

International Policy on Iraq: Some Ethical and Moral Considerations¹

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This article focuses on some of the moral issues arising from the threat or use of pre-emptive force against Iraq by the international community in the light of some just war criteria. It questions the moral validity of such a conflict and argues that military intervention, even with UN authorisation, is only liable to damage world stability and increase the likelihood of further terrorist attacks.

The article points out that Iraq is only one of a number of nations which have the use of weapons of mass destruction such as Israel, India, Pakistan and North Korea, as well as the five permanent members of the Security Council. Any UN resolution endorsing a war must define the objectives of the conflict, the fate of the current regime, the new government to be installed, the control of Iraq's oil resources and a clear exit strategy for the occupying forces.

Introduction

Iraq's ability to develop, acquire and deploy weapons of mass destruction (WMD),² and its intentions in their regard, present policymakers and international public opinion with complex

moral and ethical considerations. The importance of situating these questions in a broader political context is clear, as examined in previous papers on the subject.

The concept of the just war has emerged from an enduring and long-tested tradition of moral analysis, particularly within the Christian tradition. It has common ground with the Christian pacifist and non-violent tradition in emphasising the centrality of preventing conflict in the first place and its preference for non-violent conflict resolution. Both views speak to crucial elements of Christian belief, and neither can be regarded as invalidating the other. While the Christian peace witness of the minority is more likely to be prophetic in nature, for many, especially those in authority who have to make prudential judgments of statecraft which may have profound consequences, the just war tradition presents itself as an essentially practical, if demanding, moral framework where the use of lethal force has to be considered.³ But for both traditions war, even if justified, is always an evil, and while the majority view regards war as sometimes justified, it can only be as a last resort.⁴ This has many implications for the legitimacy of a possible US strike against Iraq.

Collective security and legitimate authority

Whether war should be declared on Iraq, and how it should be pursued, are questions of profound moral and religious as well as geo-political importance. Central to the moral evaluation of intervention in Iraq is the just war requirement of legitimate authority. Formerly, where the state was sovereign, it was its own legitimate authority and therefore its own judge in determining when war was justified.⁵ While the requirement of legitimate authority generally ruled out wars waged by private individuals or sub-state groups (in most cases), it did not, since it could not, provide much useful guidance in the case of inter-state conflict. However, with the development of supranational sources of political authority, notably the United Nations (UN), the requirement of legitimate authority takes on a significant new importance, even more so where hostilities are proposed for reasons other than a response to aggression. An attack on Iraq would not be a response to direct aggression, and to undertake

such a move without UN approval would render it far more questionable.

From the start the UN has sought to provide an alternative to the unstable reliance on arms inherent in the balance of power approach and remove the ultimately self-defeating threat when states rely primarily on arms for security. The development of nuclear and other WMD give a new urgency to this.

At the core of the UN Charter is the principle of collective security.⁶ This commits member states to ensuring security through collective means rather than their individual capacity to wage war. Whereas formerly each state sought to guarantee its security *against* others, the Charter envisages this will be guaranteed *with* others.

Even though the agreement to establish a worldwide UN security system under UN auspices represents a great moral advance towards the global common good, it still lacks essential elements to make it effective. This may be better understood by comparing the decision-making procedures and powers of an individual state faced with a threat to its national security, with those of the UN faced with a threat to collective international security. A sovereign state has a system of political decision-making and maintains its own armed forces but the UN has no independent armed forces. It remains an assembly of sovereign states greatly unequal in power and influence.⁷ Power still resides with the larger states and above all with the superpowers, so much so that the UN Charter formally builds inter-state inequality into the core of its decision-making procedures.⁸

Under the Charter peacekeeping and peacemaking decisions are entrusted to the UN Security Council which comprises five states with permanent tenure and a further ten states elected for two years. The permanent members are the dominant powers among the Second World War victors - Russia, the UK, China, France and the US - who decided the structure of the Security Council. The Charter also allows each permanent member to veto unilaterally any Security Council resolution, a right denied to any of the 200 other UN member states. Each permanent member must also approve any UN peacekeeping or peacemaking operation.

As the creation of the UN coincided more or less with the start of the Cold War the ensuing East/West stalemate meant that the Charter concept of collective security was still-born. The ideological stand-off carried through into the Security Council itself as each side relied on the threat of mutual assured destruction through WMD, primarily nuclear but also chemical and biological.

As long as the Cold War persisted, the possibility of veto by each bloc set clear limits to the role of the Security Council. Neither bloc would give its approval for the involvement of any of its opponents in peacemaking operations. Deployment of military forces under UN auspices, requiring a Security Council resolution, was largely confined to peacekeeping operations; peacemaking operations would mean the power to make war under UN auspices, and neither side would permit the other to do so. This constraint largely inhibited the UN in developing its Charter role of providing an effective structure of global security.

While the threat of mass destruction constrained both superpowers it engendered a deadly arms race and fuelled the continuous development, manufacture and stockpiling of all three types of WMD which are able to wipe out the entire population of the earth many times over.⁹ Far more than the ambitions of a Saddam Hussein, this remains the ultimate threat to the international community and to the ecosystem on which it depends.

Although there were important initiatives to control the nuclear and conventional arms race during and after the Cold War, they were ultimately limited in effect and there was no sustained effort to secure lasting and comprehensive nuclear disarmament. The ending of Soviet communism offered a unique opportunity to develop a new approach to collective international security but the necessary motivation, vision and leadership were lacking. The stronger side chose instead to expand the NATO (North Atlantic Treaty Organisation) alliance by absorbing former Warsaw Pact members into the alliance, excluding Russia, and establishing the NATO-dominated Partnership for Peace.

Even without the Cold War, it was clear from the beginning that an effective security system depended on the major powers' willingness or otherwise to surrender authority and resources to the UN. Securing the permanent members' approval is only the first hurdle in mounting peacekeeping and peacemaking operations. These are often costly and, most importantly, member states must provide troops and equipment. Where *peacemaking* is concerned, not only must all the permanent members either agree to the necessary Security Council resolution, or at least abstain from vetoing it, but at least one must also be prepared to act in the field.

Today, in almost every peacemaking as distinct from peacekeeping situation, the US alone of all UN member states has the military capacity to undertake major operations. Its perception of vital interests in the Middle East made it inevitable that the US would be the lead actor in the UN response to Iraq's invasion of Kuwait. Since the Gulf War, the disparity between US military

strength and the rest of the world has become even more pronounced. While the US will seek UN approval where it can to gain legitimacy, the US Congress and Senate have already authorised President Bush to attack Iraq even without a UN mandate. If the US goes to war without UN approval, there is little the rest of the world can do to stop it or sanction it apart from the force of world opinion. If any state can intervene militarily in another country on a presumptive basis and without, or even in defiance of, UN approval, then collective international security in the broader sense is well on the way to being fatally undermined. As long as the dominant global economic model is based on unrestrained energy consumption, the impact of competition for scarce energy resources will pose a greater threat to international security than terrorism.

The belief that complete national security can or should be guaranteed primarily through military strength is deep-rooted in the US, where the pursuit of so-called “full-spectrum dominance” as a major defence and foreign policy objective appears to be gaining currency. This holds that the US should seek military superiority against all possible hostile states and coalitions. Today the US is clearly the only state in the world which can aspire to such dominance. Such overwhelming power combined with an inadequate collective security within the UN may impel smaller states to acquire WMD by hook or by crook. Yesterday Israel, today Iraq and North Korea and tomorrow other states may feel driven to acquire them by clandestine means. As the sole “hyperpower” in the world the US is more likely to encounter the weapons of weaker opponents - sabotage, assassination, guerrilla warfare of various sorts, terrorism, suicide bombings, and a host of other expressions of resistance or opposition. These dangers will be all the greater if it appears that the individual powerful states are able effectively to ignore the UN’s collective security system.

Weapons of mass destruction (WMD): the international context

From the early days of the nuclear era the five large nuclear powers have been morally and logically inconsistent in arguing that while *they* needed nuclear weapons, no other states did, nor

should they acquire them. The majority of states have ratified the Nuclear Non-Proliferation Treaty (NPT) reflecting their belief that despite the double standards of the nuclear powers it is important to prevent further proliferation. As the lesser of two evils this approach is persuasive up to a point, given the relative stability between the nuclear powers. But that stability is fragile and relies on the threat of mutual destruction. It could fail and needs to do so only once. Comprehensive disarmament requires an effective system of international collective security. Without this, WMD will always be a threat.

Although there are major grounds for scepticism about the motives and intentions of the main WMD states in regard to Iraq, it would be a grave error to abandon the struggle to pursue effective control and disarmament of all WMD. It would be equally unjustified to turn a blind eye to the wider international failure to pursue and implement comprehensive arms control and disarmament, a failure for which the five permanent members of the Security Council are largely responsible and for which they must be held to account.

Nuclear weapons

All five permanent members of the UN Security Council openly possess nuclear weapons, as do India and Pakistan. The only other state generally believed to possess them is Israel, which may have between 100 and 200 nuclear warheads although it has never officially admitted having any.¹⁰ It seems clear that Iraq has tried to develop a nuclear weapons capability, but there is uncertainty as to how close it might now be to doing so.

By acceding to the NPT the majority of states have officially renounced the possibility of developing or acquiring nuclear weapons. The *quid pro quo* was the expectation that the nuclear powers would keep their commitment to work towards complete nuclear disarmament.¹¹ Several decades later this goal has not been achieved and for the foreseeable future there is no prospect that it will be.

Both morally and logically, it is difficult to condemn any one state for the *possession* of nuclear weapons without censuring all other nuclear states. If the international community believes that military intervention is justified on grounds either of actual or probable possession or attempting to acquire WMD, then Israel

should be at least as great a focus of attention and concern as Iraq, plus all the remaining nuclear powers. Either there are egregious double standards, or else the cause for concern must lie not with possession, but in the *degree of threat* posed by possessing WMD or, like Iraq, aiming to acquire them. For the main WMD states this would have the great advantage of shifting international attention towards the less tangible question of intent and away from the all-too concrete realities of possession: the US and Russia alone have amassed between them some 4,000 strategic nuclear weapons and 5,000-9,000 tactical nuclear warheads.¹²

Apart from the danger of proliferation, the psychological and physical gap for many years between the most powerful conventional explosive and the smallest nuclear explosive (the so-called "tactical" nuclear charges), continues to be narrowed at both ends; conventional explosives (such as fuel-air bombs and the "daisy-cutter" bombs used for the first time in Afghanistan) have become more powerful, and nuclear warheads miniaturised.¹³ This increases the risk of moving from conventional to nuclear weapons in a conflict.

The global situation in regard to nuclear weapons is probably more dangerous and fragile than ten years ago, and could worsen. The reasons for this are largely to do with states situated in or neighbouring the Middle East or significantly involved there in a military sense. Although Israel has clandestinely acquired a nuclear mass destruction capability. Neither the UN, the US, the European Union nor any other international body has proposed effective sanctions on or weapons inspections in Israel, nor has any international enquiry examined where Israel might have acquired the material for its warheads.

Secondly, Pakistan, a Muslim state directly affected by the conflict in Afghanistan, whose relationship with India is traditionally confrontational over Kashmir and other issues, recently exploded its first nuclear bomb. India exploded a hydrogen bomb in 1974, probably as a warning to China which had been energetically developing its nuclear capabilities. After 1974 India prudently refrained from further nuclear testing. However, following the Pakistani test, and reflecting also a change in government sentiment, India has now resumed its nuclear programme. Pakistan is estimated to have 30-50 warheads and India may have enough plutonium for 100-150 warheads.

Biological and chemical weapons

The threat of chemical weapons was recognised as far back as 1899 when two dozen states signed the Hague Convention, binding themselves not to use toxic gases or other chemicals as weapons. The Convention failed to prevent the large scale use of chemical weapons during the First World War. Development continued in the interwar period. The Japanese killed hundreds of thousands in China using biological weapons including plague, and carried out research and development up to 1945. Scientists in the main Japanese research unit were amnestied by the US in return for handing over their research data. In the Third Reich, gas was first used to kill the mentally disabled in a clandestine pre-war euthanasia programme and then to kill millions in Hitler's genocide programme. During the Cold War both East and West accelerated research into biological and chemical weapons. Some progress in controlling these weapons was made when in 1972 the US, the USSR and over 100 other states signed the Biological Weapons Convention, although this was subsequently broken by the USSR, and a number of states including the US continue to engage in research for defensive purposes. In 1993 the Chemical Weapons Convention was opened for signature.

Biological and chemical weapons are the poor man's weapons of mass destruction. The technology for making them is well known or relatively easy to acquire, the necessary raw materials are easily obtainable, and they can be manufactured far more cheaply and with much less fear of discovery than nuclear weapons. During the Cold War the superpowers adopted more stringent international controls. This arose more from the greater difficulty of controlling biological rather than nuclear weapons, and the increased vulnerability of the superpowers to their use by other states or terrorist groups, than to any principled moral or humanitarian conviction against their manufacture or use. A recent cause of anxiety is the criticism of the Biological and Chemical Weapons Conventions by the Bush administration.

Such considerations aside, there is also the likelihood that, regardless of who rules it, Iraq must fear for a long time to come the possibility that Iran will want to exact revenge for Saddam's 1980 invasion and use of chemical weapons in the eight year war. This suggests that independently of other motives Iraq might well have been prompted to develop and hold stocks of WMD after 1988 to safeguard against a future Iranian attack. The same considerations might also prevail in Iran. In either or both cases,

a durable long term peace between the two countries is indispensable to the eventual peace and stability of the entire region.

WMD and Iraq

The right of self-defence against an aggressor is clearly established in international law. It includes the right of a victim state to seek the help of other states or the international community as a whole. As a victim of aggression Kuwait is entitled not only to resist the Iraqi invaders itself but to seek international help to do so.

The situation following the expulsion of Iraq and operation Desert Storm is less straightforward. Iraq has not this time attacked or invaded any other state. Unjustified aggression cannot be invoked as grounds for military action, as no such aggression has taken place since the invasion of Kuwait, and this has already been rectified by international intervention. The possible justification for military action against Iraq centres on its actual or alleged possession of WMD, and the threat this poses to international peace.

Apart from using chemical weapons against Iranian troops the Saddam regime killed several thousand of its own Kurdish citizens in one terrible gas attack on the town of Halabja in 1988. On neither occasion did the international community intervene or impose sanctions. The dog did not bark in the night. The UN did not establish an international inspection and monitoring regime to identify and destroy Iraq's WMD capabilities in response to their use against Iran or Halabja. It did so only following the Iraqi invasion of Kuwait, even though Iraq used no WMD then or since. It appears that by 1995 the UN inspection team was close to giving Iraq a clean bill of health when it received information from an Iraqi source leading to the discovery of large and hitherto unsuspected WMD stocks and facilities, which were destroyed by the inspectorate. The Iraqi regime continued to obstruct the inspectors and in 1998 the UN was forced to withdraw its teams on grounds of non-co-operation.

It is the nature of the Iraqi regime coupled with its record in regard to WMD which makes its intentions and activities an object of great international distrust. After the attacks of 11 September the prospect that Al Qaeda might obtain WMD

added a new and worrying aspect, although concerns that Iraq could have passed such weapons to terrorist groups may have been equally valid for years before 11 September.

A pre-emptive attack on Iraq is likely to be justified on the following grounds:

- the belief that Iraq has continued to rebuild and further develop its WMD capacity clandestinely since 1998;
- that international inspection has revealed accumulated large stocks of WMD in the past; that it has actually used such weapons against its own citizens and other states; that it has a record of aggression against neighbouring states and of oppressing its own citizens and ethnic and/or religious groups (Kurds and Sunnis);
- that it has attempted to conceal WMD from UN inspection;
- that it has refused to comply with sixteen UN resolutions since the Gulf War;
- that it is guilty of serious human rights abuses;
- that its current leadership might put WMD privily into the hands of terrorists.

For all these reasons Iraq's actual or possible WMD capability poses a clear danger to international peace and security which entitles the international community to introduce inspectors and if necessary to take military action to neutralise that capability.

Each of these profoundly concerns the international community. Nonetheless it is questionable whether they are sufficient to justify an attack on Iraq, as long as that state, however oppressive its leadership, is not making war or not using WMD on its citizens, or has not been proven to have made them available to other states or terrorist groups such as Al Qaeda.

The question of intention and pre-emptive action

Are there conditions, if any, under which other countries would be justified in pre-emptively attacking a state primarily on the basis of an *assessment of the intentions* of the state to use weapons of mass destruction in the future? To answer "yes" is to legitimate an attack *prior to and distinct from any actual use of such weapons*

by the state in question.

This does not mean that a UN-authorized pre-emptive military attack aimed at destroying Iraq's WMD capacity could necessarily be ruled out *a priori*, only that the justification must be compelling, since going to war on the grounds of an intent rather than in response to an act of aggression, is to create a very dangerous precedent. Once the legitimacy of a pre-emptive strike is admitted in principle, the claim to be engaging in a just war becomes dependent on estimates of capability which are difficult for independent judges to verify, and on the even less tangible and often subjective question of motive and intent. To admit the validity of a pre-emptive strike brings the international community perilously closer to eroding the essential moral distinction between a war of aggression and a war of justifiable defence, and may remove that distinction altogether.

The issue of inspection illustrates this point. The US insists that on the basis of its own intelligence assessments it believes Iraq has stocks of WMD. However, these assessments are not available in detail to anyone else. On foot of concerns about Iraq's WMD the Security Council has ordered it to submit to the most rigorous inspection regime. Iraq agreed under the threat of imminent war. But if the inspectors find nothing of significance, is the international community, or the US on its own, still entitled to go to war on Iraq if the US insists that its intelligence is reliable? If the UN inspection team can find nothing, what grounds would the US have for maintaining it would do any better by forcibly occupying the country? What new standards of proof over and above the existing inspection process would be demanded?

Apart from this, war is hardly justifiable even or especially if the UN inspection team does discover WMD. While any discovery would further establish the total untrustworthiness of the Iraqi regime, it would at the same time remove the original grounds for threatening war, assuming that whatever had been discovered was subsequently destroyed. By coercing Iraq into submitting to a rigorous inspection regime the international threat of force would have achieved its effect without war. To justify war on the grounds that WMD had indeed been discovered would appear to violate the just war requirements of proportionality and clear intent.

Moral consistency and inconsistency

The UN Security Council appears to be disposed to accept the legitimacy of a pre-emptive strike, even though neighbouring states, which may have most to fear, do not generally feel his regime poses a threat serious enough to justify another war. Saudi Arabia, for example, has stated that it would not permit attacks on Iraq to be launched from its territory.

The Council's stance is not self-evidently consistent. It took no action against Iraq during 1983-8 when the latter had actually used WMD against Iran or in 1988 when it used chemical weapons against its own Kurds. There was no great demand for international sanctions then and throughout the Iran-Iraq conflict several permanent members of the Security Council continued to sell arms to one side or the other. Why were sanctions not imposed on foot of Saddam's proven use of chemical weapons during the 1980s, rather than at the present moment, when he has not used any such weapons since before the invasion of Kuwait to the present? Iraqi Kurds might well remind the international community that more people (between 4,000 and 5,000) were killed in the attack on Halabjah than in New York on 11 September.

Other UN member states either have numerous WMD, or the capacity to develop them at short notice, yet the international community neither demands nor imposes the right of inspection on them. Apart from Iraq, the UN is not proposing to enforce inspection or decommissioning on Israel, which probably possesses more nuclear warheads than Pakistan and India put together,¹⁴ or on the latter two countries. Nor is it proposing to impose international inspection regimes on states such as Sudan, Egypt, Syria, Iran, North Korea or Libya which have chemical and/or biological development programmes and possibly stocks. Equally there have been, and there are, many repressive regimes against which the UN has never proposed to launch military action.

The great majority of WMD have been developed, manufactured and remain in the possession of the five permanent members of the UN Security Council with the US and Russia still controlling most. Each of these two states alone possesses enough weaponry to kill every form of life on earth many times over.¹⁵ They are years behind the 2007 deadline for destroying

chemical weapons under a Chemical Weapons Convention. One must ask, *quis custodiet ipsos custodes?*

If the main mover pushing for inspection of Iraq with the threat of war is itself one of the largest possessors of WMD, is there not an element of dangerous hypocrisy in such insistence? Equally is there not a real risk that other WMD states would be even less likely to be put under pressure to destroy all such weapons? One or more of the Security Council permanent members is likely to continue to be the main mover of resolutions authorising military action against Iraq on the grounds not of WMD possession (since the permanent members can all be convicted of this) but of their judgement of Iraq's intention to use such weapons or possibly pass them to others who might use them. It is almost certain to be the same permanent members who would provide and control the considerable armed force needed to carry out such action. This tends to produce scepticism among many in the Middle East, in the face of expressions of concern and moral outrage over Iraq.

The major powers, including the US, have not pursued a morally consistent policy in regard to the control, reduction and elimination of all WMD, or in regard to putting in place an effective and universal monitoring, inspection and enforcement system.

There is a weighty moral argument that in a sinful world the possession of WMD by some countries is something that must be tolerated, while respecting the moral imperative to do what can be done to prevent other countries acquiring or holding them. To proceed against Iraq alone may for the moment be the lesser of two evils. Nonetheless failure to address the continued possession by others of the same weapons may make us tacit accomplices in the greater evil, since their use could wipe out the human race.

The logic of enforcement and its risks

An inspections regime is fruitless if it cannot be enforced. Thus a credible threat of sanctions has to be an integral part of any decision to impose inspection. In the case of Iraq the only effective sanctions now appear to be military ones. To authorise

an inspections regime is to accept in advance the possibility and legitimacy of military action if the target state either refuses or obstructs inspection. The justification for military action against Iraq may depend on the degree of co-operation with weapons inspectors. Having agreed to admit inspectors under the terms of the Security Council resolution, military action cannot be justified on grounds of refusal. Only if the inspection team concludes it cannot carry out its mandate might military intervention be possibly justified.

It could be argued that, paradoxically, military intervention could be more difficult to justify morally if there was no guarantee of the complete destruction of WMD stocks and capabilities, since the euphemistically termed “collateral damage” would have been inflicted on foot of an aim which could not be assured. If it is conceded for purposes of argument that the importance of locating and destroying Iraq’s WMD capabilities justifies military force by the international community, through the UN, it should be of sufficient scope to ensure that all WMD-related stocks and facilities in Iraq are totally destroyed. WMD are such that even a small fraction escaping detection could still constitute a significant threat. Given the Iraqi regime’s demonstrated capacity to conceal and disperse its WMD stocks, it is hard to see how anything short of complete occupation could guarantee that all had been detected.

However, a full-scale occupation of Iraq would be a high-risk venture, if it left Saddam no options other than capitulation or resistance to the last. If he concluded that the US, the only power capable of ousting him, was launching an attack, he might well decide to fight to the bitter end. This must mean large scale attacks and fighting in urban areas rather than the desert or open countryside, where the US has shown its capacity to destroy from a distance with virtual impunity. It is possible that in the event of an invasion, support for Saddam’s regime would crumble, and resistance evaporate. There might be a coup d’état or his generals might revolt but this is by no means certain. It is equally possible he would command enough loyalty to ensure a stiff resistance to any invading force in the towns and cities of Iraq. No one can predict the scale of civilian casualties and destruction of buildings and infrastructure if this happened. The possibility, if not the likelihood, that the cost of invading Iraq and toppling Saddam would be very high both immediately and in the longer term has to be considered before a final moral reckoning of the pros and cons of military action could be attempted.

The picture is even graver when considering that WMD might

be used. "Based on what is known of its planning during the Gulf War, the [Iraqi] regime would be prepared to use chemical and biological weapons if faced with its termination, given that regime survival is its fundamental concern".¹⁶ There would appear to be a profound moral paradox. If military action against Iraq is to be justified primarily on the grounds that Saddam has or might have the intention of using WMD, the only certain way to prevent this happening would appear to be to remove the person who possesses or is accused of possessing the intent. In the short run the sole way to do so, (apart from assassination, which seems unachievable), is to attack and defeat the regime on the ground. In which case, as various commentators have pointed out, military action would in itself be the single foreseeable step most likely to provoke Saddam actually to use whatever WMD he possesses. If this were to happen, large scale military action with the declared aim of destroying Iraq's WMD capacity could well be the step that actually triggered their use. The consequences could be even bleaker, for Saddam might conclude that there was nothing to be lost by launching WMD at Kuwait or Saudi Arabia, for example to make oil facilities unusable, or at Israel, with the intention of provoking Israel or the US to retaliate with nuclear weapons and inflame opinion throughout the Arab and Muslim world. This might not happen if the US could prevent Iraqi warheads from reaching Israel, but all bets would be off if some got through. An Israeli government might be unable to contain itself. Once again, the consequences of provoking Saddam to use WMD would be incalculable.

Since a declared war aim of removing Saddam from power would be more likely to drive him to fight to the end, thereby rendering any conflict more destructive of life and infrastructure, such an aim would render military action morally even more problematical.

There would be a horrible irony if UN-approved military intervention against Saddam led ultimately to the use of WMD. Hence the moral dilemma: would full-scale military intervention be more likely than non-intervention to lead sooner or later to their use? Put another way, which is morally preferable: to tolerate the present unsatisfactory situation or to take action at the risk of precipitating the use of the very weapons one wishes to destroy?

Even if the Iraqi regime did not resort to WMD, the impact of an all-out war using the full gamut of modern so-called "conventional" weapons could be disastrous for a population already suffering years of sanctions-imposed undernourishment,

malnutrition, excessive morbidity and lowered life expectancy. Following Iraq's invasion of Kuwait the international community not only approved an armed response to this invasion, but also imposed a comprehensive sanctions regime on Iraq which continues to the present. The justification for sanctions is increasingly questionable because of its cumulative effects on the population. A further armed assault on Iraq could well have a doubly disastrous impact on people debilitated after a decade of sanctions. The bulk of the cost would, as always, fall on non-combatants, particularly the most vulnerable - women, children, the elderly.

Given these considerations it is more difficult to see how another just war requirement, that of proportionality between the good sought and the evil likely to be caused, is likely to be satisfied in the case of an attack on Iraq

Issues which an enabling resolution should address

Even assuming that a Security Council resolution is *prima facie* sufficient to meet the requirement of legitimate authority, and there are sufficient grounds to justify military intervention, other essential just war requirements still remain to be satisfied. Even if they can be, there is the further question of the *ius in bello*, i.e. the moral limits to be observed in the conduct of any war, however just in itself.

Both just war and *ius in bello* criteria require the evaluation of any Security Council resolution, not only in the light of such factors as the grounds on which military intervention is justified, but also of the objectives specified, the conditions and limitations imposed, the nature and effectiveness of UN control of states involved in the action, the proportion between the evil likely to be caused and the good to be achieved (including the degree of risk that a given course of action might provoke the use of WMD), and in general the ethical-political assumptions underlying such approval,¹⁷ such as whether there is clearly a just intention (i.e. eliminating WMD as opposed to securing control of Iraqi oil).

Political and military control cannot be isolated from each other. Where political authority is nominally vested in the UN,

but where military intervention will be carried out by the world's dominant hyperpower, the likelihood of tension and divergent aims is high. Unless the terms of an enabling resolution are clear, comprehensive and rigorous the UN will be unable to exercise much, if any, effective control over what happens once war begins. The prospect of a UN-authorized war leading to the partial or complete occupation of Iraq raises morally relevant issues in regard to the scale, duration and longer term outcomes of military action under UN auspices, and in regard to the purpose and nature of the resulting occupation, all of which an enabling resolution should address.

It is only a small step from justifying pre-emptive action as a response to anticipated use of WMD to justifying the removal of the possessor, in this case Saddam Hussein. An enforced change of regime could effect a possibly momentous change in the control of Iraq's oil resources. To ensure that the object of intervention is clearly limited to destroying WMD capabilities there should be a prior UN guarantee that the oil assets of Iraq will be administered by an independent and impartial UN-appointed trustee body and this only if and for as long as there is a hiatus of government in Iraq. Such a guarantee is necessary to ensure that the objective of disarmament is not a cover for the larger strategic objective of securing control over Iraqi oil.

As the scale of destruction following military intervention could depend on whether or not Saddam felt able to retain power even if defeated, the enabling resolution should define the objectives of intervention so as to limit the risk that Saddam would resort to the use of WMD as a last desperate measure. The most obvious, if very unpalatable, way to do this would seem to be to exclude regime change from the objectives to be directly achieved by military intervention.

The just conduct of war: *ius in bello*

If hostilities triggered the use of WMD, *ius in bello* requirements are of particular relevance. The international community has to address the risk that military action authorised in its name might actually precipitate the use of WMD. The Security Council must consider whether an enabling resolution should explicitly

prohibit the use of WMD by UN-mandated forces, or if not whether it is prepared to permit or condone their use in specified circumstances, such as in response to their first use by Saddam's forces.¹⁸

The Security Council should also consider the imposition of conditions in other relevant areas, such as the conduct of the war, the tactics and weaponry to be used, restrictions on the type and scale of so-called "collateral damage",¹⁹ international monitoring of the war, international supervision of the treatment of prisoners of war, the location and administration of prisoner of war camps and the conditions under which a cease-fire should be declared.²⁰

After intervention, what?

The type of government imposed on an occupied Iraq is bound to be highly sensitive for the Iraqis and the wider world. In the event of total occupation the governance and administration will be perceived as intimately affecting not only Saddam Hussein but directly or indirectly the strategic control of Iraqi oil, and the politics of the wider region. It is likely to have a significant influence on how the extended Muslim world stretching from Algeria to Indonesia reacts to events during and after intervention. If the US were seen to be calling all the shots it could have incalculable consequences on international Muslim public opinion and politics and as a result on international peace and security in general. If, on the other hand, the UN rather than the occupying forces is seen to be in charge of the political future of Iraq, and if political control is restored without delay to the people, then an occupation may be perceived more benignly. Thus, the possible governance and administration of Iraq call for careful advance definition by the UN. If not, it is likely that the key decisions about the future leadership of Iraq will be made by the occupying power or powers, in their own interests. Another just war criterion, that of just intention, would accordingly be compromised, perhaps irretrievably.

Consideration of how an occupied Iraq is to be administered must recognise that any military intervention is likely to be very costly in humanitarian terms. Apart from human casualties, the cost of military intervention is "enormously expensive". While the cost of bombing Serbia in 1999 is estimated at \$4 billion, the cost of rebuilding has been estimated at some five to seven times

the bombing, or about \$20-30 billion.²¹ And, unlike Iraq, there was no full-scale land invasion or occupation of Serbia. Failure of the Security Council to consider the administrative and legal responsibility for war-related injuries, the destruction of vital services, infrastructure, administrative capacity and much more would further add to the humanitarian cost of a conflict, as well as making it more difficult to justify.

Conclusion

If the considerations put forward in this article are well-founded, then there must be the deepest moral reservations about large scale military intervention in Iraq on pre-emptive grounds. At the least, any intervention without prior UN authorisation would gravely damage the concept of collective security and in doing so diminish rather than enhance peace and stability in the world. If UN approval is sought, as it must be, an enabling resolution should carefully and comprehensively define the objectives to be achieved, the fate of the existing Iraqi regime, how Iraq is to be governed during and after occupation, and by whom. It should provide for Iraqi oil resources to be administered by an independent and impartial body answerable to the UN, not the occupying forces, and for a clear exit strategy by the occupiers. Furthermore, it should consider imposing limits on the type of weapons used (conventional or WMD), and provide for effective UN monitoring of the war. If any or most of these conditions are deemed unachievable or unenforceable, the overall moral justification of military action under UN auspices becomes correspondingly more questionable.

Footnotes

- 1 This article was written in mid-December 2002.
- 2 In terms of moral evaluation, the limitation of the term weapon of mass destruction to nuclear, biological and chemical weapons is misleading and unacceptable, since the scale of destruction caused by so-called conventional weapons may in practice be greater than that of the three types mentioned. An example is the use of large numbers of small incendiary bombs by the US in a raid against Tokyo in 1945; the resulting fire-storm killed more people than the atomic bomb dropped on Hiroshima a short time afterwards.
- 3 "Pacifists and just-war theorists are actually closer to each other than they often suppose. They share a common starting-point which just-war theorists sometimes overlook: non-violence has moral priority over violence, and violent acts always stand in need of justification because they violate the *prima*

facie duty not to injure or kill others whereas only some non-violent acts need justification (e.g. when they violate laws). While pacifists can remind just-war theorists of this presumption against violence, pacifists also need just-war theorists. In a world in which war appears to be a permanent institution, debates about particular wars require a framework and a structure, which can be provided by the criteria of the just war tradition, properly constructed. In addition, there are degrees of justice and humanity within violence and warfare, and the just war theorist can emphasise those moral constraints which the pacifist view of war as hell or murder (shared by some realists) tend to obscure.” James Childress, “Just war criteria”, in *War or Peace? The Search for New Answers*, Thomas J. Shannon (ed.), Orbis Books, 1980, pp.53-4.

- 4 “The whole Catholic doctrine of war is hardly more than a *Grenzmoral*, an effort to establish on a minimal basis of reason a form of human action, the making of war, that remains always fundamentally irrational.... The effort of the moral reason to fit the use of violence into the objective order of justice is paradoxical enough; but the paradox is heightened when this effort takes place at the interior of the Christian religion of love”; John Courtney Murray SJ, *Morality and Modern War*, Council on Religion and International Affairs, New York, 1959, pp. 14 and 17.
- 5 As the Second Vatican Council stated, “As long as the danger of war persists and there is no international authority with the necessary competence and power, governments cannot be denied the right of lawful self-defence, *once all peace efforts have failed*”: Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, n.79 (emphasis not in original)
- 6 The principle of collective security is a pivotal element of Catholic social teaching on international order. The Church looks for the eventual outlawing of war by international agreement, a goal which in turn requires the establishment of a “universally acknowledged public authority vested with the effective power to bring justice to all, and respect for law.” A necessary step towards achieving this is an end to the arms race and multilateral disarmament achieved “on the basis of agreements and backed up by genuine and effective guarantees”: *Gaudium et Spes, op.cit.*, n.82
- 7 “The United Nations is not, properly speaking, a juridical organisation with adequate legal authority to govern in the international community. It is basically a power organisation. And its decisions, like those rendered by war itself, are native to sanction injustice as well as injustice”: John Courtney Murray SJ, *Morality and Modern War, op.cit.*, p.6.
- 8 A former senior UN official has commented that “[t]he fact that the veto power prevents any collective action which in any way goes against the interests of any one of the five Permanent Members of the Security Council still leaves a very large hole in the concept of a universal system of collective security. Any restructuring of the Security Council should aim to alleviate rather than exacerbate this problem. The new trend for intervention in some internal situations and in humanitarian or human rights situations makes a serious and sensitive handling of the North-South question more necessary than ever. A better system of international security must take this into account if it is to succeed. ... [T]he UN should have the will and the capacity to deal with situations, especially those involving the defence of the weak, regardless of whether they are of major concern to the industrialised powers. The UN must remain a universal organisation and must avoid becoming what is perceived by a large part of its membership as elitist”: Brian Urquhart, “The UN and international security after the Cold War”, in *United Nations, Divided World: the UN's Roles in International Relations*, 2nd Edition, Adam Roberts and Benedict Kingsbury (eds), Clarendon Press, Oxford, 1995, pp.102-103.

- 9 In 1982 an authoritative UN report (*Comprehensive Study on Nuclear Weapons*, Report of the Secretary General to the United Nations General Assembly, 1982) estimated that the total strength of existing nuclear arsenals was estimated at the equivalent of 1,000,000 Hiroshima bombs, or about 13,000,000 tons of TNT.
- 10 "Weapons of mass destruction", *National Geographic*, November 2002, p.18
- 11 Article VI of the Nuclear Non-Proliferation Treaty states that each of the parties to the Treaty "undertakes to pursue negotiations in good faith on effective measures relating to the 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." The Treaty was signed nearly thirty-five years ago.
- 12 Even before the disastrous climatic consequences of a large scale nuclear exchange (the so-called nuclear winter) were scientifically identified in the early 1980s the Second Varican Council had pointed out in 1965 that "if the kinds of weapons now stocked in the arsenals of the great powers were to be employed to the fullest, the result would be the almost complete reciprocal slaughter of one side by the other, not to speak of the widespread devastation that would follow in the world and the deadly after-effects resulting from the use of such arms": *Gaudium et Spes*, *op.cit.*, n.80
- 13 Even twenty years ago Sir Solly Zukerman noted that nuclear arsenals included artillery shells, depth charges, nuclear-tipped torpedoes, with yields ranging from a kiloton to several megatons, and that "small" weapons had also been devised for field warfare: Solly Zukerman, *Nuclear Illusion and Reality*, London, Collins, 1982, p.18. Since then the progress towards miniaturisation has continued.
- 14 "Weapons of mass destruction", *op. cit.*, pp.18-19
- 15 *Ibid.*, p.15
- 16 *The War on Terrorism: 12-month Audit and Future Strategy Options*, The Oxford Research Group, Oxford, 2002, p.22
- 17 "Just war deliberation pre-supposes the acceptance of the following working premises: that all belligerents possess a common humanity, that the right of the opponent to exist politically must be recognised, that unqualified, unlimited violence against his person and property is not permitted, that the belligerents must develop a modus vivendi within a common set of political relationships. Where these principles are in abeyance, just war limitations usually cannot be sustained": Theodore Weber, *Modern War and the Pursuit of Peace*, Council on Religion and International Affairs, New York, 1968, p.29.
- 18 On the problem of belligerent reprisals see Sydney Bailey's comments in "International Humanitarian Law and the Nürnberg Principles", in *The Nuclear Weapons Debate: Theological and Ethical Issues*, Richard J. Bauckham and R. John Elford (eds), SCM Press, London, 1989, pp.194-5
- 19 In the preamble to the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, the contracting parties base themselves on "the principle of international law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, and on the principle that prohibits the employment in armed conflict of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering" (emphasis not in original).
- 20 "Obviously, a decision to use force, including for humanitarian purposes, will never be an exact science and, in this sense, there will always be room for a political assessment of whether it is right or not to intervene in particular

circumstances. But this does not take away the duty to develop as precise criteria as possible for humanitarian intervention and to build a political consensus to support them.... Indeed, the conditions would not be very different from those normally attached to the general use of force in international relations – gravity of the situation; force to be the last resort, after all other attempts of solving the conflict have been exhausted; limited objective; proportionality of the means used to the ends pursued; probability of success. To those criteria can be added the requirement that the intervention stem from a group of states – a single country being always suspect of pursuing its narrow nationalist interest – and that the states participating act in close co-ordination with the United Nations, proving ready to refer the matter back to the [Security] Council as soon as circumstances permit”: Catherine Guicberd, “Humanitarian intervention: Can NATO and the UN speak the same language?”, in *Defence and Security for the 21st Century*, NATO Parliamentary Assembly, Brussels, 2000, p.47.

21 *The War on Terrorism, op. cit.*, p.8