
ARTICLES

Untying the Gordian Knot: Evaluating the Legal Dimensions of the UN Weapons Inspection Programme in Iraq and Rethinking the Future

Rex J. Zedalis*

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Abstract: A variety of legal problems exist with the UN weapons inspection régime applicable to Iraq. These problems hinder the assurance that Iraq can be disarmed of the ability to produce biological or chemical weapons. Given this fact, the stalemate produced by the mid-December 1998 air strikes against that country might be best resolved by a reconfigured inspection program which aims at addressing Iraqi weapons of mass destruction efforts in the context of global security policy regarding such weaponry, with due account taken of the desires of Iraq's neighbors and the importance of reintegrating that nation into the world community.

1. INTRODUCTION

Prior to mid-December 1998, only two substantial military strikes had been launched against Saddam Hussein's Iraq following the 1991 conclusion of the Gulf War through Security Council Resolution 687.¹ The first was connected with the 1993 Iraqi development of an assassination plot aimed at then President George Bush.² The second was undertaken in 1996 to dissuade Iraq from continuing its use of force to suppress both Kurds living in the northern portion of

* Professor of Law and Director at the Comparative and International Law Center, University of Tulsa, Tulsa, United States of America; JSD (1987) and Cutting Fellow in International Law (1980-1981), Columbia University, New York, United States of America. In part, the title of this article is taken from a baroque classical composition by Sir Henry Purcell (1659-1695).

1. See Security Council Resolution 687, adopted 2 April 1991, UN Doc. S/RES/687 (1991), reproduced in 30 ILM 846 (1991). On Iraq's acceptance of the terms of the cease-fire, including those regarding weapons inspections, see Letter from the Foreign Minister of the Republic of Iraq to the Secretary-General and the President of the Security Council (6 April 1991), UN Doc. S/22456 (1991).
2. On that 26 June 1996 strike, see G. Ifill, *U.S. Fires Missiles at Baghdad, Citing April Plot to Kill Bush: Seeks a U.N. Session*, New York Times, 27 June 1993, at A1, col. 6; and T. Weiner, *Attack Is Aimed at the Heart of Iraq's Spy Network*, *id.*, at A1, col. 3.

the country, near the border with Turkey, and the Shiite religious minority in the South.³

In January-February, and again in November, of 1998 the international community stood on the cusp of a third substantial military strike,⁴ in both instances the precipitation coming from Iraq's refusal to comply fully with UN imposed inspection obligations regarding atomic, biological, and chemical weaponry (WMD or weapons of mass destruction).⁵ The 23 February 1998

3. This attack was code named Operation Desert Strike. See http://www.fas.org/man/dod-101/ops/desert_strike.htm. On the attack, see S. Lee Myers, *U.S. Attacks Military Targets in Iraq: Pentagon Says Command Site Was Struck*, *New York Times*, 3 September 1996, at A1, col. 6; S. Kinzer, *Iraqi Troops Said to Round Up Kurd Leaders*, *id.*, at A1, col. 1; A. Mitchell, *U.S. Launches Further Strike Against Iraq After Clinton Vows He Will Extract 'Price': U.S. Continuing Bid to Smash Air Defense*, *New York Times*, 4 September 1996, at A1, col. 6; and E. Sciolino, *Facing Saddam, Again*, *id.*, at A1, col. 4. It should also be noted that smaller scale bombing and cruise missile strikes were carried out against Iraq during January of 1993, primarily in defending the southern no-fly-zone, and destroying certain suspected nuclear weapons facilities. On these strikes, see http://www.fas.org/man/dod-101/ops/southern_watch.htm.
4. On the January-February 1998 situation, see J. M. Goshko, *Iraq Expels 6 American Inspectors; U.N. Orders Team to Leave Baghdad*, *Washington Post*, 14 November 1997, at A1; *Albright Suggests Iraq Hiding Arms Data*, Reuters, 16 November 1997, available at http://www.tigbitties.com/headlines/971116/politics/stories/albright_2.html; J. Wolf (Reuters), *U.S. Vows Swift Reply to Any Iraq U-2 Shots*, 16 November 1997, available at http://www.tigbitties.com/headlines/971116/politics/stories/usiraq_3.html; J. Goshko, *Security Council Debate Reflects Continued Split on Iraq*, *Washington Post*, 19 December 1997, at A20; S. Erlanger, *Albright Skeptical of Diplomatic Resolution on Iraq*, *New York Times*, 31 January 1998, available at <http://www.nytimes.com/library/world/013198iraq-albright.html>; and C. S. Wren, *Top U.N. Arms Monitor is Said to Call Iraqi Plans to End Crisis Inadequate*, *New York Times*, 6 February 1998, available at <http://www.nytimes.com/library/world/020698iraq-un-council.html>. On the November 1998 situation see, Philip Shenon, *U.S. Asserts It Will Consider Raids Unless Iraq Backs Down*, *New York Times*, 2 November 1998, at A12, col. 5; B. Crossette, *Iraq Yields Slightly in Monitoring Dispute*, *New York Times*, 3 November 1998, at A6, col. 4; S. Lee Myers, *U.S. Says It Is Able to Strike Iraq From the Persian Gulf*, *New York Times*, 4 November 1998, at A12, col. 1; S. Lee Myers, *U.S. Works to Win Allies' Support for Using Force Against Iraq*, *New York Times*, 5 November 1998, at A16, col. 1; B. Crossette, *U.N., Avoiding Talk of Force, Criticizes Iraq on Arms Team*, *New York Times*, 6 November 1998, at A1, col. 1; S. Lee Myers, *U.S. Moves Ahead With Preparation for Strikes on Iraq but Sets No Deadline*, *id.*, at A8, col. 1; S. Lee Myers, *2 U.S. Options For Iraq Strike: Swift or Larger*, *New York Times*, 9 November 1998, at A1, col. 1; S. Lee Myers, *Raising Pressure on Iraq, U.S. Rules Out Talks on Arms Search*, *New York Times*, 11 November 1998, at A12, col. 1; J. M. Broder, *Clinton Is Sending Bombers and G.I.s to Persian Gulf*, *New York Times*, 12 November 1998, at A1, col. 6; S. Lee Myers, *U.S. Bolsters its Air Forces at Rapid Rate in Gulf Area*, *id.*, at A12, col. 1; and T. Weiner, *Response to Baghdad: Military Muscle May Not Suffice*, *id.*, at A12, col. 1.
5. For factual background on the January-February crisis, see J. M. Goshko & T. W. Lippman, *Iraq Blocks U.S. Arms Inspectors: Incident is Second in 4 Days*, *Washington Post*, 3 November 1997, at A1; D. Evans, *U.N. Arms Inspector Says Iraq Still Blocks Access to Key Sites*, *Washington Post*, 16 December 1997, at A16; C. S. Wren, *U.N. Weapons Inspection Chief Tells of Iraqi Tricks*, *New York Times*, 27 January 1998, available at <http://www.nytimes.com/library/world/012798iraq-un-butler.html>; S. Erlanger, *Britain to Urge U.N. to Find Iraq in Violation of Arms Terms*, *New York Times*, 1 February 1998, available at <http://www.nytimes.com/library/world/020198iraq-rdp.html>; E. Schmitt, *Cohen Promises "Significant" Military Campaign Against Iraq If Diplomacy Fails*, *New York Times*, 4 February 1998, available at <http://www.nytimes.com/library/world/020498iraq-congress.html>; E. Thomas, *Crisis in Iraq*, 30 *Newsweek* (1998), at 34-37. On the November 1998

memorandum of understanding between Iraq and UN Secretary General Kofi Annan served to permit a so-called 'climb down' from tensions in the earlier of the cases,⁶ and the 14 November 1998 letter to the Secretary General from Iraq's Foreign Minister, Tariq Aziz, as supplemented by the letter of the same day from Iraqi UN Ambassador, Nizar Hamdoon, to the President of Security Council, averted action in the latter case.⁷ On 16 December 1998, however, after the disclosure of information indicating Iraqi non-compliance with its 14 November commitment, a massive military strike was launched against significant targets under the control of Saddam Hussein.⁸

The continuing problem causing the hostility between Iraq and the United Nations concerns Saddam Hussein's belief that the world body, primarily at the behest of the United States and Great Britain, refuses to move with clarity and swiftness towards lifting the economic sanctions that have punished his nation for more than seven years.⁹ Conversely, of course, is the concern that if sanctions are lifted before all of Iraq's Weapons of Mass Destruction have been accounted for and destroyed, and its ability to reconstitute such eliminated, then

crisis, see P. Shenon, *U.S. Asserts It Will Consider Raids Unless Iraq Backs Down*, New York Times, 2 November 1998, at A12, col. 5; B. Crossette, *Iraq Yields Slightly in Monitoring Dispute*, New York Times, 3 November 1998, at A6, col. 4; S. Lee Myers, *U.S. Says It Is Able to Strike Iraq From the Persian Gulf*, New York Times, 4 November 1998, at A12, col. 1. See also, British Foreign and Commonwealth Office, *The Iraqi Threat and the Work of UNSCOM*, available at <http://www.britain-info.org/bis/fordom/middlee/4Feb98-2stm>.

6. For the memorandum of understanding, see *How Accord Will Work: Special Group is Set Up*, New York Times, 24 February 1998, at A8, col. 5. An analysis of many of the important legal issues raised by the memorandum appears in R. J. Zedalis, *An Analysis of Some of the Principal Legal Questions Relating to U.N. Weapons Inspection in Iraq*, 67 Nordic Journal of International Law 249 (1998).
7. See text of the letter from H.E. Mr. Tariq Aziz, Deputy Prime Minister of the Republic of Iraq to H.E. Mr. Kofi Annan, Secretary-General of the United Nations, 14 November 1998, available at <http://www.iraqi-mission.org/aziz111498.html> (Iraqi version); Letter dated 14 November 1998 from Deputy Prime Minister of Iraq addressed to the Secretary-General, UN Doc. S/1998/1078, Annex, 14 Nov. 1998 (UN version as annexed to 14 Nov. 1998 letter from Iraqi UN Ambassador Nizar Hamdoon to the Secretary-General). For the letter from Ambassador Hamdoon to the President of the Security Council, Deputy US Ambassador Peter Burleigh, available at <http://www.iraqi-mission.org/hamdoon111498.html> (Iraqi version); Letter dated 14 November 1998 From the Permanent Representative of Iraq to the United Nations Addressed to the President of the Security Council, UN Doc. S/1998/1079, 14 November 1998 (UN version substantially the same).
8. Code named Operation Desert Fox, the strike involved the use of both sea and air launched cruise missiles (SLCMs and ALCMs), as well as aircraft delivered conventional ordinance. See F. X. Clines & S. Lee Myers, *Biggest Attack Since '91 War - Britain Gives Support*, New York Times, 17 December 1998, at A1, col. 5. See also P. Shenon, *Strike Aims to Cripple Weapons Centers*, New York Times, *id.*, at A15, col. 3. On the strike concluding after four days, see S. Lee Myers, *U.S. and Britain End Raids on Iraq, Calling Mission a Success*, New York Times, 20 December 1998, available at <http://www.nytimes.com/library/world/mideast/122098iraq-rdp.html>.
9. On the impact of the sanctions, see Press Release WHO/16, 27 Feb. 1997, available at <http://www.who.int/inf-pr-1997/en/pr97-16.html> (availability of medical care); <http://www.unicef.org/newsline/97pr60.htm> (malnutrition). See also, P. Lewis, *U.N. Says Iraq Will Have More to Spend on Food and Medicine*, New York Times, 19 August 1998, at A7, col. 1; N. Hamdoon (Iraq's UN Ambassador), *A Black Cat in a Dark Room*, New York Times, 20 August 1998, at A23, col. 1.

leverage to accomplish those ends will be compromised. The November 1998 crisis, which eventuated in the strike of the 16th of December, grew out of these divergent perspectives. On the 5th of August, and again on the 31st of October, Iraq first limited weapons inspections to the use of existing on-site monitoring equipment,¹⁰ and then later refused to co-operate at all with authorized inspection personnel.¹¹ The US worked quietly through the Security Council to build support for the use of military force to compel Iraq to renew adherence to its obligations. This seemed to mark a more 'internationalist' strategy than was evidenced in the crisis that started 1998.¹² Indeed, almost simultaneous with the ap-

10. See B. Crossette, *Iraq's Sudden Rejection of Arms Scrutiny Brings U.S. Warning*, New York Times, 5 August 1998, at A9, col. 1; B. Crossette, *Security Council Closes Its Ranks Against Baghdad*, New York Times, 7 August 1998, at A1, col. 3; B. Crossette, *Toughening Stand on Weapons, Iraq Foils Long-term Monitoring: New Confrontation Worries Chief U.N. Inspectors*, New York Times, 13 August 1998, at A1, col. 1. From the time of the 23 February 1998 memorandum of understanding between Kofi Annan and Iraq, Saddam Hussein had faced several difficulties with the UN, including a negative UNSCOM report in April, revelations about Iraqi weaponization of the nerve agent VX, and air strikes against anti-aircraft facilities in southern Iraq. See *Report of the Executive Chairman on the Activities of the Special Commission Established by the Secretary-General Pursuant to Paragraph 9(b)(i) of Resolution 687 (1991)*, UN Doc. S/1998/332, 16 April 1998; C. S. Wren, *Iraq Insists It's Being Candid With U.N. Arms Inspectors*, New York Times, 23 June 1998, at A6, col. 5; C. S. Wren, *Lab Reports of Iraq Poison Bolster Case For Sanctions*, New York Times, 24 June 1998, at A9, col. 1; C. S. Wren, *U.N. Arms Inspector Firm on Iraq Nerve Gas but Accepts New Tests*, New York Times, 25 June 1998, at A10, col. 1. For further developments concerning the VX charge, see relevant reports *infra* note 11. On the strike against the anti-aircraft battery, see S. Lee Myers, *U.S. Jet Fighter Fires Missile at an Iraqi Antiaircraft Battery*, New York Times, 1 July 1998, at A3, col. 1.
11. See P. Shenon, *U.S. Asserts it Will Consider Raids Unless Iraq Backs Down*, *supra* note 4. On the events between the decision of the 5th of September by Iraq to confine weapons inspections to the use of existing monitoring equipment and the decision of the 31st of October to cease all co-operation, see P. Lewis, *U.N. Council Prepares Mild Reply to Iraq*, New York Times, 17 August 1998, at A7, col. 1; P. Lewis, *U.N. Council Renews Sanctions After Iraq Expresses Defiance*, New York Times, 21 August 1998, at A8, col. 3; A.M. Rosenthal (Op-Ed), *Scott Ritter's Decision*, New York Times, 28 August 1998, at A23, col. 5; E. Schmitt, *U.N. Arms Inspector Who Quit Is Told He Can't Make Policy*, New York Times, 4 September 1998, at A6, col. 5; B. Crossette, *Chief U.N. Inspector Reports More Interference by Iraq*, New York Times, *id.* at col. 3; B. Crossette, *Top U.N. Arms Inspector Answers Criticism*, New York Times, 9 September 1998, at A8, col. 1; B. Crossette, *U.N. Keeps Sanctions on Iraq, Citing Its Balking of Monitors*, New York Times, 10 September 1998, at A10, col. 3; B. Crossette, *Iraqi Official Criticizes U.N. Chief Over Role in Arms Inspection*, New York Times, 16 September 1998, at A11, col. 1; B. Crossette, *Top Iraqis Affirm Threat to End Arms Checks*, New York Times, 17 September 1998, at A13, col. 1; B. Crossette, *Iraq Says It Won't Let U.N. Resume Spot Arms Checks*, New York Times, 29 September 1998, at A11, col. 1; Y. M. Ibrahim, *U.S. and Iraq Fail to End Arms Impasse*, New York Times, 8 October 1998, at A5, col. 1; Y. M. Ibrahim, *France Seeks Talks on Iraqi Chemical Tests*, New York Times, 9 October 1998, at A11, col. 1; Y. M. Ibrahim, *U.N. Cajoles Iraq to Cooperate on Weapons*, New York Times, 14 October 1998, at A10, col. 4; Y. M. Ibrahim, *Issues at U.N. Again: Iraq, Nerve Gas and Weapons*, New York Times, 23 October 1998, at A5, col. 1; and Y. M. Ibrahim, *Panel Studying Iraq Missiles Is of 2 Minds on Nerve Gas*, New York Times, 27 October 1998, at A8, col. 5.
12. On the twists and turns of policy towards Iraq, see S. Erlanger, *U.S. Retreats From Vow to Use Force if Iraq Blocks Inspectors*, New York Times, 14 August 1998, at A4, col. 3; P. Lewis, *U.N. Council Prepares Mild Reply to Iraq*, New York Times, 17 August 1998, at A7, col. 1; B. Crossette, *U.S. and Iraq Toughen Stances on Weapons Inspection*, New York Times, 25 August 1998, at A9,

parent solution to the November impasse, talk began in some quarters about openly seeking to undermine Saddam Hussein's ability to remain in power.¹³ Iraqi refusal to supply UN Special Commission (UNSCOM) chief inspector Richard Butler with documents on weaponization of biological and chemical agents during its earlier Eight Year War (1980-88),¹⁴ and its blocking of entry into specific suspected sites,¹⁵ led to the conclusion Saddam Hussein had no intention of adhering to his commitment of the 14th of November. In the end, this once again moved the US and its ally, Great Britain, away from internationalism, and in the direction of a unilateral military solution.

This essay argues that a policy shift in dealing with Iraq's position on weapons of mass destruction may be worth serious consideration. The alternative of movement in the direction of attempting to topple Saddam raises as many questions as it answers.¹⁶ To be sure, resuscitation of the UN inspection process after the most recent military action may prove a long and arduous challenge.¹⁷ But whether or not that particular process is revived, insistence upon compliance

col. 1; (Editorial) *Illusory Inspections in Iraq*, New York Times, 28 August 1998, at A22, col. 1; G. A. Geyer (Op-Ed), *No Retreat?: Clinton Administration Negates Results of Gulf War*, Tulsa World, 2 September 1998, at A15, col. 3; T. Oliphant (Op-Ed), *Saddam's Costly Provocation*, Tulsa World, 3 September 1998, at A19, col. 3; P. Shenon, *Rebuking Ex-Arms Inspector, Albright Defends U.S. Role*, New York Times, 10 September 1998, at A10, col. 3.

13. See W. Hoge, *Blair Backs Clinton's Call for Iraqi Opposition Groups to Topple Hussein*, New York Times, 18 November 1998, at A10, col. 1; J. Risen & B. Crossette, *Even U.S. Sees Iraq Opposition as Faint Hope*, New York Times, 19 November 1998, at A1, col. 1; and B. Crossette, *Pressing for Iraqi's Overthrow, U.S. Appeals for Arab Support*, New York Times, 9 December 1998, at A8, col. 3.
14. See *Clinton Cautious on Iraq*, Tulsa World, 22 November 1998, at A1, col. 1; B. Crossette, *Iraq Backtracks in New Defiance Over Inspections*, New York Times, 23 November 1998, at A1, col. 6; B. Crossette, *Iraq Writes U.N. a 3rd Time Explaining Why It's Resisting*, New York Times, 24 November 1998, at A10, col. 1; and B. Crossette, *Security Council Gets Iraq Report and Takes No Action*, New York Times, 25 November 1998, at A12, col. 3. On the resumption of weapons inspections in the immediate aftermath of the crisis of the 14th of November, see D. Jehl, *Arms Inspections Get Cool Reception in Iraq*, New York Times, 18 November 1998, at A10, col. 3; *Normal Day in Baghdad for U.N. Teams*, New York Times, 19 November 1998, at A6, col. 1; and (Associated Press) *Weapons Teams pay Surprise Visit*, Tulsa World, 22 November 1998, at A3, col. 1. On the Eight Year War itself, see D. Hiro, *The Longest War: The Iran-Iraq Military Conflict* (1991).
15. See B. Crossette, *Ruling Party in Iraq Bars Inspectors From Offices*, New York Times, 10 December 1998, at A6, col. 1; and B. Crossette, *Iraq Again Hindering Inspectors, U.N. Told*, New York Times, 11 December 1998, at A6, col. 3.
16. See (Editorial) *Unseating Saddam Hussein*, New York Times, 19 November 1998, at A30, col. 1; J. Risen, *U.S. Calling for New Iraq Government, But Has No Plan to Oust Current One*, New York Times, 23 December 1998, available at <http://www.nytimes.com/library/world/mideast/122398iraq-opposition.html>.
17. See generally S. Kinzer, *Iraq Rebuffs France on Plan for Compromise on U.N. Weapons Inspections*, New York Times, 22 December 1998, available at <http://www.nytimes.com/library/world/mideast/122298iraq-inspections.html>. See also B. Crossette, *U.N. Struggles With Policy Toward Saddam*, New York Times, 24 December 1998, available at <http://www.nytimes.com/library/world/mideast/122498iraq-un.html> (reviewing Russian proposed resolution indicating the Security Council remains in control, urging Kofi Annan to initiate efforts, and providing the Council shall determine what to do about a resumption of inspections).

with the essential obligations it reflects¹⁸ leaves little doubt that, in the absence of some sort of policy shift, recurring showdowns with Iraq should be expected.¹⁹ United Nations Secretary General Kofi Annan was all too cognizant of the potential for such when he opined, at the time of Iraq's decision of the 5th of August, that it might be appropriate to step back and 'reassess' the entire WMD inspection programme.²⁰ Consistent with the Secretary General's suggestion, the thesis advanced herein is that the inspection programme UNSCOM has administered suffers from flaws which present doubts as to whether it can ever eliminate Iraqi atomic, biological, and chemical weapons capability. In view of that, it would not be entirely without merit to consider some sort of phased 'wind down' from the current inspection régime, a policy shift that restructures the régime and defuses the overall situation.

Perhaps as much as anything else, a shift away from the current inspection régime would provide a certain coherency regarding the position of the United States on foreign country possession of, or programmes aimed at configuring, a WMD arsenal. Without recourse to the distinction that Iraq has employed biological and chemical armaments in the past,²¹ it would seem difficult to explain why that nation must remain subject to scrutiny targeting the eradication of its weapons of mass destruction, while others escape comparable treatment. Ironically, during the very week Iraq's refusal to turn over requested documents to UNSCOM chief Richard Butler raised concerns about whether that nation was going back on its commitment of the 14th of November, the US was having to address possible violations by North Korea of a 1994 agreement to refrain from weapons-level nuclear activity.²² And within three weeks of the refusal, stories began to appear about Iranian efforts to augment their own WMD programs with scientists from the former Soviet Union.²³ Yet no one insisted North Korea and Iran be subjected to an inspection régime paralleling that applied to Iraq. Con-

18. See J. Risen, *U.S. Stands Firm in Calling for U.N. Inspections in Iraq*, New York Times, 24 December 1998, available at <http://www.nytimes.com/library/world/mideast/122498iraq-us.html> (US national security adviser Sandy Berger indicating that without compliance with WMD inspection obligations, sanctions will not be lifted).
19. On evidence of some sort of post-14 November 1998 policy shift in the United States, see B. Crossette & S. Erlanger, *Hussein Likely to Break Vow, U.S. Says*, New York Times, 17 November 1998, at A1, col. 6; and J. M. Broder, *Iraq Gets Reprieve as U.S. Tries Policy of Patience*, New York Times, 24 November 1998, at A1, col. 2.
20. See B. Crossette, *Security Council Closes Its Ranks Against Baghdad*, New York Times, 7 August 1998, at A1, col. 3, especially the continuation at A6, col. 4.
21. On such use against foreign forces and its own citizens, see L. A. Cole, *The Specter of Biological Weapons*, Scientific American (1996), available at <http://www.sciam.com/1296issue/1296cole.html>; *Transcript: Gosden Senate Testimony on Chemical Weapons Threat*, 22 April 1998, available at <http://www.usia.gov/regional/nea/gulf/gosd0422.html>; Human Rights Watch, *Iraq's Crime of Genocide: The Anfal Campaign Against the Kurds* (1995).
22. See P. Shenon, *North Korea Offers a Look at a Secret Plant, at a Steep Price*, New York Times, 19 November 1998, at A15, col. 1.
23. See J. Miller & W. J. Broad, *Iranians, Bioweapons in Mind, Lure Needy Ex-Soviet Scientists*, New York Times, 8 December, 1998, at A1, col. 1.

sidered in the light of the 1997 US Department of Defense study indicating that as many as 25 nations may have or may be developing at least some form of WMD and delivery capacity,²⁴ one has to wonder if it is more so retribution for the Gulf War, than an international policy seeking the elimination of atomic, biological, and chemical weapons, which is driving retention of the current UN inspection programme. Certainly, retribution is an understandable human impulse. However, it may be harmful, if it is allowed to dictate the continuation of a programme presenting the high probability of repeated military confrontation, while remaining unable to guarantee long-term and persisting deprivation of an Iraqi weapons of mass destruction capability.

2. IRAQI WMD DEVELOPMENT IN FOREIGN STATES

The foundation of the UN weapons inspection programme is Security Council Resolution 687,²⁵ with the programme's specific details spelled out in a variety of different documents issued by the Secretary-General and adopted by the Security Council.²⁶ The most basic of these documents for UNSCOM is S/22871/Rev.1.²⁷ One of the more important problems with the plan set forth therein concerns the possibility of Iraqi attempts to circumvent inspections in

24. See US Department of Defense, *Proliferation: Threat and Response* (1997), available at <http://www.defenselink.mil/pubs/prolif97/secii.html#conclusion>.

25. See Security Council Resolution 687, adopted 2 April 1991, UN Doc. S/RES/687 (1991), reproduced in 30 ILM 846 (1991).

26. See Plan for the Implementation of Relevant Parts of Section C of Security Council Resolution 687 (1991); Report of the Secretary-General, UN Doc. S/22614, 17 May 1991 (indicating that the weapons plan consists of three stages: collection and assessment of information, destruction of existing weapons and related material, and ongoing monitoring and verification – and setting forth details on the first two); Plan for Future Ongoing Monitoring and Verification of Iraq's Compliance With Relevant Parts of Section C of Security Council Resolution 687 (1991); Report of the Secretary-General, UN Doc. S/22871/Rev.1, 2 October 1991 (addressing the third of the stages); Plan for Future Ongoing Monitoring and Verification of Iraq's Compliance With Paragraph 12 of Part C of Security Council Resolution 687 (1991) and With the Requirements of Paragraphs 3 and 5 of Resolution 707 (1991), UN Doc. S/22872/Rev.1, 20 September 1991 (the International Atomic Energy Agency's long-term plan); Memorandum of Understanding between the United Nations and the Republic of Iraq (MOU), reproduced in *How Accord Will Work: Special Group Is Set Up*, New York Times, 24 February 1998, at A8, col. 5 (MOU on inspections of so-called Presidential Sites); Letter dated 9 March 1998 from the Secretary-General Addressed to the President of the Security Council, UN Doc. S/1998/208, 9 March 1998, available at <http://www.un.org/Docs/sc/letters/1998/s1998208.htm> (providing details on inspections of Presidential Sites). On Security Council adoption of UN Doc. S/22614, see Security Council Resolution 699, 17 June 1991, para. 1, available at <http://www.fas.org/news/un/iraq/sres/sres0699.htm>. On adoption of UN Doc. S/22871/Rev.1 and S/22872/Rev.1, see Security Council Resolution 715, UN Doc. S/RES/715, 11 October 1991, at para. 1, available at <http://www.fas.org/news/un/iraq/sres/sres0715.htm>. On adoption of the MOU, see Security Council Resolution 1154, UN Doc. S/RES/1154, 2 March 1998, available at <http://www.fas.org/news/un/iraq/sres/sres1154.htm>.

27. See UN Doc. S/22871/Rev.1, *supra* note 26.

their own nation by relocating to some other foreign state all, or a portion of the work undertaken on weapons of mass destruction. Obviously, the 20th of August 1998 US attack on suspected WMD facilities located in the Sudan and thought to be tied to Afghan-headquartered international terrorist Osama bin Laden²⁸ suggests that such a tactic is far more than imaginary. An inspection régime that seeks to blunt weapons development, but is limited to activities taking place within the boundaries of the party subject to its obligations, is open to being side-stepped. Today, the lines between both rogue nations and terrorist organizations have become blurred. As a consequence, the potential for cross-border weapons development poses a real threat.

Paragraph 13(a) of the UNSCOM inspection plan speaks to the matter of Iraq's commitment regarding weapons of mass destruction. Among other things, it indicates Iraq shall not "possess, develop, [...] or otherwise acquire" biological or chemical weapons, agents or stocks for such, or things related to their research, development, or production.²⁹ Paragraph 15 follows by providing that, in

28. See F. Haq (Inter Press Service), *Politics-UN: Sudan, Afghanistan Struggle for Response to Attacks*, available at http://www.oneworld.org/ips2/aug98/02_11_001.html. The explanation provided by US officials for the cruise missile strike against the Al Shifa pharmaceutical plant in Khartoum, Sudan related to alleged links between Sudan's Military Industrial Corporation and the plant itself. The US argued that the Military Industrial Corporation had been funded by Osama bin Laden, had connections with the Al Shifa plant, that Al Shifa was involved in the production of Empta, a VX nerve gas precursor, and that the plant had ties to Iraq's chemical weapons activities. See S. Lee Myers, *U.S. Says Iraq Aided Production of Chemical Weapons in Sudan*, *New York Times*, 25 August 1998, at A1, col. 1. By early 1999, a report prepared by a private international security company, Kroll Associates, indicated the existence of evidence that Al Shifa had made exports to Iraq of human pharmaceuticals, but not of chemical weapons components. See J. Risen & D. Johnston, *Experts Find No Arms Chemicals at Bombed Sudan Plant*, *New York Times*, 9 February 1999, at A3, col. 1. The report, which was prepared for the Washington D.C. law firm of Akin, Gump, Strauss, Hauer & Feld, hired by the owner of the plant, Sudanese-born, Saudi businessman, Salih Idris, who is exploring all avenues to secure compensation for the attack, including the avenue of litigation, further indicates that Idris does have connections to the Sudanese Military Industrial Corporation, though not by way of a link between the Corporation and Idris's Al Shifa plant. *Id.* See also J. Risen, *New Evidence Ties Sudanese to Bin Laden, U.S. Asserts*, *New York Times*, 4 October 1998, at A11, col. 1 (ties between Idris, bin Laden, and the Egypt-based terrorist organization, Islamic Jihad). Unrelated investigations conducted under the supervision of Professor T. D. Tullius, chair of Boston University's chemistry department, and also hired by Mr. Idris, suggest neither Empta, nor Empa, a subsidiary product resulting from the breakdown of Empta, appeared in soil and septic tank samples taken from various locations where the plant was previously situated. See J. Risen & D. Johnston, *Experts Find No Arms Chemicals at Bombed Sudan Plant*, *supra* in this note. Representatives of the US National Security Council continue to insist the cruise missile strike was ordered on the basis of soil sample evidence of chemical weapons production, and evidence of links to Osama bin Laden. *Id.* Earlier, however, US Secretary of Defense, W. Cohen, acknowledged the deficiency of some of the data relied upon to order the strike. See T. Weiner & S. Lee Myers, *U.S. Notes Gaps in Data About Drug Plant but Defends Attack; Sudan Envoy is Angry*, *New York Times*, 3 September 1998, at A6, col. 1 (US not originally aware Al Shifa produced legitimate pharmaceuticals, or of mere 'indirect' links between the plant and bin Laden). On the strike enhancing bin Laden's stature, see T. Weiner, *Missile Strikes Against bin Laden Won Him Esteem in Muslim Lands, U.S. Officials Say*, *New York Times*, 8 February 1999, at A13, col. 1.

29. See UN Doc. S/22871/Rev.1, *supra* note 26, at 4, para. 13(a).

order to achieve this and the other goals of the plan, the rules and measures articulated throughout the plan and its annexes are to be unconditionally observed by the government of Iraq.³⁰ In the context of addressing national implementation measures, paragraphs 20(a) and (b) then declare Iraq must adopt legal provisions which prohibit all natural or juridical persons under its “jurisdiction and control” from engaging in conduct contrary to what the plan itself proscribes, and must enact penal legislation subjecting such conduct to punishment.³¹

Making clear that any such measures of national implementation adopted by Iraq are to extend to natural and juridical persons under its authority, wherever such persons may be located, paragraphs 20(a) and (b) plainly state the measures are to apply to acts committed “anywhere”, if violative of the strictures established by the inspection régime.³² Such a straightforward statement supplements the much more general language in paragraph 13(a)’s basic prohibition regarding WMD. That language’s reference to Iraq being prohibited from possessing, “develop[ing], [...] or otherwise acquir[ing]” biological or chemical weapons, or associated items,³³ is susceptible to the interpretation of prohibiting development or acquisition even outside of Iraq itself. With the reference to measures of national implementation extending to acts undertaken “anywhere”³⁴ by those under the jurisdiction or control of Iraq, paragraphs 20(a) and (b) eliminate any possibility of confusion. Whether activities violative of the inspection régime’s basic prohibition are engaged in by Iraqi personnel under the supervision of the Iraqi government, or by any other entity subject to the jurisdiction or control of Iraq, the activities are not to escape condemnation simply because they are carried on within the borders of some foreign state.

In spite of the language in paragraphs 20(a) and (b), two problems exist on this front. First, according to the report submitted by UNSCOM chief inspector Richard Butler immediately before the 16 December 1998 attack launched by the US and Great Britain, Iraq has yet to adopt national implementation measures.³⁵ As a consequence, the most authoritative statement in the inspection régime about Iraqi biological or chemical weapons activities undertaken in a foreign state is the broad language of paragraph 13(a), language not entirely free from ambiguity.³⁶ It could be suggested that the reference in paragraphs 20(a) and (b) to the idea of striking at such activities when undertaken “anywhere” by

30. *Id.*, para. 15. UN Doc.S/22871/Rev.1 contains four annexes, one on the rules governing inspection, overflights and privileges and immunities; a second on chemical weapons activities; a third on biological weapons activities; and a fourth on ballistic missiles.

31. *Id.*, at 6, para. 20(a) and (b).

32. *Id.*

33. *Id.*, at 4, para. 13(a).

34. *Id.*, at 6, para. 20(a) and (b).

35. See UNSCOM Chairman Butler’s Report to the UN Secretary General (15 December 1998), section entitled ‘National Implementation Measures’, available at <http://www.fas.org/nu/iraq/s/butla216.htm>.

36. See UN Doc. S/22871/Rev.1, *supra* note 26, at 4, para. 13 (a).

entities under Iraqi jurisdiction or control implies an intent to extend the prohibitions of the régime beyond the borders of Iraq. That suggestion, however, overlooks the fact that such an extension is to come about as the result of the adoption of national implementation measures, not some unilateral imposition by the UN infringing upon the sovereign independence of another state.

Second, there is the more significant problem of the territorial scope of UNSCOM's inspection authority. Paragraph 17(b) provides that the Special Commission has the right to inspect without hinderance any site, facility, material, or item "in Iraq".³⁷ From this it is crystal clear no authorisation exists for inspections outside of Iraq, even for the purpose of assuring full and complete Iraqi compliance with its obligation not to develop or otherwise acquire WMD. Presumably, as with the preceding idea of connecting extraterritorial extensions of the weapons prohibition to national implementation measures, unilateral impositions, outside Iraq, of inspections authority by the UN were considered unacceptable. Thus, movement by Iraq towards the adoption of legislative measures designed to outlaw and punish weapons development in foreign states would be insufficient to assure against the acquisition of biological and chemical weapons. Nothing in the UNSCOM inspection régime authorizes the kind of on-site inspections necessary to guarantee that foreign development does not occur.

3. RECRUITING FOREIGN WMD SCIENTISTS

Given the sizable biological and chemical weapons programmes of the former Soviet Union, the collapse of its communist government left many hundreds of scientists, with extensive skill and experience in the field, available to be actively sought by lesser powers interested in developing an arsenal capable of making them into international players with which to be reckoned.³⁸ This situation highlights another of the problems inherent in the UNSCOM inspection régime. Specifically, the way it addresses the possibility of Iraq attempting to enhance its WMD efforts by recruiting or admitting immigrant scientists with proficiency in biological or chemical weaponry.

Paragraph 13(a) of the basic UN inspection plan contains language relevant to this problem, as well as to that of Iraqi research and development efforts carried on in foreign states. In particular, it provides that the prohibition on the possession, development, construction, or acquisition by Iraq of biological or chemical weapons, agents, or stocks, also covers related subsystems and com-

37. *Id.*, at 5, para. 17(b).

38. For indications that in the nuclear field, emigration of former Soviet scientists is a significant concern, see M. R. Gordon, *Russia and the U.S. Plan to Guard Atomic Secrets*, New York Times, 23 September 1998, available at <http://www.nytimes.com/library/world/europe/092398/soviet-unclear.html>. See also the article by Miller & Broad, *supra* note 23 and *The Other Biological-Weapons Worry*, New York Times, 28 November 1997.

ponents, “or any research”, development, support, or manufacturing facilities.³⁹ Standing alone, the prohibition on the possession or acquisition of “any research”⁴⁰ might be construed as including not just documentary or empirical research, but the individuals who have formulated, carried out, and evaluated research on WMD systems. It stands to reason that the personnel responsible for putting together and performing research in the biological and chemical weapons area have far greater value than any mere scientific data to those interested in initiating or supplementing weapons of mass destruction programmes. Surely, in many fields of endeavour, data alone can be virtually meaningless without sophisticated individuals capable of deciphering and applying such.

At least a couple of reasons exist for questioning the persuasiveness of such an interpretation, however. To start with, the precise language of paragraph 13(a)’s prohibition regarding the possession, development, construction, or acquisition of biological or chemical weapons, agents, stocks, related subsystems and components, “or any research”, ties the quoted reference to the term “facilities”.⁴¹ Again, this occurs in the context of the paragraph stating that the prohibition extends to weapons, agents, stocks, subsystems and components, “or any research”, development, support, or manufacturing “facilities”.⁴² The implication is that of prohibiting the possession, development, construction, or acquisition of biological or chemical weapon manufacturing facilities, support facilities, development facilities, and research facilities. The acquisition of foreign scientists with valuable WMD knowledge and skills would appear to remain untouched.

There is also another reason which undercuts interpreting the language of paragraph 13(a) as prohibiting Iraqi recruitment of WMD scientists from other states, a reason which seems to prevent the paragraph’s reference to “or any research” from being read in a way that links it with the term “facilities”.⁴³ Specifically, neither paragraph 16, which sets forth the particular information sharing obligations of Iraq, nor paragraph 17, which delineates the inspection rights and powers of UNSCOM, contain explicit language suggesting paragraph 13(a)’s basic prohibition extends to preventing Iraq from retaining or acquiring personnel with certain scientific and technical skills. Paragraph 16 speaks of Iraq having to provide information about activities, sites, facilities, material, and other items concerning its WMD obligations under Security Council Resolution 687.⁴⁴ While, admittedly, the reference to “activities”⁴⁵ might be understood as encompassing the activity of recruiting scientists, it seems the essential object of that reference was most likely the actual conduct of WMD and related develop-

39. See UN Doc, S/22871/Rev.1, *supra* note 26, at 4, para. 13(a).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*, at 4, para. 16.

45. *Id.*

ment. Paragraph 17 indicates inspectors have the right to examine, including through the use of surveillance and overflight, any Iraqi site, facility, activity, material, or other item.⁴⁶ Here, too, the emphasis seems to be on keeping track of the actual conduct of biological or chemical weapons development, not the constituting of a scientific personnel base. The cross-reference, at the very end of paragraph 16, to Section C⁴⁷ and Annex II⁴⁸ of the plan, both of which concern potential chemical weapons activity, and to Section D⁴⁹ and Annex III,⁵⁰ which deal with micro organisms, toxins, and equipment of potential use in biological weapons activities, does not suggest any contrary emphasis. As with the language in paragraphs 16 and 17, virtually everything that appears in Sections C and D, and Annexes II and III, focuses on concrete and tangible efforts in working with the equipment, components, precursors, or ingredients of biological or chemical weapons. There is absolutely nothing which clearly provides or suggests that the taking-in of foreign scientists with WMD skills is somehow impermissible.⁵¹

4. SIMULATED OR VIRTUAL RESEARCH

As observed above, paragraph 13(a) of the central document of the UNSCOM inspection régime prohibits the possession, development, construction, or acquisition of, among other things, biological or chemical weapons “research [...] facilities”.⁵² It should be noted that this prohibition, apart from failing to characterize as impermissible any Iraqi effort to supplement or expand its WMD programmes by inducing biological or chemical weapons scientists to leave nations like Russia and relocate in Iraq, also fails to outlaw explicitly efforts by Saddam Hussein’s government to undertake the simple act of research on such weapons. Despite the absence of such an unequivocal prohibition on research, paragraph 13(a)’s language making “research [...] facilities” impermissible certainly has the effect of rendering almost all WMD research something impossible to carry out. In large part, biological and chemical weapons research would seem to require the existence of facilities in which to conduct such research. Without facilities where empirical examination and the culturing of various toxins, pathogens, and debilitating agents can occur, where speculation and conjecture re-

46. *Id.*, at 5, para. 17.

47. *Id.*, at 8-9, paras. 28-33, for Section C.

48. *Id.*, at 19-25.

49. *Id.*, at 9-11, paras. 34-39, for Section D.

50. *Id.*, at 26-28.

51. It should be noted that Annex III, *id.*, at 27, para. 5(e), alludes to Iraq supplying information concerning training and support personnel connected with imports of certain suspicious items. But this does not even remotely suggest foreign WMD scientists are not to be sought out by Iraq.

52. See text accompanying *supra* notes 37-38.

garding the weaponization and distribution of microbes and chemicals can be tested and perfected, there is likely to be no hands-on research.

The increasing sophistication and rapid advancement of computer technology, however, holds out the potential that the prohibition on “research [...] facilities” may not be sufficient to stop all meaningful research into biological and chemical weaponry. It is true that there may be some question about the precise definition of the term ‘facilities’. In common parlance, though, it seems rather remote that most would consider it to include intelligent electronic equipment employed in scientific simulation and virtual weapons research. A site at which personnel worked with and manipulated the actual, tangible components or precursors of, or the equipment needed to produce, biological or chemical weapons would seem necessary. A single computer or network of computers on which research is executed at an intellectual level would seem less than what is essential to transgress paragraph 13(a)’s prohibition. Interestingly enough, such a conclusion appears consistent with the notion, advanced in the context of recruiting WMD scientists from foreign countries, that the thrust of the inspection plan is activities involving the real life equipment, components, precursors, or ingredients of biological or chemical weapons.⁵³

In Annex I of the Report of the Secretary-General S/22871/Rev.1, an annex that provides further detail regarding the conduct of inspections on prohibited activities, paragraph 5(a) states that inspectors have the right to examine anything, including “data” or “information”, found at an entered site.⁵⁴ At least two reasons prevent this declaration from being interpreted as striking at simulated or virtual research. In the first place, it no more explicitly characterizes such research as impermissible than other provisions of the inspection plan prohibit the recruitment of foreign scientists with biological or chemical weapons expertise.⁵⁵ Surely, more than inference would seem preferred when dealing with such a critically important subject. In the second place, paragraph 5(a)’s declaration concerning the examination of “data” or “information” must be kept in total context. Given that the references appear in an annex setting forth further details about UNSCOM inspections of prohibited activities, since there is no reason to otherwise believe data or information from simulated or virtual research is within the scope of what the inspection régime prohibits, there is absolutely no basis for concluding such research is subject to scrutiny, let alone impermissible.

If the weapons of mass destruction plan that obligates Iraq is intended to aim at completely eliminating that nation’s ability to undertake research activity of any sort having any connection in any way with WMD, then it is clear the plan has shortcomings. Now that is not to say this particular problem is guaranteed to

53. See text accompanying *supra* notes 44-45.

54. See UN Doc. S/22871/Rev.1, *supra* note 26, at 14, para. 5(a).

55. See text accompanying *supra* note 38-39, reviewing the interpretation of the significance of the reference to the term “activities” in para. 16 of the body of UN Doc. S/22871/Rev.1

prove a substantial threat to those worried about Saddam's biological and chemical weapons capacity. Research based on even the most sophisticated computer programs can surely lull one into a sense of false confidence. While simulated or virtual research may present innumerable life-like scenarios, and provide extensive preparatory experiences for those who might ultimately put together a biological or chemical weapons arsenal, the infinite vicissitudes of reality can quickly raise the spectre of the unanticipated, completely complicating what had been expected to be uneventful. Thus, the bottom-line may be that the consequence of the inspection plan's deficiency regarding simulated or virtual research is far from terribly perilous.

5. ONGOING MONITORING AND VERIFICATION

Over the years, whenever relations between Iraq and the UN inspectors have become especially frayed and unsteady, those public officials who have felt compelled to speak-up and defend the inspection régime and its accompanying economic sanctions, have occasionally suggested that all that is needed is for Iraq to come clean on its WMD programmes, and then the tensions and hard feelings of inspections can be left behind, with an ongoing monitoring and verification (OMV) programme effectuated by on-site surveillance equipment and overflights taking the place of announced and surprise visits. There can be no doubt that UNSCOM's basic inspection document provides for the possibility of long-term OMV. Paragraph 3 states that the Report of the Secretary-General S/22871/Rev.1 is essentially about the whole issue of monitoring and verification.⁵⁶ Paragraph 27 later provides that the plan itself has no fixed duration and continues as long as the Security Council deems appropriate.⁵⁷ The previously referenced Annex I, in enunciating further details regarding inspections, states in paragraph 5(d) that the UN Special Commission shall have the right to install "surveillance, and other equipment and devices" for monitoring and verification.⁵⁸ In paragraph 5(e), it follows this with a statement of UNSCOM's right to "take samples [...] using its own equipment."⁵⁹ The combined effect of these several provisions is to give approval to the idea of long-term OMV, including that carried out by cameras and soil, air, and water sampling devices.

What is clear from the provisions governing the inspection plan is that no sharp delineation is drawn between a régime involving intrusive, announced, or surprise visits by inspectors, and, after the closing of Iraq's WMD dossier, a less

56. See UN Doc. S/22871/Rev.1, *supra* note 26, at 1, para. 3.

57. *Id.*, at 7, para. 27.

58. *Id.*, at 14, para. 5(d).

59. *Id.*, at 14, para. 5(e).

intrusive inspection régime involving only OMV equipment. Paragraphs 5(d)⁶⁰ and (e)⁶¹ of Annex I do authorize monitoring and verification with sampling and observation equipment. In doing so, however, they do not speak of the employment of surveillance equipment and devices as something that commences following Iraqi compliance with reporting and destruction obligations on atomic, biological, and chemical weapons and ballistic missile systems. On-site visits by inspection teams are not spoken of as a phenomenon obtaining only up to the point that the Security Council is finally able to certify the closing of Iraq's WMD file. The reality is that fixed monitoring and verification equipment may be, and actually has been, utilized simultaneously with the use of inspection team visits.⁶² Nowhere does the inspection plan tie the use of such equipment to a switch away from actual visits by inspection teams.

Acknowledging that the use of on-site visits and surveillance equipment overlap in the UN inspection régime,⁶³ it cannot be denied that, given the constant irritation we have seen in announced or surprise inspections by UNSCOM, the Security Council could decide, when and if Iraq has been found to have fully complied with its WMD obligations, to dispense with further visits and conduct all future OMV through on-site cameras, sampling equipment, and overflights. The occasional suggestions of public officials certainly hint at that as a possibility. Any switch away from the notion of actual inspection visits, however, would create an incredibly troublesome problem for the inspection régime. Surveillance equipment can be especially useful in monitoring activities on a continual basis. But given its fixed nature, it is incapable of scrutinizing activities just around the corner of its field of vision. Perhaps of even greater significance, such equipment is completely unable to detect activities occurring at locations well beyond where the equipment is situated.

Imagine for a moment a scenario in which the UN certifies the closing of Iraq's WMD file, deciding that future OMV is to be accomplished completely, or primarily, through reliance upon data supplied by on-site cameras, soil, air, and water sampling devices, supplemented by reconnaissance overflights. The information about future activities at the sites where such monitoring equipment is located, or sites subject overflight data, would prove extremely helpful in de-

60. *Id.*, at 14, para. 5(d).

61. *Id.*, at 14, para. 5(e).

62. See B. Crossette, *Security Council Closes Its Ranks Against Baghdad*, New York Times, 7 August 1998, at A1, col. 3 (indicating that with Iraq's decision of the 5th of August of non-cooperation on inspections, UNSCOM left with OMV equipment alone); see B. Crossette & S. Erlanger, *supra* note 19 (on-site visits and monitoring equipment in simultaneous use). See also *Report of the Executive Chairman on the Activities of the Special Commission Established by the Secretary-General Pursuant to Paragraphs 9(b)(i) of Resolution 687 (1991)*, para. 12, UN Doc. S/1998/920, 6 Oct. 1998, available at <http://www.fas.org/news/un/iraq/s/981008.htm> (following the decision of the 5th of August, UNSCOM left with role of monitoring).

63. See B. Crossette, *U.N., Avoiding Talk of Force, Criticizes Iraq on Arms Team*, New York Times, at A1, col. 1, A8, col. 6 (135 cameras and sensors in approximately 20 locations around Iraq).

termining the extent of compliance by Saddam Hussein's government with its obligations to refrain from reconstituting its weapons of mass destruction arsenal. But air reconnaissance faces real difficulties when it comes to the cover of darkness and weather, and the fixed nature of on-site monitoring equipment can severely limit the ability to be assured that activities potentially violative of WMD obligations are not relocated to sites left unmonitored by such equipment. In the event heavy or exclusive reliance is placed upon monitoring and verification equipment to certify continuing Iraqi observance of its weapons of mass destruction obligations, unless the entire country is literally swathed in such equipment, what is there to prevent Saddam from instituting prohibited activities at one uncovered site after another? The inspection plan dictates Iraq report information about biological and chemical facility sites,⁶⁴ but if no way exists at sites uncovered to detect activity, how can this requirement impede revival of WMD development?

6. DUAL USE CHEMICALS

The matter of dual use chemicals is not quite as much a problem under the inspection régime as each of the other matters previously discussed.⁶⁵ It arises from the somewhat complex interrelationship between various provisions of the régime. Paragraphs 28 and 29, which open Section C setting out particular rules regarding chemical items, indicate that the rules of the Section extend to chemicals known for weaponization, and other commercially used chemicals that have the potential for use in the production of chemical weapons.⁶⁶ The idea is to prevent dual use chemicals from escaping all strictures imposed by the inspection plan. The rules of paragraphs 30(b) and (d) then provide that one of the requirements Iraq must follow with respect to dual use chemicals is an obligation to report certain information. Aside from the type of information to be reported, the paragraphs are said to apply to sites where more than one ton per year of the chemicals is being, or is planned to be produced, processed, stored, imported or exported, or where weaponization of such chemicals had occurred in the past.⁶⁷ To the extent the one ton limit might provide a loophole, paragraph 30(a)'s requirement about reporting total country-wide production of the relevant chemi-

64. See UN Doc. S/22871/Rev.1, *supra* note 26, at 7, para. 30 (chemical activities), and 8, para. 35 (biological activities).

65. It must be noted, however, that Richard Butler's 6 October 1998 report to the Security Council indicated concern about dual use chemicals, especially sulphur, and dual use equipment, especially chemical sprayers. See *Report of the Executive Chairman*, *supra* note 62, at para. 55.

66. See UN Doc. S/22871/Rev.1, *supra* note 26, at 8, paras. 28 and 29.

67. *Id.*, at 8, paras. 30(b) and (d).

cals⁶⁸ could result in the Special Commission obtaining at least some information on which to base further investigation, thus preventing abuse.

There are two real problem areas with respect to dual use chemicals. The first concerns facilities for research on such chemicals; the second, agents or components that may be employed in the production of dual use chemicals. As to the matter of research facilities, it will be recalled from the discussion about simulated or virtual research on biological or chemical weapons, that paragraph 13's introductory language clearly prohibits only the construction, development, or acquisition of chemical weapons "research [...] facilities," not chemical weapons research itself.⁶⁹ Obviously, as was suggested, if research facilities are impermissible, it is unlikely a great deal of research will take place.⁷⁰ In the context of dual use chemicals, however, paragraphs 29-31 of Section C focus almost exclusively on production, processing, consumption, storage, and import or export.⁷¹ Nothing is said there, or elsewhere about restraining the building, or monitoring the operations, of facilities conducting research on such chemicals. In fact, paragraph 29 makes clear that "development" of dual use chemicals with significant non-weapons applications is permissible.⁷² Paragraph 32 prohibits Iraq from undertaking efforts to "develop" those dual use chemicals which have almost no use outside the chemical weapons field.⁷³ Obviously, though, for this prohibition to reach the construction and use of chemical research facilities, the term "develop" would have to be understood as extending beyond efforts to expand, evolve, or enhance the products emerging from the knowledge generated by research activity.

Moving to the second problem area, that of the agents or components of dual use chemicals, the language of paragraph 30 is of central importance. That paragraph speaks of obligations connected with specified chemicals, whether the ones referenced in the various provisions of Section C of the inspection plan, or in Annex II on chemical weapons.⁷⁴ In addressing the requirement to report particular information about specific sites, 30(b) and (d) say absolutely nothing about that requirement being extended to sites where agents or components of dual use chemicals happen to be produced, processed, or stored.⁷⁵ By way of contrast, it will be recalled from the earlier discussion on possible Iraqi efforts to recruit foreign WMD scientists, that paragraph 13(a) of the basic inspection plan extends not only to biological and chemical weapons, but also to agents and

68. *Id.*, at 8, para. 30(a).

69. *Id.*, paras. mentioned *supra* notes 46-49.

70. *Id.*, paras. mentioned *supra* notes 46-47.

71. *Id.*, at 8, paras. 29-31.

72. *Id.*, at 8, para. 29.

73. *Id.*, at 9, para. 32.

74. *Id.*, at 8, para. 30.

75. *Id.*

components of such.⁷⁶ The difference between these two sets of language suggests paragraphs 30(b) and 30(d) may not go far enough in requiring the reporting of useful information.

The suggestion could be advanced that, even if this sort of reading of paragraphs 30(b) and (d) is accepted, the very language of paragraph 13(a) establishes an obligation which neutralizes the importance of that reading. Specifically, paragraph 13(a) articulates a basic prohibition on biological or chemical weapons, as well as on all agents or components of such.⁷⁷ Thus, little significance should attach to the failure of paragraphs 30(b) and (d) to reach agents or components of dual use chemicals, since the reporting obligations contained in those two paragraphs are overshadowed by the basic prohibition on the development, possession, production, or acquisition of such. Support for such an understanding of the interrelationship between paragraphs 13 and 30 would seem to appear in paragraph 28, which introduces Section C's detailed rules regarding chemical weapons, stating that it provides "additional rules" governing certain chemicals.⁷⁸ The plain implication of this language is that the more general rules, such as contained in paragraph 13, continue to apply as well.

There is a critical deficiency, however, with the reasoning that the prohibition of paragraph 13(a) overshadows the failure to require the reporting of sites involved with agents and components of dual use chemicals. That deficiency has to do with the fact the language of paragraph 13(a)'s prohibition can be read as covering the actual agents and components of chemical weapons, not the agents and components of chemicals which could be transformed into the ingredients of agents or components of chemical weapons. In other words, paragraph 13(a) is concerned with the ready-to-use parts of chemical weapons, and paragraphs 30(b) and (d) with ready-to-use dual use chemicals. None of the provisions attempt to impose obligations on Iraq for agents or components that can go into creating dual use chemicals. When this is taken in combination with the problem of research facilities on dual use chemicals, the overall soundness of the inspection régime is unavoidably affected.

7. BIOLOGICAL RESEARCH

In view of how the language of paragraphs 29-32 of Section C on chemical items handles the matter of research facilities for dual use chemicals,⁷⁹ paragraph 35(f) of Section D on biological items seems especially interesting.⁸⁰ As a

76. *Id.*, at 4, para. 13(a).

77. *Id.*

78. *Id.*, at 8, para. 28.

79. See text accompanying *supra* notes 58-64.

80. See UN Doc. S/22871/Rev.1, *supra* note 26, at 10, para. 35(f).

general proposition, the inspection régime strikes at Iraqi efforts regarding biological weapons, or bio-weapons research facilities, through the basic prohibition of paragraph 13(a).⁸¹ Section D supplements this prohibition with more detailed rules on the entire range of matters connected with the toxins and micro organisms that form the essential component of a biological weapons arsenal.⁸² In that context, paragraph 35(f) obligates the government of Iraq to supply UNSCOM with information about any “research, development, testing or other support or manufacturing facility for equipment and other items specified in paragraph 1 of Annex III.”⁸³

Though not entirely free from doubt, if the wording of the paragraph means to target any “research [...] facility for equipment” associated with bio-weapons activities, this provision of the inspection régime would present an additional problem with the UN’s overall plan. Specifically, it would suggest that paragraph 13(a)’s prohibition on research regarding biological weapons is not strengthened by obligations regarding research facilities focusing on toxins and micro organisms, only for those focused on the equipment relevant to biological weapons activities. Paragraph 35(f)’s additional language, referencing “and other items specified in paragraph 1 of Annex III”,⁸⁴ would seem perfectly in-line with this sort of an understanding of the provision, in that everything listed in the cross-referenced paragraph happens to be something that could be thought of as research equipment.⁸⁵ How could mere biological research facilities be subject to the reporting obligation, if the text of the inspection plan seems to envision facilities involved in bio-weapons equipment research?

An examination of other relevant provisions of Section D appears to hint at the possibility that the reading of paragraph 35(f) just recounted is much too ungenerous and restrictive. For example, there is paragraph 35(a)’s reference to Iraq having to report on sites or facilities at which “work with” certain high risk toxins or micro organisms occurs.⁸⁶ The implication of this reference is that a reporting obligation attaches, not just to sites or facilities where research on bio-weapons equipment is taking place, but to all facilities where toxins or micro organisms, or their genetic material, are the subject of experimentation and study. Paragraph 36(a) provides another example, in that it requires reporting information on documentary studies from sites or facilities where “work relating to” high risk toxins or micro organisms occurs.⁸⁷ Consistent with this broader approach, it must be acknowledged that the very language of paragraph 35(f) itself can be understood as connecting the words “facility for equipment” with the

81. *Id.*, at 4, para. 13(a).

82. *Id.*, at 9-11, paras. 34-39.

83. *Id.*, at 10, para. 35(f).

84. *Id.*

85. *Id.*, at 26, Annex III, para. 1.

86. *Id.*, at 9, para. 35(a).

87. *Id.*, at 10, para. 36(a).

word “manufacturing”, and not with development, testing, support, or “research”. Structurally, there is nothing in the way in which the paragraph is written that compels it to be construed as linking the reference to “research” with the reference to the words “facility for equipment”.

Certainly, the inspection régime does not appear to prohibit all Iraqi work with toxins or micro organisms. Paragraph 38(b) declares only that Iraq shall not undertake such through the military, or through civilian personnel under the authority of the military.⁸⁸ It is one thing, however, to leave open the possibility for work with items that could form the basic ingredient for biological weapons, and an entirely different thing to create a reporting obligation based on the existence of research facilities conducting such work. While on balance it would appear support exists in the text of Section D of the inspection plan’s central document for construing the language of paragraph 35(f) as requiring a report regarding any biological research facility, connected or not, to bio-weapons equipment, the plan is far from crystal clear. As unfortunate as it is, Saddam Hussein has exhibited little compunction about pursuing conduct designed to give his government what he perceives as the greatest advantage in its struggle with those who wish him disarmed of WMD. Given this attitude, it would seem wise to view the ambiguity of paragraph 35(f) as among the areas of difficulty with the UN inspection régime.

8. CONCLUDING REFLECTIONS

In recounting some of the inspection régime’s problems, the intent has not been to suggest a complete abandonment of the objective of containment of Saddam Hussein and his WMD aspirations.⁸⁹ Given international political realities, however, just as surely it has not been to prompt any emendative inclination that might evidence itself in the form of a UN proposal for enhancing the thoroughness of the extant inspection rules. The inspection régime’s problems have been raised out of an interest in challenging the conventional wisdom that apparent compliance with UNSCOM directives will yield an Iraq disarmed of a WMD capability. And that upon such disarmament, sanctions can be lifted, less intrusive ongoing monitoring and verification by on-site surveillance equipment can be turned to, and the world community can breathe more easily with the devilish genie of biological and chemical weapons back in the bottle. Clearly, this wisdom is in part the product of an unsophisticated public’s extrapolation from official statements. Nonetheless, to the extent that governments constantly emphasize the connection between Iraq and weapons of mass destruction, making this

88. *Id.*, at 10, para. 38(a).

89. See Risen, *supra* note 18 (indicating that at least the US views the United Nations’ policy regarding Saddam is one of containment).

the issue which repeatedly pushes the international community to the brink of war, they have contributed to the development of many of the simplistic and unrealistic attributes of the conventional wisdom that surrounds the inspection programme.

As observed at the outset of this essay, Iraq is not the only nation with a WMD capability, or even the only such nation governed by an ideologue embracing an almost irrational contempt for the United States and Western democracy.⁹⁰ In view of this, would there not seem to be merit in requiring that insistence upon an unaltered inspection régime be explained by more than allusion to the fact of past experience with Saddam's use of biological and chemical weapons? Why should other nations with a WMD capability escape intrusive inspections just because they have yet to submit to the temptation to use such? Are biological and chemical weapons somehow militarily less puissant until employed at least once? Is Iraq somehow to be seen as a threat to international security that cannot be dealt with through any means short of its total compliance with each and every aspect of the UNSCOM inspection plan?

Biological and chemical weapons pose a genuine and serious risk going forward into the next century. Everyone is in agreement they are no trifling matter. The difficulty with regard to Iraq and WMD is in crafting a policy that lessens existing tensions in an economically vital and already dangerous area of the globe, and simultaneously begins to view Iraq within the context of a larger and realistic framework for addressing the threat of biological and chemical weapons world-wide. It seems understandable one could conclude the régime UNSCOM has operated under since 1991 comes up short on both counts. To the extent it has resulted in equating the basic problem of WMD with Saddam Hussein himself, has it not run the risk of leading to the perception of a lack of evenhandedness and, indeed, the impression that the Iraqi people are being punished for the vicious transgressions of their military leadership during the Gulf War? And by seeming obsessed with Iraq's flagrant non-compliance with aspects of the long-standing UN inspection programme, an obsession that often appears to have dwarfed most other international issues, has the message not been communicated that the policy for addressing the possession and proliferation of WMD is myopic in its focus? Given both the implication of retribution, and the impression of a policy distorted by the view that Iraq alone threatens global security through WMD activities, is it not understandable one might perceive at least a modicum of merit in conducting a 'reassessment' of the inspection régime?⁹¹

Two points require consideration in the context of any such 'reassessment', however. The first has to do with possible claims of appeasement, contentions that any rethinking of the current inspection régime could be interpreted as re-

90. See text accompanying *supra* note 24.

91. The idea of possible merit in a reassessment is intended to take up the earlier referenced suggestion of Secretary General Kofi Annan. See text accompanying *supra* note 20.

warding Saddam's intransigence, obfuscation, and delay. The second point concerns the general concepts that should guide what a reconfigured inspection régime, the end product of a 'reassessment' process, ought to look like. The latter point intersects with the former in that, any inspection plan which is to supersede UNSCOM's seven plus year régime can somewhat neutralize the criticism of appeasement, if it can both invoke central principles enunciated in the current inspection plan to explain the genesis and development of a successor, and time the shift to a new régime so it appears to reward evidence of a restoration of cooperative conduct on the part of Iraq. Clearly, this is extremely tricky. Even if an opportune moment presents itself, no guarantee exists that plausible explanations for moving the inspection régime in a new direction will persuade those fearful of ever showing signs of flexibility. To them, any change not moving towards more severe strictures on Iraq will simply encourage further intransigence. But how attractive is the alternative of bouncing from one crisis with Saddam to another? And in view of his determination to refuse to continue cooperating with UNSCOM on the final details of the WMD inspections, is it not true that inflexibility accords Saddam the role of dictating on a daily basis the frequency and nature of such bounces?⁹²

Every reason exists to believe that, in the event a restructured inspection régime is seen as having a certain appeal, Security Council Resolution 687,⁹³ the seminal legal statement on Iraq and the foundation upon which UNSCOM's basic inspection document of S/22871/Rev.1 rests, articulates grounds capable of accommodating change. After the fourth paragraph of the Resolution's preamble indicates the UN's "need to be assured [of] Iraq's peaceful intentions",⁹⁴ a series of paragraphs note Iraq's commitments to various WMD treaties.⁹⁵ The pream-

92. Within two weeks of the 16 December 1998 attack on Iraq by US and British forces, Saddam Hussein was again causing irritation. See S. Lee Myers, *Iraq Vows to Defy U.S. Ban and Fly in 'No Flight' Zone*, New York Times, 30 December 1998, available at <http://www.nytimes.com/library/world/mideast/123098iraq-us.html> (reviewing episode beginning with 28 December 1998 firing on allied planes patrolling 'no fly' zone). The stepped-up US campaign in mid-Winter 1999 to attack a variety of sites connected with challenges to air patrols in the 'no-fly' zone was seen by some as an effort to shift the initiative away from Saddam. On the attacks, see S. Lee Myers, *U.S. Jets Attack Iraq Again, Though Result Is Unclear*, New York Times, 13 January 1999, at A6, col. 1; S. Lee Myers, *A New U.S.-Iraqi Clash; More Hard Words, Too*, New York Times, 14 January 1999, at A6, col. 5; *For Second Day, Clashes in the Skies Over Iraq*, New York Times, 25 January 1999, at A10, col. 1; E. Becker, *U.S. Pilots Over Iraq Given Wider Leeway to Fight Back*, New York Times, 27 January 1999, at A6, col. 1; S. Lee Myers, *U.S. Jets Attack Iraqi Targets After a Challenge By Baghdad*, New York Times, 11 February 1999, at A5, col. 3; *Iraq Claims Combat But U.S. Denies It*, New York Times, 19 February 1999, at A9, col. 1; E. Becker, *Allied Warplanes Conduct 3 Raids in Iraqi No-Flight Zones*, New York Times, 23 February 1999, at A3, col. 1; S. Lee Myers, *U.S. Jets Strike Missile Sites 30 Miles Outside Baghdad*, New York Times, 25 February 1999, at A15, col. 5; and *Iraq Says U.S. Strike Disabled Oil Pipeline; Pentagon Denies Claim*, New York Times, 1 March 1999, at A3, col. 1.

93. See UN Doc. S/RES/687 (1991), *supra* note 25.

94. *Id.*, preamble, para. 4.

95. *Id.*, preamble, paras. 8-10 and para. 7 of the body of the Resolution.

ble's nineteenth paragraph then follows with a declaration that the objectives reflected in those WMD commitments are to be attained through the use of "all available means".⁹⁶ The implication, of course, being that the aim of the policy details of Resolution 687, including the details on weapons inspections, focus on the restoration of regional stability, with every mechanism to be used to secure such. This targeting of regional stability, and not the issue of weapons of mass destruction as such, is the key principle of all the central principles set forth in this foundational Resolution.

Paragraph 34 of the same resolution drives home the focus on sparing no measure to restore regional stability. It indicates the Security Council decides "to take such further steps as may be required", not just for the implementation of the resolution's policy details, such as those on weapons inspections, but also to establish "peace and security in the area".⁹⁷ That the leitmotif is regional calm, not the elimination of each and every incident of Iraqi military autonomy, is evidenced by the UN's affirmation, in the preamble's third paragraph, of the "sovereignty, territorial integrity, and political independence of [...] Iraq".⁹⁸ The significance of the latter concept has never been lost and, indeed, continues to be reiterated even in Secretary General Annan's 23 February 1998 memorandum of understanding and its implementing resolution.⁹⁹

Yet accepting the possibility the current inspection plan enunciates principles able to accommodate a reconfiguration, there remains the matter of the general concepts which should guide the formulation of such a régime. In the event merit is seen in the perception that the Iraqi WMD problem should be looked at in the context of the two dozen or so other nations that have, or are capable of producing biological and chemical weapons, the single most critical guide that suggests itself is the adoption of an official doctrine based on that of 'massive retaliation' articulated during the Cold War to dissuade the first-use of nuclear weapons. Clearly, because of the consequences of reliance on military force to deter unsavory activity, a much more preferred option would be a universal convention, similar to the Chemical Weapons Convention of 1993 (CWC),¹⁰⁰ which would assure inspections of all activities that could eventuate in WMD. Many rogue nations, however, have not obligated themselves to the CWC. And since it is unlikely a different outcome would result from an attempt to put forward an even more comprehensive international agreement, it may be prudent for the major superpowers to let all others know, in unequivocal and categorical terms, how each would respond to a biological or chemical weapons attack. The spec-

96. *Id.*, preamble, para. 19.

97. *Id.*, para. 34.

98. *Id.*, preamble, para. 3.

99. See MOU, *supra* note 26, paras. 2 and 3; Security Council Resolution 1154, *id.*, preamble, para. 3.

100. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Paris, 13 January 1993, reproduced in 32 ILM 804 (1993).

trum of options clearly runs from either massive or proportionate nuclear retaliation against military facilities and personnel, to attacks with devastating conventional armaments against targets comparable to those hit within the retaliating state. An attractive spin-off of the adoption of any such official doctrine may well be the ability to break free from the feeling that each episode of Iraqi effrontery regarding weapons inspection rules warrants some response of a military nature. In the absence of something substantially more provocative, resort to military force would not be considered necessary.

A second concept that might be suggested as a guide for a reconfigured inspection régime is that of increased attentiveness to the interests and views of Iraq's neighbours in the region. This could have several positive consequences. Conceivably these consequences might include linking of the precise details of any reconfigured inspection rules with what the states most immediately threatened consider essential for their security. Israel, Iran, Kuwait, and Saudi Arabia all have reason to be concerned about Iraqi WMD activities. But the concerns of these nations may be met through an inspection régime which varies considerably from the current UN plan. Thus, to the extent that focus on the interests and views of the United States is balanced with those of the nations neighbouring Iraq, the details of the present inspection rules may be susceptible to alteration.

The building of a consensus among Arab nations for undertaking a larger – or primary – role in containing, or contributing to the containment of, Saddam's aggressive ambitions may also be a positive consequence of increased attentiveness to the desires of Iraq's neighbours. Undoubtedly, the financial and diplomatic costs of dealing with Iraq are high. Greater involvement on the part of the states in the region would minimize both, and permit the major powers to conserve their political goodwill for expenditure on the world's many other international problems. Obviously, the likelihood of success in eliciting such involvement, though, will be tied to an inspection régime that reflects what Iraq's neighbours consider essential.

Closely related is the additional positive consequence of minimizing the potential for Iraq to serve as a source of recurring friction between Middle-East fundamentalist and the Western world, friction which threatens to undermine the laboriously slow process towards a final peace settlement involving Israel and the Palestinians. The single-most critical problem in the Middle-East remains that of the Palestinians. Until that issue is resolved, the likelihood for significant adverse impact on relations between states in the region lies just beyond the horizon. In thinking about Iraq from the vantage of Saddam's neighbours, sight is not lost of that ever-present truth. With this always in mind, the importance of finding a solution to the inspection problem that has driven a wedge between Iraq and the international community becomes all the more pressing.

Distinct from any reconfiguration of the WMD inspection rules, an increased attentiveness to the interests and views of Iraq's neighbours could also prove salutary for the issue of sanctions. Sanctions have generated an immense degree

of consternation, not only between Iraq and the Security Council, but within the original coalition that prosecuted the Gulf War for the United Nations. In the event Arab countries that have expressed sentiment favourable towards Iraq on this issue have their positions more fully reflected in a weapons inspection régime, then it is possible the sanctions approach currently in place might be altered to allow anything from greater sales under the oil-for-food programme, to an absolute guarantee of the removal of sanctions upon a closing of the WMD dossier.¹⁰¹ In other words, if the needs and desires of Iraq's neighbours are taken into consideration, then it is possible a 'reassessed' inspection régime able to revive the inspection process could be conjoined with a loosening of sanctions and sold to Saddam Hussein as a way to move beyond the present impasse. Plainly, this could operate to shift the initiative in the debate over the UNSCOM régime squarely into UN hands. Iraq would be deprived of the argument of UN insensitivity on the issue of sanctions, and put in a position of making it difficult to refuse renewed co-operation on the WMD front.

Without going into detail about the precise contours of a 'reassessed' inspection programme able to secure Iraqi co-operation, a variety of options would seem to exist. One option might involve scaling-down efforts to comprehend the exact character and extent of Iraq's past WMD activities, focusing instead on assuring that its current activities comport with relevant UN limitations. The attractiveness of such an option is that it side-steps a matter that has bedevilled the United Nations as of late; the matter of getting Iraq to come clean on the history of its weapons of mass destruction programmes. Another particularly attractive option, especially if one views the principal threat posed by Baghdad to be in the form of chemical weaponry, would be that of shifting responsibility for inspections of such weapons away from UNSCOM and in the direction of the Hague-based Organization for the Prohibition of Chemical Weapons (OPCW). The OPCW has oversight responsibility for compliance by states that are party to the earlier referenced Chemical Weapons Convention. Though Iraq has not committed itself to observing the terms of this Convention, movement by the UN on the sanctions front could be conditioned upon Iraqi accession to the CWC. Matters other than chemical weaponry could remain susceptible to United Nations' jurisdiction.

In any event, the present inspection régime unquestionably suffers from problems.¹⁰² When coupled with the fact Iraq is not unique in possessing weapons of mass destruction or the capability to develop such, it is understandable

101. In the past there have been suggestions that various other issues, such as the return of all Kuwaiti prisoners of war and any personal property taken during the Gulf War, must also precede the lifting of sanctions.

102. Besides the problems discussed herein, one of the other possible problems that now affects UNSCOM's future concerns the nature of its past relations with the United States. See B. Gellman, *Arnan Suspicious of UNSCOM Role*, Washington Post, 6 January 1999, available at <http://www.washingtonpost.com/wp.srv/inatl/longterm/iraq/iraq2.htm>.

sufficient grounds for a reassessment of the entire inspection plan may be seen to exist. But whether or not that opinion is shared,¹⁰³ it is incontrovertible the world has encountered in its quarrel with Saddam Hussein a diplomatic conundrum of ineffable complexity.¹⁰⁴ In the end, it can only be hoped that frustration, anger, and animosity are not permitted to cloud the formulation of a rational solution for unravelling this intricate and important problem. Conscientious policymakers everywhere should commit themselves to finding a stratagem that returns Iraq to full membership in the community of nations while blunting its threat to global or regional security. Surely that task cannot be any more arduous than continuing an approach fraught with hostility and confrontation,¹⁰⁵ yet unable to promise that once completed we will all be markedly safer from biological and chemical weapons.

103. For one scholar who expresses an interest in supporting the present régime with the unilateral use of force, see R. Wedgwood, *The Enforcement of Security Council Resolution 687: The Threat of Force Against Iraq's Weapons of Mass Destruction*, 92 AJIL 724 (1998).

104. See (Op-Ed) G.A. Geyer, *No Easy Victory: Passive Iraqi Response Must Be Met With Long-term Strategy*, *Tulsa World*, 6 January 1999, at A17, col. 3 (the willingness of Iraq to take a long-term view is what complicates dealing with Saddam Hussein)

105. On the continuing nature of this confrontational atmosphere, see *U.S., Iraqi Planes in Dogfight*, *Associated Press*, 5 January 1999, available at <http://www.nytimes.com/aponline/i/AP-US-Iraq.html> (reported as first air-to-air fighting in six plus years).