

Written Testimony of John Burroughs  
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Citizens' Hearing on the Legality of U.S. Actions in Iraq  
The Evergreen State College, Tacoma, Washington

My theme today is the hypocrisy of U.S. nuclear weapons policy as demonstrated in relation to Iraq.

Prior to the war, the United States accused Iraq of retaining stocks of chemical and biological weapons and materials and of reconstituting the chemical, biological, and nuclear (NBC) weapons and missile programs that were terminated or at least severely disrupted by the post-Gulf War inspections. However, no definitive evidence was presented to establish Iraq's possession of such weapons or missiles, or their current use to threaten the United States or other states. Indeed, as the reports of the UN inspectors made clear, there was no basis for the U.S. claims.

The UN Monitoring, Verification and Inspection Commission (UNMOVIC) made it very clear that only *uncertainty* existed as to such matters as whether Iraq had fully destroyed stocks of chemical and biological weapons and materials. Given UNMOVIC's stance, especially in view of the fact that states were requested to provide relevant information to UNMOVIC, any plea that U.S. and other intelligence agencies reasonably believed Iraq retained such weapons is unpersuasive. Hans Blix, head of UNMOVIC, has many times stated that in 2002 he thought it likely that Iraq had WMD programs. However, he knew that his job was to be a professional inspector, not to go on gut instinct. By early 2003, he started to believe that Iraq had no programs. One important reason: around two dozen leads provided by U.S. intelligence led nowhere. Similarly but more robustly, the International Atomic Energy Agency (IAEA) publicly and emphatically confirmed what was common knowledge among specialists, namely that the Iraqi nuclear weapons program had been successfully dismantled under IAEA monitoring in the early 1990s and had not been reconstituted.

I want to underline that possession of NBC weapons or NBC weapons programs, are not, in and of themselves, sufficient to justify going to war as a matter of international law. But in any case prior to the war, there was no established case that Iraq had prohibited weapons, materials or programs. The information from the UN inspectors tended to show their absence in the case of chemical and biological weapons and programs and missiles; and the absence was clear in the case of nuclear weapons and a nuclear weapons program.

At an American University Research Symposium held on November 28, 2006, a public event, Charles Lutes, chief of the Combating WMD Division for the Deputy Directorate for the War on Terrorism, Pentagon's Joint Staff, made two observations. First, prior to the war, he did believe that the United States had made the case for WMD in Iraq. Second, if there had been WMD in Iraq, the United States did not have the ability to secure them.

The lack of U.S. planning regarding WMD in Iraq was demonstrated by events at the al-Tuwaitha nuclear facility. It is a complex of more than 100 buildings on a 35 square mile site located 12 miles south of Baghdad. Until 1991 it was the center of Iraq's nuclear weapons program. By the mid-1990s, the International Atomic Energy Agency (IAEA) had confirmed dismantlement of the weapons program and removal from Iraq of stocks of nuclear material that could be used in weapons. Other nuclear materials remained on site, including 500 tons of "yellowcake" uranium, processed uranium ore containing 80% uranium oxide, and a reported 400 radioactive sources, for

example, X-ray machines. Some of the sources contained materials suitable for use in radiological weapons, conventional bombs that disperse radioactive materials.

U.S. troops arrived at al-Tuwaitha in early April 2003, but failed to prevent ongoing looting or to accomplish thorough cleanup of surrounded populated areas. This became evident to the world when Greenpeace arrived for an investigation carried out from June 16 until July 4.

Some 500 barrels of yellowcake uranium disappeared. Local Iraqis emptied the barrels and used them to hold drinking water and other items. The United States recovered most of the barrels through a buyback program, later supplemented by Greenpeace which exchanged clean barrels for the uranium barrels.

In June, the United States permitted the IAEA to survey previously declared nuclear material at al-Tuwaitha at one part of the complex, but denied the IAEA permission to survey radioactive sources or to investigate contamination and health effects in the area.

The Greenpeace team found a huge yellowcake mixing canister, with approximately 4-5 kilos of radioactive uranium inside, abandoned on open ground near a village. The canister had several holes, one of which was large enough for children to climb through. Although yellowcake uranium does not produce high dose rates of radiation, inhalation of the powder is toxic and carcinogenic.<sup>1</sup>

The Greenpeace team also found radioactivity in a series of houses, including one industrial source registering 10,000 times above normal background radiation levels. In that house, the occupants had been living with the source for more than six weeks. The maximum annual recommended dose of the International Commission on Radiation Protection (ICRP) could be exceeded in one half hour. Greenpeace report, Tuwaitha – Iraq Investigation.

A Greenpeace radiation specialist commented in July 2003, “If this happened in Europe or anywhere in the West, they would have shut down whole villages, closed streets, tested people and the environment for contamination, and done a big cleanup.”<sup>2</sup>

Here are the conclusions I reached in my presentation to the New York session of the World Tribunal on Iraq, May 2004 ([www.newyork.worldtribunal.org](http://www.newyork.worldtribunal.org)):

- The U.S. failure to prevent looting of portions of the al-Tuwaitha facility, which lasted for weeks after the first arrival of U.S. forces, is a violation of the 1907 Hague Regulations which requires the Occupying Power to “take all the measures in his power to restore, and ensure, as far as possible, public order and safety” (Article 43).
- The U.S. failure to conduct thorough medical assessment and cleanup in the al-Tuwaitha area is a violation of Article 56 of the Fourth Geneva Convention, which charges the Occupying Power with the “duty of ensuring and maintaining ...

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<sup>1</sup> Greenpeace report, Tuwaitha – Iraq Investigation: Radioactive Contamination, Findings & Recommendations.

<sup>2</sup> (“Iraqis grapple with post-war radioactivity,” Christian Science Monitor, July 10, 2003)

public health and hygiene”.

- The U.S. refusal to allow the IAEA to undertake a thorough investigation of conditions in and around al-Tuwaitha, and throughout Iraq, is unconscionable.

The IAEA has the appropriate expertise, and far more credibility than the United States.

- The U.S. failure to completely secure the al-Tuwaitha facility at the earliest possible time is shocking in view of the rationale for the invasion of Iraq as aimed at disarming nuclear, chemical, and biological weapons programs and preventing the acquisition of such weapons by terrorists.

By the mid-1990s, Iraq had come into compliance with its international obligations regarding NBC weapons, admittedly after a war and under coercion by the Security Council. What was U.S. policy at that time and since? Presidential Decision Directive-60 (PDD-60), signed by Bill Clinton in late 1997, recommitted the U.S. to nuclear weapons as the “cornerstone” of its national security and reaffirmed the U.S. policies of threatened first use and threatened massive retaliation. PDD-60 also further institutionalized a policy shift that had been underway for some time: nuclear weapons would now be used to “deter” a range of threats including not only nuclear, but also chemical and biological weapons. Indeed, the United States threatened to use nuclear weapons against Iraq in the 1990-91 Gulf War. The U.S. made ambiguous threats to use nuclear weapons against Iraq again in early 1998, in response to allegations by UNSCOM Chief Inspector Richard Butler that Iraq possessed biological weapons.

The December 2001 Department of Defense Nuclear Posture Review (NPR) contained plans to target, with U.S. nuclear weapons, countries that do not have nuclear weapons themselves, among them Iraq and Iran. Also newsworthy were the plans for the military to develop nuclear weapons with new capabilities to be used for a wide variety of missions far beyond deterrence of nuclear attack. Nuclear weapons ““could be employed against targets able to withstand nonnuclear attack,” or in retaliation for the use of nuclear, biological, or chemical weapons, or against biological and chemical weapon capabilities (prior to use), or “in the event of surprising military developments.” The White House-approved December 2002 National Strategy to Combat Weapons of Mass Destruction outlined the U.S. Government’s plan for protection against and response to chemical, biological and nuclear weapons. Described as an integral component of the National Security Strategy of the United States, published a few months prior, the strategy states that the U.S. “reserves the right to respond with overwhelming force – including through resort to *all of our options* – to the use of WMD against the United States, our forces abroad, and friends and allies.” (Emphasis supplied.)

Then, in late 2002, George W. Bush stated regarding Iraq: “America must not ignore the threats gathering against us. Facing clear evidence of peril, we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud.” President Bush *didn’t* tell us that the mushroom cloud was more likely to emanate from the United States. In the run-up to the March 2003 U.S. invasion, a “Theater Nuclear Planning Document” was drawn up for Iraq. This plan was disclosed by military affairs analyst William Arkin in the Los Angeles Times, as part of a larger story describing how Strategic Command’s (STRATCOM’s) portfolio had been expanded, consistent with provisions of the Nuclear Posture Review. Previously limited to nuclear weapons, STRATCOM’s role now encompassed all aspects of assessing and responding to nuclear, biological and chemical weapons worldwide.

Again, in the spring and summary of 2006, there were credible reports from Seymour Hersh that, until the Joint Chiefs of Staff insisted on their removal, U.S. civilian officials at the highest level wanted to keep nuclear use options in plans for counter-proliferation strikes on Iran.

So is the United States in compliance with its international obligations? The answer is no. In 1996, the International Court of Justice held that the threat or use of nuclear weapons is generally illegal. The Nuclear Non-Proliferation Treaty requires the good-faith negotiation of the elimination of nuclear arsenals. The 2000 NPT Review Conference agreed – with the approval of the United States – on measures to implement this obligation, including: verified and irreversible reduction of nuclear weapons; a diminishing role of nuclear weapons in security policies; and ratification of the Comprehensive Test Ban Treaty. The expansion of doctrine regarding use of nuclear weapons outlined above violates the Court’s holding and the commitment to a reduced role for nuclear weapons in security policies made in 2000. The United States is not engaged in verified, irreversible reduction of its arsenal in negotiations with Russia. The United States refuses to ratify the CTBT.

The hypocrisy of the U.S. invasion of Iraq on the basis that it might acquire NBC weapons while the United States maintains large nuclear forces and aggressive doctrines of use in defiance of its obligations regarding nuclear disarmament is absolutely staggering. One way to think about it is to consider the Bangor Trident submarine base, about 20 miles from here. Nine submarines are based there. Each carries 24 missiles; each missile can deliver at least six warheads. So each submarine carries about 144 warheads. Most of the warheads have a 100 kiloton yield, about seven times the size of the atomic bomb with which the United States devastated Hiroshima. Some of the warheads have a yield of about 450 kilotons, about 30 times the size of the Hiroshima bomb.

I have written about the illegality of the U.S. invasion of Iraq in violation of the UN Charter.<sup>3</sup> It is important that this hearing examine that and other illegal and criminal aspects of the U.S. invasion and occupation of Iraq. It is also important that we understand the monumental U.S. hypocrisy regarding nuclear weapons that is part of the larger context for the U.S. actions in Iraq. Thank you.

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<sup>3</sup> Nicole Deller and John Burroughs, “Jus ad Bellum: Law Regulating Resort to Force,” Human Rights (Winter 2003). Online at <http://www.abanet.org/irr/hr/winter03/lawregulatingresorttoforce.html>.