

*Op-ed by Hans Corell in Svenska Dagbladet "Brännpunkt" on 23 September 2004.
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Bush's War Damaged the UN

By attacking Iraq, the US and Britain have seriously harmed the system of the UN Charter for collective security. President Bush, who addressed the UN the day before yesterday, should learn from his predecessor President Eisenhower. He emphasized the authority of the UN, writes Hans Corell, former UN Legal Counsel.

This year, on 15 September, the UN Secretary-General described for the first time the attacks by the US and Britain on Iraq as "illegal". Hence I feel free to discuss the matter publicly.

To those of us who served in the UN Secretariat during spring 2003, Kofi Annan's answer did not come as a surprise; already at an early stage he said that the attack was not in conformity with the UN Charter – a euphemism for the sad fact that the attack on Iraq was illegal.

According to the UN Charter, military force can only be used in two situations:

- (1) in self-defense in case of an armed attack on a member state and
- (2) if the UN Security Council has sanctioned this, applying Chapter VII of the UN Charter. In this case the Security Council has to establish the fact that there is a threat against international peace and security.

In the case of Iraq, the Security Council had adopted a great number of resolutions applying Chapter VII, starting already in 1990.

Two resolutions are especially relevant: 678 (1990) and 687 (1991). In brief, the content of these resolutions was that the member states were entitled to use "all necessary means" to secure that Iraq provided an accurate, full, final and complete disclosure of all aspects of their programs to develop weapons of mass destruction and ballistic missiles with a certain range.

By the end of 1998, Iraq suddenly refused to admit the inspectors of UNSCOM into the country. By resolution 1284 of 17 December 1999, the Security Council decided to replace UNSCOM with a new commission, UNMOVIC, which came to be headed by Hans Blix.

However, it took until 27 November 2002 before Iraq permitted UNMOVIC's inspectors to enter the country.

The reason that Iraq changed attitudes was that the Security Council on 8 November 2002 had adopted resolution 1441. In this resolution the Council established the fact that

Iraq remained in material breach of its obligations, while at the same time the country was given a final opportunity to comply with its disarmament obligations.

In the resolution, the Council also recalled that it had warned Iraq time and again of serious consequences as a result of its continued violations of its obligations.

On 8 December 2002, Iraq reported to the Security Council. The US and Britain, in particular, were dissatisfied with this report.

During the period of December 2002 – March 2003 Hans Blix and the head of IAEA reported to the Security Council. In February, Hans Blix informed among other things that Iraq had taken certain steps that could be the beginning of an active cooperation to solve outstanding questions on disarmament. But no weapons of mass destruction had been found.

The tension rose. In February 2003, principally Britain began investigating the possibility for support for a Security Council resolution that sanctioned an armed action against Iraq.

These efforts failed to succeed. A majority of the Council members was not willing to go that far under the existing circumstances.

Despite the fact that the US and Britain actually knew that they did not have the support of the Council they attacked Iraq on 20 March 2003.

As a basis for the legitimacy of this measure Britain referred to the original resolutions of the Security Council. This position was presented with consistency.

The US, on the other hand, presented varied justifications: sometimes they referred to the early resolutions, sometimes to resolution 1441, sometimes they referred to self-defense, and sometimes they claimed that Saddam Hussein was an ally to the al-Qaeda network and that the action therefore could be permissible as part of the “war” against terrorism.

The latest statement from the US on this issue was delivered by President Bush in his speech to the General Assembly a couple of days ago, on 21 September 2004:

“The dictator agreed in 1991, as a condition of a cease-fire, to fully comply with all Security Council resolutions – then ignored more than a decade of those resolutions. Finally, the Security Council promised serious consequences for his defiance. And the commitments we make must have meaning. When we say "serious consequences," for the sake of peace, there must be serious consequences. And so a coalition of nations enforced the just demands of the world.”

According to this view of the matter, resolution 1441 would support the US’ action.

But this is where the problem lies. In a case like this “the just demands of the world” should be expressed by the Security Council – not by the US and Britain – and at the time of the attack it was clear that there was no majority in the Security Council for an armed intervention.

What happened also raises the question of principle for how long a Security Council resolution can be referred to as support for the use of force, especially when there is no majority for this in the Council.

The resolutions referred to by Britain had been in force in Iraq for more than twelve years. Much had happened during that time, including the fact that Saddam Hussein, however reluctantly, started to open the doors to UNMOVIC.

Furthermore, as it has turned out in UNSCOM’s and two American investigations: Iraq did not have the weapons of mass destruction that the sanctions were about.

Now somebody might wonder: if the attack on Iraq was illegal – how can one in that case accept the fact that the occupying powers were allowed to continue their activities in Iraq until the governing power was handed over to the Interim Government, lead by Mr. Allawi, on 28 June this year?

The explanation is simple. When the Security Council in March 2003 was faced with the fact that Iraq was occupied by two of its own members, it had no choice. Ordering the occupying powers to leave the country was not possible.

Apart from the fact that the US and Britain would have used their veto power against it, a withdrawal under the circumstances would most likely have resulted in chaos and a bloody civil war.

That is why the Security Council on 22 May 2003 adopted a resolution, establishing the fact that Iraq was occupied. At the same time the Council, in full accordance with its competence, gave the so called Coalition a mandate that went far beyond what an occupying power is allowed to do according to humanitarian law.

It would lead to far in this context to address the tragic fact that the Coalition did not realize at an earlier stage that the power should have been handed over to an Iraqi interim government as soon as possible. Much time was lost here before the Secretary-General’s message to that effect took hold.

We can now observe that such a government is in place and elections are to be held early next year. We can also note the positive fact that a cruel dictator is gone and that his country hopefully is on its way towards democracy.

But this is not what it is all about.

The system of collective security laid down in the UN Charter has been seriously damaged by the attack on Iraq.

The Security Council actually functioned the way it was intended to when it did not give permission to the use of force in this case.

One may like this point of view or not. But it was this system that Presidents Roosevelt and Truman, the American engineers behind the UN Charter, had in mind when the Organization was founded.

And they were not alone.

The words of the republican President and former General Dwight D. Eisenhower are as relevant today as they were in January 1957:

“We recognize and accept our own deep involvement in the destiny of men everywhere. We are accordingly pledged to honor, and to strive to fortify, the authority of the United Nations. For in that body rests the best hope of our age for the assertion of that law by which all nations may live in dignity.”

Mr. President Bush, build on to this bulwark!

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