

## **Chemical and Biological Weapons in Iraq: The Justification to Go to War**

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On 20 March 2003, troops from primarily the United States and the United Kingdom began military operations against Iraq in a preemptive move to eliminate the fast growing threat posed by Iraq's unconventional arsenal, including chemical and biological weapons (CBW). At the time, it was the culmination of a process that had started on 11 September 2001 with the deliberate crashing of commercial airliners into the World Trade Center in New York City and the Pentagon just outside Washington, DC, by Al-Qa'eda operatives. Meanwhile, the Taliban regime in Afghanistan was forcefully removed through foreign intervention sanctioned by the UN Security Council as a consequence of that government's unwillingness to withdraw its support for the Al-Qa'eda network operating from Afghan territory.

As part of the so-called global war against terrorism, US President George W. Bush soon also threatened renewed military action against Iraq. For reasons supposedly clear to him, his inner circle, and close supporters, Bush located the nexus between terrorism and proliferation of unconventional weapons in that country. Politically, Iraq made for an easy target. Since its eviction from Kuwait in 1991, Iraq had defied the world with regard to its disarmament obligations, remained a constant source of regional instability, and demonstrated an atrocious human-rights record. However, according to several UN Security Council resolutions—UNSC Resolution 1441 of 8 November 2002 in particular—only material breaches of its disarmament obligations could justify military inter-

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vention in Iraq. (It is a matter of legal and political debate whether Resolution 1441 sufficed, or whether a new resolution was required to authorize military force.) Regime change was never part of the UN mandate. Yet, it was equally clear that, as long as the Ba'ath regime remained in power, it would be impossible for the international community to acquire confidence in its disarmament and to reintegrate the country into the international system.

### **Legitimacy of the war in Iraq**

Following the liberation of Kuwait in 1991, the UN Security Council offered Iraq a conditional cease-fire in the form of Resolution 687. One condition was the destruction of its CBW and the dismantlement of its CBW programs. Economic sanctions, which had originally been imposed in 1990 after the invasion of Kuwait, were extended and expanded to compel Iraq to comply with the UN Security Council demands. The UN Security Council created the UN Special Commission on Iraq (UNSCOM) to verify Iraq's declarations and oversee the elimination of its proscribed arsenals. (UNSCOM's responsibilities also included ballistic missiles with a range of over 150 kilometres, and support for the International Atomic Energy Agency, which had been designated to dismantle Iraq's nuclear weapon program). Early hope for a quick closure of the Iraqi dossier evaporated soon in the light of Iraq's obstruction policies and vastly inaccurate reporting. Already in August 1991, UNSC Resolution 707 declared Iraq in material breach of its obligations under Resolution 687 and threatened renewed military action to enforce compliance. UNSCOM basically had to reconstitute itself from verifying into an investigative agency to ferret out the details of Iraq's CBW programs and holdings. Although UNSCOM destroyed or verified the destruction of most of Iraq's chemical weapons (CW), uncovered much of its advanced CW research and development programmes, and established beyond any doubt that Iraq was operating a major biological weapon (BW) research, development, and production program, it always found significant discrepancies between the repeatedly updated Iraqi declarations and its own verification data and calculations. By the end of 1998, when the inspectors were no longer allowed into the country, Iraq probably no longer had a military significant CBW capability, but the discrepancies suggested that it might be able to reconstitute its prohibited weapon programs fairly quickly after the dissolution of UNSCOM and the lifting of international sanctions.

Iraq's obstructive policies definitely complicated UNSCOM's work. However, UNSCOM suffered from the division of responsibilities between the UN Security Council (enforcement) and itself (verification and destruction). Whenever there was a case of serious obstruction, UNSCOM had to report back to the UN Security Council. The fifteen countries represented on the UN Security Council were perhaps united on the goal of Iraq's disarmament, but they held rather divergent views on how to achieve that goal. Of the permanent members, France and Russia had large economic interests in Iraq, so they were reluctant to endorse new measures that would delay the lifting of economic sanctions. China, traditionally opposed to any intervention in what it considers to be the internal affairs of a sovereign state, wanted to avoid precedents that could be invoked to deal with Tibet or other domestic affairs. The United States and the United Kingdom were probably the most fixed on the weapon issues, but especially Washington had a tendency to lose its focus. In particular, calls for regime change (which was never part of any UNSC resolution) or statements that Iraq had to meet many more criteria than just disarmament before the sanctions could be lifted (which was technically correct under the terms of UNSC Resolution 687, but became untenable as the standoff continued and a humanitarian crisis in Iraq began to emerge) not only raised questions about the true US political agenda, but also appeared oblivious to any security or economic interests of the other Security Council members. Iraq, which remained singularly focused on retaining as much as possible of its weapon capabilities and on having the sanctions lifted, quickly mastered the art of driving wedges between these diverging concerns and interests in order to neutralize the effectiveness of the UNSCOM inspectors.

In this battle of wills, Baghdad achieved a major success when it signed a Memorandum of Understanding (MOU) with UN Secretary-General Kofi Annan on 23 February 1988 over restricted inspector access to the so-called presidential sites. The MOU effectively ended the fundamental principle of unfettered inspector access to any site at any time laid down in UNSC Resolution 687 (1991). Furthermore and this was probably much more significant in its striving to divide the Security Council and Iraq was now in a position to bypass UNSCOM and appeal directly to Kofi Annan and the Security Council whenever, among other things, UNSCOM activities unfairly challenged its sovereignty or dignity. These issues soon overtook the primary question of Iraq's compliance with its disar-

mament obligation. Unsurprisingly, Iraq violated the MOU by the end of the summer, but the authority of the Security Council resolutions, and hence of UNSCOM, had been compromised. The deep fault lines within the UN Security Council were by now unbridgeable, and Operation Desert Fox—a vain US and UK attempt to bomb Iraq into compliance—ensured that the UNSCOM inspectors were never to return.

The outcome was unsatisfactory to all parties. The Iraq dossier could not be closed, and there was great uncertainty about Iraq's remaining CBW holdings and precursors and growth materials to manufacture chemical and biological agents. The long-term monitoring of activities in relevant facilities inside Iraq had all but ended, and none of the Security Council members were able to restore full economic ties with Iraq. Iraq, on the other hand, had failed in its key objective of having the sanctions lifted, and it had no hope of having the conditional cease-fire agreement—UNSC Resolution 687 (1991)—replaced with a permanent peace arrangement. Throughout 1999, several diplomatic attempts to return the inspectors to Iraq were undertaken, which in December resulted in the adoption of UNSC Resolution 1284. It created the UN Monitoring, Verification and Inspection Commission (UNMOVIC) to replace UNSCOM, and charged the new body with resolving any outstanding questions regarding CBW and ballistic missiles with a range exceeding 150 kilometres, developing a work program for Iraq to meet its obligations, and organizing the ongoing monitoring and verification (OMV) first referred to in UNSC Resolution 715 (1991). As a carrot, UNSC Resolution 1284 offered Iraq concrete time lines for the lifting of the sanctions, provided it met its obligations. UNMOVIC, however, was burdened by the 1998 MOU, which interposed the UN Secretary-General between it and the Iraqi government. Its authority was also negatively affected by the split vote in the UN Security Council, with three of the five permanent members—China, France, and Russia—abstaining. Despite the obvious weaknesses in the UNMOVIC mandate and the prospect of a roadmap towards lifting the sanctions, Iraq refused to accept the resolution. Until the adoption of UNSC Resolution 1441 in November 2002, UNMOVIC activities were essentially reduced to preparing for onsite inspections.

Personal politics notwithstanding, President Bush's address on 12 September 2002 confronted the members of the UN General Assembly with the stark truth that they were allowing a state to bla-

tantly defy UN Security Council resolutions. While such defiance has not been unique in the history of the United Nations, the trauma of events one year earlier and the apparent US resolve galvanized the international community to close the Iraq chapter once and for all. Several official and semi-official reports published in the United States and the United Kingdom added to the urgency by underscoring Iraq's advanced CBW capabilities, as well as its active research, and development, and production programs. On 8 November, the UN Security Council unanimously adopted Resolution 1441, which, while noting that Iraq had been and remained in material breach of its disarmament obligations, ordered the Iraqi government to comply with all past relevant UN Security Council resolutions and to allow the UNMOVIC inspectors into the country. The resolution threatened "serious consequences" if Iraq did not disclose all aspects of its CBW, nuclear, and longer-range ballistic missile programs or failed to cooperate fully and unconditionally with the inspectors. To make the threat real, US and UK forces began to deploy in the Persian Gulf region and gradually intensified air operations (which were part of the no-fly-zones operations over the north and south of Iraq to protect the Kurdish and Shiite populations) against anti-aircraft defenses and other targets. Resolution 1441 basically restored the UNSCOM inspection mandate prior to the 1998 MOU, and the unanimous vote gave the document enormous political weight.

Following Iraq's acceptance of the resolution, it submitted a 12,000-page declaration on 7 December. Iraq stated that it no longer possessed the proscribed weapons, but the files provided no substantive information to clear up the discrepancies in the final UNSCOM report. Meanwhile UNMOVIC had started its inspections on 27 November. However, the fissures in the UN Security Council soon resurfaced. Particularly the United States and the United Kingdom interpreted the gaps in the Iraqi declaration as a material breach of Resolution 1441 that authorized military force. (The US insistence on sanitizing the Iraqi documents before passing them on to the other UNSC members and UNMOVIC out of proliferation concerns was also controversial.) Most of the other members wanted to let the inspections run their course. Although the UNSC resolution again did not include a specific time frame, there existed a widespread sense that the inspectors would require 12 to 18 months to satisfactorily complete their mission. The feeling quickly emerged that military deployments were setting the pace of events, and in an increasingly polarized Security Council, the countries opposing

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immediate military action used the ongoing inspections as an argument against war.

These political developments placed UNMOVIC in a precarious position, especially since the inspections failed to turn up any tangible evidence of CBW stockpiles or active research and development programs. The United States, the United Kingdom, and their allies viewed the UNMOVIC reports to the Security Council as further evidence of Iraq's non-cooperation and the ineffectiveness of the inspection process, which, so they argued, had already been demonstrated in the 1990s. However, the disarmament mandate once more became muddled with issues of regime change, human rights, and so on. While undeniably important, none of these complications offered a legal basis for military action.

### **Judging the threat**

Since the start of the war in March 2003, UNMOVIC inspectors have not been back to Iraq. Derided for their ineffectiveness by the proponents of military action, the coalition forces brought in their own units to uncover the proscribed weapons, the Mobile Exploitation Teams (MET). In May, they were replaced by the Iraq Survey Group, whose 1,500 people represent a much larger effort than UNMOVIC was ever allowed to mount. At the time of writing, these coalition inspectors made no significant discoveries, nor have they come any closer to clarifying why evidence of Iraq's past CBW arsenals and programs remains elusive. In contrast, several prominent pieces of evidence about Iraq's unconventional weapons have meanwhile been shown to be wrong (allegations of the resumption of CBW-related activities in certain identified facilities, and the adaptation of unmanned aerial vehicles for spraying chemical or biological agents), false (claims about acquiring uranium from Niger), highly questionable (the truck-mounted BW production units), or hyped to ensure domestic support for the war (the claim in the UK government report that Iraq was capable of launching a CW strike within forty-five minutes).

This result is not entirely surprising in the light of the absence of any reports about the presence of traces of CW or BW agents in the air samples analyzed by detectors of the coalition forces. In all previous conflicts in which one of the warring parties possessed CW (including the 1991 Persian Gulf War), there were accounts of the release of agents as a consequence of hits on stockpiles, accidental firing of shells with agent filling, and so on. At a

minimum, the absence of such reports contradicts pre-invasion claims that CBW had been stockpiled with forward units and that battlefield commanders had received pre-delegated authority to such special munitions. However, the lack of reports (which was a even surprise to people who were skeptical about some claims regarding Iraq's CBW) also appeared to suggest that no such weapons were present in Iraq or that they were extremely well concealed.

The discrepancies that UNSCOM, and later UNMOVIC, found with the Iraqi declarations are significant. They include 6,500 bombs holding about 1,000 tons of chemical agent, lack of credible evidence to support the Iraqi claim of unilateral destruction of 8,500 litres of anthrax, doubts about the status of the development and production program of the nerve agent VX, and questions about the volumes of chemical precursors and growth materials for biological agents. In the arguments urging immediate military action, these discrepancies were presented as if those CBW munitions and capabilities were physically present (in which case the numbers would indicate a serious military threat). However, the term 'discrepancy' merely means that UNSCOM or UNMOVIC were not able to verify the Iraqi declarations or find conclusive evidence of the destruction of weapons and agent fillings. In other words, all or some of the weapons and capabilities might have been eliminated, or all or some of the weapons and capabilities might still have existed.

The size and nature of the discrepancies were such that Iraq remained a country of serious proliferation concern. The key question in the light of the invasion of Iraq in March 2003 was whether that threat had undergone significant qualitative and quantitative changes that accounted for urgency not present in 1998. Iraq's CBW were far from complete, and it could reasonably be assumed that, for example, its scientists and technicians were carrying out research and development activities to improve the quality of the agents and the production processes. However, there were very few reports of large-scale manufacturing of agents and delivery systems (which leave telltale signs, however well concealed), and no reports at all of large troop exercises to familiarize them with the use of agents or conditions on a contaminated battlefield. For example, it is inconceivable that any test with a Scud ballistic missile (with or without a chemical or biological warhead) would have escaped notice of the intelligence agencies. No such claim was included in the government reports detailing the Iraqi CBW threat. In other words, even if there still had been remnants of the CBW arsenal, it is doubt-

ful that these weapons were assimilated with the troops, and therefore that they could have been used in the case of a war. The only real expertise left probably dated back to 1988, the last year of the war with Iran and against the Kurds.

In summary, during the second half of 2002, there was little evidence that Iraq posed such an acute threat to regional or global security that the UNMOVIC inspections could not have continued for another year or so (although the UN Security Council would have had to set a realistic end date for the inspections, and then be prepared to take appropriate action based on the final UNMOVIC report). The true threat was that Iraq retained capabilities, knowledge, and expertise to reconstitute its weapon programs following the formal departure of the inspectors and the lifting of sanctions. The UN Security Council, however, never formally addressed the conundrum about how the world could acquire confidence in Iraq's disarmament commitments with the Ba'ath regime in power. A regime change (more fundamental than a so-called palace revolution) would have ultimately been necessary. Meeting this requirement was not part of UNSC Resolution 1441.

### **Conclusion: Was the war inevitable?**

The only legal justification for the use of military force against Iraq was UNSC Resolution 1441. While jurists, diplomats, and politicians may debate whether an additional resolution was required before international troops could actually cross the border into Iraq, the determination of non-compliance was always linked to UN-imposed disarmament obligations. (This is in contrast to UNSC Resolution 687 [1991], in which the dismantlement of proscribed unconventional weapons and weapon programs was just one of several issue areas.) Following the eviction of its inspectors in December 1998, UNSCOM reported some significant discrepancies between its findings and Iraq's declarations. While these discrepancies in and of themselves did not necessarily mean that weapons or components for weapon programs remained hidden somewhere in the country, it did signify that Iraq retained the potential to reconstitute its weapon programs and arsenals. As long as the international community lacked certainty about weapon programs and holdings, Iraq would have remained a source of regional instability and uncertainty, and thus a threat to peace and security. In other words, it was necessary for the international community to show resolve and unity to enforce the UNSC resolutions.

US President Bush, using the global sympathy for the American people to maximum effect, confronted the United Nations in September 2002 with the undeniable fact that it was allowing Iraq to flout its own decisions. The momentum he created resulted in the unanimous adoption of UNSC Resolution 1441 and the subsequent acceptance of its obligations by Iraq. However, it was also evident that the US strategy was fraught with danger. Driven by ideological motives, religious conviction, and a sense of revenge for the unfinished business of 1991, the US administration could easily overplay its hand. The large military buildup in the Persian Gulf, necessary to compel Iraq to comply, could easily overtake the diplomatic agenda for a peaceful settlement of the dispute. Furthermore, since taking office, the Bush administration had time and time again demonstrated its disdain for multilateral arms control and disarmament, as well as for international institutions. This latter aspect was reflected in the impatience with the UNMOVIC; the fact that the inspectors after their return to Iraq were unable to find any evidence of prohibited weapons confirmed Iraq's bad faith. According to US reasoning, seven years of inspections between 1991 and 1998 failed to close the Iraqi dossier, and new rounds of inspections would not make a difference.

Iraq's 12,000-page, but still incomplete, report confirmed in Washington's mind Iraq's resolve to continue to hide its unconventional weapon holdings and its policies of deception. Although the world was united on the need to disarm Iraq, the report exposed major ideological fault lines about the role of inspections between the United States and the United Kingdom, on the one hand, and the other UN Security Council members, on the other hand. To the United States and the United Kingdom, the report represented the baseline for compliance. Therefore, the lack of any new data on the discrepancies identified by UNSCOM in 1999 and any other gaps in the declarations constituted a material breach of Resolution 1441 allowing for military action. As a consequence of the experience with Iraq in the 1990s and their own intelligence assessments (large parts of which they refused to share with UNMOVIC), neither country was able or willing to consider alternative plausible explanations for gaps in the report. The position of the other Security Council members and other countries (notably West European) was more in line with the spirit of verified disarmament treaties: the declaration is a baseline document, whose accuracy needs to be confirmed and discrepancies resolved by means of on-site inspections. Military force

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was an instrument of last resort in the case that Iraq refused to hand over supplementary information during the inspections or prevented the inspectors from performing their tasks. However, as the world had witnessed during the UNSCOM period, this approach was equally problematic, as it became politically increasingly difficult to sanction minor infractions and to take punitive action against more serious ones.

Realization that regime change was virtually a prerequisite for the international community to gain trust in Iraq's disarmament commitments made the resolution of the conflict intractable. This solution always lay outside the mandate of the United Nations. War logic prevailed over disarmament, and has foreclosed possible diplomatic solutions or alternative security strategies. The question is now whether the region and the world will be safer.

### **References**

<sup>1</sup> The opinions expressed in this essay are strictly personal.