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Developments of the Law of Arms Control as a Result of the Iraq-Kuwait Conflict

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Abstract

Security Council measures against Iraq were hardly indicative of new developments in the law of arms control and disarmament. However, Iraqi threats to use chemical weapons have encouraged consensus among participating states to conclude the 1993 Chemical Weapons Convention and revelations of the advanced nature of Iraq's nuclear programmes might have contributed to the May 1995 decision of states parties to the 1972 Non-Proliferation Treaty to extend the treaty indefinitely. The system of ongoing monitoring and verification introduced under Security Council Resolutions 687 (1991) and 1284 (1999), as well as the practical experience gained through monitoring nuclear, chemical and biological weapons and ballistic missiles have supported efforts to strengthen international verification activities. As a further result of the conflict, increased awareness of the dangers of exporting dual-purpose technologies has led to a review of guidelines and practices for inspections under IAEA safeguards agreements. The problem of enforced verification, however, remains unresolved. This underlines that there is no viable alternative to resolute action by the Security Council. It likewise supports the conclusion that the need for political solutions in post-conflict peace-building, involving and stimulating the participation and cooperation of the state concerned, is even more obvious today than it was a decade ago.

1 Introduction

Arms control initiatives in response to the Iraq-Kuwait conflict were supplementary to a variety of other activities to restore international peace and security, including economic and military sanctions, humanitarian actions and the settlement of claims. These initiatives must all be seen in context with the invasion by Iraq of Kuwait in August 1990, Iraq's declaration of its 'comprehensive, eternal and inseparable

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merger' with Kuwait on 7 August 1990,¹ the detention in Iraq and Kuwait of nearly 13,000 third-state nationals (mostly Americans and Europeans, a large number of whom were subsequently placed at strategic sites as 'human shields' against the threat of foreign military attacks),² and countless refugees from Iraq and Kuwait (most of them going to or via Jordan).³

While arms control decisions normally are a result of negotiations providing for a balance of national interests by the contracting parties, important decisions had to be imposed in the Iraqi case by the Security Council acting under Chapter VII of the Charter. Only a few of these decisions concerned new restrictions for Iraq's armament, while the great majority of them dealt with the implementation and verification of existing obligations under the 1925 Geneva Protocol,⁴ the 1972 Biological Weapons Convention⁵ and the 1968 Non-Proliferation Treaty (NPT).⁶ Indeed, a new quality of verification was established and to a considerable extent also implemented under Chapter VII.

This study will firstly examine the influence played by the Iraq-Kuwait conflict on Iraq's treaty obligations in the field of arms control (Section 1). Section 2 will analyse the problems and opportunities for enforced disarmament as developed during the conflict, and Section 3 will consider certain effects that public awareness of and reactions to the Iraq-Kuwait conflict had on the development of the law of arms control. Finally, the concluding Section 4 will discuss the future success of verification, depending on both the resolved action by the Security Council and the participation and cooperation of Iraq.

2 Iraq's Arms Control Obligations as Derived from Existing Treaties and Measures in Accordance with Chapter VII of the UN Charter

The extent to which international response to the Iraq-Kuwait conflict led to measures supplementing existing treaty obligations can be detected in Security Council Resolution 687 (1991). Section C of this resolution, adopted on 3 April 1991 after a month of negotiations following the successful liberation of Kuwait, summarized Iraq's existing treaty obligations and provided detailed arms control decisions in the field of weapons of mass destruction and certain ballistic missiles.

A *Chemical Weapons*

Iraq, a party to the 1925 Geneva Protocol, had issued a statement in September 1988 reiterating its attachment and adherence to the provisions of that Protocol. Iraq had

¹ *The United Nations and the Iraq-Kuwait Conflict 1990–1996*, The United Nations Blue Book Series, vol. IX (1996), at 16.

² *Ibid.*, at 17.

³ *Ibid.*, at 19.

⁴ Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 17 June 1925.

⁵ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972.

⁶ Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968.

also participated in the Conference of States Parties to the 1925 Geneva Protocol and Other Interested States held in Paris on 7–11 January 1989 and had signed the Declaration of the participating states establishing the objective of completely eliminating chemical and biological weapons.⁷

In Resolution 687, the Security Council referred to statements by Iraq threatening to use weapons in violation of its obligations under the Geneva Protocol, and noted its prior use of chemical weapons (preamble, paragraph 8), invited Iraq to reaffirm unconditionally its obligations under the Geneva Protocol (section C7) and decided that Iraq shall accept the destruction, removal or rendering harmless, under international supervision, of all chemical weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities related thereto (section C8a). Chemical weapons had been used previously during the Iran–Iraq war (1980–1988).⁸ An investigation team set up in 1984 by the Secretary-General of the United Nations found evidence that these weapons had been produced and used by Iraq.⁹

The decision taken in Resolution 687 went beyond the obligations laid down in the Geneva Protocol in that it confirmed the prohibition of the use of chemical and bacteriological weapons without any qualification and it addressed the problem of existing stockpiles; this latter is not dealt with by the Geneva Protocol.

Several states, including Iraq, had made reservations to the Geneva Protocol, declaring that they shall be bound by its provisions only towards those states which have both signed and ratified it or have acceded thereto. Iraq had expressly stated that it shall not be bound by the Protocol towards any enemy state whose armed forces, or the forces of whose allies, do not respect the provisions of the Protocol.¹⁰ While Resolution 687 might be viewed as an interesting precedent for the Security Council — removing a state’s reservations to certain treaty obligations under international humanitarian law and imposing a disarmament obligation in an area where to date only the use of a particular means of warfare has been prohibited — the decision taken under Resolution 687 was less far-reaching than might be assumed. Iraq’s reservation to the Geneva Protocol was not even referred to by the Security Council and the use of the word ‘unconditionally’ in section C7 did not necessarily invalidate it. There was no reason for the Security Council to broach the issue of reciprocity in this context as there was no threat of first use of chemical weapons against Iraq.

As far as the destruction, removal or rendering harmless of chemical weapons is concerned, the Declaration issued at the 1989 Paris conference provided a clear indication, albeit not yet legally binding at the time, of a broad international commitment to the universal elimination of these weapons.

Iraqi threats to use chemical weapons certainly encouraged consensus by

⁷ Final Declaration of the Paris Conference of States Parties to the 1925 Geneva Protocol and Other Interested States, 11 January 1989 (CD/880, 49; G. Fahl, *International Law of Arms Control*, vol. 1, E/0.4).

⁸ Kalshoven, ‘Prohibitions or Restrictions on the Use of Methods and Means of Warfare’, in I. F. Dekker and H. H. G. Post (eds), *The Gulf War of 1980–1988* (1992) 97, at 112–113.

⁹ <<http://www.opcw.org/guide.htm>>.

¹⁰ <<http://www.projects.sipri.se/cbw/docs/cbw-hist-geneva-res.html>>.

participating states in the then ongoing negotiations which two years later resulted in the Chemical Weapons Convention.¹¹ The possibility, however, of the Security Council ensuring Iraq's acceptance of this Convention by employing measures under Chapter VII was never pursued. In the Iraqi case, verification under the UNSCOM regime was obviously given exclusive preference to the cooperative and reciprocal system set up under the 1993 Convention. To date Iraq has not signed or acceded to the Convention. Consideration of means to ensure compliance under the Convention¹² are consequently not yet applicable to Iraq.

B *Biological Weapons*

As Iraq had signed, but not yet ratified the 1972 Biological Weapons Convention, the Security Council decision in Resolution 687 (section C7) provided for development in this regard by inviting Iraq to *ratify* the Convention.

This step was taken by Iraq shortly afterwards on 19 June 1991. Too much significance, however, should not be attached to this action on the part of Iraq since it only confirmed the commitment it had already made with its signature to the Convention, no control mechanisms were foreseen under the Biological Weapons Convention, and biological weapons, unlike chemical weapons, did not really present an imminent threat in the region.

C *Nuclear Weapons Programme*

Iraq had been a party to the NPT since 1969, without reservations. At the 1989 Paris Conference, Iraq took a position which was unanimously shared by all Arab countries, namely that all weapons of mass destruction, including nuclear weapons, must be eliminated from the Middle East region.

In Resolution 687, the Security Council, referring to the objective of establishing a nuclear weapons free zone in the region of the Middle East (preamble, paragraph 16), invited Iraq to reaffirm unconditionally its obligations under the NPT (section C11) and decided that Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapon usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above (section C12). The Security Council thus clarified that Iraq's obligations under the NPT are not limited by any reservations or conditions.

No additional arms control obligation was imposed by the Security Council on Iraq in this field. The Iraq-Kuwait crisis had prompted the Security Council, however, in the preamble of Resolution 687 to recall the objective of the establishment of a nuclear-weapon-free zone in the region of the Middle East. Moreover, and much more importantly, revelations of the advanced nature of Iraq's nuclear programmes may have later contributed to the May 1995 decision on the part of states parties to the NPT to extend the Treaty indefinitely.

¹¹ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 13 January 1993.

¹² Rosas, 'Reactions to Non-compliance with the Chemical Weapons Convention', in M. Bothe, N. Ronzitti and A. Rosas, *The New Chemical Weapons Convention — Implementation and Prospects* (1998) 415.

D Ballistic Missiles

Resolution 687 touched upon new ground in the field of missile restrictions. Iraq had developed extensive missiles and rocket technology, which were used from the beginning of the Iraq-Kuwait crisis to embroil Israel.¹³ Several hundred long-range missiles had been used by Iraq earlier during the war with Iran. During the coalition action, which started on 16 January 1991, Iraq launched dozens of surface-to-surface missiles against Saudi Arabia, Israel, and also against Bahrain and Qatar.

In Resolution 687, the Security Council decided that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of all ballistic missiles with a range greater than 150 km, as well as related major parts and repair and production facilities (section C8b). This decision was indeed a drastic and unprecedented limitation of existing armaments, which was not based on existing treaty law, with the exception of the authority of the Council to take decisions under Article 39 of the UN Charter to maintain or restore international peace and security.

This comparison of the measures taken by the Security Council under Chapter VII with Iraq's existing treaty obligations demonstrates that only very few additional limitations were introduced by the Council in the field of weapons of mass destruction. The limitations on chemical weapons were in line with Iraq's declared commitments made earlier at the 1989 Paris conference, at a time when the 1993 Chemical Weapons Convention was still to be negotiated. No serious attempt was made in later years to invite Iraq to participate in this new convention. As far as the prohibition of biological weapons is concerned, Iraq's signed commitment to the 1972 Convention was strengthened by its subsequent ratification, though this decision provided no imminent threat to Iraq. The prohibition of nuclear weapons for Iraq was underlined, but Iraq was already subject to this same legal situation under the NPT. Only in the case of ballistic missiles were new obligations created by the Security Council, as no treaty obligations previously existed in this field.

Quite differently, however, new obligations were established to ensure notification of existing armaments, to provide for extensive verification activities and to create a strong linkage between arms control and post-conflict peace-building in the region under Security Council Resolutions 687 (1991) and 1284 (1999).

3 Special Decisions and Arrangements and their Implementation

The decisions taken by the Security Council to ensure full implementation of Iraq's obligations in the field of arms control were very far-reaching. They not only defined

¹³ Navias, 'The Scud Missile War: A Focus On Iraqi Declaratory Policy', in G. Neuneck and O. Ischebeck (eds), *Missile Proliferation, Missile Defense, and Arms Control, Proceedings of a Symposium Held in Hamburg* (1993) 229.

general obligations for Iraq to declare and support the destruction of prohibited weapons, but they also provided organizational mechanisms and working procedures in order to achieve that aim. These decisions need to be assessed before examining the overall results achieved and open issues that are yet to be solved.

A Declaration and Destruction of Weapons, Demilitarized Zone

In Resolution 687 (1991), the Security Council decided

that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

- (a) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities related thereto;
- (b) All ballistic missiles with a range greater than one hundred and fifty kilometres, and related major parts and repair and production facilities (section C8).

Iraq was requested to submit to the Secretary-General, within 15 days, a declaration on the locations, amounts and types of all these items and to agree to urgent, on-site inspection (section C9a). The Security Council also introduced prohibitions against the sale or supply of arms and related matériel to Iraq (section F24) and further asked the Secretary-General to develop a plan for future ongoing monitoring and verification (OMV) of Iraq's compliance with the ban on these weapons and missiles (section C13).

A demilitarized zone (DMZ) was established under section B5 of Resolution 687 (1991), extending 10 km into Iraq and 5 km into Kuwait, to be monitored and controlled by the United Nations Iraq-Kuwait Observation Mission (UNIKOM), in accordance with Resolution 689 (9 April 1991) and the report of the Secretary-General of 5 and 9 April 1991.¹⁴

Some of the coalition countries created 'no-fly' or 'exclusion' zones in Iraq:¹⁵ the northern zone, covering territory above the 36th parallel, was created in June 1991 to shield the Kurdish population; the southern zone was established in August 1992 and extended the flight ban to territory below the 32nd parallel for the protection of Shiites and to create a buffer zone to ensure the security of Saudi Arabia and Kuwait. The latter was announced by President George Bush and referred to Security Council Resolution 688 (1991) which condemned 'the repression of the Iraqi civilian population in many parts of Iraq, including most recently the Kurdish-populated areas, the consequences of which threaten international peace and security in the region'.¹⁶

To enforce the no-fly regime, US and UK forces repeatedly attacked various targets in response to Iraqi hostile acts. In none of these cases was there an express and

¹⁴ Report of the Secretary-General proposing terms of reference for an observer unit to be known as the United Nations Iraq-Kuwait Observation Mission (UNIKOM), S/22454 (5 April 1991) and addenda S/22454/Add. 1 (5 April 1991), S/22454/Add. 2 (5 April 1991), S/22454/Add. 3 (9 April 1991).

¹⁵ *Supra* note 1, at 41.

¹⁶ US Department of State Dispatch, vol. 3, no. 35, 31 August 1992.

specific authorization by a Security Council decision. In one of these incidents a British government spokesman referred to ‘material breaches of Resolution 687’, which gave ‘other parties to the conflict the right in international law to take necessary and proportionate measures’ and to ‘action taken to ensure the safety of coalition aircraft patrolling the no-fly-zone in support of UN Security Council Resolution 688’.¹⁷ Evaluation of the legality of the establishment of both of these no-fly zones remains critical.¹⁸ On 14 April 1994 two US F-15 fighters mistakenly shot down two UN helicopters in the northern no-fly-zone.¹⁹ France had terminated its participation in surveillance missions in the northern zone by 1 January 1997,²⁰ while the US tightened controls there in October 1997.²¹

B Mechanisms for Implementation

Unlike the military sanctions as such, which had been carried out by a coalition of the willing in conformity with Resolution 661 (1990), implementation of the arms control decisions under Resolution 687 (1991) was reserved to the Security Council and its subordinate organs.

The Special Commission (UNSCOM) was established by the Security Council under section C9b of Resolution 687 (1991) to carry out immediate on-site inspection of Iraq’s biological, chemical and missile capabilities, to take possession for the destruction, removal or rendering harmless of all chemical and biological weapons and related components and all research, development, support and manufacturing facilities, to supervise the destruction by Iraq of all its ballistic missiles with a range greater than 150 km, and to assist and cooperate with the International Atomic Energy Agency (IAEA) in the elimination of Iraq’s nuclear-weapon capabilities and in the subsequent monitoring of non-proscribed nuclear activities. The work of UNSCOM was planned and managed from its Headquarters in New York and field offices were established in Bahrain and Baghdad (since 1994, Baghdad Monitoring and Verification Center (BMVC)).²² Cooperation between UNSCOM and the IAEA, as requested by Resolution 687 (sections C12 and 13), was essential to ensure the assessment of potential dangers related to the export of dual-purpose technologies.

¹⁷ Parliamentary Debates (Hansard), Sixth Series, Session 1992–93, 13 January 1993, 21 January 1993, 25 January 1993 (Commons); 26 January 1993 (Lords). Cf. also ‘United Kingdom Materials on International Law 1992’, 63 *BYbIL* (1992) 824.

¹⁸ Stein, ‘No-Fly-Zones’, 27 *Israel Yearbook on Human Rights* (1997) 193, at 209–211.

¹⁹ *Archiv der Gegenwart*, 29 May 1994, 3900 4 A.

²⁰ *Frankfurter Allgemeine Zeitung*, 28 December 1996.

²¹ *Financial Times*, 10 October 1997.

²² R. Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (2000); see the Review Essay by Malone, ‘Iraq: No Easy Response to “The Greatest Threat”’, 95 *AJIL* (2001) 235; Duelfer, ‘Arms Reduction: The Role of International Organizations, The UNSCOM Experience’, 5 *Journal of Conflict and Security Law* (2000) 105; ‘The Lessons and Legacy of UNSCOM: An Interview with Ambassador Richard Butler’, *Arms Control Today*, June 1999, at 3–9.

C Working Procedures

Under the Guidelines to Facilitate Full International Implementation of section E24, 25 and 27 of Security Council Resolution 687 (1991),²³ research, development, support and manufacturing facilities for nuclear, chemical and biological weapons or weapon-usable material, repair and production facilities for ballistic missiles, related technology and related personnel or materials for training or technical support were also made subject to monitoring. The Security Council Committee, established under Resolution 661 (1990), was requested to report at 90-day intervals on the implementation of the arms and related sanctions against Iraq. States and international organizations were encouraged to cooperate in the implementation of the arms and related sanctions against Iraq. All states were requested to report to the Secretary-General within 45 days on the measures they had instituted to meet the obligations set out in Resolution 687 (para. 24). Detailed work plans were submitted by the Director General of the IAEA²⁴ and the Secretary-General.²⁵ They were approved by the Security Council with Resolution 715 (1991) of 11 October 1991, which also authorized UNSCOM, in the exercise of its responsibilities as a subsidiary organ of the Security Council, to continue to take responsibility for designating additional locations for inspections and overflights and to coordinate activities under the work plans in cooperation with the IAEA. A mechanism for export/import monitoring called for in Resolution 715 (para. 7) was proposed by the Chairman of the Committee established under Resolution 661 and approved by the Security Council with Resolution 1051 (1996) of 27 March 1996.

The methods of verification applied by UNSCOM and the IAEA should be seen in context with established principles and rules of verification as developed in various arms control activities. Verification comprises three elements: the establishment of facts, their legal assessment, and the reaction called forth by the determination of any violation.²⁶ Verification measures include national technical means, national intelligence means, data exchange, notification, on-site inspections, as well as aerial and satellite inspections. As they may vary under different regimes, cooperative, adversarial and coercive methods and techniques may be applied, as exemplified by

²³ Annex to the Report of the Secretary-General of 2 June 1991 (S/22660); approved by SC Res. 700 of 17 June 1991.

²⁴ Revised plan submitted by the Director General of the IAEA for future monitoring and verification of Iraq's compliance with the requirements of Security Council Resolution 687 (1991) for the destruction or removal of specified weapons and with the requirements of Resolution 701 (1991) for full disclosure, access to inspection sites and compliance with international obligations (S/22872/Rev.1, 20 September 1991).

²⁵ Report of the Secretary-General transmitting the plan, revised pursuant to the adoption of Security Council Resolution 707 (1991), for future monitoring and verification of Iraq's compliance with the destruction or removal of weapons specified in Security Council Resolution 687 (1991), S/22871/Rev. 1, 2 October 1991.

²⁶ S. Sur, *A Legal Approach to Verification in Disarmament and Arms Limitation* (1988); S. Sur (ed.), *Verification of Current Disarmament and Arms Limitation Agreements: Ways, Means and Practices* (1991); *Verification in All its Aspects, Including the Role of the United Nations in the Field of Verification*. Report of the Secretary-General, UN-Doc A/50377 and Corr. 1.

the CFE Treaty,²⁷ the Chemical Weapons Convention and the Iraq inspections, respectively.²⁸ In the Iraqi case, the broad scope of control and its declared aim of ensuring full, final and complete disarmament (FFCD) of all prohibited weapons have led to a new quality of control, which constituted a considerable challenge. Ongoing monitoring and verification (OMV) involves regular inspections of dual-purpose capabilities, maintenance of accurate inventories of all dual-purpose items and close tracking of their real uses.²⁹ For this purpose, aerial surveillance, remote ground-based sensors, a variety of detection technologies, and export/import controls by other states are all required as necessary components of effective monitoring. To meet this objective, even coercive measures have to rely on a minimum of cooperation with the country involved. It is for this reason that the importance of cooperative verification measures for effective control and confidence-building has been stressed.³⁰ The Iraqi case has exemplified this need.

D Open Problems and International Response

Iraq's refusal, and subsequent acceptance, of its obligations and obstruction of their implementation are documented elsewhere³¹ and will be discussed in depth in another context. Iraq clearly voiced its reservations with regard to relevant activities and was reluctant to accept ongoing monitoring and verification measures in accordance with Security Council decisions. Iraq's willingness to support international verification activities has always been connected with the question whether sanctions could be eased or lifted in accordance with section F21 of Resolution 687.

On 5 August 1998 Iraq ended its cooperation, except for monitoring inspections at designated sites. The Security Council condemned this decision by Resolution 1194 of 9 September 1998 and again suspended the sanctions reviews. In late October of the same year, Iraq announced a complete halt of work with UNSCOM and the IAEA. The Council responded by adopting Resolution 1205 on 5 November 1998, condemning Iraq and demanding that it rescind this decision. Military action by the United States was planned, but on 14 November Iraq stated that it would cooperate fully with UNSCOM and the IAEA. The Council indicated that it would conduct a comprehensive review once the Secretary-General confirmed, on the basis of reports from UNSCOM and the IAEA, that Iraq had returned to full cooperation.³²

Following a report by UNSCOM, which described Iraq's cooperation as inadequate and stated that 'the Commission is not able to conduct the substantive disarmament work mandated to it by the Security Council and, thus, to give the Council the

²⁷ Treaty on Conventional Armed Forces in Europe (CFE) of 19 November 1990, amended on 19 November 1999.

²⁸ *National and International Verification Measures*, Fifth Report of the ILA Committee on Arms Control and Disarmament Law (Report of the London Conference 2000), at 222–247.

²⁹ *Supra* note 1, at 79.

³⁰ 69th ILA Conference, Resolution No. 4/2000, *Arms Control and Disarmament Law*, (Report of the London Conference 2000), at 26.

³¹ *Supra* note 1, at 79–94. For developments since 1996, see Butler, Dueller and Malone, *supra* note 22.

³² Dueller, *supra* note 22, at 117.

assurance it requires with respect to Iraq's prohibited weapons programmes',³³ the United States and the United Kingdom executed *Operation Desert Fox*, launching military strikes with cruise missile attacks against selected targets in Iraq from 16 to 19 December 1998. American and British planes flew more than 650 strike and strike support sorties. US ships launched more than 325 Tomahawk cruise missiles and Air Force B-52 bombers dropped more than 90 cruise missiles, bombs and missiles. During the four nights of operations 100 Iraqi military targets were struck. These strikes were ordered in response to Iraq's continued failure to comply with Security Council resolutions as well as their interference with UNSCOM inspectors. As Secretary of Defense William S. Cohen stated on 19 December 1998, clear military goals were pursued with this operation: 'We've degraded Saddam Hussein's ability to wage war against his neighbors. Our forces attacked about 100 targets over four nights, following a plan that was developed and had been developed and refined over the past year. We concentrated on military targets and we worked very hard to keep civilian casualties as low as possible. Our goal was to weaken Iraq's military power, not to hurt Iraq's people.'³⁴

Secretary of State Madeleine Albright explained the shorter, medium and longer term goals of this campaign: The short-term goals were 'to degrade Saddam Hussein's ability to develop and deploy his weapons of mass destruction, to degrade his command and control of some of his security areas in order to degrade his ability to threaten his neighbors'. A medium-term goal was to have him comply with the Security Council resolutions as a prerequisite for the lifting of sanctions. She then added: 'Longer term, we have come to the determination that the Iraqi people would benefit if they had a government that really represented them. So we know that this is something that cannot be done overnight, and we are working with the various opposition groups on a longer range way of trying to help them help themselves to have a regime that represents them.'³⁵

While quite significant results were achieved in respect of the short-term goals,³⁶ none of the mid- or longer-term aspirations voiced by Secretary Albright have yet been fulfilled. Inspectors from both UNSCOM and the IAEA departed from Iraq on 16 December 1998. As a consequence, Iraq has refused to allow UN inspectors onto its territory as required under Security Council Resolution 687. OMI plans are not operational to date.

In the context of increasing concern regarding the interruption of UN activities in Iraq among Security Council members, a panel under the chairmanship of Ambassador Celso L. N. Amorim of Brazil was constituted, pursuant to a note issued

³³ Letter from the Secretary-General transmitting reports of both IAEA and UNSCOM to the Security Council on the Iraqi cooperation from 17 November 1998 to 15 December 1998 (S/1998/1172, 15 December 1998).

³⁴ DoD News Briefing, 19 December 1998, <<http://www.defenselink.mil/news>>.

³⁵ <<http://secretary.state.gov/www/statements/1998/981217.html>>.

³⁶ General Anthony C. Zinni, commander of the U.S. Central Command had explained on 8 January 1999 that 'the mission against Iraq's military infrastructure in December was so effective that the time estimate for repair has now been increased from one to two years', <<http://www.defenselink.mil/news>>.

by the President of the Security Council on 30 January 1999.³⁷ The panel's task was to assess all existing and relevant information available, including data from ongoing monitoring and verification, relating to the state of disarmament in Iraq. The report produced by this panel³⁸ developed detailed proposals for further action in relation to remaining questions concerning Iraq's clandestine nuclear weapons programme, Iraq's development and procurement efforts for proscribed missile programmes, discrepancies with remaining stocks of Iraq's chemical weapons, and critical gaps to be filled in in order to obtain a reasonably complete picture of Iraq's biological weapons programme. While accepting that some uncertainty is inevitable in any country-wide verification process, a pragmatic approach was recommended in view of the fact that the extent to which such uncertainty is acceptable is a policy judgement. The report advocated in favour of a reinforced OMV system, stressing the fact, however, that to be effective, any verification system must be deployed on the ground, which could only occur with Iraq's acceptance.

Notwithstanding the severe problems encountered by both UNSCOM and the IAEA in their verification activities, their general achievements should not be diminished. UNSCOM and the IAEA have evaluated extensive information from both international and national sources. The UNSCOM experience has heightened awareness of the dangers of exporting dual-purpose technologies. This has led to a review of existing guidelines and practices for inspections under safeguard agreements with signatories of the NPT.³⁹ In addition, the Iraq experience has provided useful information regarding ballistic missiles, which could also be used in support of the multilateral Missile Technology Control Regime (MTCR), in which nations possessing certain technologies place various limits on their export.⁴⁰

UNSCOM was officially terminated when the Security Council passed Resolution 1284 (1999), which established, again as a subsidiary body, the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC). This Commission's tasks are to establish and operate a reinforced system of ongoing monitoring and verification to implement the plan approved in Resolution 715 (1991) and to address unresolved disarmament issues. An organizational plan for UNMOVIC was developed⁴¹ and approved by the Security Council.⁴²

There is a general understanding that the reinforced OMV envisaged with UNMOVIC must include an integrated system that will also be capable of addressing the outstanding disarmament issues. It cannot be conceived as an enticement for Iraq to invite UNMOVIC into its territory, but rather, if anything, the reinforced OMV must be more intrusive than the one practised to date. Iraq has not yet accepted Resolution

³⁷ S/1999/100.

³⁸ Amorim Report, S/1999/356 of 27 March 1999.

³⁹ *Supra* note 1, at 112.

⁴⁰ *Ibid.*, at 112.

⁴¹ S/2000/292 (6 April 2000).

⁴² S/2000/311 (13 April 2000).

1284. In spite of ongoing UN efforts⁴³ to establish a follow-on inspection regime comprising UNMOVIC and the IAEA's Iraq Action Team, no UN inspections have thus far taken place.

4 Assessment of Ongoing Developments

A sound assessment of the ongoing developments in the control of Iraq's armament should of course begin with the question of what is distinctly new in this case and whether comparisons may be drawn with similar challenges the international community has faced in the past.

In the short history of the United Nations no comparable case may be found in which the Security Council acted with similar decisiveness on an issue of international security. Under its predecessor, the League of Nations, only the armed attack against Abyssinia in 1935 had led to the application of sanctions. These remained weak, however, due to their limitation to economic and financial measures short of an oil embargo and short of using military force. The inadequate success of the international community to ensure security for Abyssinia led to the League's decline, followed by its complete inactivity in response to similar armed attacks against China in 1937, against Finland in 1939 and against Poland at the outbreak of World War Two.

As has been suggested elsewhere,⁴⁴ and is elaborated by David Bederman in this issue, more relevant parallels might be seen in the measures against Germany instituted at the end of the First World War. But in this case, too, there are strong dissimilarities to the Iraq-Kuwait conflict. The origins of the First World War were much more complex and debatable than those of Iraq's attack against Kuwait, and the outcomes of the two wars also resulted in very different situations. German political leadership underwent a total change after the revolution of 1918 and a democracy was developing under the Weimar Republic; no such change occurred in Iraq after 1991. The limitation of arms and armaments under Part V of the Versailles Treaty of 1919⁴⁵ were intended, as declared in its Preamble, as a first step 'in order to render possible the initiation of a general limitation of the armaments of all nations'.⁴⁶ No single type of the large quantities of German arms and ammunition, tanks, ships and aircraft rendered under the Versailles Treaty had been prohibited previously under existing law, and it was at least the German understanding that general disarmament

⁴³ Fifth quarterly report of the Executive Chairman of the United Nations Monitoring, Verification and Inspection Commission under paragraph 12 of Security Council Resolution 1284 (1999), covering the period from 1 March to 31 May 2001 (S/2001/515 of 24 May 2001).

⁴⁴ Duelfer, *supra* note 22, at 109, n.6.

⁴⁵ Treaty between the Principal Allied and Associated Powers of the one part and Germany of the other part, done at Versailles on 28 June 1919, RGBl 1919, 687–1389 [918–961].

⁴⁶ This policy was based on the IVth and XIVth of President Wilson's Fourteen Points: 'IV. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety... XIV. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.' It was reflected in Art. 8 of the Covenant of the League of Nations and pursued with little success until its failure at the Conference on Disarmament (1932–1934).

within an appropriate time-frame was an important condition for German disarmament measures.⁴⁷ This expectation, however, was not fulfilled. On 16 March 1935, Germany declared Part V as being terminated due to the failed implementation of allied commitments for disarmament, and the last unilateral measures for German disarmament were abolished on 6 March 1936.⁴⁸ It is thus only in a very limited sense that similarities may be seen between Germany in 1919 and Iraq in 1991: neither country was occupied and international control in both cases remained limited. International cooperation and support, however, which was severely lacking for the new German government after World War I, was offered to Iraq, albeit in vain, under the Security Council regime.

The Iraq-Kuwait conflict was unique in that no other comparable situation has ever occurred which has met such unanimous, extensive and sustained response from the Security Council. At the same time, this situation has frequently provided a severe challenge for Member States, not only in providing consensus in the Security Council but also in deciding on a national basis on appropriate action in those cases where such consensus could not be established. While some such decisions clearly ensured implementation of Security Council resolutions involving a large group of states acting in solidarity and great coherence, as in the case of *Operation Desert Storm* and Resolution 661 (1990), there remain open questions and even doubts in certain cases where military operations did not enjoy such wide international support.

The continuing situation in the two no-fly zones and the December 1998 *Operation Desert Fox* have already been mentioned above. Similar military operations followed in February 2001, when US and British fighters were screened by Iraqi radars during control flights in the southern zone and, in response, they attacked Iraqi anti-aircraft systems. The Iraqi government, in turn, announced missile attacks against Israel and Saudi Arabia. The results of these operations were assessed by the Pentagon as being mediocre at best, due to the fact that far fewer than half of the targeted radars were damaged.⁴⁹ It should also be considered that the success of military operations cannot be judged by military results alone. Political effects, and in particular the consequences for ongoing monitoring and verification in Iraq, remain part of the equation.

Existing verification gaps, which continue to grow under the present situation of Iraq's refusal to permit UN inspections since December 1998, will inevitably lead to further escalation and impose new threats. The automated video monitoring system, installed by the UN at known and suspected facilities for weapons of mass destruction in Iraq, is no longer in operation. Having lost this on-the-ground access, it has become more difficult for the UN or individual Member States to accurately assess the current state of Iraq's weapon programmes. According to the most recent report to Congress of the US Central Intelligence Agency, the risk of diversion of existing equipment for weapons of mass destruction purposes has increased since December 1998, due to

⁴⁷ F. Berber, *Lehrbuch des Völkerrechts, III. Band, Streiterledigung, Kriegsverhütung, Integration*, 2. Aufl. 1977, at 128–129.

⁴⁸ *Ibid.*

⁴⁹ *Stars and Stripes*, 23 February 2001, at 7.

Iraq's reconstruction efforts on those facilities destroyed by US bombing attacks, including several critical missile production complexes and former dual-use facilities for chemical production. Iraq may still have hidden chemical weapons. The full scope and nature of its biological weapons programme has not been verified. Iraq has continued working on its L-29 unmanned aerial vehicle (UAV) programme, which is believed to have been developed for the delivery of chemical or, more likely, biological warfare agents. Iraq has also probably continued low-level theoretical research and development associated with its nuclear programme, although the still existing lack of a sufficient source of fissile material remains Iraq's most significant obstacle to being able to produce a nuclear weapon.⁵⁰

In comparison with these present and future security risks, some remaining controversial issues from previous military operations may appear less urgent. The latter nevertheless require further careful consideration in view of their potentially long-lasting consequences. The so-called 'Gulf War Syndrome' on soldiers, a previously uncharacterized complex of signs and symptoms which may be related to common wartime experiences rather than to a unique event during the gulf war,⁵¹ has not yet been fully explored. The potential effects of chemical and biological agents, combined with psychological stress situations for soldiers in the field, cannot be neglected as they also influence the legal assessment and bear certain risks of potentially long-term importance. Unsuccessful efforts to provide complete information in these areas could gain political weight and influence public opinion, as is also the case with discussions on the effects of the use of depleted uranium ammunition.

5 Conclusions

The restrictions imposed on Iraq in the field of weapons of mass destruction and ballistic missiles were hardly indicative of new developments in the law of arms control and disarmament. No important obligations have been created by the Security Council that could serve as pace-making examples for the creation of further treaty obligations in this field, although Iraqi threats to use chemical weapons provided support for consensus among participating states in order to conclude the 1993 Chemical Weapons Convention and revelations of the advanced nature of Iraq's nuclear programmes might have contributed to the May 1995 decision by states parties to the NPT to extend the treaty indefinitely.

Nevertheless, the strict determination of the Security Council to introduce a system of ongoing monitoring and verification under Resolutions 687 (1991) and 1284 (1999) and its continuing efforts to make this system fully operational in Iraq might

⁵⁰ Unclassified Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions, 1 January through 30 June 2000, <http://www.cia.gov/cia/publications/bian/bian_feb_2001.htm>.

⁵¹ Hyams, Wignall and Roswell, 'War Syndromes and Their Evaluation: From the U.S. Civil War to the Persian Gulf War', *Annals of Internal Medicine*, (1996), 125, at 398–405.

hopefully influence legal responses by the international community to similar situations that may occur in the future. UNSCOM and UNMOVIC, together with the IAEA, have been involved in the most comprehensive international monitoring system ever established in the sphere of arms control. The practical experience gained with regard to nuclear, chemical and biological weapons and ballistic missiles has assisted efforts to strengthen international activities in these areas, most notably with respect to verification. Also as a result of the conflict, awareness of the dangers of exporting dual-purpose technologies has led to a review of guidelines and practices for inspections under IAEA safeguards agreements with signatories of the NPT.

The problem of enforced verification, still unresolved despite the adoption of Resolution 1284 (1999), remains highly critical. This situation keenly underlines the fact that there is no viable alternative to resolute action by the Security Council. It likewise supports the conclusion that the need for political solutions in post-conflict peace-building, involving and stimulating the participation and cooperation of the state concerned, is even more obvious today than it was a decade ago.