

**SUBMISSION TO THE STANDING COMMITTEE ON FOREIGN AFFAIRS
AND INTERNATIONAL TRADE on November 18th, 2002.**

**By Peggy Mason, International Security Policy Expert
(Former Canadian Ambassador for Disarmament)**

Resolution 1441 (2002)

In Resolution 1441, passed unanimously on November 8th last, the 15 members of the UN Security Council did not rubber-stamp the U.S. call to war. Instead, they lined up behind a tough resolution calling for “immediate, unimpeded, unconditional and unrestricted access” for UN weapons inspectors, stated their intention to convene immediately in the event of an Iraqi failure to comply with its disarmament obligations and warned of “serious consequences” of such violations.

No use of force was authorized by this resolution, a fact clearly acknowledged by all Security Council members – including the United States – in their statements in the Council chamber immediately following the vote.¹ This lack of a trigger – hidden or otherwise – for the use of force means that this resolution respects the wishes of the vast majority of UN member states and their citizens who are overwhelmingly opposed to a frighteningly reckless war that is unprovoked, unjust and totally unnecessary.

U.S. Ambassador Negroponte went on to say in his post-vote statement that it did not actually matter that the resolution did not authorize the use of force because the U.S. can invade Iraq in order to defend itself. In addition he asserted that any Member State can act “to enforce relevant UN resolutions and protect world peace and security.”

Neither of these assertions can withstand even minimal scrutiny. The UN Charter recognizes in Article 51 the right of self-defence “if an armed attack occurs” and, as Minister Graham has recently observed, since the UN Charter is not meant to be a “suicide pact”, this has been interpreted to include a country taking action to forestall an *imminent* attack. In the case before us, however, the United States acknowledges that no attack is imminent and has produced no credible evidence of an Iraqi intention to attack America at any time. To allow a claim of self-defence to stand in these circumstances would be to make a mockery of the prohibition against the use of force enshrined in Article 2 (4) of the UN Charter.

Likewise, to countenance the argument that any Member state can attack Iraq to enforce UN resolutions and protect world peace and security is to argue that force can be used to carry out a resolution, which does not authorize the use of force. As the UN Charter so clearly delineates in Article 39, 41 and 42, any enforcement action to bring Iraq into compliance with Council resolutions can only be authorized by the Security Council itself after it determines that the violation in question constitutes a threat to, or breach of, international peace and security and that the threat cannot be effectively managed in any way other than through the use of force. In this regard it is useful to recall the relevant

¹ See Annex A attached of the UN Press Release dated Nov 8, 2002.

wording of Security Council resolution 678 of 29 November 1990, authorizing the use of force after Iraq's invasion of Kuwait on August 2nd:

2. *Authorizes* Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements...the above-mentioned resolutions, to use all necessary means to uphold and implement resolution 660 (1990)² and all subsequent relevant resolutions and to restore international peace and security in the area;

This wording not only specifically authorizes the use of force with the term “all necessary means”, a reference to Article 42 and “such action by air, sea or land forces as may be necessary to maintain or restore international peace and security” but, in accordance with Article 48, it also specifies which Member States are so authorized.

In effect, the American argument seeks to equate a specific authorization to all or some Member States or organizations to carry out specific actions that may involve the use of force (as for example the authorization of ECOWAS to enforce the arms embargo against the rebel forces in Sierra Leone)³ with authorization for the ultimate use of force, that is, a coalition of states engaging in a military attack on the offending country. In any event, neither the specific nor the general *authorization* appears in Resolution 1441.

Having considered the wording of the resolution by which the first Persian Gulf war was launched, it is now useful to consider the circumstances surrounding that action and comparing them to those that now apply:

The justification for war on Iraq in late November 1990:

- ❖ Iraq breached the UN Charter non-aggression “prime directive” by invading Kuwait.
- ❖ The Security Council determined that there had been a breach of international peace and security by reason of the invasion and demanded the withdrawal of Iraq from Kuwait.
- ❖ Article 41 measures not including the use of force were first tried, beginning with a comprehensive economic embargo established by Resolution 661.
- ❖ When those measures proved inadequate to secure compliance, the Security Council authorized the coalition military action, in the event that Iraq had not complied by a specific deadline.
- ❖ A broad coalition of UN member states, including many Arab states, both supported and participated in the coalition action.

² By this resolution, passed the same day as the invasion took place, the Security Council demanded that Iraq withdraw immediately from Kuwait.

³ In SCR 1132 (1997) in paragraph 8, the Council “Acting also under Chapter VIII of the Charter of the United Nations *authorizes* ECOWAS, cooperating with the democratically-elected Government of Sierra Leone, to ensure strict implementation of the provisions of this resolution relating to the supply of petroleum... and arms...”.

- ❖ While there were serious concerns about the impact on the stability of Iraq and of the Middle East in general of a U.S.-led invasion, it was hoped that the presence of key Arab states in support of the action would mitigate these effects.
- ❖ Regime change was not authorized by the UN Security Council, was not supported by most of the coalition members and was not ultimately pursued by the U.S. in part at least because of American fears of the impact on the stability of Iraq and on the cohesion of the coalition.

Notwithstanding the role that the United States may have played in not forestalling the invasion of Kuwait when forewarned of it, I strongly supported the 1990 UN Security Council authorization of the use of force against Iraq as the only realistic means left to secure its withdrawal from Kuwait. Resort to force was a last resort and a necessary one to prevent the precedent of unchecked naked aggression in circumstances where something could have been done.

What is the situation in November 2002?

- ❖ The issue is not Iraqi aggression but its continuing failure to comply fully with the disarmament provisions of the ceasefire resolution 687 (1991). Article 39 of the Charter requires that the Security Council determine the existence of a threat to the peace, breach of the peace or act of aggression. Only on this basis can it authorize measures to maintain or restore international peace and security. Thus, there is no automatic co-relation between a material breach of a resolution and a threat to international peace and security.
- ❖ Iraq has been under a total economic embargo since August 6, 1990. Its army – built up with the aid of massive conventional arms transfers from the 5 Permanent Members of the Security Council and many other western suppliers in the 1980s – was devastated in Operation Desert Storm. Particularly in the seven years from 1991 to 1998, when the UN Special Commission was under the Chairmanship of Ambassador Ekeus, Iraq underwent substantial disarmament in relation to its weapons of mass destruction programmes, its chemical and biological weapons and its missile delivery systems. (Indeed the UN inspectors are credited with destroying more Iraqi weapons than the U.S.-led forces during the conflict.⁴) It is inconceivable that its army could be anything other than a shadow of what it was in 1990.
- ❖ There are very sharp divisions within the international community over whether Iraq poses a threat to international peace and security sufficient to justify an attack with the vast majority of states within the region and around the world opposed to such military action, while the USA and the UK seemingly alternate between support for disarmament on the one hand and inspections as a mere pretext for invasion and regime change on the other.

⁴ See Washington Post article by Column Lynch of Sunday, November 17, 2002 at p. A01.

- ❖ All measures short of authorization of the use of force (i.e. a military attack) have not been exhausted. By resolution 1441, members of the Security Council unanimously mandated a tough, new inspection regime which needs to be given the strongest possible support. Instead, the United States has already started to publicly undermine the respected and extremely well-qualified head of UNMOVIC, Hans Blix, and to insist that even unintentional errors by Iraq should justify war.⁵
- ❖ Consistent with their view that Iraq does not pose a threat to international peace and security sufficient to resort to an invasion, there is no broad coalition supporting an attack on Iraq. On the contrary, key countries in the Middle East such as Saudi Arabia have refused to co-operate in any way with such military action. They believe that the Israeli- Palestinian conflict should take precedence and are gravely concerned with the regional security implications of a U.S. invasion of Iraq that has as its stated aim the overthrow of its leader and the country's subsequent occupation.
- ❖ The major new factor is the U.S.-led "war on terrorism" and the possibility of Al Qaeda using an invasion of Iraq to launch new attacks on Western targets and to foment grave regional instability.

The threat from Iraq

As noted above in comparing the conditions in 1990 to 2002, Iraq has been under a total economic embargo since August 6, 1990. Its army was devastated in Operation Desert Storm and it then underwent substantial disarmament in the period from 1991-1997. It is inconceivable that its army could be anything other than a shadow of what it was in 1990. This recitation of the current weakness of Iraq demonstrates both the fallacy of comparing Saddam to Hitler and a logical reason for Saddam wanting to secure weapons that might be a last ditch guarantee of regime survival.

Much has been made in the various dossiers of Iraqi attempts to acquire components for nuclear weapons. What seems clear, as Toby Dodge, an Iraq specialist at the **Royal Institute of International Affairs** in London has said, is that little solid evidence has emerged that Iraq had been on any recent "shopping spree" such as the one that took place in the 1980s, when the US and UK helped arm Iraq against Ayatollah Khomeini's Iran.

⁵ Since the Security Council vote, administration officials have argued that paragraph 8 of the resolution prohibits Iraq from firing on U.S. and British warplanes enforcing the "no fly" zones even though there is no sanction for these zones in any Security Council resolution. On Sunday officials alleged that an attack by Iraqi air defenses on Friday therefore constituted a material breach. Note that Blix has urged the reporting of any alleged material breaches to the Security Council for assessment.

Taking the arguments of even the generally authoritative London and Washington-based International Institute for Strategic Studies (IISS) – of which I am a member – at their face value, what they amount to is some evidence of unsuccessful attempts by Saddam to acquire a nuclear weapons capacity. But a threat to international peace and security sufficient to justify a pre-emptive strike requires more than evidence of capacity or an attempt to acquire capacity. A general threat arises from capacity plus hostile intentions and an imminent threat requires even more precision with respect to intentions.

Despite all the hoopla, there has been no current evidence presented of an Iraqi intention to attack or invade anyone and no evidence ever of such an intention vis-à-vis the United States. The pattern of past behaviour being relied upon by the United States – that is, the attacks on Iran and Kuwait - took place *after* Iraq had consulted the United States, received the green light and, in the case of Iran, also received active targeting and other battlefield command and control assistance. And what about the much more recent behaviour by Vice-President Cheney when, as CEO of Halliburton, he lobbied the Clinton administration to agree to lifting the sanctions against Iraq so that his company could sell more than the \$36 million worth of equipment permitted by the UN Sanctions Committee?

It is equally questionable for the United States to assert that Saddam is a threat today because he used chemical weapons against Iran and the Iraqi Kurds in the 1980s, when, at the time it was allegedly happening, the USA was turning a blind eye and continuing to actively assist Saddam in his war against Iran.

In the absence of any reliable evidence of current intentions, Iraq's efforts to maintain or reconstitute a weapons of mass destruction capability would seem to be consistent with a desire for regime survival rather than the certain annihilation that would follow his use of them against a U.S. ally in the region. After all, this was a risk Saddam was apparently not willing to take even when about to be overrun in the first Persian Gulf war. Add the fact that Iraq's neighbours do not feel threatened by Saddam; even Kuwait does not want war waged on Iraq. And would Saddam attack Israel (unless he really had nothing left to lose) given that country's nuclear retaliatory capacity and its defensive capabilities? (Israel now has the world's most advanced anti-missile system, Arrow, with two batteries operational, and numerous batteries of the latest U.S. Patriot missiles in place.)

Finally, I note that there has been no credible evidence adduced of a link with Al Qaeda, as even the American CIA has acknowledged. This is not surprising given the secular nature of the Ba'ath regime, with for example freedoms accorded to women that are unheard of in most Arab states and anathema to Al Qaeda.

This is NOT to say that the international community should be sanguine about Iraq and should abandon **determined, consistent and broadly supported containment and disarmament efforts**. But it is to say that there is insufficient evidence to justify launching a war on Iraq and to do so without the necessary evidence is to set a horrific precedent for an unprovoked and unjustified attack.

The threat from an attack on Iraq

Former Secretary of the Navy James Webb speaking at the Naval Postgraduate School in Monterey on November 7th, stated: "Iraq is a terrible detour from what we ought to be doing... The real threat is from the al Qaeda network." Others openly worry that by invading and occupying Iraq and using it as a base to remake the region, the United States surely risks easing the hateful work of Osama bin Laden, spurring new converts to Islamic radicalism and threatening moderate regimes. Still others fear, as George Bush Senior did, that a march on Baghdad could lead to Iraq falling apart, with the Shi'ite lands defecting to Iran and the Kurds seeking their freedom too. And, if Afghanistan cannot hold U.S. attention for one short year, how would far more complex Iraq be nurtured long term?

Might does not make right: the Bush pre-emptive war doctrine must not be supported

Former Canadian OSCE Ambassador Kimon Valaskakis, wrote in an article in the Globe and Mail recently of the grave dangers of the Bush pre-emptive war doctrine. He argued that it is the combination of "unilateral" and "pre-emptive" that is the dangerous mix. Unilateral defensive war is still quite acceptable, as when the United States responded to the unprovoked 9/11 attack originating in Afghanistan. Multilateral pre-emptive military interventions sanctioned by a legitimate world body to right obvious wrongs, stop genocides or for general humanitarian purposes are not only acceptable but desirable -- much like police raids intended to nip in the bud terrorist or criminal activities. Prevention is a virtue. But unilateral pre-emptive war in the name of national interest opens up a Pandora's box much more dangerous than the problem it addresses.

To which I would add that, what is at stake here is a world where, in place of might makes right, there is *one* system of rules, adherence to which enables us to distinguish the good guys from the bad. At the heart of these rules is the UN Charter and the family of institutions it engendered, a system created out of the ashes of two world wars and dedicated to the abandonment by all nations of the use of force as a guiding principle of national statecraft. To overturn this system is to return to anarchy.

An alternative to war exists and this is a united Security Council fully behind Smart sanctions, "future monitoring" and a tough inspection/disarmament regime.

This means targeting the sanctions on military equipment and monitoring all sensitive imports (dual use goods) in accordance with the future monitoring system developed by UNSCOM and the IAEA and blessed by the Security Council in 1995. Equally, it means ending the general economic embargo - that has caused so much hardship to ordinary Iraqis and so undermined international support for the disarmament regime - so the economy and the middle class can start to function again and civil society can start to prepare the ground for internal regime change.

Implications for Canada

- 1. The pre - condition for Canada's consideration of participation in a U.S. led attack on Iraq has not been met – there has been no Security Council authorization of the use of force.**
- 2. Canada should strongly support UNMOVIC and the IAEA in the tasks given them by the Security Council and to this end should underscore the request in paragraph 10 of SCR 1441 to all Member States to give full support to UNMOVIC and the IAEA including by providing any relevant information.**

Thank you.

From: "UN News Service" <UNNews@un.org>
Organization: United Nations
Reply-To: <UNNews@un.org>
Date: Fri, 8 Nov 2002 15:01:17 -0500
To: <news11@list.un.org>
Subject: SECURITY COUNCIL MEMBERS SAY NEW IRAQ MEASURE
CONTAINS NO AUTOMATIC TRIGGERS FOR FORCE

SECURITY COUNCIL MEMBERS SAY NEW IRAQ MEASURE CONTAINS NO
AUTOMATIC TRIGGERS FOR FORCE
New York, Nov 8 2002 3:00PM
Following the adoption of a landmark resolution aimed at
returning United Nations weapons inspectors to Iraq,
members of the Security Council today
<"http://www.un.org/News/Press/docs/2002/sc7564.doc.htm">st
ressed that the text, which was cosponsored by the United
States and the United Kingdom, contains no provisions for
the automatic use of force.

Speaking after the Council unanimously adopted the
<"http://www.un.org/News/dh/iraq/iraq-blue-e-110702-
1198.pdf">resolution, **US Ambassador John D. Negroponte said
the text contains no "hidden triggers;"** it was designed to
test Iraq's intentions. "Every act of Iraqi non-compliance
will be a serious matter, because it would tell us that
Iraq has no intention of disarming," he said, warning that
"one way or another, Iraq will be disarmed." **If the
Security Council failed to act decisively in the event of a
further Iraqi violation, "this resolution does not
constrain any Member State from acting to defend itself
against the threat posed by Iraq, or to enforce relevant UN
resolutions and protect world peace and security."** Council
Members, he added, "can rely on the United States to live
up to its responsibilities if the Iraqi regime persists
with its refusal to disarm."

The Ambassador of the United Kingdom, Jeremy Greenstock,
agreed that the resolution has no "automaticity," noting
that in the event of a further Iraqi breach, the matter
would return to the Council. While voicing hope that
Baghdad would comply, he joined the US in issuing a stern
warning against defiance. "The disarmament of Iraq of
weapons of mass destruction by peaceful means remains the
UK's firm preference, but if Iraq chooses defiance and
concealment, rejecting the final opportunity it has been
given by the Council the UK - together, we trust, with

other members of the Security Council - will ensure that the task of disarmament required by the resolution is completed," he said.

French Ambassador Jean-David Levitte hailed the fact that the resolution ensures that the Security Council maintains control over the future course of action, requiring a Council meeting in the event of Iraqi non-compliance. "France welcomes the elimination from the resolution of all ambiguity on this point and the elimination of all automaticity," he said. All efforts in recent weeks had been aimed at giving peace a chance; war could be only a last resort. The resolution's demands, he stressed were clear and rigorous. "They require full cooperation on the part of Iraq's leaders," he noted. "If Iraq wishes to avoid confrontation, it must understand that the opportunity it has been given is the last."

Mexico's Ambassador, Adolfo Aguilar Zinser, said in the case of Iraq's failure to comply, the Council itself would determine the existence of a threat to international peace and security. "The decision of the Security Council confers the legitimacy, the effectiveness and the relevance of this body," he said. "It strengthens the Security Council, the United Nations, multilateralism and the construction of an international system of norms and principles." Iraq was now required to fully comply with its obligations. Security Council decisions on the matter must comply with international law on the basis of objectively verifiable facts. The possibility of the use of force is only valid as a last resort, "with the prior, explicit authorization of the Security Council," he stressed.

Ambassador Richard Ryan of Ireland agreed that the unanimously adopted resolution sent a strong message to Iraq. He welcomed assurances by the sponsors that the text aims to achieve disarmament through inspections, and not to establish a basis for the use of force, which must remain a last resort. "This is a resolution about disarmament, not war," he stressed. "It is about removing all threat of war." Iraq had been offered a rigorous and fair way forward to meet its disarmament obligations, but Baghdad should have "no doubt that it must now cooperate fully with arms inspectors and reassure the world, finally, that it has divested itself of weapons of mass destruction and the means of delivering them - or face serious consequences." Ireland called on Iraq to choose the path of peace, "for

the sake of its own people, that of its neighbours, and in the interests of international peace and security."

Russian Ambassador Sergey Lavrov said that as a result of intensive talks, the resolution "does not contain any provisions about automatic use of force." The sponsors had confirmed that this was their understanding, and had given assurances that the goal was to achieve disarmament through inspections. The resolution also underscored the need to respect Iraq's sovereignty and territorial integrity. "The wording in the resolution is not the ideal, and the sponsors themselves acknowledge this, but this just reflects the very complicated nature of the compromise that was arrived at," he said. The key point was that the text "deflects the direct threat of war, and opens up the road to further work in the interests of a political, diplomatic settlement." In the event of any dispute, the Council would consider the situation as it develops. Clarifying specific points in the text, he said that Iraq would probably need more than 30 days to submit information on non-military chemical and biological programmes, but such a delay would not constitute a violation. All involved must not yield to the temptation of unilateral interpretation of the resolution's provisions.

Christine Lee, Singapore's representative, said there was an international consensus that Iraq must comply with its obligations under UN resolutions. The unanimous adoption of the new text aimed to bring to completion the disarmament process. The resolution "makes clear that Iraq will be given a full and final opportunity to comply with its disarmament obligations." Noting that the difference between successful and unsuccessful inspections could mean the difference between peace and war, she voiced hope that "Iraq will make its decision carefully."

Colombian Ambassador Alfonso Valdivieso stressed the importance of sending a clear message that the international community does not intend to wait any longer for compliance with the Security Council's demands. Colombia had insisted on preserving the Security Council's core role in dealing with the matter. "This resolution is not, nor could [it] be, a resolution authorizing the use of force," he said. "The resolution provides a final opportunity to Iraq." Iraq must show its will to rejoin the society of nations and fully cooperate, including with the 30-day timeframe set out in the resolution.

Ambassador Martin Belinga-Eboutou of Cameroon said the resolution is a "positive and constructive compromise text" which does not constitute victory for any particular fight but rather for international peace and security. "Now the ball is in Iraq's camp," he said, appealing to Baghdad to cooperate fully with the weapons inspectors who would shortly deploy in the country. "Thereby Iraq can be true to itself once again - a land of water and life." He welcomed the fact that the sponsors had affirmed that the resolution contains no hidden triggers or automaticity, and that they would work to preserve the Council's central role in maintaining international peace and security.

Mamady Traore, Guinea's Ambassador, agreed with others that the unanimous adoption of the text sends a clear message to Iraq. "This important phase now makes it possible to achieve the peaceful resolution of the Iraqi crisis and reaffirms the unity and core role of the Security Council as the guarantor of intern

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Peggy Mason : short bio

After obtaining her Honours B.A., **Peggy Mason** graduated Summa Cum Laude (Gold medalist) from the LL.B. programme at the University of Ottawa, Faculty of Common Law (Class of 1975).

She left the **private practice of law** after 4 years to focus on public policy beginning with constitutional issues at the **Canadian Advisory Council on the Status of Women** (during the turbulent birthing of the Canadian Charter of Rights and Freedoms), moving to the **House of Commons** and criminal code and pension reform issues and from there to arms control and disarmament issues, a career change that eventually led to her to 11 years with the Department of Foreign Affairs, culminating in 1989 with her appointment as **Canadian Ambassador for Disarmament**, a position she held for 5 years.

While Ambassador for Disarmament, Ms. Mason represented Canada in the UN First Committee and Disarmament Commission and headed the Canadian delegation to the 1990 review conference of the Nuclear Non-Proliferation Treaty (NPT), the 1991 Partial Test Ban Treaty (PTBT) Amending Conference, and the 1992 Biological and Toxin Weapons (BTWC) Review Conference. She was a member of the UN Secretary-General's Advisory Board on Disarmament Matters from 1993 to 1997. During 1994-1995 Ambassador Mason chaired the UN Group of Governmental Experts Study on Verification in all its Aspects including the role of the United Nations, a ground-breaking report that *inter alia* examined the work of the UN Special Commission (UNSCOM) and the IAEA in relation to disarmament in Iraq. As the Canadian member of the Tokyo Forum, an international commission established by Japan in the wake of the India/Pakistan nuclear weapons tests, she was one of the co-authors of *Facing Nuclear Dangers: An Action Plan for the 21st Century (July 1999)*.

Since leaving the department of Foreign Affairs at the end of 1994, she has focused increasingly on modern complex peace operations and is one of the longest standing **external faculty members** of the **Pearson Peacekeeping Centre** in Cornwallis, Nova Scotia. In this capacity she has lectured both on site in Cornwallis and around the world on such topics as: *The Political/Diplomatic Partner in Peace Operations; Disarmament, Demobilization and Reintegration of Ex-Combatants, The New Peacekeeping Partnership, and the UN Today.*

She is a recognized internationally as an **expert** on the planning and implementation of programmes for the disarmament, demobilization and reintegration of ex-combatants, having helped develop UN Guidelines in this area and researched, lectured and published extensively thereon including lectures for UN Senior Management courses at the Swedish and Danish Defence Colleges.

She has been an **Advisor** to the Canadian Foreign Ministry on the control of small arms, **chaired** the **UN 2001 Group of Governmental Experts study** on small arms regulation and was a member of the Canadian delegation to the **UN Conference on the Illicit Trade in Small Arms and Light Weapons in all its Aspects.**

In November 2002 Peggy Mason became at Senior Fellow at **The Norman Paterson School of International Relations** at Carleton University.

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