

IRAQ POLICY BRIEFING:
IS THERE AN ALTERNATIVE TO WAR?

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I. OVERVIEW

The policy dilemmas posed by the Iraqi crisis are much more acute, and the issues much more finely balanced, than most of those publicly supporting or opposing war are prepared to acknowledge. There is still broad international agreement about the objectives to be pursued: ensuring that Iraq does not constitute a threat, disarming it of the weapons of mass destruction it still retains (as demanded by Security Council Resolution 1441), and improving the condition of the Iraqi people (as demanded both by common decency and the Iraqi people themselves¹). But following the inspectors' reports to the UN Security Council on 14 February 2003 and the extraordinary scale of the worldwide anti-war demonstrations over the following days, achieving international consensus on how to achieve these objectives appears as difficult as ever.

This policy briefing does not offer clear conclusions and recommendations – not least because views within the ICG Board are as sharply divided as those within the international community. We hope, nonetheless, that it will clarify the issues and contribute some useful ideas to this difficult debate. The report is divided into four sections, each addressing a distinct course of action and identifying its pros and cons:

- *War options:* This section analyses the three principal rationales that have been put forward to justify a war at this point, corresponding to the three broad objectives of the international

community just stated (to meet the threat the Iraqi regime presents to the international community; to disarm Iraq; and to meet the threat the Iraqi regime presents to its own people). It examines in each case the criteria that may be thought to be required to be satisfied and whether they have been.

- *A deadline for disarmament:* This section explores the option of imposing a final deadline for Iraq to comply with a set of clearly defined benchmarks or face the certainty of war. It considers the four possible outcomes of this approach: full compliance and disarmament; non-compliance and exile for the Iraqi leadership; non-compliance and an internal coup that overthrows Saddam; or non-compliance leading to war.
- *More time for inspections:* Several nations have argued that additional time (and means) need to be given to the inspectors before any final decision can be made about a possible war; some have also argued in this context that inspectors ought to be accompanied by an armed force. This section discusses this approach and the two rationales that have been offered: more time to establish that inspections can actually disarm Iraq, and more time to establish that inspections can at least contain Iraq.
- *The CDD-Plus alternative: stronger containment, deterrence and diplomacy:* The final section looks at an alternative to further pursuing war as an option (assuming that there is no change in the state of evidence regarding the nature or extent of the Iraqi threat) and explores whether a strengthened regime of containment, deterrence and diplomacy can viably and in a sustained manner address such threat as currently exists.

¹ No one should underestimate the powerful desire for regime change on the part of the Iraqi people themselves, as evidenced in the recent ICG Middle East Briefing Paper, *Voices from the Iraqi Street*, 4 December 2002.

There are situations, and this may be one of them, where there is no alternative but to resort to war to achieve legitimate international objectives. At the same time, everyone acknowledges that war in the current situation should be the last resort. The case for looking for an honourable and defensible alternative to war is always strong, even more so when the transatlantic alliance is under unprecedented stress, when the case for war is clearly struggling to win international support in the Security Council and elsewhere, and when the risk of wider adverse consequences from war may well be greater than usual. What can be stated unequivocally is that the alternative to war, if there is one, is not to do nothing. Something substantial must be done to advance all three of the basic international objectives identified above. And it would obviously be helpful, if at all possible, that what is done were done in a way that maximises the chances of reuniting rather than further dividing the international community.

II. WAR OPTIONS

A. THREE RATIONALES FOR WAR

International consensus on whether there is a case for waging war against Iraq is hindered by disagreement about what such a war would be for, i.e. for which one or more of the three objectives outlined at the outset a war is to be fought:

- ❑ *External threat:* Is it a war to remove a threat to international peace and security?
- ❑ *Disarmament:* Is it a war to enforce Iraqi compliance with UN Security Council Resolution 1441 and previous resolutions demanding that Iraq disarm itself of all remaining weapons of mass destruction?
- ❑ *Internal Threat:* Is it a war to overthrow an Iraqi regime that has behaved monstrously toward its own people?

These questions are obviously not mutually exclusive, and cases can and have been made for overthrowing Saddam on all three grounds. But evidence that might be necessary or sufficient to satisfactorily answer one question might not be enough to answer another. For example, the question of whether there has been compliance with Resolution 1441 is of critical relevance if the issue is disarmament, but of only second-order relevance if the issue is external threat and extremely marginal if the issue is internal threat.

Many states are talking past each other at the moment because they are focusing on different questions. The issue is further complicated because a number of states have focused on different issues at different times, jumping backwards and forwards between the different rationales for war as circumstances have evolved. The following section attempts to untangle the different issues involved and to describe prevailing perceptions about the strength and weakness of each of the three different cases for war.

B. WAR TO MEET EXTERNAL THREAT

The critical question would appear to be simply this: “*Is the present Iraqi leadership such a threat to international peace and security that it is necessary to overthrow it by military force?*” To answer it

involves, in turn, teasing out two distinct sets of issues.

- “Is the present Iraqi leadership a threat to international peace and security?” This involves issues of *capability* (whether, in the context of WMD, there is solid evidence of possession of deadly weapons and the ability to unleash them) and *intent* (for which past behaviour and use of WMD, as well as present associations with terrorist groups likely to use them, are relevant).²
- “Is the threat posed by the regime, assuming there is one, of such a nature and magnitude that it must necessarily be overthrown by military force?” This involves issues of *containability* (whether capability can at least be limited, if not eliminated), *deterrability* (whether the use of any residual capability can effectively be stopped), and *consequences* (how the relative risks and benefits involved in going, and not going, to war balance out).³

And if the answer to the core question is affirmative, one further major question has to be asked:

- “Is there proper international legal authority for military action?” This involves the questions of whether there is sufficient legal authorisation for war based on existing UN Security Council resolutions; whether this is a case when unilateral action can be taken within the UN Charter in reliance on Article 51’s self-defence provision; and whether – beyond that – it can ever be justifiable to take military action outside the Charter, without seeking, or receiving, Security Council approval.⁴

On all these issues, answers differ markedly.

1. Is There a Threat?

Capability. The 27 January 2003 report by the Iraq Nuclear Verification Office of the International Atomic Energy Agency (IAEA) and the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), Secretary Powell’s 5

² Putting it in terms of accepted just war criteria, is there a ‘just cause’.

³ The just war criteria of ‘last resort’, ‘proportionality’ and ‘reasonable prospects’.

⁴ The just war criterion of ‘right authority’ (and to some extent ‘right intention’).

February 2003 presentation at the Security Council and various analyses produced by research institutes and official sources provide a good – albeit disputed – overview of the available information regarding Iraq’s program.⁵

Proponents of the view that Iraq has the WMD capacity to threaten international peace and security argue that an irrefutable case has been made regarding its continued possession of WMD, its determination to acquire new production facilities in the chemical, biological, nuclear and missile areas and its leadership’s efforts to conceal these from the inspectors.⁶ In particular, they point out that Iraq has flouted its requirement under UNSCR 1441 to provide a “currently accurate, full, and complete declaration” identifying its existing arsenal of WMD and its efforts to acquire more.⁷ Iraq has not provided adequate answers regarding its biological weapons program (most notably large quantities of unaccounted for anthrax), its chemical weapons capabilities (in particular VX), or the development of missiles and other instruments to deliver its WMD.

The U.S. and UK in particular have argued that biological and chemical weapons unaccounted for in Iraq’s declaration, and therefore presumably still in its possession, could do unspeakable damage even in small quantities and, because they are easily moved and concealed, will not be found by the inspectors. Iraq’s alleged development of various means to disperse biological agents in water or air makes this danger all the more real. Iraq is believed to be

⁵ For the most comprehensive outlines of U.S. and UK concerns see: U.S. Central Intelligence Agency, *Iraq’s Weapons of Mass Destruction Programs*, October 2002; UK Joint Intelligence Committee, *Iraq’s Weapons of Mass Destruction: The Assessment of the British Government*, 24 September 2002. For an excellent overview of the available data and key areas of concern, see Joseph Cirincione et.al., *Iraq: What Next?* (Carnegie Endowment, January 2003).

⁶ See Secretary of State Colin L. Powell, *Remarks to the United Nations Security Council*, 5 February 2003. For a critique of Powell’s presentation, see David Cortright et.al., *Contested Case: Do the Facts Justify the Case for War in Iraq*, Fourth Freedom Forum, available at <http://www.fourthfreedom.org>.

⁷ Hans Blix, the head of UNMOVIC, described the Iraqi declaration as “rich in volume but poor in new information about weapons issues and practically devoid of new evidence”. *International Herald Tribune*, 10 January 2003. For the U.S. view on the Iraqi declaration see: U.S. State Department, *Illustrative Examples of Omissions From the Iraqi Declaration to the United Nations Security Council*, 19 December, 2002.

seeking to develop nuclear weapons, focusing efforts on acquiring the fissile material it now appears to lack. There also is evidence indicating that Iraq has maintained programs to produce ballistic missiles that can fly significantly beyond the allowed range⁸ and unmanned aerial vehicles that could potentially disperse chemical and biological weapons. Any one of these actions standing on its own constitutes a serious breach of Iraq's disarmament obligations as put forward in numerous Security Council resolutions;⁹ together, according to this view, they paint a highly disturbing picture and leave little doubt as to the existence of at least some illicit material.

Opponents of the view that Iraq has the capacity to threaten international peace and security underscore the fact that the regime's military capability has been severely degraded by war, sanctions and the earlier successes of the UN inspectors, and that the inspections currently being undertaken have yet to uncover WMD. They argue in particular that, in their 14 February 2003 presentations to the Security Council, Hans Blix and Mohammed ElBaradei were careful to stress that they had no evidence that Iraq possessed any WMD.

Overall, however, the general international view – held even by those states that oppose a war – is that Iraq in all likelihood retains sufficient material to inflict great damage if it so intends and if it were so permitted. Though the inspectors may not have uncovered any WMD, Blix in particular underscored the important question of unaccounted for chemical and biological weapons.¹⁰ That,

combined with continued Iraqi non-cooperation, is considered powerful, if not incontrovertible, evidence of continued Iraqi possession of WMD.

Intent. The question of whether Saddam Hussein would, if allowed, unleash his weapons of mass destruction to imperil international security has generated much more divergence in international opinion.

Those arguing that the Iraqi regime intends to use its WMD start with the simple, chilling observation that it has used them already, against its Iranian neighbour and against its own people, and point to its continued efforts to retain such weapons and acquire new ones, in defiance of the international community, at considerable cost to Iraq's economy and, now, with the significant risk of triggering a devastating war. Why, except for evil purposes, would Iraq choose to retain its WMD despite the immense damage it has brought upon itself?¹¹ U.S. officials further make the case that Iraq has a long history of ties with terrorist groups and argue that this extends, more recently, to ties with al-Qaeda itself – raising the possibility that Saddam might be harbouring the desire to pass on WMD to them, thereby concealing his role. Indeed, the U.S. claims to have evidence that Iraq has provided training to al-Qaeda operatives in how to make poisons. Undertaking such a transfer and therefore making possible an attack against the U.S., possibly even on U.S. soil, would satisfy Saddam's strong desire for revenge against the United States which dates back to Desert Storm. As Secretary Powell put it:

Given Saddam Hussein's history of aggression, given what we know of his grandiose plans, given what we know of his terrorist associations and given his determination to exact revenge on those who oppose him,

⁸ In his 14 February 2003 report to the United Nations Security Council, Hans Blix stated that Iraq had developed a missile system capable of exceeding the maximum 150-kilometre range and that it had a program to produce missiles capable of significantly greater ranges.

⁹ See United Nations Security Council Resolution (UNSCR) 1441, 8 November 2002; UNSCR 1284, 17 December 1999; UNSCR 1205, 5 November 1998; UNSCR 1194, 9 September 1998; UNSCR 1137, 12 November 1997; UNSCR 1134, 23 October 1997; 1115, 21 June 1997; UNSCR 949, 15 October 1994; UNSCR 707, 15 August 1991; UNSCR 699, 17 June 1991; UNSCR 692, 20 May 1991; UNSCR 689, 9 April 1991; UNSCR 687, 8 April 1991.

¹⁰ Referring to nuclear issues, however, ElBaradei stated that the "IAEA concluded by December 1998, that it had neutralised Iraq's past nuclear programme, and that, therefore, there were no unresolved disarmament issues left at that time." He went on to stress that "our focus since the resumption of our inspections in Iraq, two and a half months ago, has been verifying whether Iraq revived its nuclear program in the intervening years. We have found to date no

evidence of ongoing prohibited nuclear or nuclear related activities in Iraq. However, as I have just indicated a number of issues are still under investigation, and we are not yet in a position to reach a conclusion about them, although we are moving forward with regard to some of them." Statement to the Security Council, 14 February 2003.

¹¹ The Iraqi regime sacrificed about U.S.\$140 billion in foregone oil revenues in the 1990s as a result of the sanctions – a rough estimate, some would say, of the value it places on its WMD. See Abbas Alnasrawi, "Oil, Sanctions, Debt and the Future", unpublished paper, 11 March 2001. Iraq resumed oil exports at the end of 1996. The ceiling on oil sales was lifted in 1999, but the shortage in spare parts and unfavourable pricing mechanisms continue to limit Iraq's oil revenues.

should we take the risk that he will not someday use these weapons at a time and the place and in the manner of his choosing at a time when the world is in a much weaker position to respond?¹²

Those arguing that the Iraqi regime does not, under present circumstances, intend to use its WMD emphasise that Saddam has never used non-conventional weapons when he would have suffered devastating retaliation (as during Desert Storm), and that he would be likely to do so only if he felt he had nothing left to lose – in other words, if his or his regime's survival were at stake. They suggest that he is holding on to WMD precisely to avert that eventuality and that the likelihood of his using WMD is proportional to the likelihood of a war aimed at dislodging him.¹³ This assessment was shared by George Tenet, the Director of the CIA, who told the U.S. Joint Intelligence Committee in October 2002 that "Baghdad for now appears to be drawing a line short of conducting terrorist attacks with conventional or CBW [chemical and biological weapons] against the United States". The CIA, he advised, had also determined that "should Saddam conclude that a U.S.-led attack could no longer be deterred, he probably would become much less constrained in adopting terrorist actions", and that "Saddam might decide that the extreme step of assisting Islamist terrorists in conducting a WMD attack against the United States would be his last chance to exact vengeance by taking a large number of victims with him".¹⁴

On the question of Iraq's ties to terrorist groups, moreover, many take issue with the evidence put forward by Secretary Powell, claiming that it was the weakest part of his case. In particular, they challenge the allegations regarding Iraq's ties to al-

Qaeda, insisting there is of yet no evidence offered of any operational link to that organisation or of Iraq providing it with WMD and that, had Baghdad intended to do so, it had ample opportunity during the past few months.¹⁵ While U.S. officials point to the message attributed to Osama bin Laden and broadcast on 11 February 2003 calling on Iraqis to carry out suicide attacks against the US – others argue that it presents in itself no evidence of any link with Saddam's regime.¹⁶ Finally, those who take issue with the U.S. view also claim that the notion of Saddam Hussein passing on WMD to terrorist groups beyond his control does not comport with his past record, his hyper-centralised concept of power, or even his purported goal of dominating the Middle East. Iraq's Baathist regime is guilty of many unspeakable crimes, according to this view, but weapons proliferation, has not, so far, been one of them.¹⁷

¹⁵ A leaked intelligence report prepared by the British Ministry of Defence concluded that relations between Saddam Hussein's regime and bin Laden had "foundered" because of ideological differences. See: *The Guardian*, 6 February 2003. For more details see: "Alleged Al-Qaeda Ties Questioned", *The Washington Post*, 7 February 2003. Among Secretary of State Powell's claims regarding Iraq's links to al-Qaeda, he made the case that Baghdad was working with the Kurdish Islamist group, Ansar al-Islam, and that the group harboured members of al-Qaeda. For a discussion see ICG Middle East Briefing, *Radical Islam in Iraqi Kurdistan: The Mouse that Roared?*, 7 February 2003.

¹⁶ In fact, the recorded message took a clear swipe at the Iraqi regime: The fighting by Moslems "should be for the sake of the one God. It should not be for championing ethnic groups, or for championing the non-Islamic regimes in all Arab countries, including Iraq. . . Regardless of the removal or the survival of the socialist party or Saddam, Muslims in general and the Iraqis in particular must brace themselves for jihad against this unjust campaign. . . Under these circumstances, there will be no harm if the interests of Muslims converge with the interests of the socialists in the fight against the crusaders, despite our belief in the infidelity of socialists. The jurisdiction of the socialists and those rulers have fallen a long time ago. Socialists are infidels wherever they are, whether they are in Baghdad or Aden." This translation from the BBC can be found at http://news.bbc.co.uk/2/hi/middle_east/2751019.stm. As a U.S. terrorism expert remarked, "there is at least one important difference between al-Qaeda and the Iraqi regime: the former desperately wants a war; the latter desperately want to avoid it". ICG interview, Washington, 12 February 2003.

¹⁷ The 1999 report of a U.S. "Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction", otherwise known as the Gilmore Commission, stated that "governments that have devoted considerable time, effort, and resources to a covert build up of their chemical, biological, radiological, and

¹² Secretary of State Colin L. Powell, op. cit.

¹³ See, e.g., John J. Mearsheimer and Stephen M. Walt, "An Unnecessary War", *Foreign Policy*, January/February 2003.

¹⁴ Letter to Senator Bob Graham, Chairman of the House and Senate Intelligence Committees, 8 October 2002, by CIA Director George Tenet. Excerpts from *The Nation*, 10 October 2002. A senior CIA official told the U.S. Senate that the likelihood of Saddam using WMD if he did not feel threatened was low. Once under attack, however, that likelihood was "pretty high". Statement to the U.S. Senate Select Committee on Intelligence, 9 October 2002. Referring to Saddam's potential use of WMD once attacked, Graham Allison, wrote: "To prevent an attack the likelihood of which is low, the U.S. is taking action that makes the likelihood of the attack high". *Boston Globe*, 12 October 2002.

2. Does the Threat Demand Military Action?

Assuming for present purposes that Iraq presents a potential threat to the international community, the next question is whether it is of such a nature and magnitude that it must be dealt with by means of a military invasion, and cannot be dealt with by the application of strategies of containment (as a result of which the threat level is kept within bounds) and deterrence (as a result of which whatever level of threat that does exist is not acted upon).

Containability. Containment, basically the policy pursued by the international community since 1991, has as its principal objective the limiting of Iraq's military potential so that it cannot endanger regional or world stability. As others have noted, containment was enshrined in Security Council resolutions that required Iraq's disarmament and imposed harsh sanctions and other penalties designed to confine its capacity to reconstitute its weapons arsenal should it fail to comply.¹⁸

Proponents of the view that containment cannot work argue that it is unsustainable because too many nations are willing to break the rules. Since 1991, an increasing number of countries have chosen to violate the sanctions, thereby providing the regime with the means both to purchase banned materials and to import them unhindered.¹⁹ There has been a constant erosion of the sanctions regime, with more and more countries prepared to trade with Iraq,

nuclear (CBRN) capability are unlikely to want to place these weapons in the hands of groups over which they have no ultimate control"; and "given the unpredictable nature of the terrorist groups that would be most interested in gaining CBRN capacity, the possibility of proxies using weapons against the supporting state itself could never be entirely discounted by the terrorists' patron" (p. 17). *Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction; Part One, Assessing the Threat*, First Annual Report to the President and the Congress, 15 December 1999. The most recent edition of the report, released 16 December 2002, stated that "...despite Hussein's motivation to use terrorist forces as a vector against the United States and the possibility that Iraq could transfer unconventional weapons capabilities to terrorist groups for their own purposes, there is no consensus that this has occurred....While the danger remains that the context may change and these states will view transfers of unconventional weapons to terrorist groups as in their interest, there is no evidence that they have yet done so". Fourth Annual Report to the President and the Congress.

¹⁸ See Kenneth M. Pollack, *The Threatening Storm, The Case for Invading Iraq* (New York, 2002), pp. 211-213.

¹⁹ *Ibid.*, p. 213.

ignore the ban on civilian flights, and – in some instances – provide it with the material necessary to produce WMD. Whatever new-found commitment may now exist on the part of the international community, it is unlikely to last long, and will soon give way to divisions among its members, sanctions-fatigue, and the desire to enter into lucrative commercial contracts with Iraq. Finally, however intrusive the inspections currently under way, precedent shows they are unable to find all existing weapons; likewise, they will be unable to detect and stop all ongoing production. In short, if containment leaked in the past, as it did, there is no reason to believe it will not in the future.

While acknowledging that in theory containment provides the best alternative to a military solution, UK Prime Minister Tony Blair maintains that it has been tried and found wanting. Inspectors, he argues, failed to eliminate either Saddam Hussein's WMD or his WMD programs during the 1990s, and eventually they were, in effect, thrown out of the country, thus permitting Saddam to accelerate those programs and produce the current dangerous situation. He adds that the experience since inspectors returned to Iraq in late 2002 further demonstrates that they are incapable of finding Saddam's WMD or preventing him from accumulating more of it. Thus, the prime minister concludes, the only credible alternative to an unacceptably growing risk that Saddam will use his WMD at a time and in a method of his choosing is to assume the risk of war.²⁰

Proponents of the view that containment can work claim that, in the present circumstances, given the continued sanctions (however debilitated) and the presence of over 100 inspectors conducting "anywhere, anytime" inspections, Iraq will lack the capacity to acquire, produce or use weapons of mass destruction, particularly the nuclear weapons about which there is most acute concern in the policy community. Even presuming, as one must, particularly after Secretary Powell's presentation, that inspectors can have at best limited success in

²⁰ Summary of part of the argument made by Prime Minister Tony Blair to BBC *Newsnight* host Jeremy Paxman and an audience of British citizens at the Baltic Arts Centre, Gateshead, 6 February 2002. See BBC News website. Paxman contested that the inspectors were "thrown out" of Iraq in 1998, making the point that they were withdrawn by the UN to clear the way for U.S. and UK bombing. The Prime Minister rebutted that the circumstances amounted to their expulsion because Iraq had made it impossible for them to conduct their work properly.

discovering WMD and that Iraq will continue to do its best to thwart both the sanctions and the inspections, the argument is that at a minimum they will prevent Iraq from developing a credible threat capacity.²¹ At their full operational level, UN inspectors will be equipped with a variety of cameras and sensors as well as with the capacity for surveillance over-flights (assuming Iraq lives up to its agreement, mandated by UNSCR 1441). Already, the argument goes, while evidence that Iraq is hiding and perhaps intimidating scientists, removing documents and otherwise seeking to conceal its WMD points to Baghdad's ability to deceive, it also points to the inspectors' ability to disrupt.²²

Advocates of containment also take issue with wholly negative assessments of the achievements of

²¹ The containment effects of inspections have been acknowledged by both Mohamed ElBaradei, the director-general of the International Atomic Energy Agency (IAEA) and Hans Blix, the head of UNMOVIC. ElBaradei commented: "It should be noted that IAEA's verification activities serve not only as a mechanism for verifying that Iraq is not currently carrying out any proscribed activities, but equally as an important deterrent to the resumption of such activities by Iraq". IAEA, *Statement of the Agency's Verification Activities in Iraq As of 8 January 2003*, 9 January 2003. Hans Blix told the UN Security Council: "The awareness in Iraq that industrial facilities, military installations, public or private offices and dwellings, may be the subject of no-notice inspection is further likely to deter possible efforts to hide items or activities or, at the very least, to make such action much more difficult. This is no small gain". Dr. Hans Blix, Executive Chairman, UNMOVIC, *Notes for Briefing the Security Council*, 9 January 2003. For an up-to-date report on the inspectors' activities in Iraq, see the statements by Hans Blix and Mohammed El-Baradei to the Security Council on 14 February 2003.

²² The case for containment is stated most forcefully in a recent Carnegie Endowment Report: "With tens of thousands of troops around Iraq, an international coalition united in support of the inspection process, and now hundreds of inspectors in the country able to go anywhere at any time, Saddam is unable to engage in any large-scale development or production of chemical, biological, or nuclear weapons. It would be exceedingly difficult to import significant quantities of proscribed materials or to manufacture longer-range missiles or missile components". Carnegie, "What Next", op. cit., p.12. The CIA and UK government dossiers on Iraq's WMDs are consistent with this view. For example, neither report claims that Iraq currently possesses nuclear weapons but rather that, if "left unchecked", its nuclear program may be able to produce this capability in a not so distant future. See: U.S. Central Intelligence Agency, *Iraq's Weapons of Mass Destruction Programs*, October 2002; UK Joint Intelligence Committee, *Iraq's Weapons of Mass Destruction: The Assessment of the British Government*, 24 September 2002.

UN inspection during the 1990s. Before they left Iraq in 1998, the inspectors had supervised the destruction of large amounts of military material – far more than had been destroyed during the Gulf War – and had at the least substantially set back WMD programs.²³ Whatever the degree of threat Saddam currently presents, they maintain that it would be considerably greater had it not been for their efforts.

Deterrability. Even assuming that Iraq cannot be contained from acquiring or maintaining WMD, to justify war the case needs to be made that the regime cannot be deterred – by the credible threat of immediate and massive military retaliation – from using that capability.

Proponents of the view that deterrence cannot work point to Saddam's history of defying international warnings and of recklessly miscalculating the reactions his actions will trigger: attacking Iran, invading Kuwait, attempting to assassinate former President Bush, and so on.²⁴ They note the fact that the Iraqi regime has not been deterred from violating Resolution 1441 despite the massing of U.S. troops and the threat of imminent U.S. military action. Certainly, they argue, should Saddam be able to develop his WMD capability, he would be convinced of his ability to blackmail the international community – as North Korea is doing right now. Perhaps most importantly, they argue that deterrence is ineffectual against a decision by Saddam to transfer WMD to terrorist groups that can neither be traced to Baghdad nor dissuaded from attack. More than a year after the anthrax attacks in the U.S., they point out, Saddam must surely be aware that the Bush administration still doesn't know who was responsible for them. In Secretary Powell's words:

We cannot wait for one of these terrible weapons to show up in one of our cities and wonder where it came from after it's been detonated by al-Qaeda or someone else.²⁵

The potential consequences of such an attack are illustrated by a simulation conducted by the Center for Strategic and International Studies in Washington

²³ See the findings of the independent panel of experts established by the United Nations Security Council in 1999. UNSC, Letters Dated 27 and 30 March 1999, S/1999/100, 30 March 1999.

²⁴ The best argument for why Saddam Hussein is not deterrable is found in Pollack, op. cit., pp. 243-280.

²⁵ Secretary of State Powell, remarks to the United Nations Security Council, 14 February 2003.

called Dark Winter. Postulating a smallpox attack by a terrorist group originating in Tulsa, Oklahoma, the CSIS concluded that after one month a million Americans would have been infected, 300,000 would have died, all air traffic into and out of the country would have been shut down, martial law would have been declared, and the economy would have been crippled.²⁶

Proponents of the view that deterrence can work stress that the presence of tens of thousands of U.S. troops and heightened international vigilance will dissuade the Iraqi regime from threatening its neighbours or any others – that, faced with the clear-cut threat of a war that would obliterate the regime, it would not engage in risky behaviour. While conceding that an Iraq armed with sufficient quantities of WMD may believe it can blackmail the international community – in effect, deterring the deterrer – they counter that the current containment regime can adequately limit his WMD arsenal, at least for now. As for the possibility that Saddam may transfer WMD to terrorist groups, the case here relies on the argument that Iraq has no record of taking such a step or of enjoying such operational links with terrorist groups. 11 September may have changed the U.S. perception of the danger, but there is no evidence that it has changed Saddam’s pattern of behaviour. He is not alleged to have provided terrorists with WMD in the past, and the mere observation that he might do so in the future does not justify a military attack – and could just as well apply to Iran, Libya, Syria or North Korea. Moreover, the regime could not be sufficiently confident about successfully covering its tracks – particularly in an environment of intense international scrutiny – so as to warrant the tremendous risk any WMD transfer would entail.²⁷

²⁶ For more information on the Dark Winter simulation, which was played in June 2001, see <http://www.homelandsecurity.org/darkwinter/indexx.cfm>.

²⁷ The most articulate case for deterrence is made in John J. Mearsheimer and Stephen M. Walt, “An Unnecessary War”, *Foreign Policy*, January/February 2003; see also Morton H. Halperin, “A Case for Containment”, *The Washington Post*, 11 February 2003 (noting that Saddam “has not used weapons of mass destruction against anyone who could retaliate with either weapons of mass destruction or overwhelming conventional military power”). Initially, U.S. National Security Advisor Condoleezza Rice seemed to have supported the argument that deterrence would keep Iraq from using WMD: “[I]f they do acquire WMD their weapons will be unusable because any attempt to use them

Again, they look to the past to argue that Iraq has been successfully deterred from using its WMD when faced with the threat of massive retaliation. They also note that, with the exception of the 1994 mobilisation of Iraqi troops at the Kuwaiti border (which the dispatch of additional U.S. troops to Kuwait aborted), Saddam has not threatened, much less used, his military capabilities against any external foe since the Gulf War – the deterrent here being UN Security Council resolutions, U.S. and UK military pressure from the air (the no-fly zones and fairly extensive bombing in their support) and the guarantee of a full-scale U.S. military response.

Consequences. In assessing its various options for dealing with the continuing Iraqi crisis, the international community has an obligation to weigh the risks and benefits of going, and not going, to war. No amount of trepidation concerning the consequences ought to trump the necessity for war if it is indeed the only way to ensure international peace and security; likewise, the justification for war should be based on the threat presented by Iraq, and not on the putative side-benefits that also might flow. That said, the balance of consequences must always be taken into account, and particularly so in circumstances where the stakes are as high as they appear to be here.

Proponents of military action emphasise that, though there is much opposition to war today, it is likely to subside once scenes of a grateful Iraqi people replace scenes of combat. They also emphasise that, given the demoralisation and poor equipment of most of Saddam’s troops, a military campaign could be quickly won. It would, they say, lead to an Iraq freed of its despot and of its WMD, rapidly stabilised and rebuilt, helping pave the way for democratisation efforts throughout the region. It would facilitate the withdrawal of U.S. forces from Saudi Arabia, thus removing an important source of mobilisation for Islamist terrorist groups such as al-Qaeda. At the same time, the display of U.S. power in Iraq could simultaneously quell the ambitions of groups such as Hamas or Hizbollah or, at the very least, lead their sponsors such as Iran and Syria to keep them under control for fear of U.S. retaliation.²⁸ A different Iraq,

will bring national obliteration”. Condoleezza Rice, “Campaign 2000: Promoting the National Interest”, in: *Foreign Affairs*, January/February 2000.

²⁸ As ICG observed in Lebanon, the mere prospect of a U.S.-led invasion was having a chilling effect on Hizbollah, a member of which claimed the group would have to “lay low”

in other words, could usher in a new era for the region as a whole, making possible renewed efforts on the Israeli-Arab front and on the Arab domestic reform agenda. In the words of Douglas Feith, the U.S. Under Secretary of Defence for Policy:

If Iraq had a [freer] government ... and if that government could create some of those institutions of democracy, that might be inspirational for people throughout the Middle East to try to increase the amount of freedom that they have. . . . If we were to take military action . . . against Iraq, I think it would register with other countries around the world that are sponsoring terrorism and would perhaps change their own cost-benefit calculations about their role in connection with terrorist networks.²⁹

If the benefits of action are high, so too – it is argued by those favouring war – are the potential costs of inaction. To be sure, going to war should not be justified by the fact that events have already gone to the brink. But, just as one must acknowledge the utility of the rhetorical and physical build-up in wringing out such cooperation from Saddam as there has so far been, with inspectors at least back on the ground, no one can dismiss as of no consequence the effect of a U.S. decision not to go to war on Iraq's assessment of whether Washington, let alone the international community, would have the will and ability to wage war the next time around. Should Saddam Hussein escape once again without having to let go of all his WMD, he is certain to become more confident that future threats of war will remain idle – thereby increasing his willingness to defy the international community and pursue his WMD programs. War may be risky, but no outcome can be

before, during and in the aftermath of a war. ICG interview with Hizbollah member, 19 November 2002. Hamas' discussion of a possible cease-fire agreement appears to be fuelled, in part, by apprehension about the impact of a war. ICG interviews with Palestinian official, January 2003; and with U.S. official, January 2003. Similar feelings were voiced by Lebanese and Syrian officials. ICG interviews, Beirut, Washington. Of equal interest are signs that the regimes in Saudi Arabia and Jordan may be encouraging pro-democracy sentiments, possibly in order to head off any popular discontent generated by the war. See "Saudi reformists put 'future vision' to Crown Prince Abdullah", *Daily Star*, 30 January 2003; also ICG interviews, Amman, February 2003.

²⁹ Quoted in Nicholas Lemann, "After Iraq", *The New Yorker*, 17 February 2003, pp. 71-72. See also Fouad Ajami, "Iraq and the Arabs' Future", *Foreign Affairs*, January/February 2003.

worse than Saddam armed with WMD and convinced of the international community's lack of resolve. Indeed, just as the destruction of his WMD would resonate with other proliferators and would-be proliferators, so a decision not to wage war would not be lost on them. Moreover, it is argued that a decision by the U.S. not to attack would destroy its credibility in the region and beyond.

Opponents of a military action have stressed its considerable potential risks. These are argued to be greater – and more needing to be closely weighed in the balance – than has been the case for most of the conflicts faced by the international community in the last decade:

- *In Iraq*, the regime's past record, the fact that it will know it is fighting for its life, and its presumed possession of WMD constitute, it is argued, an ominous combination. The activation of putative terrorist cells around the world and the passing of WMD to terrorist groups cannot be excluded should war become imminent. Nor can the use of chemical or biological weapons on the battlefield or against neighbours or the setting on fire of Iraq's vast oil fields, causing a monumental environmental catastrophe, be excluded should war actually be fought. Some would argue that Saddam's presumed willingness to act in such a way and in particular his presumed willingness to use WMD are precisely the reasons why war is the preferred option. Others suggest in reply that ensuring Saddam has nothing to lose may well lead to the very scenario (a strategic alliance with al-Qaeda and other terrorist groups; the use or transfer of WMD) the international community is seeking to avoid. Moreover, the transfer of WMD may result not from an active decision by Saddam, but rather from the absence of central control and the unintended privatisation of the country's arsenal during the course of a war.³⁰

A further consideration is that in the aftermath of an invasion of Iraq the task of rebuilding the country would require a colossal investment of time, energy and resources.³¹ The international community's track

³⁰ See Daniel Benjamin, *The Washington Post*, 31 October 2002: "The collapse of the Iraqi regime could prove to be the greatest proliferation disaster in history. The beneficiaries will be terrorists who have no interest in the weapons for their deterrent value; they will just want to use them".

³¹ The United Nations Development Program estimates that the costs of rebuilding post-conflict Iraq would amount to at

record in this regard is ambivalent at best. But while neglecting the effort of political and economic reconstruction in Afghanistan is unwise,³² to neglect it in a country like Iraq – strategically located as well as tempting prey for various internal and external forces – would, it is argued, be disastrous.

□ *In the region*, there is a widely held international view that a war against Iraq, especially if waged by the U.S. and its coalition partners without further Security Council authorisation, would dangerously exacerbate an already tense situation. ICG interviews throughout the region, in Saudi Arabia, Yemen, Kuwait, Jordan, Egypt and Algeria, indicate that there exists wide and deep scepticism about U.S. motives. Few are willing to believe that the U.S. is genuinely pursuing a disarmament objective; instead, most see a policy designed to increase America's influence in the region and its control over oil resources, to reshape the Middle East or to promote Israeli interests.³³ Warnings that a war could provoke dangerous manifestations of popular anger must contend with the objection – emphasised by those supporting military action – that such admonitions have repeatedly been made in the past (during Desert Storm, the second intifada and the war in Afghanistan) without once becoming reality. The response is that the current situation is exceptional: the ongoing Israeli-Palestinian conflict, the lack of any prospect for its resolution, U.S. diplomatic foot-dragging in the Arab-Israeli arena and, worse, the perception of its total alignment with Israel, have combined to produce an intense mood of anti-Americanism.³⁴ Moreover, the

scope of U.S. ambitions for Iraq (an invasion followed by regime change and military occupation) dwarfs anything that has occurred in the recent past, and therefore may well lead to a reaction unlike what has been seen previously.

The mere prospect of an Iraqi war already is seen as having its ripple effects, intensifying feelings of anger and humiliation, further alienating Arabs and Moslems from the West, affecting the domestic agendas of various Arab countries and harming their capacity to cooperate with the U.S. in its war on terrorism.³⁵ It is argued that the priority of conquering the hearts and minds of the Arab people – so urgent for U.S. policy-makers in the immediate aftermath of 11 September 2001³⁶ – might become a virtual impossibility in the event of a U.S.-led war.

□ *Globally*, it is argued that a war under existing conditions could have highly destabilising consequences. Potentially, it could deal the fight against terrorism a triple blow: diverting the international community's attention, including that of the U.S. administration,³⁷ diminishing the capacity of various governments to assist the U.S. overtly; and, above all, providing a powerful recruiting tool for al-Qaeda

least U.S.\$30 billion in the first three years alone. See *The New York Times*, 31 January 2003. Iraq's colossal debt burden (in 1999 estimated by the World Bank at U.S.\$126 billion including interest) and its currently limited oil production capacities would make international aid indispensable.

³² See ICG Asia Report N°45, *The Afghan Transitional Administration: Prospects and Perils*, 30 July 2002.

³³ ICG interviews, September 2002-February 2003.

³⁴ A 2002 Gallup poll conducted in nine Muslim countries (including seven in the Middle East) shows that U.S. popularity in the region is in steep decline. See <http://www.gallup.com/poll/summits/islam.asp>. According to Vice Admiral Jacoby, Director of the U.S. Defence Intelligence Agency, intensifying anti-American sentiment can take the form of "mild chafing on the part of our friends and allies, to fear and violent rejection on the part of our adversaries". Senate Select Committee on Intelligence, 11 February 2003.

³⁵ The impact of the regional situation on Yemen, a core country in the struggle against terrorism, is detailed in ICG Middle East Report N°8, *Yemen: Coping with Terrorism and Violence in a Fragile State*, 8 January 2003. Egyptian officials have confirmed the extent to which the Iraqi and Palestinian situations are creating internal tensions and interfering with the domestic reform agenda. ICG interview with Egyptian official, Washington, February 2003.

³⁶ Since the attacks of 11 September 2001, the Under Secretary for Public Diplomacy Charlotte Beers has launched several initiatives designed to counter the negative image of the U.S. in the Middle East. "[T]he Middle East [...] is full of conflicting ideas, biases boldly told, rumours that harden into 'truth' overnight, and, curiously, a real lack of relevant information". One of the main aims of the U.S. government, Beers added, should therefore be to "inform our many publics of the content of U.S. policy – accurately, clearly and swiftly". Remarks at the Washington Institute for Near East Policy, Washington D.C., 7 May, 2002. For a discussion of the importance of public diplomacy in the Middle East see: Council on Foreign Relations, "Improving the U.S. Public Diplomacy in the War Against Terrorism", 6 November 2001.

³⁷ This point has been forcefully made by Brent Scowcroft, the former National Security Advisor to former President George H.W. Bush. See: Brent Scowcroft, "Don't Attack Saddam", *Wall Street Journal*, 15 August 2002.

throughout the world.³⁸ The global economic impact, in particular of a prolonged rise in the price of oil,³⁹ and warnings of a resulting regional economic slump,⁴⁰ are speculative, as are the repercussions for the domestic stability of many Western societies with large Arab-Moslem populations. But these, too, are risks to be taken into account

3. Is There Legal Authority for Military Action?

Security Council Authorisation. All members of the international community agree that the most direct route for ensuring the legality in international law of military action is an explicit resolution by the Security Council under Chapter VII of the UN Charter, authorising force in response to a “threat to international peace and security”.

Proponents of the view that legal authority already exists (principally the U.S. and UK) argue that Security Council Resolution 1441, adopted on 8 November 2002, along with resolutions passed in the immediate aftermath of the Gulf War, give sufficient formal legal authority for one or more states to deliver the foreshadowed “serious consequences” in the event of manifest Iraqi non-cooperation, at least if the Security Council fails to further deal with the issue.⁴¹ The 1991 war ended,

under this view, in a “suspension” of hostilities contingent on Iraq’s disarmament. “Having not disarmed, [Saddam] is in violation of the cease-fire. The suspension is thus unsuspended.”⁴² Should that not suffice, then Resolution 1441 ought to: it recognises “the threat Iraq’s non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles poses to international peace and security”, decides that “Iraq has been and remains in material breach of its obligations under relevant resolutions”, affords it “a final opportunity to comply with its disarmament obligations”, imposes a series of new obligations upon it to cooperate with inspectors making it clear that failure to comply “shall constitute a further material breach”, agrees that the Council will convene to consider inspectors’ reports, and “recalls, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations”. Washington and London emphasise that it was always understood that “serious consequences” meant the use of force.

Opponents of the view that legal authority already exists suggest that resolutions passed in the early 1990s cannot possibly provide a basis for conducting a war a decade later: the Security Council’s role is to determine whether a current threat justifies current action, not to write blank cheques. As for Resolution 1441, not only does it fail to authorise the use of

³⁸ Al-Qaeda propaganda is playing upon widespread Muslim resentment over U.S. policies toward Iraq. This became particularly clear from the 11 February 2003 recorded message attributed to Osama bin Laden. See above note 17.

³⁹ The U.S. investment bank Goldman Sachs recently predicted that “the combined effect of Venezuelan and Iraqi disruptions has the potential to be the biggest shock in oil market history”. Cited in *The Observer*, 2 February 2003. For more details see William D. Nordhaus, “The Economic Consequences of a War with Iraq”, in: Carl Kaysen et al., “War with Iraq: Costs, Consequences, and Alternatives”, (American Academy of Arts and Sciences, 2002).

⁴⁰ For example, official sources in Egypt estimate that a war in Iraq may incur its economy costs amounting to U.S.\$15 billion in lost trade, tourism and shipping fees in the Suez Canal. See: *As-Sharq al-Awsat*, 8 February 2003.

⁴¹ President Bush in off the cuff comments on 18 February 2003 stated that “ We don’t need a second resolution. It’s clear this guy couldn’t even care less about the first resolution. [He’s] in total defiance of 1441. But we want to work with our friends and allies and see if we can get a second resolution, that’s what we’re going to do now”. Referring specifically to the second resolution question, the President also added, “it would be helpful to get one out [but] it’s not necessary as far as I’m concerned. BBC News transcripts. Both UK Foreign

Minister Jack Straw and U.S. Secretary of State Colin Powell have repeatedly referred to Iraq’s material breach of obligations and its failure to comply with UN resolutions over the past twelve years. For the most recent statements, see Secretary Powell’s remarks to the UN Security Council, 14 February 2003, available at www.state.gov; and Mr. Straw’s speech to the International Institute of Strategic Studies, 11 February, 2003, available at www.fco.gov.uk.

⁴² Charles Krauthammer, “Call Their Bluff”, *The Washington Post*, 18 October 2002. UN Security Council Resolution 678 of 1990, adopted under Chapter VII of the Charter while Iraq was in occupation of Kuwait, “authorizes Member States cooperating with the Government of Kuwait ... to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area”. Resolution 687(8 April 1991) imposed the terms of a formal ceasefire between Iraq and Kuwait and the Member States cooperating with Kuwait. More than 30 subsequent resolutions that deal with obligations Iraq assumed at that time, including some fifteen on disarmament issues (obligation to give up its WMD, missiles with a range greater than 150 kilometres, and so forth), have referred back to that ceasefire resolution (687), though not directly to the earlier; “all necessary means” resolution (678).

military force or even “all necessary means” (the usually understood euphemism for such force), but it also explicitly states that the Security Council will consider further action.⁴³ A large number of countries in the international community, therefore, have taken the view that a further resolution of a more explicit kind will be required if military action is to be accepted as taking place with Security Council authorisation. The prospects of such a further resolution appear to have been reduced, at least temporarily, by the inspectors’ briefing of the Security Council on 14 February 2003 – less condemnatory of Iraq than anticipated and suggesting that containment was being achieved – and the burgeoning domestic opposition to war that is putting additional pressure on many governments.

Action Without Security Council Authorisation.

In the absence of Security Council authority, the only other credible basis on which it is seriously argued that a U.S.-led assault on Iraq would be legally justified is self-defence under Article 51 of the UN Charter.

Proponents of the view that this is a case of legitimate anticipatory self-defence (particularly the U.S.), argue that “pre-emptive action” is justified to defend against Iraq’s possible use or transfer of weapons of mass destruction. Applying the doctrine laid out in its recently released National Security Strategy,⁴⁴ Washington asserts that it cannot afford to wait until the Iraqi threat becomes imminent and therefore is justified to act, even without further Council authorisation, if Baghdad continues to act in breach of Security Council resolutions.

The concept of anticipatory self-defence has wider application than is sometimes conceded: Chapter VII of the Charter deals as much with “threats” as actual attacks, and there is nothing inherently illegitimate about acting in anticipation of an attack rather than waiting for it to actually occur. Situations may arise that present a strong and compelling case for this type of military intervention, particularly given the potential nexus between terrorism and weapons of mass destruction. Given that WMD may be used

without forewarning, in non-detectable quantities, and to maximum devastating effect, and have particularly alarming potential in the hands of non-state terrorist actors, the requirement of waiting for actual attack before responding is no longer tenable. In the particular case of Saddam Hussein, given his past usage of such weapons, reckless behaviour and pattern of flouting UN resolutions, the argument for acting before he does is compelling.

Opponents of the view that this is a case of legitimate anticipatory self-defence argue that, while there is legitimacy in the proponents’ view that anticipatory action may be reasonable and the need for it should be more widely accepted, the new U.S. doctrine as articulated, without further limiting conditions, goes too far. The right to self-defence enshrined in Article 51 of the UN Charter expressly refers only to situations in which an actual attack has taken place. It has been accepted in international practice as extending to cover cases where the attack, although threatened rather than actual, is “imminent”, but the U.S. doctrine would extend it further yet, to cover attacks that are neither actual nor imminent. The argument is that the extension of Article 51 in this way is an over-reaction to a legitimate concern, and that such a principle would throw into doubt the entire international order established since 1945, with unpredictable consequences and predictable misuse. The point is repeatedly made about WMD in particular that mere possession – however detestable – cannot in itself suffice as the justification for military action without Security Council authorisation.

It might be argued further in this respect that the high risk of misuse of the concept of unilateral “pre-emptive” or “preventive”⁴⁵ defence means that it should perhaps be subject to strong limiting conditions, viz. the less imminent the threat, the greater must be the evidence of its reality; the less imminent the threat, the greater must be the need for formal authorisation of the action by the wider international community through the Security Council; and the more the threat is to world order as opposed to a particular country, the greater the evidentiary threshold for proving a serious threat and the greater the need for international approval.

⁴³ The relevant part of Resolution 1441 provides that the Security Council will, “convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security”.

⁴⁴ Available at: <http://www.whitehouse.gov/nsc/nss.html>.

⁴⁵ In most languages these terms appear to be interchangeable. In English “preemptive” perhaps implies that the risk or threat being responded to is relatively immediate, “preventive” that it is rather longer term: “anticipatory” covers both situations.

On the present state of the evidence about the nature, magnitude, containability and deterrability of the threat from Iraq, as discussed above, the case for U.S. reliance on Article 51 is perceived by most of the international community as being not strong.

A further basis on which it is being argued in some quarters that military action can be taken against Iraq without express further Security Council authorisation is that such action is permissible if Council assent is “unreasonably withheld”.⁴⁶ The Security Council has shown in the past, even in conscience-shocking situations crying out for intervention (such as Kosovo)⁴⁷ that it will sometimes choose the path of least resistance and least risk: in such situations, countries like the U.S. and “coalitions of the willing” must be able, it is urged, to act against a serious threat. Such an argument has no weight in international law, but may well have political weight in certain contexts. With Iraq, its political effectiveness, and indeed moral weight,⁴⁸ depends again on just how compelling a case can be made on the core question posed at the outset: the seriousness of the threat and the necessity for military action against it.

C. WAR TO ACHIEVE DISARMAMENT

If a separate case is to be made for a war against Iraq based not on the existence of a threat but on its refusal to disarm, it must be predicated on the fact that Iraq has ignored over a dozen UNSC resolutions demanding its disarmament.

Proponents of the view that war can be justified on disarmament grounds alone argue that the international community’s (in particular the UN’s)

⁴⁶ At present, with the UNSC actively considering the work of the inspectors and various options, including strengthening containment and deterrence, it would be very difficult to justify a judgement that the Council is unreasonably withholding authorisation or otherwise abdicating its responsibilities.

⁴⁷ In which action, the U.S. and UK are quick to point out, France participated without Security Council approval.

⁴⁸ Some commentators have noted that the moral force of the U.S. position on Iraq has been weakened by the array of different reasons that have been offered for attacking Iraq, and the mixed motives that are evident among those strongly supporting war, which (along with the willingness to act unilaterally if multilateral support is not forthcoming) have brought in issue whether the “right intention” criterion for a just war has been satisfied; see Timothy Garton Ash, “In Defence of the Fence”, *The Guardian*, 6 February 2003.

credibility is at stake. The logic of their case is as follows: Iraq continues to harbour and seek to develop dangerous weapons – VX, anthrax and possibly nuclear weapons – twelve years after the first UN resolutions mandated its disarmament; if it has kept them despite the sanctions, international pressure, isolation and now credible threat of force, it is that they are vital to the regime and that it intends some day to make use of them. The Iraqi regime knows very well what it needs to do to avoid a war – disarm – and if it has not done so by now, it is that it simply has no intention of doing so, regardless of how much time it is given. Inspections cannot do that job – no matter how many, how forceful, how well equipped they might be – nor were they ever intended to; at best, they can verify that Iraq is complying. So far, they have verified that it is not. The question is, how much longer can the UN tolerate such blatant defiance?

It is strongly argued by the U.S., the UK and others that if the Security Council does not take action to enforce its own resolutions when they are being blatantly breached, particularly ones as strongly worded in terms of “serious consequences” as UNSCR 1441, what is left of its credibility will rapidly erode. No other would-be proliferator would take seriously the will and the determination of the international community, and Iraq in particular would give no weight to future threats of force.⁴⁹

Opponents of the view that war can be justified on disarmament grounds alone argue that possession of WMD does not, in and of itself, constitute a threat warranting military response (North Korea, Iran, Pakistan and many others, including Israel, would meet that threshold). Rather, that decision should be a function of whether the country possessing WMD also has the requisite intent and cannot be otherwise contained or deterred. The decision to go to war, they say, must be predicated on more than a breach of a UN resolution; it must depend on whether there exists a genuine threat to peace and security demanding military action.

Though virtually all agree that Iraq is in violation of UNSCR 1441, proponents of this view contend that

⁴⁹ To quote Secretary of State Powell: “[The Security Council] places itself in danger of irrelevance if it allows Iraq to continue to defy its will without responding effectively and immediately”. Report to the Security Council, 5 February 2003. Available at: <http://www.state.gov/secretary/rm/2003/17300.htm>.

the determination of material breach does not prejudice the issue of the consequence of such a breach. While it is not an option for the Security Council to ignore entirely the manifest breach of a resolution as specific as UNSCR 1441, and while the expression “serious consequences” was undoubtedly intended and understood to include military action, the words do not *have* to mean immediate military attack and only that. It is always proper for multiple criteria to be weighed and for alternative courses of action (such as a continuation or enhancement of sanctions, or other steps articulated in Article 41 of the UN Charter) to be fully considered. The choice does not have to be between going to war and doing nothing.⁵⁰ Some opponents also turn on its head the argument about UN credibility loss if war is not supported, claiming the UN’s credibility would be at risk were Council members to vote *for* military action when the case for it has not been compellingly made on the grounds of actual threat to international peace and security. While legally sufficient to justify a war, UN Security Council approval may in these circumstances fall short of what is politically or morally demanded. Just as the Council might unreasonably withhold approval, so, too, might a majority of its members *grant* approval under pressure and for reasons unrelated to their assessment of the gravity of the threat: either way the Council’s reputation would suffer.

D. WAR TO MEET INTERNAL THREAT

Throughout the entire period of focus on Saddam Hussein’s Iraq a compelling case has been made for regime change. This is a leadership which has from its inception behaved brutally toward its own people, as Prime Minister Blair described graphically in his speech to the UK Labour Party in Glasgow on 15 February 2003:

[Iraq is a country] where every year and now, as we speak, tens of thousands of political prisoners languish in appalling conditions in Saddam's jails and are routinely executed. Where in the past fifteen years over 150,000 Shia Moslems in Southern Iraq and Moslem Kurds in Northern Iraq have been butchered; with up to four million Iraqis in exile round the world, including 350,000 now in Britain.

⁵⁰ Some proponents of this view also note that there is a long history of Security Council resolutions being ignored and claim that this is simply a case of double standards.

This isn't a regime with Weapons of Mass Destruction that is otherwise benign. This is a regime that contravenes every single principle or value anyone of our politics believes in.⁵¹

The question at issue is not whether improving the lot of the Iraqi people should be an international objective; or whether that objective would be best served if Saddam and his regime were to disappear. Nobody contests that regime change would be highly desirable; what matters is how it is to come about. The question is rather whether it is legitimate to mount a military intervention to overthrow that repressive regime for the sole purpose of protecting the Iraqi people – irrespective of whether it is threatening external peace and security, or in breach of UN resolutions demanding disarmament.

Although much of the earlier U.S. rhetoric explicitly made the case for military intervention as much in terms of regime change as disarmament, and Saddam’s evil behaviour toward his own people has been a recurring supporting theme in both U.S. and UK rhetoric since, an explicit case based on “humanitarian intervention” grounds has not been made to the UN Security Council. Even Tony Blair in his recent Glasgow speech did not seek to make the primary case for war on this basis, offering it rather as moral support for a legal case that has to be made on other grounds:

The moral case against war has a moral answer: it is the moral case for removing Saddam. It is not the reason we act. That must be according to the United Nations mandate on Weapons of Mass Destruction. But it is the reason, frankly, why if we do have to act, we should do so with a clear conscience.⁵²

This approach generally accords with that of the wider international community. There has been a recognition of the responsibility to protect those internally at risk from harm perpetrated or tolerated by their own governments, and of the legitimacy of military intervention when that harm takes the form, for example, of large-scale killing or ethnic cleansing, actual or apprehended. Bosnia, Rwanda and Kosovo, for example, are all now generally

⁵¹ “I want to solve the Iraq issue via the United Nations”, Speech by Prime Minister Tony Blair at Labour’s local government, women’s and youth conferences, SECC, Glasgow, 15 February 2003. Available at: <http://www.labour.org.uk/tbglasgow/>.

⁵² Ibid.

accepted in retrospect as cases where early, full-scale military intervention should have occurred. But there has been a deep reluctance to acknowledge the legitimacy of such military intervention, as distinct from political and economic sanctions and other forms of pressure, when the harm involved is neither catastrophic in scale nor current in time, which is essentially the case for that cited in Iraq.⁵³

III. A DEADLINE FOR DISARMAMENT?

A. SETTING A DEADLINE

In an attempt to bridge the gap between proponents and opponents of war, some have proposed that a final ultimatum be delivered to Baghdad: either fully comply with a set of clear benchmarks by a date certain, or face certain war.⁵⁴ The ultimatum, endorsed by the Security Council, might require that Iraq resolve a series of outstanding issues identified by UNMOVIC and the IAEA, perhaps under a system of phased deadlines starting from the date of the next briefing by the inspectors, on 1 March 2003. While this approach appears to be gaining some momentum, passage of such a resolution cannot be assumed given the current state of play in the Security Council.

Proponents of the deadline approach argue that the best and only way to avoid a war is to convince the Iraqi regime that, should it fail to disarm, war will be inevitable. Only in this way might Saddam be persuaded to disarm; alternatively, he might be tempted to flee Iraq or others may be prompted to overthrow him. (These scenarios are more fully explored below.) Assuming war nonetheless were to occur, it would do so under conditions of far greater international unity. By agreeing to such a course of action, the U.S. and UK would demonstrate a willingness to listen to the concerns of their allies, making clear that war is not yet a pre-ordained outcome but only a last resort. Likewise, by endorsing this approach, countries like France or Germany would demonstrate that they do not intend to string out the inspections process indefinitely and that they are serious about the disarmament objective – in effect agreeing to support a war if Iraq has not complied within the specified period. Finally, such a war would enjoy greater international

⁵³ These issues are fully discussed in *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty, Co-Chairs Gareth Evans and Mohamed Sahnoun, Ottawa, December 2001, available at <http://www.intl-crisis-group.org/projects/icgnews.cfm>.

⁵⁴ See, e.g., Zbigniew Brzezinski, “Why Unity is Essential”, *The Washington Post*, 19 February 2003: “The United States and the other veto-wielding powers in the U.N. Security Council should impose on Iraq a bill of particulars, defined as specifically and realistically as possible, perhaps also with staged deadlines (i.e., ultimatums), so that at each major stage it would be easier to reach consensus regarding Security Council certification of Iraqi compliance or defiance. . . . defiance at any stage would mean a U.N.-sponsored war, with regime change in its wake”. See also *The New York Times*, “Disarming Iraq”, 15 February 2003.

backing as much of the world would have seen that Saddam rejected a good faith last effort.

Opponents of a deadline approach take several positions. Some argue that it would not resolve the core issue: namely, that war cannot be justified by a mere failure to disarm but rather must be premised on the existence of a serious threat to international peace and security. France and its allies argue that the inspectors are making progress and, so long as that is the case, there should be no artificial deadline for military action. Others note that it cannot be assumed that any report by the arms inspectors on the extent to which the Iraqis are cooperating in both process and substance will be either absolutely unambiguous in its terms, or accepted as such by both sides in the policy debate. A mixed report is likely to be seized upon by the U.S. as proof of non-compliance and by France as evidence of continued progress: in other words, the same disagreements as exist today are likely to resurface in another guise.

B. THE COOPERATION RESPONSE

The hope of many of those strongly arguing for war against Iraq has been that building an unmistakable and apparently irresistible momentum for war would ultimately make its conduct unnecessary: that the best way to convince Saddam to disarm is to convince him of the inevitability of military action if he does not.

Faced with the choice between survival or demise, Saddam may at the last minute – although this is generally considered unlikely, given the Iraqi regime's track record to date – choose to cooperate fully with the weapons inspectors and genuinely undertake a WMD disarmament process.⁵⁵ Proponents of this view argue that such a scenario is only conceivable if Saddam Hussein and the Iraqi leadership are absolutely persuaded both of the imminence of a war that would obliterate them and of its possible avoidance through real disarmament. That would require maintaining the momentum toward a military confrontation while at the same

time dangling the prospect that Saddam could still avert it. A clear statement by the U.S. to this effect would obviously be very helpful, recent comments by Washington having left room for doubt in some minds as to whether indications of genuine cooperation could at this stage still forestall a war.⁵⁶

According to some Iraqi and European officials interviewed by ICG, Baghdad may be considering last-minute concessions on non-disarmament issues, including legalising opposition parties, committing to multi-party elections under international supervision, and offering guarantees to the Kurdish minority and to Kuwait. However, none of these is likely to be viewed by the United States as credible, irreversible, or sufficient to meet Iraq's international obligations. Given Saddam's track record on political liberalisation, including gestures he made and quickly retracted after the Gulf War,⁵⁷ such scepticism would seem warranted.

C. THE EXILE RESPONSE

Speculation has intensified about a possible initiative to persuade the Iraqi president and his core supporters to step down and leave Iraq, thereby sparing the country and the region a costly war. According to unconfirmed reports, Qatar's Foreign Minister Sheikh Hamad Bin Jassem al-Thani conveyed this message directly to Baghdad last summer, and Saudi officials are said to have done the same.⁵⁸ Secretaries Powell and Rumsfeld have also indicated that Saddam's departure would be an acceptable outcome.⁵⁹

⁵⁵ This would have to be more than what Baghdad is already dangling, namely ensuring that the inspectors interview scientists without the presence of Iraqi minders and allowing U2 overflights, neither of which would signify a genuine commitment to give up all WMD. As examples of such "cooperative disarmament" the U.S. administration referred to South Africa, Ukraine and Kazakhstan. See The White House, "What Does Disarmament Look Like?", January 2003.

⁵⁶ President Bush warned of an Iraqi "last-minute game of deception" on 6 February 2003 and stated that "the game is over". Moreover, the continuing claim that Baghdad has ties to al-Qaeda provides a "threat" argument for war independent of the disarmament issue. Nevertheless, international opposition to war would be nearly unanimous in the event that Saddam did unequivocally meet the terms of Resolution 1441, and the U.S. would no doubt consider its position very carefully before proceeding on other grounds.

⁵⁷ See ICG Briefing Paper: *Voices from the Iraqi Street*, op. cit., p. 6.

⁵⁸ See Blanford, "A secret Saudi visit to Iraq last month may signal a plan to coax its leader into exile", *Christian Science Monitor*, 8 January 2003.

⁵⁹ "If he were to leave the country, and take some of his family members with him, and others in the leading elite that have been responsible for so much trouble during the course of his regime, we would, I'm sure, try to find a place for them to go". Secretary of State Powell cited by Associated Press, 29 January 2003. Secretary of Defence Donald Rumsfeld stated: "To avoid a war, I would personally

According to these reports, the initiative would take the form of a UNSC resolution that would simultaneously impose a military ultimatum as described above and extend immunity for the Iraqi leadership in exchange for their departure.⁶⁰

The prospect of changing the regime without war is highly appealing but it is perhaps even less conceivable that Saddam Hussein would leave power voluntarily than that he would willingly turn over his WMD.⁶¹ The option also raises difficult, though not insurmountable questions – for example, who would succeed the current regime and would granting Saddam Hussein immunity seriously weaken the emerging international criminal justice system?⁶²

recommend that some provision be made so that the senior leadership and their families could be provided haven in some other country”. Quoted in *London Sunday Telegraph*, 10 February 2003. There are reports that Jordan is also promoting the idea of offering exile to Saddam and his aides. See *The New York Times*, 12 February 2003.

⁶⁰ In January 2003, a group of Arab intellectuals issued a petition calling on Saddam Hussein to step down. See www.mallat.com/statementiraq.htm. The statement does not specify where he should go or whether he should be granted amnesty. One of its initiators, Chibli Mallat, told ICG: “My own position is that Saddam should be tried. There was some discussion among us to say something on this but we failed to reach a consensus. So we left it out”. He added that the “initiative is gaining momentum” in the Arab world. “With the war approaching, more and more people [in the region] are looking for an alternative to supporting the war or Saddam”. ICG telephone interview, 4 February 2003. On 13 February, a group of prominent exiled Iraqi politicians and professionals issued an appeal calling for the “removal of the current regime” and the establishment of a representative government “in the hands of a temporary administration in cooperation with the UN” as a means of avoiding war.

⁶¹ Mohammed al-Douri, Iraq’s ambassador to the UN, rejected the idea of exile. “We’re an independent state. We intend to preserve that independence. We’re proud of our government”. Cited in *The Washington Times*, 3 February 2003. Amatzia Baram, the pre-eminent Israeli expert on Iraq, dismissed the option of voluntary exile out of hand, arguing that disarmament – however humiliating – would at least leave Saddam in Baghdad, in power and with a far greater chance of surviving attempts on his life. “Would Saddam Abdicate?”, Iraq Memo #9, 4 February 2003, Saban Centre for Middle East Policy. Of course, the odds of Saddam leaving would increase if and when a military assault were to begin. At that point, he might have to choose between exile on the one hand and death or capture by U.S. forces on the other.

⁶² Recent reports suggest a possible hesitancy on the part of the U.S. to offer immunity to Saddam in exchange for exile. See Middle East Newline, 6 February 2003. An amnesty for Saddam and his high level aides is also likely to face opposition from international human rights movements who campaign to indict the Iraqi regime for its human rights

D. THE COUP RESPONSE

In a variant of the above option, Arab leaders and others are said to be trying to persuade senior Iraqi officers to oust Saddam unless he fully complies with UN resolutions. Offering amnesty to Iraqi officials and military officers who are prepared to cooperate with the disarmament process while imposing a strict deadline for compliance would, according to this scenario, give Iraqi officials and military officers a powerful incentive to remove Saddam from power, since in so doing they would avert an overwhelming U.S. military attack and ensure their own survival. After long having denied involvement in this initiative, Saudi Foreign Minister Saud al-Faisal strongly hinted at it:

I can visualise elements of the regime turning away from an order that would jeopardise stability and security of Iraq . . . Say you are a general and the UN says that it will give you protection if you perform your duty. Immediately, once you get that offer, trust in those who are against the implementation of UN resolutions is gone . . . This is the proposal you bring to those who want to cooperate, to Iraqis who don’t want to see their country destroyed, to the people who want to have a peaceful resolution, to the people who don’t really want weapons of mass destruction for Iraq but want a country united and on the road to prosperity.⁶³

As in the cases discussed above, and to maximise its effectiveness, the offer would be synchronised with adoption of a Security Council resolution authorising the use of force.⁶⁴ Again, however, the odds against a successful coup in Saddam Hussein’s hyper-secure environment are extremely high.⁶⁵

atrocities. See Human Rights Watch, “Prosecute ‘Chemical Ali’”, New York, 17 January 2003; Kenneth Roth, “Indict Saddam”, *The Wall Street Journal*, 22 March 2002. The International Criminal Court has no jurisdiction over anything Saddam did before 1 July 2002, but ironically an ad hoc court has become harder to create given the U.S. opposition in principle to the ICC.

⁶³ “The Saudi Initiative Explained”, *Time Magazine*, 4 February 2003.

⁶⁴ Ibid.

⁶⁵ For a description of the power structure in Baathist Iraq, see ICG Middle East Report N°6, *Iraq Backgrounder: What Lies Beneath*, 1 October 2002.

This and the exile scenario above share much in common: both would provide immunity to persons guilty of serious crimes; both would likely preserve the current structure of the Iraqi regime (in fact, this appears to be one of their selling points for the Saudi and other Arab regimes); both would have a greater probability of success once a military assault was under way (at which point the United States would have to decide whether to interrupt its operations and take the risk of a successor regime similar to the existing one, or see them through at the cost of what would be a highly divisive war);⁶⁶ and while both are far more appealing than war, neither is particularly likely. Indeed, some have backed these options knowing their success is improbable, on the grounds that under those conditions a war would garner far greater international support – insofar as Iraq was offered a last concrete chance to avoid it – particularly if Arab nations were to join in the call.

E. THE WAR RESPONSE

Should Saddam refuse to comply and should neither exile nor a coup be forthcoming, the answer under this scenario would have to be war. However, the argument is made that under these conditions, emergence of a strong coalition in favour of military action is more likely and, in particular, that Arab states would find it easier to justify a war to their own publics on the grounds that Saddam had rebuffed a clear and fair offer – to disarm, to leave or to face war.

IV. MORE TIME FOR INSPECTIONS?

Several members of the international community have made the case that inspections are working and that they need more time to verify Iraq's WMD program. Reacting to Secretary Powell's 5 February 2003 remarks to the UNSC, Russian Foreign Minister Ivanov stated: "The information provided today . . . once again convincingly indicates the fact that the activities of the international inspectors must be continued. They alone can provide an answer to the question, to what extent is Iraq complying with the demands of the Security Council?"⁶⁷ The concept has been refined by others, most notably France and Germany, who have proposed that the current inspections regime be strengthened to facilitate its mission.

A. THE FRENCH PROPOSALS

In a recent non-paper,⁶⁸ France proposed the following steps to make the inspections "more intensive, more carefully targeted, more intrusive":

- ❑ Increasing the number of inspectors. Under this proposal, the number of inspectors would be doubled (240) or tripled (360).
- ❑ Recruiting other types of experts, including more security units to protect the inspectors' facilities and where necessary "freeze" activity at a suspect site, and experts in "customs and accounting, archivists and other experts who can help improve their understanding of the nature of Iraqi proliferation programs".
- ❑ Establishing "mobile teams . . . to check on the nature of goods entering Iraq, thereby imposing stricter import controls on WMD components".
- ❑ Strengthening technical resources. This would include beefing up aerial surveillance to ensure maximum coverage of Iraqi territory. In addition to the American U2s, France's proposal mentions its own Mirage IV, Russian Antonovs and German drones.

⁶⁶ Divisions within the U.S. administration on Iraq policy are likely to come to the fore in that context. Those who believe that a war with Iraq would be the first step in a redefinition and "modernisation" of the Middle East could see that goal frustrated by a coup; conversely, those who are more fearful of the fallout of a war would welcome one. On this, see, e.g., Nicolas Lemann, "After Iraq", *The New Yorker*, 17 February 2003.

⁶⁷ Available at www.washingtonpost.com/wp-srv/nation/transcripts/securitytext, 5 February 2003.

⁶⁸ This proposal was also outlined by the French Minister of Foreign Affairs, Dominique de Villepin, during the debate in the Security Council on 5 February 2003.

- Placing a full-time coordinator in Iraq, who would coordinate UNMOVIC and IAEA efforts and report to Blix and ElBaradei.

Proponents of the French approach argue that the course of inspections has yet to be exhausted. Some results have been achieved (discovery of banned material; unhindered examination of hundreds of sites; monitoring of on-going activity) but far more is needed from Baghdad. While Iraq should have complied voluntarily, the proposal starts from the premise that it will not and that “inspections [were] designed from the outset as a necessary intrusive instrument to ensure the elimination of banned Iraqi programs”. The answer to inadequate Iraqi compliance is not at this point to go to war – particularly given the high human and political costs of a confrontation, the great international divisions to which it would lead,⁶⁹ and the fact that Iraq does not at this point present an immediate threat⁷⁰ – but rather to increase pressure on Baghdad by making the inspections even more intrusive.⁷¹ By significantly strengthening the numerical and technical means of the inspectors, the likelihood of uncovering existing WMD would increase and Iraq’s ability to acquire or produce additional WMD would be reduced. The Iraqi threat, in other words, would be contained and, over time, reduced. Under these conditions, messy and ambiguous though the situation may remain for some time, there is no rational reason for rushing to a risky war.

Opponents of the French approach argue that the problem today is not the number of UN inspectors, but rather the absence of Iraqi compliance.⁷² An Iraq willing to abide by Security Council resolutions would be disarmed simply – as others, such as South Africa, were in the past. Because Iraq carries the

burden of responsibility for disclosing and getting rid of its WMD arsenal, and because the inspectors have neither the responsibility nor the capacity to fully examine what Iraq possesses or what it is doing, enhancing their abilities cannot achieve the fundamental goal, which is Iraq’s disarmament. If Iraq has not been prepared to disarm in the face of over 100,000 U.S. troops and with the threat of imminent war, there is little reason to believe that a few hundred additional inspectors – however well-equipped – can reach that objective. On the contrary, Saddam will have learned from this episode that the international community lacks the will to confront him and, over time, he will resume his efforts to acquire and produce WMD.

Opponents also claim that the French proposal is ambiguous as to the ultimate objective of the inspections and, therefore, as to when war can be justified. As presented by President Chirac, there are two alternatives: either the inspectors claim that Iraq is fully disarmed, in which case the crisis will be over; or, alternatively, “if Iraq doesn’t cooperate and the inspectors say this isn’t working, it could be war.”⁷³ But the third, and arguably most likely, outcome is that the inspectors will repeatedly come back with the assessment they have offered so far: progress is being made, but cooperation is not absolute and disarmament has not been achieved. At that point, the U.S. and others will argue that Iraq is in breach of its obligations and that the only option is military, while others will argue that the inspectors are still doing their job and ought to be allowed to continue.⁷⁴ On this view, the French answer – it depends on whether the inspectors can “fulfill [their] mission” – begs the question of what that mission is: disarmament or containment of the Iraqi threat through continued inspections?⁷⁵ If the goal is disarmament, then extending the inspections will never achieve it. If the goal is containment, then – according to the opponents’ view – the objective itself is at fault, for history shows that Saddam cannot be contained.

⁶⁹ “Among the negative fallout would be inevitably a strong reaction from Arab and Islamic public opinion. . . .A war of this kind cannot help giving a big lift to terrorism. It would create a large number of little bin Ladens”. Interview with President Chirac, *Time Magazine*, 16 February 2003.

⁷⁰ “In its current situation, does Iraq – controlled and inspected as it is – pose a clear and present danger to the region? I don’t believe so.” Ibid..

⁷¹ For a presentation of the French view, see, e.g., intervention by French Foreign Minister Dominique de Villepin at the United Nations Security Council, 14 February 2003; interview with President Chirac, *Time*, op. cit.

⁷² “What we need is not more inspections, what we need is not more immediate access; what we need is immediate, active, unconditional, full cooperation on the part of Iraq”. Secretary of State Powell, remarks to the United Nations Security Council, 14 February 2003.

⁷³ Interview with *Time Magazine*, op. cit.

⁷⁴ President Chirac appears to be wavering between the two views. At some points, the test he proposes is whether Iraq has disarmed. At others, the test is whether “Iraq – controlled and inspected as is . . .poses a clear and present danger to the region”, which, at this point, he concludes it does not. Ibid.

⁷⁵ Ibid.

B. ARMED INSPECTORS

In an attempt to further enhance the role of the inspectors and move toward the goal of disarmament, others have floated the idea of putting troops on the ground, deploying blue-helmeted United Nations peacekeeping forces to accompany the inspectors. The Carnegie Endowment, for example, has proposed that a “powerful, multinational military force, created by the UN Security Council” be authorised to use force to overcome Iraqi obstruction – to ensure immediate access to a site; to impose no-drive zones in areas to be inspected; and, ultimately, to destroy suspect sites – and so to “enable UN and IAEA inspection teams to carry out ‘comply or else’ inspections.”⁷⁶ The inspectors would be equipped with “a military arm strong enough to force immediate entry into any site at any time with complete security for the inspection team” or destroy it.⁷⁷ A similar proposal has reportedly been floated by France and Germany. Information leaked to the press evoked the possible presence of a Blue Helmet force designed to enable the inspectors to overcome immediately low-level Iraqi harassment and resistance. Again, resistance by Iraqi security services, or an attack upon them, would be expected to trigger massive international reaction.

Proponents of the armed inspections approach argue that an “inspections implementation force” would prevent Iraq from causing delays in inspections, without immediately resorting to full-scale war. The proposal would not only enhance the powers of the inspectors but also shift the focus from regime-change (necessitating a perilous, full-scale invasion of Iraq) to disarmament (which, according to this view, could be achieved by precise attacks against suspect sites). Should the force itself encounter Iraqi resistance, it would be in a position to be supplemented by others and become an invasion force.

Opponents of the armed inspections approach, beyond questioning the very logic of giving more time to inspectors under any guise, have raised questions about its feasibility.⁷⁸ First, they question its purpose: As witnessed over the last few months, inspectors’ access to sites has not been the main

problem; Iraq’s efforts of concealment have been.⁷⁹ Secondly, they question its mandate: how independent would it be of U.S. forces in the region? Under what terms would it leave Iraq? How would the international community prevent it from becoming a “human shield”, as occurred in the Balkans, thereby preventing military action in the event of hostile Iraqi action? Why would it be more capable of achieving its goals than a military presence outside Iraq, ready to strike at any suspect facility? Thirdly, they question its effectiveness: since the problem today is that we do not know where the WMD is being concealed, arming the inspectors with greater ability to destroy it does not answer the question. Finally, to the extent it is viewed as a robust force with powers in Iraq, Baghdad’s resistance to the very concept is likely to be quite strong – making it one of those rarest of ideas that both Iraq and the U.S. are likely to reject.

⁷⁶ Jessica T. Mathews, “Coercive Inspections”, in *Iraq: A New Approach* (Carnegie Endowment, August 2002).

⁷⁷ *Ibid.*, pp. 10, 13.

⁷⁸ Interestingly, the proposal does not appear in the French non-paper.

⁷⁹ “The most important point to make is that access has been provided to all sites we have wanted to inspect and with one exception it has been prompt”. Executive Chairman of UNMOVIC, Dr. Hans Blix, report to the Security Council, 27 January 2003. See also Blix’s report to the United Nations Security Council on 14 February 2003, *op. cit.* “All inspections were performed without notice and access was almost always provided promptly.” A former UNSCOM inspector told ICG that, in light of the lack of access problems, “the idea has lost its topicality”, though he still supported the idea on the grounds that it would make “inspections look credible in the eyes of U.S. hawks”. ICG telephone interview, 10 February 2003.

V. THE 'CDD-PLUS' OPTION: STRONGER CONTAINMENT, DETERRENCE AND DIPLOMACY

A. ELEMENTS

The challenge for those in the international community who oppose a military confrontation at this point is to devise a credible and sustainable alternative strategy that does more than just “give the inspectors more time”. It would need to meet – albeit over time if not immediately – the international community’s continuing threefold objective: to counter whatever threat Iraq presents, to remove Iraq’s WMD and to assist the suffering Iraqi population.

Such an alternative strategy – which we label here ‘CDD-Plus’ – could have three key elements :

- *stronger containment*: reinforced resources and methods of the sort sketched out in the French position described above, deployed openly for the purpose of denying Iraq the ability to acquire or develop additional WMD;
- *stronger deterrence*: a credible threat to respond with overwhelming military force to any move by Iraq to use what it possesses, develop or acquire more, threaten any country by any means or transfer WMD to terrorist groups – open-ended rather than linked to a short-term deadline and immediate disarmament; and
- *targeted diplomatic pressure*: a practical longer-term strategy to resolve the Iraqi problem in all its dimensions – achieving full WMD disarmament, but also addressing the issues of regional security and of the Iraqi people’s own plight.

Such a strategy would acknowledge that Iraq is not fully cooperating now, and start from the premise that without that cooperation inspectors will not successfully uncover all the WMD or completely disarm Iraq. While not altering longer-term objectives, it would require a redefinition of the international community’s short-term objective from immediate disarmament to minimal armament, albeit in a context where the threat to use, actual use or transfer to others of such arms could arguably be prevented. The difficulties of gaining acceptance for such an approach in the present environment are clear, but it may assist the debate nonetheless to spell

out in a little more detail just what might be involved in a fully developed non-war scenario.

1. Stronger Containment

On the containment side, the goals of the CDD-Plus approach would be to obstruct the research, production or purchase of WMD; tighten control over the flow of revenues into Iraq to better monitor their use; and enhance penalties against sanctions-busters. Steps (a number of which would involve elements of the French non-paper option) could include:

- *Strengthening the inspectors’ monitoring capacity in Iraq*. Bearing in mind that the immediate goal under this option would not be to verify disarmament so much as to neutralise the possibility of further armament, the number of inspectors could be significantly increased from the current level of roughly 115 (excluding aircrew and support staff),⁸⁰ even beyond the doubling or tripling contemplated in the French non-paper, so as to ensure widespread, continuous geographic coverage. According to a former UNSCOM biological weapons inspector, “there is definitely a need for more inspectors so that they can conduct inspections simultaneously. Next to that, there should be more regional offices so that the warning time of visits to certain sites will get much shorter”.⁸¹ Inspectors would consequently become “a routine feature of Iraq”, circulating “freely and aggressively throughout the country, according to their own timetable”.⁸²

UNMOVIC also could use more sophisticated aerial surveillance, including American U-2s, French Mirages, German surveillance drones and Russian Antonovs. (U.S. Predator surveillance drones were reportedly turned down by Hans Blix, the head of

⁸⁰ Hans Blix, report to the United Nations Security Council, 14 February 2003 available at http://news.bbc.co.uk/2/hi/middle_east/2763653.

⁸¹ ICG telephone interview with Jonathan Tucker, 7 February 2003.

⁸² Michael Walzer, “La façon de dire non à la guerre”, *Le Monde*, 29 January 2003. The U.S. reacted dismissively to the notion of increased inspectors floated by France and Germany. “If [Saddam] is not complying, tripling the number of inspectors doesn’t deal with the issue”. Secretary of State Powell, Reuters, 9 February 2003. Mr. Powell is right, of course, if the issue is defined as ensuring Iraqi compliance; he is on less firm ground if the issue is to disrupt and neutralise any attempt by Iraq to continue its WMD program.

UNMOVIC, as risking the appearance of undue U.S. interference.)⁸³ This, together with the expanded team of inspectors, could considerably enhance the capacity to provide continuous monitoring of suspected dual-use sites. Internal security and secrecy measures within UNMOVIC could be strengthened to prevent Iraqi prior knowledge of inspection sites. For the same purpose and in order to encourage the U.S. to share its intelligence more extensively, the inspectors' counter-intelligence capacity could be improved to prevent Iraqi prior knowledge of visit sites. A "system of electronic tagging and end-use certification of dual-use goods" would limit Iraq's ability to divert such items for illicit purposes.⁸⁴

For this, there would need to be an understanding that the inspectors would have to remain in Iraq indefinitely. Given the potential that Iraq could establish "breakout facilities" – small enough not to be detected, but developed enough to become capable of producing real WMD capacity quickly after the inspectors' departure – monitoring would persist until and unless an Iraqi regime demonstrated a genuine commitment to disarm.⁸⁵

Finally, the Security Council could further limit Iraq's capacity to develop a WMD threat potential by banning all Iraqi missile development, including of those with ranges under 150 kilometres. The current 150-kilometre standard still allows Iraq to build missiles, import component parts, test them, produce engines, and experiment with fuel varieties – all of which permits them to keep these programs going and facilitates cheating.

- *Enhancing monitoring of Iraqi trade in general and, in particular, tightening the arms embargo.* Although sanctions arguably have worked reasonably well in curbing illegal imports of WMD components, they have by all accounts been far from fail-proof.⁸⁶ Some have suggested beefing up the size of the current team of land-based UN monitors at both major border

crossings into Iraq and inside the country to bring all commercial traffic flowing into and out of Iraq under UN control.⁸⁷

- *Providing incentives for Iraq's neighbours to cooperate and comply with the sanctions.* Countries like Syria, Turkey, Iran, the UAE or Jordan circumvent the sanctions because commerce with Iraq constitutes a lucrative if not vital economic activity.⁸⁸ Concrete financial measures would need to be negotiated to compensate Iraq's neighbours for the losses they would incur if they ceased illegal trade or brought their oil transactions under the oil-for-food program (steps for which Iraq might retaliate by ceasing even legal trade with them). This would be very expensive, but probably no more so than the significant commitments the

⁸⁷ Currently, only shipments paid via the oil-for-food system are inspected by UN monitors at Iraq's borders, leaving other shipments unchecked. On the monitoring of sanctions, see David Cortright, Alistair Millar and George A. Lopez, "Sanctions, Inspections and Containment: Viable Policy Options in Iraq", Joan B. Kroc Institute/Fourth Freedom Forum Policy Brief F4 (May 2002), p. 9; see also David Cortright and George A. Lopez, "Disarming Iraq: Non-military Strategies and Options", *Arms Control Today* (September 2002) p. 14.

⁸⁸ Syria benefits in two ways. First, it indirectly earns money from Iraq's illicit export of subsidised oil to it, largely through an old pipeline linking Iraq's Kirkuk oilfields to the refineries at Homs and Banyas, but also through land transport. According to various sources, Iraq exports 150,000-200,000 barrels per day to Syria, with an additional 25,000 supplied via the Mosul-Aleppo railway. Oil-loading schedules suggest that Syria is using subsidised Iraqi oil for domestic consumption, allowing it to export more of its own oil at world prices. This subsidy factor earns Syria an estimated U.S.\$1 billion per year. Economist Intelligence Unit, *Syria Country Report*. August 2002. Secondly, Syria makes nearly U.S.\$2 billion annually in bilateral trade with Iraq, facilitated by the introduction of a free-trade agreement. ICG interview with the Syrian economist Nabil Sukkar. Damascus, November 2002. The case of Jordan is somewhat ambiguous. In May 1991, the UN Sanctions Committee tacitly allowed Jordan to import Iraqi oil on concessionary terms as a means of repaying Baghdad's substantial pre-war debt to Amman. Although the debt has been paid off, this arrangement has been maintained with an ever increasing level of trade. According to some estimates, Jordan earns roughly U.S.\$500 million in discounted Iraqi oil plus U.S.\$900 million in trade. See Pollack, op. cit., p. 219. UNSC Resolution 1409 was supposed to address the problem of oil smuggling but pressure from affected countries reportedly prevented the necessary measures from being included in the resolution. See Sarah Graham-Brown, "Sanctions Renewed on Iraq", *Middle East Report*, 14 May 2002.

⁸³ See *Newsweek*, 20 January 2003; Carnegie, "What's Next", op. cit., p. 11.

⁸⁴ George Lopez, "Toward Smart Sanctions in Iraq", Joan B. Kroc Institute for International Peace Studies, N°5 (April 2001).

⁸⁵ ICG interview with Gary Samore, former White House Senior Director for Non-Proliferation, 7 February 2003.

⁸⁶ See David Cortright et. al., "Winning Without War: Sensible Security Options for Dealing with Iraq", Fourth Freedom Forum/Joan B. Kroc Institute for International Peace Studies, October 2002, pp. 12-13.

U.S. is reportedly making to compensate many of these same states and others if a military option is implemented,⁸⁹ and without such measures these states are unlikely to bring the illicit activity to an end.⁹⁰

- *Instituting better control over Iraq's oil revenues.* By channelling all oil revenues through the UN escrow account, the international community would seek to curtail whatever unmonitored funds the regime might use to acquire WMD. The drawback, as mentioned above, is that this would require significant compensation for neighbouring countries that benefit greatly from oil exports

⁸⁹ For example, the U.S. reportedly offered Turkey a package of grants and loans valued up to U.S.\$26 billion, while Turkey was said to request U.S.\$32 billion. "Turkey Demands \$32 billion U.S. Aid if it Is to Take Part in a War on Iraq", *The New York Times*, 19 February 2003. See also "Turkey Conditions Troop Deployment on More U.S. Aid", *The Washington Post*, 19 February 2003. Subsequently the U.S. and Turkey were said to be reaching agreement for a smaller package worth U.S.\$16 billion, all of which would, however, be made available in the current year rather than spread out over multiple years. "U.S. and Turkey Reach Accord to Let G.I.'s Establish a Base", *The New York Times*, 22 February 2003. Israel has requested a total of U.S.\$12 billion, one-third in military aid and two-thirds in loan guarantees. See "Israeli delegation returns from Washington empty-handed", 21 February, 2002, available at www.haaretzdaily.com, which, despite the title, reports that the Israeli government is confident it will reach a satisfactory understanding with the U.S. While no official agreement has apparently been concluded between Washington and Amman, a senior Jordanian official referred to "informal promises of an additional U.S.\$150 million in economic aid this year". "Jordan to Allow Limited Stationing of U.S. Troops", *The Washington Post*, 30 January, 2002. Egyptian Foreign Trade Minister Youssef Boutros-Ghali stated that Cairo has also submitted "outlines of what a conflict in Iraq would cost us". "Egypt Asks for Trade Pact, Aid Boost", *The Washington Post*, 8 February, 2002.

⁹⁰ The mixed record of endeavours to reinforce border monitoring of embargoes in countries in which ICG has long experience (for example, the introduction of sanctions assistance missions in Bulgaria, Romania and Hungary and of patrolling missions to help enforce the embargo against Yugoslavia) makes clear their inherent difficulty. There are invariably too many ways and willing states and companies capable of circumventing restrictions; the effort, therefore, ought to focus on reducing the occurrence and magnitude of sanctions busting through effective verification/inspection as well as a combination of diplomatic sweeteners and sanctions. Direct budgetary infusions to front line states and punitive measures for violations, both of which require strong consensus on the part of the international community, are also musts.

that circumvent the oil-for-food program.⁹¹ However, the goal would be to bring oil smuggling through the Syrian pipeline, the truck traffic through Turkey, Jordan, and Iran and the Gulf tanker traffic under the umbrella of the UN. Moreover, the market incentive for trade within the oil-for-food program could be enhanced as a means of reducing smuggling. One suggestion is to abandon the retroactive pricing system for oil sales within oil-for-food (instituted to diminish the practice of Iraq's surcharges that it could then siphon off) that makes such sales commercially less appealing.⁹² Instead, alternative measures to deal with Iraqi surcharges on oil sales could be considered: strict auditing of oil companies' books by the sanctions committee and penalties for companies found to have paid the kickbacks. Iraq's neighbours could be given preferential treatment in both the oil trade and in contracts concluded under the oil-for-food program, to increase their incentive to operate under the UN system and discourage illegal trade.

- *Monitoring of, and increasing penalties on, companies and countries that flout the arms embargo.* This would need to focus on the potential acquisition of components used for Iraq's WMD program, including fissile material

⁹¹ George Lopez, "Toward Smart Sanctions in Iraq", Joan B. Kroc Institute for International Peace Studies, N°5 (April 2001). It is difficult to get a reliable estimate of how much Iraqi oil money currently escapes the escrow account but the two biggest non-escrow beneficiaries are Syria and Jordan. As noted above (fn. 88), Syria probably benefits to the tune of some U.S.\$1 billion annually from its use of subsidised oil that Iraq exports to it illegally while Jordan's advantage from its special oil arrangements with Iraq outside the escrow mechanism probably is in the range of U.S.\$500 million annually.

⁹² Since October 2001 contracts for oil sales are to be approved by the UN Sanctions Committee on the basis of average oil prices during the previous month. Due to delays in such approvals (up to 45 days), oil traders complain that they cannot be certain what price they are charged at the time of purchase. See: *Middle East Economic Survey*, 12 August 2002. In effect, this discouraged the trade in Iraqi crude, causing an estimated one-third reduction in demand for (legal) Iraqi oil. See: Global Policy Forum, *Oil Pricing Disputes and Shrinking Humanitarian Revenue*, (Global Policy Forum, 6 August 2002, <http://www.globalpolicy.org/security/sanction/iraq1/oilforfood/2002/0806price.htm>). Since December 2002, the time lapse resulting from UN approval procedures has been reduced. Yet, the pricing system remains a disincentive for oil companies to trade with Iraq. ICG interview oil analyst, London, 13 February 2003.

(particularly from Sub-Saharan Africa and Eastern Europe) – an important but very difficult task.⁹³ Steps that could be taken include creating a “special investigative commission to track down and expose sanctions violators”,⁹⁴ and “assisting UN member states in establishing effective penalties for companies and individuals that violate the new sanctions system”.⁹⁵

2. Stronger Deterrence

This element of the CDD-Plus approach starts from the view that containment alone is unlikely to address the threat posed by the Iraqi regime. First, in the absence of a credible threat of force, Baghdad can be expected to obstruct the inspectors to the point where even their redefined mission of keeping a lid on the country’s WMD programs becomes impossible. Secondly, not all types of weapons are similarly containable. If they have unrestricted access and strong political backing, inspectors are good in detecting large-scale materials for nuclear, chemical and missile programs. They are weaker when trying to detect small-scale programs, in particular biological weapons (which are more easily concealed, military significant even in small quantities, and capable of being developed in dual use facilities). For these, what matters is “whether Iraq wants to use them in an aggressive way; that ultimately depends on Saddam’s assessment of U.S. deterrence”.⁹⁶ And inspectors would find it virtually impossible to monitor Iraq’s possible transfer of WMD to terrorist groups. On the deterrence side of this option, therefore, a minimum posture would require:

- *Pre-authorization of the use of force by the Security Council and other key nations if Iraq undertakes certain specified acts.* The challenge would be to define those conditions so tightly,

and so clearly, as to leave no doubt as to their triggering effect and avoid another round of international haggling.⁹⁷ If this option is pursued, the following should certainly be included as *casus belli*:

- a hostile military act, or threatened hostile military act, by Iraq against any other nation, including but not limited to threat or use of WMD;
- strong evidence of transfer or threatened transfer of WMD to any terrorist group;
- clear prevention of the inspectors from performing their containment function (for example, blocking access to a site).⁹⁸
- *Pre-positioning of a sufficiently credible military capability in the region.* The experience of the past several months demonstrates that genuine military pressure (and probably only that) can force the Iraqi regime to move, however reluctantly and minimally. Had it not been for U.S. military warnings, it is unlikely the inspectors would have been readmitted in the first place.⁹⁹ To maintain leverage to move Iraq over the indefinite time period foreseen in this option, therefore, the international community would require the continued presence of a sizeable military force around Iraq – or the clear capacity to reassemble such a force in a brief period – to ensure the capacity to react rapidly

⁹³ See Fouad El-Khatib, “Tracking Iraqi Procurement”, in Carnegie, *A New Approach*, op. cit., pp. 51 and ff. The importance of focusing on the supply side of WMD was mentioned to ICG by former UNSCOM inspector Jonathan Tucker and former White House Senior Director for Non-Proliferation Gary Samore, though neither was particularly sanguine about chances of success. ICG telephone interviews, 7 February 2003.

⁹⁴ Lopez, supra. Examples from other countries where ICG has done work (sanctions monitoring in Liberia or Angola, for instance) make clear the necessity of strong enforcement of punitive measures against sanctions busters.

⁹⁵ Ibid.

⁹⁶ ICG telephone interview with Gary Samore, 7 February 2003.

⁹⁷ While it will obviously be difficult to negotiate a resolution in these terms – given inevitable anxiety about questions of definition, evidence and the absence of further Security Council review – it should not be impossible given that the quid pro quo for these uncertainties would be the U.S. taking off the table the immediate war option. The U.S. incentive to do so would have to be essentially political: a desire to respond to erosion of support for the outright war option internationally, and possibly domestically.

⁹⁸ The need for this stems from the fact that if Iraq were able to develop its WMD basically unhindered, the value of deterrence would be seriously undermined. At some point, the Iraqi regime could become persuaded that its own military capacity was sufficient to deter the deterrer, giving pause to those in a position to counter-attack. Indeed, the reluctance to launch a military assault because Iraq already may possess enough WMD to inflict major battlefield (or civilian) casualties is a strong argument for that case. See further, e.g., Albright and O’Neil, “The Iraqi Maze: Searching for a Way Out”, Monterey Institute of International Studies, vol. 8, N°3 (2001).

⁹⁹ Others have argued that had it not been for the U.S. focus on regime change rather than disarmament, the Iraqi problem might have been solved some time ago.

and forcefully. The greatest burden would inevitably fall on the U.S. but it should have support in establishing the prerequisites from a united Security Council and a relieved region.

To the extent it has not already done so, the U.S. would need to identify the bases it must have to confront Iraq, negotiate arrangements to store and maintain the necessary weapons and related material, and obtain firm commitments that its judgement would be decisive with respect to a decision to reactivate the bases and instigate the appropriate deployments. Such an arrangement, particularly if coupled with the maintenance of sufficient air power in the region to deliver a sharp initial response to any provocation while the rapid deployment was unfolding, would make clear to Saddam Hussein that he could anticipate facing again an overwhelming military force similar to that which is presently gathering around his borders. A U.S.-led multinational force would need to enjoy the full imprimatur of United Nations authorisation.

3. Stronger Diplomacy

For the past decade, Iraq has been an unsolved problem, caught between those who believed that sanctions and covert action would make the regime go away and those who believed that time would make the whole issue go away. As a result, Iraq today is a country suffering under harsh international sanctions and harsher domestic repression. Sanctions both leak – to the benefit of their intended target, the Iraqi regime – and hurt – to the detriment of their unintended victims, the Iraqi people. The regime's totalitarian power is intact, but the nation's sovereignty is in shambles, with no-fly zones north and south, a quasi-independent area in Kurdistan, repeated U.S. and British aerial attacks, interventions by Turkey and others, periodic and intrusive inspections, and various restrictions throughout. Whatever else this might be, it hardly constitutes a recipe for a stable future.

A strategy of strengthened containment and deterrence would not in itself offer either the prospect of full disarmament or a long-term way out for the Iraqi people or the international community. It might, however, offer the prospect of establishing a more stable security situation for a sufficient period to allow time to work on behalf of a more definitive solution.

More and better equipped inspectors arguably could be expected, like their predecessors did throughout much of the 1990s, to find some, though not all the WMD in-country, and to make it difficult for Saddam Hussein to supplement those declining stocks. The cumulative effect – if maintained rather than broken off as happened in 1998 – might chip away not only at Saddam's military capacity but also at his sources of power. The more obtrusive, omnipresent and unremovable the international presence, in other words, the less all-powerful, feared and unopposable the dictator would come to seem.

Under the CDD-Plus option, a number of additional diplomatic measures would accompany stronger containment and deterrence with the object of promoting a more comprehensive and longer-term solution for the Iraqi people and the international community. These would require determined but also creative diplomacy in the areas of disarmament, sanctions, Iraqi domestic reform and regional security:

- *Revamping the sanctions regime.* While the ban on strictly military items and the oil-for-food program would remain in place to help monitor and maintain limits on military acquisitions, other sanctions could be removed, with dual use items monitored through continued on-the-ground inspections on their end-use. Civilian trade and some foreign investment could be allowed, thereby undoing some of the more pernicious socio-political impacts of the sanctions – the destruction of the productive, salaried middle class and the increased control by the regime of the economy – and gradually undermining the regime's absolute economic power.¹⁰⁰

¹⁰⁰ For a discussion of the impact of the sanctions, see ICG Report, *Iraq Background: What Lies Beneath*, op. cit; Andrew Mack, "Help the Iraqi people topple Saddam Hussein", *Ottawa Citizen*, 29 January 2003. Some Iraqi dissidents take the view that "if the general economy were allowed to flourish by the removal of general sanctions it would weaken the grip of the regime and empower the population." Mundher Adhami, "Iraqi Perspective on Regime Change: Keep the Inspections, Lift the Sanctions", Discussion Paper, International Security Information Service, 21 February 2003. The argument further is made that, if dual use sanctions – which have held back repairs to vital infrastructure – were replaced by on-the-ground monitoring and coordination between inspectors and "users of such materials, such as electricity or oil industry engineers, on the means to ensure that the equipment will not be diverted," as suggested here, the regime and the elite supporting it would

- *Offering the Iraqi regime a genuine incentive to disarm.* While the international community would be crystal clear in its commitment to use force under the conditions described above, the U.S. would, under this scenario, leave no doubt that it would agree to the lifting of all sanctions (other than the arms embargo and the ban on developing WMD) if and when disarmament took place, the inspectors gave Iraq a clean bill of health and Iraq accepted a continued program of monitoring and verification. Likewise, the U.S. would commit not to seek the forcible removal of the regime so long as the inspections continued unhindered. According to some, current and past U.S. policy on both these issues has played a part in removing any incentive for the Iraqi regime to comply with its disarmament obligations.
- *Continuing to work for a change of regime through non-military means.* As observed above, the prospect of political liberalisation under Saddam cannot be considered very realistic, whatever pledges he might make in an effort to head off war. Should, however, he be willing to make such pledges – for example, on elections – the international community would insist on their fulfilment under strict international supervision, and seek access for governments and NGOs to work with Iraqi civil society. Additionally, as part of the resolution of the current stand-off (though not as a substitute for security measures), Iraq could be asked to accept deployment of a considerable number of United Nations human rights monitors, particularly in areas where the population is at risk of grave abuses. Members of the international community could also continue to support the opposition. While none of these measures would provoke an early regime change, and while there is no reason to believe that Saddam will ever relinquish his repressive means of governing, the increased exposure of Iraq and Iraqis to the outside world (international organisations, NGOs and the like) may help whittle away at Saddam Hussein's central power and gradually the fear that constitutes his principal instrument of control. The presence of a substantial number of inspectors, arguably, can have a similar effect, "provid[ing] a check on the tyranny of the regime and on the general accumulation of

arms stocks and the movement of weapons (conventional and unconventional)".¹⁰¹

- *Steps to address regional security concerns.* Again as part of the resolution of the current crisis, Iraq could be required to renounce formally any territorial claim against its neighbours and pledge that it will neither attack them nor interfere in their domestic affairs. In the case of Kuwait, this would mean a formal non-aggression treaty and normalisation of relations through resolution and closure of all outstanding files and claims (related to Kuwaitis who disappeared during the Gulf War and to claims for compensation). In the longer term, a broader regional system needs to be put in place that addresses the legitimate security concerns of Iraq and its neighbours. A disarmed Iraq, if that were to occur, would provide comfort to Kuwait and Saudi Arabia, but could nourish different designs in Iran, with which it has no formal peace treaty more than thirteen years after the Iran-Iraq war and which, unlike Iraq, has not been barred from developing its own WMD. More generally, Iraq's territorial encirclement and limited access to the Gulf have given rise to a sense of geographical insecurity that preceded Saddam and will likely outlast him.

B. PROS AND CONS

Arguments in favour of the CDD-Plus approach start from the premise that the threat presented today by Iraq can be addressed through a more robust containment and deterrence strategy, supplemented by a strong targeted diplomatic pressure, and that the efforts required to put such a strategy in place are only a fraction of those required to wage a full-scale war. Particularly given the anxiety about war in the region and more widely in the international community, the U.S. might well be able to virtually name its price for conditions that would justify its concurrence with a non-military resolution of the crisis. Extracting these commitments, and as appropriate locking them into a Security Council resolution, arguably would require less expenditure of political and diplomatic capital than the arduous effort to build a military coalition and address the considerable financial demands of front-line states.

be weakened while domestic professionals and functionaries would be strengthened. Ibid.

¹⁰¹ Mundher Adhami, op. cit.

The U.S., under this scenario, would have to insist on iron-clad international commitments on all the issues described above – beefing up sanctions monitoring and enforcement, compensating Iraq's neighbours for lost revenues due to the embargo, pre-positioning U.S. troops and pre-authorising military action under specified circumstances. The current U.S. administration on more than one occasion has demonstrated resolve in pushing through its priorities; should it apply itself to this task, the success that eluded its predecessors may well be within its grasp. As for the notion that the U.S. cannot maintain a credible deterrent force in the region for a sustained period of time, it has been noted that “war-ready U.S. troops, in the hundreds of thousands, were deployed in Europe for several decades; and U.S. ability for rapid deployment is today greater than ever”.¹⁰²

On this view, professions of doubt about the U.S. and the international community's determination to maintain a policy of containment and deterrence are not particularly convincing – or, if convincing, not particularly reassuring. The determination to stay the course with stronger containment and deterrence is, after all, merely the other side of the coin of the determination that would be needed to stay the course after a war and help in the long-term stabilisation and reconstruction of Iraq.

Arguments against the CDD-Plus approach would begin from the position that Iraq's current WMD poses an intolerable threat and that no containment regime can stop Iraq from continuing to produce biological or chemical weapons in small, untraceable sites. Moreover, the effort it will take to genuinely prevent the flow of illicit weapons and to credibly dissuade Iraq from using them cannot be sustained. In the long run, Saddam will have far more staying power than the international community. He has no other objective than to stay in power with his WMD; the international community has many more, and sooner or later it will turn its attention elsewhere. UN credibility will be once again in tatters if the obligations unequivocally placed on Iraq are not directly enforced. As Secretary Powell put it:

We cannot allow this process to be endlessly strung out as Iraq is trying to do right now – string it out long enough and the world will start looking in other directions, the Security

Council will move on, and we'll get away with it again.¹⁰³

International support for tough inspections and sanctions and regional tolerance for a robust U.S. military presence for both containment and deterrent purposes are functions of a credible U.S. military threat: if the latter faded so would the former. Over time, the argument goes, old patterns would recur: renewed impatience with Iraqi sanctions; international distaste for the principle of secondary sanctions; limited funds and willingness to compensate front-line states. However intensive the diplomatic effort, there is no way that the hundreds of trucks that cross into Iraq from Jordan, Syria or Turkey can be stopped, monitored and searched and its borders are, in any case, far too porous to prevent the smuggling of proscribed items such as fissile material into Iraq. Iraqi defiance of inspections would increase, including, for example, refusal of access to certain buildings.

As for the pre-authorisation of the use of force by the Security Council if Iraq undertook certain specified acts, sceptics of such an approach would argue that such a resolution would do little to deter Iraq from engaging in hostile acts against other countries since Iraq is fully aware of the fact that were it to attack another country Article 51 of the UN Charter would give that country the right to retaliate without securing Security Council approval; that a country which was the victim of a terrorist attack with WMD supplied by Iraq would probably never know it had been supplied by Iraq; and if prohibiting the inspectors from performing their containment function is a justification for the use of force in a pre-authorising resolution, it has already been justified by virtue of Iraq's efforts to intimidate its scientists from cooperating with the inspectors.

The U.S. military presence would come under increased pressure to scale-back and ultimately withdraw, as both regional opposition and the financial and military burden grew. The burden of maintaining tens of thousands more troops in the region would be politically out of the question. Countries would haggle as they are now over the precise definition of a trigger for military action against Iraq. Reconstituting international momentum to pressure Iraq might well be much more difficult the next time if the U.S. shied away from military

¹⁰² Brzezinski, op. cit.

¹⁰³ Secretary of State Powell, remarks to the United Nations Security Council, 14 February 2003.

intervention on this occasion. Meanwhile, an Iraq that does not seem deterred from concealing its WMD by the threat of imminent and massive US military action arguably cannot be deterred from using them, regardless of the threat.

Ultimately, opponents of CDD-Plus would insist, the option of strengthened containment and deterrence supplemented by broader diplomatic measures would be a failure if it merely avoided a war. It would need to restrain the genuine threat that Saddam Hussein represents and over time deal in a successful manner with his WMD and promote a regime change that will benefit the long-suffering Iraqi population. This, however, largely depends on the international community's resolve and willingness to take steps on inspections, sanctions and military fronts, and all others as well, that it has been loath to take in the past.

Amman/Brussels, 24 February 2003

