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Iraq: The Case for Proceeding

[This RPC paper is intended to explain why no further U.N. authorization is required before the United States and its allies may take action to force Iraq to disarm, and why, if such authorization is sought, the United States should make no concessions to obtain it that could degrade the U.S. military mission.]

“The dictator of Iraq is not disarming. To the contrary, he is deceiving.”

– President George Bush, State of the Union Address, January 28, 2003

Saddam Hussein consistently and repeatedly has refused to abide by his obligations to disarm under international supervision, as required in the 1991 Gulf War cease-fire agreement and succeeding United Nations resolutions. If that agreement and those resolutions are to mean anything, they must be enforced.

Enforcing the resolutions does not require a so-called “smoking gun.” Nor does it require an imminent Iraqi threat to the United States, or international approval before the United States and its allies may take further military action to enforce Iraq’s international obligations.

Granting Iraq additional time will serve no purpose in view of its obvious intention to remain noncompliant: On January 27, 2003, the head of the U.N. Monitoring and Verification Commission for Iraq (UNMOVIC) reported to the U.N. Security Council that Iraq has failed to fill in many gaps in its December 7 arms declaration, and that Iraq treats its disarmament obligations as a “game.”

That same day after receiving the UNMOVIC report, Secretary of State Powell, in a televised statement, said, “Iraq’s refusal to disarm in compliance with Resolution 1441 still threatens international peace and security, and the relevance and credibility of the Security Council. . . . Iraq continues to conceal material to kill thousands upon thousands of men women and children” and may provide it to others.

In his State of the Union Address, President Bush said:

“Twelve years ago, Saddam Hussein faced the prospect of being the last casualty in a war he had started and lost. To spare himself, he agreed to disarm of all weapons of mass

destruction. For the next 12 years, he systematically violated that agreement. . . . He has shown instead utter contempt for the United Nations, and for the opinion of the world. The 108 U.N. inspectors were not sent to conduct a scavenger hunt for hidden materials across a country the size of California. The job of the inspectors is to verify that Iraq's regime is disarming. It is up to Iraq to show exactly where it is hiding its banned weapons, lay those weapons out for the world to see, and destroy them as directed. Nothing like this has happened."

The Legal Basis for U.S. Military Action in Iraq

On August 2, 1990, Saddam Hussein invaded Kuwait. On January 16, 1991, the U.S.-led coalition of 28 nations launched Operation Desert Storm. After liberating Kuwait, President George H.W. Bush announced a cease-fire, unilaterally halting offensive military operations on February 28, 1991.

On March 3, 1991, General Norman Schwarzkopf and Iraqi Lieutenant General Sultan Hashim Ahmad al-Jabburi concluded a cease-fire agreement. That cease-fire agreement was adopted and approved on April 3, 1991, by the U.N. Security Council in Resolution 687, which recalled and reaffirmed all 13 of the Security Council's earlier resolutions on Iraq's invasion of Kuwait.

Resolution 687 also provided that a formal cease-fire would become effective upon Iraq's *unconditional* acceptance of all these provisions. In a letter delivered to the Security Council on April 6, 1991, *Iraq formally accepted the terms of the cease-fire without conditions*. No one has ever argued that Iraq is not legally obligated to perform the obligations it assumed in the cease-fire agreement.

Iraq Has Never Complied With its Obligations

Iraq has never satisfied its obligations under the cease-fire agreement or succeeding U.N. Resolutions. Even before the Security Council had an opportunity to take up, review and approve the 1991 cease-fire, Iraq went into material breach of its cease-fire obligations. On March 20, 1991, a U.S. fighter aircraft shot down an Iraqi SU-22 which, in direct violation of the cease-fire, was encountered over northern Iraq. On March 22, 1991, a U.S. fighter shot down another Iraqi SU-22 over northern Iraq. On the same day, another U.S. fighter forced down a third Iraqi aircraft. Literally from the time it was signed, Iraq has been in material breach of the agreement.

Iraq's Continuing Breach and Defiance of U.N. Resolutions

Beginning just hours after Iraq invaded Kuwait, and continuing through late November, 1990, the U.N. Security Council adopted a number of increasingly coercive resolutions demanding that Iraq withdraw from Kuwait and restore Kuwait's national government. Meanwhile, U.S. and coalition forces organized themselves and relocated to the Persian Gulf in Operation Desert Shield. Iraq failed to comply with any of these resolutions.

On November 29, 1990, the Security Council adopted Resolution 678. In Resolution 678, the Council gave Iraq a last opportunity to withdraw from Kuwait, setting a deadline of January 15, 1991. It authorized member states to employ "all necessary means" to force Iraq to withdraw from its neighbor and "to uphold and implement . . . all subsequent relevant resolutions and to restore international peace and security to the area" (emphasis added). The Security Council also reaffirmed its 11 earlier resolutions concerning Iraq's invasion of Kuwait, and cited the right to use force in collective self-defense, which is authorized under Article 51 of the U.N. Charter. Unlike the current situation, there were no demands for an additional journey to the Security Council after Iraq ignored Resolution 678, but before military action commenced.

Resolution 678 has provided a firm legal basis for operations in and over Iraq *up to and including the present time*. As it did with regard to all previous resolutions related to Kuwait, Iraq ignored Resolution 678. As a result, the authority of the coalition to use all necessary means to restore international peace and security to the area remains in force.

Iraq's Record of Contempt for the United Nations

Of the 16 U.N. Security Council resolutions adopted simultaneously with and after the 1991 cease-fire, Saddam Hussein has been in open, continuing and repeated material breach of each. The recurring theme of Iraq's conduct after the cease-fire is a blatant resistance to disarmament obligations undertaken in the cease-fire and elaborated in subsequent resolutions.

Resolution 687 of April 3, 1991, on Weapons of Mass Destruction, is the key to Iraq's obligation to disarm, and created the United Nations Special Commission (UNSCOM) to verify the elimination of Iraq's chemical and biological weapons programs. The Resolution also mandated that the International Atomic Energy Agency (IAEA) verify elimination of Iraq's nuclear weapons program. Specifically, Resolution 687 mandates:

- ✓ Iraq must "unconditionally accept" the destruction, removal or rendering harmless "***under international supervision***" of all "chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and

- ✓ manufacturing facilities.” (The phrase “under international supervision” assures the ability to verify compliance. The U.N. Security Council did not want to rely on Iraq’s “word” that it had disarmed. Iraq agreed to this requirement.)
- ✓ Iraq must “unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapons-usable material” or any research, development, or manufacturing facilities.
- ✓ Iraq must “unconditionally accept” the destruction, removal or rendering harmless “under international supervision” of all “ballistic missiles with a range greater than 150 KM and related major parts and repair and production facilities.”
- ✓ Iraq must not “use, develop, construct, or acquire” any weapons of mass destruction.
- ✓ Iraq must reaffirm its obligations under the Nuclear Non-Proliferation Treaty.
- ✓ Iraq must declare fully its weapons of mass destruction programs.
- ✓ Iraq must end its support for terrorism, and bar terrorist organizations from Iraq.
- ✓ Iraq must cooperate in accounting for the missing and dead Kuwaitis and others.
- ✓ Iraq must return Kuwaiti property seized during the Gulf War.

Yet only months later, the U.N. Security Council turned once again to Iraq’s failure to disarm. In **Resolution 707 of August 15, 1991**, the Security Council:

- condemned Iraq’s “serious violation” of Resolution 687, and Iraq’s noncompliance with IAEA or its Non-Proliferation Treaty obligations;
- demanded that Iraq halt nuclear activity;
- demanded that Iraq make full, final, and complete disclosure of all aspects of its weapons of mass destruction and missile programs;
- demanded that Iraq allow U.N. and IAEA inspectors immediate, unconditional and unrestricted access;

- demanded that Iraq cease attempts to conceal or move weapons of mass destruction, and related materials and facilities;
- directed Iraq to allow U.N. and IAEA inspectors to conduct inspection flights throughout Iraq;
- directed Iraq to provide transportation, medical, and logistical support for U.N. and IAEA inspectors.

Iraq's breach of disarmament requirements was apparent again in **Resolution 715 of October 11, 1991**, where the Security Council again demanded full Iraqi cooperation with U.N. and IAEA inspectors, and four days later in **Resolution 949 of October 15, 1994**. In this Resolution, the Security Council condemned Iraq's provocative military deployments toward Kuwait, and warned Iraq against using its military or other forces in a hostile manner to threaten its neighbors or U.N. operations in Iraq. The Council also demanded full Iraqi cooperation with U.N. weapons inspectors, and forbade Iraq from enhancing its military capabilities in southern Iraq.

In **Resolution 1051 of March 27, 1996**, the Security Council directed Iraq to report shipments of dual-use items related to weapons of mass destruction to the U.N. and IAEA, and yet again demanded that it cooperate fully with U.N. and IAEA inspectors and afford them immediate, unconditional unrestricted access.

In **Resolution 1060 of June 12, 1996**, the Security Council deplored Iraq's refusal to allow access to U.N. inspectors, as well as Iraq's "clear violations" of previous U.N. resolutions. Once again, the Council demanded that Iraq cooperate fully with U.N. weapons inspectors and allow immediate, unconditional, and unrestricted access.

In **Resolution 1115 of June 21, 1997**, the Security Council condemned the repeated refusal of Iraqi authorities to allow access to U.N. inspectors, calling this a "clear and flagrant violation" of Resolutions 687 and others. The Council demanded that Iraq cooperate fully with U.N. weapons inspectors and allow immediate, unconditional and unrestricted access, not only to weapons-related facilities and material, but also to Iraqi officials whom U.N. inspectors wanted to interview.

Resolution 1134 of October 23, 1997, essentially repeated the substance of Resolution 1115. Once again the Council "condemned repeated refusal of Iraqi authorities to allow access" to U.N. inspectors, in "flagrant violation" of Resolutions 687 and others. The Council demanded that Iraq cooperate fully with U.N. weapons inspectors and allow immediate, unconditional, and unrestricted access. The Resolution also demands that Iraq give immediate, unconditional, and unrestricted access to Iraqi officials whom U.N. inspectors want to interview.

In **Resolution 1137 of November 12, 1997**, the Council condemned Iraq's continued violations of previous resolutions, including the "implicit threat to the safety" of aircraft operated by U.N. inspectors. It also reaffirmed Iraq's responsibility to ensure the safety of U.N. inspectors, and demanded that Iraq cooperate fully and allow them immediate, unconditional, and unrestricted access.

Between 1991 and 1997, Iraqi officials regularly delayed inspections, spied on inspectors, harassed them and lied about Iraqi capabilities. Inspectors were not permitted to interview scientists and engineers without Iraqi "minders" present. Iraq received "tips" about impending short-notice inspections, and frequently denied access to sites. Eight presidential palaces became special concerns for inspectors. Inspectors were threatened in person and over the phone. Their hotel rooms were ransacked, they were subjected to verbal and physical abuse, and Iraq also attempted to infiltrate the ranks of inspectors with spies. Iraq also destroyed and removed evidence to mislead inspectors about the capabilities of certain facilities.

In October, 1997, Iraq demanded that U.S. personnel be withdrawn from UNSCOM. Iraqi obstruction intensified in 1998.

On February 23, 1998, U.N. Secretary General Kofi Annan reached agreement with Saddam Hussein on resumed UNSCOM inspections. In **Resolution 1154 of March 2, 1998**, the Security Council demanded that Iraq cooperate fully with U.N. and IAEA weapons inspectors and allow immediate, unconditional, and unrestricted access, and notes that any violation would have the "severest consequences for Iraq."

On August 5, 1998, Iraq stopped UNSCOM inspections but allowed monitoring to continue. In **Resolution 1194 of September 9, 1998**, the Council condemned Iraq's suspension of inspections, calling it "a totally unacceptable contravention" of its obligations under Resolutions 687, and others. The Council demanded that Iraq cooperate fully with U.N. and IAEA weapons inspectors, and allow immediate, unconditional, and unrestricted access.

On October 31, 1998, Iraq abruptly announced it was stopping all cooperation with UNSCOM. In **Resolution 1205 of November 5, 1998**, the Security Council "condemn[ed] the decision by Iraq of 31 October 1998 to cease cooperation" with U.N. inspectors, calling it "a flagrant violation" of UNSCR 687 and other resolutions. The Council demanded "immediate, complete and unconditional cooperation" with U.N. and IAEA inspectors.

On **November 13, 1998**, President Clinton ordered air attacks on Iraq but canceled the order the next day, with planes in the air, following an Iraqi “promise” that U.N. weapons inspectors could resume work.

Nevertheless, on **December 15, 1998**, U.N. Secretary General Kofi Annan transmitted a report from UNSCOM director Richard Butler to the U.N. Security Council, and yet again advised the Council that “UNSCOM did not enjoy full cooperation from Iraq.” Butler wrote in his report to the Security Council that “[Iraq’s] disclosure statements have never been complete; ... *contrary to the requirement that destruction of prohibited capabilities be conducted under international supervision, Iraq undertook extensive, unilateral, secret destruction; and ... [Iraq] also pursued a practice of concealment of proscribed items, including weapons*” (UNSC Document S/1198/1172, 15 December 1998; emphasis added).

In light of this latest episode of Iraqi non-compliance with its disarmament obligations, and out of concern for their personal safety, UNSCOM withdrew its personnel from Iraq. From **December 16 to 19, 1998**, the United States and Great Britain conducted **Operation Desert Fox**, a four-day aerial bombing campaign, without seeking additional U.N. Security Council approval or authority. U.N. Security Council permanent members France, Russia and the People’s Republic of China criticized the U.S./U.K. attack harshly, but took no formal U.N. Security Council action to condemn Operation Desert Fox or assert that prior U.N. Security Council authorization should have been obtained.

On January 29, 1999, Secretary General Annan circulated a January 25, 1999 note from UNSCOM Executive Director Richard Butler submitting a comprehensive report on the state of play with respect to Iraqi disarmament. This document, designated U.N. Doc. S/1999/94 of January 29, 1999, has been relied upon as an important baseline for measuring Iraqi compliance with the requirement in Resolution 1441 to provide a full and accurate accounting of its arms inventory.

In **Resolution 1284 of December 17, 1999**, the Security Council created the United Nations Monitoring, Verification and Inspections Commission (UNMOVIC) to replace the UNSCOM weapon inspection team. The Council demanded that Iraq allow UNMOVIC “immediate, unconditional and unrestricted access” to Iraqi officials and facilities, fulfill its commitment to return Gulf War POWs, and distribute humanitarian goods and medical supplies to its people, and address the needs of vulnerable Iraqis, without discrimination.

No Meaningful Effort to Exercise Enforcement Authority

Since 1991, there has been clear and continuing authority for the United States, alone or with allies, to take decisive enforcement action against Iraq for its breaches of the cease-fire and U.N. resolutions. As noted, the authority to take enforcement action against Iraq is explicit in Resolution 678

and remains in force. The measure has been cited explicitly in the operational paragraphs of subsequent resolutions on Iraq's failure to disarm – including Resolution 1441 – and has not been rescinded.

The frequency and unmistakable malice behind Iraq's interference with weapons inspections – and over a decade of deadly attacks on U.S. combat forces – aggravate the nature of Iraq's breach of its Gulf War agreements and obligations. Seen in light of the depth and magnitude of Iraq's breaches, the absence of determined enforcement action prior to the current Administration is striking. *The history confirms that obligations that are not enforced seriously undermine the authority of the parties with an obligation to enforce.*

U.N. Gives Iraq its “Final” Chance – and Iraq Again Reneges

On November 8, 2002, the U.N. Security Council unanimously adopted **Resolution 1441**. Resolution 1441 strengthens the weapons inspection regime for Iraq, and gives Baghdad “a final opportunity to comply with its disarmament obligations.” The Resolution preserves and cites the authorities to act contained in Resolution 678. *It also places the burden of proving compliance squarely on Iraq.*

Efforts to Measure Iraqi “Compliance”

Iraq's disarmament obligations – i.e., *what must be done* – can be measured accurately against an ample baseline of U.N. information. In his report to the U.N. Security Council on January 27, 2003, UNMOVIC Executive Director Hans Blix referred to this baseline. Discussing Iraq's 12,000-page declaration of December 7, 2002, Blix voiced his expectation that Iraq would have tried to respond to, clarify, and submit supporting evidence regarding many open disarmament issues contained in Document S/1999/94 (the Butler report), and in the so-called “Amorim Report” of March 1999 (Document S/1999/356).

The Butler and Amorim reports serve as important yardsticks for measuring Iraqi compliance with the requirement in Resolution 1441 to provide a full and accurate accounting of its arms inventory. The March, 1999 Amorim Report, published after UNSCOM inspectors departed Iraq included as “remaining concerns” (among others):

“In the chemical weapons area . . . satisfactory resolution is required especially with regard to: a) discrepancies with Iraq's declarations on the expenditure of CW munitions in the 80s, as indicated by figures contained in a document detailing consumption of special munitions by Iraq; b) evidence of 550 artillery shells filled with mustard declared to have been lost shortly after the Gulf War; c) accounting for five hundred R-400 bombs, which could be done through the verification of the disposition of the parachute tail sections of

those bombs; d) Iraqi declarations on the production and weaponization of the chemical agent VX, in particular with regard to the military plans for the use of VX during various periods, the different precursors available and the synthetic routes pursued; and e) the material balance of CW production equipment.”

(Paragraph 21, <http://www.un.org/Depts/unmovic/documents/Amorim%20Report.htm>)

Issues raised in the Butler and Amorim Reports about these and other armaments were, noted Blix on January 27th, open questions which UNMOVIC, governments and independent commentators had often cited. One such government is the United States. The Department of State compared the January, 1999 Butler report with Iraq’s December, 2002, declaration and concluded that, in the latter, Iraq had falsified information about chemical and biological munitions: “In January, 1999, [UNSCOM] reported that Iraq failed to provide credible evidence that 550 mustard gas-filled artillery shells and 400 biological weapon-capable aerial bombs had been lost or destroyed. ... *what is the Iraqi regime trying to hide by not providing this information?*” (Fact Sheet, December 19, 2002; emphasis in original).

Yet in spite of important remaining questions about its inventory, according to Blix, Iraq’s December, 2002 declaration *contained no new evidence that would eliminate the questions raised by the [Butler and Amorim] documents*, or reduce their number (U.N. Security Council Press Release SC/7644, January 27, 2003, www.un.org/News/Press/docs/2003/sc7644.doc.htm). In other words, in its December, 2002 declaration, Iraq apparently ignored the serious issues raised in the baseline reports of January and March, 1999, as well as later information collected about Iraq’s armaments.

Resolution 1441 states in its first operative paragraph: “Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq’s failure to cooperate with United Nations inspectors and the IAEA (sic), and to complete the actions required under . . . resolution 687 (1991). . .”

On its face, this Resolution is grounded in the fact that material breach of Iraq’s fundamental Gulf War cease-fire obligations commenced long ago and continues. Likewise, it confirms that the authority to take military action conferred by the Security Council in Resolution 678 clearly remains. Resolution 1441 does not supercede or nullify preceding resolutions – it properly must be read together with preceding resolutions, not in lieu of them.

Inspectors Cannot Force Disarmament

It bears repeating, however, that international inspections under a multilateral regime are utterly incapable of forcing disarmament on a recalcitrant regime like Iraq. As Charles Krauthammer wrote in the *Washington Post* on January 24:

“The president cannot logically turn back. He says repeatedly, and rightly, that inspectors can only verify a voluntary disarmament. They are utterly powerless to force disarmament on a regime that lies, cheats and hides. And having said, again correctly, that the possession of weapons of mass destruction by Hussein is an intolerable threat to the security of the United States, there is no logical way to rationalize walking away from Iraq – even if the president wanted to.”

Secretary Powell made the same point, as reported in the *Washington Post*, on the same day: “The question isn’t how much longer do you need for inspections to work. Inspections will not work.”

Resolution 1441 makes clear that the burden of demonstrating compliance with disarmament obligations imposed under the cease-fire agreement and various U.N. resolutions rests squarely on Saddam Hussein’s shoulders. As Deputy Secretary of Defense Wolfowitz said to the Council on Foreign Relations in New York City on January 23, 2003:

“It is not the job of inspectors to disarm Iraq; it is Iraq’s job to disarm itself. What inspectors can do is confirm that a country has willingly disarmed and provided verifiable evidence that it has done so.”

Recall that the very first thing that Iraq was supposed to do was destroy and dismantle its weapons under international supervision.

Saddam Fails to Make His Case

Under Resolution 1441, Saddam’s posture is *not* that of a defendant in a criminal proceeding, enjoying a presumption of innocence and resting with folded arms while a prosecutor (or UNMOVIC/IAEA inspector) labors to prove him guilty beyond a reasonable doubt. Instead, Saddam’s true status properly must be understood as that of a plaintiff charged with the burden of “going forward” and affirmatively proving the elements of his Resolution 1441 “case” to a trier of fact and law.

In the context of the January 27, 2003 declaration, this means that *it is Saddam Hussein – and not the inspectors* – who must prove that all the material Saddam was obligated to destroy (viz., the Butler/Amorim and previous baseline reports) under international supervision actually has been destroyed.

To carry his burden of proof successfully, under Resolution 1441, Saddam Hussein’s task was to demonstrate full compliance with the following elements:

– **that all required declarations had been provided under Resolution 1441 and previous resolutions;**

Deputy Secretary Paul Wolfowitz, January 23, 2003, New York: “[W]ith its December 7th declaration, Iraq resumed a familiar process of deception. Secretary Powell has called that 12,200-page document a catalogue of recycled information and brazen omissions that “totally fails to meet the resolution’s requirements.”

– **that the declarations are “currently accurate, full, and complete” as to all aspects of Iraq’s chemical, biological and nuclear weapons programs, ballistic missiles, and other delivery systems;**

Under Secretary John Bolton, Manila, January 9, 2003: “Iraq’s obligation under the Security Council resolutions is to demonstrate that it no longer has weapons of mass destruction. In other words, the burden is on Iraq. And the requirement is on Iraq to be free of weapons of mass destruction. It was obligated under Resolution 1441 to make a declaration of the weapons of mass destruction, the production facilities, the dual-use items that it has and it failed to do so. The December 7 Iraqi Declaration is false and misleading. It contains material omissions and misrepresentations. And as Secretary Powell has said, it constitutes a material breach of Iraq’s obligations – one in a long series of material breaches over a 12-year period.

Deputy Secretary Richard Armitage, U.S. Institute of Peace, January 21, 2003: “The events of the past week can be hard to interpret. It is safe to say that the discovery of 16 chemical warheads and new documents about nuclear and missile programs is an important development. It signals that the inspectors are doing their best to do their jobs – that they are beating in at least some small way the considerable odds Saddam Hussein has stacked against them. But finding these 16 warheads just raises a basic question: Where are the other 29,984? Because that is how many empty chemical warheads the U.N. Special Commission estimated he had – and he has never accounted for. And where are the 550 artillery shells that are filled with mustard gas? And the 400 biological weapons-capable aerial bombs? And the 26,000 liters of anthrax? The botulinum, the VX, the Sarin gas that the U.N. said he has? We don’t know, because Saddam Hussein has never accounted for any of it.”

– **that there are no false statements or omissions in the declarations provided;**

Deputy Secretary Richard Armitage, U.S. Institute of Peace, January 21, 2003: “Instead, [Saddam] gave us a three-foot stack of papers devoid of the most important information – making this his third such declaration that has failed to be full, currently accurate and complete, as required by the U.N. Security Council. As Dr. Blix just said:

“We feel the declaration has not answered a great many questions of the past which still remain open. . . . We have some way to go.”

- **that Iraq has cooperated fully, at all times, to implement Resolution 1441;**

Deputy Secretary Richard Armitage, U.S. Institute of Peace, January 21, 2003:

“This is about Saddam Hussein – and what he is prepared to do – and what he is not doing right now. He is not meeting the terms of U.N. Security Council Resolution 1441, as Dr. Blix said over the weekend. He is not cooperating with the international community. And he certainly is not disarming his nation of the biological and chemical weapons and nuclear capabilities he continues to hold and to develop.”

- **that Iraq has provided to UNMOVIC and IAEA “immediate, unimpeded, unconditional and unrestricted access to all places and persons desired by the inspectors;**

President George Bush, St. Louis, MO, January 22, 2003: “Saddam Hussein has learned lessons from the past. See, the first time he was told to disarm was 11 years ago. He is adept at deception and delays and denying. He asked for more time so he can give the so-called inspectors more runaround. He’s interested in playing hide and seek in a huge country. He’s not interested in disarming.”

- **that Iraq has not interfered with the “revised or additional authorities” which the Security Council conferred on UNMOVIC/IAEA in light of the inspectors’ long absence from Iraq (Seventh Operative Paragraph); and**

- **that Iraq has neither taken nor threatened hostile acts against UN, IAEA or member state personnel taking action to uphold any resolution.**

U.S. Central Command News Release, January 19, 2003, MacDill, AFB, Tampa:

In response to Iraqi hostile acts against Coalition aircraft monitoring compliance of United Nations Security Council Resolutions over Southern Iraq, Operation SOUTHERN WATCH Coalition aircraft used precision-guided weapons today to target eight unmanned cable repeater sites that are part of Iraq’s military air defense command and control system. The sites were located between Al Kut, approximately 95 miles southeast of Baghdad, and An Nasiriyah, approximately 170 miles southeast of Baghdad. The strikes occurred at approximately 7:10 a.m. EST.

To date, Iraq has failed utterly to satisfy its burden of “going forward” – its burden of proving that it will comply or has complied with Resolution 1441 and earlier obligations to disarm. As Deputy Secretary Wolfowitz said on January 23:

“A process that begins with a massive lie and proceeds with concealment, penetration, intimidation and obstruction cannot be a process of cooperative disarmament. . . . If Iraq were to choose to comply with the requirement to dismantle its weapons of mass terror, we would know it.”

Given Iraq’s failure to make its case, the prudent assumption is that Saddam Hussein retains armaments prohibited by the Gulf War cease-fire and subsequent resolutions. Resolution 1441 confirms explicitly that the authority to take military action conferred by the Security Council in Resolution 678 clearly remains. Resolution 1441 does not supercede or nullify foregoing resolutions – it properly must be read together with foregoing resolutions, not in lieu of them. As such, no further resolutions are required before military action may be commenced against Iraq.

Iraq Continues to Attack Coalition Forces

For the last 12 years, Iraq has been in continuing breach of many other provisions of the 1991 cease-fire agreement. Since the cease-fire entered into force, Iraq has attacked U.S. military aircraft literally thousands of times with anti-aircraft artillery and surface-to-air missiles. U.S. European Command statistics for just two years are telling:

- In 2000 alone, Iraqi forces fired on U.S. and British pilots 1,600 times.
- In 2002 alone, Iraqi forces fired on U.S. and British pilots 406 times.
- From September 16, 2002 to November 3, 2002 – beginning hours after Saddam promised to “allow the return of the United Nations inspectors without conditions” and expressed his desire “to remove any doubts that Iraq still possesses weapons of mass destruction” – Iraqi forces fired on U.S. and British pilots no less than 149 times.

As a result of Iraq’s breach, U.S. and coalition military forces have been exposed on a continuing basis to life-threatening peril. They have been forced to continue military operations, under the authority of Security Council resolutions and acting in collective self-defense. These operations have been undertaken in response to Iraqi attacks on coalition forces and provocations directed at its neighbors, Iraqi threats to U.N. inspection aircraft, Iraqi oppression of ethnic minorities, Iraqi efforts evade economic sanctions, and Iraq’s utter contempt for disarmament obligations undertaken in the cease-fire agreement.

Therefore, despite conclusion of a 1991 cease-fire agreement, as Defense Secretary Donald Rumsfeld said: “Technically the state of war [with Iraq] that began in 1991 has never ended” (“Tony Snow” broadcast, January 19, 2003).¹

Proof of Saddam’s Defiance is Substantial

Though the burden of proof is on Iraq to prove it has disarmed, using the Butler/Amorim Reports and other baseline information, there is substantial proof that it has not done so. The Administration has recently presented some of this evidence in Cabinet-level member briefings on the Iraq situation. There is also substantial information generally available to our allies about Iraq’s unconventional weapons programs.

International inspectors have operated in Iraq intermittently since 1991. In addition, the United States and its allies have experience with successful disarmament programs in other countries, and are able to make rational comparisons with Iraq’s lack of performance. In addition, the United States is providing substantial intelligence support to the inspectors. In short, there is substantial credible evidence in the Butler/Amorim Reports and elsewhere of Iraq’s unconventional weapons programs and of Saddam Hussein’s defiant refusal to dismantle them.

IAEA maintained an active inspections program in Iraq between 1991 and 1998, pursuant to Resolution 687, to uncover and dismantle Iraq’s clandestine nuclear program, and to develop and implement an ongoing monitoring and verification (OMV) plan. Between 1991 and 1996, the IAEA submitted two sets of semi-annual reports to the UNSC. The first set of nine reports dealt with the destruction, removal or rendering harmless of items as requested in paragraph 12 of Resolution 687. The second set of eight reports dealt with OMV activities.

IAEA established an “Iraq Action Team” (recently renamed the Iraq Nuclear Verification Office - INVO) on April 15, 1991, to carry out its work with the assistance and cooperation of the U.N. Special Commission (UNSCOM). Between 1991 and 1998, INVO conducted 29 numbered inspections. In addition, after establishing a permanent presence in August 1994, it conducted more than 1,500 OMV inspections, mostly with no prior announcement. According to IAEA, these activities yielded a “technically coherent picture of Iraq’s clandestine nuclear program” (see, <http://www.iaea.org/worldatom/Programmes/ActionTeam/>). As Wolfowitz pointed out:

¹As a matter of U.S and international law, the state of war has existed since 1990. In March, 1991, General Schwarzkopf and the Iraqi commander reached a cease-fire agreement, not a peace treaty. Further action against Iraq will as a legal matter be a resumption of hostilities in an existing conflict – not the initiation of a new conflict.

“When U.N. inspectors left Iraq in 1998, they concluded, ‘The history of the Special Commission’s work in Iraq has been plagued by coordinated efforts to thwart full discovery of Iraq’s programs.’ What we know today from the testimony of Iraqis with first-hand knowledge, from U.N. inspectors and from a variety of other sources, about Iraq’s current efforts to deceive inspectors suggests that Iraq is fully engaged today in the same old practices of concealment and deception. Iraq seems to be employing virtually all of the old techniques that it used to frustrate U.N. inspections in the past.”

In addition to the existing records and experience of earlier inspections in a recalcitrant Iraq, the United States and its allies have substantial experience with successful disarmament programs in countries such as South Africa, Ukraine and Kazakhstan. In other words, the United States knows what a successful program “looks like.” As Wolfowitz said:

“Other nations have rid themselves of weapons of mass destruction cooperatively in ways that were possible to verify. So let’s talk for a moment about what real disarmament looks like: There are several significant examples from the recent past – among them South Africa, Ukraine and Kazakhstan. . . . Given the full cooperation of [Ukraine and Kaszkhstan], implementation of the disarmament was smooth. All nuclear warheads were returned to Russia by 1996, and all missile silos and heavy bombers were destroyed before the START deadline. Each of these cases was different but the end result was the same: the countries disarmed while disclosing their programs fully and voluntarily. In each case, high-level political commitment to disarmament was accompanied by the active participation of national institutions to carry out that process. In each case, the responsible countries created a transparent process in which decisions and actions could be verified and audited by the international community. In Iraq’s case, unfortunately, the situation is the opposite.”

Intelligence Sources Must be Protected

Along with the Butler/Amorim Reports, substantial additional information about Iraqi armament programs is available to the international community through multilateral inspections programs and the storehouse of experience about the characteristics of successful disarmament programs. Further, the United States has provided considerable intelligence support to the inspections process. President Bush also announced in his State of the Union address that he will send Secretary Powell to a special U.N. Security Council meeting on February 5th to “present information and intelligence about Iraq’s illegal weapons programs, its attempts to hide those weapons from inspectors, and its links to terrorist groups.” As Wolfowitz explained:

“Last fall, the Security Council requested member states to give ‘full support’ to U.N. inspectors. . . . The United States answered that call and President Bush directed departments and agencies to provide ‘material, operational, personnel, and intelligence support’ for U.N. inspections under Resolution 1441. Such assistance includes a comprehensive package of intelligence support, including names of individuals whom we believe it would be productive to interview and information about sites suspected to be associated with proscribed material or activities. We have provided our analysis of Iraq’s nuclear, chemical, biological and missile programs, and we have suggested an inspection strategy and tactics. We have provided counterintelligence support to improve the inspectors’ ability to thwart Iraqi attempts to penetrate their organizations.

“The United States has also made available a wide array of technology to support the inspectors’ efforts, including aerial surveillance support in the form of U-2 and Predator aircraft. So far, Iraq is blocking U-2 flights requested by the U.N., in direct violation of Resolution 1441, which states that inspectors shall have free and unrestricted use of manned and unmanned reconnaissance vehicles.”

Although there is considerable intelligence information available about Iraq’s unconventional weapons programs, well-founded reasons support restrictions on public disclosure. The United States has a vital interest in protecting intelligence sources and methods. According to court documents, for example, Aldrich Ames’ information allowed the Russians to close down at least 100 intelligence operations, and at least 10 U.S. and allied agents were executed. As Wolfowitz said:

“Today we know from multiple sources that Saddam has ordered that any scientist who cooperates during interviews will be killed, as well as their families. Furthermore, we know that scientists are being tutored on what to say to the U.N. inspectors and that Iraqi intelligence officers are posing as scientists to be interviewed by the inspectors.

“[I]n some cases, we can tell very clearly where we got information from. In some cases, you would put somebody’s life at risk if you told how you got it. That’s a fact of life; it’s not something you can overcome. . . . I sort of find it astonishing that the issue is whether you can trust the U.S. government. The real issue is, can you trust Saddam Hussein?”

Some among the press, U.N. member states, and opponents of U.S. policy toward Iraq have demanded a “smoking gun” in Iraq before commencing U.S. military action. The “smoking gun” search puts Saddam Hussein in the driver’s seat, and conditions the President’s freedom of movement, with regard to Iraq options, on Saddam’s skill at concealing evidence of violations from international inspectors.

As National Security Adviser Condoleezza Rice said on CNN's "Late Edition" on September 9, 2002: "There will always be some uncertainty about how quickly [Iraq] can acquire nuclear weapons. But we don't want the smoking gun to be a mushroom cloud."

It is unrealistic to expect inspectors to find carefully-concealed evidence of violations in the desolate reaches of a hostile nation that is, as President Bush pointed out, as large as California. There is no single "smoking gun." Rather, there are many smaller ones. The situation in Iraq is similar to a puzzle with two-thirds of the pieces in place. What we do not have is the box with the picture on it.

Additional Considerations Relevant to Iraq's Defiance of Obligations

Far from being a "diversion" from the war on terrorism, Iraq under Saddam Hussein is instead a major front in that war. Victory on that front is critical, both because of its bearing on our own national security, and because of what it will mean to the region and the salutary message it will send to Iran, North Korea, and other terrorist regimes. Secretary of State Powell told heads of state at the World Economic Forum in Davos, Switzerland, on January 26:

"Saddam should tell the truth, and tell the truth now. The more we wait, the more chance there is for this dictator with clear ties to terrorist groups, including al Qaeda, more time for him to pass a weapon, share a technology, or use these weapons again."

Yet it does not weaken the arguments for strong action against Saddam Hussein to acknowledge that Iraq and al Qaeda are not the same, and that each presents a different threat. Iraq is a terrorist state. Al Qaeda, at best, is an irregular armed terrorist group without the attributes or responsibilities of statehood. Indeed, it would be a grave error to attribute such responsibilities to al Qaeda since it could confer additional status on unlawful combatants.

To date, the Administration has not argued that Iraq today poses the same kind of threat that al Qaeda does. But even giving Saddam Hussein the benefit of the doubt – despite his bloody record of aggression and using unconventional arms against his own population and neighbors – at best, it may be said safely that Iraq today is where Germany was circa 1934: a continuing palpable threat to its neighbors, a country with a track record of international lawlessness and the desire to back it up with weapons of mass destruction, and a belligerent dictatorship facing pitiful international resistance to its desire for *lebensraum*.

The question, therefore, is not whether Iraq poses an “imminent” danger, but rather how long we can continue to gamble that the danger will not escalate to the point that when – inexorably – we must confront the threat, it has become a nuclear threat.

Our current experience with North Korea has settled the question. It would be irresponsible to stand aside while Iraq develops weapons programs to the same level apparently achieved by North Korea – in spite of a blizzard of regional and international undertakings, solemnly concluded to prevent precisely what happened, and just as solemnly ignored by Pyongyang. We cannot afford to roll the dice again.

Multilateral or Unilateral? Breaking New Ground

Some policymakers maintain that “internationalism” is the only justified approach to Iraq, and that what Senator John Kerry reportedly called “[b]lustering unilateralism” is wrong. According to the January 24th *Washington Times*, Senator Kerry remarked at Georgetown University on January 23 that “with creative leadership, the U.S. can enlist [its] allies in a sustained multilateral campaign to build bridges between the community of democracies and the greater Middle East.”

No one denies that it is preferable to have other countries agree with U.S. actions, and that it is useful sometimes to have them join us. But let us parse Senator Kerry’s point. In the first place, many foreign nations are not capable of contributing militarily to action in Iraq, so their participation is not essential. In the second place, obtaining their “approval” carries its own problems. Indeed, seeking such approval *may actually be counterproductive* if the cost for agreement is too high, and if by doing so we advance the proposition that our actions are only legitimate (or more legitimate) to the extent that an international “blessing” is secured for what we conclude must be done. In short, there are costs for multilateralism, just as there are costs for unilateralism.

Faced with pressure to opt exclusively for a multilateral approach, in the present situation a U.S. failure to assert a right of independent (or collective) action outside the U.N. system will set a dangerous precedent and hobble U.S. capacity to protect itself in the future from unconventional attack. As Charles Krauthammer said in Washington, D.C., on December 4, 2002:

“The problem is that appeasing multilateralism does not assuage it; appeasement only legitimizes it. Repeated acquiescence on provisions that America deems injurious reinforces the notion that legitimacy derives from international consensus. This is not only a moral absurdity. It is injurious to the U.S. because it undermines any future ability of the U.S. to act unilaterally, if necessary.

“Coalitions are not made by superpowers going begging hat in hand; they are made by asserting a position and inviting others to join. What even pragmatic realists fail to understand is that unilateralism is the high road to multilateralism.”

Conclusion

Given that Saddam Hussein has refused to abide by his obligations to disarm under international supervision, as required in the 1991 Gulf War cease-fire and succeeding U.N. resolutions, no further authorization is required before the United States and its allies may commence military action against Iraq to enforce its obligations. Neither a “smoking gun” nor an imminent threat to the territory of the United States is required. There is no evidence to suggest Saddam Hussein is likely to comply if we just give him a little more time.

Finally, while it may be desirable to have multilateral “support” for U.S. operations, the United States will have what it needs militarily, and serious long-term negative implications would result from seeking international agreement as a *condition* to taking necessary action.

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