

# Punishing Saddam Hussein, not Iraq

by Chibli Mallat

If the diplomatic efforts do not yield an unconditional acceptance by the Iraqi leadership of the UN special commission's unfettered inspections, war is inevitable.

Unlike the previous bombings, however, the ingredients of the present crisis are serious in so far as the logic of political compromise between Washington and Baghdad over the inspections is frustrated by the nature of the dispute.

When the bombing starts, it will be with a view to force Saddam Hussein to open up his sites to unconditional visits. If he hasn't in the wake of the diplomatic efforts by the Russians and others, why should he do so as a result of the bombings, and lose face? If he doesn't yield, why should the US stop the bombing campaign? The risk of an open and spiralling confrontation is real.

Bombing, however massive, is futile and any attempt to bomb out the sites is pointless. The Iraqi government has been able to hide a huge programme of development against inspectors roaming the country for seven years on the ground, so how can missiles and planes do the job by remote control, let alone prevent the inevitable use by the Iraqi ruler of his population as human shield in palaces, mosques and other privileged stockpiling sites?

Is Saddam Hussein prepared to raise the ante and is he capable of taking the initiative with the launch of missiles carrying biological or chemical weaponry to land in Israel or Kuwait? Only time will tell but no one should doubt the likelihood of Armageddon as the result of a biological or chemical strike, in Israel or elsewhere. The Iraqi government was warned during the Gulf War that any such use would lead to massive retaliation, including the nuking of Iraq, and these dramatic prospects were re-actualised in recent weeks.

Nor is this fear unfounded. One should not doubt, considering the precedents of Halabja in the spring of 1988 and the repeated use of chemicals during the Iran-Iraq war, Saddam's readiness to use weapons of mass destruction.

Recent videotapes show him testing them on animals and news has emerged of similar tests carried out in 1995 against Iranian prisoners of war. Ambassador Richard Butler's January 22 report to the security council mentions the fabrication by Iraq of 3.9 tons of VX nerve gas in the past few years.

As the logic of the shown unfolds, one can only shudder at the abyss confronting the area and at the shortsightedness of American policy in letting the crisis in Iraq drift for seven full years.

The United States should have sought to save the people of Iraq from dictatorship at the end of the war, supported the Iraqi intifada in March 1991, or at least insisted in the ceasefire resolution on a clause seeking the personal liability of the Iraqi leadership. The historic responsibility of president Bush is heavy in this regard, and the hands-off policy of containment under president Clinton has clearly proved counter-productive, as it bought time for the regime and allowed Saddam Hussein to reorganise, while the suffering of his population was being used to force normalisation with such countries as Russia and France.

Through repeated crises, he has succeeded in denting his isolation, as Arab and western envoys streamed to meet him and his assistants across the world.

Seven years later, as the Iraqi ruler appears to have re-armed in the most dramatic way, one wonders what it takes to remove his threat over the region. At times, the only way left seems a James Bond-type operation, recently depicted in the movie *Air Force One*, where a group of commandos descends onto the palace of a Kazakh dictator and arrests the rogues.

Fortunately or unfortunately, the Middle

East is not like the Kazakhstan of *Air Force One*. The immediate scenario is fairly clear at this stage, and was elaborated in a speech by Sandy Berger in Washington last week, confirming the request to "gain unfettered access for Unscm and to assure it can do its job effectively". He added: "We will not accept any proposal that would weaken Unscm's effectiveness."

So unless the UN secretary-general comes up with a miraculous solution within a few days - perhaps in the shape of the unlimited opening up the sites to Unscm teams which would be accompanied by representatives from the permanent member countries in the security council, as sometimes suggested by Richard Butler - the US will declare Saddam Hussein in material breach of the ceasefire resolution, unilaterally or through the security council, and they will start bombing Iraq soon thereafter.

What are the American plans if they bomb and Saddam doesn't yield? In his February 13 speech, the head of the national security council explained the four pillars of US policy for the day after: "Here's how the world will look to Saddam in the weeks and months after force is used.

"First, Iraq's weapons of mass destruction threat and capacity to lash out at its neighbours will be significantly diminished..."

"Second, Saddam will know, by our actions and our warning, that we will be prepared to act again if we have evidence he is trying to rebuild his weapons of mass destruction capabilities..."

"Third, sanctions cannot be lifted so long as Unscm is unable to complete its mission..."

"Fourth, in the weeks and months ahead Saddam will know that we will strictly enforce the *No Fly Zones* in southern and northern Iraq..."

In the best of cases, these four pillars make the crisis spin aimlessly. Berger answered his own first point, by acknowledging that "we cannot destroy everything".

Considering the nature of weapons of mass destruction, any weapon left will be available for Saddam Hussein to use at will sooner or later, and Unscm will not be there to provide any warning.

The second point, which is Washington's readiness to remind Saddam Hussein that "the United States will not go away" is trite, since the United States has been "in the calculus" of the Iraqi leader uninterrupted for seven full years.

As for points three and four, they also vary little on the current situation, because the continuation of sanctions consolidates Saddam Hussein's policy of drawing the world pity on the wretched people of Iraq, while the no-fly zones have been there in any case, with little effect, over the past several years.

In the light of these explanations, the problem therefore remains: amidst the rising toll of casualties and bombasts on both sides, Washington has no convincing plan on what to do when the bombing stops and the Iraqi government has not complied.

So rather than bombing Iraq pointlessly, it would be appropriate to pose the one question which is decisive: What can hurt Saddam Hussein and least hurt the poor, ordinary Iraqis, whose life was stopped

since he came to power in the summer of 1979? The answer must be sought in the effective delegitimisation of the rule of Saddam Hussein over Iraq by means of his indictment.

Standing in material breach of a ceasefire agreement draws serious consequences in the mind of lawyers: the party on the receiving side of the agreement - here the international community, however hazy the concept - is not held to the arrangement anymore. This means that anything goes, and so-called "all necessary measures" will be available to make the regime comply. This is well understood by the United States and will be used to the fullest extent once material breach is pronounced.

The problem is that military measures like the ones envisaged by massive bombing are as blunt as the present policy of sanctions. They hurt ordinary Iraqis much more than they hurt Saddam Hussein, who is the one responsible for the breach. Ordinary Iraqis aren't, as is repeated every day across the world and on the Arab street.

Hence the need to consider the second legal consequence of

the breach of UN resolutions. A material breach carries a liability for the party which has occasioned it. In other words, it is not sufficient for the US government to declare, as did William Cohen in the Gulf, that "Saddam Hussein alone will be responsible for the consequences of his action". He must be held legally responsible for the material breach. Hence the importance of the indictment, which, as a legal concept, is embedded in a combination of old-style international law by the Nuremberg trial, and new-style international law, which the Gulf crisis first introduced, and which has developed most notably with the international criminal courts in former Yugoslavia and Rwanda.

The immediate result of the indictment would be the removal of any legitimacy for Saddam Hussein's rule in Iraq until those indicted appear before a court of law, in this instance the security council acting to provide a body of respected judges if needed, or to entrust it to existing courts such as the international court of justice or the Yugoslavia and Rwanda tribunals.

Of course Saddam Hussein will not respond to an indictment or to a warrant for his arrest but then any measure taken against him - as opposed to Iraq as a whole - will be legal. For the first time, a difference will result clearly, in the world community's response to the Iraqi crisis, between rulers and ruled in that unhappy country.

Lest one would imagine this policy to be a utopian measure, an indictment will be translated at once into an effective travel ban on senior Iraqi aides of Saddam Hussein, who would stop visiting most countries in the civilised world for fear of being arrested.

Several other significant consequences flow from the indictment. Most effective would be the support for, and *de jure* recognition of, an Iraqi government to be set up on any part of Iraqi territory, or even in exile.

However bad the shape of the Iraqi opposition, there is a territory in the North of the country in which Saddam's writ doesn't

reach with any effectiveness, and there is a group of Iraqi National Congress (INC) leaders with a history of standing up to the dictatorship from within the country, offering in the process hundreds of lives for democracy in the past year.

On the basis of Resolution 688, which called on Saddam Hussein to stop the repression against his people, the INC has developed the concept of armour-free zones in the north and the south of the country, from which they can start, with minimal logistical support, to operate as the new Iraqi interlocutors for the world community. This proposal is seeming to gain ground in Washington, thanks to a more open and aggressive campaign by Iraqi opposition leaders.

Nor should the argument that the opposition is divided justify keeping it at bay. The Iraqi opposition is united on the need to change the government and would respond unanimously to the indictment of Saddam. The INC and other groups are capable of providing hundreds of enlistments at short notice, if the logistics are worked out. The INC has retained, despite the setback occasioned in August 1996 in Erbil, when the US allowed Saddam Hussein's heavy armours to invade the North, an impressive network of informers and supporters on the ground.

The indictment of Saddam Hussein would also be an occasion to lift sanctions over those parts of Iraq which are freed from the man's rule immediately, and to allow, in time, INC territory to be a conduit of medical and food supplies for the rest of the country.

The present policy of sanctions, notwithstanding all the nuances introduced with food and medicine exceptions and the oil-for-food deal, has not been effective against Saddam Hussein, who uses the real plight of the Iraqis to draw justified pity on Iraq as a whole. He is not known to have suffered from it himself in any way.

Nor is the idea of Saddam Hussein's indictment new, and a world-wide campaign to that effect, under the name of INDICT, was started last January in the British Parliament. It was taken to Capitol Hill two months later and received the express support in a resolution sent to the president in this effect, with the signature of 396 congressmen.

Both Clinton and Blair have also openly declared their support to INDICT.

Since both are lawyers, they should consider a more civilised legal course of action, flowing from the most recent breach of international resolutions by the Iraqi ruler, rather than embark on a campaign of bombing with no tangible prospects of success.

This might not prevent Saddam Hussein from using weapons of mass destruction but, if he tries, the rest of the world will be ready for him with a much more convincing strategy than indiscriminate bombing or the nuking of Iraq.

Indeed the indictment should proceed even if Saddam Hussein agrees to unconditionally open his sites to the inspectors. The ruler of Iraq has flouted the international order in so many ways that he deserves to be singled out as one of the most prominent mass criminals since the second world war, towards his own people first, and towards his next-door neighbours, against whom he initiated two major wars of invasion in less than a decade.

Short of the indictment of Saddam Hussein and the resulting support of the international community to an alternative Iraqi government, there is only the scenario of *Air Force One* left for effectiveness. It is sad that we have reached a point where that scenario can be taken seriously.

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