

2003: The Next Iraq War

By Robert Dreyfuss, senior correspondent, *The American Prospect*.

In a pair of editorials after the 1991 Gulf War, one of them titled “Don’t Shoot Down Iraqi Aircraft,” *The New York Times* called the plan to create vast “no-fly zones” (NFZs) in Iraq “legally untenable and politically unwise.” The editorials, based on a careful reading of UN resolutions, were explicit: “The [cease-fire] accord permits Iraq to fly all types of aircraft and sets no restriction on their use. Shooting them down would put the U.S. in the position of breaking an accord it is pledged to uphold.” Saying that Washington was entering “new and dangerous territory,” the *Times* warned, “The purpose [of the NFZs] is unclear, probably unwise and maybe even illegal.”

In fact, no UN resolution or other international authority legitimizes the NFZs, which are currently the scene of an intensifying air-to-ground firefight between an armada of U.S. and British warplanes and an ineffectual Iraqi defense system. The British-U.S. presence over Iraq is a case of might-makes-right, and Iraq’s feeble attempts to defend its skies are justified under international law. Yet the NFZs are immeasurably more explosive now because a unilateral U.S. interpretation of UN Security Council Resolution 1441, adopted on November 8, provides a pretext for launching the war that President Bush wants.

Since the resolution’s passage, France, Russia, China and other nations, along with UN Secretary-General Kofi Annan, have worried about the presence of “hidden triggers” in the resolution, and they’ve opposed unilateral action against Iraq. One of those triggers is embedded in the eighth paragraph, which reads, “Iraq shall not take or threaten hostile acts directed against any representative or personnel of the UN or ... of any member state taking action to uphold any Council resolution.” But U.S. operations in the NFZs aren’t upholding any UN resolutions, a fact that hasn’t deterred the White House and the Pentagon from warning that Iraq’s self-defense efforts are reason enough to trigger U.S. military action. “The U.S. believes that firing upon our aircraft in the no-fly zone, or British aircraft, is a violation. It is a material breach,” says Scott McClellan, a White House spokesman.

The history of how 1441 was cobbled together proves otherwise. From the blustery and bellicose original draft peremptorily put forward by the U.S., it was molded (under



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threat of veto by France, Russia and China) into a far more moderate one that strengthens the hand of the weapons inspectors now working in Iraq. The UN Security Council shot down an attempt by the U.S. to get the no-fly zones into 1441. “Language on the no-fly zones was in the draft resolution, but it was watered down to be very nebulous,” says a U.S. official, requesting anonymity. “We took out the specific no-fly-zone language.” That’s because the no-fly zones wouldn’t fly with others in the UN Security Council.

Still, the U.S. insists on the existence of the hidden trigger. John Bellinger III, senior associate counsel to the president and legal adviser to the National Security Council (NSC), says other countries clearly understand that Paragraph 8 refers to NFZs: “They know why we put that in,” even if specific reference to the zones didn’t make the cut: “We’ve told them, ‘You may not buy our legal theory’.... But the whole idea is to test Saddam’s cooperation.”

The legal justification for the UK-U.S. NFZs is based on a shaky interpretation of past UN resolutions. Resolution 678 invoked the UN Charter’s Chapter 7, authorizing member states to use military force, thus legitimizing war to expel Iraq from Kuwait. Resolution 688 condemns Iraq’s internal repression. According to Bellinger, by imposing the NFZs, the U.S. is enforcing 688 by creating an aerial umbrella over Kurdish and Shi’a regions. That legal theory inelegantly combines 678 with 688. Neither resolution refer to the NFZs, nor does any other UN resolution.

In fact, the NFZs were created unilaterally – first in the north, in 1991, and then in the south, in 1992 – by the U.S., UK and France. (France dropped out, first refusing to go along with President Clinton’s expansion of the southern NFZ in 1996, then quitting altogether in 1998.) For more than a decade, the U.S. has played a lethal cat-and-mouse game over Iraq, carrying out increasingly provocative patrols, sometimes drawing Iraqi fire or radar targeting, and then launching widespread bombing or missile



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strikes. Since 1991, thousands of sorties have been carried out. And since 1998, when fighting intensified, at least 300 Iraqis have been killed by U.S. and British attacks.

From the beginning, Iraq rejected the NFZs. "Iraq does not recognize the no-fly zone because it was not a UN job," said then-Foreign Minister Tariq Aziz in 1993. "It was imposed by the Western powers." Many nations agreed, but there was a UN stalemate. On one hand, the U.S. could not win support for the illegal NFZs in the Security Council, and it eventually gave up trying. On the other hand, NFZ opponents considered it fruitless to try to have them condemned, knowing that the U.S. and Britain would veto it. Still, the stalemate hasn't prevented others from speaking out. "Air bombing of Iraqi targets by U.S. and British air forces is a breach of international law and UN resolutions," said Russian Foreign Minister Igor Ivanov two years ago. "Russia calls for abrogating the so-called no-fly zones."

Marjorie Cohn, an attorney and executive vice president of the National Lawyers Guild, has said: "The no-fly zones have never been specifically authorized by the UN Security Council. They are illegal violations of Iraqi sovereignty.... The UN Charter is very clear. Only the Security Council can decide what measures can be taken to enforce Security Council resolutions."

Specialists in national-security law who defend the NFZs agree that the UN has not endorsed them, but they argue that: "They've been persisting so long that it's almost become a kind of customary regime for the area," says Ruth Wedgwood, professor of international law and diplomacy at John Hopkins University. Paul Schott Stevens, a former legal adviser to the NSC, says the UN has tolerated NFZs for so many years that they are now *de facto* legal: "They've been done with the full cognizance of the UN, and at least with their implicit approval."

So far, the State Department has not brought up the issue of Iraq's defense of its skies to the UN, preferring instead to catalog the alleged violations for future use. Perhaps that's because France, Russia and China would reject such claims out of hand, and because Annan has made it clear that only significant obstruction by Iraq would be considered a violation of 1441. "I think the discussions in the council made it clear we should be looking for something meaningful and not for excuses to do something," says Annan. On the other hand, the administration's hawks believe they don't need to go back to the UN at all – that Washington, at a time of its own choosing, can go to war against Iraq without further UN approval.

The arms-inspection regime has the hawks feeling caged. That sentiment was pervasive during a mid-November event at the American Enterprise Institute, the roost for a flock of hawks, including Richard Perle, chairman of the Pentagon's Defense Policy Board. An errant fire alarm sent scores of people tramping down 12 flights of stairs. The institute's troops chattered about the re-entry of UN weapons inspectors into Iraq – and the mood wasn't good. "We

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can only hope and pray that this doesn't mean we are boxed in," said a high-level Department of Defense official involved in planning the war against Iraq.

It's no secret that NFZs could provide a trapdoor out of that box. By increas-

ing the pace of its patrols in the NFZs and stepping up the aggressiveness of its response to Iraqi defenses, the U.S. military can push the U.S.-Iraqi standoff closer to the brink. "If we get a couple of aircraft shot down, or a pilot taken hostage, all bets are off," says a leading specialist in international law. "We will continue to take actions in the no-fly zones," says Bellinger. "What's provocative is that Iraq has continued to take actions against U.S. planes."

Could U.S. military action against Iraq trump the inspections regime? There's a precedent. In 1998, when Clinton launched a massive bombing attack against Baghdad, UN inspectors in Iraq had to pack up and leave. Iraq didn't kick them out, though that perception has lasted to this day. If Iraq continues to cooperate with the inspectors, or if chief UN inspector Hans Blix, moves too slowly for the White House, the intensifying shooting war in Iraq's skies could suddenly make all that irrelevant once again.

Source: "Persian Gulf or Tonkin Gulf?" *American Prospect*, December 31, 2002. <www.why-war.com/cgi-bin/read.cgi?id=2585>

UN Resolution as Cover for U.S. War Plans

By Salah Hemeid

Just a day after the UN Security Council unanimously voted to disarm Iraq, President George W. Bush reportedly approved a Pentagon plan to invade Iraq and implement a strategy of regime change in Baghdad should new arms inspections fail.

The new resolution set a 30-day deadline for Iraq to declare all its weapons programs and open every potential weapons facility for inspection.

Resolution 1441 also declares that Iraq shall not act in a threatening or hostile manner toward any representative of the UN or any member state taking action to uphold any council resolution. It also prohibits any Iraqi resistance to U.S. bombings or missile attacks in the "no-fly zones" that have been unilaterally declared and enforced by the U.S. and UK in Iraq.

Although the new resolution imposes requirements that Iraq will find difficult to meet, Baghdad reluctantly welcomed the document, probably counting on assurances made by some Security Council members that nothing in the resolution could be used as an excuse to wage war on Iraq, and does not constitute automatic military action in case of a dispute with the inspectors. However, will Iraq's acceptance and compliance help it to avert a war that is widely seen as inevitable?

Observers believe the tough terms set by the resolution underscores Washington's desire to use the weapons inspections issue as a pretext for war. Speaking in the White House Rose Garden shortly after the Council passed the resolution, Bush made it clear that the U.S. sees the resolution as a legitimisation of its war plans. He left no doubt that his administration will seize on any alleged "non-compliance" as a pretext for full-scale war.

"With the passage of this resolution, the world must not lapse into unproductive debates over whether specific instances of Iraqi non-compliance are serious. Any Iraqi non-compliance is serious," he said.

On November 16, the *New York Times* disclosed that Bush has endorsed a war plan, envisaging a force of some



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200,000 to 250,000 troops invading Iraq. *Newsweek* revealed that the Bush administration is finalising plans for a post-Saddam Iraq. The plans set aside hopes for early democracy in Iraq, calling instead for a U.S.-led occupation force lasting several years and a carefully selected representative government with delegates from major Iraqi ethnic and religious groups. Quoting senior administration officials, *Newsweek* said the plan calls for a "pluralist system, not democratic in a literal sense." Bush has not, however, ordered the Pentagon to carry out the invasion plan. He might wait to see whether Iraq abides by the terms of the UN resolution.

If arms inspections go forward

UN Inspectors fear they'll be used as Triggers for War

By Peter Beaumont and Ed Vulliamy

UN weapons inspectors in Iraq fear their work – which has failed to turn up any evidence thus far of weapons of mass destruction – will still be used as an excuse to trigger a U.S.-led invasion of Iraq.

UN inspectors were more aware than ever that their work would be likely to trigger a war. Some of the inspectors are understood to be convinced that their mission has become a 'set-up job' and America will attack Iraq regardless of what they find.

Source: Excerpt, *Observer*, Jan. 5, 2003.

without interference, a decision to go to war could be difficult to make. However, any non-compliance by Saddam would give the green light to America's hawks to use the military.

Source: *Al-Ahram Weekly Online*, November 14-20, 2002. <weekly.ahram.org/eg/2002/612/re1.htm>

Iraq calls UN Resolution a Pretext for War

By Haitham Haddadin, a reporter for Reuters now based in Baghdad, Iraq.

Iraq's Foreign Minister Naji Sabri said in a November 23 letter to U.N. Secretary-General Kofi Annan that Baghdad accepted UN resolution 1441 in hopes of sparing its people war but felt the resolution provided the U.S. with a pretext to launch an attack on Iraq. "The real motive was to create pretexts to attack Iraq under an international cover," Sabri wrote in the letter, adding that the resolution gave the U.N. inspectors tyrannical authority.

Resolution 1441 obliges Baghdad to allow inspectors from the UN and the International Atomic Energy Agency (IAEA) to peer into every nook and cranny of the country in the search for weapons of mass destruction.

Bush said last week that Iraqi President Hussein's days would be numbered if he carried on denying having weapons of mass destruction.

Source: *Reuters*, November 25, 2002.