

The Use of Armed Force, Weapons of Mass Destruction and the UN

Hans Blix er formaður nefndar gegn
gereyðingaervopnum (WMDC),
fyrirverandi utanríkisráðherra Svíþjóðar,
fyrirverandi yfirmaður vopnaeftirlits Sameinuðu
þjóðanna (UNMOVIC) og fyrirverandi aðalforstjóri
Alþjóðakjarnorkumálastofnunarinnar (IAEA)

1. tbl. 2. árg. 2006
Erindi og greinar

[Erindi flutt á ráðstefnu Stofnunar Stjórnsýslu og Stjórnsmála 7. apríl 2006]

I propose to address three connected topics:

- How rules concerning the use of armed force between states have developed over time;
- What efforts have been made and are made to reduce and eliminate weapons of mass destruction – biological, chemical and nuclear;
- Some current questions at the United Nations.

At the present time we **do not see any risk of major powers** using armed force against each other. The relations between the great powers are not exactly relaxed, but they are also not tense. All pursue the **market economy** of various shapes and shades as their economic model. All are bent on pragmatism. After the end of the Cold War European countries do not see Russia as a military threat and many states in Europe are reorienting their armed forces from defense of their own territory to use in international peace-keeping or peace-enforcing operations.

Recently, the UN Undersecretary for Peace Keeping noted

- that there are less wars than there used to be;
- that there are today about 25 armed conflicts in the world, down from more than 50 in the early 1990s;
- that most armed conflicts in the world today are *civil wars*;
- that the number of people killed in battle in the world is at present at a hundred year low. (Jean-Marie Guehenno in *The International Herald Tribune*, 12 September 2005).

Sounds hopeful! **Yet**, the recently published US National Security Strategy begins with the words **“America is at war”** and in the past year we have heard President Bush say that 9/11 was the Pearl Harbour of the Third World War.

We must also note that **world military expenses** are not going down. This is due in large measure to the US spending on arms and armed conflicts.

In 2005, the US spent 3.7 % of its GDP on defense while Europe's NATO members were spending about 1.9 %. (*FiT 3 March 2005*).

When we look for what role the use of armed force is playing in today's world we must also note, of course, that the **US** and some allied states actually **went to war against Iraq in 2003 over weapons of mass destruction** – that turned out not to exist. We can also not ignore voices in Washington saying repeatedly that in the case of **Iran** “all options are on the table” to stop **Iran** from further developing its capability to enrich uranium and, thereby, get closer to the ability to make a nuclear weapon.

Are there in today's world any rules as to when armed force can be used by states against other states? Has there ever been any such rules?

I. The rules concerning the use of force between states

How did rules develop in our own societies?

Ethnography tells us that strict rules were upheld within clans and tribes in the early human societies. The rules were developed by tradition into firm custom. They were not upheld and enforced by a centralized authority but by retaliation – blood revenge. To escape from endless vendettas the settlement of conflicts were often sought through mediation, conciliation or third party determination.

In the same manner some rules developed **in relations between tribes** --conduct and solutions that were found rational were repeated and became custom. Deviations from customs were subjected to revenge.

The custom that the **messenger** should be inviolable and that **agreements** must be kept must have developed early --- but surely not always respected. [Cf. modern diplomatic immunity and the rule *'pacta sunt servanda'*.] Often the sincerity of intentions and the sense of obligation were manifested and expressed in elaborate procedures and oaths. The rules about control of **territorial waters** are likely to have arisen through gradual adjustment between the interests and claims of those living on land and those moving on the seas. Needless to say, the “adjustment” may have cost a lot of blood and taken long time.

Notions about “just” and “unjust” war also appear early.

In the fourth century, **St Augustin**, wrote that

*“that kind of war is undoubtedly **just** which God Himself ordains...”*
[Brownlie, I., *Int. Law and the Use of Force*, p. 5];

Machiavelli, writing about a thousand years later (1492 – 1550), as one might expect, did not advise any restraint. He wrote:

*“that war is **just** which is necessary and every sovereign entity may decide on the occasion for war.”* [Brownlie, p. 11]

Jumping to the 19th century we find the right to go to war still not challenged but the view was commonly stressed that war should be **a means of last resort**. One very narrow prohibition of armed action was even laid down in a Hague Convention of 18 October 1907. I quote:

*“The Contracting Parties agree not to have recourse to armed force for the recovery of **contract debts** claimed from the Government of one country by the Government of another country as being due to its nationals.”*

The **convention** sends us a message about the **global attitudes** to the use of armed force in 1907. It had evidently not been out of question for a government to send a gunboat to some poor debtor country demanding that it pay its debts. Today we may hear a variety of justifications for the use of gunboats. However, they are unlikely to be sent to defaulting countries to collect contract debts. Such calamities are more likely to result in the dispatch of rescue boats from the World Bank or the IMF.

The period of the Hague conventions around 1900 also give rise to some precise rules prohibiting **‘treacherous’ weapons**, such as poison and weapons having **indiscriminate** effects or causing **‘unnecessary suffering’**.

None of these developments prevented the **First World War** and the extensive use of **poison gas** – mainly mustard gas – in that war. After the end of that war efforts resumed to restrict the use of armed force and particularly cruel weapons. The **Geneva Protocol** of 1925 prohibited the use in war of chemical and bacteriological weapons and under the **Briand Kellogg Pact** of 1928 the states parties renounced war as a means of national policy. The notion was developing that war was not permitted except in self defense and that there was a duty – articulated in the **Covenant** of the League of Nations - - to try to settle disputes by peaceful means.

The efforts failed. Japan occupied Manchuria and used gas. Italy occupied Ethiopia and used gas and in 1939 the Second **World War** broke out – only twenty years after the end of the First.

The United Nations

In 1945, however, the Charter of the **United Nations** was adopted at San Francisco. It marked a conceptual and even organizational leap forward in the efforts to restrict the use of armed force and advance the idea of ‘**collective security**’.

Art. 2:4 of the Charter stipulated that members **must not use force** against the territorial integrity and political independence of any state. This was not to be just a toothless rule admonishment. The **Security Council** was authorized to **intervene** – if need be with military force – to stop aggression or threats or breaches of the peace and member states undertook in Art. 25 to accept and carry out the decisions of the Council.

In practical terms, upholding the ban on the use of armed force was made dependent on the five victors in the Second World War: China, France, the Soviet Union, the UK and the US. These states gave themselves permanent seats in the Council and the Charter prescribed that their consent would be needed for all decisions of substance.

As we know, this construction led in practice to paralysis. Decisions and action by the Council could be blocked by the **veto of any one of the P5**. Indeed, the use of force by anyone of these five states or their allies would, in all likelihood, escape any reaction by the Council.

As a result, states could not, in practice, expect to be protected by the Council. As before they had to protect themselves through **individual or collective self-defense** – a right that was explicitly preserved.

On paper reliance on the ‘inherent’ right of individual or collective **self-defense** had looked like an exception, valid only until the Security Council could take action. When in reality constant disagreement prevented the Council from taking action the exception – individual and collective self-defense [like NATO] – became the main rule. The sad result was that **during the cold war** the collective **security system of the UN** Charter was mostly inoperative.

The end of the Cold War

After the end of the Cold War and the collapse of Communism the security situation changed drastically in the world. In the Security Council consensus between the five permanent members was now within the realm of the possible. Council decisions on forceful collective action were no longer excluded.

The most important joint UN action made possible by the new political climate was, of course, the authorization given by the Security Council to the broad alliance created by President George H. Bush to intervene in 1991 to **stop Iraq's naked aggression against and occupation of Kuwait.**

For some time the action gave hope to the world that **a new will of the five great powers to cooperate** would at long last make the Charter work as originally envisaged. Consensus decisions on a large number of peace-keeping operations seemed to confirm this. President Bush spoke about a **new 'world order'**.

The Iraq war in 2003

However, in 2003 the war in Iraq was launched by a number of states without the authorization of the Security Council. Indeed, they were perfectly aware that their action **would not** obtain an authorization of the Council. Realizing this they preferred to claim as **legal basis** that Iraq's violation of a number of resolutions of the Council entitled them to take the action. It would have been more logical, in my view, to argue that violations of the Council's resolutions would entitle the **Council** – rather than individual members of it – to decide on war.

The **political justification** given for the Iraq war was above all the contention that Iraq retained **weapons of mass destruction** in violation of Security Council resolutions. It is unlikely that any other argument would have persuaded the US Congress or the UK parliament to authorize armed action.

As we know the evidence was faulty and the reports of UNMOVIC and the IAEA were ignored by the states launching the war. UNMOVIC had carried out some **700 inspections** of some 500 different sites, dozens of them proposed by the intelligence organizations, and had reported no finds of wmds. Quite to the contrary, we had expressed doubts about some of the evidence that had been presented. The pleas of the majority of the Council

that inspections should be continued were ignored by the states launching the war.

The US did not officially argue that the war was justified as a **preemptive action** against an Iraqi threat of attack, but there is no doubt that this view was held. A **US National Security Strategy** had been published in September 2002. It stated flatly that **a limitation of the right unilaterally to use armed force in self-defense** to cases where “armed attacks” were occurring or were “imminent” **would be insufficient** in the era of missiles and terrorists. These limitations were, indeed, the ones laid down in article 51 of the UN Charter, **which the US had helped once to formulate nearly 60 years earlier.**

The position taken by the US in 2002 was confirmed in the National Security Strategy of 2006 and many statements by the US President and other officials to the effect that in the cases of Iran and North Korea **“all options are on the table”** confirm that the current US administration feels free to use force, if it so chooses, without any authorization by the Security Council, even if there is no armed attack or imminent attack.

As I see it, the Bush administration has thereby **said good bye** to the restrictions laid down in San Francisco on the use of force – at least as regards actions to stop the development of weapons of mass destruction.

A statement by the current US ambassador to the UN confirms that in his view restrictions in the UN Charter on the use of force are simply not relevant to the US. Query whether he thinks they are relevant to any other state. He said:

*“Our actions, taken consistently with Constitutional principles, **require no separate, external validation to make them legitimate...**” (2003)*

The attitude taken calls to mind a story comes about President **Theodore Roosevelt**. Before US action was taken in 1915 to secure the secession of Panama from Colombia, Roosevelt asked the US Attorney General whether a legal argument could be made to justify the action. It is reported that the high legal official replied “Why let such a beautiful operation be marred by any petty legal considerations...” [Cf. AJIL July 2004,p. 519]

That, however, was nearly 100 years ago – before the Briand Kellogg Pact and the UN.

How worrisome is this position today?

It might perhaps be said that the **restrictions** on the use of force in the UN Charter are only some 60 years old and for most of that time the rules were **inoperative** and **often violated** in the shade of the Cold War. However, although the restrictions introduced at San Fransisco were placed in the deep freezer during the Cold War, they had been **thawed and invoked in 1991**.

A **special problem** with the preemptive and **preventive** use of armed force is that it is inevitably taken on the basis of **intelligence suggesting the existence of a threat**. After the Iraq affair we know that this can be a very shaky a basis on which to start a war.

These positions taken by the US seem to be based on the most benevolent intentions to the world.

The US National Defense Strategy of 2005 states, and I quote:

“The end of the cold war and our capacity to influence global events open the prospects for a new and peaceful system in the world.” [p. 5]

Another quote from the same document shows that “international fora” – including, one would assume, the United Nations, are seen as mainly obstacles on the road to the peaceful system. I quote:

“Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism.” [p.5]

II. Phasing out weapons of mass destruction and terror

I have mentioned how in the 19th century more determined and successful efforts were begun to prohibit the use of weapons that were particularly cruel – the dum dum bullet is the best known example – or indiscriminate, like poison and gas. As of today such efforts have led the world much further. However, the **threats** have also become immeasurably **greater** by the **addition of nuclear weapons** at the end of WW II, **by** the more widely spread knowledge how to use biology and chemistry for weapons, and **by** the emergence of non-state actors – terrorists – who may not recognize and respect any restrictions.

So, where are we today? First, some successes:

With the arrival of the nuclear weapons it was concluded that agreements prohibiting their use would not be enough. The 1925 Geneva Protocol prohibiting the use of gas had simply been ignored in the interwar period.

Bans would have to extend to the **production** and **possession** of the weapons. No weapons, no use!

This led to another conclusion, namely, that **on site inspection** would be necessary. A use of a weapon would be visible but the production or stocking of weapons might be done secretly. To be confident that states were not clandestinely preparing for use of prohibited nuclear, biological or chemical weapons you needed on site inspection. Needless to say, during the **Cold War** you could not get any meaningful agreements on such inspection in the closed Soviet empire.

Nevertheless, in that period neither the US nor the Soviet Union thought biological weapons were militarily useful and a **convention against the production and stocking of biological weapons was concluded** without any provisions for inspection. Today this raises problems. It was revealed after the end of the Cold War that the Soviet Union had had a large B-weapon program and we have learnt how Iraq under Saddam Hussein was engaged in the production and testing of B-weapons. One might also fear that terrorists could attempt to spread disease and terror by using virus and germs.

The case in which **anthrax** was sent by letters in the United States in 2002 and killed a number of people has not yet been cleared up. It probably illustrates the difficulty of maintaining complete control over the research sector.

Given the rapid development of biotechnology and the large number of potential actors a multifaceted international regime is needed to give us some confidence

that B-weapons are not made – whether by states, terrorists or mad scientists

that any use of B-weapons is rapidly detected, and

that there is a readiness in national health services everywhere quickly to intervene and stop any attacks.

A review conference later this year of the Convention offers a new opportunity to approach these issues. Regrettably, a verification protocol that

was the result of many years of negotiations has been flatly rejected by the US. The outlook is therefore uncertain.

The situation is much better as regards **chemical weapons**. A **convention** on chemical weapons, that had taken some twenty years to negotiate was completed and adopted after the end of the Cold War and is in full operation.

It prohibits the production, storing and use of chemical weapons and has an elaborate **inspection regime**.

We know that Iraq made extensive use of chemical weapons in the war with Iran and even against its own Kurdish population. We also know that several other states are suspected still to have chemical weapons programs. There is no doubt that the convention is needed as **a firm signal** from the whole international community to all that chemical weapons must not be produced and not be used. As a result of this convention huge quantities of chemical weapons are currently being destroyed in the US, Russia and other countries.

While thus both the production and use of biological and chemical weapons have been **outlawed by conventions** to which a vast number of states – including the great powers – are parties, this is – **not yet** – done for the **nuclear weapons**.

It is important that the **International Court** of Justice, in an advisory opinion, has seen a very limited scope for a legal use of nuclear weapons – mainly in situations where the survival of a state is at stake. Yet, even more than in the cases of B and C weapons, confidence that nuclear weapons will not be used will only come from assurance that they do not exist. As there are still between 25.000 and 30.000 nuclear weapons, we cannot feel that confidence.

The approach to limiting the threat of nuclear weapons has been to prohibit them in certain environments and in certain areas. Thus, their presence was banned early in the Antarctic, on the seabed and in outer space. However, their presence has also been banned in less exotic environments.

First, there are by now a large number of **nuclear weapon free zones**: all states in a given area have agreed between themselves not to allow any nuclear weapons on their territories. These zones now cover the whole **southern hemisphere**.

Second, there is the **Treaty on Non-Proliferation** of Nuclear Weapons – the **NPT**, that entered into force in 1970 and that contains a basic bargain under which the states parties, which do not have nuclear weapons, promise not to acquire them and five nuclear weapon states parties – China, France, Russia, the UK and the US – promise to negotiate toward nuclear disarmament.

Only four states in the world are **not parties** to this treaty: India, Israel, North Korea and Pakistan. They are all assumed to have nuclear weapons and India and Pakistan have even tested their weapons.

The **NPT**, which aims at leading the world to become free from nuclear weapons, is currently seen as having **a number of problems**.

First, an elaborate system of **on site inspection** is linked to the NPT. Confidence that the non-nuclear weapon states parties are not developing nuclear weapons is meant to arise through extensive verification by the IAEA. **The original inspection system** was designed in the 70s and was marked by the unwillingness of states at that time to accept intrusive inspections. It failed to detect the clandestine nuclear weapons program **in Iraq and Libya** and the Iranian program for the enrichment of uranium.

The members of the IAEA agreed in 1997 to **upgrade** the inspection system. As that new system is becoming accepted verification becomes more intrusive and reliable. One of the requests made to **Iran** today is that it should continue to accept these more effective inspections to create confidence about its nuclear activities.

The violations of the NPT by Iraq, Libya and North Korea and the suspicions about Iranian intentions have led some to conclude that the treaty is **falling apart**. I think this is too alarmist a view. We can, indeed, register a good deal of successes for the treaty:

A large number of states, which could have developed and still could develop nuclear weapons (Japan, Germany, Brazil, Sweden, Switzerland etc.) have decided to renounce the option.

Further, when separating from the Soviet Union the **Ukraine, Byelorussia and Kazakhstan** ceded their nuclear weapons to Russia, received various security assurances and joined the NPT. **South Africa** became the first state rolling back from a nuclear weapon status and joining the NPT. **Iraq**

and Libya violated their NPT and safeguards obligations but were caught and stopped.

While the **nuclear weapon states** seem to think that the major problem in the sphere of nuclear weapons is the risk that countries like Iran and North Korea move further in the direction of weapons and that terrorists might seek these weapons, they do not seem to worry about the thousands of nuclear weapons in their own hands, many of them on **hair trigger alert**.

Many non-nuclear weapon states, on the other hand, feel **cheated** that while they have given their consent to stay without nuclear weapons indefinitely, the nuclear weapon states have **not** even after the Cold War **moved decisively toward disarmament**. Indeed, there is discussion in the US about developing new types of nuclear weapons –bunker busters. In China and Russia they consider how to ensure a capability to penetrate the missile shield that the US is building.

Sadly, at the present time one **cannot feel optimistic** about progress in the field of nuclear disarmament – indeed, any disarmament. The Conference on Disarmament in Geneva has not been able to agree on a work programme for nearly a decade. The **World Summit** at the UN last autumn could not agree on a single line on disarmament and non-proliferation.

There is a crying **need for a revival of efforts**. After I returned to Sweden in 2003 I have chaired a Commission on Weapons of Mass Destruction (WMDC). It has been financed by the Swedish Government but been entirely independent with 14 members from all over the world. In May 2006 the report will be published and contain ideas, arguments and recommendations that we hope will be of use in the next few years. Let me single out two measures that could turn the current gloom to hope.

First: ratification of the **Comprehensive Test Ban Treaty**. The US Senate refused a number of years ago to give its consent to the treaty. If the US were to reconsider the matter and ratify it would likely trigger Chinese ratification and Chinese would trigger Indian, and Indian would trigger Pakistani and so on and bring the treaty into force. On the other hand, leaving the matter to the informal moratorium, which is currently observed is risky. A new round of testing could be the result.

Second: conclusion of a treaty to **stop the production of highly enriched uranium and plutonium for weapons**. The world needs not only to reduce the number of nuclear weapons from the current level of some

27.000 but also to close the tap providing fissile material for new weapons. Not least important is this, if the recent agreement on peaceful nuclear cooperation between the US and India were to be confirmed. Any addition of weapons grade fissile material in India could have negative repercussions in the whole Asian region.

III. THE UNITED NATIONS

Let me conclude with a few comments on the United Nations beyond what I said about the restrictions of the UN charter on the use of force.

The UN World Summit that was held last autumn [2005] confirmed the central role of the United Nations and endorsed some significant organizational innovations. The reform process is on-going but difficult.

In the past half year we have seen a decision to create a new **peace-building commission** designed to help countries that emerge from war and violence.. This is welcome to help them avoid relapsing into violence.

We have also seen recently that a new **council of human rights** will be set up to replace the old human rights commission that in several respects was unsatisfactory.

The discussions in New York are now moving into other difficult areas, notably **management reforms**.

There is no doubt that the UN is a heavy machine with a heavy bureaucracy. What can one expect when 191 national bureaucracies are to give birth to a single one? It is not going to be easy to reform. Many smaller countries see the General Assembly as one place in the world where they can be heard and even have some influence. They are **suspicious that the US** is seeking to reduce the role of the UN in general and the prerogatives of the Assembly in particular.

It is, indeed, hard to avoid the impression that strong political groups in the US seek to downgrade the UN. An article about UN reform last year by the Former Speaker of the US House of Representatives, Newt Gingrich had the title: *“A limited UN is best for America”*. [IHT 13 Sept 2005]

In the past year the **UN Oil for Food Program**, has been held up in US media and the US political world as a symptom of the UN as a **“corrupt”**

organization. The UN certainly deserved some **criticism for the management** of this huge and difficult program, which on the whole succeeded in its main objective, namely, to mitigate the misery brought by the oil embargo that the Security Council had imposed on Iraq.

However, the huge sums of money that flowed to the Iraqi regime was not a result of “corruption” at the UN but of fraud perpetrated **on the UN** by Iraq, on the one side, and **private enterprise** to which Iraqi oil was sold and private enterprise from whom food and other items were bought. Moreover, all was supervised, known and tolerated by Security Council and its biggest members. In my view, the whole affair was played up by political and media forces in the US that sought to downgrade the UN. It is striking that European media and political circles did not join in the smear campaign. They do not share the interest in downgrading the UN.

I am not suggesting that the UN is **the only multilateral church** in the global village and that it should be subject to criticism. Nevertheless, it is a far more developed organization than the League of Nations and we have an interest in making it function well and develop.

The UN and the many specialized agencies will remain the most important network through which nations can cooperate to stop epidemics, organize telecommunications, ensure nuclear safety, protect the global environment and attain and implement global disarmament measures.

Now let me make some comments specifically on the **Security Council**.

During the Cold War the **veto** frequently led to paralysis of the **Security Council**. It is easy to see that this privilege, which the five victor states in World War II created for themselves, is now an anachronism. While it may have the sensible effect of precluding decisions authorizing armed actions against anyone of the five – which would be tantamount to large scale war – one might perhaps question whether retention of the veto is reasonable for other types of decisions, (notably those outside chapter 7 of the Charter.)

However, it is not the extent of the veto right, but rather the **expansion of the Council** that has been the focus of attention in the recent reform discussions. How important is expansion?

Much of the discussion has been driven and dominated by the interest of specific states and groups of states to be given seats in the Council. In my

view the **starting point** in the discussion should be Article 25 of the Charter under which all members agree to carry out decisions of the Council, including decisions on sanctions. This **delegation of power** to a small group of states sitting in the Council would justify a demand that the Council should be broadly representative of the whole membership and that Council members should act as trustees of the whole membership.

The aim should not be just to reward some states with a better platform from which they can pursue their own foreign policy but rather to make the Council **more representative** of the states and peoples, who may become bound by its decisions. The current composition reflects the wish in 1945 that the military power in the world should be represented. Today, this appears as too narrow a consideration. Both economic power and population need to be reflected, while the total number needs to be kept low for operative viability.

Although no revision has come out of the current reform work, the Council as it is now composed has in its power to make itself more representative of the UN membership for whom it acts. They could simply pay more attention to their constituents – the membership. In practice, they could consult more closely, especially before important Council decisions, with the members of geographical groups in which they participate. Such a practice would reduce the feeling that especially the permanent five are simply a somewhat disharmonious power cartel.

Let me conclude: today some ask the question whether the US is consciously or unconsciously striving for a *Pax Americana* based on a total military dominance in the world. American influence, action and cooperation may often be welcome and indispensable for the maintenance or restoration of international peace and security. Yet, the US is unlikely to want to assume the role of *global sheriff* and unlikely to get NATO or other groups as assistant sheriffs.

Today US efforts to restore peace in Iraq are in trouble. To maintain order in the world would be beyond the capability of any single state. Moreover, for influence in the world **economic power** may be of increasing importance and it is much more evenly spread than military power, in which the US dominates.

Even small modifications and improvements in the structures and working of the UN, are worth the effort. However, I submit that the will of the members to use the instrument and to act together is even more important.

If we see **the UN as an orchestra** the replacement or repair of damaged or missing instruments is important and welcome. However, such action does not help if the first violinist does not want to play or the musicians cannot agree to play by the same notes.

I have no doubt that the **greater problem in the UN today does not lie in the instruments** but in the will of the musicians to use the full potential of their instruments – and to play by the same notes. I have also no doubt that they will come to feel a growing need for music.