and cooperate fully in the implementation of, this resolution shall constitute a further material breach of Iraq's obligations and will be reported to the Council for assessment in accordance with paragraph 11 and 12 below;

This sets Iraq up with a "damned if you do, damned if you don't" situation. If they claim they have no WMD material to declare, Washington will identify that as evidence of the "continuing breach" based on the unproved, but functionally unchallenged, U.S. assertion that Iraq does have viable WMD programs. If Iraq actually declares viable WMD programs, it similarly proves the U.S. claim of continuing breach of resolution 687.

The last sentence's reference, however, to paragraph 11 and 12, was the final compromise demanded by France, Russia, Mexico and other Council members before passing the resolution. The significance is that determining what Iraqi action constitutes a breach, bringing that breach to the Council and thus triggering the immediate convening of the Council to assess the violation, can only be done by the UN inspectors—UNMOVIC and IAEA—and not by Washington alone.

5. Decides that Iraq shall provide UNMOVIC and the IAEA immediate, unimpeded, unconditional, and unrestricted access to any and all, including underground, areas, facilities, buildings, equipment, records, and means of transport which they wish to inspect, as well as immediate, unimpeded, unrestricted, and private access to all officials and other persons whom UNMOVIC or the IAEA wish to interview in the mode or location of UNMOVIC's or the IAEA's choice pursuant to any aspect of their mandates; further decides that UNMOVIC and the IAEA may at their discretion conduct interviews inside or outside of Iraq, may facilitate the travel of those interviewed and family members outside of Iraq, and that, at the sole discretion of UNMOVIC and the IAEA, such interviews may occur without the presence of observers from the

Iraqi government; and instructs UNMOVIC and requests the IAEA to resume inspections no later than 45 days following adoption of this resolution and to update the Council 60 days thereafter;

The effect of moving scientists and their families outside of Iraq would be to have UN arms inspectors acting as asylum officers. Certainly many, perhaps most scientists would jump at the opportunity right now to leave Iraq with their families and be granted asylum somewhere else. They are living, after all, in a country not only devastated by 12 years of crippling economic sanctions and the ravages of a repressive political regime, but also facing the likely possibility of imminent war. There are certainly legitimate reasons why many Iraqi scientists would want to live and work somewhere with greater safety and political freedom. There is also, however, the consequent and understandable likelihood of scientists exaggerating the level of Iraq's military or WMD programs as well as their own role in those programs, in the hope of persuading international immigration officials of their importance. And finally, another longer term result of such an effort, if carried out on a large scale, will be the stripping of a key component of Iraq's national intellectual and scientific base, with seriously deleterious effects on future efforts to rebuild a modern society.

6. Endorses the 8 October 2002 letter from the Executive Chairman of UNMOVIC and the Director General of the IAEA to General Al-Saadi of the Government of Iraq, which is annexed hereto, and decides that the contents of the letter shall be binding upon Iraq;

This letter asserts a set of arrangements allegedly agreed to by Iraq, without confirmation from Iraq that it did indeed accept those arrangements.

7. Decides further that, in view of the prolonged interruption by Iraq of the presence of UNMOVIC and the IAEA and in order for them to accomplish the tasks set forth in this resolution and all previous relevant resolutions and notwithstanding prior understandings, the Council hereby establishes the following revised or additional authorities, which shall be binding upon Iraq, to facilitate their work in Iraq:

Deciding to disregard existing resolutions and agreements made between Iraq and the United Nations, without any determination as to why those earlier arrangements should not be respected, undermines the legitimacy, consistency and coherence of UN resolutions.

-- UNMOVIC and the IAEA shall determine the composition of their inspection teams and ensure that these teams are composed of the most qualified and experienced experts available;

This language represents a compromise between the necessity of having the inspectors be UN employees, accountable only to the United Nations itself (important because of the history of earlier inspection regimes which provided information to U.S., Israeli and other intelligence agencies), and the claim of U.S. and other diplomats that only certain countries (mainly the U.S. and U.K.), actually have adequately trained personnel.

-- All UNMOVIC and IAEA personnel shall enjoy the privileges and immunities provided in the Convention on Privileges and Immunities of the United Nations and the Agreement on the Privileges and Immunities of the IAEA ;

-- UNMOVIC and the IAEA shall have unrestricted rights of entry into and out of Iraq, the right to free, unrestricted, and immediate movement to and from inspection sites, and the right to inspect any sites and buildings, including immediate, unimpeded, unconditional, and unrestricted access to Presidential Sites equal to that at other sites, notwithstanding the provisions of resolution 1154 (1998);

Sidelineing the existing terms of 1154 (which set special arrangements, including diplomatic accompaniment, for inspection of the eight designated "presidential sites") undermines the legitimacy of UN decision-making. Iraq's acceptance of this provision of course represented one of the most significant concessions by Baghdad.

-- UNMOVIC and the IAEA shall have the right to be provided by Iraq the names of all personnel currently and formerly associated with Iraq's chemical, biological, nuclear, and ballistic missile programmes and the associated research, development, and production facilities;

-- Security of UNMOVIC and IAEA facilities shall be ensured by sufficient UN security guards;

-- UNMOVIC and the IAEA shall have the right to declare, for the purposes of freezing a site to be inspected, exclusion zones, including surrounding areas and transit corridors, in which Iraq will suspend ground and aerial movement so that nothing is changed in or taken out of a site being inspected;

These two together blur the distinction between inspection and occupation. The resolution requires Iraq to accept unlimited numbers of UN Blue Helmets to guard the inspectors' facilities. The U.S. backed down from an earlier demand that the resolution include deployment of national (read: U.S.) military troops as well as UN guards. But the final language still implies a threat to the safety of the inspectors. In fact, there is no history of UNSCOM inspectors at their bases or centers being threatened in the past; the need for armed guards there has no clear basis. There is no clarity here what "UN security guards" mean; will the U.S. be satisfied with normal UN Blue Helmet security personnel, perhaps seconded to Iraq from their positions as security guards at UN headquarters in New York? Or will Washington use this language to demand more heavily armed military personnel, perhaps seconded not from other UN posts but from member states, ostensibly operating under UN authority? Although the earlier draft's reference to "member states" providing troops to enforce "no-fly/no-drive" zones was deleted from the final draft, it is not clear that the U.S. has completely given up on including national military forces—presumably including U.S. troops.

Even without a direct authorization for national armies to participate, the resolution calls for what amounts to a functional occupation of Iraq by UN military forces. The final resolution deleted language referring specifically to "no-fly/no-drive" zones in Iraq. But it does give inspectors the right to "freeze" a site for inspection by creating "exclusion zones" and "transit corridors," and refers specifically to Iraq's being required to "suspend ground and aerial movement" which amounts to no-fly/no-drive zones in other words. Authorizing the UN inspection agencies to declare "no-fly/no-drive" zones will allow them to control potentially huge swathes of Iraqi territory. Creation of functional no-fly/no-drive zones itself reflects the U.S. history of taking control of large parts of Iraqi air space, and consequently Iraqi land, through the unilateral creation of "no-fly" zones in northern and southern Iraq. These existing zones, imposed by the U.S. and the British (France briefly participated, then backed out) have no basis in international law; they are not authorized, or even mentioned, in any UN resolution. Authorization of such zones in this new resolution imposes a UN imprimatur on a continuing violation of UN resolutions—particularly their references to other countries respecting Iraq's territorial integrity.

-- UNMOVIC and the IAEA shall have the free and unrestricted use and landing of fixed- and rotary-winged aircraft, including manned and unmanned reconnaissance vehicles;

-- UNMOVIC and the IAEA shall have the right at their sole discretion verifiably to remove, destroy, or render harmless all prohibited weapons, subsystems, components, records, materials, and other related items, and the right to impound or close any facilities or equipment for the production thereof; and

-- UNMOVIC and the IAEA shall have the right to free import and use of equipment or materials for inspections and to seize and export any equipment, materials, or documents taken during inspections, without search of UNMOVIC or IAEA personnel or official or personal baggage;

While some may believe it is implicit, this section does not identify "weapons material" or some such standard to judge what may be "taken" and "exported." The clear language, as written, would allow inspectors to seize and "export" anything they come across in the course of doing inspections—trucks, computers, carpets—whether or not those items have anything to do with prohibited materials or prohibited WMD or missile programs.

8. Decides further that Iraq shall not take or threaten hostile acts directed against any representative or personnel of the United Nations or of any Member State taking action to uphold any Council resolution;

This language is clearly aimed at demanding Iraqi compliance with the U.S.-British air patrols and bombings going on in the so-called "no-fly" zones. Neither creation nor military enforcement of those zones was ever authorized by the United Nations; no UN resolution before this one ever even mentioned "no-fly" zones. This section would serve to legitimize the eleven-year-long illegal U.S.-British imposition of "no-fly" zones, and the four-year-long illegal bombing raids carried out there. The U.S. claims that those bombing raids, and the imposition of the zones themselves, are to "enforce" UN resolutions—specifically 688, which calls on Iraq to protect the human rights of various communities. But in fact the bombing is without any actual UN authorization. So far the Security Council has never called the U.S. and Britain to account for their illegal actions; this language serves to legalize those actions instead. While not specifying what would constitute a "member state taking action to uphold any Security Council resolution," and not specifying who can determine whether any action is in fact upholding a Council resolution, the U.S. interprets this language to require that Iraq allow any action—including illegal military actions -- that the U.S. claims is enforcing a resolution. Several other Council members, including France and Russia, specifically stated their interpretation that Article 8 does not refer to the bombing of the "no-fly" zones; but Washington holds exactly the opposite view. This language also denies the limitations on the use of military force to enforce Council resolutions. Even if the Council itself makes the decision, not all its resolutions can be enforced by military means. Only those resolutions specifically passed under the terms of Chapter VII can lead to the use of force. Resolution 688, which the U.S. cites as authorizing bombing of the "no-fly" zones, was not passed under Chapter VII; quite the contrary, it reaffirms "the commitment of all Member States to the sovereignty, territorial integrity and political independence of Iraq."

9. Requests the Secretary General immediately to notify Iraq of this resolution, which is binding on Iraq; demands that Iraq confirm within seven days of that notification its intention to comply fully with this resolution; and demands further that Iraq cooperate immediately, unconditionally, and actively with UNMOVIC and the IAEA;

Because there is no specified consequence here for a potential Iraqi delay or lack of cooperation (which is also not defined), it is likely the U.S. will interpret this section as authorizing immediate and unilateral military force. No such force would be authorized or appropriate, but there is a history of usurpation of such language.

10. Requests all Member States to give full support to UNMOVIC and the IAEA in the discharge of their mandates, including by providing any information related to prohibited programmes or other aspects of their mandates, including on Iraqi attempts since 1998 to acquire prohibited items, and by recommending sites to be inspected, persons to be interviewed, conditions of such interviews, and data to be collected, the results of which shall be reported to the Council by UNMOVIC and the IAEA;

This implies that UNMOVIC must share its actual findings and raw data with "the Council," meaning intelligence operatives from Council member states, including those mobilized to overthrow the Iraqi regime (such as the U.S.). When UNMOVIC was created, its director made clear that his view of intelligence sharing was that it could only be "one way"—meaning member states could provide UNMOVIC with information to assist their inspection work, but UNMOVIC would not provide reciprocity to national intelligence agencies. Such reciprocity would, he rightly recognized, repeat the disaster of UNSCOM's unauthorized sharing of intelligence material with U.S. intelligence agencies. Calling here for UNMOVIC to report "the results" of its interviews and data to the Council indicates a clear U.S. intention to gain access to UNMOVIC and IAEA data.

11. Directs the Executive Chairman of UNMOVIC and the Director General of the IAEA to report immediately to the Council any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations, including its obligations regarding inspections under this resolution;

12. Decides to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to restore international peace and security;

This clear language should prohibit any country—including the United States—from acting unilaterally in response to any perceived Iraqi obstruction. The meaning is that the inspectors' reports to the Council would serve to trigger the immediate convening of the Council to consider next steps. However, given Bush administration officials' consistent claim that they need "no further" UN resolutions to authorize the use of force "to enforce" UN resolutions, it is highly doubtful that Washington intends to adhere to this language. The inclusion of the reference "in order to restore international peace and security" is a code for proceeding immediately to using force, whether or not authorized by a new "consideration of the situation". It is certain the Bush administration will point to this reference if they choose to go to war without actual Council consent. The resolution specifically does not call for an actual formal meeting of the Council and a new resolution, but only the informal call "to convene." This was an artful way to negotiate between the French, Russian, Mexican and other countries' demand for a second resolution to authorize any future action, and the U.S. refusal to accept such a requirement. As written, the resolution does not authorize the use of force, but neither does it explicitly prohibit such use of force. Any action, however, by any country, would have to keep in mind the preeminent requirements of the UN Charter—which does prohibit any use of force except when authorized by the Council.

13. Recalls, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations;

The problem is how to define the consequences. Washington uses the term to refer explicitly to military force; for this reason, France and Russia have objected to the use of the term in the new Council resolution. In 1998, when the UN Security Council passed a resolution endorsing Kofi Annan's negotiated stand-down with Iraq, the resolution called for "severest consequences." At that time, every Council ambassador except that of the U.S. said explicitly that use of the term did not constitute an automatic authorization of the use of force for any country or group of countries. It did not, they said, include what the Russian ambassador called "automaticity." The U.S. ambassador, Bill Richardson, alone of all the Council, said, "we think it does" authorize immediate unilateral use of force.

14. Decides to remain seized of the matter.

This is a fundamental point of principal—it means that the issue of Iraqi requirements and Iraqi compliance remains on the Security Council's agenda, and only the Council itself can make decisions as to future interpretation or enforcement.

Appendix B

The United Nations Charter and the Use of Force Against Iraq

October 2, 2002

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The United Nations Charter is a treaty of the United States, and as such forms part of the "supreme law of the land" under the Constitution, Article VI, Clause 2. The UN Charter is the highest treaty in the world, superseding states' conflicting obligations under any other international agreement. (Art. 103, UN Charter)

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 exist. Absent one of them, U.S. use of force against Iraq is unlawful.

Self-Defense

Article 51 of the UN Charter recognizes the inherent right of self-defense. It states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Under Article 51, the triggering condition for the exercise of self-defense is the occurrence of an armed attack ("if an armed attack occurs"). Notwithstanding the literal meaning of that language, some, though not all, authorities interpret Article 51 to permit anticipatory self-defense in response to an imminent attack. A generally recognized guide to the conditions for anticipatory self-defense is Daniel Webster's statement regarding the Caroline affair of 1837: Self-defense is justified only when the necessity for action is "instant, overwhelming, and leaving no choice of means, and no moment for deliberation." (Letter from Daniel Webster, Secretary of State, to Lord Ashburton, August 6, 1842, reprinted in 2 John Bassett Moore, A Digest of International Law 409, 412 (1906)). A modern version of this approach is found in Oppenheim's International Law: Ninth Edition, 1991, p. 412 (emphasis added):

The development of the law, particularly in the light of more recent state practice, in the 150 years since the Caroline incident suggests that action, even if it involves the use of armed force and the violation of another state's territory, can be justified as self defence under international law where:

- a. an armed attack is launched, or is immediately threatened, against a state's territory or forces and probably its nationals);
- b. there is an urgent necessity for defensive action against that attack;
- c. there is no practicable alternative to action in self-defence, and in particular another state or other authority which has the legal powers to stop or prevent the infringement does not, or cannot, use them to that effect;
- d. the action taken by way of self-defence is limited to what is necessary to stop or prevent the infringement, i.e. to the needs of defence...

The application of the basic law regarding self-defense to the present U.S. confrontation with Iraq is straightforward. Iraq has not attacked any state, nor is there any showing whatever that an attack by Iraq is imminent. Therefore self-defense does not justify the use of force against Iraq by the United States or any state.

Also relevant is that the Security Council authorized an armed response to Iraq's invasion of Kuwait in 1990, and then after the termination of hostilities required Iraq to end its missile and chemical, biological, and nuclear weapons programs. Thus under Article 51 "the Security Council has taken measures necessary to maintain international peace and security," and the right of selfdefense against an armed attack, applicable until the Security Council has done so, is no longer in effect. While few would argue that the Security Council's assumption of responsibility precludes self-defense in response to a future attack by Iraq, it weighs heavily against attempts to extend the boundaries of self-defense to justify use of force by the United States and selected other states.

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 use of force. Further, there is no claim or publicly disclosed evidence that Iraq is supplying weapons of mass destruction to terrorists.

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."

Security Council Authorized Use of Force

There is only one legal basis for the use of force other than self-defense: Security Council directed or authorized use of force to restore or maintain international peace and security pursuant to its responsibilities under Chapter VII of the UN Charter* Article 42 of that chapter provides:

Should the Security Council consider that measures [not involving the use of force] provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

It was under Chapter VII that in 1990 the Security Council by Resolution 678 authorized all "necessary means" to eject Iraq from Kuwait and to restore international peace and security in the area. Following the formal cease-fire recorded by Resolution 687 in 1991, there has been no Security Council resolution that

has clearly and specifically authorized the use of force to enforce the terms of the cease-fire, including ending Iraq's missile and chemical, biological, and nuclearweapons programs.

Such a resolution is required for renewed use of force. It is the Security Council that has assumed responsibility regarding Iraq, and it must be the Security Council that decides, unambiguously and specifically, that force is required for enforcement of its requirements. Past Security Council resolutions authorizing use of force employed language universally understood to do so, regarding Korea in 1950 (prior to General Assembly action, Security Council Resolution 83 recommended that UN member states provide "such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area"), and Kuwait, Somalia, Haiti, Rwanda, and Bosnia in the 1990s ("all necessary means" or "all measures necessary"). In all these instances, the Security Council responded to actual invasion, large-scale violence, or humanitarian emergency, not to potential threats.

Any claim that "material breach" of cease fire obligations by Iraq justifies use of force by the United States is unavailing. The Gulf War was a Security Council authorized action, not a state versus state conflict; accordingly, it is for the Security Council to determine whether there has been a material breach and whether such breach requires renewed use of force.

It is fundamental that the UN Charter, Article 2(3) and (4), gives priority to the peaceful settlement of disputes and the non-use of force. Article 2(4) barring the threat or use of force has been described by the International Court of Justice as a peremptory norm of international law, from which states cannot derogate. (Nicaragua v United States, [1986] ICJ Reports 14, at para. 190) Strained interpretations of Security Council resolutions, especially when opposed, as in the case of Iraq, by a majority of other Security Council members, cannot overcome those fundamental principles. Rather, given the values embedded in the Charter, the burden is on those who claim use of force has been authorized. **

Despite U.S. claims over the years that resolutions subsequent to Resolution 687 have provided the basis for U.S. use of force against Iraq, the Bush administration is now seeking a new resolution authorizing use of force should Iraq continue to fail to comply with Security Council requirements. Practically speaking, then, the Bush administration accepts that existing resolutions do not authorize use of force.

Conclusion

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 exist. Absent one of them, U.S. use of force against Iraq is unlawful.

** Some contend that intervention to prevent genocide, crimes against humanity, and other gross human rights violations is authorized by the UN Charter and other international law even absent Security Council action under Chapter VII. This is not a principal rationale offered for use of force against Iraq.*

*** For elaboration of these and other reasons why existing Security Council resolutions do not authorize use of force against Iraq, see Jules Lobel and Michael Ratner, "Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime," 93 American Journal of International Law (January 1999, no. 1) 124-154; Rabinder Singh, QC, Alison Macdonald, Matrix Chambers, London, "Legality of use of force against Iraq: Opinion," September 10, 2002, go to www.lcn.org/global/IraqOpinion10.9.02.pdf*

Appendix C

United Nations Security Council Resolution 1284

S/RES/1284, 17 December 1999

Adopted by the Security Council at its 4084th meeting, on 17 December 1999

Adopted by 11 in favor and 4 abstentions (Russia, France, China and Malaysia)

The Security Council

Recalling its previous relevant resolutions, including its resolutions 661 (1990) of 6 August 1990, 687 (1991) of 3 April 1991, 699 (1991) of 17 June 1991, 707 (1991) of 15 August 1991, 715 (1991) of 11 October 1991, 986 (1995) of 14 April 1995, 1051 (1996) of 27 March 1996, 1153 (1998) of 20 February 1998, 1175 (1998) of 19 June 1998, 1242 (1999) of 21 May 1999 and 1266 (1999) of 4 October 1999,

Recalling the approval by the Council in its resolution 715 (1991) of the plans for future ongoing monitoring and verification submitted by the Secretary-General and the Director General of the International Atomic Energy Agency (IAEA) in pursuance of paragraphs 10 and 13 of resolution 687 (1991),

Welcoming the reports of the three panels on Iraq (S/1999/356), and having held a comprehensive consideration of them and the recommendations contained in them,

Stressing the importance of a comprehensive approach to the full implementation of all relevant Security Council resolutions regarding Iraq and the need for Iraqi compliance with these resolutions,

Recalling the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons as referred to in paragraph 14 of resolution 687 (1991),

Concerned at the humanitarian situation in Iraq, and determined to improve that situation,

Recalling with concern that the repatriation and return of all Kuwaiti and third country nationals or their remains, present in Iraq on or after 2 August 1990, pursuant to paragraph 2 (c) of resolution 686 (1991) of 2 March 1991 and paragraph 30 of resolution 687 (1991), have not yet been fully carried out by Iraq,

Recalling that in its resolutions 686 (1991) and 687 (1991) the Council demanded that Iraq return in the shortest possible time all Kuwaiti property it had seized, and noting with regret that Iraq has still not complied fully with this demand,

Acknowledging the progress made by Iraq towards compliance with the provisions of resolution 687 (1991), but noting that, as a result of its failure to implement the relevant Council resolutions fully, the conditions do not exist which would enable the Council to take a decision pursuant to resolution 687 (1991) to lift the prohibitions referred to in that resolution,

Reiterating the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait, Iraq and the neighbouring States,

Acting under Chapter VII of the Charter of the United Nations, and taking into account that operative provisions of this resolution relate to previous resolutions adopted under Chapter VII of the Charter,

A. 1. Decides to establish, as a subsidiary body of the Council, the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) which replaces the Special Commission established pursuant to

paragraph 9 (b) of resolution 687 (1991);

2. Decides also that UNMOVIC will undertake the responsibilities mandated to the Special Commission by the Council with regard to the verification of compliance by Iraq with its obligations under paragraphs 8, 9 and 10 of resolution 687 (1991) and other related resolutions, that UNMOVIC will establish and operate, as was recommended by the panel on disarmament and current and future ongoing monitoring and verification issues, a reinforced system of ongoing monitoring and verification, which will implement the plan approved by the Council in resolution 715 (1991) and address unresolved disarmament issues, and that UNMOVIC will identify, as necessary in accordance with its mandate, additional sites in Iraq to be covered by the reinforced system of ongoing monitoring and verification;

3. Reaffirms the provisions of the relevant resolutions with regard to the role of the IAEA in addressing compliance by Iraq with paragraphs 12 and 13 of resolution 687 (1991) and other related resolutions, and requests the Director General of the IAEA to maintain this role with the assistance and cooperation of UNMOVIC;

4. Reaffirms its resolutions 687 (1991), 699 (1991), 707 (1991), 715 (1991), 1051 (1996), 1154 (1998) and all other relevant resolutions and statements of its President, which establish the criteria for Iraqi compliance, affirms that the obligations of Iraq referred to in those resolutions and statements with regard to cooperation with the Special Commission, unrestricted access and provision of information will apply in respect of UNMOVIC, and decides in particular that Iraq shall allow UNMOVIC teams immediate, unconditional and unrestricted access to any and all areas, facilities, equipment, records and means of transport which they wish to inspect in accordance with the mandate of UNMOVIC, as well as to all officials and other persons under the authority of the Iraqi Government whom UNMOVIC wishes to interview so that UNMOVIC may fully discharge its mandate;

5. Requests the Secretary-General, within 30 days of the adoption of this resolution, to appoint, after consultation with and subject to the approval of the Council, an Executive Chairman of UNMOVIC who will take up his mandated tasks as soon as possible, and, in consultation with the Executive Chairman and the Council members, to appoint suitably qualified experts as a College of Commissioners for UNMOVIC which will meet regularly to review the implementation of this and other relevant resolutions and provide professional advice and guidance to the Executive Chairman, including on significant policy decisions and on written reports to be submitted to the Council through the Secretary-General;

6. Requests the Executive Chairman of UNMOVIC, within 45 days of his appointment, to submit to the Council, in consultation with and through the Secretary-General, for its approval an organizational plan for UNMOVIC, including its structure, staffing requirements, management guidelines, recruitment and training procedures, incorporating as appropriate the recommendations of the panel on disarmament and current and future ongoing monitoring and verification issues, and recognizing in particular the need for an effective, cooperative management structure for the new organization, for staffing with suitably qualified and experienced personnel, who would be regarded as international civil servants subject to Article 100 of the Charter of the United Nations, drawn from the broadest possible geographical base, including as he deems necessary from international arms control organizations, and for the provision of high quality technical and cultural training;

7. Decides that UNMOVIC and the IAEA, not later than 60 days after they have both started work in Iraq, will each draw up, for approval by the Council, a work programme for the discharge of their mandates, which will include both the implementation of the reinforced system of ongoing monitoring and verification, and the key remaining disarmament tasks to be completed by Iraq pursuant to its obligations to comply with the disarmament requirements of resolution 687 (1991) and other related resolutions, which constitute the governing standard of Iraqi compliance, and further decides that what is required of Iraq for the implementation of each task shall be clearly defined and precise;

8. Requests the Executive Chairman of UNMOVIC and the Director General of the IAEA, drawing on the expertise of other international organizations as appropriate, to establish a unit which will have the respon-

sibilities of the joint unit constituted by the Special Commission and the Director General of the IAEA under paragraph 16 of the export/import mechanism approved by resolution 1051 (1996), and also requests the Executive Chairman of UNMOVIC, in consultation with the Director General of the IAEA, to resume the revision and updating of the lists of items and technology to which the mechanism applies;

9. Decides that the Government of Iraq shall be liable for the full costs of UNMOVIC and the IAEA in relation to their work under this and other related resolutions on Iraq;

10. Requests Member States to give full cooperation to UNMOVIC and the IAEA in the discharge of their mandates;

11. Decides that UNMOVIC shall take over all assets, liabilities and archives of the Special Commission, and that it shall assume the Special Commission's part in agreements existing between the Special Commission and Iraq and between the United Nations and Iraq, and affirms that the Executive Chairman, the Commissioners and the personnel serving with UNMOVIC shall have the rights, privileges, facilities and immunities of the Special Commission;

12. Requests the Executive Chairman of UNMOVIC to report, through the Secretary-General, to the Council, following consultation with the Commissioners, every three months on the work of UNMOVIC, pending submission of the first reports referred to in paragraph 33 below, and to report immediately when the reinforced system of ongoing monitoring and verification is fully operational in Iraq;

B. 13. Reiterates the obligation of Iraq, in furtherance of its commitment to facilitate the repatriation of all Kuwaiti and third country nationals referred to in paragraph 30 of resolution 687 (1991), to extend all necessary cooperation to the International Committee of the Red Cross, and calls upon the Government of Iraq to resume cooperation with the Tripartite Commission and Technical Subcommittee established to facilitate work on this issue;

14. Requests the Secretary-General to report to the Council every four months on compliance by Iraq with its obligations regarding the repatriation or return of all Kuwaiti and third country nationals or their remains, to report every six months on the return of all Kuwaiti property, including archives, seized by Iraq, and to appoint a high-level coordinator for these issues;

C. 15. Authorizes States, notwithstanding the provisions of paragraphs 3 (a), 3 (b) and 4 of resolution 661 (1990) and subsequent relevant resolutions, to permit the import of any volume of petroleum and petroleum products originating in Iraq, including financial and other essential transactions directly relating thereto, as required for the purposes and on the conditions set out in paragraph 1 (a) and (b) and subsequent provisions of resolution 986 (1995) and related resolutions;

16. Underlines, in this context, its intention to take further action, including permitting the use of additional export routes for petroleum and petroleum products, under appropriate conditions otherwise consistent with the purpose and provisions of resolution 986 (1995) and related resolutions;

17. Directs the Committee established by resolution 661 (1990) to approve, on the basis of proposals from the Secretary-General, lists of humanitarian items, including foodstuffs, pharmaceutical and medical supplies, as well as basic or standard medical and agricultural equipment and basic or standard educational items, decides, notwithstanding paragraph 3 of resolution 661 (1990) and paragraph 20 of resolution 687 (1991), that supplies of these items will not be submitted for approval of that Committee, except for items subject to the provisions of resolution 1051 (1996), and will be notified to the Secretary-General and financed in accordance with the provisions of paragraph 8 (a) and 8 (b) of resolution 986 (1995), and requests the Secretary-General to inform the Committee in a timely manner of all such notifications received and actions taken;

18. Requests the Committee established by resolution 661 (1990) to appoint, in accordance with resolutions 1175 (1998) and 1210 (1998), a group of experts, including independent inspection agents appointed

by the Secretary-General in accordance with paragraph 6 of resolution 986 (1995), decides that this group will be mandated to approve speedily contracts for the parts and the equipments necessary to enable Iraq to increase its exports of petroleum and petroleum products, according to lists of parts and equipments approved by that Committee for each individual project, and requests the Secretary-General to continue to provide for the monitoring of these parts and equipments inside Iraq;

19. Encourages Member States and international organizations to provide supplementary humanitarian assistance to Iraq and published material of an educational character to Iraq;

20. Decides to suspend, for an initial period of six months from the date of the adoption of this resolution and subject to review, the implementation of paragraph 8 (g) of resolution 986 (1995);

21. Requests the Secretary-General to take steps to maximize, drawing as necessary on the advice of specialists, including representatives of international humanitarian organizations, the effectiveness of the arrangements set out in resolution 986 (1995) and related resolutions including the humanitarian benefit to the Iraqi population in all areas of the country, and further requests the Secretary-General to continue to enhance as necessary the United Nations observation process in Iraq, ensuring that all supplies under the humanitarian programme are utilized as authorized to bring to the attention of the Council any circumstances preventing or impeding effective and equitable distribution and to keep the Council informed of the steps taken towards the implementation of this paragraph;

22. Requests also the Secretary-General to minimize the cost of the United Nations activities associated with the implementation of resolution 986 (1995) as well as the cost of the independent inspection agents and the certified public accountants appointed by him, in accordance with paragraphs 6 and 7 of resolution 986 (1995);

23. Requests further the Secretary-General to provide Iraq and the Committee established by resolution 661 (1990) with a daily statement of the status of the escrow account established by paragraph 7 of resolution 986 (1995);

24. Requests the Secretary-General to make the necessary arrangements, subject to Security Council approval, to allow funds deposited in the escrow account established by resolution 986 (1995) to be used for the purchase of locally produced goods and to meet the local cost for essential civilian needs which have been funded in accordance with the provisions of resolution 986 (1995) and related resolutions, including, where appropriate, the cost of installation and training services;

25. Directs the Committee established by resolution 661 (1990) to take a decision on all applications in respect of humanitarian and essential civilian needs within a target of two working days of receipt of these applications from the Secretary-General, and to ensure that all approval and notification letters issued by the Committee stipulate delivery within a specified time, according to the nature of the items to be supplied, and requests the Secretary-General to notify the Committee of all applications for humanitarian items which are included in the list to which the export/import mechanism approved by resolution 1051 (1996) applies;

26. Decides that Hajj pilgrimage flights which do not transport cargo into or out of Iraq are exempt from the provisions of paragraph 3 of resolution 661 (1990) and resolution 670 (1990), provided timely notification of each flight is made to the Committee established by resolution 661 (1990), and requests the Secretary-General to make the necessary arrangements, for approval by the Security Council, to provide for reasonable expenses related to the Hajj pilgrimage to be met by funds in the escrow account established by resolution 986 (1995);

27. Calls upon the Government of Iraq:

(i) to take all steps to ensure the timely and equitable distribution of all humanitarian goods, in particular medical supplies, and to remove and avoid delays at its warehouses;

(ii) to address effectively the needs of vulnerable groups, including children, pregnant women, the disabled, the elderly and the mentally ill among others, and to allow freer access, without any discrimination, including on the basis of religion or nationality, by United Nations agencies and humanitarian organizations to all areas and sections of the population for evaluation of their nutritional and humanitarian condition;

(iii) to prioritize applications for humanitarian goods under the arrangements set out in resolution 986 (1995) and related resolutions;

(iv) to ensure that those involuntarily displaced receive humanitarian assistance without the need to demonstrate that they have resided for six months in their places of temporary residence;

(v) to extend full cooperation to the United Nations Office for Project Services mine-clearance programme in the three northern Governorates of Iraq and to consider the initiation of the demining efforts in other Governorates;

28. Requests the Secretary-General to report on the progress made in meeting the humanitarian needs of the Iraqi people and on the revenues necessary to meet those needs, including recommendations on necessary additions to the current allocation for oil spare parts and equipment, on the basis of a comprehensive survey of the condition of the Iraqi oil production sector, not later than 60 days from the date of the adoption of this resolution and updated thereafter as necessary;

29. Expresses its readiness to authorize additions to the current allocation for oil spare parts and equipment, on the basis of the report and recommendations requested in paragraph 28 above, in order to meet the humanitarian purposes set out in resolution 986 (1995) and related resolutions;

30. Requests the Secretary-General to establish a group of experts, including oil industry experts, to report within 100 days of the date of adoption of this resolution on Iraq's existing petroleum production and export capacity and to make recommendations, to be updated as necessary, on alternatives for increasing Iraq's petroleum production and export capacity in a manner consistent with the purposes of relevant resolutions, and on the options for involving foreign oil companies in Iraq's oil sector, including investments, subject to appropriate monitoring and controls;

31. Notes that in the event of the Council acting as provided for in paragraph 33 of this resolution to suspend the prohibitions referred to in that paragraph, appropriate arrangements and procedures will need, subject to paragraph 35 below, to be agreed by the Council in good time beforehand, including suspension of provisions of resolution 986 (1995) and related resolutions;

32. Requests the Secretary-General to report to the Council on the implementation of paragraphs 15 to 30 of this resolution within 30 days of the adoption of this resolution;

D. 33. Expresses its intention, upon receipt of reports from the Executive Chairman of UNMOVIC and from the Director General of the IAEA that Iraq has cooperated in all respects with UNMOVIC and the IAEA in particular in fulfilling the work programmes in all the aspects referred to in paragraph 7 above, for a period of 120 days after the date on which the Council is in receipt of reports from both UNMOVIC and the IAEA that the reinforced system of ongoing monitoring and verification is fully operational, to suspend with the fundamental objective of improving the humanitarian situation in Iraq and securing the implementation of the Council's resolutions, for a period of 120 days renewable by the Council, and subject to the elaboration of effective financial and other operational measures to ensure that Iraq does not acquire prohibited items, prohibitions against the import of commodities and products originating in Iraq, and prohibitions against the sale, supply and delivery to Iraq of civilian commodities and products other than those referred to in paragraph 24 of resolution 687 (1991) or those to which the mechanism established by resolution 1051 (1996) applies;

34. Decides that in reporting to the Council for the purposes of paragraph 33 above, the Executive Chairman of UNMOVIC will include as a basis for his assessment the progress made in completing the tasks referred to in paragraph 7 above;

35. Decides that if at any time the Executive Chairman of UNMOVIC or the Director General of the IAEA reports that Iraq is not cooperating in all respects with UNMOVIC or the IAEA or if Iraq is in the process of acquiring any prohibited items, the suspension of the prohibitions referred to in paragraph 33 above shall terminate on the fifth working day following the report, unless the Council decides to the contrary;

36. Expresses its intention to approve arrangements for effective financial and other operational measures, including on the delivery of and payment for authorized civilian commodities and products to be sold or supplied to Iraq, in order to ensure that Iraq does not acquire prohibited items in the event of suspension of the prohibitions referred to in paragraph 33 above, to begin the elaboration of such measures not later than the date of the receipt of the initial reports referred to in paragraph 33 above, and to approve such arrangements before the Council decision in accordance with that paragraph;

37. Further expresses its intention to take steps, based on the report and recommendations requested in paragraph 30 above, and consistent with the purpose of resolution 986 (1995) and related resolutions, to enable Iraq to increase its petroleum production and export capacity, upon receipt of the reports relating to the cooperation in all respects with UNMOVIC and the IAEA referred to in paragraph 33 above;

38. Reaffirms its intention to act in accordance with the relevant provisions of resolution 687 (1991) on the termination of prohibitions referred to in that resolution;

39. Decides to remain actively seized of the matter and expresses its intention to consider action in accordance with paragraph 33 above no later than 12 months from the date of the adoption of this resolution provided the conditions set out in paragraph 33 above have been satisfied by Iraq.

(source: <http://daccessods.un.org/doc/UNDOC/GEN/N99/396/09/PDF/N9939609.pdf?OpenElement>)

Appendix D

United Nations Security Council Resolution 687

S/RES/687 (1991) 8 April 1991

Adopted by the Security Council at its 2981st meeting, on 3 April 1991

Adopted by 12 in favor, 1 against (Cuba), and 2 abstentions (Ecuador and Yemen)

The Security Council,

Recalling its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990, 677 (1990) of 28 November 1990, 678 (1990) of 29 November 1990 and 686 (1991) of 2 March 1991,

Welcoming the restoration to Kuwait of its sovereignty, independence and territorial integrity and the return of its legitimate Government,

Affirming the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq, and noting the intention expressed by the Member States cooperating with Kuwait under paragraph 2 of resolution 678 (1990) to bring their military presence in Iraq to an end as soon as possible consistent with paragraph 8 of resolution 686 (1991),

Reaffirming the need to be assured of Iraq's peaceful intentions in the light of its unlawful invasion and occupation of Kuwait,

Taking note of the letter sent by the Minister for Foreign Affairs of Iraq on 27 February 1991 and those sent pursuant to resolution 686 (1991),

Noting that Iraq and Kuwait, as independent sovereign States, signed at Baghdad on 4 October 1963 "Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters", thereby recognizing formally the boundary between Iraq and Kuwait and the allocation of islands, which were registered with the United Nations in accordance with Article 102 of the Charter of the United Nations and in which Iraq recognized the independence and complete sovereignty of the State of Kuwait within its borders as specified and accepted in the letter of the Prime Minister of Iraq dated 21 July 1932, and as accepted by the Ruler of Kuwait in his letter dated 10 August 1932,

Conscious of the need for demarcation of the said boundary,

Conscious also of the statements by Iraq threatening to use weapons in violation of its obligations under the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and of its prior use of chemical weapons and affirming that grave consequences would follow any further use by Iraq of such weapons,

Recalling that Iraq has subscribed to the Declaration adopted by all States participating in the Conference of States Parties to the 1925 Geneva Protocol and Other Interested States, held in Paris from 7 to 11 January 1989, establishing the objective of universal elimination of chemical and biological weapons,

Recalling also that Iraq has signed the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972,

Noting the importance of Iraq ratifying this Convention,

Noting moreover the importance of all States adhering to this Convention and encouraging its forthcoming Review Conference to reinforce the authority, efficiency and universal scope of the convention,

Stressing the importance of an early conclusion by the Conference on Disarmament of its work on a Convention on the Universal Prohibition of Chemical Weapons and of universal adherence thereto,

Aware of the use by Iraq of ballistic missiles in unprovoked attacks and therefore of the need to take specific measures in regard to such missiles located in Iraq,

Concerned by the reports in the hands of Member States that Iraq has attempted to acquire materials for a nuclear-weapons programme contrary to its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968,

Recalling the objective of the establishment of a nuclear-weapons-free zone in the region of the Middle East,

Conscious of the threat that all weapons of mass destruction pose to peace and security in the area and of the need to work towards the establishment in the Middle East of a zone free of such weapons,

Conscious also of the objective of achieving balanced and comprehensive control of armaments in the region,

Conscious further of the importance of achieving the objectives noted above using all available means, including a dialogue among the States of the region,

Noting that resolution 686 (1991) marked the lifting of the measures imposed by resolution 661 (1990) in so far as they applied to Kuwait,

Noting that despite the progress being made in fulfilling the obligations of resolution 686 (1991), many Kuwaiti and third country nationals are still not accounted for and property remains unreturned,

Recalling the International Convention against the Taking of Hostages, opened for signature at New York on 18 December 1979, which categorizes all acts of taking hostages as manifestations of international terrorism,

Deploring threats made by Iraq during the recent conflict to make use of terrorism against targets outside Iraq and the taking of hostages by Iraq,

Taking note with grave concern of the reports of the Secretary-General of 20 March 1991 and 28 March 1991, and conscious of the necessity to meet urgently the humanitarian needs in Kuwait and Iraq,

Bearing in mind its objective of restoring international peace and security in the area as set out in recent resolutions of the Security Council,

Conscious of the need to take the following measures acting under Chapter VII of the Charter,

A

1. Affirms all thirteen resolutions noted above, except as expressly changed below to achieve the goals of this resolution, including a formal cease-fire; A

2. Demands that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of

islands set out in the "Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters", signed by them in the exercise of their sovereignty at Baghdad on 4 October 1963 and registered with the United Nations and published by the United Nations in document 7063, United Nations, Treaty Series, 1964;

3. Calls upon the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on appropriate material, including the map transmitted by Security Council document S/22412 and to report back to the Security Council within one month;

4. Decides to guarantee the inviolability of the above-mentioned international boundary and to take as appropriate all necessary measures to that end in accordance with the Charter of the United Nations;

B

5. Requests the Secretary-General, after consulting with Iraq and Kuwait, to submit within three days to the Security Council for its approval a plan for the immediate deployment of a United Nations observer unit to monitor the Khor Abdullah and a demilitarized zone, which is hereby established, extending ten kilometres into Iraq and five kilometres into Kuwait from the boundary referred to in the "Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters" of 4 October 1963; to deter violations of the boundary through its presence in and surveillance of the demilitarized zone; to observe any hostile or potentially hostile action mounted from the territory of one State to the other; and for the Secretary-General to report regularly to the Security Council on the operations of the unit, and immediately if there are serious violations of the zone or potential threats to peace;

6. Notes that as soon as the Secretary-General notifies the Security Council of the completion of the deployment of the United Nations observer unit, the conditions will be established for the Member States cooperating with Kuwait in accordance with resolution 678 (1990) to bring their military presence in Iraq to an end consistent with resolution 686 (1991);

C

7. Invites Iraq to reaffirm unconditionally its obligations under the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and to ratify the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972;

8. Decides that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

(a) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities;

(b) All ballistic missiles with a range greater than 150 kilometres and related major parts, and repair and production facilities;

(b) All ballistic missiles with a range greater than 150 kilometres and related major parts, and repair and production facilities;

(a) Iraq shall submit to the Secretary-General, within fifteen days of the adoption of the present resolution, a declaration of the locations, amounts and types of all items specified in paragraph 8 and agree to urgent, on-site inspection as specified below;

(b) The Secretary-General, in consultation with the appropriate Governments and, where appropriate, with the Director-General of the World Health Organization, within forty-five days of the passage of the present resolution, shall develop, and submit to the Council for approval, a plan calling for the completion of the following acts within forty-five days of such approval:

(i) The forming of a Special Commission, which shall carry out immediate on-site inspection of Iraq's biological, chemical and missile capabilities, based on Iraq's declarations and the designation of any additional locations by the Special Commission itself;

(ii) The yielding by Iraq of possession to the Special Commission for destruction, removal or rendering harmless, taking into account the requirements of public safety, of all items specified under paragraph 8 (a) above, including items at the additional locations designated by the Special Commission under paragraph 9 (b) (i) above and the destruction by Iraq, under the supervision of the Special Commission, of all its missile capabilities, including launchers, as specified under paragraph 8 (b) above;

(iii) The provision by the Special Commission of the assistance and cooperation to the Director-General of the International Atomic Energy Agency required in paragraphs 12 and 13 below;

10. Decides that Iraq shall unconditionally undertake not to use, develop, construct or acquire any of the items specified in paragraphs 8 and 9 above and requests the Secretary-General, in consultation with the Special Commission, to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with this paragraph, to be submitted to the Security Council for approval within one hundred and twenty days of the passage of this resolution;

11. Invites Iraq to reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968;

12. Decides that Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapons-usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above; to submit to the Secretary-General and the Director-General of the International Atomic Energy Agency within fifteen days of the adoption of the present resolution a declaration of the locations, amounts, and types of all items specified above; to place all of its nuclear-weapons-usable materials under the exclusive control, for custody and removal, of the International Atomic Energy Agency, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General discussed in paragraph 9 (b) above; to accept, in accordance with the arrangements provided for in paragraph 13 below, urgent on-site inspection and the destruction, removal or rendering harmless as appropriate of all items specified above; and to accept the plan discussed in paragraph 13 below for the future ongoing monitoring and verification of its compliance with these undertakings;

13. Requests the Director-General of the International Atomic Energy Agency, through the Secretary-General, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General in paragraph 9 (b) above, to carry out immediate on-site inspection of Iraq's nuclear capabilities based on Iraq's declarations and the designation of any additional locations by the Special Commission; to develop a plan for submission to the Security Council within forty-five days calling for the destruction, removal, or rendering harmless as appropriate of all items listed in paragraph 12 above; to carry out the plan within forty-five days following approval by the Security Council; and to develop a plan, taking into account the rights and obligations of Iraq under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968, for the future ongoing monitoring and verification of Iraq's compliance with paragraph 12 above, including an inventory of all nuclear material in Iraq subject to the Agency's verification and inspections to confirm that Agency safeguards cover all relevant nuclear activities in Iraq, to be submitted to the Security Council for approval within one hundred and twenty days of the passage of the present resolution;

14. Takes note that the actions to be taken by Iraq in paragraphs 8, 9, 10, 11, 12 and 13 of the present resolution represent steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons;

D

15. Requests the Secretary-General to report to the Security Council on the steps taken to facilitate the return of all Kuwaiti property seized by Iraq, including a list of any property that Kuwait claims has not been returned or which has not been returned intact;

E

16. Reaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait;

17. Decides that all Iraqi statements made since 2 August 1990 repudiating its foreign debt are null and void, and demands that Iraq adhere scrupulously to all of its obligations concerning servicing and repayment of its foreign debt;

18. Decides also to create a fund to pay compensation for claims that fall within paragraph 16 above and to establish a Commission that will administer the fund;

19. Directs the Secretary-General to develop and present to the Security Council for decision, no later than thirty days following the adoption of the present resolution, recommendations for the fund to meet the requirement for the payment of claims established in accordance with paragraph 18 above and for a programme to implement the decisions in paragraphs 16, 17 and 18 above, including: administration of the fund; mechanisms for determining the appropriate level of Iraq's contribution to the fund based on a percentage of the value of the exports of petroleum and petroleum products from Iraq not to exceed a figure to be suggested to the Council by the Secretary-General, taking into account the requirements of the people of Iraq, Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy; arrangements for ensuring that payment are made to the fund; the process by which funds will be allocated and claims paid; appropriate procedures for evaluating losses, listing claims and verifying their validity and resolving disputed claims in respect of Iraq's liability as specified in paragraph 16 above; and the composition of the Commission designated above;

F

20. Decides, effective immediately, that the prohibitions against the sale or supply to Iraq of commodities or products, other than medicine and health supplies, and prohibitions against financial transactions related thereto contained in resolution 661 (1990) shall not apply to foodstuffs notified to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait or, with the approval of that Committee, under the simplified and accelerated "no-objection" procedure, to materials and supplies for essential civilian needs as identified in the report of the Secretary-General dated 20 March 1991, and in any further findings of humanitarian need by the Committee;

21. Decides that the Security Council shall review the provisions of paragraph 20 above every sixty days in the light of the policies and practices of the Government of Iraq, including the implementation of all relevant resolutions of the Security Council, for the purpose of determining whether to reduce or lift the prohibitions referred to therein;

22. Decides that upon the approval by the Security Council of the programme called for in paragraph 19 above and upon Council agreement that Iraq has completed all actions contemplated in paragraphs 8, 9, 10, 11, 12 and 13 above, the prohibitions against the import of commodities and products originating in Iraq and the prohibitions against financial transactions related thereto contained in resolution 661 (1990) shall have no further force or effect;

23. Decides that, pending action by the Security Council under paragraph 22 above, the Security Council Committee established by resolution 661 (1990) shall be empowered to approve, when required to assure adequate financial resources on the part of Iraq to carry out the activities under paragraph 20 above, exceptions to the prohibition against the import of commodities and products originating in Iraq;

24. Decides that, in accordance with resolution 661 (1990) and subsequent related resolutions and until a further decision is taken by the Security Council, all States shall continue to prevent the sale or supply, or the promotion or facilitation of such sale or supply, to Iraq by their nationals, or from their territories or using their flag vessels or aircraft, of:

(a) Arms and related materiel of all types, specifically including the sale or transfer through other means of all forms of conventional military equipment, including for paramilitary forces, and spare parts and components and their means of production, for such equipment;

(b) Items specified and defined in paragraphs 8 and 12 above not otherwise covered above;

(c) Technology under licensing or other transfer arrangements used in the production, utilization or stockpiling of items specified in subparagraphs (a) and (b) above;

(d) Personnel or materials for training or technical support services relating to the design, development, manufacture, use, maintenance or support of items specified in subparagraphs (a) and (b) above;

25. Calls upon all States and international organizations to act strictly in accordance with paragraph 24 above, notwithstanding the existence of any contracts, agreements, licences or any other arrangements;

26. Requests the Secretary-General, in consultation with appropriate Governments, to develop within sixty days, for the approval of the Security Council, guidelines to facilitate full international implementation of paragraphs 24 and 25 above and paragraph 27 below, and to make them available to all States and to establish a procedure for updating these guidelines periodically;

27. Calls upon all States to maintain such national controls and procedures and to take such other actions consistent with the guidelines to be established by the Security Council under paragraph 26 above as may be necessary to ensure compliance with the terms of paragraph 24 above, and calls upon international organizations to take all appropriate steps to assist in ensuring such full compliance;

28. Agrees to review its decisions in paragraphs 22, 23, 24 and 25 above, except for the items specified and defined in paragraphs 8 and 12 above, on a regular basis and in any case one hundred and twenty days following passage of the present resolution, taking into account Iraq's compliance with the resolution and general progress towards the control of armaments in the region;

29. Decides that all States, including Iraq, shall take the necessary measures to ensure that no claim shall lie at the instance of the Government of Iraq, or of any person or body in Iraq, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolution 661 (1990) and related resolutions;

G

30. Decides that, in furtherance of its commitment to facilitate the repatriation of all Kuwaiti and third country nationals, Iraq shall extend all necessary cooperation to the International Committee of the Red Cross, providing lists of such persons, facilitating the access of the International Committee of the Red Cross to all such persons wherever located or detained and facilitating the search by the International Committee of the Red Cross for those Kuwaiti and third countrynationals still unaccounted for;

31. Invites the International Committee of the Red Cross to keep the Secretary-General apprised as appro-

priate of all activities undertaken in connection with facilitating the repatriation or return of all Kuwaiti and third country nationals or their remains present in Iraq on or after 2 August 1990;

H

32. Requires Iraq to inform the Security Council that it will not commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods and practices of terrorism;

I

33. Declares that, upon official notification by Iraq to the Secretary-General and to the Security Council of its acceptance of the provisions above, a formal cease-fire is effective between Iraq and Kuwait and the Member States cooperating with Kuwait in accordance with resolution 678 (1990);

34. Decides to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the area.

Appendix E

Treaty on the Non-Proliferation of Nuclear Weapons

Signed at Washington, London, and Moscow July 1, 1968

Ratification advised by U.S. Senate March 13, 1969

Ratified by U.S. President November 24, 1969

U.S. ratification deposited at Washington, London, and Moscow March 5, 1970

Proclaimed by U.S. President March 5, 1970

Entered into force March 5, 1970

The States concluding this Treaty, hereinafter referred to as the "Parties to the Treaty",

Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples,

Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war,

In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,

Undertaking to cooperate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities,

Expressing their support for research, development and other efforts to further the application, within the framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points,

Affirming the principle that the benefits of peaceful applications of nuclear technology, including any technological by-products which may be derived by nuclear-weapon States from the development of nuclear explosive devices, should be available for peaceful purposes to all Parties of the Treaty, whether nuclear-weapon or non-nuclear weapon States,

Convinced that, in furtherance of this principle, all Parties to the Treaty are entitled to participate in the fullest possible exchange of scientific information for, and to contribute alone or in cooperation with other States to, the further development of the applications of atomic energy for peaceful purposes,

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament, Urging the cooperation of all States in the attainment of this objective,

Recalling the determination expressed by the Parties to the 1963 Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water in its Preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end,

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stock-piles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control, Recalling that, in accordance with the Charter of the United Nations, States must refrain in their internation-

al 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, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the worlds human and economic resources,

Have agreed as follows:

Article I

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

Article II

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

Article III

1. Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfillment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this article shall be applied to all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

2. Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this article.

3. The safeguards required by this article shall be implemented in a manner designed to comply with article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this article and the principle of safeguarding set forth in the Preamble of the Treaty.

4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations.

Article IV

1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II of this Treaty.

2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

Article V

Each party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a nondiscriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

Article VI

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control.

Article VII

Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.

Article VIII

1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.

2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force for each Party

that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment.

3. Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized. At intervals of five years thereafter, a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.

Article IX

1. This Treaty shall be open to all States for signature. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this article may accede to it at anytime.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositories of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this Treaty, and the date of receipt of any requests for convening a conference or other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to article 102 of the Charter of the United Nations.

Article X

1. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

2. Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty.

Article XI

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Treaty.

DONE in triplicate, at the cities of Washington, London and Moscow, this first day of July one thousand nine hundred sixty-eight.

Appendix F

Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*

Principle I

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

Principle II

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

(a) Crimes against peace:

- (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war, of persons on the Seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Principle VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

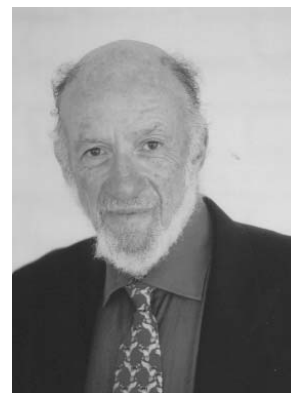
** The Nuremberg Principles were affirmed by the United Nations General Assembly in 1946 in Resolution 94 (1). The above is the text as adopted by the Commission at its second session, in 1950, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the principles, appears in Yearbook of the International Law Commission, 1950, vol. II. Source: <http://www.un.org/law/ilc/texts/nurnberg.htm>*

About the Editors

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Falk is the author of *Law, War, and Morality in the Contemporary World*; *The Role of Domestic Courts in the International Legal Order*; *Legal Order in a Violent World*; *The Status of Law in International Society*; *This Endangered Planet*; *A Study of Future Worlds*; *Human Rights and State Sovereignty*; *The End of World Order*; *Reviving the World Court*; *The Promise of World Order*; *Revolutionaries and Functionaries*; *The Dual Face of Terrorism*; *Revitalizing International Law*; *Explorations at the Edge of Time*; *On Humane Governance: Toward a New Global Politics*; and *Law in an Emerging Global Village: A Post-Westphalian Perspective*, *Human Rights Horizons*; *The Great Terror War* and editor or co-editor of over twenty books.

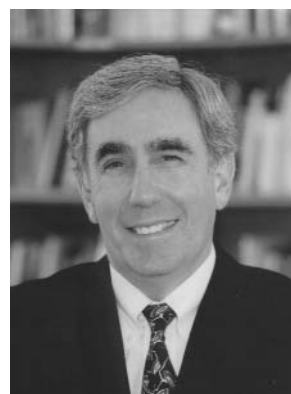
Falk has also been a Fellow at the Center for Advanced Study in the Behavioral Sciences, a Guggenheim Fellow, the Olaf Palme Visiting Professor in Stockholm and a Visiting Distinguished Professor at the Mediterranean Academy of Diplomatic Studies, University of Malta.



David Krieger is a founder of the Nuclear Age Peace Foundation, and has served as President of the Foundation since 1982. Under his leadership the Foundation has initiated many innovative and important projects for building peace, strengthening international law and abolishing nuclear weapons. Dr. Krieger has lectured throughout the United States, Europe and Asia on issues of peace, security, international law, and the abolition of nuclear weapons.

Krieger is the author of many studies of peace in the Nuclear Age. Among the books he has written or edited are *Choose Hope, Your Role in Waging Peace in the Nuclear Age*; *Nuclear Weapons and the World Court*; *A Maginot Line in the Sky: International Perspectives on Ballistic Missile Defense*; *Disarmament and Development: The Challenge of the International Control and Management of Dual-Purpose Technologies*; *Waging Peace in the Nuclear Age, Ideas for Action*; *Waging Peace II, Vision and Hope for the 21st Century*; and *The Tides of Change, Peace, Pollution and Potential of the Oceans*.

Krieger is Deputy Chair of the International Network of Engineers and Scientists for Global Responsibility (Germany); a member of the Committee of 100 for Tibet; and a member of the International Steering Committee of the Middle Powers Initiative. He is also a founder and a member of the Global Council of Abolition 2000, a global network of over 2000 organizations and municipalities committed to the elimination of nuclear weapons.





The Nuclear Age Peace Foundation's vision is a world at peace, free of the threat of war and free of weapons of mass destruction. It seeks to advance initiatives to eliminate the nuclear weapons threat to all life, to foster the global rule of law, and to build an enduring legacy of peace through education and advocacy.

The Foundation initiates and supports worldwide efforts to abolish nuclear weapons, to strengthen international law and institutions, to use technology constructively and sustainably, and to empower youth to create a more peaceful world.

Founded in 1982, the Foundation is a non-profit, non-partisan international organization with consultative status to the United Nations Economic and Social Council. It provides analysis and resources to policymakers, educators, researchers and the public on critical issues of global security.

For more information about the Foundation and its programs, please visit:

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